

Retaining women lawyers: the need for new perspectives

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“Whether you can observe a thing or not depends on the theory which you use. It is the theory which decides what can be observed.” Albert Einstein

Law firms want to keep women lawyers and see them succeed. They are starting to realise that their failure to retain and advance women is jeopardising their ability to compete and thrive in the modern marketplace. Research has shown that greater gender diversity has a statistically significant positive impact on both client satisfaction and law firms’ financial performance.¹ In contrast, the lack of women in leadership prevents firms from meeting client expectations for gender-diverse teams and women leaders; it handicaps firms in the intense competition for top legal talent; it deprives them of women’s professional strengths and perspectives; and the steady loss of highly experienced lawyers weakens profitability. Firms try to keep women by adopting various policies and programmes, but the results are usually disappointing because firms define the problem incorrectly. They base their actions on biased mindsets and incorrect assumptions about what women want and need, then offer programmatic solutions when what is required is a new law firm culture. For better outcomes in retention and advancement, law firms must reframe the way they view and address the problem.

Firms have created and perpetuated a culture based on a preference for masculine thinking and acting. This culture expects round-the-clock work availability, values aggressive competition and self-promotion, and measures success by compensation based on the most hours worked and the biggest book of business. They may offer some flexible alternatives (eg, reduced hour schedules) but stigmatise lawyers who use them. This ‘ideal worker’ model benefits employers at lawyers’ expense. While some lawyers thrive in this culture, it has led to problems more serious than attrition, such as extremely high rates of depression and alcoholism.²

While women are more dissatisfied than men with firm culture, compensation and work environment,³ resistance to the traditional model is growing among young lawyers of both sexes.⁴ And since millennials (those born between 1980 and 1995)

1 Acritas Diversity Report, Acritas Research Ltd, 2016.

2 “Lawyers and Depression”, Dave Nee Foundation; Mark Cohen, “Why Are Lawyers So Unpopular and Stressed?”, Big Law Business, Bloomberg BNA, 30 September 2015.

3 Rachel Marx Bouffard, “Why Are Women Lawyers Unhappy?” Vault, 21 March 2013.

4 Claire Cain Miller, “The 24/7 Work Culture’s Toll on Families and Gender Equality”, The Upshot, *The New York Times*, 28 May 2015.

will make up nearly half of the workforce by 2025,⁵ firms have to rethink their expectations, norms and values. Instead of trying to help women fit into the current culture, law firm culture will need to adapt to the changing labour force.⁶ Resolving the issues that have long troubled women in law firms will create a workplace more appealing to men as well.

Creating a more balanced and inclusive culture is, of course, a complex, multi-faceted, multi-year undertaking, so law firms that want to build a culture where women will stay and succeed cannot delay. (See Appendix A for examples of transformative initiatives.) To begin, you have to redefine your operating premises. Lawyers know that the way you frame an issue dictates your analysis and conclusion. To find effective solutions, firms must reframe the issues:

- not 'gender diversity' but 'gender balance';
- not 'why do women leave?' but 'why should women stay?'
- not retaining women but engaging them;
- not a women's issue but a strategic business issue;
- not led by women alone but led by men and women together;
- not how do we 'fix' the women but how do we fix the firm.

By looking at the problems differently firms can better understand what they must do in order to keep and get the most from the great female lawyers who are otherwise walking out the door.

1. **Move beyond gender diversity to gender balance**

Instead of just trying to increase gender diversity, focus on achieving gender balance. Increasing gender diversity suggests raising numbers and percentages. Creating 'gender balance' involves building an inclusive culture where women are accepted for who they are as individuals; valued and fairly rewarded for all they contribute to the firm; can achieve their highest potential; and are equitably represented in the firm's power structure. Statistics about gender diversity are important measures but do not tell the full story about women's status. It has been said that 'diversity' is being invited to the party; 'inclusion' is being asked to dance. Women are invited into law firms and well represented at entry levels, but they leave because they are not made to feel included.

This shift of perspective acknowledges that the problem is not simply one of reversing female attrition; it is a matter of getting more women into firm leadership. In fact, industry-wide attrition rates are uncertain. Although some authorities state that women leave firms at twice the rate of men,⁷ others show that the rate is about the same for men and women.⁸ But with so few executive women, every woman's departure has significance. When women leave it reduces and discourages the pool of women who remain; if those women do not want to become partners or do not try because they think it would be futile, the firm's diversity figures remain low.

5 Christie Smith and Stephanie Turner, PhD, "The Radical Transformation of Diversity and Inclusion: The Millennial Influence", Deloitte University 2016.

6 Joseph Collins, "How to Hire a Millennial", Working Knowledge, *Harvard Business Review*, 8 April 2016.

7 Selena Rezvani, "Large Law Firms are Failing Women Lawyers", *The Washington Post*, 28 February 2014.

8 2016 Update on Associate Attrition, The NALP Foundation, 2016.

2. Why should women stay?

Firms have been assuming that women choose to leave them because they cannot cope with work–family conflicts, they lack ambition, or they are not tough enough to succeed in the firm. So firms adopt family-friendly policies and start women’s initiatives, to which they proudly point as evidence of their support for women. Some of those policies and initiatives do indeed help women and enable some to stay at work longer than they otherwise would. Yet even after firms take those steps, women continue to leave. This reinforces firms’ underlying and mistaken assumptions that the problem of high attrition is due to women’s failings and inadequacies.

The problem persists because as important and valuable as they are, family-friendly policies and women’s initiatives have not addressed the heart of the problem: inherent cultural, structural and institutional biases that favour men and disadvantage women. What if we look at the situation a different way?

Women begin their careers with the same ambitions as men.⁹ Hired in numbers equal to men, they watch men advance faster and earn more than they do no matter how much, how well or how hard they work. Women with the intelligence, talent and drive to be partners, leaders and rainmakers do not enter the top ranks on a par with similarly qualified men. In Latin America, women are 49% of associates and only 20% of partners.¹⁰ In the United Kingdom, women have been 60% of entry-level lawyers for 20 years but are only 19% of partners in the top 20 firms and 16% of the senior leaders at the top 50 firms.¹¹ In the United States, women have been entering law firms in about the same numbers as men for three decades, but are still less than 18% of equity partners and less than 4% of chairs, managing partners and executive management.¹² Women equity partners make 20% less than men equity partners, even when they bill the same hours and have comparable books of business.¹³

Law firms fancy themselves as meritocracies, but more than merit determines the outcomes of decisions about promotions, clients and pay, especially when those who define merit and make the decisions are overwhelmingly men. Instead of assuming that women leave because of babies and a lack of ambition, firms should be asking, ‘Why would women stay when the odds are stacked against them?’

In today’s highly mobile labour market, women – like men – do not hesitate to move when better opportunities are presented. Talented women lawyers have many work options and not just in the traditional places like established law firms. They can also choose from a rapidly growing number of ‘alternative’ legal service providers and innovative start-ups that offer interesting and challenging legal work, flexibility and autonomy, high compensation, and more chances for professional growth and advancement than they see in conventional law firms.

9 Robin J Ely, Pamela Stone and Colleen Ammerman, “Rethink What You ‘Know’ About High-Achieving Women”, *Harvard Business Review*, 2014; Eileen Patten and Kim Parker, “A Gender Reversal on Career Aspirations”, Pew Research Center, 19 April 2012.
 10 Joachim Bamrud, “Latin America: The Challenges for Female Lawyers”, *Latinvex*, 2 July 2014.
 11 Natasha Bernal, “Where are the Women Law Firm Leaders?” *The Lawyer*, 9 March 2015.
 12 Lauren Stiller Rikleen, *Report of the Ninth Annual National Survey on Retention and Promotion of Women in Law Firms*, National Association of Women Lawyers and NAWL Foundation, October, 2015.
 13 *Ibid.*

In a sense, the burden of proof has shifted. In the past women had to argue the business case for themselves. Women tried to adapt to existing law firm cultures because they were trying to break into the legal profession and be taken seriously on the basis of their skills, ability and work ethic.

Today, the market is making the case for women: clients insisting on gender diversity, the costly exodus of female talent, and in some countries, regulations¹⁴ requiring greater transparency about gender diversity. Now that women lawyers are prized and needed, it is law firms that must adapt. Firms that genuinely want to attract and keep women lawyers today must prove that the opportunities and work conditions they offer are better than what women can find in another workplace. Firms must look at themselves through women's eyes and make the business case that would persuade women to stay.

3. **How can you engage women?**

Instead of merely retaining women, firms should be trying to engage them. Engagement is a state of intellectual and emotional commitment, and it is a critical factor in how long people stay in their jobs. Engaged lawyers feel respected and valued; find their work interesting, challenging and meaningful; and believe they can achieve their highest potential in the firm. Engagement should not be confused with satisfaction. Satisfied lawyers may feel good about their job, the people and the firm, and do what is expected of them. When lawyers are fully engaged, they perform at the highest levels, identify with the firm and want to stay there even when there are opportunities to work elsewhere.

Many factors can generate engagement, so successful engagement efforts must be tailored to each lawyer, taking into account her motivators, development needs, personal circumstances at work and at home, and career goals. But some factors are universal. Lawyers want firms to help them acquire the legal and business skills they need to be excellent lawyers and provide opportunities for them to constantly develop and stretch their abilities. They want partners to take a personal interest in them, providing instruction, guidance and mentorship. And they want a workplace culture that is collaborative and inclusive, where leaders are supportive and women feel that they fit in and are appreciated for who they are and what they contribute.¹⁵ While the desire for this kind of culture may sound naive or 'soft' to some law firm leaders, it is not. These conditions are necessary not just to engage women, but to engage young men as well.¹⁶ A 2016 study by Deloitte and the Billie Jean King Leadership Initiative showed that 83% of millennials are actively engaged when they believe their organisation fosters an inclusive culture, compared to only 60% of millennials who are actively engaged when they believe their organisation does not.¹⁷

14 Kat Green, "BigLaw Gender Pay Gap Under Pressure With New EEOC Rule", *Law360*, 29 January 2016; Liz Bolshaw, "UK Law Firms Face Compulsory Diversity Reporting", *Financial Times*, Women at the Top Blog, 8 August 2011.

15 Corey Laplante and Katie Larkin-Wong, "Perspective: Millennials in Big Law – Let's Get to Work", *Big Law Business*, Bloomberg BNA, 4 April 2016.

16 Joseph Collins, "How to Hire a Millennial", Working Knowledge, *Harvard Business Review*, 8 April 2016.

17 Christie Smith and Stephanie Turner, PhD, "The Radical Transformation of Diversity and Inclusion: The Millennial Influence", Deloitte University 2016.

The importance of this difference translates into dollars and cents because organisations with high numbers of engaged employees have been shown to outperform others by more than 200%.¹⁸

In an inclusive culture, lawyers would be able to see enough diverse male and female role models that they can envision a future for themselves with the firm. This point is especially vital for women. Law firms have few prominent women rainmakers and leaders. Unlike the wide variety of men who are law firm partners, the scarcity of women partners, especially at the top, severely limits the role models available to women. Because women have had to be exceptional in order to become successful partners – more so than men – many women leaders and rainmakers are perceived as ‘superwomen’, and younger women may find them intimidating rather than inspiring. Young women become discouraged when they see few women leaders with whom they can identify and thus cannot envision themselves becoming partners at the firm.

To counteract this perception, women need to know that partnership, especially equity partnership, is both attainable and desirable. They need to be told clearly and honestly what it takes to succeed in the firm, how to do it, and what their chances are of making it. If they are on track, they want sufficient encouragement from supervisors, mentors and sponsors who believe they can make it, urge them to try and agree to support them. And they have to believe that their sacrifices and hard work to get to the top are worth it.

Pillsbury Winthrop Shaw Pittman LLP has benefited from this kind of culture. Pillsbury holds the distinction of being the first global law firm to elect a woman as its chair and it has had many other women serve as high-profile leaders. In the firm’s Los Angeles office, where 30% of the equity partners are women, men and women partners personally support the career progress of women associates and junior partners. They routinely talk to the women associates they supervise about what it takes to become a partner and how to position themselves for partnership. They do more than just advise these women. They give them challenging and high-profile client responsibilities, often stepping back and letting the women take the lead. They teach women the business and economic aspects of practice. They invite women along to business development activities, introduce them to younger in-house counsel and encourage them to build those relationships. They push women out of their comfort zone and encourage them to reach ever higher. Partners do this one-on-one, not because of any programme but because such behaviour is part of their culture. As a result, women thrive.

4. Gender balance is a strategic business issue

Many firms treat gender balance as a ‘women’s issue’. It is not. Retaining half your talent pool is a strategic business and talent issue that goes to the core of the firm’s ability to succeed in the marketplace. Instead of firms asking, ‘What is wrong with women if they cannot make it to the top in our firm?’ they should be asking, ‘What is wrong with this firm if talented women cannot make it to the top?’

18 *Ibid.*

Firms cannot afford to continue losing female talent. Women now represent more than 36% of all lawyers worldwide; in most countries women represent 30% to 50% of lawyers and the percentage is even higher in some countries.¹⁹ As the proportion of women lawyers continues to grow, and the market for legal talent becomes ever more competitive, women will flock to firms where they can flourish, and the firms they leave will be at a severe competitive disadvantage.

Firms with gender-diverse senior teams are better able to address clients' expectations because clients increasingly expect firms to have such teams. Even more important, increasing numbers of those clients are women. Many of those women make hiring decisions and manage outside counsel, and they place far more value on 'feminine' attributes that the business world previously undervalued.²⁰ With an increasingly female client base, a dearth of women leaders and women-led teams deprives a company of perspectives needed to understand and serve women clients.

In addition, women's leadership strengths are especially suited for leadership in the modern marketplace.²¹ As the business world changes, law firm leaders need to forge new kinds of working relationships with colleagues, employees, vendors, competitors and clients, more and more of whom will be women. Leaders will need to use behaviours and leadership styles that women tend to demonstrate more than men, such as emotional intelligence, team building, collaboration, empowering others, and participatory decision making.

Moreover, abundant research shows that more gender-diverse executive teams produce tangible business benefits, including better financial performance and organisational health, while the lack of gender diversity in leadership is very costly to the bottom line.²² As stated in a recent study, a large and growing body of research is "delivering unassailable proof that accelerating women's advancement in the workplace and creating gender-balanced teams, boards and governments produce better outcomes and create prosperity".²³

A law firm's growth, endurance and profitability depend on retaining and optimising the talents of all its lawyers, including women. It is simply a business imperative – and should be a top strategic priority – for firms to keep women lawyers and place them in leadership and decision-making roles where they can have the greatest impact.

Many firms rationalise that there are not enough 'qualified' women to fill those senior roles, or believe that women do not want those positions. But most firms could find plenty of women who are equally or more qualified than men if they used unbiased leadership criteria, groomed women for those roles (as some are starting to

19 Ethan Michelson, "Women in the Legal Profession, 1970–2010: A Study of the Global Supply of Lawyers", *Indiana Journal of Global Legal Studies*, Summer 2013, Table A6.

20 Cathy Benko and Bill Pelster, "How Women Decide", *Harvard Business Review*, September 2013.

21 Julia Sperling, Chiara Marcati, and Michael Rennie, "GCC Women in Leadership – From the First to the Norm", McKinsey Middle East, July 2014; Georg Vielmetter and Yvonne Sell, "Leadership is about to get more uncomfortable", HRR Blog, 1 July 2014; *Americans Crave a New Kind of Leader – And Women Are Ready to Deliver*, Pershing LLC, 2014.

22 Acritas Diversity Report, above; Beth Brooke-Marciniak, Uschi Schreiber, and Karyn Twaronite, "Women: Fast Forward. The Time for Gender Parity is Now", Ernst & Young 2016; The Catalyst Research Center For Equity In Business Leadership, Catalyst.

23 Brooke-Marciniak, *et al*, *ibid*.

do – see Appendix B), or simply had the will to act. One leader who took direct action is Greg Jordan, the former managing partner of the global law firm Reed Smith.

Reed Smith’s executive committee is an elected group of representatives from every firm office. In 2000, the firm went through a series of global mergers. The firm amended its partnership agreement to add three seats to the executive committee, to be appointed by the managing partner, for the purpose of increasing ‘balance’. At the time the intention was to enhance geographic balance and hasten firm-wide integration by adding representatives from newly merged offices. As geographic balance improved naturally during the integration process, Jordan began to appoint women to fill the three extra seats. Over time, women began to run for executive committee seats because it became ‘normal’ for women to be on the firm’s top committee. Eventually more women were elected rather than appointed and women came to represent 28 to 33% of the executive committee.

5. Men must join women in leading gender balance initiatives

Once a firm acknowledges that the need for more women leaders is a critical business issue and makes it a strategic priority, it becomes less marginal and more urgent, and men can no longer avoid sharing ownership of it. In order to take advantage of the enormous benefits and opportunities that gender balance can offer, men, especially those in leadership, must ensure that the promises of greater gender balance are realised.

Until now, most initiatives to retain and advance women have been led solely by women. The work they have done has established a strong and necessary foundation: establishing internal women’s networks for mutual support; building external business networks with women clients and community leaders; sponsoring business development and leadership training for women; and lobbying for family-friendly programmes and policies. Although these activities are vital, they keep women away from the men who control the firm and their male clients – the very people who hold the power, connections and support women need to get ahead.

The success of initiatives to achieve gender balance is more likely when leaders are visibly, actively involved.²⁴ Since most law firm leaders are men, meaningful change depends on men taking leading roles in the effort. To date, few men have stepped forward. The absence of men places extra burdens on women, especially women leaders who spend considerable non-billable time running these initiatives and being available to younger women as mentors and advisers.

It is unfair to expect women to bear the full responsibility for finding a solution for what is essentially a failure of male leadership. As long as men hold overwhelming control of firm management, clients and money, they control the keys to greater gender balance. Women alone cannot change the cultural norms, mindsets, and systems that govern law firm advancement, leadership and rewards. There are too few powerful women in most law firms to drive significant institutional changes without the support of men at the top, where it can make a difference. It

24 “A CEO’s Guide to Gender Equality”, *McKinsey Quarterly*, McKinsey & Company, November 2015; “Women in the Workplace 2015”, *LeanIn and McKinsey & Company*, 2015.

will take committed men, working together with women, to create the conditions in which gender balance can be attained.

Women, too, must accept and welcome men into women's initiatives. In many firms women prefer women-only activities because they offer women a greater sense of camaraderie, safety and control. But by excluding men, women have deprived men of opportunities to learn from women, be mentored by women, and fully understand the challenges women face. This may have left potential male supporters untapped and possibly even alienated them.²⁵

By educating each other but not men, women's initiatives have missed the chance to correct the mindsets, myths and unconscious biases that create barriers for women. Indeed, educating men is critical, since a high proportion of men deny that women face gender bias or other disadvantages at work.²⁶ Moreover, by being for women only these initiatives fail to assist men who challenge gender norms in ways that promote desirable cultural changes, such as fathers who face work-life conflicts or work reduced schedules.

In some ways excluding men has undermined the larger objective of creating a more inclusive culture. It has made it more difficult for men to develop sufficient trust, understanding and comfort to speak candidly with women, give them honest feedback and advice, and offer them mentorship and sponsorship. When men believe women want to do it without them, they do not appreciate what they can contribute or how they can best be of help.

One area where this is especially problematic is sponsorship. Sponsors are powerful partners who help propel a lawyer's career upward. They urge colleagues to make her a partner and raise her compensation; introduce her to clients and appoint her to high-impact committees; and do other things that boost a lawyer's chances of success. Research has shown that the reason more men than women get promoted is not because of any inherent differences between the sexes in ability, talent or drive, but because far more men than women enjoy the sponsorship of powerful leaders, the vast majority of whom are other men. This research also shows that when women do have senior-level sponsors, they get promoted at the same rate as men.²⁷ As an example, when the Women's Initiative Network of Reed Smith (WINRS) determined that the lack of powerful sponsors limited women's ability to move up, they identified senior women associates who were or should have been up for partnership and as a group, WINRS championed those women and advocated for their promotion. All the women they sponsored in the first year of the programme were elected to partnership and in each subsequent year, between 27% and 57% of women they sponsored were elevated.

It is well known that men prefer to sponsor other men rather than women for various reasons: unconscious gender bias; uncertainties about women's career

25 Jeanine Prime, Corinne A Moss-Racusin, Heather Foust-Cummings, "Engaging Men in Gender Initiatives", *Catalyst* 2009.

26 "A CEO's guide", above; "Women in the Workplace 2015", above; Sandrine Devillard, Sandra Sancier-Sultan, and Charlotte Werner, "Why Gender Diversity at the Top Remains a Challenge", *McKinsey Quarterly*, McKinsey & Company, April 2014.

27 Sylvia Ann Hewlett, (*Forget a Mentor Find a Sponsor* (Harvard Business Review Press, 2013); Heather Foust-Cummings, Sarah Dinolfo and Jennifer Kohler, "Sponsoring Women to Success", *Catalyst*, 2011.

ambitions; worry that something they say or do may lead to misunderstandings or claims of impropriety; and concerns that an opposite-sex relationship may cause complications such as an affair or office gossip. These issues need to be discussed and addressed by men and women together. Men need to be made aware of the factors that may cause them to overlook or avoid women protégées in favour of men. These discussions need to take place in a setting where men and women feel safe discussing concerns they have about opposite-sex sponsor relationships, and are given tools and techniques to make opposite-sex sponsor–protégée relationships work.²⁸

The time has come for a new version of women’s initiatives – renamed ‘gender balance initiatives’ – that preserve the vital women-only events that are important to women, but which also promote greater interaction, trust-building and involvement by both men and women. A gender balance initiative would expect men to take visible roles in promoting gender balance and advocating for the cultural and institutional changes it requires. It would teach men and women how to talk about gender bias and work in tandem toward gender equality. If the objective is to create a more inclusive firm culture, then more needs to be done to help women and men build it together.

6. **Fixing law firm culture: identifying and eliminating gender bias**

The slow progress toward gender balance in law firms is caused principally by unconscious gender bias. Gender bias today is subtle, unspoken and unconscious, but it remains firmly embedded in “cultural assumptions and organisational structures, practices, and patterns of interaction that inadvertently benefit men while putting women at a disadvantage”.²⁹

Although it is unconscious and not deliberate, gender bias determines how people in the firm view, judge and treat each other, and in most firms they do so through a traditionally masculine lens. When leaders make judgements and decisions based on inaccurate and biased assumptions, they give men unfair advantages even though they may not realise it. One recent study, for example, found that politically conservative partners consider women as ‘less promising’, so they do not give women associates the same work opportunities and promotions they give men. This reduces the partnership chances of those women by 80%.³⁰ In order to reverse the unwanted attrition of women, firms need to take a close look inward and tackle the biases that permeate law firm culture and block women’s ascent.

There is a large body of literature about the many forms of gender bias and how they unwittingly create barriers that subject women to higher standards and double binds; undermine women’s confidence and ambition; exclude women from important networks; prevent them from getting profitable work, business, and promotions; and keep women undervalued, under-compensated, and under-utilised as leaders.³¹ Women are viewed as less competent, ambitious and competitive than

28 Ida O Abbott, *Sponsoring Women: What Men Need to Know* (Attorney at Work, 2014).

29 Herminia Ibarra, Robin Ely and Deborah Kolb, “Women Rising: The Unseen Barriers”, *Harvard Business Review*, September 2013.

30 Vivia Chen, “Bad News for Women with Republican Bosses”, *The Careerist*, 8 April 2016.

31 Ibarra *et al*, above; Rachel Emma Silverman, “Gender Bias at Work Turns Up in Feedback”, *Wall Street Journal*, 30 September 2015.

men; if they are mothers, they are considered less committed than both women without children and all men; and no matter how women behave, they are criticised. Like Goldilocks, women are too soft or too tough but rarely just right. If collaborative, compassionate and modest, they are either ignored or viewed as likeable but 'too feminine' to command respect. If they act with authority, decisiveness and strength, they are denigrated as 'unfeminine', arrogant and pushy.

Gender bias also harms men. Men who do not conform to expectations of masculine behaviour – by working part-time to care for their kids or being soft spoken and gentle rather than aggressive and tough – may be ridiculed or written off as 'not leadership material'.

Gender biases, and the stereotypes behind them, may be unconscious but they have a pernicious effect on women. Firms must aggressively root them out and eradicate them. Classes in gender bias are only a start; they raise awareness but do not get rid of the bias. The difficulty, as explained earlier, is that biases are 'hidden', based on unconscious mindsets, and therefore hard to find. And the challenge is compounded because these biases are embedded in law firm culture and institutional systems that affect how women are evaluated, promoted and rewarded. Firms can begin by taking a close look at systems and processes that affect women's work experience, assessments, promotions to partnership, business development, client referrals, leadership selection, and compensation.

6.1 Work allocation

The most critical element of professional development is work experience, yet few firms have formal systems for assigning and monitoring work. Instead, partners informally give work to associates. Without a system in place to track associates' work experience, partners who have less confidence in women or feel more comfortable working with men may give women less challenging work, less client contact, less visibility in the firm, and fewer opportunities to prove how good they are. This denies women many of the work experiences they need in order to learn and advance, and prevents them from establishing reputations for leadership and excellence. Mothers, especially those who work reduced hours, are at particular risk of receiving too little, too much or inferior work.

6.2 Evaluations

Performance standards should be explicit and performance assessments should be based on objective, observable, and measurable criteria. Otherwise, evaluations may harbour subtle biases that result in women receiving lower scores than their performance would justify, reducing their chances of becoming partners. In a study of associate evaluations at a Wall Street law firm, women received more positive narrative assessments (eg, 'excellent', 'stellar', 'terrific') than men, but only 6% of women – as opposed to 15% of men – were mentioned as potential partner material. What's more, women who received the same narrative comments as men about their technical competence and partnership material nonetheless received lower numerical ratings than men. Because the firm relied on numerical ratings for partnership consideration, men in the firm were three times more likely than women

to be promoted to partnership even when women exhibited the same performance, competence and partnership potential.³²

6.3 Partner promotions

In making partnership decisions, women are often held to stricter readiness standards. Decision makers may give men the benefit of the doubt based on their future potential, while judging women on their past performance. So if a man and a woman have made identical but not yet successful efforts to land a new client, they conclude the man 'just needs a little more time' while the woman 'hasn't shown she can do it'. If they both do land a client, the man may be congratulated for his skill while the woman may be seen as 'lucky'. Moreover, during partnership selection discussions fewer women than men have powerful sponsors to advocate for them and challenge these biases.

6.4 Business development

Women partners are frequently left out of client pitches, social events with clients, and other business development activities. Women are often overlooked or excluded from pertinent business promotions, presentations and client activities even when they have pre-existing relationships with a client or are leading experts in the field being discussed. Whether unconscious or deliberate, the effect is the same: women are deprived of opportunities to originate or share in new client business.

6.5 Client referrals

Partners acquire clients internally in two ways: when rainmakers have new business to distribute and when partners retire and ask lawyers to take over responsibility for their clients. Male rainmakers (who are the vast majority) often assume that 'since the client likes me, the best partner to handle the work or take over my client is someone like me'. Even when they know women partners who would be excellent candidates they overlook them, so women are left out of the running and men get the business. This keeps women from receiving or inheriting significant client relationships.

6.6 Leadership selection

When selecting people for leadership positions, most law firms do little formal planning to identify and prepare the people best qualified for them. The lack of leadership criteria and succession planning hurts women's chances for being selected. Unlike men, women are not automatically perceived as leaders, are not as well connected in the firm power structure, and do not have influential sponsors grooming and advocating for them. Formal succession planning using objective selection criteria has been shown to reduce favouritism and promote equal advancement opportunities for women – but few firms do it. When the firm develops and uses leadership competencies to guide the process of identifying qualified

32 Monica Biernat, M J Tocci and Joan C Williams, "The Language of Performance Evaluations: Gender-Based Shifts in Content and Consistency of Judgment", *Social Psychological and Personality Science*, published online 18 July 2011.

candidates, women are more likely to be included in the list. Similarly, when decision makers are given specific characteristics to look for and a directive to consider women, they necessarily take notice of a wider pool of candidates, which increases women's chances of being selected.

6.7 Compensation

Women partners (equity and non-equity together) are paid 32% less than their male peers, an average difference of \$250,000.³³ Research has repeatedly concluded that compensation disparities between men and women partners in law firms cannot be explained by performance, productivity, or any factors other than biased practices.³⁴ One study found that the presence of three or more women on compensation committees significantly narrows the pay gap, but few firm compensation committees have that many women members.³⁵ In the absence of clear, fair and consistently applied criteria, compensation committees may make biased assumptions about the commitment, achievements and potential of women (especially mothers), and use decision factors that favour men and undervalue the contributions of women to the success and economic wellbeing of the firm.

7. Accountability

Before a firm decides on a course of action and sets goals for increasing gender balance, it needs to collect and analyse basic data about retention and attrition rates and patterns, and about lawyers' experiences and perceptions. Likewise, it needs data about current policies and practices, how often they are used, and their impact on lawyers' status and career progress. For example, more than 90% of law firms have policies permitting part-time work, but less than 6% of lawyers actually use them because they fear it will jeopardise their careers.³⁶

Having an accurate picture of the firm's lawyers and the policies that impact gender balance enables the firm to identify its gender disparities, areas of strength, and points of vulnerability and weakness. You can look for disparities between men and women in such areas as exposure to valuable work experience and client contact; representation in leadership, management, governance, and important committees; business development opportunities; compensation, rainmaking, and credit for business origination; election to equity partnership; and hiring and integration of lateral associates and partners. If you find that such disparities exist, you can investigate why and find ways to correct the situation by examining the existing governance and reward structures, leadership and compensation decision-making processes, and personal behaviours and practices of lawyers in the firm.

33 Julie Triedman, "A Few Good Women", *The American Lawyer*, 28 May 2015. (Note that the gender disparity cited in footnote 12 relates only to equity partners, while the figure here compares pay for all partners.)

34 Natasha Innocenti, "Show Me the Money", Major, Lindsey & Africa, 12 September 2014; Dr Silvia Hodges Silverstein, "White Paper: Gender Study", Sky Analytics, March 2014; Lauren Stiller Rikleen, *Closing the Gap*, (American Bar Association, 2013).

35 Rikleen, *Report of the Ninth Annual National Survey*, above.

36 Deborah Rhode, "Law is the Least Diverse Profession in the Nation. And Lawyers aren't Doing Enough to Change That", *The Washington Post*, 27 May 2015.

Don't assume you know about what women experience, perceive or feel about the firm. Ask them. Compare the data by seniority levels and across offices, practice groups, departments and industry teams. Ask qualitative questions too, about all aspects of life and experience at the firm. Collect the same information from men and compare their responses to women's. To provide just a few examples:

- How do they feel about the way they are treated in the firm?
- Do they believe the firm is meritocratic?
- Do they believe they experience gender bias?
- Do they have role models they admire in the firm?
- Do they receive the work experience and opportunities they want?
- Do they have mentors and sponsors who are invested in their career success?
- How many internal client referrals do they receive?
- How engaged are they? How long do they plan to stay?
- Where do they go/what do they do when they leave your firm?

Your data analysis provides a baseline. It should give you a clear picture of the firm's unique gender disparities and allow you to develop data-driven strategies tailored to these findings. Once you understand women's experiences and perceptions, and know when, where and why women leave, you will have a better sense of where intervention and change are needed. For example, if you determine that women are receiving inferior work assignments, insufficient client contact, or lesser bonuses, you can put systems in place to ensure that work assignments and client opportunities are fairly distributed, and decisions about compensation are made using unbiased criteria.

As you develop and implement strategies for change, it is essential to set targets and priorities. Specific targets are important to keep everyone focused and establish clear measures of success. Firms that set gender balance goals are more likely to make progress than those without them. Setting priorities is important so that energies are directed properly and for greatest impact.

The team in charge of the overall initiative should be diverse, with prominent male leaders in the forefront who are respected by colleagues and accept a stake in the outcome. They should track developments closely to ensure that plans are being well executed and making the desired progress. Monitoring implementation allows them to see what's working, what isn't, and what needs to be dropped, added or tweaked. It allows them to assess the effectiveness of the initiative over time. And it enables them to recognise patterns and trends and respond quickly.

Critical to this process is tying actions to consequences, so that everyone is held accountable for the success of their efforts. Accountability is crucial in order to maintain momentum and achieve both short- and long-term objectives. Leaders at every level and in every office and practice area should have plans for their constituents tied to the overall plan, and report to the firm regularly on their progress and results.

One example of how firms can build accountability into an initiative is by setting clear expectations for partners and holding partners to them. For example, one AmLaw50 firm has developed diversity and inclusion competencies that deal with

education, behaviour change and visible leadership. Each of these three foundational competencies is explained in detail, along with examples of associated behaviours, skills and action items. All partners in leadership roles create their own 'diversity and inclusion action plans' that set out what they will learn and do to improve and apply these competencies. The personal goals they set are tied to critical firm business goals, and their plans incorporate specific action steps that move them toward their goals.

8. Conclusion

Women – and men – will stay longer and perform better in law firms where the culture is inclusive and lawyers believe they can have fulfilling legal careers without sacrificing their personal lives or authenticity. Firms with the foresight and determination to create a better workplace will have a significant competitive advantage. The time to start is now.

Appendix

A Transformative women's initiatives

Many women's initiatives (WI) offer programmes for women at all levels of seniority and across generations, such as educational and social networking events, mentoring circles, book groups, and training in business development and other skills. The most effective WIs do more than sponsor programmes and events. They seek to transform firm culture through consistent, strategic efforts that include changing systems and behaviours; driving policies that deal with everything from parental leave to pathways to leadership; reaching out to men in various ways; and drawing attention to women as leaders.

As an example, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC expanded and reinvigorated its WI in 2013. Its objective is to create an inclusive culture where women lawyers thrive, and that objective is explicitly tied to the strategic and economic priorities of the firm. The WI is working toward this goal in many ways. For example, recognising the pivotal role partners and decision makers play in this process, the WI sponsors a 360-degree review process for firm leaders that evaluates them on factors like their respect for diversity, support for all group members' growth and development, and whether they treat everyone equitably. The WI is also writing new job descriptions for managing partners and practice group leaders with an emphasis on diversity and succession planning.

Men are actively involved in the WI, which operates through committees. Influential male partners chair or co-chair some of those committees. The firm's chair and CEO, a man, serves on the women's initiative advisory committee, which is comprised of prominent male and female leaders from throughout the firm. A detailed annual plan enumerates goals for each committee, and each aspect of the annual plan is monitored, measured and reported. In addition, the chair of the WI is allotted time at management committee meetings to keep the firm's top leaders informed about progress and to provide them with tools and resources to support women's advancement.

Baker Donelson's WI is producing positive results. In each of the years 2014 to 2016, 42% to 62% of the lawyers elevated to partner have been women, and women now make up 33% of both the firm's board of directors and practice group leaders.

B Initiatives that identify and groom women leaders

Some firms conduct intensive leadership and business development programmes that identify and groom high-potential women lawyers. In most of these programmes, women are nominated by their practice groups, submit written applications and go through interviews. The women who are selected participate in a number of developmental activities and are given access to firm leaders and career-supporting resources, such as:

- educational programmes on topics like business development, client communication, leadership skills, gender dynamics, personal branding, and law firm economics;
- meetings with senior partners, firm leaders and executive-level committees;
- sessions with executive, business development, and other types of coaches;
- discussion opportunities with women partners and exposure to a variety of role models;
- reunions with alumnae of the programme.

Here are three examples of firms that prepare women for leadership:

(1) Norton Rose Fulbright's Career Strategies Programme (CSP), launched in 2010, was intended to raise women's confidence in pursuing partnership and show managers how to encourage women toward that goal. The CSP is designed to help women become successful partners, understand their value to the business, and demonstrate the firm's commitment to retaining their expertise. It also educates supervisors on how to discuss, manage and promote the career progress of the women they supervise.

Norton Rose Fulbright has 3,800 lawyers in 50+ offices around the world. The initial goal of the CSP was to raise the number of women partners in its offices in Europe, the Middle East and Asia from 16% to 21% in three years – and they met that goal. In fact, they now have 25% women partners, with a new target of 30% by 2020. Results of the CSP have been impressive in other ways as well:

- Attrition for CSP alumnae is 7% lower than overall female attrition.
- In 2012/2013, CSP graduates financially outperformed other women partners by 53.6% and male colleagues by 36.5%.
- 20% of CSP alumnae have been promoted to partner, 80% of whom were promoted within two years of attending CSP.

In light of the programme's success, the CSP has been expanded to Australia, Canada and the United States.

(2) Holland & Knight LLP was the first law firm to create a leadership development programme for women when it started 'Rising Star' in 2003. The goals of this year-

long programme for five annual participants are to help prepare women for leadership opportunities, elevate their profiles within the legal profession and community, and increase their success in business development. Since its inception, 65 women have graduated from the Rising Star programme. Among those graduates, 19 were promoted to non-equity partner, 10 have become equity partners, and many have assumed major leadership roles.

(3) Perkins Coie LLP also targets women with the potential and desire for leadership but uses a different approach. The firm considers committees to be training grounds for firm leaders because they provide the chance to learn, practise and demonstrate leadership ability, and over time, to step into increasingly important committees and more significant roles. The firm encourages women, including junior associates, to apply for committees. The managing partner makes committee appointments after consulting the committee chair and the chief diversity officer (CDO), among others, to discuss the skills, ambitions, needs and readiness of each candidate. Through this selection process, more women apply, receive appointments, gain experience, confidence and visibility, and move up through the ranks. Over the last seven years, women have comprised one-fifth to two-thirds of each new partner class.

This chapter 'Retaining women lawyers: the need for new perspectives' by Ida Abbott is from the title Recruiting and Retaining Lawyers: Innovative Strategies to Attract, Develop and Retain Legal Talent, published by Globe Law and Business.