

2021 Report

National Association of Women Lawyers (NAWL) Survey
on the Promotion and Retention of Women in Law Firms

It's Time to Move
Beyond the
Numbers



nawl.org

FOREWORD

A review of the last 15 years of data from the NAWL Survey on the Promotion and Retention of Women in Law Firms (NAWL Survey) shows that year after year, the promotion and retention of women in the legal profession have not changed. While women are entering the legal field as law school graduates at a rate equal to, and often exceeding that of men, women are leaving the profession sooner and more frequently.

NAWL is committed to providing insights for law firms and other stakeholders to change these trends to achieve meaningful representation of women and other underrepresented groups at all levels of the law firm and more broadly in the profession. To that end, this year's report focuses on practices related to compensation, performance evaluation and promotion, and succession planning – three key areas that our research tells us deserve focused attention.

In future years, NAWL intends to focus not only on end results but also on best practices that have the most potential to build a more equitable and representative legal workplace. Our goal is to help legal employers and stakeholders answer these questions: What should be done differently? Where should we focus our efforts? What actions have the most potential to create meaningful progress for women and other underrepresented groups? And what can we do now to make change?

This year's report provides the foundation for that exercise and is a significant departure from previous NAWL Survey reports in that it includes insights from not only NAWL data, but also ties that research to other studies of the legal profession to provide valuable insights and recommendations.

As always, we encourage law firm leaders, in-house counsel who are charged with monitoring law firm diversity, and other stakeholders to act on NAWL's extensive research to design and implement better practices to change the trajectory of women in the law firm and more broadly in the profession.

THANK YOU

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INTRODUCTION

NAWL has been collecting data on the state of women in large law firms for 15 years. While there have been some advances in the representation of women in leadership roles in the largest law firms and increasing investment by law firms in diversity-focused infrastructure during that time, the change in the representation of women in law firms has been incremental with regular plateaus. We are still far from a world in which women stay in law firms over the course of their legal careers in proportions similar to the representation of women at the associate level. The trend of significant attrition of women from law firms as their careers advance persists despite some positive, but small, increases in the representation of women at partnership levels over the last 15 years. These incremental changes continue to occur slowly, despite a substantial rise in both interest and investment in increasing and maintaining the representation of women and attorneys from underrepresented backgrounds (including people of color, LGBTQIA+ people, and people with disabilities) in the legal profession, especially after the racial and social justice awakening of 2020.¹ Law firms say they want to tackle the problem of attrition of women and attorneys from diverse backgrounds, but the data suggests the legal profession has not fully committed to the actions necessary to address the persistent loss of talent and experience from the legal profession.

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This report consists of three parts. Part I provides a brief overview of 15 years of data collection, highlighting the key data points NAWL has tracked during that time. Our data demonstrates, at best, the slow progress made by law firms to increase the representation of women in their partnership ranks and in leadership roles and the lack of progress made in addressing gender compensation gaps. Part II highlights data focused on what we learned about firms' reactions to the COVID-19 pandemic and the racial and social unrest of 2020, with an emphasis on showing data in terms of what firms reported they were doing before 2020, what they did in 2020, and what they report about the future of work in large law firms. Finally, Part III, the core of this year's report, digs into the processes NAWL believes are hindering the progress of women, people of color, and attorneys from diverse backgrounds in law firms and the legal profession: compensation, performance evaluation and promotion, and succession planning. Here, we outline what we know from NAWL data as well as data from across the legal profession and the social sciences, what we need to know to better understand and improve these processes, and recommendations to address the biases and disparities these processes, in their present forms, may perpetuate thereby explaining the stalled progress on diversity, equity, and inclusion in the legal profession.

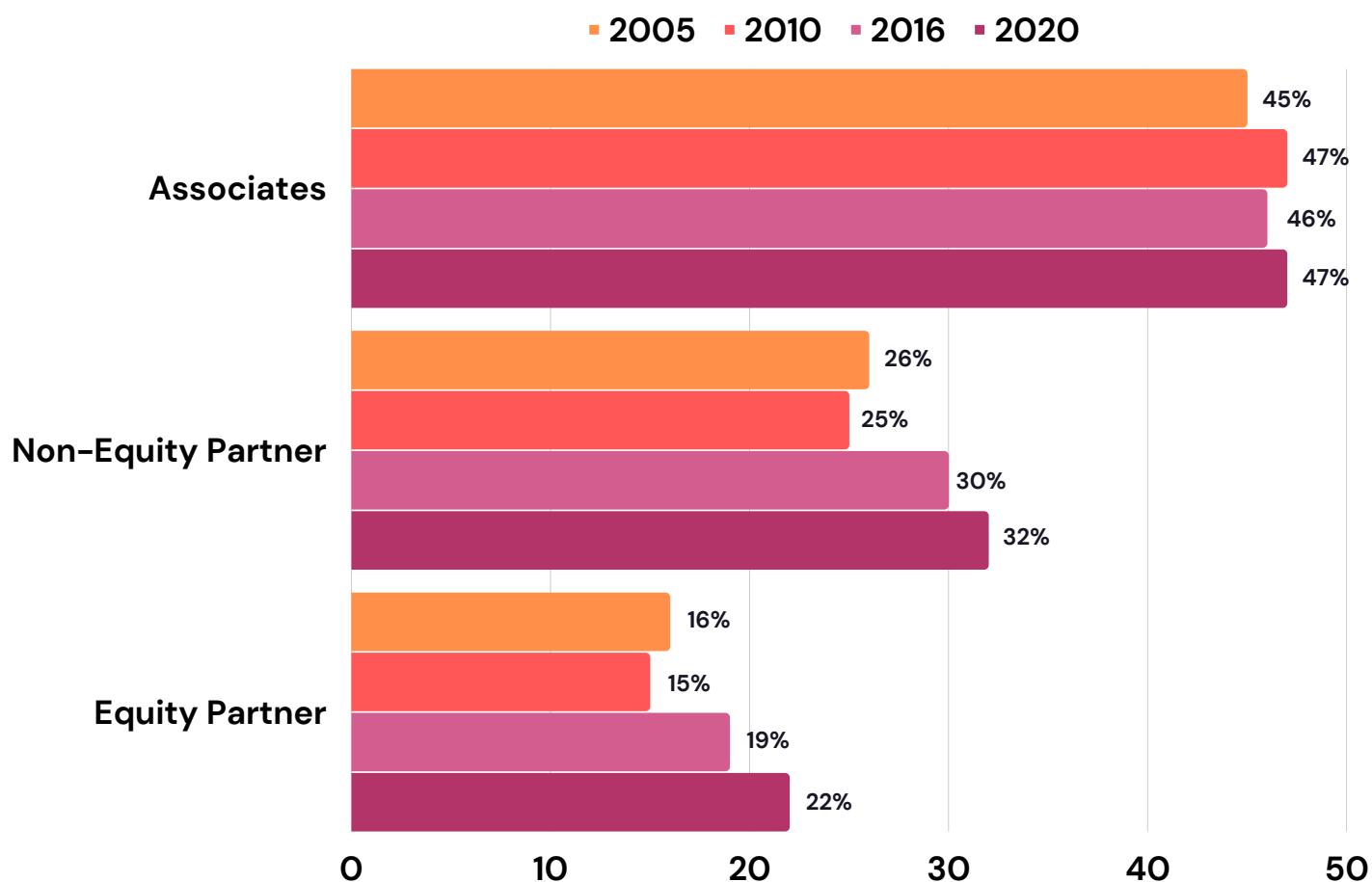
PART I

Progress? 15 Years of NAWL Data

NAWL pioneered collecting data on what have become key data points marking women's representation in large law firms. At the time NAWL began collecting data, there was no regular or systematic collection of this data. The now-classic headline statistic used to describe the state of women in large law firms is their representation among the ranks of equity partners. Over the last 15 years,² NAWL data has shown a modest, incremental increase in the representation of women as non-equity and equity partners, but their numbers among law firm partners continue to reflect significant attrition relative to their representation among law school graduates and law firm associates.

Percentage of Women in Law Firms from 2005 – 2020

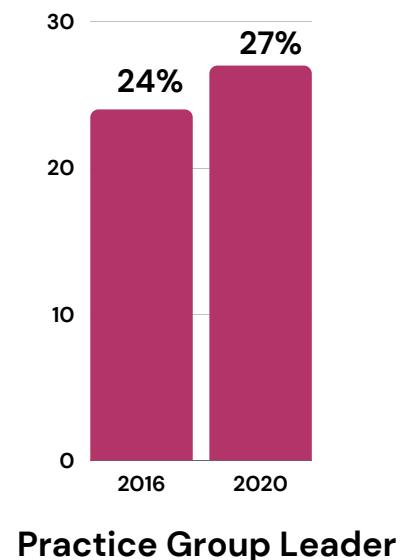
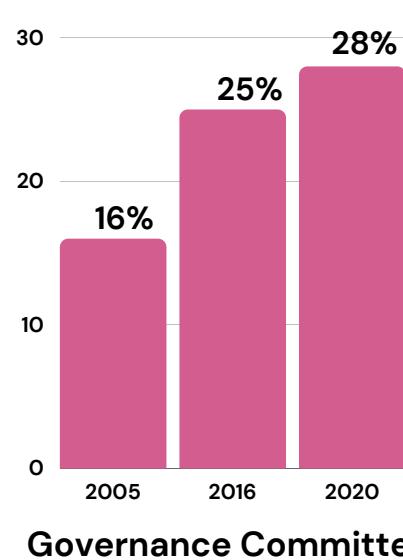
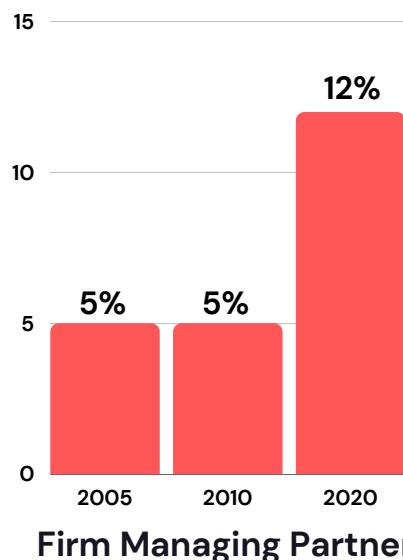
"... numbers among law firm partners continue to reflect significant attrition relative to their representation among law school graduates and law firm associates."



In addition to achieving the rank of partner, women's participation in law firm governance is understood to be important for incorporating their perspectives in key decisions at the firm and reducing barriers for women that may arise in decisions made at the governance level. Over time, NAWL's data has shown that the number of women represented in these positions of influence in law firms has increased significantly (almost doubling in some cases) over the last 15 years. Further, their representation in these roles matches or exceeds their representation in the equity partner ranks, but there is still considerable room for growth in women's participation in firm leadership roles.

Percentage of Women in Law Firm Leadership Roles

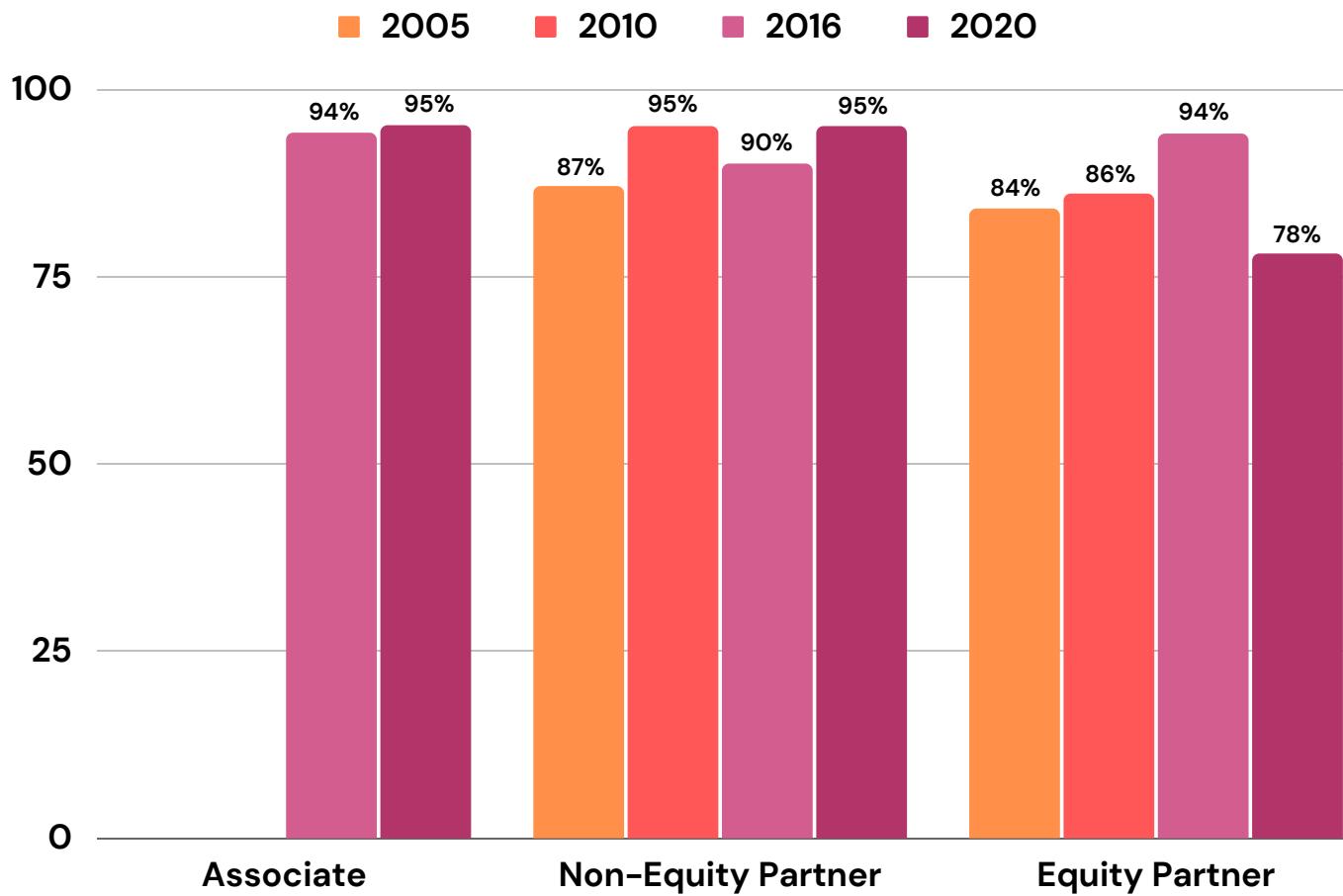
"...there is still considerable room for growth in women's participation in firm leadership roles."



Compensation data has long been considered a simple indicator for equity in the workplace, and NAWL's unique compensation data collected at the firm level offers a long-term view on compensation in large law firms. Over the last 15 years, NAWL data has captured the persistence of gender gaps in compensation at all stages of an attorney's career in the firm. Even at the entry level, women are paid less than men, and these gaps often grow as women and men advance to partnership, with the largest gaps occurring between equity partners.

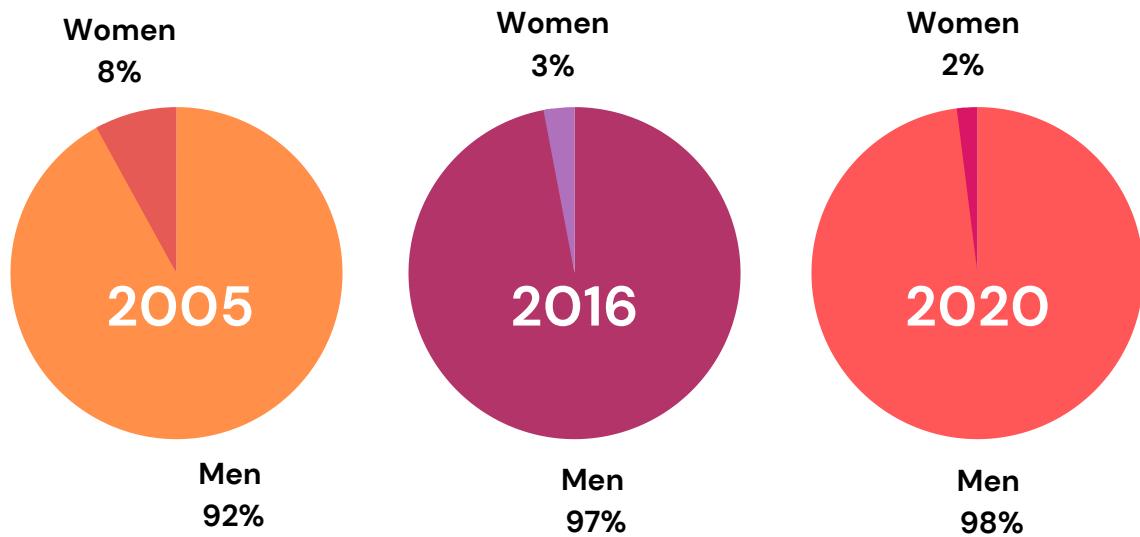
The Gender Pay Gap – Women's Compensation as a Percentage of Men's Compensation

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In addition, women continue to be largely shut out of the highest levels of compensation, as men remain the most highly compensated attorneys in law firms, with the most highly compensated attorney at a firm nearly always being a man and women rarely breaking into even the top ten at the firm.

Gender of Most Highly Compensated Attorney in the Firm (%)



This Part is meant to highlight the slow or stalled progress of women in large firms over the last 15 years through the data NAWL and many others have collected year after year. The short version of the data story over the last decade is that not a lot has changed.

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This fact has frustrated and puzzled many in the profession who wonder why and how it is that, despite increased attention and investment in the advancement of women and diverse attorneys, there has been much less progress than might be expected or hoped for. To answer those questions though, it is time to go beyond the numbers.

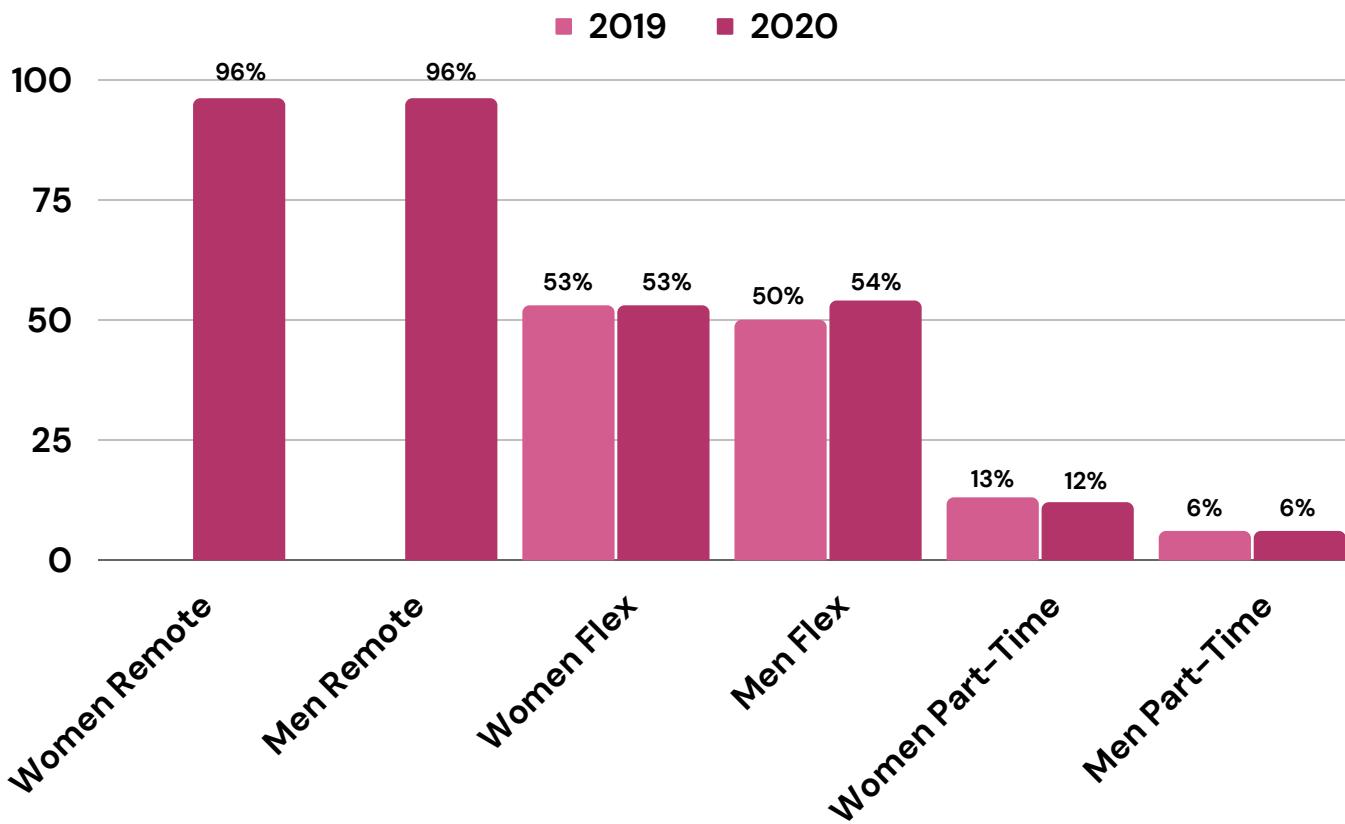
PART II

Law Firm Reactions to the Events of 2020

In addition to looking at the historical trends in the data, we wanted to examine the impact of the pandemic and a renewed focus on racial and social justice on law firms and the data they report to NAWL. In NAWL's most recent survey, conducted in 2021, NAWL collected data from Am Law 200 law firms regarding their demographics, policies, and practices during the 2020 fiscal/calendar year. We predicted in our report published in 2020 (based on 2019 data) that we might see something different in the 2020 data given the onset and persistence of the pandemic. Yet, the numbers and the efforts reported by law firms largely remained the same.

For example, law firms reported that their approach to alternative work arrangements remained unchanged in 2020. Nearly all firms reported that, in 2019, they were already offering flexible work schedules, remote work/telework options, and part-time work schedules, with **more than 95% of firms saying they offered all of these options pre-pandemic**.

Percentage of Attorneys Using Alternative Work Arrangements by Gender 2019 vs. 2020



In the last two years of data collection (2019 and 2020), we asked about the percentage of women and men utilizing these alternative work schedules. Surprisingly, firms reported almost no difference between 2019 and 2020 in the percentage of women and men utilizing remote and flexible work arrangements. In other words, firms reported that pre-pandemic (2019) and in 2020, almost equal numbers of women and men were utilizing flexible work schedules, and women and men were equally likely to have worked remotely during 2020. Although there was no difference between the percentage of attorneys utilizing part-time schedules between 2019 and 2020, in both years, firms reported that women were twice as likely to be working part-time as men (13% vs. 6%, respectively) in both 2019 and 2020.

Taken together, law firms across the Am Law 200 reported essentially no changes in the availability of alternative work arrangements. The only change in how people seemed to work in law firms in 2020 was that nearly all attorneys (96%) spent at least some time working remotely, a significant shift from the office-oriented culture of law firms and the legal profession pre-pandemic when remote work was understood to be a rarity.

Nearly all firms also reported that they intend to maintain access to these alternative work arrangements post-pandemic (97% – 100%, depending on the policy). Although, it is still unknown how law firms will adjust to expectations of continued access to remote or hybrid work arrangements.

In addition to asking about how working at the law firm had changed (or not) in response to the pandemic, we were interested in how law firms would report responding to the racial and social unrest of 2020. On this topic, 100% of firms reported they took actions to respond directly to the racial and social unrest of 2020 by, among other things, issuing statements and donating to racial and/or social justice causes.

A NALP survey of 86 law firms shared that 73% of responding firms launched new programs to address racial injustice and social unrest, 43% said they redeployed staff and/or attorneys toward firm diversity, equity, and inclusion efforts, and 70% said that the work of their diversity teams increased after March 2020.³

Thus, while firms did not report any significant changes to their policies related to alternative work arrangements or the usage of such policies in response to the pandemic, firms reported widespread engagement in activities related to diversity, equity, and inclusion in response to the racial and social justice awakening that began in 2020. Although any increased attention and investment on these matters should not hurt diversity, equity, and inclusion progress in the legal profession, much of what firms focused on was responding to external events and engagement or education, things going on in the world, rather than taking an inward-facing look at how the issues raised by racial and social justice movements implicate the legal profession.

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For this reason, in Part III, we discuss the actions law firms can and should take at key decision-making points to address the persistence of gender, racial, and other barriers to success and advancement in law firms and in the legal profession.

PART III

Key Law Firm Processes for Advancing Women, People of Color, and Attorneys from Diverse Backgrounds

Given the slow and sometimes stalled progress of women, people of color, LGBTQIA+ people, and people with disabilities in the legal profession, NAWL has been motivated in recent years to dig deeper into identifying the potential reasons for these stubborn realities in the legal profession. Given the similarity of the data seen in the last few years, we find it important at this juncture, after 15 years of collecting data on large law firms, to focus our attention less on documenting the numbers per se and more on identifying what the legal profession needs to do and/or what we need to know more about in order to address key barriers to the advancement of women, people of color, LGBTQIA+ people, and people with disabilities in the legal profession. We have identified three key areas to focus on, as we see these processes as central to the advancement of attorneys in the legal profession: compensation, performance evaluation and promotion, and succession. Notably, each of these areas is characterized by subjective and opaque decision-making processes. That is, processes that are more prone to bias.

What follows is an examination of these three key areas through the lens of NAWL data and relevant data from other respected sources that speak to the past and current state of progress, a discussion of what we know about what may be causing the challenges women and attorneys of diverse backgrounds face in these areas, and recommendations of known practices for addressing these challenges. Further, looking ahead to the next chapter of NAWL data collection on the legal profession, we recommend additional data collection that would aid the legal profession in better understanding the mechanisms that replicate the status quo again and again.

Compensation

What We Know

The compensation gap between women and men is persistent inside and outside of the legal profession. In fact, the gender pay gap is said to exist in most or all industries⁴ and in workforces around the world⁵ even if the size of the gap sometimes varies. Even in women-dominated fields, such as caretaking, teaching, and healthcare, when men enter these fields, the wages tend to increase for these positions overall,⁶ and the men in these spaces make more than women doing the same work.⁷ The prevailing theory is that women's work is devalued persistently relative to men's work, whether in female-dominated fields or mixed-gender fields.⁸



President Kennedy signs the Equal Pay Act (June 10, 1963). Photo courtesy of Ms. Magazine.



President Obama signs the Lilly Ledbetter Fair Pay Act. (January 29, 2009) Photo Courtesy of White House Photo Office.

In other words, gender discrimination in various forms, whether explicit or implicit, plays a role in the compensation gaps that exist between women and men in every profession, including the legal profession. Despite landmark legislation, including the Equal Pay Act of 1963 and the Lilly Ledbetter Fair Pay Act of 2009, and increased interest and attention to pay equity in many professions, a significant gap in the relative compensation of women and men's compensation remains across the board.

Pay equity in the legal profession has been a point of interest and concern for some time. A landmark 2014 Sky Analytics study of \$3.4 billion in client billings from over 3,000 law firms, including a majority of the Am Law 200 law firms studied annually by NAWL, found that men bill at higher rates from the earliest stages of their careers.⁹

This 2014 study found that women had billing rates, on average, 10% – 12% less than the billing rates of men.¹⁰ In NAWL's own data collected from Am Law 200 law firms in 2021, we found a gap of 2% – 5%, with the gap between women and men increasing as the seniority of the attorneys increased. In addition, when looking at data related to overall compensation for women and men attorneys, multiple sources of data persistently document compensation gaps, usually beginning with smaller gaps for associates and the largest gaps for equity partners. NAWL's own compensation data as reported by Am Law 200 law firms shows that equity partner compensation gender gaps documented in the last ten years have averaged around 12%,¹¹ with the reported gap in 2020 landing at 22%.

Another major source of compensation data, the biennial surveys conducted by Major, Lindsey & Africa that rely on surveying 1000+ individual equity partners working in Am Law 200 law firms, reported a 31% gap between women and men equity partners in 2019.¹²

Explanations Offered to Explain Gender Pay Disparity in Legal Profession

Over the years, there have been several common explanations offered to explain the persistent compensation gaps between women and men. One common but regularly debunked explanation is that men work more hours than women, and, particularly, that men bill more hours than women. NAWL data have shown consistently that when looking at both billable and total hours, women are not working (or billing) fewer hours than men on average.

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fewer hours than men on average."**

Importantly, NAWL data is based on average billable and total hours as reported by the law firms themselves. The 2014 study from Sky Analytics described above also found that when looking at billing invoices for more than 3,000 firms, women bill the same average number of hours as men.

For some time, the gap in billing rates was pointed to as an explanation for compensation gaps, and of course, if one's hourly rate is less, even if one is working the same number of hours, one will have lower client billings. We know that women's overall compensation is less than men's and that women's billing rates are also less than men's, but knowing that women's billing rates are less than men's does not offer an explanation as to why. In previous years, NAWL has asked Am Law 200 law firms to explain billing rate gaps too, and firms have offered explanations such as women are more likely to work in practice areas with lower billing rates or men are more senior on average and thus can command higher billing rates.¹³

The question of gender distributions in certain practice areas should remind us of the general findings that professions, where women are concentrated, tend to pay less, and it raises the question common to pay equity research in general of whether women happen to be attracted to practice areas with lower compensation because of other features of the work (or work-life) in those areas or whether areas that attract women are less highly compensated due to the devaluing of women's work.

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In terms of the relationship between hours, billing rates, client billings, and compensation, Sky Analytics offered another interesting data point in their 2014 study of client billings. In tracking billing invoices from over 3,000 firms, they noticed that women associates and partners were more likely to have their invoices adjusted (discounted) after billing than men in both the associate and partner roles.¹⁴ This would further contribute to a gap in client billings and compensation that is not entirely explained by gaps in billing rates. In other words, women are more likely to have their already lower billing rates discounted, leading to lower client billings for women attorneys. This again provides additional evidence suggesting a devaluing of women's work in law firms, both internally when setting billing rates and possibly by clients in requesting (and receiving) discounts on their invoices.

"In other words, men are more likely to be staffed on large matters that generate more billings for the firm than women."

In addition, Sky Analytics examined how women and men are staffed on matters of different sizes.¹⁵ They compared the staffing on matters with 20+ timekeepers compared to those with five or fewer timekeepers. In their 2014 data, they found that 93% of large matters had majority-male teams, whereas 81% of small matters had majority-female teams. In other words, men are more likely to be staffed on large matters that generate more billings for the firm than women. Of course, client billings are understood to be a primary driver of compensation within law firms. These billings also affect the opportunities for promotion, particularly to equity partnerships, that attorneys receive.

NAWL has considered and suggested before that a lack of women on firm governance and/or compensation committees might partially explain the compensation gap due to a lack of women playing a role in compensation decisions.¹⁶ This hypothesis was offered when the representation of women on these committees was significantly lower 10 – 15 years ago.¹⁷ More recent data showing an increase in the representation of women on governance and compensation committees have not shown a corresponding closing of the compensation gap. Further, NAWL has not identified any correlation between the percentage of women at the table for these compensation decisions and the size of the compensation gap. This could suggest that there are still not enough women at the table to make a difference or that it is insufficient to have women at the table if the compensation formulas or inputs are already biased against women long before the compensation decisions are made.

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Much pay equity research has reached the conclusion that, despite the possibility of variables other than bias contributing to the gender compensation gap, bias is often the only surviving explanation after accounting for the effects of these other variables. In other words, given the widespread nature and persistence of compensation gaps inside and outside of the legal profession after accounting for other available explanations, bias clearly contributes to the compensation gaps we continue to see for women, people of color, LGBTQIA+ people, and people with disabilities. After acknowledging the role of bias in compensation decisions, we can ask what law firms are doing to combat the potential for bias in their compensation decision-making processes. NAWL data from the last couple of years shows that firms are not engaging consistently in many known and recommended bias interrupters when determining compensation, and all firms could be doing more to reduce the potential for bias in their compensation decisions.¹⁸

% Firms Best Practices to Interrupt Bias in Compensation Decisions

89% Look for patterns in compensation data to identify disparities

83% Annualize compensation based on average months of work, allowing for leave and off- and on-ramping periods

80% Give credit to non-billable work that is vital to the firm

72% Articulate honestly what drives compensation decisions

% Firms Best Practices to Interrupt Bias in Compensation Decisions *continued*

67% Make part-time partners' compensation proportional to their work

66% Consider who gets opportunities to pitch, speaking roles, and origination and other credit

63% Keep metrics by an individual supervising attorney, department, country, and firm

58% Involve people who are trained to spot bias, such as HR professionals

56% Consider the role of inheriting compensation credit and client relationships on compensation

55% Analyze who does/does not get the origination and other credit, including how it is distributed among demographics

55% Establish clear rules about granting and splitting origination and other credit

44% Analyze who gets de-equitized and why

42% Analyze whether lateral partners are paid more relative to homegrown partners on various metrics

40% Train the committee that sets compensation on the potential for biases

38% Establish a formal succession planning process or structure

29% Analyze how compensation is affected by lean vs. growth periods, and including demographics of affected individuals

21% Establish pitch credit that recognizes work done to put together a client pitch

Like all the processes highlighted here, compensation decisions are considered "black box" decisions. That is, decisions about compensation remain too opaque, with many across the legal profession feeling it is unclear exactly what factors into compensation decisions and how those factors are weighed in any given case and across multiple individuals within a law firm. While we have discussed the role that information like client billings, billable hours, etc. are said to play in compensation decisions, as well as the ways in which women and men do and do not differ on these factors, the persistent compensation gaps between women and men make clear that these variables are not the only ones at play in producing compensation decisions.

To better understand how to fully address the underlying mechanisms responsible for identity-based gaps in compensation, law firms must be willing to share more and act against biases in their processes.

What We Need to Know

Key Questions for Law Firms to Ask and Answer

- Who is responsible for making compensation decisions? What are the demographics of this group?
- What are the criteria for compensation decisions?
- What data is made available to the group that makes compensation decisions? Who provides that data?
- Does your firm analyze compensation data for potential biases and disparities? What analyses does your firm conduct? How often does your firm conduct these analyses?
- Does your firm know whether it has compensation gaps based on gender, race, or other identity characteristics?
- Is compensation for women in your firm lower than men's? If so, why?
- Are the billing rates for women in your firm lower than men's? If so, why? Are client billings for women in your firm lower than men's? If so, why?
- What has your firm done to address biases and disparities in your compensation structure, process, and/or outcomes? Does your firm know if these interventions have been successful? If yes, how has your firm measured successor improvement?

Actions to Take Now

Look at Your Data! Conduct Pay Equity Analyses Now¹⁹

Conducting regular pay equity analyses is crucial not only to protecting the interests of the law firm in terms of legal liability and warding off pay discrimination lawsuits, but also to ensure that a firm is doing what it can to close historical gender pay gaps in service of its diversity, equity, and inclusion efforts.²⁰ The legal landscape on equal pay has been expanding with more states recognizing broader equal pay protections than the federal Equal Pay Act.²¹ Regularly looking at the firm's compensation structure and data may allow the firm to proactively remedy problems and/or better understand and articulate the reasons for apparent pay gaps outside of the context of litigation. Further, pay analyses may help illuminate other structural aspects of the law firm that it may want to address. For example, there may not be significant, unexplainable pay gaps between people with similar roles, but the firm may notice that, because of the distribution of gender, race, ethnicity, and ability, across the firm, there are pay gaps that exist across the organization that are undesirable even if not legally actionable.²²

Communicate Clearly About What Factors Into Compensation

Research on reducing bias in many employment decision-making contexts shows the value of setting and communicating clear criteria BEFORE the decision-making process takes place.²³ Law firm compensation is often considered one of the opaque decisions that law firms regularly make, and law firms could do more to hold their compensation committees accountable²⁴ to their pre-determined compensation criteria while engendering a sense of procedural justice and transparency for those on the receiving end of the compensation decisions.²⁵

The ABA's "You Can't Change What You Can't See" report on bias interrupters summarizes the research well and emphasizes that law firms can do the following to interrupt bias in their compensation processes:

1. **Determine and/or confirm what drives compensation decisions** – firms should consider whether what firms say determines compensation actually drives their decisions in observable ways;
2. **Communicate clearly about what determines compensation at the firm** – share the relative importance of different variables, so that all attorneys and staff can plan for and understand what is being weighed when their compensation is determined;
3. **Determine compensation criteria and their relative weights based on what is important to the firm** – if it's important, it should be compensated; and
4. **Establish clear, public rules on credit (splitting, sharing, origination, etc.)** – how credit should be allocated and how credit will be weighed during the compensation process.²⁶

Performance Evaluation and Promotion

What We Know

At each stage of promotion in a law firm, women, people of color, LGBTQIA+ people, and people with disabilities are less and less represented. While women have been nearly 50% of law firm associates for some years, the current representation of women among equity partners sits around 22%. A study on the promotion of women in the legal profession published in 1990 showed that women were half as likely to be promoted to partner compared to men.²⁷ This study further showed that women exhibited equal measurements of quality, whether measured by credentials coming into the law firm or productivity while at the law firm. On the other hand, despite similar performance, this classic study found that women were held to more stringent standards for promotion compared to men.

Unfortunately, despite parity in women graduating from law school and entering the legal profession for more than three decades, the representation of women at more senior positions in law firms and the legal profession has not similarly grown. A 2017 study showed that women were still 29% less likely to be promoted to partner than men.²⁸

Research has shown consistently that performance evaluations and promotion decisions are often biased against women, people of color, LGBTQIA+ people, and people with disabilities. For example, research on gender bias in the evaluations of judges has shown consistently that women and people of color are consistently scored lower than men and White candidates.²⁹ Further, women judicial candidates are especially likely to be rated more critically by male attorneys,³⁰ and male judges are known to make negative comments about their female colleagues and female judges in general.³¹ As has been found in other settings,³² women on the bench are also commonly criticized for decisive action for which their male colleagues are praised.³³

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Decades of research on professional women in many fields has shown consistently the myriad ways that gender stereotypes affect both performance evaluations and the likelihood of promotion.³⁴ These gendered biases are more likely to show up in subjective evaluation processes without well-defined criteria, and law firm evaluations, like those in many professional spaces, are rife with undefined criteria like this. A 2020 study highlighted that bigger biases show up, for example, when evaluations focus on personality, potential, and perceptions of exceptionalism rather than evidence-based work performance.³⁵

This study is certainly not the first to highlight the need to focus on performance rather than personality to reduce biases.³⁶ Further, this study showed that a poorly defined performance review process opens the door to gender and other biases because it allows evaluators to respond to the same behavior differently when evaluating individuals from different groups.³⁷ These group-based effects are especially large when there is some stereotypical association that may be active in the evaluation setting. For example, in male-dominated spaces or spaces where the focus is on leadership or technical skills, the gender biases in favor of men/against women are even greater, as evaluations are filtered through gendered ideas that men are more competent, more likely to be leaders and a better fit for certain professional spaces and/or roles.³⁸

In addition, women often find themselves in a double bind whereby they are punished with more negative evaluations if they don't "act like men," but the traits associated with women, such as having likeable personalities and being communal, team players, are valued less in evaluations.³⁹ Further, even when women are seen as good leaders, as visionaries, they are not given as much credit as men who are perceived similarly.⁴⁰

Finally, evaluators are more likely to focus on men's potential separate and apart from their actual performance, whereas women are judged on their perceived past and present performance.⁴¹ Women who are viewed as lacking skills, competence, or demonstrated leadership receive more negative evaluations compared to men, and men are more likely to be rewarded for unrealized potential even when current conditions show they lack those same skills, competence, or leadership qualities.

This is quite consistent with the research on pay equity in that it demonstrates the myriad ways that what women bring to the table is often scrutinized more and valued less than the same performance or behaviors in men. In addition, a meta-analysis involving more than 22,000 performance evaluations found that while women often receive more positive evaluations on actual job performance,⁴² women are rated lower than men on potential and profitability.⁴³ This highlights the ways that performance evaluations often are not truly performance evaluations, but rather opportunities, at least for men, to reflect on perceptions of non-tangible future characteristics instead of the evidence in front of the evaluators. This focus on flawless performance for women and potential separate from performance for men can lead women to experience greater barriers to advancement in law firms and beyond.⁴⁴

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NAWL has collected data in the last couple of years asking whether law firms are addressing the biases in their performance evaluation and promotion processes using known bias interrupters, but law firms do not consistently report using practices known to interrupt the very types of biases noted above. While all firms claim to have formal processes, little is known about the evaluation and promotion processes at law firms, especially across the profession. Although most firms say they set clear and specific criteria, anecdotal data suggests that many continue to find the process of promotion to partner particularly opaque. In addition, if fewer firms are saying they do things such as separate potential from performance or consider personality separate from skill, as they do in the NAWL data below, this may suggest the criteria that firms continue to use remain more subjective than they need to be.

% Firms Best Practices to Interrupt Bias in Performance Evaluation

99% Have a formal performance evaluation process

83% Set clear and specific performance criteria directly related to job requirements

78% Empower people involved in the process to spot and interrupt potential biases

74% Involve people trained to spot biases in the process, such as HR professionals

71% Require evidence from the relevant evaluation period to justify an evaluation

65% Consider performance and potential separately for each candidate

64% Separate personality issues from skillsets for each candidate

46% Monitor supervisor's evaluations for patterns of bias

There is still much to learn about how law firms structure and implement their evaluation and promotion processes, particularly if we want to understand where bias continues to threaten the outcomes of these processes in ways that contribute to persistent disparities for women, people of color, LGBTQIA+ people, and people with disabilities.

What We Need to Know

Key Questions for Law Firms to Ask and Answer

- Who conducts and provides input into performance evaluations?
- Who makes decisions about promotion to partner? What are the demographics of these people? Who is informed of that process and when?
- Does your firm have a standardized process that everyone being evaluated or seeking promotion goes through? What is that standardized process?
- What criteria are the basis for performance evaluations and promotion decisions in your firm?
- Does your firm require evaluators/decision-makers to provide evidence to support their evaluation or promotion decisions? What evidence are they required to provide?
- How do performance evaluations factor into promotions to partner?

Actions to Take Now

Provide Feedback on a Regular Basis, Not Once a Year

Conducting annual reviews makes it more likely that evaluations will be subjective, less based on specific evidence of performance, and overly reliant on generalized (and often biased) impressions.⁴⁵ Building feedback mechanisms that focus on providing consistent, real-time feedback on a regular basis (weekly, monthly, project, or task-based) enables feedback and evaluation to be tied more directly to actual performance.⁴⁶ In addition, many organizations find that switching to more frequent feedback is not only beneficial to the recipient of the feedback but also reduces the potential for bias while reducing the time spent on performance reviews.⁴⁷ Research also has shown that women are less likely to receive constructive feedback that may be necessary for advancement.⁴⁸ Thus, more regular feedback conversations may ease the potential discomfort of these conversations for both the evaluator and the recipient of the feedback.

Develop Specific, Concrete Job-Related Criteria for Evaluation

As mentioned previously,⁴⁹ identifying specific, concrete criteria for evaluation before beginning an evaluation process is a first step toward reducing bias in evaluation processes. Evaluators are less likely to be biased if they understand and agree in advance on the criteria on which they should be basing their evaluations. Those criteria should be adequately defined and based on actual job performance and job-related factors rather than assessments of personality,⁵⁰ potential,⁵¹ or other abstract, subjective, and/or informal factors that are ripe for biased assessments.

Gather Regular Client Feedback and Take It Seriously

Evaluation processes are less likely to be biased when they incorporate feedback from multiple perspectives. In the law firm, this means perspectives both within and outside the firm. Clients are likely to have insights into the work performance of the attorneys on their teams that the evaluators may not have, and their feedback should be incorporated into any evaluation process.

Require Performance-Related Evidence to Support Evaluations⁵²

Instead of relying solely on ratings, evaluators should be able to provide direct observations of behavior and results to support and explain their rationale for the ratings they provide. Further, evaluators should have a sense, before beginning the evaluation process, of what types of behaviors and results would warrant which rating so that it is clear what types of direct observation evidence they will be expected to provide to justify their evaluation. People who do not have direct observation evidence of the person in question should not be given a primary role in the rating process, as they likely cannot justify their evaluation with performance-related evidence, particularly beyond objective metrics.

Clearly Communicate What is Needed/Expected to Be Promoted⁵³

Clearly communicating about what is needed for a positive evaluation of work performance or promotion provides a pathway to success that can affect performance over time. Clearly communicating this pathway should inform the criteria actually used during the performance evaluation or promotion process, but it is also these specific, job-related criteria that drive the evaluation process that should be communicated clearly throughout the evaluation period and one's career so individuals can work accordingly.

Succession

What We Know

NAWL has collected (or attempted to collect) some information about succession planning and succession processes for client relationships in Am Law 200 law firms in the last couple of years, but the information available to the legal profession at large about succession processes remains limited.

In 2020, we asked firms whether they had formal written succession plans, and only 39% of firms reported they had such plans.⁵⁴ This data is consistent with a 2018 survey of mid-sized law firms that found only 37% of firms reported they had a formal succession planning process already in place or were creating one.⁵⁵ Further, the 2018 study found that 43% of firms said they had an informal process or did not have succession planning on their radar.⁵⁶

Only 40% of firms feel prepared for succession situations, and 61% reported they were concerned about their lack of preparedness.⁵⁷ This concern is legitimated by data showing that nearly half of current law firm partners are 55 and older and fast approaching retirement age.⁵⁸ It is expected that in the next few years, 16% of law firm partners will retire, and the growth in headcounts at law firms has slowed significantly in the last 10 – 15 years.⁵⁹ Finally, one study suggests that 75% of the average law firm's clients are served by single-relationship partners.⁶⁰ This represents an additional threat to law firms' ability to retain those clients when that relationship partner leaves or retires, as 72% of clients served by single partners say they would consider leaving the firm after a relationship partner leaves, compared to only 10% of clients who are served by multiple partners.

Relationship partner transitions provide a significant opportunity for law firms to diversify the ranks of relationship partners, particularly for major clients, but this will only occur with thoughtful planning, leadership development of younger attorneys, and intentional efforts to take diversity, equity, and inclusion into account as these transitions fast approach.

In recent years, NAWL has collected data about relationship partner transitions among the top 30 clients of the Am Law 200 law firms we survey. We see some small but positive trends toward not only increasing who has access to those relationship partner roles, but also the demographics of the departing and new relationship partners, particularly for women. For example, in 2020, we found with respect to relationship partner transitions for a firm's top clients, women were 23% of the departing partners and 32% of new relationship partners. We saw little to no increase in the representation of people of color, LGBTQIA+ people, or people with disabilities in these transitions.

Our data from the last couple of years also suggests that these top clients are more likely to be shared after a relationship transition, with the overall number of relationship partners serving those clients increasing when we compare the number of departing relationship partners to the number of new relationship partners. While the sharing of credit has been regularly touted as an equity measure that will allow women, people of color, LGBTQIA+ people, and people with disabilities more access to critical building blocks for advancement in the firm, there is reason to worry that the splitting or sharing of credit may dilute the impact of these client relationships when it comes to compensation, evaluation, and promotion, especially for women, people of color, LGBTQIA+ people, and people with disabilities. Research has shown that women often receive less credit for work they do in teams, and this is particularly true when they are working with men.⁶¹ Further, men do not have their contributions discounted when working in teams, so it is a one-sided penalty for collaboration that works against women and to the benefit of men.⁶²

"Research has shown that women often receive less credit for work they do in teams, and this is particularly true when they are working with men. (61) Further, men do not have their contributions discounted when working in teams, so it is a one-sided penalty for collaboration that works against women and to the benefit of men. (62)"

Additional research has shown that male and female observers alike are more likely to devalue the contributions of women when the work involved is stereotypically male, such as tasks related to leadership and decision-making.⁶³ Observers rated the women in the team as less competent, less influential, and less likely to have played a leadership role in the task at hand.⁶⁴ And, finally, research also has shown that women themselves, when working with men, may downplay their own contributions to the collective work product, not only by not advocating for their own contributions but also by assigning more credit to the men on their teams.⁶⁵ Taken together, we should be wary of the idea that credit sharing and assigning relationship partner teams rather than single partners will necessarily address gender disparities in access to and credit for work with top firm clients.

These concerns over the potential unintended negative consequences of credit sharing also have implications for who is seen as a potential successor for a client. It has been recommended that one thing that firms can begin to do is analyze and map out their client relationships, particularly for their top 30 – 50 clients, to see who works with those clients across the firm. This information would allow the identification of potential successors to the existing relationship partner(s) that reflects who actually knows and works with the client.⁶⁶ If women's contributions are devalued within the context of who has been servicing the client, women are likely to be passed over as potential successors if they are perceived as having contributed less to maintaining the client relationship or working on the client's matters.

What We Need to Know

Key Questions for Law Firms to Ask and Answer

- *What does your firm's typical client succession look like?*
- *When does your firm typically start planning for client succession? What is the typical timeline for a succession process to play out, start to finish, at your firm?*
- *Who is involved in planning for succession at your firm? What role does each of these individuals play?*
- *How are potential successors identified? Who identifies these candidates? On what criteria are these identifications made?*
- *How are successor candidates evaluated? On the basis of what criteria are successor candidates evaluated?*
- *What are the demographics of your firm's departing relationship partners compared to their replacements in the last 10 years?*
- *How does your firm take the potential for bias into account in succession planning?*
- *How does your firm embed your diversity, equity, and inclusion commitments into succession planning?*

Actions to Take Now

Address Resistance to Succession Planning

Succession planning can trigger a host of negative feelings, particularly in those who will be succeeded and may feel that planning for their departure signals a desire to push them out prematurely. Instead, succession planning can and should be thought of as an effective business and organizational strategy and, when done right, there are benefits to all involved in the process.

In the space left by a lack of planning is room for subjective, biased decision-making that serves no one well. Adopting a mindset focused on an objective, people-focused approach to succession planning creates the opportunity to create a “centered” approach that is engaging, empathetic, and focused on the business, while understanding the realities facing the people involved in the process.⁶⁷

Create a Formal, Written Firm-Wide Succession Strategy

Because law firms remain reluctant to commit to firmwide succession strategies or even written individual plans, there has been relatively little reported about best practices for formalizing succession in the legal profession. Nevertheless, it makes sense for firm leaders to begin with developing a strategy and process to guide all successions in the firm to some extent. For example, a firm should develop a general timeline for when succession planning should begin, such as when the relationship partner hits a certain age or is within a certain number of years of the expected retirement age. A firm-wide strategy also would have guidelines for how potential successors will be identified, including the process by which these identifications will play out, the process through which candidates will be evaluated formally, and the general criteria that should apply in all successions occurring at the firm. While NAWL data has backed up the idea that most successions currently occur on a case-by-case basis and some firms (or existing relationship partners) resist the idea of setting standards that apply across the firm, standardizing the general process undertaken when making succession decisions reduces the subjectivity of the process, thus reducing the potential for bias in the outcomes of succession decisions.

Begin Advance Planning Now

Law firms need to begin to engage in advanced and systematic planning for successions in the law firm, including those affecting clients and leadership roles in the law firm (e.g., governance committees, managing partners, and practice group leaders). It has been recommended that the firm, existing relationship partners, and clients should begin thinking about possible successors at least three years, and as long as 10 years, prior to the anticipated transition.⁶⁸ This allows time both for building the relationship between the client and those who stand to inherit the relationship and ensuring the process through which the successor(s) are chosen is intentional, thoughtful, and responsive to firm and client needs.

Involve Clients in Succession Planning

Increasingly, clients of large law firms are taking the lead in pushing for more diversity on the teams that serve their matters, and this further highlights the role clients can and should play in relationship partner transitions. As mentioned above, one reason for advance planning is to make it more likely that the successor already has a positive working relationship with the client prior to the transition. In addition, the client may have ideas about who they would like to see assigned to relationship partner roles when a transition occurs, based on who they have worked with and their observations of relative contributions, subject matter expertise, and quality of client service.

Where Do We Go from Here?

In the midst of the racial and social justice awakening that has occurred alongside a global pandemic beginning in 2020, the legal profession, like so many other professions, is showing increased interest and investment in the pursuit of diversity, equity, and inclusion in the profession. But the legal profession, like so many other professions, continues to struggle with taking impactful steps that produce measurable results on outcomes that matter the most, such as (1) the representation of women and attorneys from diverse or underrepresented backgrounds (particularly in senior or leadership roles), (2) the retention of women, people of color, LGBTQIA+ people, and people with disabilities in the profession (particularly in law firms), and (3) reported experiences of a diverse, equitable, and inclusive legal profession.

This increased interest in diversity, equity, and inclusion presents itself in a context of slow or stalled progress on these dimensions in the legal profession. We will see what comes of this recent focus, but, if the past is any indication, without a significantly different approach, one that focuses on law firm culture and structures, we can expect progress to remain, at best, slow.

For years, NAWL and many other legal organizations have counted and reported the numbers that tell the familiar story of the legal profession's struggle with diversity, equity, and inclusion. It is time to move beyond the numbers toward a better understanding of why and how meaningful and significant progress on diversity, equity, and inclusion remains elusive. NAWL intends this report to serve as a launching point for deeper, more concrete, more actionable conversations across the legal profession about how law firm policies, practices, and procedures, and the culture they reflect and engender, impede or promote the advancement of women, people of color, LGBTQIA+ people, persons with disabilities, and all attorneys from marginalized backgrounds.

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While the legal profession seems to be coming around to accepting the business case for diversity and acknowledging the need to actively capture the value of diversity, these benefits cannot be realized when diversity, equity, and inclusion are lacking.

This shift in the legal profession has come about in no small part due to the increased pressure put on law firms by their clients interested in diversity, equity, and inclusion. The increasing role of law firm clients in encouraging law firm diversity, equity, and inclusion initiatives should be celebrated and supported. Corporate clients, in particular, should use the leverage they have to demand more of the law firms with which they work.⁶⁹

"...the effects of exclusion, biases, and underrepresentation build on themselves. The legal profession needs to be bold in considering how to address the exponential impact of even subtle biases or disparities that are built into the culture and systems of law firms and the profession."

The data and research are clear – the effects of exclusion, biases, and underrepresentation build on themselves. The legal profession needs to be bold in considering how to address the exponential impact of even subtle biases or disparities that are built into the culture and systems of law firms and the profession. The disparities at any stage of attorneys' careers accumulate in ways that derail the career trajectories of too many, some groups of attorneys more than others. NAWL wants to be part of helping the legal profession do this bold work, and we hope this report becomes a useful tool in that work.

Endnotes

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Survey Methodology in Brief

The 2021 NAWL Survey was sent to the 200 largest U.S. law firms[i] in March 2021 and responding law firms had until April 2021 to submit their responses. In total, 75 of 200 law firms completed all or significant portions of the survey,[ii] a response rate of 37.5%. The responding firms represent the spectrum of the Am Law 200 rankings. Firms completed questions regarding the demographics of attorneys at various levels, particularly women, as well as information about credit, succession, engagement with best practices related to employment decisions, compensation, hours and billing, and diversity initiatives and other programming designed to support women, attorneys of color, and diversity, equity, and inclusion broadly in law firms.

[i] Based on the 2020 Am Law 200 Rankings.

[ii] It is common for fewer law firms to complete questions about compensation and other sensitive data in particular, with many declining to provide the data, often noting that it is either considered confidential or is not collected in a way that matches the reporting format requested on the survey. As in most survey administrations, for various reasons, few questions receive 100% response rates, and firms were encouraged to complete as much of the survey as they were willing or able to complete while also maintaining the ability to skip other portions.



Author Biography

Destiny Peery is a social psychologist and legal scholar who studies identity, bias, and DEI, including their intersections with the law and in spaces within the legal profession. She regularly facilitates workshops on DEI topics in settings across the legal profession and other professional communities, and over the last few years, she has conducted research on diversity in the legal profession with NAWL and the ABA. Destiny holds a JD and PhD from Northwestern. She currently serves as the Managing Director of the Charles Hamilton Houston Institute for Race & Justice at Harvard Law School.