## Diana Santos Associate Counsel New York Genome Center, Inc.



Diana G. Santos, Esq. is Associate Counsel at the New York Genome Center, Inc., an independent, nonprofit academic research institution focused on genomic research. Diana specializes in handling NYGC's technology and intellectual property-related transactions, including licensing and transfer agreements; commercial agreements; SaaS agreements; software license agreements; and outsourcing and service agreements. She develops and maintains NYGC's policies on IP, privacy, and cybersecurity.

Prior to joining NYGC, Diana worked at Willkie Farr & Gallagher LLP and Ropes & Gray LLP. As outside counsel, she advised major technology, automotive, pharmaceutical, consumer product, and medical device companies in the development of offensive and defensive legal strategies. Diana has experience in a variety of patent litigation stages, and has represented clients in various forums, including district courts, the International Trade Commission, the Patent Trial and Appeal Board, and the American Arbitration Association. She also counseled clients on IP issues for investments, product development, and branding, including as related to trademarks, copyrights, and consumer law.

Diana is a member of the LatinoJustice PRLDEF Líderes Board and a Deputy of the Hispanic National Bar Association's Region II. Diana is also a member of the New York Intellectual Property Law Association's Women in IP Law Committee; Fordham Law's Recent Graduates Committee; Fordham Law's Alumni Attorneys of Color Affinity Group; and NYIPLA's Women in Law Committee.

Diana received her J.D. from Fordham's University's School of Law and LL.M. in European Law from Université Panthéon–Assas, Collège Européen de Paris. Diana received her Master of Biotechnology from the University of Pennsylvania and Bachelor of Engineering from The Cooper Union for the Advancement of Science and Art.

## David Baker Rights and Clearances Senior Manager ABC News



David W. Baker received his undergraduate degrees in Business Administration and Psychology from Utica College of Syracuse University, and his Master of Business Administration from the University of Baltimore. He earned his Juris Doctor from Syracuse University College of Law in 2005 along with his Master of Public Administration degree from the Maxwell School of Citizenship and Public Affairs.

After graduating from the College of Law, Mr. Baker served as a law clerk to the Honorable Marcella A. Holland, Administrative

Judge for the Baltimore City Circuit Court. Since 2006, Mr. Baker has worked with ABC News Rights and Clearances, the licensing department for ABC News. As Senior Manager and the head of the department, his primary responsibilities include overseeing all licensing contracts for all national news shows, as well as negotiating and establishing rates with third-party photo and video vendors for the network, and limiting the network's exposure to liability. In addition, he plays a key role in expanding the ABC News' brand in television and film.

Prior to law school, Mr. Baker worked as a television journalist. He got his start in television working at C-SPAN. He later left C-SPAN to work on ABC News' Sunday morning political affairs program This Week and then went on to become an Associate Producer for ABC News' 20/20 and Primetime. While at ABC News, Mr. Baker was part of an award-winning team that was recognized for its work on the civil rights story, "Justice At Last," which brought attention to several cold cases that were later reopened by law enforcement officials after the airing of its news report.

Mr. Baker is a member of the District of Columbia Bar and the American Bar Association. He enjoys mentoring and speaking to students. Mr. Baker has not forgotten how much the College of Law has given to him. He sits at the College of Law's booth during the law school recruitment forum in New York City.

Photo by ABC Photography.

## Paula Edgar Partner Inclusion Strategy Solutions LLC



Paula T. Edgar, Esq., is an attorney and Partner of Inclusion Strategy Solutions LLC, a consulting firm that provides innovative and strategic solutions on organizational diversity efforts, intercultural competence initiatives, sexual harassment prevention, and EEO compliance. Paula has worked to advance diversity, equity, and inclusion for more than 10 years across sectors. Paula educates on these topics by advising, facilitating workshops, conducting professional development training, and providing keynote speeches. Paula is also an expert in inclusive

executive/leadership development, professional and personal branding, networking, social media, and career strategies. Paula has demonstrated leadership in numerous civic organizations and she is the immediate past President of the Metropolitan Black Bar Association (MBBA), New York State's largest black bar association.

Paula's professional experiences include serving as the founder and CEO of PGE LLC (a speaking, consulting and executive coaching firm), as the inaugural Chief Diversity Officer at New York Law School and as an attorney in the Law Enforcement Division of the New York City Commission on Human Rights.

Paula received her B.A. in Anthropology from California State University (Fullerton) and her J.D. from the City University of New York School of Law. She was recognized by The Network Journal Magazine as a "40 Under Forty" Achievement Awardee, a Ms. JD "Woman of Inspiration" and a "Rising Star" by A Better Chance.

Justine Gozzi Special Counsel Baker Botts LLP



Justine A. Gozzi has over 12 years of experience as a registered patent attorney. She practices all aspects of intellectual property law and counsels clients on consumer product matters involving due diligence, freedom to operate, commercialization, and patentability concerns in the areas of mechanical arts, medical devices, biotechnology, electrical products, pharmaceuticals and business methods.

Ms. Gozzi has a robust licensing and transaction practice. She further advises clients regarding worldwide portfolio management

and strategic development, and litigation. Ms. Gozzi's broad engineering background allows her to understand and assist clients with the complex legal and scientific issues across many industries.

Ms. Gozzi serves as a monthly pro bono attorney with the New York City Bar Association's Monday Night Legal Clinic and has provided legal counsel to over 100 local community members since 2011. She is also representing a child in an immigration matter and child custody case. Ms. Gozzi is also active with the Women in IP and Diversity Committees of the American Intellectual Property Law Association (AIPLA). She serves as the Chair of the Diversity Committee, in addition to serving on the Inventor of the Year Committee for the New York Intellectual Property Law Association.

Ms. Gozzi is also a Board member of the University of Virginia Club of New York and a Board trustee for the American Intellectual Property Law Education Foundation.

## Khalil Nobles Associate Willkie Farr & Gallagher LLP



Khalil Nobles is an associate in the New York Office of Willkie, where he regularly counsels clients on intellectual property issues arising in complex transactions, like private equity, mergers and acquisitions, public and private offerings, asset purchases and standards-related licensing programs. His clients include venture and private equity sponsors and corporations active in the software, technology, biotechnology, fintech, insurance, and telecommunications sectors.

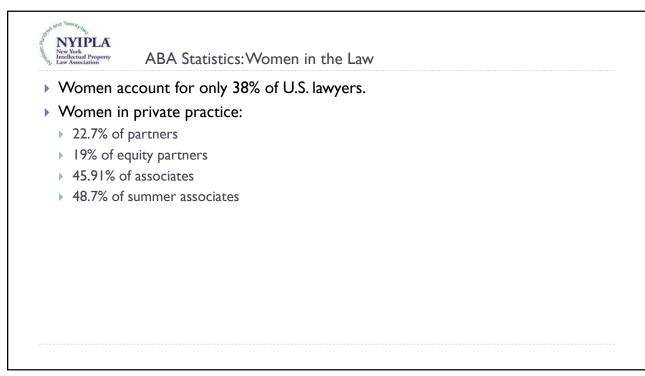
Prior to joining Willkie, Khalil practiced at a leading technology

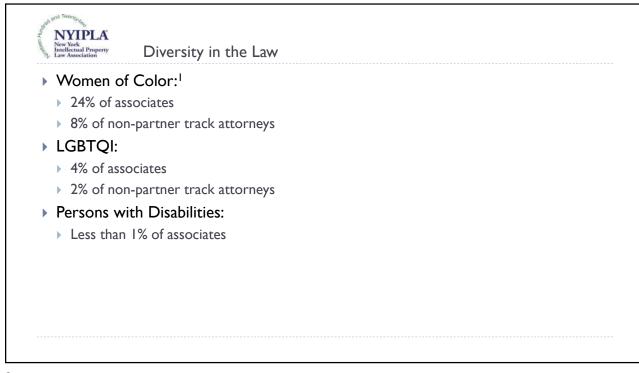
company, where he was involved in all facets of patent preparation and prosecution, including patent drafting, claim strategy development and drafting responses to USPTO office actions.

In his spare time, Khalil is actively involved in several organizations committed to diversifying the legal profession. He has served as a junior board member of Practicing Attorneys for Law Students (PALS) and currently serves as an executive board member of the Pipeline to Practice Foundation.

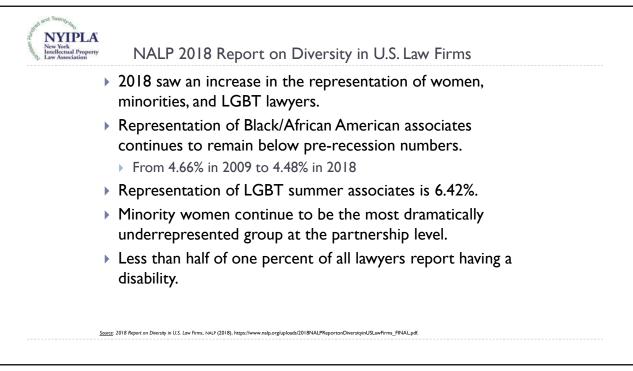
Khalil received his J.D. from Benjamin N. Cardozo School of Law, Yeshiva University, as well as a B.A. and M.S. in Information Science and Technology from the University at Albany, State University of New York.

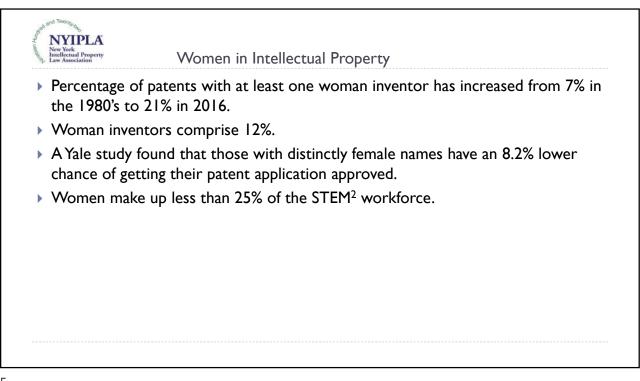
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	Diversity Initiatives: Practical Strategies
	Panelists: Paula Edgar, Partner, Inclusion Strategy Solutions LLC
	Justine Gozzi, Special Counce, Baker Botts Lynnore Thames, Director of Business Affairs, ABC News



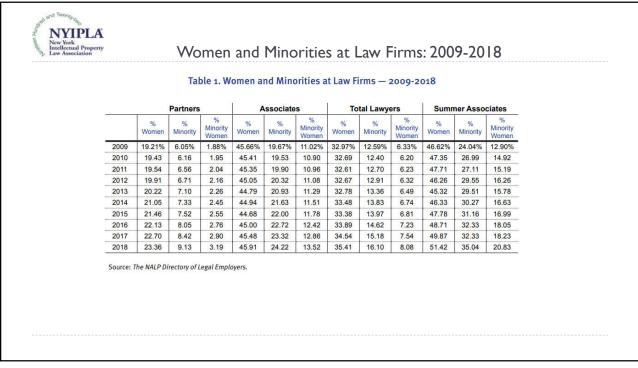


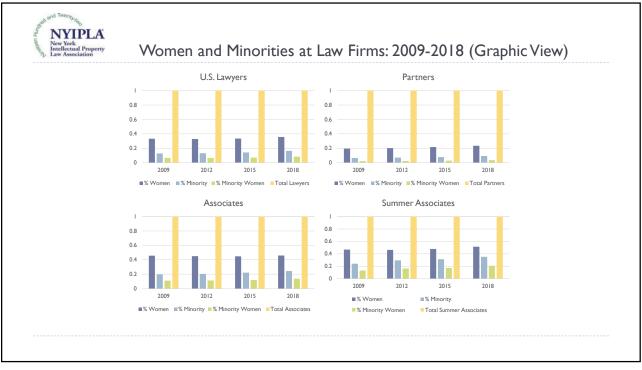




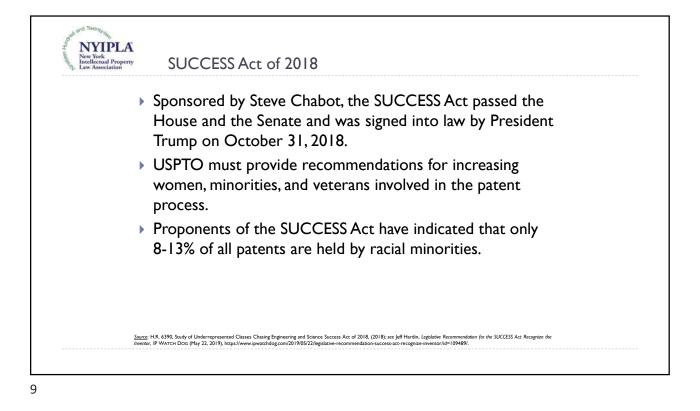


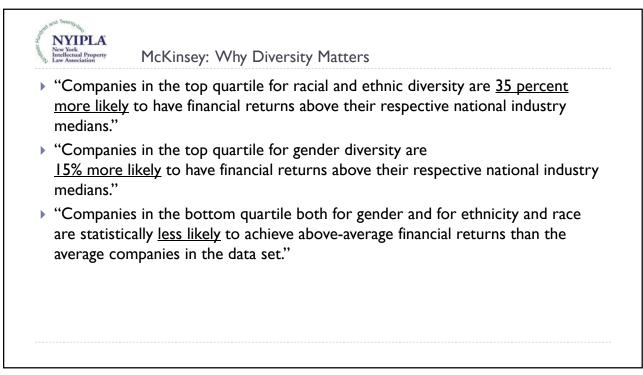


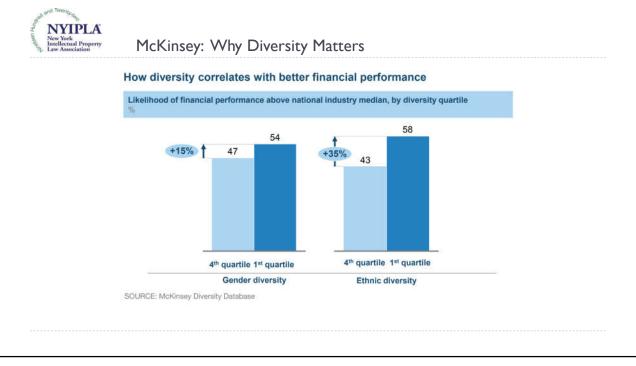




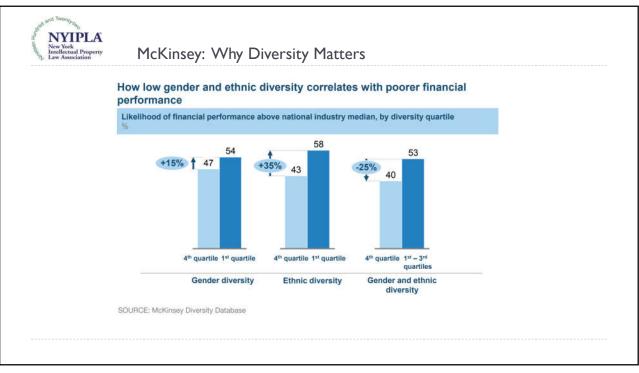
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	Partners				Associates				
	Timai #	Women	Minority	Ninosty Women	7,040 #	Women	% Minority	Minority Women	# af Offices
Total	47,625	23.38	9.13		45,807	45.91	24.22	13.52	1.009
By # of Lawyers Firm-wide:	Langero				1 terest	10.01	- and and	I in set	
100 or ferwer	2,759	22.15	7.94	3.01	1,631	40.95	19.87	9.75	90
101-250	8,497	23.18	6.63	2.42	4,815	45.71	18.50	10.55	134
251-500	9,577	24.05	8.40	3.08	6,587	45.10	22.62	12.40	199
601-700	5,779	22.70	8.67	2.86	5.856	45.44	24.42	13.61	104
701+	21.013	23.47	10.76	3.66	26,918	46.55	25.86	14.54	482
Offices in									
Atlanta	1,051	21.98	7.99	2.66	919	47.01	20.46	11.43	23
Austin	301	25.58	11.96	4.32	199	42.71	20.60	13.07	17
Boston area	1,563	24.25	4.48	1.66	1,832	45.85	19.43	11.19	34
Charlotte	430	16.05	4.65	1.40	297	42.09	14.14	7.74	13
Chicago	3,260	22.94	7,91	2.70	2,575	44.12	21.32	11.18	63 6
Cincinnati Cleveland	308	24.35	3.25	0.97	152	41.45	9.87 5.65	4.61	6
Columbus	405	18.52 24.07	2.96	2.91	283	42.71	15.58	7.04	10
Dallas	985	20.30	9.75	3.65	908	40.97	21.92	9.69	32
Derwer	511	27.59	6.65	2.15	491	48.27	13.85	8.55	22
Detroit area	550	25.82	6.18	2.55	227	44.93	17.18	9.25	9
Ft. Lauderdale/W. Palm Beach	158	23.42	6.33	3.16	95	45.32	14.74	10.53	8
Houston	1,129	17.98	12.05	3.90	1,281	39.27	25.92	12.02	43
Indianapolis	335	24.48	2.99	1.19	162	50.62	14.20	9.26	6
Kansas City, MO	493	24.54	3.85	1.22	274	47.08	13.50	7.30	7
Los Angeles area	1,832	24.45	16.65	6.33	2,294	48.78	32.13	18.09	72
Miami	384	26.78	37.76	11.72	282	47.87	47.16	25.53	14
Milwaukee	631	25.04	3.96	1.90	320	38.75	8.13	3.13	8

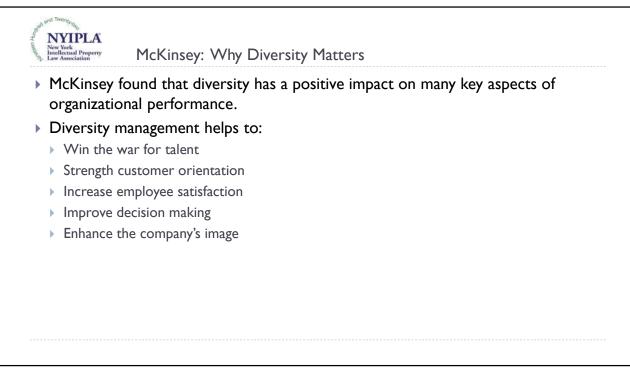




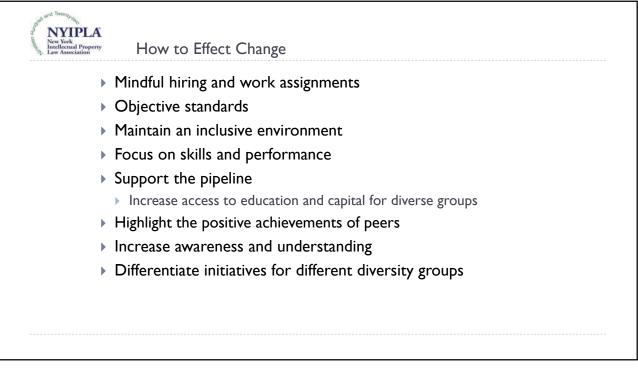












## Unconscious Bias in the Legal Profession by Paula T. Edgar, Esq. (March, 2018)

The *ABA Model Rules of Professional Conduct* state that attorneys have a mandate to be "competent in all professional functions" and indicate that a "lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials".

As members of the legal profession, we have a responsibility to advance justice for our clients and to assure that our interactions with each other, our staff, members of the Judiciary, and all stakeholders with whom we collaborate and interact are conducted at the highest level of professionalism.

It is imperative that we deliberately work to identify and eliminate potential barriers which might prevent us from engaging equitably and fairly as legal professionals. For this reason, it is essential that lawyers and all members of the legal profession learn about both conscious and unconscious bias, and their effect on how we interact with each other and ultimately how justice is administered.

Many studies and reports have detailed the slow advancement of diversity within the legal profession. Many have attributed the slow progress in this area to unconscious bias because of how that bias affects our interactions, our decisions, and ultimately access to the profession.

Legal organizations and individual attorneys strive to combat the effects of unconscious bias within their institutions by implementing educational sessions and strategies, such as mentoring and the development of inclusion councils, designed to interrupt the effects of unconscious bias. Organizations that thrive must consciously - intentionally - address diversity and inclusion in the context of the greater culture. They must recognize the inevitable impacts that our diversity as human beings and the challenges of creating inclusive relationships have on organizational cultures and sub-cultures.

## Bias inhibits innovation, engagement, and opportunity for advancement

## **Compliance vs. Goals for Inclusion**

Varying laws exist at the federal, state, and local levels to provide protections against discrimination based on multiple protected characteristics in the workplace. Organizations generally have a human resources-led imperative to provide training on those protections and to explain organizational policies and procedures. However, in order to effect lasting change, organizational and individual awareness of bias must go far beyond compliance. In particular, for employers within the legal profession, on-going unconscious bias workshops should be an imperative designed to further goals for inclusion, and include components that address recruitment, employee engagement and retention.

#### Assessment

In order to gauge how unconscious bias is affecting your organization, it is recommended that you conduct an assessment of representation across the organization, in order to get a snapshot of employee demographics across protected classes and underrepresented groups (e.g., race, gender, LGBTQ, religion). The assessment would highlight areas in which there is underrepresentation across job categories and levels. Incorporating demographic information into an organization's succession plan is an effective method for reaching the goal of increasing diversity among the leadership of your organization.

## **Demographic Data**

Several organizations produce annual reports that detail trends and measure any improvements by race, gender, and other factors across levels within legal organizations. The New York City Bar Association's annual diversity benchmarking report tracks law firm diversity within New York City. The National Association of Legal Professionals (NALP) also conducts an annual report on diversity statistics.

#### Surveys

Many legal organizations implement employee surveys to determine engagement. It is increasingly common for questions on diversity and inclusion to be included in these surveys. Anonymous surveys provide legal employers with the opportunity to learn if employees believe that they are treated with respect and if they believe that their diverse characteristics impact their working relationships with colleagues, clients, and the courts.

#### Consultants

A best practice is for Legal employers to engage external consultants to develop surveys, conduct interviews, and facilitate focus groups designed to glean direct, discreet information from employees about their experiences related to bias at work. Fully hearing about the experiences of attorneys who have had to navigate the impact of race, gender or age-based bias provides employers with tangible means to address these issues. Focus groups empower employees to contribute solutions and innovative approaches to interrupting bias in the workplace. Interviews and focus groups are much more effective when administered by consultants, as employees are less likely to be concerned about confidentiality and the risk of disclosure.

#### Law Schools

The effects of unconscious bias can also be found within law schools. How admissions officers perceive an application affects acceptance rates and resulting representation within the school. Additionally, unconscious bias on the part of professors within the classroom can affect student comfort levels, learning capacity, and academic performance. Unconscious biases can also have a detrimental effect on students during their internship and/or job search process. The biases of resume reviewers or interviewers can have a direct effect on whether an offer is tendered.

#### How does bias show up for attorneys?

The resulting effects of unconscious bias can be seen in the leadership ranks of most legal institutions. While some legal employers have a relatively diverse workforce at the entry level, this diversity is not necessarily reflected within the leadership ranks. In many cases, this situation remains unchanged even when the organization has a stated commitment to increase diversity in recruiting and retention.

#### Leadership Structure

There are many potential reasons for these results. When reflecting upon what it takes to move up within the ranks of any institution, it is important to factor in the impact of bias. Unconscious bias comes into play clearly in many situations. For example, affinity bias (the tendency to warm up to people like ourselves) is the most prevalent bias exhibited by humans. Within legal institutions this is demonstrated by the "flocking" behavior of members of shared affinity groups. For example, when individuals go to lunch with the same people on a regular basis, they reinforce deeper connections with those who are similar to themselves. This may ultimately result in benefits such as better assignments, more chances to engage with influencers, greater mentoring opportunities, and other advantages that support ascent within the organization.

#### Recruiting

An organization's recruiting policies and protocols are often clear examples of how bias can influence the organization and thwart or derail diversity and inclusion goals. For legal employers, preferences for applicants with a certain pedigree, and recruiting strategies that only include certain schools, organizations, and regions narrow the field of potential applicants, and eventually, the diversity of the workforce. Unstructured interviewing strategies, weighted resume reviews, and influenced referrals all increase bias and create disparate opportunity.

#### Retention

Lack of sufficient support structures for attorneys within the workforce results in undesirably high attrition rates. This occurs when attorneys who are traditionally underrepresented within the legal profession interact less with influencers and are not afforded the same opportunities as their colleagues who are members of the dominant culture. These situations may eventually result in disengagement on the part of either the employee or the institution.

## **Client Interaction**

#### Bias by clients

Unconscious biases often impact a client's perception of an attorney's competency and efficacy. For example, a client might question the ability of an attorney who appears younger because of biases associated with age and ability.

#### **Bias towards clients**

Similarly, an attorney's biases can detrimentally affect their working relationship with a client. For example, an attorney representing an African American client who has an unconscious bias

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against African Americans may make assumptions, or not inquire about potential resolutions, which may negatively affect their client's eventual outcome. This can have a detrimental effect on the attorney's intended representation of their clients and the eventual administration of justice.

### Supervision of non-attorney staff

In any legal institution, the work done by non-attorney support staff and other office administrators is the engine that allows the organization to thrive. Bias exhibited towards these individuals or groups can make them feel undervalued, unappreciated, or discriminated against, which severely undermines productivity and office morale.

## In the Courtroom

#### Judges

Judges are at the helm of the judicial system and have a higher charge to be equitable and fair in the administration of justice. As such, a judge's unconscious biases can have a lasting negative effect on the administration of justice. This bias may be exhibited in overruling or sustaining an objection, delivering jury instructions, commenting from the bench, sentencing, and other subjective areas in which judicial discretion exists.

#### Juries

Conscious and unconscious biases come into effect during the jury selection process. Attorneys on either side make decisions about which juror to select based on their perception of how that individual will respond to both their client and the facts/circumstances surrounding the case. Once selected, biases affect empaneled juries' interpretation of the evidence and other circumstances surrounding the case. For example, a juror with a bias against women may not perceive arguments made by a female attorney in a favorable light, regardless of the content or quality of the statement.

## **Opposing Counsel**

Bias also affects interaction between opposing counsel in the courtroom, as well as during pretrial negotiations and depositions. Similarly, bias comes into play during negotiations for transactional attorneys. For example, a more seasoned attorney may perceive a younger attorney as less competent based on his or her age.

## Why does this matter?

Lawyers are charged with advocating for and advancing laws and policies which shape our daily lives. Unconscious biases prevent us from achieving our stated organizational goals and have an effect on the public at large. We must implement strategies to interrupt the detrimental effects of bias in order to advance our DEI (diversity, equity, and inclusion) mission and to realize our broader goals within the profession. While not the primary impetus for us to focus on bias, another reason why this matters is that bias inhibits productivity, which may have negative financial ramifications from law school all the way to the boardroom and courtroom.

### Biases and challenges

A primary challenge in addressing bias among attorneys is that attorneys (and people generally) are adverse to change and risk. Because of this, there tends to be discomfort or fear of engaging with the subject of bias and its effects on diversity, equity and inclusion. However, avoidance, complacency, and denial of the effects of bias pose even greater risks to our profession.

#### **Bias Interrupters**

#### Individual

There are many strategies individual attorneys can employ to stay vigilant about interrupting bias.

- Get out of your comfort zone. Attorneys should commit to engaging with people who are different from themselves to learn about cultures, languages, and places that will enhance their cultural competency. This will also combat any existing negative biases they have towards various groups and personal characteristics.
- 2. Acknowledge and remember that *everyone* has bias. Attorneys who want to take individual steps to learn about their potential unconscious biases can use assessment tools such as the Harvard Implicit Association Test. This test gauges an individual's unconscious biases regarding a variety of characteristics, including race, gender, weight, and age.
- 3. Mindfulness is a proven tool that can mitigate the effects of bias for attorneys. This can be as simple as deep breathing exercises prior to annual reviews, jury selection, interviews, and other high stake, high-bias-potential interactions.
- 4. Attorneys should stay committed to learning about and engaging with the topic of bias. Rather than focusing on a compliance-only approach to diversity and equity, take a proactive approach to learning about this topic via training, coaching, and other educational tools. This will enable you to remain vigilant about bias as a top-of-mind challenge that needs to be constantly addressed.

#### Institutional

- 1. If there is to be lasting institutional change, a commitment to increasing diversity, advancing equity, and fostering inclusion must come from the leadership of the institution. This commitment trickles down through the organization and demands compliance, innovation, and accountability from management and staff.
- 2. Institutions should engage in constant self-assessment to determine their progress towards goals. An essential component for assessment is to review policies and procedures, in particular those that affect employee recruitment and retention. Engaging external consultants to assist with this process is a best practice that helps organizations implement this process of assessment in as objective a manner as possible. Consultants can also minimize the potential for retaliation and employee disengagement.
- 3. Institutions should commit to ongoing training, and when necessary high level coaching, to assist employees with knowledge about and strategies for combating bias.

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### **Conclusion/ Closing Remarks**

To combat the harmful and lasting effects of implicit and explicit bias, organizations and individuals must take the deliberate and intentional steps required to advance diversity, equity and inclusion. Lawyers must consciously modulate their management and communication styles to be more inclusive. In addition, lawyers should commit to being receptive to feedback and open to change. As with all efforts to shift the status quo to advance individual and organizational change, lawyers should examine their individual resistance and the resistance of others to self-assessment; this requires empathy, energy and engagement. This commitment, while not a simple endeavor, can have a positive ripple effect on the profession. In the words of Dr. Martin Luther King Jr. "Human progress is neither automatic nor inevitable... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals".

#### **Additional resources**

Bias Interrupters: <u>http://biasinterrupters.org</u> Inclusion Nudges: <u>http://inclusion-nudges.org/#learn</u> Jerry Kang & Arin Reeves Compendium DIVERSITY

# How the Best Bosses Interrupt Bias on Their Teams

#### by Joan C. Williams and Sky Mihaylo

FROM THE NOVEMBER-DECEMBER 2019 ISSUE



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ompanies spend millions on antibias training each year. The goal is to create workforces that are more inclusive, and thereby more innovative and more effective. Studies show that well-managed diverse groups outperform homogeneous ones and are more committed, have higher collective intelligence, and are better at making decisions and solving problems. But research also shows that bias prevention programs rarely deliver. And some companies don't invest in them at all. So how can you, as an individual leader, make sure your team is including and making the most of diverse voices? Can one person fix what an entire organization can't?

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Although bias itself is devilishly hard to eliminate, it is not as difficult to *interrupt*. In the decades we've spent researching and advising people on how to build and manage diverse work groups, we've identified ways that managers can counter bias without spending a lot of time—or political capital.

The first step is to understand the four distinct ways bias plays out in everyday work interactions: (1) *Prove it again:* Some groups have to prove themselves more than others do. (2) *Tightrope:* A narrower range of behaviors is accepted from some groups than from others. (3) *Maternal wall:* Women with children see their commitment and competence questioned or face disapproval for being too career focused. (4) *Tug-of-war:* Disadvantaged groups find themselves pitted against one another because of differing strategies for assimilating—or refusing to do so.

The second step is to recognize when and where these forms of bias arise day-to-day. In the absence of an organizational directive, it's easy to let them go unaddressed. That's a mistake. You can't be a great manager without becoming a *bias interrupter*. Here's how to do it.

## **Picking Your People**

Bias in hiring has been extensively documented. In one study, "Jamal" needed eight more years of experience than "Greg" to be seen as equally qualified. Another found that men from elite backgrounds were called back for interviews more than 12 times as often as identical candidates

from non-elite backgrounds. Other studies have found that women, LGBT+ candidates, people with disabilities, women in headscarves, and older people are less likely to be hired than their peers.

Fairness in hiring is only the first step toward achieving diversity, but it's an important one. Here are four simple actions that will yield the best candidates by eliminating artificial advantages:

## 1. Insist on a diverse pool.

Whether you're working with recruiters or doing the hiring yourself, make it clear from the outset that you want true diversity, not just one female or minority candidate. Research shows that the odds of hiring a woman are 79 times as great if at least two women are in the finalist pool, while the odds of hiring a nonwhite candidate are 194 times as great with at least two finalist minority applicants. For example, when Kori Carew launched the Shook Scholars Institute at Shook, Hardy & Bacon, she designed it to bring a diverse mix of students into the law firm and offered career development and mentoring that prompted many of them to apply for summer associate positions.

## 2. Establish objective criteria, define "culture fit," and demand accountability.

Implicit biases around culture fit often lead to homogeneity. Too often it comes down to shared backgrounds and interests that out-groups, especially first-generation professionals, won't have. That's why it's important to clarify objective criteria for any open role and to rate all applicants using the same rubric. When one insurance company began hiring in this way, it ended up offering jobs to 46% more minority candidates than before. Even if your organization doesn't mandate this approach, ensure that everyone on your team takes it. Write down the specific qualifications required for a particular position so that everyone can focus on them when reviewing résumés and conducting interviews. For example, when Alicia Powell was managing chief counsel at PNC Bank, she made a point of listing the qualities that would make new team members successful in their roles: proactive in managing risk, self-disciplined, patient, customer focused, and independent. Powell shared this information with the rest of her team and candidates, ensuring that everyone was on the same page. You should hold people accountable in the same way. Waive criteria rarely, and require an explanation for those exceptions; then keep track of long-term waiving trends. Research shows that objective rules tend to be applied rigorously to out-groups but leniently to in-groups.

## 3. Limit referral hiring.

If your organization is homogeneous, hiring from within or from employees' social networks will only perpetuate that. So reach out to women and minority groups. Google partners with historically black colleges such as Spelman and Florida A&M University and with Hispanic-serving institutions such as New Mexico State and the University of Puerto Rico, Mayagüez. As an individual leader, you can work with the same organizations or recruit from similar ones in your industry or local community.

## 4. Structure interviews with skills-based questions.

Ask every person interviewed the same questions and make sure that each question directly relates to the desired knowledge and skills you've outlined. Rate the answers immediately—that will allow you to compare candidates fairly on a preestablished rubric and prevent favoritism. You should also use skills assessments: Rather than ask "How comfortable are you with Excel?" say "Here's a data set. How would you find out X?" For more-complex skills, such as project management, pose a problem or a task that candidates are likely to encounter on the job and ask them to describe in detail how they would handle it.

## Managing Day-to-Day

Even good leaders sometimes fall into bad habits when it comes to the daily management of their teams. Women report doing about 20% more "office housework." on average, than their white male counterparts, whether it's literal housework (arranging for lunch or cleaning up after a meeting), administrative tasks (finding a place to meet or prepping a PowerPoint), emotional labor ("He's upset–can you fix it?"), or undervalued work (mentoring summer interns). This is especially true in high-status, high-stakes workplaces. Women engineers report a "worker bee" expectation at higher rates than white men do, and women of color report it at higher rates than white women do. Meanwhile, glamour work that leads to networking and promotion opportunities, such as project leadership and presentations, goes disproportionately to white men. When the consultancy GapJumpers analyzed the performance reviews of a tech company client, it found that women employees were 42% more likely than their male colleagues to be limited to lower-impact projects; as a result, far fewer of them rose to more-senior roles.

Objective rules tend to be applied less rigorously to in-groups than to out-groups.

Meetings are another problem area. Research shows that men are more likely than women to dominate the conversation, and that whereas men with expertise tend to be *more* influential, women with expertise tend to be *less* so. Our study of lawyers found that half of women report being interrupted in meetings at a higher rate than their male peers are. Another study found that in meetings that included more men than women (a common scenario), women typically participated about 25% less often than their male coworkers did. Double standards and stereotypes play out whenever diverse identities come together. Is a woman "emotional," or a black man "angry," while a white male is "passionate"? We once heard from a woman scientist that she was sharply criticized as "aggressive" when she brought up a flaw in a male colleague's analysis; after that she felt she needed to just "bring in baked goods and be agreeable." A black tech company executive we know told us about a meeting during which she said little while the only other woman, an Asian-American, said a lot. But she later heard that people thought she had "dominated" the conversation while her Asian-American peer had been "very quiet."

Unsure whether this sort of thing is happening on your team? Start tracking assignments and airtime in meetings. Use our free online tools to find out which work done by your group is higher- or lowerprofile and who's doing what. For meetings, pay attention: Who's at the table? Who's doing the talking? Is someone taking notes when he or she could be leading the conversation? If you find a problematic dynamic, here are some ways to change it:

## 1. Set up a rotation for office housework, and don't ask for volunteers.

"I always give these tasks to women because they do them well/volunteer" is a common refrain. This dynamic reflects an environment in which men suffer few consequences for bypassing or doing a poor job on low-value work, while women who do the same are seen as "prima donnas" or incompetent. Particularly when administrative staff is limited, a rotation helps level the playing field and makes it clear that everyone is expected to contribute to office housework. If you ask for volunteers, women and people of color will feel powerful pressure to prove they are "team players" by raising their hands.

## 2. Mindfully design and assign people to high-value projects.

Sometimes we hear "It's true, I keep giving the plum assignments to a small group—but they're the only ones with the skills to do them!" According to Joyce Norcini, formerly general counsel for Nokia Siemens Networks, if you have only a tight circle of people you trust to handle meaningful work, you're in trouble. Her advice: Reconsider who is capable of doing what these important jobs require; chances are someone not on your usual list is. You may need to move outside your comfort zone and be more involved in the beginning, but having a broader range of trained people will serve you well in the end.

## 3. Acknowledge the importance of lower-profile contributions.

"Diversity" hires may lag behind their majority-member peers because they're doing extra stuff that doesn't get them extra credit. If your organization truly prioritizes inclusion, then walk your talk. Many bosses who say they value diversity programming and mentorship don't actually take it into account when promotion or comp time becomes available. Integrating these contributions into individual goal setting and evaluating them during performance reviews is a simple start. And don't be afraid to think big: A law partner we know did such a great job running the woman's initiative that the firm begged her to stay on for another year. She said she would if the firm's bosses made her an equity partner. They did.

# 4. Respond to double standards, stereotyping, "manterruption," "bropriating," and "whipeating."

Pay close attention to the way people on your team talk about their peers and how they behave in group settings. For example, men tend to interrupt women far more often than the other way around; displays of confidence and directness *decrease* women's influence but *increase* men's. If a few people are dominating the conversation in a meeting, address it directly. Create and enforce a policy for interruptions. Keep track of those who drown others out and talk with them privately about it, explaining that you think it's important to hear everyone's contributions. Similarly, when you see instances of "bropriating" or "whipeating"—that is, majority-group members taking or being given credit for ideas that women and people of color originally offered—call it out. We know two women on the board of directors of a public company who made a pact: When a man tried to claim one of their ideas, the other would say something like "Yes, I liked Sandra's point, and I'm glad you did too." Once they did this consistently, bropriating stopped.

## 5. Ask people to weigh in.

Women, people of Asian descent, and first-generation professionals report being brought up with a "modesty mandate" that can lead them to hold back their thoughts or speak in a tentative, deferential way. Counter this by extending an invitation: "Camilla, you have experience with this–what are we missing? Is this the best course of action?"

## 6. Schedule meetings inclusively.

Business meetings should take place in the office, not at a golf course, a university club, or your favorite concert venue. Otherwise you're giving an artificial advantage to people who feel more comfortable in those settings or whose personal interests overlap with yours. Whenever possible, stick to working hours, or you risk putting caregivers and others with a demanding personal life at a disadvantage. Joan once noticed that no mothers were participating in a faculty appointment process because all the meetings were held at 5:30 PM. When she pointed this out to the person leading them, the problem was fixed immediately. This colleague had a stay-at-home wife and simply hadn't thought about the issue before.

## 7. Equalize access proactively.

Bosses may meet with some employees more regularly than others, but it's important to make sure this is driven by business demands and team needs rather than by what individuals want or expect. White men may feel more comfortable walking into your office or asking for time. The same may be true of people whose interests you share. When Emily Gould Sullivan, who has led the employment law functions for two *Fortune* 500 retail companies, realized that she was routinely accepting "walking meeting" invitations from a team member who was, like her, interested in fitness, she made a point of reaching out to others to equalize access.

## **Developing Your Team**

Your job as a manager is not only to get the best performance out of your team but also to encourage the development of each member. That means giving fair performance reviews, equal access to high-potential assignments, and promotions and pay increases to those who have earned them. Unfortunately, as we've noted, some groups need to prove themselves more than others, and a broader range of behaviors is often accepted from white men. For example, our research shows that assertiveness and anger are less likely to be accepted from people of color, and expectations that women will be modest, self-effacing, and nice often affect performance assessments. One study found that 66% of women's reviews contained comments about their personalities, but only 1% of men's reviews did. These double standards can have a real impact on equity outcomes. PayScale found that men of color were 25% less likely than their white peers to get a raise when they asked for one. And gender norms stunt careers for women. PayScale found that when women and men

start their careers on the same rung of the professional ladder, by the time they are halfway (aged 30-44), 47% of men are managers or higher, but only 40% of women are. These numbers just worsen over time: Only 3% of the women make it to the C-suite, compared with 8% of the men.

Take these steps to avoid common pitfalls in evaluations and promotions:

## 1. Clarify evaluation criteria and focus on performance, not potential.

Don't arrive at a rating without thinking about what predetermined benchmarks you've used to get there. Any evaluation should include enough data for a third party to understand the justification for the rating. Be specific. Instead of "She writes well," say "She can write an effective summary judgment motion under a tight deadline."

# Schedule meetings during working hours—or caregivers may be put at a disadvantage.

## 2. Separate performance from potential and personality from skill sets.

In-groups tend to be judged on their potential and given the benefit of the doubt, whereas outgroups have to show they've nailed it. If your company values potential, it should be assessed separately, with factors clearly outlined for evaluators and employees. Then track whether there's a pattern as to who has "potential." If so, try relying on performance alone for everyone or get even more concrete with what you're measuring. Personality comments are no different; be wary of double standards that affect women and people of color when it comes to showing emotion or being congenial. Policing women into femininity doesn't help anyone, and—as courts have pointed out it's direct evidence of sex discrimination. If that's not motivation enough, evaluators can miss critical skills by focusing on personality. It's more valuable, and accurate, to say someone is a strong collaborator who can manage projects across multiple departments than to say "She's friendly and gets along with everyone."

## 3. Level the playing field with respect to self-promotion.

The modesty mandate mentioned above prevents many people in out-groups from writing effective self-evaluations or defending themselves at review time. Counter that by giving everyone you manage the tools to evaluate their own performance. Be clear that it's acceptable, and even

expected, to advocate for oneself. A simple two-pager can help overcome the modesty mandate and cue majority men (who tend toward overconfidence) to provide concrete evidence for their claims.

# 4. Explain how training, promotion, and pay decisions will be made, and follow those rules.

As the chair of her firm's women's initiative, one lawyer we know developed a strategy to ensure that all candidates for promotion were considered fairly. She started with a clear outline of what was needed to advance and then assigned every eligible employee (already anonymized) to one of three groups: green (meets the objective metrics), yellow (is close), and red (doesn't). Then she presented the color-coded list to the rest of the evaluation team. By anonymizing the data and pregrouping the candidates by competencies, she ensured that no one was forgotten or recommended owing to ingroup favoritism.

All the evaluators were forced to stick to the predetermined benchmarks, and as a result, they tapped the best candidates. (Those in the yellow category were given advice about how to move up to green.) When it comes to promotions, there may be limits to what you can do as an individual manager, but you should push for transparency on the criteria used. When they are explicit, it's harder to bend the rules for in-group members.

## CONCLUSION

Organizational change is crucial, but it doesn't happen overnight. Fortunately, you can begin with all these recommendations *today*.

A version of this article appeared in the November-December 2019 issue of *Harvard Business Review*.



JOan C. Williams is a professor and the founding director of the Center for WorkLife Law at the University of California's Hastings College of the Law. Her newest book is *White Working Class: Overcoming Class Cluelessness in America*.

Sky Mihaylo is the Policy and Research Fellow at the Center for WorkLife Law.

## This article is about DIVERSITY

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# SUCCESS Act Comments Are In: Access, Enforceability, Predictability Concerns Underscored



By <u>Eileen McDermott</u> October 2, 2019

<u>Print Ar</u>

"Instead of providing a chance for underrepresented and underprivileged individuals to move up the social ladder, involvement in the patent system is more likely to drag them into unwinnable battles that will drain their life savings and leave them utterly destroyed." – comments of US Inventor

In May, the USPTO <u>held</u> the first of <u>three hearings</u> prompted by the <u>Study of Underrepresented</u> <u>Classes Chasing Engineering and Science (SUCCESS) Act</u>, which requires the USPTO Director to provide Congress with a report on publicly available patent data on women, minorities, and veterans, and to provide recommendations on how to promote their participation in the patent system. The hearing featured emotional testimony from five inventors, one of whom said she had joined Debtors Anonymous as a result of her patent being invalidated in the Southern District of New York.

Responses to the USPTO's request for written comment on <u>11 questions the Office had posed</u> <u>have now been published</u>. Eleven organizations and 58 individuals submitted comments,

underscoring a range of concerns. While many organizations focused on the need to collect demographic information and increase exposure to STEM education at the K-12 level, a number of other organizations and individuals emphasized the broader issue that was addressed during the hearing in May—that the



current patent system is stacked against the individual inventor across demographics.

## **IPR is Hurting Individual Inventors**

Deja S. Castro, the inventor of the Tear and Toss Trash System and founder of RDC Systems, LLC, <u>said that</u>, while she supports increasing the number of women, minorities, and veterans who hold patents, "it is crucial that we concurrently increase the enforceability of those patents." She continued: "Patents have become liabilities for independent inventors thanks to the [Patent Trial and Appeal Board] and lack of strong enforcement in court. If the recommended legislation does not include increased protection of patents, the USPTO and Congress will end up destroying the lives [of] women, minorities, and veterans who attain patents."

Tesla Thomas, a small business owner and inventor, <u>wrote</u> "as a young, minority, female inventor and entrepreneur, I do not expect that my ingenuity will be rewarded by the US patent system. The problems that my white, male counterparts have faced give me a sense of foreboding." In reference to the need to address financial barriers to access at the USPTO, Thomas said that the Office should "eliminate the [inter partes review] process for all of the patents initially filed by a small entity, a micro entity, and for inventor owned and controlled companies." She continued:

When large corporations undergo the IPR process they utilize less than 1% of their resources. When my peers of limited financial means undergo the IPR process then we face business and personal bankruptcy just to afford to defend ourselves. If we cannot scrounge up half a million for attorney fees then we cannot defend our patents. And there

is nothing to gain even by a successful defense- we will end up spending half a million dollar just to maintain status quo and may still face personal and business bankruptcy. We passed laws to lower fees for micro and small entities for the same reasons – the true disparity is of financial resources and means.

Inventors Jeff Hardin and Patricia Duran also <u>submitted comments</u> along the lines of their <u>testimony</u> at the hearing in May.



## **Protections, Predictability are Key**

US Inventor—a nonprofit organization that represents 13,000 inventor and small business members—<u>submitted comments</u> maintaining that "the experience of women, minorities, and veterans who attain patents will closely model the experience of all independent inventors and small business owners."

Since the current patent system "virtually precludes success" for all underprivileged patent owners, US Inventor urged the USPTO to include more protections for independent inventors as part of any legislative changes. "Instead of providing a chance for underrepresented and underprivileged individuals to move up the social ladder, involvement in the patent system is more likely to drag them into unwinnable battles that will drain their life savings and leave them utterly destroyed," the comments added.

Richard Baker of New England Intellectual Property, LLC also <u>submitted comments</u> stating that "the best way to assist underrepresented classes is to maintain a strong, fair, and predictable patent system." While Baker said that the USPTO actually does a good job assisting minorities through its micro-entity status, the problems arise post-grant:

"Once the inventor obtains their patent, the US patent system turns against the minority, women, and economically disadvantaged inventor. With the PTAB finding most of the patents it reviews invalid, the balance is tipped against the disadvantaged. The USPTO must reform the IPR and CBM process so that the PTAB affirms about 75% of the patents it reviews. The USPTO must stand behind the Director's signature on the front of an issued patent. Any commercial enterprise that recalled 70% of its work would find itself out of business, yet this is normal business for the USPTO. For an inventor who has taken food off of the table to pay for his maintenance fees, taking the patent away in a PTAB proceeding is particularly harsh. In order to reform the patent system to support the minority, women, and economically disadvantaged inventors, the USPTO should:

- 1. Change the IPR and CBM standards to presume validity.
- 2. Retrain the PTAB Judges to look to preserve validity.
- *3. Encourage the US Congress to fix the uncertainty surrounding patent eligibility under 35 USC 101.*

4. Encourage states to leave patent matters to the Federal government, and actively fight against state patent licensing letter related tort laws.

# **Removing Barriers**

The American Bar Association Section of Intellectual Property Law (ABA-IPL Section) focused its input on the need for both the federal government and specifically the USPTO to "take steps to remove barriers and increase these groups' participation rates." This includes collecting additional inventor demographic information at the time patent applications are filed but limiting the use of such information during patent prosecution, "as the Section is concerned about the risk of implicit bias against applicants from these groups should an Examiner have this information." The ABA-IPL added that steps such as "anonymizing inventor demographic information during prosecution; implicit bias training for examiners; additional hiring of female, minority, and veteran patent examiners; and working with various bar groups and associations to ensure women, minority, and veteran inventors have access to assistance with the high costs of patenting" could help to increase participation by women, minorities, and veterans in the patent system.

## Read all of the comments here.

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**Tags:** <u>aba</u>, <u>Congress</u>, <u>independent inventor</u>, <u>independent inventors</u>, <u>innovation</u>, <u>intellectual</u> <u>property</u>, <u>inter partes review</u>, <u>inventor</u>, <u>IPR</u>, <u>patent</u>, <u>patent eligibility</u>, <u>patent eligible</u>, <u>patent</u> <u>infringement</u>, <u>Patent Litigation</u>, <u>patent office</u>, <u>patent prosecution</u>, <u>Patent Reform</u>, <u>Patent Trial</u> <u>and Appeal Board</u>, <u>Patentability</u>, <u>patentability requirements</u>, <u>patentable subject matter</u>, <u>patents</u>, <u>post grant procedures</u>, <u>PTAB</u>, <u>SUCCESS Act</u>, <u>technology</u>, <u>US Inventor</u>, <u>USPTO</u> **Posted In:** <u>Business</u>, <u>Capitol Hill</u>, <u>Government</u>, <u>Inventors Information</u>, <u>IP News</u>, <u>IPWatchdog</u> <u>Articles</u>, <u>Legislation</u>, <u>Patents</u> <u>Technology</u>, <u>& Innovation</u>, <u>USPTO</u>

## Jeff Hardin October 3, 2019 10:29 am

Thank you for reporting this. Let's hope Congress realizes that our government is of, by, and for the People, and not just for deep-pocketed businesses.

And the ABA-IPL is wrong in their approach to collect demographic data, just like the IDEA Act aims to do in hopes to understand any lack of diversity, because unless the ship is righted, there will be missing data, as inventors are not going to participate in the patent pursuit (and thus no demographic info will be gathered on them). This is made evident in the comments the USPTO received in the SUCCESS Act testimonies—inventors are going on strike. I pointed out this problem of missing data to PPAC, and they asked the USPTO about it in their last quarterly meeting, to which the PTO had no legitimate answer.

Both the speech and paper my wife and I provided asked this regarding a legislative fix: "How can we provide equal outcome, so that equal opportunity even presents an incentive worth pursuing?" I then provided my legislative recommendations pursuant to the Act to accomplish both equal equal outcome and opportunity. Congress and the USPTO must take this to heart. Our paper is linked above in the article.

Let's see what the USPTO actually does report to Congress. And pro bono legal defense at the PTAB still won't do it. In order to attract inventors, this post-grant "second look" that occurs at the PTAB should be abolished and patents should be presumed valid once granted.

## Pro Say October 3, 2019 12:40 pm

As usual, the tireless Paul Morinville provides yet another superb, must-read exposition on trying to patent and succeed in today's America:

## https://www.uspto.gov/sites/default/files/documents/SUCCESSAct-Morinville.pdf

## Bruce Berman October 13, 2019 9:27 am

1.

Excellent article. Thank you Eileen. It is also important to remind people of the many inventions and businesses that began with independent inventors (Ford, Westinghouse and HP among them). Failure on the part of the U.S. government support inventors and inventions undermines innovation and commerce, and gives other nations the opportunity to compete in an area that the U.S. once lead.



# Legislative Recommendation for the SUCCESS Act: Recognize the Inventor



By <u>Jeff Hardin</u> May 22, 2019

Print Ar

"No attorney will take a PTAB challenge on contingency, especially when there are no damages, on the prospect of success at the USPTO. This cost is on the inventor's dime."

*Editor's Note: This is the author's follow-up to IPWatchdog's previous coverage of the USPTO's SUCCESS Act hearing held May 8, in order to clarify his statements.* 

Pursuant to the <u>2018 SUCCESS Act</u>, Congress directed the USPTO to submit to it a report on the results of a study that provides legislative recommendations for how to increase the number of women, minorities, and veterans who apply for and obtain patents. To help gather information as part of its study, <u>the USPTO opened its doors for</u> <u>public comment</u> on <u>Wednesday, May 8, 2019, in</u>



one of three scheduled hearings. Five inventors spoke at this hearing. I was honored to be one of them.

# The True Underrepresented

Patricia Duran spoke first, providing testimony in Spanish while I read the English translation. Duran expressed appreciation for the SUCCESS Act's intent, but quickly set the tone with this question: "What good is a patent if one cannot feasibly defend it?" She added that "women, minorities, and veterans all reside in the same category with other independent inventors, and this class—the independent inventors—is the true underrepresented class." She was not alone. Three other inventors who provided oral testimony stated that <u>all independent</u> <u>inventors are underrepresented in today's patent system</u>, which I found interesting, given that they all belonged to the classes at issue: women, minorities, and/or veterans.

Because Congress asked the USPTO in the SUCCESS Act for legislative recommendations on how to increase the number of patents applied for and obtained by the underrepresented, my speech was directed toward policy. Given the focus on women, minorities, and veterans, I found it fitting to quote two women who are minorities and in government: Supreme Court Justice Sotomayor and U.S. House Representative Sheila Jackson Lee.

## Patent Grant Must Provide Equal Outcome for Inventors

I first turned to Justice Sotomayor and her statements in the oral argument *of <u>Return Mail, Inc.</u>* <u>v. United States Postal Service</u> regarding post grant review proceedings. She said:

"It does seem like the deck is stacked against a private citizen who is dragged into these proceedings. They've got an executive agency acting as judge with an executive director who can pick the judges, who can substitute judges, can reexamine what those judges say, and change the ruling...."

Note that Justice Sotomayor did *not* say it seems the deck is stacked against a woman, or a minority, or a veteran; her words were "private citizen," full stop. And this is the one thing that makes the patent system great, resembling an ideal to which our American experiment continually strives to take hold: a patent is not based on the color of one's skin, one's gender, one's race, or otherwise. A patent is based solely on the merits of the claimed invention, and nothing more.

I fully support equal opportunity in obtaining a patent, but Congress and the USPTO must realize that the Leahy–Smith America Invents Act (AIA) of 2011, whether unintentionally or not, did stack the deck against private citizens. It created two classes of patent holders: the represented (those who can afford fighting a patent, e.g. big business) and the underrepresented (those who cannot afford enforcing/defending a patent, e.g. independent inventors and their small businesses). Our current system does not provide equal outcome for inventors once they receive the patent grant. If you want to encourage the pursuit of more patents, you need a worthy incentive, and the imbalance in outcome today negates that incentive. As Duran said:

"The represented class can simply bleed the underrepresented class dry legally and financially by taking advantage of today's current patent laws. So, although pursuing equal opportunity with women, minorities, and veterans in obtaining a patent is a valuable effort, if it does not coincide with equal outcome in one's ability to utilize the patent once received, regardless of the person's financial state, telling women, minorities, and veterans that they stand to benefit from a patent will simply be false doctrine."

# **Congress Was Put on Notice in 2011**

I then rolled back the clock to June 23, 2011, taking the audience to Capitol Hill, where the AIA was being discussed on the floor. I turned to U.S. House Representative Sheila Jackson Lee, who <u>rose to offer an amendment and a sense of Congress during the debate</u>, stating

"My amendment speaks ... to the vast population of startups and small businesses that are impacted by this legislation. ... This sense of Congress will put us on notice that we need to be careful that we allow at least the opportunity for [] investors, and that we continue to look at the bill to ensure that it responds to this opportunity. ... [M]y amendment also reinforces that we do not wish to engage in any undue taking of property... Small businesses should be as comfortable with going to the Patent Office as our large businesses. ... We must always be mindful of the importance of ensuring that small companies have the same opportunities to innovate and have their inventions patented and that the laws will continue to protect their valuable intellectual property. ... [W]ithout strong patent protection, businesses will lack the incentive to attract customers and contribute to economic growth."

Jackson Lee's statement put Congress on notice to look at the bill to ensure it maintained its original intent.

In my testimony on May 8, I explained that venture capital funding has dropped from being 20.95% of total VC funding in 2004 to a mere 3.22% in 2017 in strategic sectors where patent protections are key, according to a <u>report</u> from the Alliance for U.S. Startups & Inventors for Jobs (USIJ). My speech being limited to 15 minutes, I did not even begin elaborating on <u>how entrepreneurship in America is on the decline</u>.

I declared that **now is the time to look at that bill and its consequences**, not to lawyers, not to big business, but to the true stakeholders: the American Inventors.

# **No More Fairy Tales**

I pointed out that, interestingly, Congressman Lamar Smith, co-sponsor of the AIA, responded to Congresswoman Jackson Lee, saying this: "I want to make it clear that my interpretation of this amendment and its intent is to highlight the problem posed by entities ... whose sole purpose is not to create but to sue. I am talking about patent trolls." But just last October, Director Iancu <u>called out the patent troll narrative as "Orwellian doublespeak"</u>, comparing the patent troll narrative to an utter fairy tale. Others in the industry have stepped forward, saying <u>the patent troll narrative was nothing more than a power grab by big tech</u>. Director Iancu emphasized in his speech: "[I]n our zeal to eliminate 'trolls' and 'the bad patents'... we have over-corrected and risk throwing out the baby with the bathwater. This must now end, and we must restore balance to our system." Indeed.

# **The Difference? Representation**

So, where is the imbalance between these two groups: the underrepresented and the represented? What can you *not* get at the PTAB that you *can* get in an Article III court? Well, ignoring not having a stacked panel and the benefits of an impartial judge, a jury, full discovery, and a presumption of validity, I summarized it with one word: Representation.

Per the <u>2017 AIPLA Report of the Economic Survey</u>, the estimated mean cost of a post-grant proceeding through appeal runs at \$450K. This is how much it costs a patent holder for a single post grant proceeding, let alone the problems of <u>gang tackling</u>, <u>parties of interest and</u> <u>privies</u>, <u>conflicts of interest with APJs</u>, <u>serial attacks</u>, and <u>the Unified Patents subscription</u> <u>business model</u>. Add to that the <u>institution and kill rate statistics on patents challenged at the</u> <u>PTAB</u> and you have a bleak picture for anyone desiring to utilize their patents who ends up in that tribunal.

I emphasized that no attorney will take a PTAB challenge on contingency, especially when there are no damages, on the prospect of success at the USPTO. This cost is on the inventor's dime. And this is just trying to reach the same state of reliance that previously existed on the day a patent was granted before the AIA went into effect. In other words, if you don't have half a million dollars to spare for a single patent challenge at the USPTO, you will not find representation if you ever want to license your patent and someone does the math and challenges you, or if you want to protect your patent when someone else steals your invention. Is this a fair shake? Does a patent give women, minorities, or veterans any real benefit, or all independent inventors or small businesses, for that matter? With a patent system like this, the question that arises if you were to encourage these groups to get more patents is not "What are you doing for them?", but "What are you getting them into?"

# Legislative Recommendation: Recognize the Inventor

So how do we create equal outcome so that equal opportunity even presents an incentive worth pursuing? I concluded my speech with the following legislative recommendation for the USPTO to report to Congress:

"The Patent Office must recommend to Congress that, if Congress wants to keep their AIA system that created the represented and the underrepresented classes, and if Congress wants to incentivize the true underrepresented class and its progeny to file for and obtain patents, **Congress must recognize the underrepresented class in the statute**.

And doing this is simple: Recognize patents where the inventor(s), or a small business owned solely by the inventor(s), retain ownership of the patent. These are not the socalled 'patent trolls'. These are the true American innovators trying to start a company in their garage. Establish and identify them – inventors who own their patents – in the statute. This is the true underrepresented class. Once they are identified in the statute, give them preference when it comes to their patents being challenged. If it is more economical and faster to go to the PTAB, then they'll go. If not, they'll stay in the traditional Article III court. Also, give them proper venue to enforce their rights. Modify 1400(b) to include judicial districts where inventors listed on the patents performed their research. Also, the face of the patent states that the patent holder has the right to exclude others. They should have that right when it comes to injunctions.

Once Congress does this, the playing field will be more level. Independent inventors and small businesses – and all women, minorities, and veterans who reside therein – will have a more equal outcome. And then, that baby that has been thrown out with the bath water, as Iancu mentioned, will have been safely taken out of the bathtub before the bathwater has been tossed. And the patent bargain will be worth pursuing again for that very underrepresented group you wish to promote."

**Tags:** <u>Capitol Hill, Congress, Guest Contributor, Iancu, independent inventor, independent</u> <u>inventors, innovation, intellectual property, inter partes review, inventor, IPR, patent, patent</u> infringement, patent office, Patent Reform, Patent Trial and Appeal Board, patents, post grant procedures, PTAB, SUCCESS Act, technology, USPTO

**Posted In:** Business, Capitol Hill, Government, Guest Contributors, Inventors Information, IP News, IPWatchdog Articles, Legislation, Patents, Technology & Innovation, USPTO There are currently **P1 Comments** comments.

# Mike May 22, 2019 1:48 pm

This article is spot on.

I, like many others here (and according to H.R. 6264 of last Congress), prefer the PTAB and IPR process to be abolished. But if Congress wants to keep the AIA's procedures, this at least brings some sort of balance back so a patent has worth to the inventors listed in the Constitution.

# Pro Say May 22, 2019 3:13 pm

Thank you Jeff; for one of the most important and powerful cases for the return to patent fairness and reasonableness for the many 1,000's of current and future independent American inventors

#### 3.

## Enlightened May 22, 2019 4:21 pm

Good work Jeff!

You bring home the point that purpose of patents is to place value on intellectual application to solve problems, regardless of "might" or "wherewithal". The value is granted in limited monopoly to practice the solution. If the limited monopoly cannot be protected, then inventors have no incentive to disclose and educate the rest. Then we step back into trade secrets and darkness. These limited monopolies are also supposed to open doors such as investment into the businesses of those who may not have the "might" as a big business or those who may not fit the "preferred profile" that investors may like to invest in. If investors are left to their standard mode, they will continue to prop the haves. Patents level the playing field if they can be protected.

If the patents system is not meeting the above objectives, then it is not serving the public.

# Jeff,

All independent inventors face the same problem, so why do you keep harping on about women, veterans and minorities? (what is a minority, anyway? Am I a member of a minority group? statistically, yes, and I am also a veteran, but who cares?) One point that was neglected – the deck is indeed stacked against the private citizen, but in the case of US patent holders that does not necessarily equate to "private US citizen". (which I am not).

# mike May 23, 2019 9:19 am

# Benny,

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j.

Have you read the SUCCESS Act? It specifically singles out women, veterans and minorities as being underrepresented, but it fails to mention all independent inventors, as Jeff highlights here. So I don't see Jeff here "harping on about women, veterans and minorities?" — he is actually making the same point as your "who cares" comment. That is made clear when he says "… one thing that makes the patent system great, resembling an ideal to which our American experiment continually strives to take hold: a patent is not based on the color of one's skin, one's gender, one's race, or otherwise. A patent is based solely on the merits of the claimed invention, and nothing more." I see his speech correcting the record and focusing on all independent inventors.

## Anon May 23, 2019 11:48 am

""The Patent Office must recommend to Congress that, if Congress wants to keep their AIA system that created the represented and the underrepresented classes, and if Congress wants to incentivize the true underrepresented class and its progeny to file for and obtain patents, Congress must recognize the underrepresented class in the statute.

# And doing this is simple: Recognize patents where the inventor(s), or a small business owned solely by the inventor(s), retain ownership of the patent"

No, no, no — a thousand times no.

Focusing on "who owns" is the wrong move. See the various prior threads of discussion on this point – including a recent thread in which I point out that the law already has a "focus on the inventor" strictly because the Supreme Court case of *Stanford v. Roche* remains controlling law after the AIA.

As I previously noted, if one wants to instead point out and discuss the disparity in power of the juristic person versus the real person (car of – or rather, augmented by the likes of cases like *Citizens* 

*United*), I would gladly welcome that dialogue, and potential "fixes" on that different issue. But let's not *compromise* patent law with something that amounts to a band-aid for a non-patent law Cause.

#### Perkins May 23, 2019 11:51 am

Jeff,

Thank you for your testimony and this article. I was particularly surprised (I was unaware) of the amendment offered by Representative Sheila Jackson Lee. What an accurate prediction of the future problem that turned out to be. And, how fortunate individual inventors are that you remembered and repeated it to the USPTO. Please keep up this great work.

## mike May 23, 2019 3:33 pm

@Anon:

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Don't fail to note the two conditional "if" statements in the quote above:

1 – "if Congress wants to keep their AIA system that created the represented and the underrepresented classes"

and

2 – "if Congress wants to incentivize the true underrepresented class and its progeny to file for and obtain patents"

Because if Congress desires those two things, then what Jeff recommends is correct.

## TESIA THOMAS May 24, 2019 1:10 pm

Jeff this is amazing.

If my country is screwing over white male inventors then what expectation should I, a female of color, have in inventing IF there is truly a race disparity? Why correct for only me and not for everyone else?

But maybe I can start a business whereby I am assigned the IP of all the poor white males so they don't get PTAB'd to death.

Even if someone wants to bring race into this then please explain why homogeneous China (full of Asians and not easily letting many other races in) treats us all better now?

## TESIA THOMAS May 24, 2019 1:25 pm

The real disparity is large companies don't get ptab'd by small companies but small companies get ptab'd by large companies.

Apple and Google are pretty much always petitioner!! Why don't they have to defend their innovations just as much as they force others to?

# Jeff Hardin May 25, 2019 4:38 pm

Thank you Tesia.

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You can see my full May 8 speech on YouTube here: <u>https://www.youtube.com/watch?v=IeWxA7C5IZg</u>

My speech was given after Ms. Duran spoke (a Latina woman and my wife), who shares your sentiments, as well as all the inventors who spoke. She also shared her testimony of being misdiagnosed during her cancer battle. My speech addresses both Section 101 and the problems with inventors being able to receive representation at the PTAB. This article here only discusses the latter.



# American Intellectual Property Law Association

June 28, 2019

The Honorable Andre Iancu Under Secretary of Commerce for Intellectual Property and Director of U.S. Patent and Trademark Office U.S. Patent and Trademark Office 600 Dulany Street Alexandria, VA 22314

Attention: Ms. Laura Pope Office of the Chief Economist

Via email: <u>successact@uspto.gov</u>

# **Re:** AIPLA Comments on the Report Required by the Study of Underrepresented Classes Chasing Engineering and Science (SUCCESS) Act of 2018 [Docket No.: PTO-C-2019-0010]

Dear Under Secretary Iancu:

The American Intellectual Property Law Association (AIPLA) is pleased to have this opportunity to present its views on the Report Required by the Study of Underrepresented Classes Chasing Engineering and Science (SUCCESS) Act of 2018, published in the Federal Register Notice dated April 26, 2019, 84 FR 17809 (hereinafter "the Notice").

AIPLA is a national bar association of approximately 13,500 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

The purpose of the SUCCESS Act is to examine how to "increase the number of women, socially disadvantaged individuals, and economically disadvantaged individuals who apply for and obtain patents."<sup>1</sup> The Notice requests written comments by June 30, 2019, to allow the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO) sufficient time to provide Congress with a report on publicly available patent data on women, minorities, and veterans by October 31, 2019. Further, the Notice solicits recommendations on how to promote participation of the identified underrepresented communities in the patent system.

AIPLA provides the following feedback in response to the Notice.

First, this paper highlights the value and power of unrepresented and underrepresented groups; outlines the potential underlying problem behind low inventorship rates among underrepresented classes; examines the need for increased data required to implement a robust solution; and offers potential solutions, such as: 1) increased awareness of intellectual property and its importance; 2) increased education of the patent, trademark and copyright processes; and 3) increased access to information for minority and underrepresented innovation groups.

AIPLA believes that implementation of the above offered solutions will positively impact the number of women, socially or economically disadvantaged individuals, and underrepresented minorities involved in the patent process and further advance innovation in the United States at large.

## THE VALUE AND POWER OF DIVERSITY

Scientific and technological productivity has involved collaboration among diversely specialized inventors.<sup>2</sup> Diverse teams drive innovation and overall performance.<sup>3</sup> The right

<sup>&</sup>lt;sup>1</sup> See <u>https://www.congress.gov/115/bills/hr6390/BILLS-115hr6390ih.pdf.</u>

<sup>&</sup>lt;sup>2</sup> See Jones, B.F., 2010. "Age and Great Invention." Review of Economics and Statistics, 92(1): 1–14. <u>https://www.mitpressjournals.org/doi/10.1162/rest.2009.11724</u>; Jones, B.F., S. Wuchty, and B. Uzzi, 2008. "Multi-University Research Teams: Shifting Impact, Geography, and Stratification." Science 322(5905): 1259– 1262. <u>https://science.sciencemag.org/content/322/5905/1259</u>; *See also* Martínez, G.L., J. Raffo, and K. Saito, 2016. "Identifying the Gender of PCT inventors." WIPO Economic Research Working Papers No. 33. <u>https://www.wipo.int/publications/en/details.jsp?id=4125</u>.

balance of ideas, backgrounds and perspectives can make a research and development team thrive and can better leverage businesses to weather market volatility. AIPLA believes diversity leads to better business outcomes, increased innovation, and identification of new opportunities for business growth and diversification.

#### LACK OF PURSUED INVENTIONS IN UNDERREPRESENTED CLASSES

Even though diverse teams lead to better solutions, women, socially or economically disadvantaged individuals, and underrepresented minorities who apply for and obtain patents comprise a small fraction of innovators. This suggests that their innovative potential is underutilized or not acknowledged.

AIPLA is aware of reported differences in comparing the private and public sector as to the number of inventors in these underrepresented communities. For example, women are more likely to be listed as inventors on patents granted to public or not-for-profit organizations.<sup>4</sup> However, private firms, in which the percentages of the underrepresented communities are lower, account for the majority of patenting in the United States. Therefore, supporting and expanding participation in innovative activity specifically targeting private firms for such communities may offer a solution to improve women and minority inventorship rates.<sup>5</sup>

Recent research from Opportunity Insights, a research team from Harvard University, confirms disparities in opportunity across gender, race, and income. The researchers found that women, in particular, may be considered "lost Einsteins" — people who would have contributed valuable inventions had they received early exposure to innovation and inventor

<sup>&</sup>lt;sup>3</sup> "Women Matter: Ten Years Of Insights On Gender Diversity" McKinsey & Company, October 2017, <u>https://www.mckinsey.com/featured-insights/gender-equality/women-matter-ten-years-of-insights-on-gender-diversity</u>.

<sup>&</sup>lt;sup>4</sup> See Sugimoto, C.R., C. Ni, J.D. West, and V. Larivière, 2015. "The Academic Advantage: Gender Disparities in Patenting." PLOS ONE 10, e0128000. <u>https://doi.org/10.1371/journal.pone.0128000</u>; and Martínez, G.L., J. Raffo, and K. Saito, 2016. "Identifying the Gender of PCT inventors." WIPO Economic Research Working Papers No. 33. <u>http://www.wipo.int/publications/en/details.jsp?id=4125</u>.

<sup>&</sup>lt;sup>5</sup> We note and are aware that the data and comments described in this letter concern more frequently gender and inventorship. We have not been able to review or locate similar data or analyses concerning underrepresented minorities and inventorship, suggesting more work should be done on these groups.

role models.<sup>6</sup> The research suggests that harnessing such underexploited talent could spur innovation and drive growth.<sup>7</sup>

Unfortunately, even though the concept that diverse teams drive additional business value is well recognized, many businesses fail to capitalize on their underutilized human assets to drive higher returns.<sup>8</sup> Women and underrepresented communities form a significant area of underutilized value. Engaging them will have a greater impact for all.

# IS THE PROBLEM A FAILURE TO INVENT, A FAILURE TO PATENT, OR SOMETHING ELSE?

In 2012, the National Bureau of Economic Research (NBER) published a paper entitled "Why Don't Women Patent?", which highlights a significant gender gap in patent inventorship, showing that women inventors comprised just over 10% of inventors listed on U.S. origin patents issued in 1998 (where at least one inventor is a woman).<sup>9</sup> The paper additionally proposed that closing this gender gap among female science and engineering degree holders would increase commercialized patents by 24% and GDP per capita by 2.7%.<sup>10</sup> The NBER's model showed notably that "only 7% of the gender gap is accounted for by the lower share of women with any science or engineering degree, while 78% of the gap is explained by lower female patenting among holders of a science or engineering degree."<sup>11</sup> While the percentage of women listed as inventors on patents (where at least one inventor is a woman) has

opportunity.org/assets/documents/inventors\_summary.pdf. (accessed March 1, 2018). <sup>8</sup> See, e.g., A. Vaccaro, "Why Diverse Teams Create Better Work," <u>Inc.</u>, Mar. 25, 2014, *available at* 

<sup>&</sup>lt;sup>6</sup> Bell, A.M., R. Chetty, X. Jaravel, N. Petkova, and J.V. Reenen, 2017. "Who Becomes an Inventor in America? The Importance of Exposure to Innovation". National Bureau of Economic Research Working Paper No. 24062. <u>https://doi.org/10.3386/w24062</u>.

<sup>&</sup>lt;sup>7</sup> According to Bell et al. (2017), if women, minorities, and low-income children were to invent patented technology at the same rate as white men from high-income (top 20%) households, the rate of innovation in America would quadruple. See <u>http://www.equality-of-</u>

<sup>&</sup>lt;u>http://www.inc.com/adam-vaccaro/diversity-and-performance.html</u> (*last accessed* Nov. 23, 2016).

<sup>&</sup>lt;sup>9</sup> J. Hunt, *et al.*, "Why Don't Women Patent?" National Bureau of Economic Research (NBER) Working Paper No. 17888, March 2012 at 1, *available at* <u>http://www.nber.org/papers/w17888</u> (*last accessed* Nov. 23, 2016).

<sup>&</sup>lt;sup>10</sup> *Id.* at 2.

increased in recent years, reaching 18.8% in 2010, at the current rate, it will be 2072 and beyond before women are awarded as many STEM patents as men.<sup>12</sup>

Therefore, addressing how the PTO, government, and businesses can partner together to improve this gap remains critical. This requires an investigation of whether the inventorship gap originates in failing to invent, in failing to patent, or something unforeseen.

Efforts to increase awareness and understanding of intellectual property and its business value, increase education of the patent, trademark and copyright processes, improve access to information for minority and underrepresented innovation groups, and implement a robust solution may help close the patent inventorship gap.

## THE NEED FOR FURTHER DATA

Over 53% of PhDs are awarded to women.<sup>13</sup> However, while the number of patents with at least one female inventor rose from 7% in the 1980s to 21% in 2016, the percentage of all patent inventors that are women still only reached 12% in 2016.<sup>14</sup> Determining whether the absolute numbers or percentages of female and minority inventors are increasing requires obtaining baseline data. Some already available data identifies the number of patents applied for and obtained by women, but there is a need for further data.<sup>15</sup> Businesses may be best positioned to provide data regarding gender, race, and veteran status of their employees involved in the patenting process. However, this would not account for solo inventors, small businesses, or other parties – key stakeholders in the innovation community. Accordingly, a centralized data collection mechanism is recommended.

https://www.uspto.gov/sites/default/files/documents/Progress-and-Potential.pdf (February 2019). <sup>15</sup> However, similar data (or awareness of efforts to collect data) regarding patenting by minorities or veterans

<sup>&</sup>lt;sup>12</sup> L. Santhanam, "Why are most inventors men?" <u>PBS NEWSHOUR</u>, Sept. 27, 2016, *available at* <u>http://www.pbs.org/newshour/updates/why-are-most-inventors-men/</u> (*last accessed* Nov. 23, 2016). To learn more about the progress and potential of women in patenting, see PatentsView (<u>www.patentsview.org</u>), a web-based data resource supported by the U.S. Patent and Trademark Office (USPTO) Office of the Chief Economist. <sup>13</sup> 2017 statistic, Council of Graduate Schools, *Graduate Enrollment and Degrees: 2007 to 2017*, <u>https://cgsnet.org/ckfinder/userfiles/files/CGS\_GED17\_Report.pdf</u>.

<sup>&</sup>lt;sup>14</sup> Progress and Potential – A profile of women inventors on U.S. patents,

<sup>&</sup>lt;sup>15</sup> However, similar data (or awareness of efforts to collect data) regarding patenting by minorities or veterar were not found.

#### 1. Data Is Needed to Develop a Better Baseline

The USPTO collects limited information on the inventors of patented technology, which include the inventor's full name, city and state or country of residency. The USPTO does not collect information on the gender or ethnicity of patent inventors. Nor does the USPTO collect data that allows differentiation between US-based filings and non-US-based filings. This would allow the USPTO to track improvements to US-based filings as a result of those efforts. As a result of this lack of data, researchers have had to develop algorithms for classifying inventors as men or women based on their names to study unrepresented group's participation in patenting.<sup>16</sup>

Some non-U.S. data sources are, however, readily available. The World Intellectual Property Organization (WIPO) recently conducted a study about female inventors and has announced a project proposal from select delegations on increasing the role of women in innovation and entrepreneurship, encouraging women in developing countries to use the intellectual property system.<sup>17</sup> The WIPO study analyzed 6.2 million names in 182 countries to generate a worldwide gender-name dictionary and determined that in 2015, less than one-third of all international patent applications included women inventors and that women make up only one out of seven inventors.<sup>18</sup> Other countries have also identified the need for data and conducted studies.<sup>19</sup> For example, a report issued by the Presidential Committee on the Fourth Industrial Revolution of the Republic of Korea notes that 16.1% of patent applications were "patents by

<sup>17</sup> See <u>https://www.wipo.int/meetings/en/doc\_details.jsp?doc\_id=406377;</u> See also "Innovation, Creativity and the Gender Gap" available at <u>https://www.wipo.int/ip-</u>

<sup>&</sup>lt;sup>16</sup>The following appendix describes the method applied in this report to attribute gender to inventors listed on the front of patents: <u>http://data.patentsview.org/documents/On-line+Appendix+-</u>+Gender+Attribution+of+USPTO+Inventors.pdf.

outreach/en/ipday/2018/innovation\_creativity\_gender\_gap.html; Martinez et. a., "Economic Research Working Paper No. 33- Identifying the gender of PCT inventors" (November 2016) published by WIPO, available at <a href="https://www.wipo.int/edocs/pubdocs/en/wipo\_pub\_econstat\_wp\_33.pdf">https://www.wipo.int/edocs/pubdocs/en/wipo\_pub\_econstat\_wp\_33.pdf</a>.

<sup>&</sup>lt;sup>18</sup> This figure poses the question: Are women are more likely to collaborate with other inventors rather than patent alone and more likely to participate on teams of four or more inventors? Women are increasingly likely to patent on large, gender-mixed inventor teams, highlighting the growing importance of understanding the relationship between gender and innovative collaboration.

<sup>&</sup>lt;sup>19</sup> See <u>https://www.wipo.int/women-and-ip/en/news/2018/news\_0005.html.</u>

women" or "women inventors." This data assisted Korea in developing a public policy goal to increase this number to 30% by 2022.<sup>20</sup>

In 2016, the Institute for Women's Policy Research also reviewed and analyzed data and literature on women and patenting.<sup>21</sup> Among other findings, this study found that only 18.8% of all patents had at least one known woman inventor in 2010.<sup>22</sup> Although this was an improvement from 1977, when only 3.4 percent of all patents had at least one known woman inventor, the need for improvement clearly remains.<sup>23</sup>

#### 2. Data to Monitor Progress

There is an overwhelming consensus for increasing efforts to gather data related to diversity in inventing, as suggested by former Director of the USPTO Michelle Lee during Senate and Congressional hearings earlier this year.<sup>24</sup> In addition to collecting baseline data, ongoing data should be collected to detect and monitor progress. The patent application filing process likely presents the most effective opportunity to obtain demographic data. However, careful consideration should be given as to whether such data collection should be mandatory, considering the administrative burden, expense, and potential privacy issues that could arise. If data collection is mandated, policymakers should identify who is best situated to collect, monitor, and report on the data.<sup>25</sup>

<sup>&</sup>lt;sup>20</sup> See "[3rd Meeting Agenda-5] Proliferation of Invention Education to Support Creative and Fusion Talent Growth," December 28, 2017 Presidential Committee on the 4<sup>th</sup> Industrial Revolution, Attachment 1 "To support creative and convergent talent growth Expansion of Invention Education" p.6, <u>https://www.4th-</u>

<sup>&</sup>lt;u>ir.go.kr/article/detail/18?boardName=internalData&category=</u>. NOTE: There is no distinction whether the 16% value refers to the percentage of inventors who are women, or the percentage of patents that include at least one female inventor. *See also* 2017 Annual Statistics Report issued by the Korean Intellectual Property Office (KIPO), pp 58, 171. 2017 Report of Korea Institute of Science & Technology Evaluation and Planning (KISTEP), page 5, <u>https://www.kistep.re.kr/c3/sub6.jsp;</u> Another informative article, "The global patent market in 10 charts," January 11, 2019, can be found at: <u>https://www.iam-media.com/law-policy/global-patent-market-</u>10-charts.

<sup>&</sup>lt;sup>21</sup> See Milli, J. et al., "The Gender Patenting Gap," Institute for Women's Policy Research, July 21, 2016, https://iwpr.org/publications/the-gender-patenting-gap/.

 <sup>&</sup>lt;sup>22</sup> The study does not show what the percentage of women inventors was out of total number of inventors.
 <sup>23</sup>See also Branigan, D., "Women On The Rise In Patent Filings, But Still Underutilised Potential, USPTO Says, <u>https://www.ip-watch.org/2019/02/12/women-rise-patent-filings-still-underutilised-potential-uspto-says/</u>.

<sup>&</sup>lt;sup>24</sup> See <u>https://judiciary.house.gov/legislation/hearings/lost-einsteins-lack-diversity-patent-inventorship-and-impact-america-s.</u>

<sup>&</sup>lt;sup>25</sup> One option includes collecting data at the time of applying for a patent by adding inputs to the Application Data Sheet. Alternative sources of data could be provided by other governmental bureaus such as the Census

Once gathered, the data could be publicized to help spur innovative solutions to involve women and minorities in the patenting process. This can be particularly effective in the case of public corporations, where women and minorities are not typically involved in the patenting process. Collecting data will drive the types of solutions which can be proposed to address the issue.

#### POTENTIAL SOLUTIONS

The underrepresentation of women and minorities in patenting is a complex problem. The USPTO's report seems to use patenting as a proxy for inventing and assumes that because women and minorities are not patenting, they are also not inventing. However, as the testimony from the "Lost Einstein" hearings this spring before the IP Subcommittees of both the US House of Representatives and Senate demonstrated, although there certainly could be better representation in STEM fields from women and minorities, they are present and are inventing. We cannot simply characterize this as a pipeline problem. Women and minorities are engaging in innovation. However, many do not take the next step to patent. Even if they are interested in patenting, they may face other barriers.

Any solution has at least four multi-faceted layers, each of which needs to be addressed: (1) increasing the number of and supporting the pipeline for women and minorities in STEM fields; (2) increasing awareness and understanding around patenting and creating incentives for women and minorities to seek patents; (3) increasing education for women and minorities about patenting and especially the patent process; and (4) increasing women and minority access to resources to invent and patent. The solution should comprise all the above components.

Bureau, Veterans' Bureau, Small Business Association, or the Department of Labor. For example, the Census Bureau could ask respondents whether they have been listed as an inventor on a patent application.

#### 1. Increased Pipeline and Support

Although some strides have been made over the last decades in increasing the numbers of women and minorities in STEM fields, more can and should be done to continue to ensure a robust pipeline of women and minorities in STEM, starting with children and continuing with adults. As seen in other fields, we must ensure that not only are colleges and universities graduating women and minorities with STEM degrees, but also that these individuals remain in and advance within their fields. Further, inventors and entrepreneurs do not always come from STEM backgrounds but may come to innovation later in life. We must take steps to support these individuals as well and ensure that the pool of innovative talent in this country reflects its full diversity.

Support could also be provided through enhanced pro bono programs, which may benefit more female and minority inventors. The USPTO already facilitates the Patent Pro Bono Program, a network of programs that match volunteer patent attorneys with under-resourced inventors and small businesses in order to secure patent protection. The USPTO might consider providing incentives for practitioners to provide pro bono representation under this program, and also automatically provide information to *pro se* inventors on how to get free representation when *pro se* inventors apply for a patent.

#### 2. Increased Awareness and Understanding

Witness testimony at the "Lost Einstein" hearings provided examples of how women and minorities, even those in STEM fields, do not always see the value in patenting or, more specifically, in protecting their inventions. This arises for various reasons, such as a lack of women inventor role models (both because of lower numbers of women inventors and lack of recognition for women's and minorities' contributions), women not being educated on the value of patents and/or seeing patenting as an "extracurricular" activity, and women being less likely to voluntarily submit their inventions for the patenting process. Thus, further efforts should be made especially among diverse audiences, to increase the awareness and understanding of the value of patents and other IP protection, and to showcase women and minority inventors as patent holders.

#### 3. Increased Education in Diverse Groups

Witness testimony at the "Lost Einstein" hearings provided examples of where further education on the patenting process would be helpful. For example, Dr. Ayanna Howard testified that, when her first patent application was rejected, she and her co-inventor dropped the application (which they had filed without an attorney and did not realize that a rejection did not mean that the matter was closed). Thus, more can and should be done to educate women and minority inventors about the patenting process, in addition to processes for protecting other forms of IP.

#### 4. Access to Capital and Resources

The small amount of capital invested in businesses owned by women and certain minorities is well documented. The fact that many women and minority owned businesses are bootstrapped, combined with overall lower income rates for these populations as compared to white males, means that it is even more important for women and minorities to have access to low cost or pro bono resources to help enable patenting and other IP protection processes. And while some pro bono resources exist, it is unclear whether women and minorities are aware of or taking full advantage of them. Thus, it is not only that more resources are needed, but increased awareness and education about accessing them.

Within this framework, everyone in the public and private sector has a role to play. Many governmental bodies, including Congress, the USPTO, and even the Small Business Administration to Veterans Affairs, can be part of the process. Not only can these entities provide awareness and education, but, Congress, for example, can consider alternative incentives such as economic incentives in the form of tax breaks or rebates to patents issued to women, minorities, and veterans. In the private sector, both companies and organizations like trade groups, bar associations and others such as non-profits can work on all components of this solution. They may provide education and highlight opportunities, in addition to taking steps to ensure that the patenting process is open to all, that women and minorities are invited to participate, and perhaps even providing private incentives for them or their employers to do so.

Importantly, increasing awareness and education should start with children of all ages so that a robust pipeline inventors and innovators can be maintained. The USPTO already has several programs in this area that should be reviewed and considered for possible expansion in both the public and private sector. Indeed, there are a number of private and non-profit initiatives that provide opportunities for addressing these concerns, such as existing STEM programs that target economically disadvantaged youth and women. The USPTO may also consider partnering with such existing programs that already have boots on the ground as a likely shortest path to success. One example is Comp-U-Dopt Inc., a non-profit that provides free computers and free, engaging, project-based after-school STEM programming to disadvantaged communities.<sup>26</sup>

In conclusion, the impact of the above factors on the professional performance and career trajectories of women, socially disadvantaged individuals, economically disadvantaged individuals and others in the underrepresented communities who apply for and obtain patents, is increasingly significant.

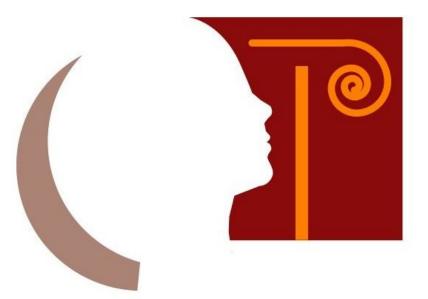
We thank you for the opportunity to present AIPLA's comments and recommendations.

Very truly yours,

Sheldon H. Klein President American Intellectual Property Law Association

<sup>&</sup>lt;sup>26</sup> See e.g., <u>www.compudopt.org</u>. According to Founder and President Jonathan Osha (currently also serving as a Member of the Board of Directors of AIPLA), the organization has to date, in the greater Houston area, distributed 15,000 free computers, served 16,000 students, and provided 71,000 free hours of technology training. The organization is planning to add an IP awareness module to its programming, and plans to expand the program nationally in the next two years.

# A Current Glance at Women in the Law April 2019



American Bar Association - Commission on Women in the Profession 321 N. Clark Street, Chicago, IL 60654 Phone: 312-988-5715 • Email: <u>abacwp1@americanbar.org</u> • Website: www.americanbar.org/women



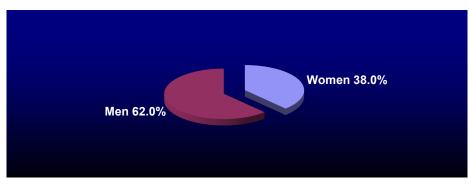
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# A Current Glance at Women in the Law

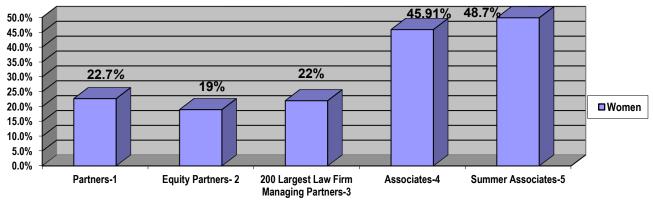
(April 2019)

# Women in the Legal Profession



United States Census Bureau, January 18, 2019. <u>https://www.census.gov/library/stories/2018/05/women-lawyers.html</u>

# **Women in Private Practice**



<sup>1</sup> 2017 Report on Diversity in U.S. Law Firms. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf

<sup>2</sup> Report of the Tenth Annual National Survey on Promotion and Retention of Women in Law Firms. National Association of Women Lawyers and NAWL Foundation, September 2017. http://www.nawl.org/d/do/663

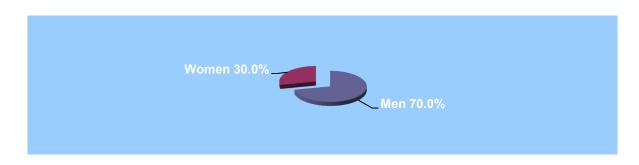
<sup>3</sup> *Report on Promotion and Retention of Women in Law Firms*. National Association of Women Lawyers and NAWL Foundation, 2018. <u>https://www.nawl.org/page/2017</u>. Women are 22% of firmwide managing partners and 20% of office-level managing partners.

<sup>4</sup> 2018 Report on Diversity in U.S. Law Firms. National Association for Law Placement, February 1, 2019. Quoted in *Legal Intelligencer:* <u>https://www.law.com/thelegalintelligencer/2019/02/01/law-firm-associates-can-play-an-important-role-in-diversity-effort/</u>

<sup>5</sup> 2017 Report on Diversity in U.S. Law Firms. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf

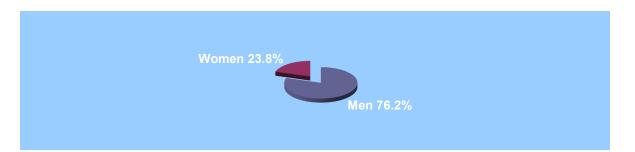
# Women in Corporations

# Fortune 500 General Counsel



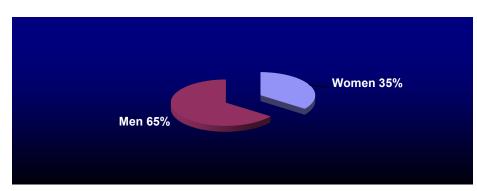
8 Stats You Need to Know about the Male-Female General Counsel Divide. Lawgeex, December 6, 2018. https://blog.lawgeex.com/8-stats-you-need-to-know-about-the-male-female-general-counsel-divide/

# Fortune 501-1000 General Counsel



*MCCA's 18<sup>th</sup> Annual General Counsel Survey: Breaking Through the Concrete Ceiling, One Woman at a Time.* Minority Corporate Counsel Association, Winter 2017. http://www.diversityandthebardigital.com/datb/winter\_2017/MobilePagedReplica.action?pm=1&folio=8#pg 8

# Law School Administration - Deans



National Law Journal, January 10, 2019. <u>https://www.law.com/nationallawjournal/2019/01/10/more-minority-women-ascend-to-law-dean-jobs/?fbclid=lwAR2-5ymSbZeehfFNK2t18G1LyXGcF5HgLhqHsbmvUV9H38jV-JMbINqv1MQ</u>

#### 100% 90% 80% 22,248 19,032 54,490 (50%) (51.3%) (51.27%) 70% 60% 50% 40% 18,057 53,645 30% 22,248 (48.7%) (48.69%) (50%) 20% 10% 0% **JD Matriculants-1** Total J.D. Enrollment - 2 J.D.s Awarded - 3 ■Men ■Women

# Women in Law Schools

<sup>1</sup>2016 JD Matriculants by Gender & Race/Ethnicity, Fall 2016. American Bar Association Section of Legal Education and Admissions to the Bar.

<sup>2</sup>ABA Required Disclosures (Standard 509 Reports), American Bar Association Section of Legal Education and Admissions to the Bar. The ABA reported a total enrollment of 110,156 students as of Dec. 15, 2017.

https://www.americanbar.org/content/dam/aba/administrative/legal\_education\_and\_admissions\_to\_the\_bar/statistics/2017\_509\_enr ollment\_summary\_report.authcheckdam.pdf

<sup>3</sup>Wisconsin Bar Association, October 17, 2018.

https://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=10&issue=18&articleid=26639&fbcli d=lwAR0BRiWqg1hwu5FvxXuTLBpCuz06jgnMj\_bFrfrqBLRKcURHGTIpZOHnFec

# Women on Law Reviews

"A random sample of the top 10 law reviews suggests that the number of women authors in 2017 is around 20%."

https://abovethelaw.com/2018/04/are-law-review-articles-a-waste-of-time/

# Women in the Judiciary

# **Representation of United States Federal Court Women Judges**

Type of Court	Total # of Seats	Women	% of Women
United States Supreme Court	9	3	33.3%
Circuit Court of Appeals (Active) <sup>1</sup>	160 (active)	59	36.8% <sup>2</sup>
Federal District Court Judges (Active) in the U.S. <sup>3</sup>	570 (active)	194	34% <sup>4</sup>

<sup>1</sup> U.S. Circuit and District Court Judges: Profile of Select Characteristics (R43426), McMillion, Barry J. U.S.

Congressional Research Service. August 1, 2017. https://fas.org/sgp/crs/misc/R43426.pdf

<sup>2</sup>When considering the 19 vacancies that existed as of June 1, 2017, women were appointed to 33% of the 179 U.S. circuit court judgeships.

<sup>3</sup> U.S. Circuit and District Court Judges: Profile of Select Characteristics (R43426), McMillion, Barry J. U.S.

Congressional Research Service. August 1, 2017. https://fas.org/sgp/crs/misc/R43426.pdf

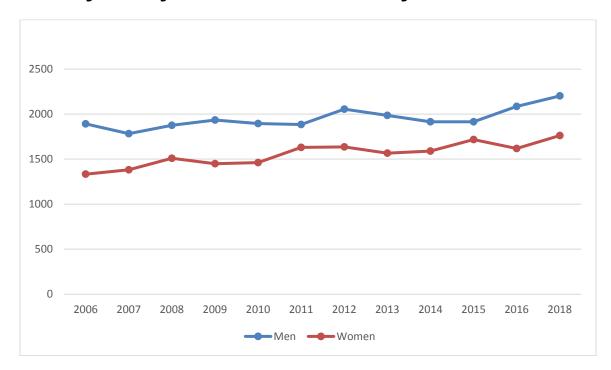
<sup>4</sup> When considering the 103 vacancies that existed as of June 1, 2017, women were appointed to 29% of the 673 federal district court judgeships.

# 2016 Representation of United States State Court Women Judges

% White	% Women			
Women	of Color			
22	8			

Gavel Gap (www.gavelgap.org)

# Compensation



# Weekly Salary Men vs. Women Lawyers

Women lawyers' weekly salary as a percentage of male lawyers' salary:

2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2018
70.5%	77.5%	80.5%	74.9%	77.1%	86.6%	79.6%	78.9%	83.0%	89.7%	77.6%	80%

2018 Bureau of Labor Statistics, *Median weekly earnings of full-time wage and salary workers by detailed occupation and sex*. https://www.bls.gov/cps/cpsaat39.htm

# **Women Equity Partners Compensation**

Globally, male partners are paid 27% more than female.

Acritas Research, 2018. https://www.youtube.com/watch?v=2I1rOLnA8h0&feature=youtu.be

# Women in the ABA through 2018

	Total	Women	% Women
ABA Lawyer Members	295,678	96,786	34.8%
Board of Governors	44	18	41.1%
Section/Division Chairs, 2017-2018 Bar Year	28	9	32.1%
Total Presidential Appointments, 2017-2018	750	385	51.3%
Committee Chair Appointments, 2017-2018	99	37	37.3%

#### Women Presidents of the ABA:

- Judy Perry Martinez, President-Elect (2019-2020)
- Hilarie Bass (2017-2018)
- Linda A. Klein (2016-2017)
- Paulette Brown (2015-2016)
- Laurel Bellows (2012-2013)
- Carolyn B. Lamm (2009-2010)
- Karen J. Mathis (2006-2007)
- Martha W. Barnett (2000-2001)
- Roberta Cooper Ramo (1995-1996)

#### Women Chairs of the House of Delegates:

- Deborah Enix- Ross (2016-)
- Patricia Lee Refo (2014-2016)
- Linda A. Klein (2010-2012)
- Laurel G. Bellows (2006-2008)
- Karen J. Mathis (2000-2002)
- Martha W. Barnett (1994-1996)

#### Secretaries

- Mary L. Smith (2017-)
- Mary T. Torres (2014-2017)
- Cara Lee T. Neville (2011-2014)
- Bernice B. Donald (2008-2011)
- Ellen F. Rosenblum (2002-2005)
- Donna C. Willard-Jones (1996-1999)

#### Treasurer

- Michelle A. Behnke (2017-)
- Alice E. Richmond (2008-2011)

#### First Women Members of the ABA:

- Mary B. Grossman; Cleveland, OH (1918)
- Mary Florence Lathrop; Denver, CO (1918)

For more information on women's advancement into leadership positions in the ABA, see the ABA Center for Diversity and Inclusion's *Goal III Report* at https://www.americanbar.org/groups/diversity/resources/goal3-reports/

# Women in Congress

23.4% of the U.S. House of Representatives and 25% of the U.S. Senate are now female.

Catalyst. February 1, 2019. https://www.catalyst.org/knowledge/women-government

Want to improve these statistics for women lawyers? The Commission on Women in the Profession has resources for systemic change and personal empowerment. Turn the page to learn more!

American Bar Association - Commission on Women in the Profession 321 N. Clark Street, Chicago, IL 60654 Phone: 312-988-5715 • Email: abacwp1@americanbar.org • Website: <u>www.americanbar.org/women</u>



# **COMMISSION BOOKS**

VISIT THE ABA WEB STORE: WWW.SHOPABA.ORG





# Best Practices for Combating Sex-Based Harassment in the Legal Profession

A comprehensive update to the ABA Commission on Women in the Profession's previous sexual harassment material. The primary goal of this manual is to provide all too necessary tools to legal organizations and victims of harassment and bullying. It strives to enhance the common understanding of workplace abuse and expand it to include non-sexual abusive behavior, while introducing protections for individuals with a range of sexual orientations, genders, and racial and ethnic identities.

PRICE: \$49.95; ABA Members \$39.97 | PRODUCT CODE: 4920050

# Grit, the Secret to Advancement Stories of Successful Women Lawyers

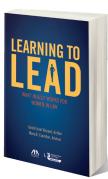
This unique volume contains new research by the Commission on grit and growth mindset, two traits that have been shown to impact the success of women lawyers. The Commission's expanded research covered all legal work environments: solo practice; small, medium, and large firms; corporations; government; and nonprofits. The book also is a collection of 47 letters from a group of diverse women who have used these principles to advance in their careers, who share their advice, insight, and experience as female attorneys who have achieved success in the practice of law. You will learn from these women how to use grit and growth mindset to blaze your own trail to success.

PRICE: \$34.95; ABA Members \$27.95 | PRODUCT CODE: 4920049

# The Road to Independence

The Road to Independence is a collection of 101 letters from women who have taken the courageous and difficult step of creating a law firm of their own, either as a solo or with others. Focusing on the experiences of women-owned law firms, these women, in their personal voices, reiterate key themes: choosing a practice area true to their passion and high character and of controlling their destinies. Throughout this inspirational book, the reader will find business-savvy tidbits and practical tips for starting and growing a successful law practice in the words of the founders themselves. The letters compiled in this book reflect the voices of women who are happy with their practices, proud of their entrepreneurial spirit and business development skills, and eager to share their advice with others who may be emboldened to follow in their footsteps.

PRICE: \$39.95; ABA Members \$35.95 | PRODUCT CODE: 4920046



THE**road**TO INDEPENDENCE

# Learning to Lead What *Really* Works for Women in Law

One of the Commission on Women in the Profession's highest priorities throughout the years has been to provide women lawyers with the information and tools they need to advance into leadership positions in all areas within the law. *Learning to Lead* provides a concise road map of the latest collective wisdom on leadership and applies those principles to women lawyers. It also features interviews with 11 women legal leaders who share their lessons learned and tips for success. Read this book, take action, and chart your course to leadership and success.

PRICE: \$24.95; ABA Members \$19.95 | PRODUCT CODE: 4920048



# **ONLINE TOOLKIT MENU**



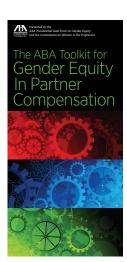
# Women of Color Research Initiative—Strategies & Toolkit The Women of Color Research Initiative

Following three cutting-edge research studies that analyzed the career trajectories and experiences of women of color and the prevalence of factors that support or undermine their retention and advancement, the Commission on Women in the Profession has developed the Women of Color Research Initiative Program Toolkit. This Toolkit—available free of charge at ambar.org/WomenOfColor—guides you every step of the way and provides you with all the necessary tools to conduct a conference to inform on the research and strategies that will ensure the success of women of color. The Toolkit includes program agendas, customizable PowerPoint slides, video and written scenarios for discussion, program handouts, and a bibliography.

# The Grit Project Program Toolkit Using Grit and Growth Mindset to Advance Women in the Law

GRIT—perseverance and passion for long-term goals GROWTH MINDSET—the view that one's abilities can be developed

The Grit Project educates about the science behind grit and growth mindset and, through its online Toolkit, provides bar associations, law firms, corporate legal departments, and women attorneys with the resources to assess, teach, and learn these traits. Ultimately, these traits can be taught and leveraged to enhance the quality and effectiveness of women lawyers and ensure competence, better communication between attorney and client, and zealous advocacy on behalf of the client. The Toolkit—available free of charge at ambar.org/grit—provides all the materials needed to present a successful program on grit, including program agendas, customizable PowerPoint slides, concept guides for presenters, a library of relevant scenarios for group exercises including several digital vignettes, program handouts, and a bibliography.





# Gender Equity in Partner Compensation Toolkit Working towards Fair Pay for Women Lawyers

June 10, 2018 marks the 55th anniversary of the passage of the Equal Pay Act, which prohibits wage discrimination on the basis of sex. Yet despite the Act, equally educated women and men in the same occupations with similar work experiences bring home very different paychecks. Women lawyers are not immune from income inequality. Women partners in law firms earn substantially less than their male colleagues even when they perform exactly the same work, have similar books of business, and make similar (or even greater) contributions to firm administration. Unequal compensation diminishes women's prospects for success, and unfairly undervalues the material contributions of women to their firms. Plus, pay inequities have a profound effect on a firm's performance and profits. The Toolkit, available free of charge at americanbar.org/groups/diversity/women/ gender\_equity\_task\_force/

toolkit\_for\_lawyer\_compensation\_achieving\_gender\_equi ty/ gives you all the materials you need to present a successful program, including: a program outline, customizable PowerPoint slides, questions for panelists, program handouts, and a bibliography. The Toolkit also provides text for use in your promotional efforts and suggested dates so that your program can coincide with national events to maximize publicity.

# Zero Tolerance Program Toolkit Combating Sex-Based Harassment in the Legal Profession

Thirty percent or more lawyers have experienced some form of sexual harassment and bullying in the workplace, and at law firms that number is likely higher. The persistence of sex-based harassment in the legal profession has profound effects on the physical and emotion well-being of female lawyers resulting in lowered job satisfaction and disillusion with the institution of law. As victims of sexual harassment come forward to the legal profession for support, what do the #MeToo and TIMES UP movements mean for lawyers who are themselves the victims? The Toolkit, available free of charge at ambar.org/zerotolerance, examines the effects of sex-based harassment on associates and partners when they are attacked, sexualized and in other ways victimized on the job. The program also discusses how bullying can lead to prolonged cases of discrimination against victims. It explores the new Zero Tolerance: Combating Sex-Based Harassment in the Legal Profession manual so participants can learn how to build and enforce a successful antiharassment policy statement.

# OFFICE OF THE CHIEF ECONOMIST IP DATA HIGHLIGHTS

Number 2, February 2019

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# Progress and Potential

# A profile of women inventors on U.S. patents



# PROGRESS AND POTENTIAL: A Profile of Women Inventors on U.S. Patents

#### **PROJECT TEAM:**

This report was prepared by the Office of the Chief Economist at the U.S. Patent and Trademark Office, in collaboration with research teams from the University of Bordeaux (France) and Bocconi University, Milan (Italy). Any inquiries regarding this publication should be sent to <u>economics@uspto.gov</u>

Andrew A. Toole Amanda Myers Charles A. W. deGrazia Stefano Breschi Edoardo Ferrucci Francesco Lissoni Ernest Miguelez Valerio Sterzi Gianluca Tarasconi

#### ACKNOWLEDGEMENTS:

We wish to thank Christina Jones, Sanjay Arora and the rest of the PatentsView team for extensive data support. We also thank Teresa Verigan for excellent graphic design and visualization work. In particular, we acknowledge the invaluable guidance, input and support we received from the following individuals within the USPTO Office of the Chief Communications Officer and Office of Policy and International Affairs: James Forman, Paul Fucito, Elizabeth Dougherty, Jacob Dubbert, Jeff Isaacs, Alan Metelko, Sandy Phetsaenngam, Shira Perlmutter, and John Ward.

#### INTRODUCTION

Hannah Wilkinson Slater is often celebrated as the first woman to receive a U.S. patent. In 1793, she received a patent for a new method of producing cottonsewing thread. She was inspired in the mills run by her husband, Samuel Slater, who had left England as a young apprentice, undeterred by a ban preventing textile craftsmen from emigrating to the United States (Cameron, 1960; White, 1836). Interestingly, the United States issued Hannah Wilkinson Slater's patent to "Mrs. Samuel Slater," which has created some ambiguity regarding whether she was indeed the first American female patent inventor.<sup>1</sup> Some historians prefer to award this merit to Hazel Irwin for a cheese-press invention in 1808 (Khan, 1996) or to Mary Dixon Kies, who in 1809 was granted a patent on a new technique for weaving straw with silk and thread to make hats (United States Government, 1888). All these women, without a doubt, were exceptional for their era. Only 72 U.S. patents were credited to women inventors between 1790 and 1859, while men obtained 32,362 patents (Khan, 1996).

Even today, women comprise a small minority of patent inventors. This fact suggests that their innovative potential is underutilized. Recent research from Opportunity Insights, a research team based at Harvard University, shows disparities in opportunity across gender, race, and income. The researchers find that women are among the "lost Einsteins" — people who would contribute valuable inventions had they had early exposure to innovation and inventor role models (Bell et al., 2017). Their research suggests that harnessing underexploited talent in these groups would be valuable to spurring innovation and driving growth.<sup>2</sup>

To learn more about the progress and potential of women in patenting, this report studies U.S. women inventors named on U.S. patents granted from 1976 through 2016 and examines the trends and characteristics of their patents. The analysis uses new data from PatentsView (<u>www.patentsview.org</u>), a web-based data resource supported by the U.S. Patent and Trademark Office (USPTO) Office of the Chief Economist.<sup>3</sup> The key findings are summarized on the sidebar.

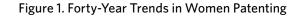
# **KEY FINDINGS**

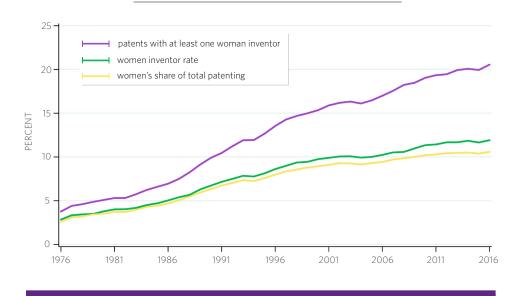
- The number of patents with at least one woman inventor increased from about 7% in the 1980s to 21% by 2016.
- Despite this increase, the percentage of all patent inventors that are women, or the annual "women inventor rate," reached only 12% in 2016.
- Notable differences in the number of male and female patent inventors persist despite greater female participation in science and engineering occupations and entrepreneurship.
- Women inventor rates are higher in technology-intensive states, but also in states where more women participate in the overall workforce.
- Women inventors are increasingly concentrated in specific technologies and types of patenting organizations, suggesting that women are specializing where female predecessors have patented rather than entering into male-dominated fields or firms.
- Women are increasingly likely to patent on large, gender-mixed inventor teams, highlighting the growing importance of understanding the relationship between gender and innovative collaboration.

See: <a href="http://blogs.britannica.com/2011/03/10-key-dates-womens-history-early-modern-period/">http://blogs.britannica.com/2011/03/10-key-dates-womens-history-early-modern-period/</a> (accessed January 3, 2018). There is ambiguity among historians regarding the first American women to receive a U.S. patent, in part, because the relevant documents were destroyed by a fire at the U.S. Patent Office in 1836. Additionally, well before the U.S. patent system was created, Sybilla Master, who devised a method for processing corn into cornmeal, was granted an English patent in 1715. Because women were not allowed to hold property at that time, the patent was issued in her husband's name. See <a href="http://www.womenhistoryblog.com/2016/01/first-women-inventors.html">http://www.womenhistoryblog.com/2016/01/first-women-inventors.html</a> (accessed March 1, 2018).

<sup>2</sup> According to Bell et al. (2017), if women, minorities, and low-income children were to invent patented technology at the same rate as white men from high-income (top 20%) households, the rate of innovation in America would quadruple. See <u>http://www.equality-of-opportunity.org/assets/documents/inventors\_summary.pdf</u> (accessed March 1, 2018).

<sup>3</sup> Appendix II provides a detailed description of the methodology applied to identify the gender of patent inventors based on their names and a combination of data extracted from PatentsView and other resources. Unless otherwise indicated, all graphs and figures reflect data on inventors residing in the United States. as specified on the patent grant. Key findings and trends are consistent if both U.S. and foreign resident inventors are considered.





Rather than female-only teams, mixed-gender teams are driving most of the growth in granted patents with at least one female inventor.

#### MORE WOMEN PARTICIPATE IN PATENTING BUT GROWTH IS SLUGGISH

Patent data can be used to construct three alternative metrics to illustrate different aspects of women's participation in invention and patenting. The main metric used throughout this analysis is the "women inventor rate." The women inventor rate is the percent of unique women inventors across all patents granted in a given year. It answers the question: What share of patent inventors are women in a given year? The other two metrics focus on patent counts to provide a "patent output" perspective on women inventors. One metric simply measures the percentage of patents granted in a given year that have at least one woman inventor.<sup>4</sup> The third metric, women's share of total patenting, attributes credit for patents by using the patent's inventor team. All inventors on a patent are given an equal share when the patent has multiple inventors. The resulting "fractions" of patents are summed across men and women to provide total patent output by gender for each year.

Figure 1 presents forty-year trends for the three metrics. Each measure has increased over time, but the percent of patents with at least one woman inventor (top line in Figure 1) has grown fastest, climbing from roughly 7% in the 1980s to about 21% in 2016. While this trend is promising, it should be viewed in combination with two less favorable patterns. First, growth in the percentage of patents with at least one woman inventor has slowed through most of the past 20 years (1998–2016) compared to the prior decades.

Between 1978 and 1997, the share of patents with at least one female inventor nearly tripled from 5% to 14%. Such a rapid increase is reasonable considering the share was quite low in the mid-1970s, making it easier to achieve high growth rates. Likewise, women's opportunities to invent expanded rapidly as more women entered the labor force over the period.<sup>5</sup> Since 1998, however, the share of patents with at least one female inventor has only increased from 15% to 21%, suggesting the pace of entry into patenting by women has slowed.<sup>6</sup>

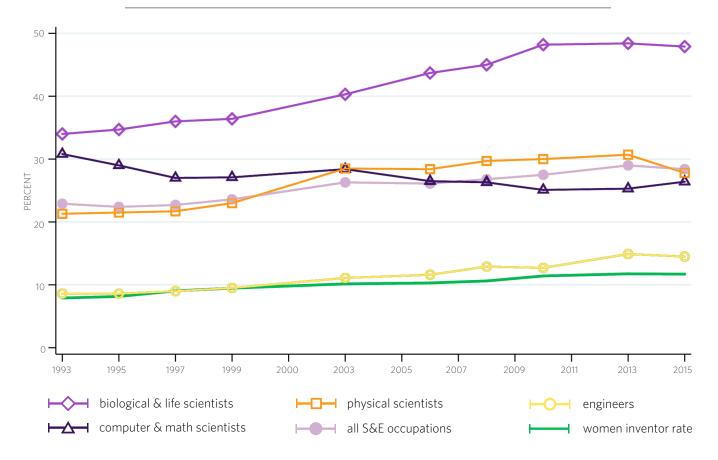
Second, even though more patent inventor teams include women, the gender composition among all inventors has not changed significantly. As shown by the women inventor rate (middle line in Figure 1), through the mid-1980s women comprised less than 5% of all patent inventors. The women inventor rate only reached 10% in 2000. And in 2016, more than a decade and a half later, only 12% of patent inventors were women. Notice the women's share of total patenting (bottom line in Figure 1) follows a similar trend, but at lower levels. This difference reflects fewer patents granted per female inventor compared to males.

Figure 1 also shows a growing gap between the percent of patents with at least one woman inventor and the other two series, women inventor rate and total patents attributable to women inventors. This reflects overall trends in patent inventor teams. Rather than female-only teams, mixed-gender teams are driving most of the growth in granted patents with at least one female inventor. Additionally, compared to men, women are more likely to work on larger patent inventor teams. Subsequent sections consider each of these factors in more depth.

<sup>4</sup> Throughout the report, the percentage of patents that have at least one woman inventor is calculated for all patents with at least one U.S. resident inventor. Patents with all inventors residing outside the U.S. are excluded.

<sup>5</sup> The percentage of women employed increased from roughly 46% in 1978 to 57% in 1997. In 2015, about 54% of women were employed. See <a href="https://www.bls.gov/opub/reports/womens-databook/2016/pdf/home.pdf">https://www.bls.gov/opub/reports/womens-databook/2016/pdf/home.pdf</a> (accessed March 1, 2018).

<sup>6</sup> A series of Wald and likelihood-ratio tests indicate the annual growth rate of the percentage of patents with at least one woman inventor experienced a time-series structural break in 1998. The mean annual growth rate after 1998 was 1.9%, significantly lower than the pre-break mean of 6.2%. Simple projections suggest that maintaining the pre-break growth rate would have increased the percent of patents with a female inventor to 25% by 2006 and 30% by 2009.



# WOMEN INVENTOR RATE REMAINS BELOW WOMEN'S SHARE OF SCIENCE AND ENGINEERING JOBS

It is widely recognized that many factors shape the opportunities for women to become patent inventors. Educational and occupational choices are two important influences.<sup>7</sup> Historically, science and engineering fields produce the most patentable inventions (Marco et al., 2015). Naturally, when fewer women pursue careers in science and engineering fields, they will make up a smaller share of patent inventors. To explore this further, Figure 2 compares the women inventor rate with the percentage of women in science and engineering occupations based on periodic national surveys.<sup>8</sup>

In 2015, women made up about 28% of the total science and engineering workforce (all S&E occupations in Figure 2) but only 12% of inventors on granted patents (women inventor rate in Figure 2). Across nearly all science occupations, women participate at a much higher rate than they invent patented technology. It is only in engineering that women's workforce participation rate (yellow, hollow circle line in Figure 2) resembles the overall women inventor rate. Across nearly all science occupations, women participate at a much higher rate than they invent patented technology.

<sup>7</sup> Observed gender differences among patent inventors reflect a wide variety of influences that ultimately shape the opportunities for men and women to become inventors. One such factor is educational background. Women make up 31% of science, engineering, technology, and mathematics (STEM) college graduates, even though they account for 60% of graduates across all degree fields (Munoz-Boudet, 2017). Within STEM fields, women comprise 18% of graduates in computer science and engineering versus 40% in life science.

<sup>8</sup> Data on the percentage of women in science and engineering occupations is from the National Science Foundation (NSF) National Center for Science and Engineering Statistics (1993-2013) and National Survey of College Graduates (2015). Figure 2 percentages are compiled from the National Science Board Science & Engineering Indicators 2018 Report. See <a href="https://www.nsf.gov/statistics/2018/nsb20181/report/sections/science-and-engineering-labor-force/women-and-minorities-in-the-s-e-workforce">https://www.nsf.gov/statistics/2018/nsb20181/report/sections/science-and-engineering-labor-force/ women-and-minorities-in-the-s-e-workforce#women-in-the-s-e-workforce</a> (accessed February 16, 2018).

While biological and life science fields approach workforce gender parity (purple, hollow diamond line in Figure 2), there have not been comparable improvements in the women inventor rate for patents. In 2015, women occupied roughly 48% of biological and life scientists but represented only about 25% of inventors on biotechnology patents and 23% of inventors on pharmaceutical patents.<sup>9</sup>

Many patented inventions are developed by entrepreneurs that pursue their endeavors outside of traditional science and engineering occupations. Women also appear to pursue such entrepreneurial activity at a higher rate than they invent patented technology. According to national survey data, women accounted for 39% of new entrepreneurs in 2016<sup>10</sup>, well above the women inventor rate (12%).<sup>11</sup> Overall, that rate remains low despite higher female participation in the scientific workforce and entrepreneurship. This suggests a potential underutilization of high-skilled, innovative talent, particularly if various factors that prevent scientific professionals and entrepreneurs from becoming patent inventors disproportionately affect women. For example, prior research has found that female scientists face more difficulty securing funding and lack social networks that can be critical to patenting and commercializing innovations (Ding et al., 2006; Hunt et al., 2012; Meng, 2016; Murray and Graham, 2007; Rosser, 2012; Whittington, 2009).

# WOMEN INVENTOR RATE IS HIGHER IN TECHNOLOGY-INTENSIVE STATES

Figure 3 illustrates how the women inventor rate differed across states during the last half-decade (patents granted 2012-2016). The figure presents an adjusted women inventor rate that takes into account the fact that women have different opportunities to invent across states.<sup>12</sup> In all states, the

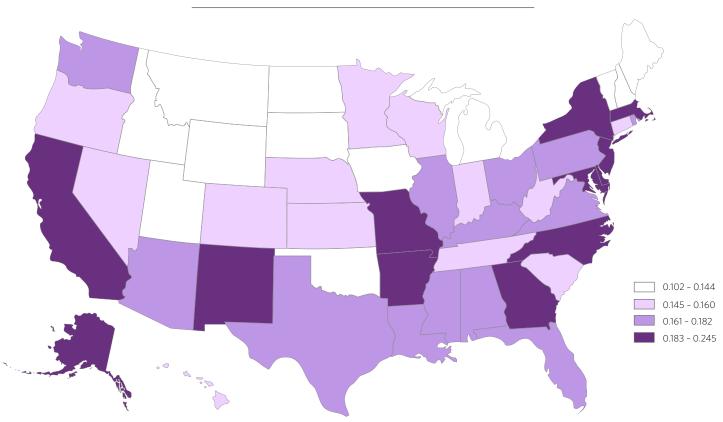


Figure 3. Adjusted Women Inventor Rate by State, 2012-2016

9 Based on supplemental analysis not shown.

- 11 There is generally a lag between entry into entrepreneurial activity and a patented invention. However, the share of new entrepreneurs that are women has consistently been well above the women inventor rate. According to the Kauffman Foundation startup activity index, women constituted roughly 35–40% of new entrepreneurs in the 2014–2016 period and 44% in 1996. See <a href="https://www.kauffman.org/kauffman-index/reporting/startup-activity">https://www.kauffman.org/kauffman.org/kauffman.org/kauffman.org/kauffman.org/kauffman-index/reporting/startup-activity</a> (accessed March 1, 2018).
- 12 Being a patent inventor is strongly associated with being employed. To account for state differences in the opportunities for women to become patent inventors, Figure 3 reports the average state-adjusted women inventor rate calculated as the state's women inventor rate over the state's share of women in the labor force. When a state's adjusted women inventor rate is equal to one, the female proportion of patent inventors is equal to the proportion of women in the state's workforce. This is one concept of gender parity. A value below one indicates that a smaller share of patent inventors are women relative to the share of women in the workforce.

<sup>10</sup> Based on gender composition of new entrepreneurs as calculated by the Kauffman Foundation from the U.S. Census Current Population Survey. See Figure 2A (page 12) <u>https://www.kauffman.org/kauffman-index/reporting/-/media/b27f0b8eb4a8414295f23870538e5372.ashx</u> (accessed March 1, 2018).

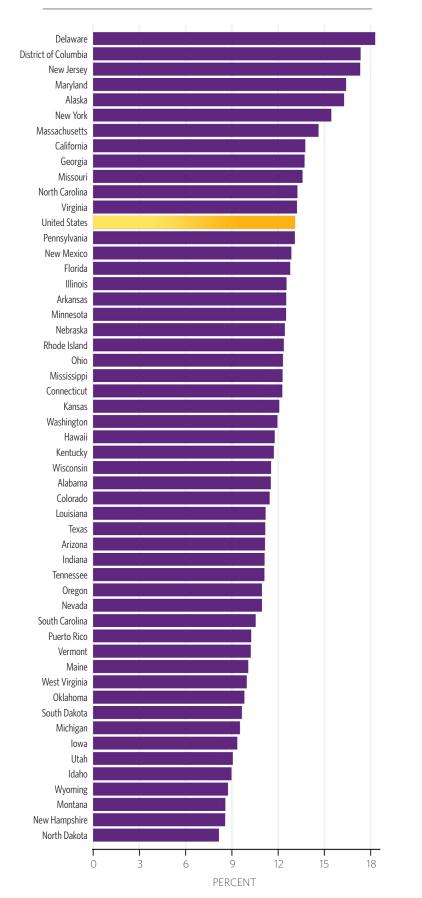


Figure 4. Actual Women Inventor Rate by State, 2012-2016

adjusted women inventor rate is below one, indicating that the female share of patent inventors is lower than the share of women in the state's workforce. Figure 4 shows the actual women inventor rate in each state for patents granted 2012-2016.

Patenting activity in the United States is heavily concentrated in a few geographical clusters, reflecting both workforce size and technological specialization (Feldman and Francis, 2004). States on both coasts, which host important technology clusters, exhibit higher adjusted and actual women inventor rates. Women comprised a relatively high share of patent inventors residing in New York (just over 15%), Massachusetts (nearly 15%), and California (14%) during the 2012–2016 period. The women inventor rate in California is particularly important because that state is, by far, home to the most patent inventors.<sup>13</sup>

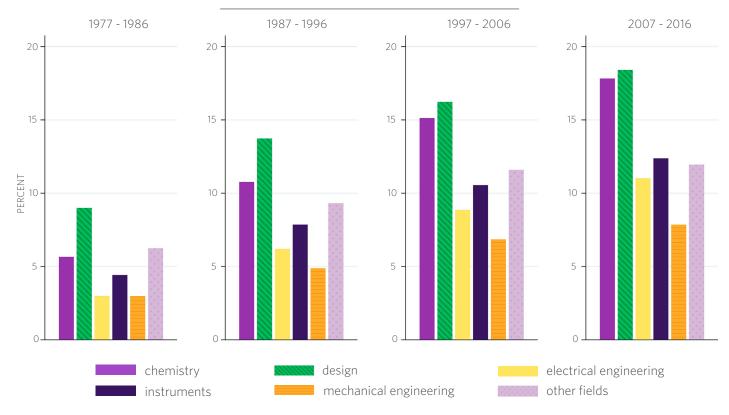
Delaware, the District of Columbia, and New Jersey actually exhibit the highest women inventor rates (both actual and adjusted). For 2012-2016 patent grants, women accounted for just over 18% of inventors residing in Delaware and 17% of inventors residing in each of the District of Columbia and New Jersey.

In many locations with comparatively more women in the workforce, such as Alaska and Maryland, the high adjusted rates in Figure 3 reflect actual women inventor rates well above the national rate. However, Figure 3 also shows relatively high adjusted rates for Kentucky, Louisiana, and Arizona, where the female share of patent inventors is below the national rate (as shown in Figure 4) but comparatively large when accounting for lower female labor force participation in these states.

Most states with low adjusted women inventor rates in Figure 3 produce relatively few patents. Michigan, however, accounts for a sizable volume of total U.S. patents and has a low adjusted rate. Figure 4 shows that the actual women inventor rate in Michigan (nearly 10%) is well below the national rate, which may reflect the industry composition in that state.

<sup>13</sup> Roughly 22% of the U.S. resident inventors on patents granted 2012-2016 resided in California.

Figure 5. Women Inventor Rate by Technology Sector



# WOMEN INVENTORS ARE CONCENTRATED IN SPECIFIC TECHNOLOGIES AND TYPES OF ASSIGNEES

Figure 5 presents the women inventor rate across broad technology categories<sup>14</sup> for each of the past four decades. Although the female share of patent inventors has increased over time in each sector (moving from left to right), there is considerable variation in growth patterns. Women's inventive participation has improved the most in chemistry and design patents. While women accounted for only 6% of inventors on chemistry patents issued 1977-1986, they comprised roughly 18% in the last decade (2007-2016).<sup>15</sup> Within chemistry, certain subcategories exhibit even higher women inventor rates. In 2016, for example, women accounted for more than one-fifth of inventors granted patents in biotechnology (25% women inventor rate), pharmaceuticals (23%), and organic fine chemistry (21%).

Women's participation on patents in instruments<sup>16</sup> and electrical engineering<sup>17</sup> has also improved but to a lesser extent. Women comprised only 12% and 11% of inventors on patents in instruments and electrical engineering, respectively, in the 2007–2016 decade.

Among mechanical engineering patents,<sup>18</sup> where inventors are the most disproportionately male, there has been the slowest improvement in women's participation. The female share of inventors on such patents was 3% in the 1977-1986 decade and only reached 8% in the last decade observed.

Overall, women inventor participation is improving. However, trends suggest that women are specializing in technology fields and sectors where female predecessors have patented before rather than entering into maledominated fields or firms.

<sup>14</sup> Utility patents are grouped into the "WIPO technology categories" suggested by Schmoch (2008) based on the International Patent Classification. The categories reflect 5 sectors which can be further disaggregated into 35 fields. Design patents are added as a sixth sector.

<sup>15</sup> Chemistry includes technology related to organic fine chemistry, biotechnology, pharmaceuticals, macromolecular chemistry, food chemistry, basic materials chemistry, etc.

<sup>16</sup> Instruments include technology related to optics, measurement, analysis of biological material, control, and medical technology.

<sup>17</sup> Electrical engineering includes telecommunications, digital communication, computer technology, IT methods for management, semiconductors, etc.

<sup>18</sup> Mechanical engineering includes technology related to machine tools, engines, pumps, turbines, mechanical elements, transport, thermal processes and apparatus, etc.

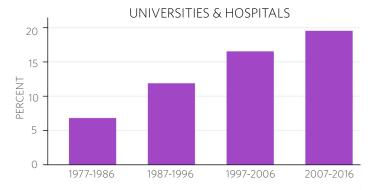
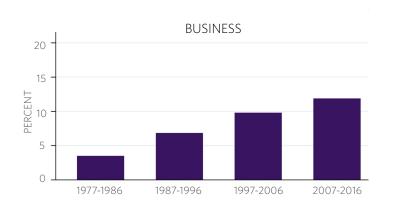


Figure 6. Women Inventor Rate by Patent Assignee Type







**USPTO** OFFICE OF THE CHIEF ECONOMIST Progress and Potential: A profile of women inventors on U.S. patents Differences in the women inventor rate across technologies are similar to those observed in the science and engineering occupations (see Figure 2). Thus, lower rates for mechanical engineering patents may merely reflect women comprising a smaller share of the workforce in that field. Still, across fields, the share of women that invent is systematically lower than the share of women working in that field.

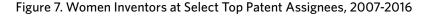
When a patent is granted, a company, university, or other entity is assigned ownership and identified as the "assignee" of the patent. Figure 6 presents the women inventor rate for different types of assignees.<sup>19</sup> Once again, the female share of patent inventors is trending up across assignee types, but universities and hospitals<sup>20</sup> and public research organizations<sup>21</sup> show the largest and most continued improvement.

In the 1977-1986 decade, women accounted for only 7% and 4% of inventors on patents granted to universities and hospitals and public research organizations, respectively. In the last decade observed, just under 20% of inventors on patents assigned to universities and hospitals and 15% of inventors on patents granted to public research organizations were women. Among individual-owned patents, women constitute just under 15% of inventors in the last decade, with fairly consistent increases in the women inventor rate decade-over-decade. While the women inventor rate on patents granted to business firms is persistently the lowest, it has climbed from only 4% in the 1977-1986 period to 12% in the last decade. Overall, women patent inventor participation is improving, but most of the growth is in the technologies and organizations where women have historically been more likely to innovate. Such trends suggest that women are specializing in technology fields and sectors where female predecessors have patented before rather than entering into male-dominated fields or firms.

The women inventor rates reported in Figure 6 are consistent with the results of prior research. Previous studies find that women are more likely to be inventors on patents granted to public or not-for-profit organizations because they offer more opportunities to women than private firms (Sugimoto et al., 2015; Martinez et al., 2016). Still, since businesses account for the majority of patenting in the United States, expanding women's participation in innovative activity within firms is important to improving the women inventor rate.

- 20 Universities and hospitals are considered jointly due to the large number of university hospitals among assignees.
- 21 Public research organizations are identified as any assignee coinciding with a governmental body.

<sup>19</sup> Patent assignee type is determined based on the method proposed by Van Looy et al. (2006) and sourced from the PATSTAT dataset. This method uses text string analysis of patent assignee names based on keyword occurrences such as "University," "Government," "Hospital," "Limited," etc. Patents with multiple assignee types were allocated to a single assignee type. Starting with all patents with multiple assignee types, those that had a university or hospital co-assignee were classified as a university and hospital assignee type. Removing these, if any of the remaining multiple assignee type patents had a public research organization co-assignee, they were classified as a public research organization assignee type. After that, all others were classified as business assignee type.



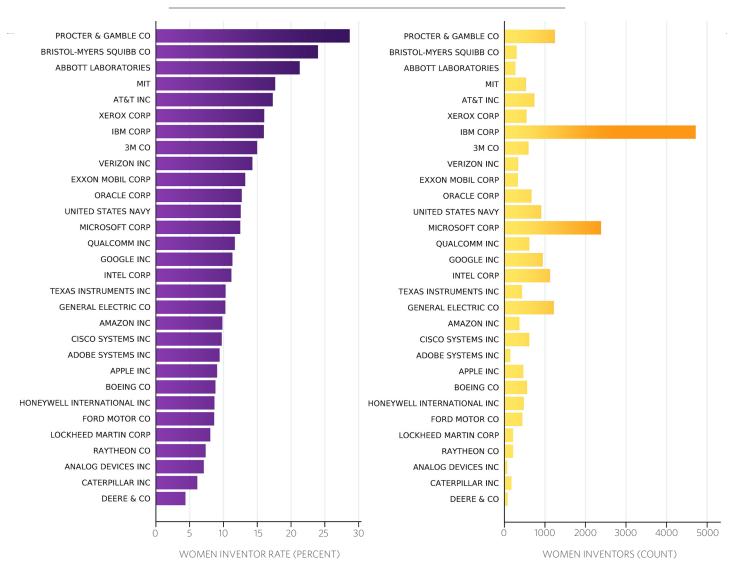


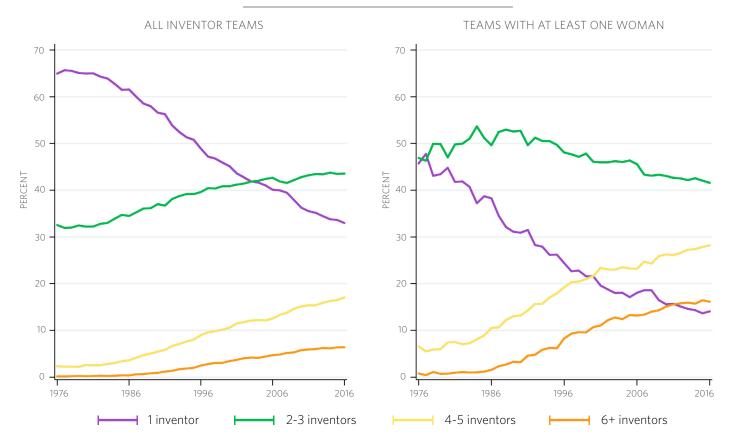
Figure 7 shows the women inventor rate (left panel) and a count of the number of unique women inventors (right panel) for select top patent assignees for the 2007-2016 decade.<sup>22</sup> Procter & Gamble stands out as having the highest women inventor rate (nearly 29%). Likewise, IBM maintains, by far, the largest women patent inventor workforce (with over 4,500 female inventors) and has a relatively high women inventor rate (16%). Microsoft also employs a relatively large number of female inventors (more than 2,300 over the decade) though the firm's women inventor rate (just over 12%) is roughly the same as the average for all entities in Figure 7.

Differences in women inventor rates based on the technology and organization type are also evident for the top patent assignees. The female share of patent inventors is highest among chemical and pharmaceutical companies, like Procter & Gamble, Bristol-Myers Squibb (24%) and Abbott Laboratories (21%), as well as research universities such as M.I.T. (Massachusetts Institute of Technology) (18%). The only government entity on the list, the U.S. Navy, also has a relatively high women inventor rate (nearly 13%).

Women comprise the smallest share of patent inventors at firms with largely electrical and mechanical engineering technology, such as Deere & Co (4%) and Caterpillar (6%). Interestingly, there is considerable variation in women inventor rates across firms within the same technological sectors, such as IBM (16%) versus Qualcomm (12%) and Apple (9%).

<sup>22</sup> Appendix III provides a detailed description of the methodology applied to calculate the women inventor rate for top patent assignees. Figure 7 presents the rate for each assignee for the entire 2007-2016 period. For most assignees included, the trend in the women inventor rate is relatively flat over this decade. The firms with upward or volatile trends are largely those with very low women inventor rates such that even their max rate over the period is comparatively low.





### WOMEN PATENT ON INCREASINGLY LARGER, GENDER-MIXED INVENTOR TEAMS

Scientific and technological production is increasingly characterized by collaboration among diversely specialized inventors (Jones, 2010; Jones et al., 2008; Wuchty et al., 2007). Accordingly, patent inventor teams have grown in size. Figure 8 illustrates how the shares of granted patents have changed over time broken out by different team sizes. The panel on the left includes all teams while the panel on the right shows trends for those patent inventor teams with at least one woman.

The left panel shows a clear decline in individual inventor patents (purple line) from comprising the majority of all issued patents in the late 1970s to 33% in 2016. Consequently, the share of patents with multiple inventors has climbed, particularly for larger teams. In 2016, over one-fifth of all patents were developed by inventor teams of four or more.

As the right panel shows, the trend toward larger patent inventor teams (yellow and orange lines) is more pronounced when women participate. Since 1976, Figure 8 shows that women are increasingly likely to collaborate with other patent inventors rather than patent alone and more likely to participate on teams of four or more inventors. In 2016, about 44% of patents with at least one woman were developed by a team of four or more inventors. Notably, in the most recent years, a larger share of patents with a woman inventor were developed by inventor teams of six or more (orange line) than by solo female inventors (purple line).

Women are increasingly likely to collaborate with other inventors rather than patent alone and more likely to participate on teams of four or more inventors.



Figure 9. Share of Patents with at Least One Woman Inventor by Gender Composition



There are a number of factors that may contribute to women being more likely to work on large patent inventor teams, relative to men. Women inventor rates are higher in technology fields where teamwork is more important, such as chemistry (see Figure 5). Higher female inventor participation at academic and publicly-funded institutions (see Figure 6) suggests that women may specialize in more fundamental research, which tends to be concentrated in these organizations and requires larger collaborative teams.

The gender makeup of patent inventor teams affects the women inventor rate. Relatively more patents with only women inventors will increase the women's share of inventors and patents, but the impact of gender-mixed teams is more ambiguous. Figure 9 shows the share of patents with at least one female inventor broken out between patents invented by mixed teams (including both men and women inventors) and those invented only by women.

Perhaps surprisingly, the share of patents by individual woman inventors and teams of all women (yellow area) shows little growth between 1976 and 2016. In the last decade, all

female invented patents constituted only about 4% of issued patents. Accordingly, the growth in women inventorship, as measured by the share of patents with at least one female inventor, is almost entirely due to women's participation on gender-mixed teams.

Among gender-mixed patent inventor teams, gender diversity has actually declined somewhat over time. Figure 10 reports the trend in the average value of the gender diversity index for all gender-mixed inventor teams. The gender diversity index measures the relative share of male and female patent inventors in a team such that a value of zero equates to a single-sex team and 0.5 to a team with equal share men and women.<sup>23</sup>

Figure 10 shows a gradual decline in the average gender diversity index for patents invented by teams of men and women inventors. Through the mid-1980s, mixed inventor teams were somewhat closer to gender equality than in the most recent years. The average index value of just below 0.47 in 1976 implies that women comprised roughly 37% of gender-mixed inventor teams, on average.

Over time, the index value has declined. The index value of just above 0.41 in 2016 indicates that women accounted for roughly 29% of gender-mixed inventor teams, on average. Thus, as the average size of gender-mixed patent inventor teams has grown over time (see Figure 8), women account for a shrinking minority of inventors on those teams.

Overall, these trends emphasize the growing importance of understanding the relationship between gender and team dynamics (Crescenzi et al., 2016; Jaravel et al., 2017) and collaborative networks (Meng, 2016) of inventors. The impact of these factors on the professional performance and career trajectories of women is increasingly focal and significant.<sup>24</sup>

<sup>23</sup> The gender diversity index is calculated as 1 — (share of men squared + share of women squared) for each team, averaged over the grant year.

<sup>24</sup> For example, women are rarely the most experienced patent inventors on teams. Even in the last decade observed, 2007-2016, the share of patents where a woman was the most experienced inventor (based on the total number of prior patents) has been largely unchanged at 6% (supplemental analysis not shown).

#### **APPENDIX I: DEFINITIONS**

**Women inventor rate:** The percentage of unique inventors with a patent granted in a given year that are women. The women inventor rate is calculated only for inventors residing in the United States based on the information disclosed in the patent. Inventors residing outside of the United States are excluded.

**Women's share of patenting:** The total number of patents attributable to women inventors is based on factional counts that give each inventor an equal share when patents are granted to multiple inventors. Women's share of patenting is calculated only for patents with at least one inventor, male or female, residing in the United States. Further, we report this number only for inventors who reside in the United States, excluding any inventors with non-U.S. addresses based on the information disclosed in the patent.

Adjusted women inventor rate: Calculated at the state level as the women inventor rate over the share of women in the labor force. An adjusted women inventor rate equal to one indicates that the proportion of women inventors is equal to the proportion of women in the workforce. A value below one indicates that the share of inventors that are women is smaller than the share of women in the workforce.

**Gender diversity index:** A measure of the relative share of men and women inventors on a team, calculated as 1 — (share of men squared + share of women squared). The index ranges from a minimum value of zero, indicating a single-sex team, to a maximum value of 0.5, indicating a team with equal share men and women.

#### APPENDIX II: METHODOLOGY FOR CLASSIFYING INVENTOR GENDER

The USPTO collects limited information on the inventors of patented technology. Only the full name and city and state or country of residency are collected and recorded on the front of the U.S. patent document. The USPTO does not collect information on the gender of patent inventors. Thus, to study women's participation in patenting, it is necessary to develop a method for classifying inventors as men or women based on their names. This appendix describes the method applied in this report to attribute gender to inventors listed on the front of patents. An online appendix provides additional detail.<sup>25</sup>

The vast majority of prior literature on gender diversity in patenting identifies the gender of inventors by comparing inventors' first names with a list of national or worldwide names for which various sources assign a feminine or masculine characterization.<sup>26</sup> Previous studies have leveraged baby name books (USPTO, 1990, 1999); the U.S. Social Security Administration (SSA) database of the most popular baby names by gender (Ashcraft and Breitzman, 2012; Jensen et al., 2018), or combinations of such sources as dictionaries, books, internet sites, and files from record offices in different countries (Naldi et al., 2004; Frietsch et al., 2009; Ashcraft and Breitzman, 2012; Sugimoto et al., 2015; UKIPO, 2016) to construct name-gender linked data. Inventors are then classified as female or male based on whether their first name is solely or predominantly linked to women or men, respectively, in the name-gender linked data. While conceptually straightforward, implementation of such methods involves three major challenges.

First, gender may vary for the same first name depending on the inventor's language spoken or country of origin. For example, "Andrea" is an Italian masculine name but a feminine name in most other languages. An inventor's linguistic origin can be critical to assigning the correct gender based on first name. Some recent studies have attempted to address this challenge by developing country-specific gender-name linked data, which allows gender to vary for the same first name depending on the language spoken (Naldi et al., 2004; Frietsch et al., 2009; Sugimoto et al., 2015; UKIPO, 2016). These studies infer an inventor's linguistic origin from the country or region of residence disclosed on the patent document. The country of residence, however, may not reflect the linguistic origin for foreign-born inventors nor second and subsequent generation migrant inventors whose first name's gender may reflect the parents' or grandparents' language. Extensive and continuous growth in migration of highly skilled labor to the United States suggests that residency is a limited proxy for linguistic origin. Recent estimates suggest that one in four inventors with a U.S. address are foreign nationals (Miguelez and Fink, 2013). These considerations indicate the importance of accounting for an inventor's country of residence as well as their potential migratory background when classifying gender based on first names.

A second challenge is gender-neutral first names. Names such as "Yannick" in French or "Tracy" in English are used interchangeably for men and women with some variation by region or birth cohort. Some prior research attempts to mitigate this issue by leveraging gender-name linked data sources with gender attribution that varies over time. However, because inventors' age is not disclosed in patent documents, such data sources have limited value in classifying inventors with gender-neutral first names.

<sup>25</sup> See <u>http://data.patentsview.org/documents/On-line+Appendix+-+Gender+Attribution+of+USPTO+Inventors.pdf</u>

<sup>26</sup> Alternative methods include matching inventors' records to Social Security registers (Jung and Ejermo, 2014), surveys of inventors (Hoisl and Mariani, 2016; Walsh and Nagaoka, 2009), and semantic analysis of names and titles (e.g. men's names ending with "o" and women's names ending with "a").

Lastly, difficulty arises from the English transliteration of names with non-Latin origin, especially East Asian names. Transliteration can render the original name's gender ambiguous. This issue affects inventors residing abroad as well as migrant inventors (or any subsequent generation) residing in the United States. The sizable volume of inventors with Asian names makes this challenge particularly problematic.

The methodology applied here addresses the first challenge by leveraging novel data on first and family names, nationality, and gender. However, similar to prior studies, our method has limited success in mitigating the second and third challenges. While the analysis and findings presented in this report should be viewed with these limitations in mind, the extent to which they introduce bias is unclear and cannot be reasonably assessed with available data. Our methods and results are consistent with prior studies, suggesting that bias is negligible.

To assign gender to inventors, we used two different sources of name-gender linked data:

- The Global Name Recognition system, a name-search 1) technology produced by IBM (hereafter, IBM-GNR). The IBM-GNR leverages a database produced by U.S. immigration authorities in the first half of the 1990s. It contains first and family names, nationality, and gender for foreign citizens entering the United States. The IBM-GNR includes roughly 750,000 full names and country-sensitive orthographic and abbreviation rules (Breschi et al., 2017a, 2017b). Each first and family name is associated with one or more countries of likely origin ( $c_i$ , with i=1...n) and the within-country frequency. The IBM-GNR also associates first names with gender in probabilistic terms (probability p to be feminine and 1-p of being masculine), irrespective of the countr(ies) of likely origin (c,), and provides the worldwide frequency of first names.<sup>27</sup>
- 2) The WIPO worldwide gender-name dictionary (hereafter, WGND), produced by the World Intellectual Property Organization (WIPO). The WGND includes 6.2 million names from 182 different countries. It was constructed using country-specific information sources, including national public statistical institutions, Wikipedia lists, and manual labeling.<sup>28</sup>

Patent data were compiled from PatentsView, a data repository and visualization tool made available by the USPTO. PatentsView provides detailed data on granted U.S. patents, including inventor name(s), assignee organization(s) (or owner), and technology classification(s). This analysis relied on a sample of all 6.4 million (6,366,664) U.S. patent documents granted in the 1976-2016 period.<sup>29</sup> PatentsView performs a series of entity resolution algorithms designed to disambiguate inventors' names. Disambiguation involves identifying an individual inventor whose name appears in varying forms on patent grants. For example, Jonathan Smith may appear as J. Smith on one patent grant and Jon Smith on another. Disambiguation also attempts to ascertain when inventors with the same name are distinct individuals. PatentsView uses a discriminative hierarchical co-reference method to disambiguate inventors based on other data elements appearing on patent documents (Monath et al., 2015). Disambiguation allows for identifying unique inventors, which is necessary for calculating women inventor rates. After inventor name disambiguation, there were 3,482,305 distinct inventors identified from the sample of U.S. patent grants. On average, each inventor was listed in 1.83 patent documents.

Using patent inventor name and name-gender linked data, we applied a "baseline method" consisting of the following steps:

- We classified inventors based on first names with high 1) probability of being feminine or masculine, regardless of country of origin, in the IBM-GNR. All inventors with a first name that had a probability of being feminine (p) equal to or greater than 97% were classified as women, and all inventors whose first name's probability of being male (1-p) was equal to or greater than 98% were classified as men. The different threshold values for classifying inventors' names as women or men were identified based on visual inspection of the distribution of p and (1-p), respectively. We applied a similar method for inventors with middle names when the first name was majority male or female but not exceeding the established thresholds.<sup>30</sup> In this way, we classified gender to roughly 73% of inventors (2,538,580 cases).
- 2) For the remaining 27% of inventors (943,725 cases), we first identified the most likely country of origin based on inventors' name and surname in the IBM-GNR. This provided a better indication of country of origin than inventors' residence or nationality, which could be misleading in the presence of migration flows. When an inventor's name and surname was associated with multiple countries of origin, we extracted from IBM-GNR the share of observed instances for each country. We collapsed the share of observed instances into linguistic groups (e.g. English, German, French, etc.) and retained the top linguistic group per inventor as a proxy for country of origin. For a relatively small number of inventors with rare surnames, we were unable to identify a likely

<sup>27</sup> Roughly 5% of worldwide first names are too rare for any statistics to be reliable. We excluded such rare names from our method.

<sup>28</sup> See Martínez et al. (2016) for details.

<sup>29</sup> Data extracted from www.patentsview.org was updated as of August 8, 2017.

<sup>30</sup> When the first name's probability of being female was more than 50% and the probability of the second or middle name being female is 97% or more, the inventor was classified as a woman. Similarly, when the first name's probability of being male was greater than 50% and the probability of the second or middle name being male was 98% or more, the inventor was classified as a man. We applied this approach for roughly 1% of inventors (38,581 cases) in the sample.

country of origin in the IBM-GNR and relied on the country of residence identified on the patent document.<sup>31</sup> We then matched inventors' name-country pairs to the WGND dataset to classify inventors as women or men based on the country specific gender-name linked data. This method classified gender for about 14% of inventors (498,620 cases).

3) For inventors without a name-country match to the WGND data, we assigned gender where the following two conditions were satisfied. First, the first name appeared in the WGND dataset without being linked to the country or countries associated with the inventor's surname. Second, the first name was identified as solely male or solely female in all instances throughout WGND and as the same gender in the majority of instances in the IBM-GNR data. This approach classified another 5% of inventors (169,405 cases).

After applying these three steps of the baseline method, we classified gender for roughly 92% of inventors (3,206,605 cases). The remaining 8% of inventors (275,700 cases) unclassified by the baseline method consisted of inventors residing (based on address reported on the patent document) in the United States (about 82,200 cases) and East Asian countries (Japan 54,400 cases, China 34,600 cases, and the Republic of Korea 28,300 cases). To gauge the extent to which these unclassified inventors may affect results, we examined the number of unclassified cases as a percentage of the total number of inventors residing in each country. Inventors unclassified by the baseline method

accounted for only 5% of all inventors with a U.S. address. They comprised a much larger percentage of all inventors residing in the Republic of Korea (31%), India (29%), and China (62%). This suggested that the baseline method suffers from the same limitations of prior studies that have attempted to assign gender to Asian names (Park and Yoon, 2007; Yu et al., 2014).

To remedy this limitation and increase coverage, we applied a less restrictive version of the baseline method to inventors whose surnames originate from China, Singapore, Taiwan, Macao, Hong Kong, the Republic of Korea, and India (even if they reside elsewhere). We repeated step 1 of the baseline method but applied a lower probability of first names being feminine or masculine.<sup>32</sup> This approach classified gender for an additional 1% of inventors (38,188 cases) in the sample.

In total, our method classified gender for roughly 93% of inventors (3,244,813 cases). We exclude inventors for which our method did not provide a gender classification from the inventor-level analysis presented in this report. We also only include patents in the patent-level analysis if all inventors have a gender classification.

The analysis presented here is predominantly limited to the subset of inventors residing in the United States. For this subset, our methods classified gender for roughly 96% of inventors. These coverage or attribution rates are consistent with or exceed those of prior studies on women in patenting.<sup>33</sup> By leveraging U.S. immigration records, we are more confident in our gender classification for migrant inventors residing in the United States.

#### APPENDIX III: WOMEN INVENTOR RATE FOR TOP PATENT ASSIGNEES

This appendix describes the methodology used to calculate the women inventor rate for select top patent assignees between 2007 and 2016.

To identify an initial set of candidate organizations, we relied on the annual lists of the top 300 patent owners published by the Intellectual Property Owners Association (IPO).<sup>34</sup> We aggregated patent grant counts for each firm or organization from the annual lists to generate each assignee's count of total U.S. patents granted from 2007 to 2016. We then restricted our sample of entities to those headquartered (firms) or located (non-firms, e.g., universities) in the United States, based on manual searching of internet and financial records. Additionally, we reduced the sample to the top 100 patenting firms, as measured by total U.S. patents granted 2007-2016.

<sup>31</sup> We used the country of residence for approximately 1% of inventors (37,003 cases).

<sup>32</sup> For inventors with a surname associated with China, Singapore, Taiwan, Macao, or Hong Kong, those with a first name that have a probability of being feminine (*p*) equal to or greater than 60% were classified as women, and those whose first name's probability of being male (1-*p*) was equal to or greater than 60% were classified as momen. A threshold of 80% and 90% was applied for inventors whose surname originate from the Republic of Korea and India, respectively. Different thresholds were identified based on visual inspection of the distribution of *p* and (1-*p*) for each surname country of origin.

<sup>33</sup> Another large-scale study of inventor gender on U.S. patents by Sugimoto et al. (2015) classified gender for 90.8% of inventors residing in the United States. A worldwide analysis released by the UK Intellectual Property Office (UKIPO) classified gender for around 80–90% of inventors residing in the United States, Japan, the UK, Germany, France, or Italy. Coverage declined to around 75% for Switzerland and the Netherlands and was even lower for China (27.9%), the Republic of Korea (29.1%), or Taiwan (11.6%).

<sup>34</sup> See https://www.ipo.org/index.php/publications/top-300-patent-owners/ (accessed 17 January 2018).

We pre-processed the names of firms and other entities in our sample<sup>35</sup> for matching to the population of assignees listed on U.S. patents granted 1976-2016.<sup>36</sup> Using proprietary software, we applied various fuzzy matching methods to match the cleaned names of entities to those of assignees.<sup>37</sup> Generally, the software generates scores for each potential match based on the co-occurrence of words, where words are weighted by their inverse frequency. We retained all potential matches with a score greater than or equal to 95 (out of a possible score of 100).

We then had multiple individuals independently conduct a manual evaluation of each potential match for accuracy. Evaluators also identified matches that indicated a joint venture, subsidiary, or international branch of the firms and other entities in our sample. We reconciled any differences between evaluators and removed inaccurate or low quality matches. We made extensive efforts to avoid errors; however, we cannot fully guarantee the accuracy of all matches.

Next, we generated two sets of matched assignee names for each entity: 1) assignee names of the entity itself as well as the IP branch or holding company, excluding joint ventures, subsidiaries, and international branches, and 2) all matching assignee names. The second set, while more expansive, does not represent a firm's entire corporate structure because additional subsidiaries with names that vary significantly from the corporate name would not be captured. It should be noted that the women inventor rate may differ if the entire corporate structure is considered. However, the effort required to identify all entities within the corporate structure of the top 100 assignees for the 2007-2016 period is beyond the scope of this report.

We then linked the assignees included in sets 1 and 2 to their respective patents, retaining only those patents granted in the 2007-2016 period. For each entity's matched patent sets 1 and 2, we retrieved the inventor and gender classification data (see Appendix II) and calculated the women inventor rate for the set of unique inventors (see Appendix I). The women inventor rates were consistent across the matched patent sets 1 and 2 because the vast majority of matched patents fall into both groups. Given this similarity, throughout the report, we provide only the women inventor rate for the patents linked to assignees matched in set 1, excluding joint ventures, subsidiaries, and international branches.

For inclusion in Figure 7 of this report, we reduced the number of entities in our sample to 30 unique assignees. To select these 30 firms, we first ranked the assignees by the women inventor rate for set 1 and grouped them by decile. Within each decile, we manually chose three assignees to include in the figure.

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<sup>35</sup> We manually searched the patent assignee data for possible variants of the official name of each entity in our sample. An individual firm name can appear in a variety of ways on different patents. For example, International Business Machines may be abbreviated as IBM or Massachusetts Institute of technology to MIT. We compiled a list of such name variants for each entity and then cleaned and standardized the variants using a firm name standardization software package (stnd\_comp) in Stata.

<sup>36</sup> We restricted PatentsView assignee file to all organizational assignees (i.e., no individuals) with at least one patent granted between 1976 and 2016 and then cleaned and standardize each assignee name using a firm name standardization software package (stnd\_comp) in Stata.

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• 2



## Introduction

Women and Black/African Americans made small gains in representation at major U.S. law firms in 2018 compared with 2017, according to the latest law firm demographic findings from the National Association for Law Placement (NALP). However, representation of Black/African-Americans among associates remains below 2009 levels. NALP's recent analyses of the 2018-2019 *NALP Directory of Legal Employers* (NDLE) — the annual compendium of legal employer data published by NALP — shows that women and minorities continued to make small gains in their representation among law firm partners in 2018. However, the overall percentage of women associates has decreased almost as often as not since 2009, and the percentage of Black/African-American associates has declined most years since 2009, and despite small increases in the last three years remains below its 2009 level.

#### COMMENTARY AND ANALYSIS BY JAMES LEIPOLD, EXECUTIVE DIRECTOR

NALP Executive Director James Leipold commenting on these new findings noted, "The story of NALP's 2018 Report on Diversity in U.S. Law Firms is a good news/bad news story. On the good news side, representation of women associates has finally rebounded and surpassed pre-recession highs for the first time, the jump in the representation of minorities among partners is the largest since NALP began tracking this data, and the number and percentage of LGBT lawyers reached all-time highs with the percentage of LGBT summer associates at firms of more than 700 hundred lawyers reaching 6.42%. On the bad news side, representation of Black/African-American associates remains below its pre-recession level, the representation of Black/African-American partners has barely changed since the recession, and minority women continue to be the most underrepresented group at the partnership level, with Black/African-American associates at firms of all."

Leipold continued, "There are also good news/bad news stories to be told when we parse the data by geography. Miami, for instance, stands alone with its law firms reporting a higher percentage of minority partners, a higher percentage of minority women partners, a higher percentage of minority associates, a higher percentage of minority women associates, and a higher percentage of minority and minority women summer associates than law firms in any other city. On the other hand, Boston law firms report minority partner and associate numbers well below the national mean, and well below other cities of its size and importance in the legal market, and report that just 0.9% of the partners in that city are Black/African-American, and only 0.26 of the partners. So, while progress towards greater diversity and inclusion among lawyers in US law firms continues to be made, and underlying population demographics play a role, much, much work remains to be done."

#### ASSOCIATES

• Despite small increases in the past three years, representation of Black/African-American associates remains just below its 2009 level of 4.66% and is now 4.48%.

#### PARTNERS

- An increase of about seven-tenths of a percentage point in representation of minorities among partners is noted as the largest over the entire span of NALP's compilation of these figures.
- Minority women continue to be the most dramatically underrepresented group at the partnership level.
- Representation of Black/African-Americans among partners has barely increased since 2009.

#### SUMMER ASSOCIATES

• Over one-third -35% – of summer associates were racial/ethnic minorities.

#### LAWYERS WITH DISABILITIES

• The reporting of lawyers with disabilities (of any race or gender) remains scant, both at the associate and partner levels.

#### LGBT LAWYERS

- There are wide geographic disparities in these numbers, and in fact about 55% of the reported LGBT lawyers are accounted for by just four cities: New York City, Washington, DC, Los Angeles, and San Francisco.
- The percentage of LGBT summer associates continues to suggest that there is still potential for some growth of the presence of LGBT associates at these firms.
- In firms of more than 700 lawyers, the percentage of LGBT associates has exceeded 5% in the five most recent years. In firms of 251+ lawyers, the figures were above 5% for the first time.

Report on Diversity

# Significant Findings

#### **ASSOCIATES:**

Representation of women, minorities, and minority women among associates saw small gains in 2018. Representation of women has climbed for three years in a row and now exceeds the high previously reached in 2009.

NALP's analysis found that representation of minority associates has continued to increase since 2010 (from 19.53% to 24.22%) following widespread layoffs in 2009. Over the same period of time, however, representation of women finally saw a net increase in 2018. In 2018, the percentage of women stood at 45.91%, compared with 45.48% in 2017, and higher than the 2009 figure, but by just 0.25 percentage points.

In contrast to the pattern for women as a whole, representation of minority women among associates has increased from about 11% (2009-2012) to 13.52% in 2018, though some backsliding in 2010 is noted. (See Table 1.)

Much of the increase in minority representation since 2011 can be attributed to increased representation of Asians among associates. While overall minority representation fell in 2010, this was not the case for Asian associates. Asian associates now make up 11.69% of all associates, with representation having risen about 2.4 percentage points, from 9.28% in 2009 to 11.69% in 2018. Hispanic associate representation has also risen. After fluctuating between 3.81% and 3.95% of associates between 2009 and 2014, Hispanics have slightly outnumbered Black/African-Americans among associates since 2015. In 2018, Hispanics accounted for 4.71% of associates. In contrast to trends among Asian associates and even Hispanic associates, representation of Black/African-Americans among associates fell every year from 2010 to 2015. **Despite small increases in the past**  three years, representation of Black/African-American associates remains just below its 2009 level of 4.66% and is now 4.48%. (See Table 2.)

#### **PARTNERS:**

*In 2018, representation of women, minorities, and minority women among partners in law firms across the nation all increased a bit over 2017.* 

During the 26 years that NALP has been compiling this information, law firms have made steady, though very slow, incremental progress in increasing the presence of women and minorities in the partner ranks. In 2018, that slow upward trend continued, with minorities accounting for 9.13% of partners in the nation's major firms, and women accounting for 23.36% of the partners in these firms, up from 8.42% and 22.70%, respectively, in 2017. **An increase of about seven-tenths of a percentage point in representation of minorities among partners is noted as the largest over the entire span of NALP's compilation of these figures.** Increases have generally been in the 0.1 to 0.4 percentage point range. The next largest increases of about 0.5 percentage points occurred only in 2008 and 2016.

Nonetheless, over this period, the gains have been minimal at best. In 1993 minorities accounted for 2.55% of partners and women accounted for 12.27% of partners. And at just 3.19% of partners in 2018, **minority women continue to be the most dramatically underrepresented group at the partnership level,** a pattern that holds across all firm sizes and most jurisdictions. The representation of minority women partners is somewhat higher (3.66%) at the largest firms with more than 700 lawyers. Minority men, meanwhile, accounted for just 5.94% of partners in 2018, compared with 5.52% in 2017. This means that the increase in minorities among partners was not quite three-tenths of one percent



for women and somewhat more than four-tenths of one percent for men.

But, as is the case with associates, most of the increase in minority representation among partners since 2009 can be attributed to an increase of Asian and Hispanic male partners in particular. **Representation of Black/African-Americans among partners has barely changed over the period** and was 1.83% in 2018, flat compared with 2017, and not much higher than the 1.71% figure in 2009. (See Table 2.)

#### LAWYERS OVERALL:

Overall, representation of women among lawyers as a whole was up, and has more than recouped losses in 2010, 2011, and 2015, and has exceeded the 2009 level since 2014.

This increase reflects both the increase among partners and associates noted above and also among lawyers other than partners and associates such as "of counsel" and staff attorneys who, in 2018, accounted for almost 15% of attorneys at these firms. For example, women accounted for 41% of these other attorneys in 2018, compared with 40% in 2016. Although the overall figure for women fell in 2010 and 2011, and again in 2015, the overall percentage for women (35.41% in 2018) and has exceeded the 2009 figure of 32.97% since 2014.

The representation of minorities among lawyers as a whole rose some in 2018, to 16.10%. Consistent with findings for minority women among partners and associates, representation of minority women as a whole also increased slightly from 7.54% in 2017 and minority women now make up 8.08% of lawyers at these law firms. (See Table 1.)

#### SUMMER ASSOCIATES:

The representation of women and minorities in the summer associate ranks compares much more favorably to the population of recent law school graduates. The

## 2018 minority representation figure of just about 35% is an almost 3 percentage point increase over the 2017 figure of 32.33%.

According to the American Bar Association (ABA), since 2000, the percentage of minority law school graduates has ranged from 20% to 30%, while women have accounted for 46% to 49% of graduates with the high point coming in the mid-2000s. In 2018, women comprised 51.42% of summer associates, minorities accounted for 35.04%, and 20.83% of summer associates were minority women. Although measures for women have improved steadily since 2013, when representation of women as a whole and minority women specifically edged down, the gains in 2018 were preceded by an unchanged percentage for minorities as a whole in 2017 compared with 2016. It also should be kept in mind that these percentages are in the context of far fewer summer associates overall, with the number of summer associates off by about 25% compared with 2009, despite increases in the numbers after they bottomed out in 2010 and 2011. The number of summer associates accounted for in the Directory was about 6,900 in 2018, compared with about 7,100 in the prior two years.

#### LAWYERS WITH DISABILITIES:

*Lawyers with disabilities (of any race or gender) are scarce, both at the associate and partner levels.* 

The *NALP Directory of Legal Employers* also collects information about lawyers with disabilities, though this information is much less widely reported than information on race/ ethnicity and gender, making it much harder to conclude anything definitive about the representation of lawyers with disabilities. About one-half of one percent of partners self-reported as having a disability in 2018, compared with about four-tenths of one percent in 2017 and about onethird of one percent from 2012-2016. Representation of associates with disabilities declined some, from 0.60% in 2017 to 0.46% in 2018. However, these figures are still tiny,

# Report on Diversity

making it difficult to draw any conclusions about movement going forward. Although the presence of individuals with disabilities among law school graduates is not precisely known, other NALP research suggests that between 1 and 2% of graduates self-identify as having a disability. Disability figures for partners, associates, and all attorneys with disabilities are reported in Table 7.

#### LGBT LAWYERS:

The percentage of LGBT lawyers has generally been trending upward over the period since 2002 when NALP first began compiling these figures, and small increases from 2017 to 2018 occurred across all lawyer types.

The overall percentage of lesbian, gay, bisexual, and transgender (LGBT) lawyers reported in 2018 increased to 2.86% compared with 2.64% in 2017. Increases were seen across all lawyer types and ranged from less than 0.1 percentage point for counsel and non-traditional track attorneys to about 0.35 percentage points for associates. The percentage of offices reporting LGBT counts has been relatively stable at about 90% of offices since 2008. About half of these reporting offices reported at least one LGBT lawyer among partners and associates in 2018.

The overall count in 2018 of 2,827 LGBT lawyers is up by just over 6% from 2017. Over a longer span of time, the number now is over 2.5 times larger than it was in the 2002 NDLE, when the numbers were first collected/compiled. In the 2002 NDLE, the number of LGBT lawyers reported was just over 1,100 — less than 1% of the total lawyers represented. It took until 2012 for the overall percentage to exceed 2%.

The presence of LGBT lawyers continues to be highest among associates, at 3.80% (see Table 8), and is up from the figure of 3.45% reported in 2017. LGBT associates are also better represented at large law firms — with firms of 701+ lawyers reporting 4.17% LGBT associates. Firms of 701+ lawyers

reported 2.33% LGBT partners, compared to 2.17% in 2017. For smaller firms, the percentages are closer to 2%.

There are wide geographic disparities in these numbers, and in fact about 55% of the reported LGBT lawyers are accounted for by just four cities: New York City, Washington, DC, Los Angeles, and San Francisco. These same four cities accounted for about 39% of the not quite 99,000 lawyers included in these analyses. Thus the percentage of LGBT lawyers in these cities is correspondingly higher — about 4% overall (and highest in San Francisco specifically at 5.8%) compared with the 2.86% nationwide figure. In these same four cities, the percentage of LGBT summer associates is also higher — about 7% compared with 5.73% nationwide.

The percentage of LGBT summer associates continues to suggest that there is still potential for some growth of the presence of LGBT associates at these firms. The overall figure for summer associates was 5.73%, compared with 4.66% in 2017. In firms of more than 700 lawyers, it has exceeded 5% in the five most recent years. In firms of 251+ lawyers, the figures were above 5% for the first time.

## BREADTH OF LAWYER REPRESENTATION IN THE NALP DIRECTORY

The 2018-2019 *NALP Directory of Legal Employers* (NDLE), which provides the individual firm listings on which these aggregate analyses are based, includes attorney race/ethnicity and gender information for over 109,000 partners, associates, and other lawyers in 1,009 offices, and for almost 6,900 summer associates in 725 offices nationwide. The NDLE is available online at <u>www.nalpdirectory.com</u>.

# Tables

For purposes of the figures in Tables 1-6, minority attorneys include those whose race or ethnicity is Black, Hispanic, American Indian/Alaskan Native, Asian, Native Hawaiian or other Pacific Islander, and those of multi-racial heritage, as reported by the law firms in the NDLE. The partner numbers include both equity and non-equity partners. The data in Table 2 ("Partner and Associate Demographics at Law Firms — 2009-2018") does not include data for minority attorneys whose race or ethnicity is American Indian/Alaskan Native, Native Hawaiian or other Pacific Islander, and those of multi-racial heritage, as these groups are a very small fraction of minorities reported.

Report on Diversity

	Partners			Associates			То	tal Lawy	ers	Summer Associates			
	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	
2009	19.21%	6.05%	1.88%	45.66%	19.67%	11.02%	32.97%	12.59%	6.33%	46.62%	24.04%	12.90%	
2010	19.43	6.16	1.95	45.41	19.53	10.90	32.69	12.40	6.20	47.35	26.99	14.92	
2011	19.54	6.56	2.04	45.35	19.90	10.96	32.61	12.70	6.23	47.71	27.11	15.19	
2012	19.91	6.71	2.16	45.05	20.32	11.08	32.67	12.91	6.32	46.26	29.55	16.26	
2013	20.22	7.10	2.26	44.79	20.93	11.29	32.78	13.36	6.49	45.32	29.51	15.78	
2014	21.05	7.33	2.45	44.94	21.63	11.51	33.48	13.83	6.74	46.33	30.27	16.63	
2015	21.46	7.52	2.55	44.68	22.00	11.78	33.38	13.97	6.81	47.78	31.16	16.99	
2016	22.13	8.05	2.76	45.00	22.72	12.42	33.89	14.62	7.23	48.71	32.33	18.05	
2017	22.70	8.42	2.90	45.48	23.32	12.86	34.54	15.18	7.54	49.87	32.33	18.23	
2018	23.36	9.13	3.19	45.91	24.22	13.52	35.41	16.10	8.08	51.42	35.04	20.83	

#### Table 1. Women and Minorities at Law Firms – 2009-2018

Source: The NALP Directory of Legal Employers.

#### Table 2. Partner and Associate Demographics at Law Firms – 2009-2018

			Part	iners			Associates							
	As	ian		ack/ American	Hispanic		Asian			ack/ American	Hispanic			
	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women		
2009	2.20%	0.76%	1.71%	0.57%	1.65%	0.41%	9.28%	5.12%	4.66%	2.93%	3.89%	2.00%		
2010	2.30	0.81	1.70	0.56	1.70	0.44	9.39	5.15	4.36	2.75	3.81	1.94		
2011	2.36	0.82	1.71	0.58	1.92	0.48	9.65	5.31	4.29	2.61	3.83	1.92		
2012	2.48	0.89	1.73	0.60	1.91	0.48	10.01	5.40	4.19	2.55	3.90	1.95		
2013	2.67	0.91	1.78	0.60	1.99	0.54	10.48	5.64	4.10	2.43	3.82	1.89		
2014	2.74	0.99	1.72	0.63	2.16	0.60	10.80	5.81	4.01	2.31	3.95	1.89		
2015	2.89	1.07	1.77	0.64	2.19	0.63	10.93	6.00	3.95	2.25	4.28	2.03		
2016	3.13	1.17	1.81	0.64	2.31	0.68	11.25	6.35	4.11	2.32	4.42	2.15		
2017	3.31	1.23	1.83	0.66	2.40	0.73	11.40	6.52	4.28	2.42	4.57	2.23		
2018	3.63	1.38	1.83	0.68	2.49	0.77	11.69	6.64	4.48	2.55	4.71	2.45		

Source: The NALP Directory of Legal Employers.



#### Table 3. Women and Minorities at Law Firms — Partners and Associates — 2018

		Part	ners						
	Total #	% Women	% Minority	% Minority Women	Total #	% Women	% Minority	% Minority Women	# of Offices
Total	47,625	23.36	9.13	3.19	45,807	45.91	24.22	13.52	1,009
By # of Lawyers Firm-wide:			•		•			•	
100 or fewer	2,759	22.15	7.94	3.01	1,631	40.96	19.87	9.75	90
101-250	8,497	23.18	6.63	2.42	4,815	45.71	18.50	10.55	134
251-500	9,577	24.05	8.40	3.08	6,587	45.10	22.62	12.40	199
501-700	5,779	22.70	8.67	2.86	5,856	45.44	24.42	13.61	104
701+	21,013	23.47	10.76	3.66	26,918	46.55	25.86	14.54	482
Offices in:						•	•	•••••••••••••••••••••••••••••••••••••••	
Atlanta	1,051	21.98	7.99	2.66	919	47.01	20.46	11.43	23
Austin	301	25.58	11.96	4.32	199	42.71	20.60	13.07	17
Boston area	1,563	24.25	4.48	1.66	1,832	45.85	19.43	11.19	34
Charlotte	430	16.05	4.65	1.40	297	42.09	14.14	7.74	13
Chicago	3,260	22.94	7.91	2.70	2,575	44.12	21.32	11.18	53
Cincinnati	308	24.35	3.25	0.97	152	41.45	9.87	4.61	6
Cleveland	405	18.52	2.96	0.74	283	43.46	5.65	3.53	6
Columbus	378	24.07	6.88	2.91	199	42.71	15.58	7.04	10
Dallas	985	20.30	9.75	3.65	908	40.97	21.92	9.69	32
Denver	511	27.59	6.65	2.15	491	48.27	13.85	8.55	22
Detroit area	550	25.82	6.18	2.55	227	44.93	17.18	9.25	9
Ft. Lauderdale/W. Palm Beach	158	23.42	6.33	3.16	95	46.32	14.74	10.53	8
Houston	1,129	17.98	12.05	3.90	1,281	39.27	25.92	12.02	43
Indianapolis	335	24.48	2.99	1.19	162	50.62	14.20	9.26	6
Kansas City, MO	493	24.54	3.85	1.22	274	47.08	13.50	7.30	7
Los Angeles area	1,832	24.45	16.65	6.33	2,294	48.78	32.13	18.09	72
Miami	384	25.78	37.76	11.72	282	47.87	47.16	25.53	14
Milwaukee	631	25.04	3.96	1.90	320	38.75	8.13	3.13	8



#### continued

	Total #	% Women	% Minority	% Minority Women	Total #	% Women	% Minority	% Minority Women	# of Offices
Minneapolis	1,127	29.19	4.08	1.86	606	41.75	13.70	6.77	20
New York City	6,254	20.37	10.89	3.31	12,270	45.76	28.40	16.19	95
Northern NJ/Newark area	426	19.48	5.63	1.88	331	47.13	21.15	11.18	8
Northern Virginia	152	15.79	6.58	2.63	130	49.23	22.31	10.77	8
Orange Co., CA	510	18.04	12.94	4.12	463	41.47	32.40	15.77	17
Philadelphia	630	19.84	5.24	1.90	538	50.00	14.87	9.11	11
Phoenix	524	22.33	6.87	1.91	214	44.86	14.95	6.07	12
Pittsburgh	325	21.23	4.31	1.54	234	40.17	8.97	3.85	6
Portland, OR area	448	27.01	6.25	2.68	204	43.14	16.18	6.37	11
Salt Lake City	156	16.03	3.85	1.28	102	30.39	7.84	2.94	7
San Diego	277	21.66	13.36	4.33	355	39.72	27.61	12.96	16
San Francisco	1,311	27.99	15.48	5.34	1,581	53.26	33.08	20.24	49
San Jose area	709	22.99	19.18	6.35	1,189	47.35	42.72	23.13	36
Seattle area	831	28.76	10.11	3.85	551	46.28	24.68	14.16	23
St. Louis	774	24.81	5.43	1.42	394	45.69	16.75	9.39	11
Татра	145	15.86	5.52	0.69	88	43.18	12.50	6.82	7
Washington, DC	4,558	23.56	10.14	3.93	4,947	46.31	23.47	13.40	96
Wilmington	282	22.34	4.96	2.13	279	41.94	11.83	6.45	13
States:		L	. <b>.</b>	L	L		L	L	L
Other areas in Connecticut	408	26.72	4.90	2.94	247	51.01	17.41	12.15	6
Other areas in Florida	221	21.72	4.07	0.90	110	49.09	14.55	5.45	11
Kentucky	351	25.07	2.28	0.57	130	46.92	12.31	6.15	5
Other areas in New York State	513	23.39	3.51	0.78	224	49.55	9.82	5.80	6

Source: The 2018-2019 *NALP Directory of Legal Employers*. Some city information includes one or more offices in adjacent suburbs. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in McLean/Tyson's Corner, and Reston. State figures exclude cities reported separately. For multi-office firms that reported only firmwide figures, the information was attributed to the reporting city if at least 60% of the firms lawyers are in that city.



#### Table 4. Women and Minorities at Law Firms — Total Lawyers and Summer Associates — 2018

		т	otal Lawye	rs			Summe	r Associate	S
	Total #	% Women	% Minority	% Minority Women	# of Offices	Total #	% Women	% Minority	% Minority Women
Total	109,459	35.41	16.10	8.08	1,009	6,875	51.42	35.04	20.83
By # of Lawyers Firm-wid	le:								
100 or fewer	5,290	31.70	11.89	5.44	90	245	46.12	28.57	16.73
101-250	15,349	31.79	10.59	5.15	134	592	52.03	32.09	20.78
251-500	19,121	34.12	13.84	6.82	199	921	50.16	36.16	20.63
501-700	13,694	34.98	16.19	8.07	104	918	52.94	35.40	21.90
701+	56,005	37.29	18.75	9.57	482	4,199	51.58	35.51	20.89
Offices in:				L	L	L	••••••		
Atlanta	2,403	35.96	13.86	7.12	23	144	55.56	22.92	14.58
Austin	589	33.11	15.96	7.81	17	59	44.07	25.42	15.25
Boston area	3,879	37.46	12.32	6.63	34	271	56.46	25.83	18.82
Charlotte	864	29.63	9.14	4.51	13	46	43.48	30.43	17.39
Chicago	6,638	32.98	13.60	6.40	53	392	46.94	30.61	18.11
Cincinnati	523	31.36	5.35	2.10	6	18	33.33	27.78	11.11
Cleveland	819	30.77	4.88	2.44	6	39	48.72	15.38	10.26
Columbus	703	30.87	9.25	3.98	10	34	67.65	32.35	23.53
Dallas	2,223	31.31	15.52	6.30	32	173	46.24	23.12	10.98
Denver	1,202	38.02	9.73	4.99	22	39	56.41	33.33	25.64
Detroit area	881	32.24	9.53	4.88	9	45	44.44	20.00	15.56
Ft. Lauderdale/ W. Palm Beach	282	32.62	10.99	6.74	8			_	_
Houston	2,730	31.14	19.05	8.17	43	296	51.01	27.70	15.88
Indianapolis	565	34.51	7.43	4.42	6	32	37.50	28.13	9.38
Kansas City, MO	917	35.33	7.09	3.60	7	39	48.72	23.08	10.26
Los Angeles area	4,694	38.56	24.86	12.82	72	270	54.81	40.00	22.96
Miami	741	36.84	41.03	17.95	14	30	50.00	60.00	33.33
Milwaukee	1,090	29.91	5.05	2.02	8	49	55.10	28.57	20.41
Minneapolis	1,973	33.76	7.20	3.50	20	90	55.56	43.33	22.22
New York City	21,346	37.54	21.67	11.42	95	2,270	50.44	39.91	23.35
Northern NJ/Newark area	935	33.37	11.98	5.67	8	43	62.79	23.26	20.93

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		Т	otal Lawye	rs			Summe	r Associate	s
	Total #	% Women	% Minority	% Minority Women	# of Offices	Total #	% Women	% Minority	% Minority Women
Northern Virginia	334	32.63	13.47	5.99	8	19	31.58	31.58	15.79
Orange Co., CA	1,063	31.33	22.86	10.35	17	84	42.86	41.67	20.24
Philadelphia	1,397	35.29	9.23	4.80	11	40	50.00	27.50	17.50
Phoenix	830	29.16	10.48	3.61	12	42	50.00	30.95	19.05
Pittsburgh	604	29.64	6.29	2.65	6	—	_		_
Portland, OR area	742	33.29	9.57	4.18	11	28	39.29	28.57	10.71
Salt Lake City	292	22.95	5.82	2.05	7	—	_		
San Diego	729	33.88	20.71	9.47	16	49	46.94	32.65	18.37
San Francisco	3,291	42.05	24.46	13.55	49	232	53.88	44.40	28.45
San Jose area	2,112	39.30	33.10	16.48	36	219	47.95	47.03	26.48
Seattle area	1,587	36.61	15.82	8.07	23	64	43.75	43.75	23.44
St. Louis	1,377	32.61	8.93	4.21	11	53	50.94	22.64	13.21
Tampa	266	27.44	7.89	3.38	7	—	—	_	_
Washington, DC	11,597	36.13	16.80	8.67	96	740	55.27	34.19	21.89
Wilmington	614	32.41	8.14	3.91	13	72	41.67	23.61	15.28
States:				L					L
Other areas in Connecticut	803	36.86	8.97	5.60	6	27	59.26	55.56	33.33
Other areas in Florida	389	33.93	7.46	3.08	11	17	58.82	5.88	0.00
Kentucky	558	32.26	4.84	2.15	5	23	56.52	21.74	17.39
Other areas in New York State	1,048	40.46	5.34	2.67	6	22	59.09	18.18	9.09

Source: The 2018-2019 *NALP Directory of Legal Employers*. Some city information includes one or more offices in adjacent suburbs. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in McLean/Tyson's Corner, and Reston. State figures exclude cities reported separately. For multi-office firms that reported only firmwide figures, the information was attributed to the reporting city if at least 60% of the firms lawyers are in that city.

Note: The number of offices reporting one or more summer associates, including demographic information, was 725. Dashes in the summer associates columns indicate that fewer than five offices in that city reported summer associates, or the total number of summer associates reported was less than 10.



#### Table 5. Partner Demographics at Law Firms — 2018

					Partne	ers by Ra	ace or Et	hnicity		
		All Partners	S	As	sian		African- erican	Hispanic		
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	# of Offices
Total	47,625	9.13	3.19	3.63	1.38	1.83	0.68	2.49	0.77	1,009
By # of Lawyers Firm-wide:					-		-			
100 or fewer lawyers	2,759	7.94	3.01	3.66	1.56	1.34	0.43	1.49	0.58	90
101-250 lawyers	8,497	6.63	2.42	2.70	1.07	1.32	0.52	1.75	0.56	134
251-500 lawyers	9,577	8.40	3.08	2.88	1.16	1.83	0.80	2.56	0.77	199
501-700 lawyers	5,779	8.67	2.86	3.27	1.12	1.89	0.61	2.27	0.66	104
701+ lawyers	21,013	10.76	3.66	4.44	1.65	2.09	0.75	2.96	0.90	482
Offices in:	<b>b</b>	••••••								
Atlanta	1,051	7.99	2.66	2.38	0.76	3.62	1.05	0.86	0.38	23
Austin	301	11.96	4.32	1.66	0.33	2.99	1.33	6.64	2.66	17
Boston area	1,563	4.48	1.66	1.98	1.02	0.90	0.26	1.22	0.32	34
Charlotte	430	4.65	1.40	0.93	0.23	2.33	1.16	0.93	0.00	13
Chicago	3,260	7.91	2.70	3.65	1.29	1.78	0.61	1.84	0.46	53
Cincinnati	308	3.25	0.97	0.97	0.00	0.65	0.00	0.97	0.97	6
Cleveland	405	2.96	0.74	1.23	0.25	1.23	0.49	0.25	0.00	6
Columbus	378	6.88	2.91	1.85	1.32	2.91	1.06	0.53	0.00	10
Dallas	985	9.75	3.65	2.34	0.71	1.73	0.91	3.45	1.12	32
Denver	511	6.65	2.15	1.57	0.39	0.59	0.00	2.74	0.39	22
Detroit area	550	6.18	2.55	1.27	0.55	3.09	1.82	0.91	0.00	9
Ft. Lauderdale/W. Palm Beach	158	6.33	3.16	1.27	0.63	1.90	1.27	3.16	1.27	8
Houston	1,129	12.05	3.90	3.90	1.51	2.75	1.15	4.78	1.06	43
Indianapolis	335	2.99	1.19	1.19	0.60	0.90	0.00	0.60	0.30	6
Kansas City	493	3.85	1.22	0.81	0.41	2.03	0.20	0.61	0.20	7
Los Angeles area	1,832	16.65	6.33	8.68	3.66	2.02	0.82	4.15	1.36	72
Miami	384	37.76	11.72	1.30	1.04	2.86	1.30	32.81	9.11	14
Milwaukee	631	3.96	1.90	0.79	0.48	0.63	0.16	2.22	1.11	8
Minneapolis	1,127	4.08	1.86	1.15	0.89	0.62	0.35	0.80	0.00	20
New York City	6,254	10.89	3.31	4.81	1.65	1.63	0.54	2.61	0.78	95
Northern NJ/Newark area	426	5.63	1.88	2.11	0.70	1.17	0.47	1.64	0.47	8

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					Partne	ers by Ra	ace or Et	hnicity		
		All Partners	6	As	Asian		Black/African- American		Hispanic	
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	# of Offices
Northern Virginia	152	6.58	2.63	3.29	0.66	0.66	0.00	1.97	1.97	8
Orange Co., CA	510	12.94	4.12	7.06	2.75	0.78	0.20	3.73	0.98	17
Philadelphia	630	5.24	1.90	2.22	0.79	1.43	0.63	0.48	0.00	11
Phoenix	524	6.87	1.91	1.72	0.76	0.00	0.00	2.67	0.95	12
Pittsburgh	325	4.31	1.54	1.85	0.62	0.92	0.31	1.23	0.62	6
Portland, OR	448	6.25	2.68	1.34	0.89	1.34	0.67	2.23	0.67	11
Salt Lake City	156	3.85	1.28	0.00	0.00	0.00	0.00	2.56	1.28	7
San Diego	277	13.36	4.33	5.78	2.53	0.72	0.36	4.69	1.08	16
San Francisco	1,311	15.48	5.34	9.61	3.51	1.83	0.46	2.44	0.99	49
San Jose area	709	19.18	6.35	13.54	4.51	1.13	0.42	2.96	0.99	36
Seattle area	831	10.11	3.85	5.66	2.53	1.56	0.48	1.44	0.48	23
St. Louis	774	5.43	1.42	0.90	0.00	2.45	0.78	1.29	0.52	11
Tampa	145	5.52	0.69	0.69	0.00	0.00	0.00	4.83	0.69	7
Washington, DC	4,558	10.14	3.93	4.28	1.49	2.81	1.29	2.15	0.66	96
Wilmington	282	4.96	2.13	1.77	1.06	1.77	1.06	0.71	0.00	13

Source: The 2018-2019 *NALP Directory of Legal Employers*. The few Native American, Native Hawaiian and multi-racial lawyers reported are included in the overall minority percentages but are not reported separately. Some city information includes one or more offices in adjacent suburbs. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in McLean/Tyson's Corner, and Reston.



					Associ	ates by l	Race or I	Ethnicity		
	A	All Associat	es	As	sian		African- erican	Hispanic		
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	# of Offices
Total	45,807	24.22	13.52	11.69	6.64	4.48	2.55	4.71	2.45	1,009
By # of Lawyers Firm-wide:										
100 or fewer lawyers	1,631	19.87	9.75	10.79	5.52	3.25	1.53	3.31	1.66	90
101-250 lawyers	4,815	18.50	10.55	7.50	4.59	4.65	2.51	3.86	2.10	134
251-500 lawyers	6,587	22.62	12.40	10.10	5.71	4.51	2.54	4.86	2.58	199
501-700 lawyers	5,856	24.42	13.61	11.03	6.20	4.99	2.73	4.83	2.53	104
701+ lawyers	26,918	25.86	14.54	13.03	7.40	4.40	2.59	4.88	2.51	482
Offices in:			•••••••••••••••••••••••••••••••••••••••				•		•	•
Atlanta	919	20.46	11.43	6.86	3.26	8.49	5.01	2.94	1.85	23
Austin	199	20.60	13.07	8.04	3.52	1.51	1.01	3.52	2.01	17
Boston	1,832	19.43	11.19	9.77	5.90	3.55	1.80	3.98	2.24	34
Charlotte	297	14.14	7.74	4.38	2.36	4.71	2.69	2.69	1.01	13
Chicago	2,575	21.32	11.18	9.98	5.20	5.17	2.41	3.84	2.21	53
Cincinnati	152	9.87	4.61	1.32	0.66	4.61	1.97	1.97	1.32	6
Cleveland	283	5.65	3.53	2.47	1.41	1.77	1.06	0.35	0.35	6
Columbus	199	15.58	7.04	4.02	2.01	6.03	1.51	2.51	1.51	10
Dallas	908	21.92	9.69	7.93	2.86	4.07	2.31	6.06	2.86	32
Denver	491	13.85	8.55	3.67	2.44	2.04	1.63	4.68	2.44	22
Detroit area	227	17.18	9.25	4.85	2.64	7.49	3.52	1.76	1.32	9
Ft. Lauderdale/ W. Palm Beach	95	14.74	10.53	1.05	0.00	7.37	4.21	5.26	5.26	8
Houston	1,281	25.92	12.02	9.45	3.67	5.07	2.97	7.88	3.28	43
Indianapolis	162	14.20	9.26	4.94	3.09	4.94	3.70	3.09	1.85	6
Kansas City	274	13.50	7.30	3.65	2.55	2.55	1.09	4.01	1.82	7
Los Angeles	2,294	32.13	18.09	17.00	9.72	3.49	1.83	6.54	3.62	72
Miami	282	47.16	25.53	2.84	1.06	5.67	1.42	36.52	21.63	14
Milwaukee	320	8.13	3.13	2.19	0.94	1.56	0.00	1.88	0.94	8
Minneapolis	606	13.70	6.77	4.95	2.81	3.63	2.15	1.65	0.66	20
New York City	12,270	28.40	16.19	15.46	9.10	4.59	2.64	5.13	2.58	95
Northern NJ/Newark area	331	21.15	11.18	10.57	6.04	3.32	2.11	4.83	2.42	8
Northern Virginia	130	22.31	10.77	16.92	8.46	0.77	0.77	2.31	0.77	8

#### Table 6. Associate Demographics at Law Firms – 2018

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					Associ	ates by I	Race or E	Ethnicity		
	ŀ	All Associat	es	As	Asian		Black/African- American		Hispanic	
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	# of Offices
Orange Co., CA	463	32.40	15.77	20.52	9.72	1.51	1.08	5.18	2.59	17
Philadelphia	538	14.87	9.11	6.32	3.53	4.09	2.97	2.04	1.12	11
Phoenix	214	14.95	6.07	4.21	1.40	2.80	0.93	5.14	2.34	12
Pittsburgh	234	8.97	3.85	2.56	1.71	2.56	0.85	1.71	0.43	6
Portland, OR	204	16.18	6.37	4.41	1.96	3.43	0.98	4.41	0.98	11
Salt Lake City	102	7.84	2.94	0.00	0.00	1.96	0.98	2.94	1.96	7
San Diego	355	27.61	12.96	13.80	6.76	2.25	1.41	6.48	1.97	16
San Francisco	1,581	33.08	20.24	20.43	13.22	2.47	1.39	5.63	3.04	49
San Jose area	1,189	42.72	23.13	30.19	16.23	2.69	1.43	4.96	2.78	36
Seattle area	551	24.68	14.16	12.70	8.53	2.90	1.45	2.90	0.91	23
St. Louis	394	16.75	9.39	5.33	3.55	6.60	4.31	2.28	0.76	11
Tampa	88	12.50	6.82	2.27	1.14	3.41	2.27	5.68	3.41	
Washington, DC	4,947	23.47	13.40	10.71	6.10	6.15	3.76	3.50	2.00	96
Wilmington	279	11.83	6.45	5.38	3.23	3.23	1.79	1.43	0.72	13

Source: The 2018-2019 *NALP Directory of Legal Employers*. The few Native American, Native Hawaiian and multi-racial lawyers reported are included in the overall minority percentages but are not reported separately. Some city information includes one or more offices in adjacent suburbs. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in McLean/Tyson's Corner, and Reston.



	All Fi	All Firms		Firms of 250 or Fewer Lawyers		Firms of 251-500 Lawyers		<sup>501-700</sup> yers	Firms of 701+ Lawyers	
	# Reported	% of Total	# Reported	% of Total	# Reported	% of Total	# Reported	% of Reported	# Reported	% of Total
Partners	167	0.52%	31	0.33%	33	0.51%	21	0.49%	82	0.69%
Associates	127	0.46	13	0.25	28	0.63	18	0.43	68	0.50
All lawyers	368	0.53	52	0.30	73	0.57	52	0.52	191	0.64

#### Table 7. Lawyers with Disabilities – 2018

Note: Figures for lawyers with disabilities are based on 693 offices/firms reporting counts, including zero, in all lawyer categories. Counts of individuals with disabilities, including zero, cover 69,854 lawyers. Because so few summer associates with disabilities were reported (15 total), they are not included in the table.

	All Firms		Firms of 100 or Fewer Lawyers		Firms of 101-250 Lawyers		Firms of 251-500 Lawyers		Firms of 501- 700 Lawyers		Firms of 701 + Lawyers	
	# Reported	% of Total	# Reported	% of Total	# Reported	% of Total	# Reported	% of Reported	# Reported	% of Total	# Reported	% of Total
Partners	900	2.11%	45	2.08%	130	1.88%	158	1.87%	105	1.93%	462	2.33%
Associates	1,581	3.80	39	2.99	90	2.25	194	3.25	210	4.02	1,048	4.17
Other lawyers	346	2.37	6	0.77	33	1.98	61	2.38	44	2.24	202	2.65
All lawyers	2,827	2.86	90	2.12	253	2.01	413	2.43	359	359	1,7121	3.26
Summer Associates	333	5.73	4	1.94	17	3.77	38	5.11	42	5.32	232	6.42

#### Table 8. LGBT Lawyers – 2018

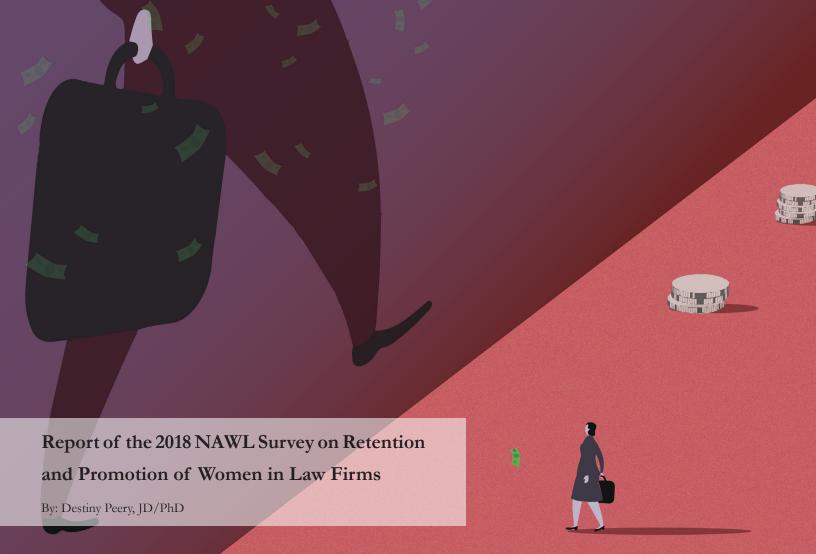
Note: Figures for LGBT lawyers are based on 914 offices/firms reporting counts, including zero, in all lawyer categories; figures for LGBT summer associates are based on 594 offices/firms with a summer program and reporting counts, including zero. Overall, LGBT counts, including zero, cover 98,942 lawyers and 5,807 summer associates.

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The data regarding the stalled career trajectories of many women in the legal profession, especially in the law firm, is indisputable. NAWL itself has collected data for the last 11 years demonstrating a consistent and relatively undisturbed pattern showing the absence of women in the upper echelon of law firm and legal profession leadership, and in the 11 years that NAWL has tracked the data, there has been relatively little progress made in the representation of women in these roles. With this year's survey, NAWL thought it important to take the first steps toward more systematic study of the mechanisms underlying these well-known statistics. Each year, the goal of the NAWL Survey has been to provide objective statistics regarding the position and advancement of women lawyers in law firms in particular, and the NAWL Survey remains the only national survey that collects this industry benchmarking data in such detail.

#### Survey Methodology in Brief

The 2018 NAWL Survey was sent to the 200 largest U.S. law firms<sup>1</sup>

<sup>1</sup> As reported in the 2017 AmLaw 200 Rankings.

in February 2018 and responding law firms had until April 30, 2018 to submit their responses. This year, 97 of 200 law firms completed all or significant portions of the survey,<sup>2</sup> a response rate of 48.5 percent.<sup>3</sup> An additional 7 firms formally declined to participate, an option given in this year's survey, and these firms answered questions about their reasons, leading to an overall response rate of 52%.<sup>4</sup>

As discussed in more detail below, firms completed questions regarding the demographics of attorneys at various levels, particularly women, as well as the structure of the partnership track, credit awarding processes, compensation and hours, and women's initiatives and other programming designed to support women in law firms.

The responding firms represent the full spectrum of the AmLaw 200 rankings. The quartile showing the lowest response rates were from Quartile 4 (AmLaw rank 151 – 200), with about 38% percent of those firms responding to the survey, and Quartile 1 (AmLaw rank 1 - 50), with about 42% of those firms responding. By comparison, 60% of those ranked in Quartile 2 (AmLaw 51 – 100) and 54% of Quartile 3 (AmLaw rank 101 - 150) responded. Overall, there were few significant differences between firms of different quartiles, but some nuances are discussed in the results below.

#### Following Women through the Law Firm

For over a decade, approximately 50% of law students nationwide have been women, <sup>5</sup> law firms have recruited women as entry-level associates roughly in proportion to their representation among law school graduates, and yet the statistics repeatedly show that these women are not reflected in the numbers of nonequity or equity partners in those same law firms. This report proceeds by highlighting the representation at three key points in the career trajectory of law firm lawyers: associate, non-equity (income) partner, and equity partner. Along the way, practices and procedures that could impact the experiences of women and diverse attorneys and their continued success in the law firm are also discussed, including management of the client relationship and succession planning, credit assignment and sharing procedures, and the ways that firms internalize their commitments to gender and racial/ethnic diversity as part of these practices and procedures.

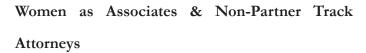
<sup>2</sup> As noted in more detail in the compensation sub-section, fewer law firms completed questions about compensation and hours, with many declining to provide the data, often noting that it's either considered confidential or is not collected in a way that matches the reporting format requested on the survey. As in most survey administrations, very few questions receive 100 percent response rates for various reasons, and firms were encouraged to complete as much of the survey as they were willing while also maintaining the ability to skip other portions.

<sup>3</sup> This represents an increase in responses compared to the 2015 Survey (37 percent) and is consistent with response rates from 2017 (90 of 200 firms or 45% response rate). Firms that declined to participate cited reasons such as too many surveys, the length of this particular survey, and the sensitive nature of some of the data requested. NAWL will continue working to address some of these concerns to encourage increasing firm participation.

<sup>4</sup> The participation rate goes up to 60% (or 119 of the AmLaw 200 firms) when the participation rates for the last two years are taken together. There is a core group of firms that have participated in both years, but there is a sizable number of firms who participated in either 2017 or 2018.

<sup>5</sup> For all law schools, women made up a simple majority (51 percent) of all law students for the first time in 2016, as reported by Law School Transparency (LST), a non-profit organization aimed at making entry to the legal profession more transparent, affordable, and fair. Report available at www.lstradio.com/women/docu-ments/MerrittandMcEnteeResearchSummary\_Nov-2016.pdf. In the last 20 years, the percentage of women earning law school degrees has hovered between 45 and 50 percent according to statistics from the US Department of Education. Discussion of findings available at www.theatlantic.com/sexes/archive/2012/12/more-women-are-doctors-and-lawyers-than-ever-but-progress-is-stalling/266115.





Women are 47% of all law firm associates,<sup>6</sup> 39% of counsel,<sup>7</sup> and 57% of "other"<sup>8</sup> attorneys. Women of color (including Black, Asian, and Hispanic/Latina women) are about 24% of law firm associates and 8% of non-partner track attorneys (made up of both counsel and other full-time attorneys). And for those firms reporting numbers,<sup>9</sup> LGBTQI individuals (of all genders) are about 4% of associates and 2% of non-partner track attorneys with disabilities are less than 1% of all associates and non-partner track attorneys.

As discussed further below, this year's survey again shows that while women start off in essentially equal numbers as men at the entry level, they are not represented in similar numbers at the non-equity partner level and are even less represented at the equity partner level.

In this year's report, we also break out the hours, billing rates, and compensation to better understand disparities and to compare data across attorney types in the law firm. Overall, the data shows not only relatively equal representation of women among associates, but also relatively equal compensation, billing rates, and hours worked for female and male associates. This evidences the continued importance of investigating the variables that contribute to the underrepresentation of women at higher levels in the law firm despite the starting points of men and women in the law firm being relatively equal on a number of dimensions.

Associate & Non-Partner Attorney

Compensation<sup>10,11</sup>

For associates, the median man makes, on average, about

\$7,712 more a year than the median woman (\$190,614

6 Associates are partner-track attorneys who have not yet achieved partnership.

7 Counsel attorneys are those attorneys known often as Senior Counsel, Special Counsel, Senior Attorney, and are neither associates nor partners and are full-time, permanent salaried employees of the firm.

9 For LGBTQI individuals and persons with disabilities, a large hurdle to getting an accurate picture of their representation in the law firm is in the collection of data on these identities. About 10% of firms explicitly indicated that they do not collect demographic data on LGBTQI individuals, and about 36% indicated they do not collect data on persons with disabilities.

<sup>8</sup> This "other" category is a catchall for any other full-time, permanent salaried lawyers at the law firm that do not fit into any of the above categories, regardless of title.

<sup>10</sup> There may be increasing equity at the median compensation level, for individuals at the middle of the compensation distribution, but this pattern co-exists with a persistent pattern that women are not represented among the most highly compensated attorneys at law firms. Thus, the pay gap may have closed some in the middle (at the median), but has remained wide or is widening at the extremes. NAWL first mentioned this possibility in the 2017 report, but the 2017 data didn't allow for an investigation of this hypothesis. In response, this year's survey collected median compensation, allowing for comparison of the man and woman at the middle of their respective distributions, and mean or average compensation, which better captures and reflects the full range of compensation. Overall, we find little difference between the results based on median vs. mean numbers except at the level of equity partner, as discussed below. This suggests that the distributions are more equivalent between men and women until they reach the most highly compensated level in the law firm.

<sup>11</sup> As in the past and as mentioned previously, the response rate for the compensation and billing questions is lower than that for the other sections of the survey. For the compensation questions, we had an average n = 36, representing 18 percent of the AmLaw 200 and 37% of the responding firms. As with the overall response rate, those firms in Quartile 1 (AmLaw rank 1 - 50) were the least likely to respond, with only 11% of the responding firms in Quartile 1 providing the data compared to up to 37% of the responding firms in Quartile 3 (AmLaw rank 101 - 150) providing the data. Overall the response rates for these questions went down in 2018 even though the overall response rate for the survey as a whole increased.

vs. \$182,902, respectively). This pattern persists across the AmLaw 200, and on average, the median woman associate makes 96% of what the median man makes. When mean compensation is considered, the mean male associate makes about \$8,959 more a year than the mean female associate (\$192,536 vs. \$183,577, respectively). Thus, the mean female associate makes 95% of what the mean male associate makes. While this does represent a compensation gap, it suggests that men and women start off with relatively more equivalent compensation, and the gap widens over time.

For non-partner track attorneys, specifically counsel, the median man makes, on average, \$18,308 more a year than the median woman (\$237,500 vs. \$219,192, respectively). This pattern persists across the AmLaw 200, and on average, the median woman counsel makes 92% of what the median man makes. For mean compensation, the mean male counsel makes \$22,208 more a year than the mean female counsel (\$255,677 vs. \$233,469, respectively). Thus, the mean woman counsel makes 91% of what the mean man makes.

#### Associate & Non-Partner Attorney Hours<sup>12</sup>

Despite existing hypotheses to the contrary, many years of NAWL data have shown that there are no significant differences between the hours recorded by men and women attorneys at different levels and in different roles. This year's data show the same pattern. Among all lawyer types, including associates and non-partner track attorneys, there were no significant differences in total or billable hours recorded based on attorney gender. Gaps were up to but not greater than about 50 hours for the year, and there was no consistent pattern with respect to one gender recording more hours across the attorney types or the median and mean number of hours.

#### Associate Billing Rates<sup>13</sup>

As part of the discussion about observable differences in both compensation and billings for men and women in the law firm, differential billing rates have been suggested as one possible source of a disparity that creates gaps at subsequent steps. For the first time this year, NAWL collected data on median and mean billing rates for men and women. We found that men and women start with similar billing rates at the associate level but diverge by the time they reach nonequity and equity partner. At the associate level, there was essentially no difference between reported billing rates for men and women (\$408 vs. \$403, respectively).

<sup>12</sup> The response rate for the client billing questions was consistent with that for the other compensation-related questions, about n = 40. Billable hours include client billable hours and at most firms (75%) at least some pro bono hours. A minority of firms include administrative hours, service to firm, firm legal work, etc. as billable hours. Non-billable hours include administrative hours (94%), personal professional development (89%), business development (88%), practice group development (88%), all or some pro bono hours (65%), and some other categories of hours. Most firms said they compensate non-billable pro bono hours (74%), but a majority of firms said they didn't compensate other categories of non-billable hours explicitly. Some firms reported that they took non-billable hours into account in a non-formulaic way when reviewing attorneys and determining base and bonus compensation, recognizing exceptional service in these areas. 13 The response rate for billing rates questions was on par with that of the compensation data, with about n = 39.

#### Supporting Women on the Path to Partner

There are many practices that law firms can and do engage in that are meant to support women and diverse attorneys throughout their careers. These practices often focus on trainings, diversity and inclusion efforts, and implementing policies that help support women and families.

**Diversity Training & Bias Reduction Efforts:** Firms engage in a variety of firm-wide training programs that often serve similar purposes as similar training and programming provided inside of women's or diversity initiatives. For example, 76% of firms report offering firm-wide implicit bias training, 36% offer training on micro-aggressions or micro-inequities, 79% offer diversity and inclusion training, 90% offer business development training, 72% offer management training, and 82% offer leadership training. These are most commonly reported to be made available to attorneys of all varieties and sometimes also include law firm staff.

This year we also asked firms about bias reduction efforts. Specifically, we asked firms whether they had implemented bias interrupting procedures and processes meant to reduce the likelihood of biases (such as gender and racial biases) affecting evaluations and outcomes. A moderate majority of firms (65%) reported that they had implemented bias interrupting procedures in at least one of the following areas: recruitment, hiring, performance evaluation, promotion (pre-partnership), elevation to non-equity partner, and elevation to equity partner. Specifically, the earlier in the process, the more likely firms were to report that they engaged in bias interrupting processes and procedures: 89% at recruitment, 86% at hiring, 70% for performance evaluations, 58% at promotion, 44% at elevation to non-equity partner, and 54% at elevation to equity partner.

Firms reported that the types of procedures and processes they used included the following: structured interviews, the use of objective criteria for decisions, intentionally diverse decision-making teams, targeted recruiting to diversify the applicant pools,<sup>14</sup> the use of centralized hiring processes (e.g., HR), training on implicit biases for decision-makers, standardized content for interview questions, and more. A minority of firms provided this detail, so a more systematic collection and analysis of firm processes and procedures would allow for a more nuanced view of both what firms are doing and whether they align (and to what degree) with evidence-based best practices for bias reduction in employment settings. Of those firms who reported implementing such bias reducing processes and procedures, firms said they had been doing so for an average of 5 years, with a range from 1 to 20 years. In addition, some firms reported that

14 Multiple firms reported using Diversity Lab's 2016 Women in Law Hackathon idea of incorporating the Mansfield Rule, which says law firms should consider at least 30% women, LGBTQ+, and minority lawyers for significant leadership roles. Information available at http://www.diversitylab.com/pilot-projects/mansfield-rule.

they began with one stage or process and then added additional measures in subsequent years.

It is important to point out that firms are much more likely to engage in these bias reduction efforts at the earliest stages of an attorney's relationship with the firm, where the disparities between men and women are non-existent or small, but less likely to engage in similar efforts across the career lifespan where men and women's trajectories diverge. Thus, firms may have found ways to effectively reduce bias at the recruitment and hiring stages, but the stalled progress of women at subsequent levels combined with the decreased likelihood that firms are engaging in bias reducing processes at these higher level decision points evidences a need for firms to consider expanding their bias reduction efforts to decisions made once a woman is at the firm and advancing through her career.

Women and Family Friendly Policies: In addition to active women's initiatives aimed at training and skill development (discussed in more detail below), we also asked firms about policies that are understood to benefit and support families and women in particular, such as flexible and part-time work schedules and help transitioning back into work after a family leave. Most firms reported offering both flexible (97%) and parttime work schedules (100%), the option to work from home (88%), as well as on-ramping for those attorneys returning from leaves (71%). As reported above, most firms reported allowing partner-track attorneys who work part-time schedules to be promoted to partner, although it was more likely for firms to allow this for non-equity partnership promotion than equity partner promotion. In other words, most firms report allowing for flexible or part-time work schedules that don't prevent the possibility of future promotion in theory.

#### Pathways to Partnership

Central to establishing the credentials for elevation to equity partner is building one's book of business and attaining and maintaining client relationships. Discussion in the field has begun to home in on the importance of client relationships and credit processes and procedures for partner promotion decisions. Better understanding how law firms manage both the client relationships and credit processes allows for a more nuanced view of who is getting access to the crucial building blocks of a book of business that merits promotion to equity partner.

#### Client Relationships & Credit Origination

Another important component of career advancement in the law firm is the credit allocation and succession structures that affect how attorneys build their books of business. Most firms award credit for a variety of roles with respect to clients and matters at the firm: origination credit for relationship partners (86%), matter proliferation credit for partners eliciting new business from existing clients (71%), credit for

#### 2018 NAWL Survey at a Glance

- The likelihood that women will become equity partners remains on a sluggish upward trajectory over the last 12 years, with the data reflecting an increase from 15 percent in 2006 to 20 percent in 2018.
- The representation of women declines significantly as she rises in seniority at law firms, making up 47 percent of associates, 30 percent of non-equity partners (unchanged from last year) and 20 percent of equity partners.
- Among equity partners, women work as many hours as men, but their client billings are only 92 percent of those of men. The billing rates for men and women start at the associate level essentially equal but develop a 5 percent gap by the time attorneys reach non-equity partnership and persist at 5 percent into equity partnership.
- Entering classes of equity partners were 31 percent women, a slight drop from last year (33 percent) and a failure to meet the NAWL One-Third by 2020 Challenge for incoming equity partner classes.
- Men continue to dominate the top earner spots, with 93 percent of firms reporting their top earner is a man and of the 10 most highly compensated lawyers in the firm 1 or none of those top 10 is a woman.
- Women make up 25 percent of firm governance roles, 22 percent of firm-wide managing partners, 20 percent of office-level managing partners, and 22 percent of practice group leaders. This is the area of the most progress, but the numbers still lag behind the representation of women in the legal profession as a whole.
- Firms bias interruption interventions reflect the lack of progress at the higher levels of law firms, with firms reporting that the earlier in the process, the more likely they were to engage in bias interrupting processes and procedures: 89 percent at recruitment, 86 percent at hiring, 70 percent for performance evaluations, 58 percent at promotion, 44 percent at elevation to non-equity partner, and 54 percent at elevation to equity partner.
- The median woman equity partner earns 91 percent of what the median male equity partner makes and 88 percent of what the mean male equity partner makes. However, female equity partners generate 94 percent of the revenue that male equity partners generate.
- Among new relationship partners those that inherited clients due to transitions within firms' top 20 clients 36 percent are women compared to 20 percent of the current relationship partners for all top 20 clients.
- People of color, women of color, LGBTQ and persons with disabilities fare worse across all positions. People of color make up about 8 percent of equity partners, and only two percent of equity partners are women of color. Openly LGBTQI attorneys represent only 2 percent of equity partners, and persons with disabilities represent less than 1 percent. These percentages match those measured in 2015 after a dip in the representation of people of color in equity partnership last year.

management of the matter for partners and attorneys actively managing the client's matters (73%), and production credit for partners and attorneys billing hours on the client/matter (57%). Of the responding firms that have credit allocation structures, 90% of firms reported that they allow credit sharing, and 97% of those firms reported that they encourage credit sharing. They report that they do so by taking credit sharing into account for both bonus allocations (75%) and promotion reviews (80%). About a third of firms indicated that they had credit sharing requirements on at least some projects. Firms also offered that they further encourage credit sharing via the following: considering credit sharing in compensation in general not just for bonuses; developing a culture of credit sharing, starting with endorsement and encouragement by firm management; tracking credit sharing; and allowing attorneys to report matters and clients they worked on. Collecting more information from firms as to how they allocate credit and encourage credit sharing will better represent what firms, on average, are doing to this end and allow for discussion of whether what firms are doing is effective in increasing credit sharing overall as well as whether credit is being allocated to and shared with women and diverse attorneys in the same way as White men attorneys.

#### Managing Client Relationship Transitions

We asked firms about the succession planning practices

and procedures in an effort to uncover more detail about how firms handle the transfers of highly valuable relationships and status in the law firm. A slight majority (59%) of firms reported having formal succession plans that govern all or most successions, but firms were not willing, at the present time, to share those processes with NAWL.<sup>15</sup> With respect to succession processes and procedures, whether formalized or not, 82% of firms reported that they have extended their diversity efforts to consider succession processes and outcomes. In addition, 74% of firms reported that they had succession processes for transitions in practice group leadership, and 76% reported that they had succession processes for transitions on governance committee(s). Firms overwhelmingly (91%) reported that they allowed for relationships to be passed down to multiple new partners (i.e., shared), although the results below show that more recent transitions haven't resulted in greater numbers of relationship partners overall. All responding firms report that they have made efforts to encourage the incorporation of women into client relationships. Some firms report fostering the development of women's relationships with clients through the following activities: hosting events, networking and substantive, for women to interact with clients; fostering ongoing collaboration and relationship-building between women in the law firm and clients, particularly women, through projects, pro bono work, and the development of mentoring

<sup>15</sup> We asked firms reporting formal plans to share their plans, procedures, or practices to gather information to work toward best practices, but only one firm opted to upload any information.

relationships that pair women lawyers with clients; placing attorneys in-house at their client to serve as ambassadors for the firm and to learn the client and their business from the inside; and training aimed at business development and client relationships. Again, a minority of firms elected to submit responses to this open-ended request for firm practices that encourage client relationship-building for women. More sharing of firm practices and analysis of what firms are doing would better allow for development of best practices in this area.

As for who makes the decisions about a succession and when, there was no standardized approach across firms. Most firms reported that some combination of the client (58%), the current relationship partner(s) (72%), firm leadership (58%), and the practice group leaders(s) (59%) determine how the succession will be assigned, and many firms acknowledged that exactly how the process plays out is dependent on the specifics of the particular client/matter. Further, succession planning is also largely an individualized and ongoing process, with 63% of firms reporting that the eventual succession is considered throughout the relationship and tenure of the existing relationship partner. Only 27% of firms reported that they started thinking about it either as the existing relationship partner approaches retirement age and/or once they announce retirement. While the idiosyncratic nature of existing succession planning and the eventual transitions affords firms flexibility that may be, research suggests that less standardized, more subjective processes are ripe for the influence of biases that may lead certain groups or individuals to be disfavored in the process, such as women and racial/ethnic minorities.<sup>16</sup>

For the first time this year, NAWL asked firms about the relationship partners for their top 20 clients.<sup>17</sup> Specifically, firms were asked about recent transitions in relationship partners for these top clients and the representation of women and diverse attorneys among them. Among responding firms, 65% (63 firms) answered at least some questions about their relationship partners. On average, the total number of relationship partners assigned to the top-20 clients was 39. Of those 39, on average about 8 are women (21%), 2 are racial/ethnic minorities (5%), and none are openly LGBTQI or a person with a disability. Among the responding firms, about 57% reported they had relationship partner transitions for their top 20 clients in the last three years (Jan 1, 2015 – Dec 31, 2017). On average, firms reported that they had about 5 relationship partners change during that time, and the results reflect that the new relationship partners were more likely to be women than the departing relationship partners were (36% vs. 20%, respectively). There was no noticeable change in the representation of diverse attorneys between the departing and new

<sup>16</sup> See e.g., Melissa Hart's "Subjective Decision making and Unconscious Discrimination," 56 ALA. L. REV. 741 (2005).

<sup>17</sup> Firms were allowed to consider their top-20 clients based on their own, unreported, criteria.

relationship partners, and their representation was overall low, with racial/ethnic minorities, LGBTQI, and persons with disabilities all likely to be absent from both the departing and new relationship partner pools. The vast majority of these decisions were made at the firm rather than as directed primarily by the client.

#### Women as Non-Equity (Income) Partners<sup>18</sup>

As discussed in more detail in last year's report, NAWL documented the transition that many firms have made to a two-tier model of partnership.<sup>19</sup> One effect of a two-tier partnership model is that it creates an additional level before reaching the highest status (and most highly compensated) equity partner role, possibly making it harder to achieve equity partner in general, but particularly for women and other diverse groups who have been historically underrepresented. With the move over the last two decades toward two-tier partnership models in a majority of firms, percentage of women equity partners has not followed suit.<sup>20</sup> This year, 81% of our sample reported that they are two-tier firms.

As in past years, women are 30% of non-equity or income partners. Women of color (including Black, Asian, and Hispanic/Latina women) are 5% of nonequity partners. LGBTQI individuals of all genders are 2% of non-equity partners. Persons with disabilities are less than 1% of non-equity partners.

#### **Non-Equity Partner Compensation**

For non-equity partners, the median man makes, on average, about \$8,005 more a year than the median woman (\$309,279 vs. \$301,274, respectively). On average, the median woman non-equity partner makes 97% of what the median man makes. When considering mean compensation, the mean male nonequity partner makes about \$13,609 more per year

Women are 30% of non-equity or income partners. Women of color (including Black, Asian, and Hispanic/Latina women) are 5% of nonequity partners. LGBTQI individuals of all genders are 2% of nonequity partners. Persons with disabilities are less than 1% of non-equity partners.

women in non-equity partner and non-partner track than the mean female non-equity partner (\$323,008 attorney roles have reached or surpassed the 2006 vs. \$309,399, respectively). Thus, women non-equity

<u>NAWL Challenge</u> goal of 30% representation, but the partners make 96% of what the mean man makes. 18 Non-equity or Income Partners are those who receive more than half of their compensation on a fixed-income basis and may have voting rights on firm matters.

19 See e.g., 2017 NAWL Annual Survey on the Promotion and Retention of Women in Law Firms at page 4. Report available at http://www.nawl.org/page/2017. 20 We found that women may be slightly more likely to be equity partner in firms with a one-tier partnership model compared to a two-tier model (21% vs. 20%, respectively), consistent with past reports. Note, these numbers reflect a similar gap to that at the associate level, but it is a smaller gap than exists at the equity partner level where men's and women's salaries diverge more.

#### Non-Equity Partner Billing Rates

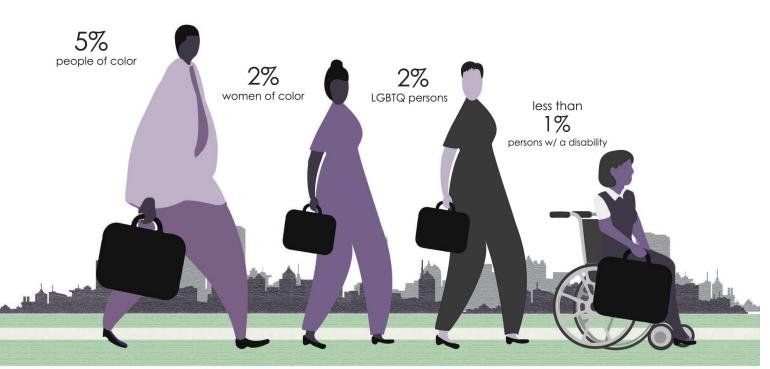
As suggested above, the billing rates of men and women diverge by the time they reach non-equity partner despite starting at the same point as associates. For non-equity partners, the median billing rate for men was \$585/hour compared to a median for women of \$554/hour. This billing rate gap is similar to that seen between male and female equity partners, and represents an average premium of about 5% for male non-equity partners compared to female non-equity partners.

#### Women as Equity Partners

The number of women equity partners and women in leadership roles in the law firm are of primary interest, given the focus of the *One-Third by 2020 Challenge* issued by NAWL in 2016.<sup>21</sup> This challenge renewed the call for the legal field to increase its representation of women to one-third of General Counsels of Fortune 1000 companies, of new law firm equity partners, of law firm lateral hires, and of law school deans. The *One-Third by 2020 Challenge* also calls for an increase of at least one-third for diverse women attorneys, including LBTQ and women of color, in every segment of the legal profession.

This year's survey shows a similar percentage of women equity partners compared to last year (20% vs. 19%, respectively).<sup>22</sup> Last year we reported that this represents an increase over the 15% - 16% recorded

22 In raw numbers, in 2017 there was an average of 29 female equity partners reported per firm compared to 33 in 2018. Although it's also of note that the average



<sup>21</sup> Full details of the One-Third by 2020 Challenge are available at http://www.nawl.org/nawl challenge.

10 years prior,<sup>23</sup> but it also highlights the uneven progression that often occurs whereby there may be larger increases over a period of time but incremental changes or plateaus in the short term.

#### **Diversity among Equity Partners**

The One-Third by 2020 Challenge explicitly identified goals related to the representation of diverse women attorneys in the legal profession, including women of color, LGBTQI individuals, and people with disabilities. This specific challenge is to increase the numbers (with a baseline at the 2016 numbers) of these diverse women by a third by 2020. In 2018, White women represent 89% of female equity partners and 18% of equity partners overall. In the aggregate, women of color (including Black, Asian, Hispanic/ Latina women) represent only about 12% of female equity partners, on average, and about 2% of all equity partners. For all equity partners, people of color (men and women) account for only 8% of equity partners<sup>24</sup> (Black equity partners are 2% of equity partners,

Asian equity partners account for 3%, Hispanic/ Latinx equity partners account for 2%, and all other racial/ethnic minorities combined account for about 1%).<sup>25</sup> This represents a bump up from 6% equity partners of color reported in 2017 and a return to the levels reported in 2015.<sup>26</sup> For those firms reporting numbers,<sup>27</sup> LGBTQI individuals were 2% of all equity partners and persons with disabilities were less than 1% of all equity partners. These numbers are unchanged since 2017.

#### **Equity Partner Compensation**

Ninety-three percent (93%) of responding firms<sup>28</sup> reported that their most highly compensated attorney is a man. Of the 10 most highly compensated lawyers in the firm, on average, 1 of those top 10 is a woman. We also asked firms about their top 10 revenue-generators, and of those 10, firms reported that there was, on average, 1 woman among them. Most firms reported no women in the ranks of those attorneys generating the most revenue or those being the most highly compensated.

Taken with the above-reported data on compensation at the associate and non-equity partner levels, across all types and levels of attorneys, men made more per year than women, and this pattern existed without

number of equity partners reported overall was also higher in 2018 (153 in 2017 vs. 160 in 2018).

23 2017 NAWL Annual Survey, available at http://www.nawl.org/page/2017.

26 https://www.nawl.org/page/2015-nawl-survey.

27 As a reminder, for LGBTQI individuals and persons with disabilities, a large hurdle to getting an accurate picture of their representation in the law firm is in the collection of data on these identities. About 10% of firms explicitly indicated that they do not collect demographic data on LGBTQI individuals, and about 36% indicated they do not collect data on persons with disabilities.

28 The response rate for these questions compared to the more detailed compensation questions was slightly higher, ranging from n = 51 to n = 56, depending on the question. This represents about 25% of the AmLaw 200 and 55% of the responding firms.

<sup>24</sup> As a reminder, people of color (including but not limited to Black, Asian, Hispanic/Latinx individuals), make up an average of 24% of associates. And their representation is higher at higher-ranked firms. Quartile 1 and 2 firms (AmLaw 1 - 100) report 26% associates of color, whereas the bottom two quartiles report about 20% associates of color.

<sup>25</sup> There was a noticeable difference especially in the percentages of Asian equity partners at AmLaw 50 firms (Quartile 1). These firms reported higher percentages of Asian equity partners (5% compared to about 2% in the other quartiles). For all other racial/ethnic groups, there was no noticeable difference across the AmLaw 200.

significant variance across the AmLaw 200 for all numbers before reaching equity partner, suggesting attorney types and levels. that the smaller but persistent gap that begins at the

Among equity partners, the median man makes, on average, about \$64,320 more a year than the median woman (\$750,215 vs. \$685,895, respectively).<sup>29</sup> On average, the median woman equity partner makes 91% percent of what the median man makes. Among equity partners, the mean man makes about \$99,421 more a year than the mean woman (\$847,266 vs. \$747,845, respectively). Thus, the mean woman equity partner makes 88% of what the mean male equity partners makes. These findings support the hypothesis that the compensation distribution skews higher for men than for women as evidenced by a greater pay gap when using the mean vs. median compensation numbers. This offers additional support to the data that shows that men tend to have near exclusive domain over the most highly compensated roles in the firm. In addition, it highlights that only looking at the median numbers may hide the differences in the distribution of compensation, particularly at the high end where women are less likely to be represented. Further, this difference only appears among the most highly compensated attorneys. There is no significant difference between median and mean compensation

numbers before reaching equity partner, suggesting that the smaller but persistent gap that begins at the associate level expands much more dramatically at the level of equity partner.

#### **Equity Partner Hours**

As discussed previously, for the median female and male equity partners, there was essentially no difference in median billable hours on average (1532 vs. 1542 hours, respectively). No significant difference is recorded if mean hours for women and men are considered instead (1496 vs. 1507, respectively). For total hours there was also no significant difference between the median woman and man in hours recorded (2178 vs. 2134 hours, respectively). Again, the mean total hours also did not differ significantly between women and men (2215 vs. 2232, respectively).

#### Equity Partner Client Billings<sup>30</sup> & Billing Rates

For equity partner median client billings, the median male equity partner bills more than the median woman (\$1,348,306 vs. \$1,262,683, respectively). On average, the median woman equity partner bills 94% of what the median man bills. The mean client billings show a similar pattern. It has been suggested before that disparities in compensation, at least among equity

<sup>29</sup> Equity partners at Quartile 1 firms bill more hours than those in the other quartiles, with Quartile 1 equity partners averaging about a median of about 1625 billable hours and the equity partners in the other quartiles averaging a median 1512 billable hours. Across the quartiles, there appears to be no significant difference in hours billed between men and women equity partners. For total hours, Quartile 1 equity partners again record more hours compared to those from the other quartiles (average 2392 total hours vs. 2080 total hours). For total hours, there appear to be some small differences between men and women equity partners at the higher ranked firms, with women equity partners recording greater median total hours than men (in Quartile 1, women recorded a median of 2442 total hours to men's median of 2342 total hours). This effect reverses when mean hours are considered such that men record a higher mean total hours compared to women (in Quartile 1, 2676 vs. 2442, respectively).

<sup>30</sup> NAWL defined client billings as the dollar amount credited by the firm to a given equity partner as their billings. Variations on what NAWL was trying to identify with its definition of "client billings" include origination credit, fee credit, book of business, credited revenue, and similar terms.

#### 2018 NAWL Survey Report

partners, may align with differences in client billings between men and women. In other words, men bill more and thus they are compensated more. On the other hand, this raises questions as to how client billings are generated and how credit is assigned for client billings. For this reason, in this year's survey, we attempted to dig deeper into this question of what explains these disparities by collecting data on billing rates. In other words, one reason for higher billings could be a difference in the rates that underlie the billings. However, when compared to the pay gap at the equity partnership level (91% at the median and 88% at the mean), a discrepancy remains that cannot be explained by billing generation.

As discussed above, we found that men and women start with similar billing rates as associates but diverge by the time they reach non-equity partner. While billing rates go up overall for equity partners compared to non-equity partners, a gap between men and women remains. The overall median billing rate for equity partners was \$683/hour, and the overall mean billing rate for equity partners was \$676/hour. By gender, the median billing rate for male equity partners was \$686/hour compared to a median of \$655/hour for women equity partners. This, again, represents an average premium of about 5% for male equity partners compared to female equity partners.

When hours and billing rates are taken together, the fact that women work the same hours as men but bill at 95% the rate of men at the same level could explain, in part, why women equity partners record 94% of the client billings of male equity partners. To get at perceptions of why these billing rate differences may exist, we asked firms which common anecdotal explanations they thought were tied to any billing rate differences that may exist between men and women. Most firms reported that they thought that men and women working in practice groups with different billing rates (65%) and men's longer tenures in law firms (73%) explained differences in billing rates of men and women. More work needs to be done to determine the more precise relationship between hours worked, billing rates, client billings, and compensation, particularly at the level of equity partner.

### New Equity Partners & Availability of Partner-Track

Firms were asked to report how many new equity partners they promoted in the previous two years (2016 and 2017). On average, 16 individuals were

This billing rate gap is similar to that seen between male and female equity partners, and represents an average premium of about 5% for male non-equity partners compared to female non-equity partners. those 16 new equity partners, about 5 (31%) were women. This is similar to 2017 when firms reported that they had promoted, on average, 15 attorneys to equity partner in the prior two years, and 1/3 of those were women. In addition, a third of the new equity partners were homegrown (i.e., started their careers at the firm), and 13% of the new equity partners spent three or fewer years at the firm before promotion to equity partner, suggesting some recruitment of laterals that were expected to advance to equity partner. For homegrown partners, about 41 percent were women (2 of 5), and for recent laterals who were promoted to partner, 50 percent were women (1 of 2), on average. These numbers match those reported in 2017, providing another year of data suggesting that some firms in recent years may be promoting more gender equity in newer classes of equity partners, in line with the One-Third by 2020 Challenge.

In addition, most firms reported allowing partnertrack attorneys who work part-time schedules to be promoted to partner, although it was more likely for firms to allow this for promotion to non-equity partnership (95%) compared to equity partnership (89%). All responding firms with non-partner track attorneys reported allowing non-partner track attorneys, such as counsel attorneys, to transition to the partner track. In theory, this access could also

promoted to equity partner during that period. Of serve to increase the diversity of the partnership track.

#### Women in Leadership Roles in the Law Firm

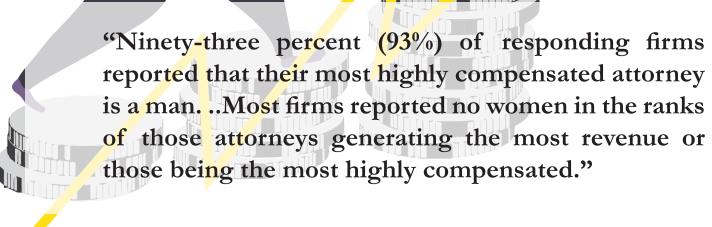
#### Women on Firm Governance Committees

Much like the continued underrepresentation of women in the equity partner ranks, women have been consistently underrepresented among the leadership positions in the law firm, such as on the governance committee(s) that oversee the operations of the firm and often set compensation. While the particular name and function of the highest-level governance committee varies across firms, the responding firms reported an average membership for those governance committees of 12 people, and, on average, 3 of those 12 (25%) are women. These numbers are exactly the same as those reported in 2017.<sup>31</sup> In the last 10 years, the participation of women on these committees has increased substantially, with the 2017 and 2018 numbers nearly double those from 2007.32 This increase in representation for women has not resulted in similar levels of representation for other diverse groups. The average governance committee of 12 people has only one person of color and no LGBTQI person or person with a disability on average.

For 47% of responding firms, the highest governance committee sets compensation for equity partners. The other 53% of firms reported having dedicated compensation committees, and the average compensation committee looks similar to the

31 This year's data did show that Quartile 1 firms (AmLaw 1 – 50) reported greater representation of women on governance committees compared to both their numbers last year and firms in the other quartiles this year. Quartile 1 firms reported 37% of their governance committee members were women compared to the 20 - 25% women reported by firms in the other three quartiles.

32 2017 NAWL Annual Survey, available at http://www.nawl.org/page/2017.



<u>93%</u>

of top earners are men

high-level governance committees.<sup>33</sup> The average membership of the compensation committee is 11 people, and the average number of women is 3 of those 11(27%). The numbers for women are the best of any underrepresented group. At best 1 of 11 members, on average, is likely to be a person of color, and none are likely to be openly LGBTQI or a person with a disability. These numbers, again, mirror those from 2017.

#### Women as Managing Partners & Practice Group

#### Leaders

In addition to serving on governance committees, managing partner roles at the firm, office, and practice group levels provide additional leadership opportunities. The average firm has two firm-wide managing partners, and most firms have no women, people of color, LGBTQI individuals, or persons with disabilities among those firm-wide managing partners. Only 22% of firms report having a woman among their firm-wide managing partners. In addition, only 9.5%

33 The size of Governance and Compensation Committees do differ across the AmLaw 200 given the differences in firm size. Quartile 1 and 2 firms (AmLaw 100) average 14 members on the Governance Committees compared to about 10 members on average for Quartile 3 and 4 firms. The AmLaw 100 averages about 12 members on dedicated Compensation Committees compared to an average of 9 members for firms in the AmLaw 101 - 200.

of firms have a person of color, 6% of firms have an LGBTQI individual, and 1.5% of firms have a person with a disability serving in this role.

Most firms (90%) also report having office-level managing partners. On average, firms have 12 of these office-level managing partners, and, on average, 2.5 are women (20%), one is a person of color (8%), and none are LGBTQI or a person with a disability. Finally, 98% of firms report having practice group partners/leaders. Most firms (86%) report allowing for co-leadership of practice groups. Firms have an average of 25 practice group partners/leaders, and of those, 6 are women (24%), two are people of color (8%), and none are LGBTQI or a person with a disability.

Across the governance positions in the law firm, in terms of committees and managing positions, the results are consistent, with women representing about a quarter of all of these positions.

#### Time to Rethink the Women's Initiative?

As in 2017, all but one responding firm reported having a women's initiative (99%), and this number represents firms across the AmLaw 200 rankings. In addition, firms reported that their initiatives had been in place for an average of 13 years, with a range from two years to a few decades.<sup>34</sup> Overall, women's initiatives, once implemented, report similar longstanding practices over time, but it is unclear what impact, if any, these efforts have had on women's representation in more senior and higher status positions in the law firm.

Women's Initiative Mission & Objectives: Most (91%) firms report that they have mission statements specifically for their women's initiatives. Ninety-percent (90%) report that their women's initiative is part of the overall strategic plan of the firm. In addition to women's initiatives being incorporated into the strategic vision of the law firm, essentially all firms also report that they have specific objectives for their initiatives (93% percent). Finally, 96% percent of firms report that their women's initiative is part of the firm's diversity plan.

Women's Initiative Budget & Resources: In terms of resources, 60% of firms report that they have specific budgets for their women's initiatives. Other firms indicated that their women's initiative budgets fall under the umbrella of their broader diversity budgets or did not report any specific budget numbers for their women's initiative.<sup>35</sup> For the firms that have dedicated women's initiative budgets, the average budget is \$176,971, and the range of budgets is \$15,000 to \$1.5 million. Firms in higher-ranked quartiles reported larger budgets than those in lower-ranked quartiles. Firms in Quartile 1 (AmLaw 1 - 50) reported an

<sup>34</sup> Last year we reported a suggestive finding that firms that reported more mature women's initiatives had greater percentages of women equity partners. This year, by capturing how many years the initiatives had been in place, we could examine the relationship between years of existence and the numbers of women equity partners. We found no statistical relationship between the tenure of a firm's women's initiative and the percentage of women equity partners.

<sup>35</sup> If firms indicated that their reported budgets were not funds earmarked specifically for the women's initiative, their reported numbers were not included in the calculations. We asked firms to report only budgets designated specifically for women's initiatives.

average budget of 3335,834 compared to 217,712 for firms in Quartile 2 (AmLaw 51 – 100), 79,598 for firms in Quartile 3 (AmLaw 101 – 150), and 100,129for firms in Quartile 4 (AmLaw 151 – 200).

Women's Initiative Organizational Infrastructure & Support: Firms take different approaches to the structural integration of their women's initiatives, but 74% report having a hybrid structure that involves both firm-level budget and strategy, as well as specific activities (and sometimes budget and strategy) determined at a more local level. Specifically, nearly all firms (95%) report that women's initiative leaders are in place at the firm level, in the form of a firmlevel Chair, firm-level Co-Chairs, and/or a firm-level planning committees. Some firms report multi-layered levels of leadership from the firm-level down to the office level, but it was clear that nearly all firms view the head of the initiatives as existing at the firm-level. In addition to firms providing firm-level support and resources, many firms report that there is also active monitoring of the career trajectories of women in the firm. For example, most firms report monitoring promotion rates (83%) and succession plans (61%) by gender, taking into account the performance of women compared to men in these processes. Almost half of firms report monitoring work assignments by gender (46%).

Women's Initiative Participation: There

is

widespread participation in the women's initiative programming across the different levels and positions in the firm. All firms report relatively high rates of participation from women in general, across attorney type. For example, 83% of firms report that at least half of their female equity partners participate in women's initiative events and programs and 91% of firms report that at least half of their women associates participate. In most firms, access to women's initiatives is not limited to partner-track attorneys, and firms report that 75% of women counsel and 54% of other fulltime attorneys participate in the programming.

Women's Initiative Programming: All firms report that their women's initiatives sponsor programming at least quarterly and 55% of firms hold programs monthly or weekly. A vast majority of firms report that their women's initiatives offer programming around business development (98%) and development of "soft skills" such as negotiation and navigating the law firm (87%), but only about a third offer programming around developing legal and research skills. Further, most firms' women's initiatives offer women management and leadership training (65% and 76%, respectively). Besides programming around business development, the most common activity for women's initiatives is networking, including opportunities for women to network with clients (95%) and for women within the firm to network with each other (99%). Women's initiatives are more likely to have mentorship

programs than sponsorship programs (85% vs. 50%, respectively). Finally, most firms report that their women's initiatives highlight the achievements of women in the firm (87%), advocate for women- and family-friendly policies (79%), and advocate for individual women in the firm (70%).

Women's Initiative Impacts & Outcomes: Nearly all firms (91%) report that they attempt to measure the outcomes of their women's initiatives, and they look at factors like the business development of women in the firm, women's relationship development with clients, others in the firm, mentors, etc., as well as the particular, it is likely that firms still struggle to be strategic with their programming such that they do not tie it effectively to the goals and objectives they identify, they do not direct it specifically at different audiences (e.g., attorney type) with unique needs, or the programming is not deep or targeted enough to produce changes in the law firm where women's advancement is most affected.<sup>36</sup> Overall, what firms report doing within their women's initiatives has changed little since at least the comprehensive study of women's initiatives published by NAWL in 2012, and the progress of women in the law firm, especially at the higher levels, has remained similarly stalled. As called

The median 91% what woman equity partner makes percent of the median the makes man makes. Among equity partners, mean man about \$99,421 more than the woman (\$847,266 \$747,845, а year mean vs. respectively). Thus, the makes 88% of mean woman equity partner what the mean male equity partners makes.

representation of women in leadership positions. On the other hand, despite the now universal adoption of women's initiatives, reports of near universal adoption of mission statements and objectives, and high rates of participation and diverse programming for women attorneys across their career spans, there is little evidence that these initiatives have led to substantial increases in the representation of women at the highest levels of the law firm. As suggested in NAWL's 2012 report on the efficacy of women's initiatives in for in 2012, firms may need to rethink their women's initiatives and broaden diversity initiatives to more effectively utilize them in service of supporting and advancing women and diverse attorneys.

### Promising Trends for Women's Advancement in Law Firms

While the percentage of women equity partners (and diverse equity partners) has not changed dramatically in a decade, there are some promising results that may suggest focused attempts to increase representation that will translate into greater representation of women going forward. These results also show that firms seem to be taking NAWL's 2020 Challenge seriously. Among recently promoted equity partners - those promoted in the last two years - about one-third (31%) are women compared to 20% overall. In 2017, 33% of new equity partners were women compared to 19% overall.

Among new relationship partners - those that inherited clients due to transitions within the top 20 clients -36% are women compared to 20% of the current relationship partners for all top 20 clients.

Over the last decade, women have seen significant increases in their representation in firm leadership roles, including service on governance committees and compensation committees, and as managing partners and practice group leaders.<sup>37</sup> This year, firms in the AmLaw 50 reported that 37% of their governance committee seats were filled by women, an increase from their own numbers from last year, as well as a greater percentage than that reported by the rest of the AmLaw 200 this year or last.

#### Continued Challenges for Women in Law Firms

On the whole, the numerical results of the 2018 survey are an almost exact replication of those from 2017. This may not come as a surprise, as NAWL has observed that the progress women have made in law firms over the last decade has been slow and incremental at best, and law firms continue to face challenges with respect to supporting and promoting women. Despite universal adoption of women's initiatives, a ramping up of broader diversity initiatives, and increased awareness of the challenges women face in their advancement through the law firm, there has been little progress made in recent years that is reflected in noticeable increases in representation of women and diverse attorneys, particularly at the more senior and higher status levels of the law firm. As law firms confront this reality, it has become clear that there is more that needs to be done to interrogate the processes and decision points for women's advancement to better identify where and why women's progress stalls during their careers. And what's needed most to do this is a willingness of firms to share their practices and data to provide as full a picture as possible of what is happening as attorneys progress through the law firm over the course of their careers. NAWL hopes this year's report will serve as a call to action for firms - a call to share both practices and data that can help the profession, as a whole, better understand the problem of stalled advancement and the potential solutions to that problem by more completely capturing what firms are doing that is and is not producing changes in status quo for women in the law firm.

As discussed above, there are multiple areas where

data would help flesh out our collective understanding of what mechanisms are holding women back despite increased awareness of the problem and expanding diversity efforts. The areas that call for more research include the practices, policies, and procedures of law firms with respect to employment decisions, such as hiring, evaluation, and promotion; bias reduction in employment decisions; credit allocations and credit sharing; parental leave management; succession planning and implementation; encouragement of relationship building with clients, particularly for women and diverse attorneys; client billings and billing rates; and monitoring of promotion, succession, and work assignments for diversity, including gender and race. Many firms are hungry for best practices, and it is the collection of baseline data on practices, policies, and procedures currently in place that allow for a comparison to the evidence on best practices from the organizational research literature, but also allow for benchmarking the existing practices of law firms and identifying innovative practices and procedures that may not be well-known externally. NAWL hopes that law firms will take this call for more information seriously and consider ways that they can contribute to the general knowledge about the practices, policies, and procedures that can increase the rate of advancement of women and other underrepresented attorneys in law firms across the profession.

#### Author Bio:

Destiny Peery, Associate Professor of Law at Northwestern University Pritzker School of Law, holds a JD and PhD in social psychology from Northwestern University. She writes, teaches, and speaks on issues of stereotyping, prejudice, discrimination, and diversity, equity and inclusion in law, including gender bias and implicit biases. AUTHENTICATED U.S. GOVERNMENT INFORMATION

#### Public Law 115–273 115th Congress

#### An Act

Oct. 31, 2018

[H.R. 6758]

To direct the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, in consultation with the Administrator of the Small Business Administration, to study and provide recommendations to promote the participation of women, minorities, and veterans in entrepreneurship activities and the patent system, to extend by 8 years the Patent and Trademark Office's authority to set the amounts for the fees it charges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018" or the "SUCCESS Act".

#### SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) Patents and other forms of intellectual property are important engines of innovation, invention, and economic growth.

(2) Many innovative small businesses, which create over 20 percent of the total number of new jobs created in the United States each year, depend on patent protections to commercialize new technologies.

(3) Universities and their industry partners also rely on patent protections to transfer innovative new technologies from the laboratory or classroom to commercial use.

(4) Recent studies have shown that there is a significant gap in the number of patents applied for and obtained by women and minorities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States has the responsibility to work with the private sector to close the gap in the number of patents applied for and obtained by women and minorities to harness the maximum innovative potential and continue to promote United States leadership in the global economy.

#### SEC. 3. REPORT.

(a) STUDY.—The Director, in consultation with the Administrator and any other head of an appropriate agency, shall conduct a study that—

(1) identifies publicly available data on the number of patents annually applied for and obtained by, and the benefits of increasing the number of patents applied for and obtained

Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018. 15 USC 1 note. by women, minorities, and veterans and small businesses owned by women, minorities, and veterans; and

(2) provides legislative recommendations for how to-

(A) promote the participation of women, minorities, and veterans in entrepreneurship activities; and

(B) increase the number of women, minorities, and veterans who apply for and obtain patents.

(b) REPORT.-Not later than 1 year after the date of the enactment of this Act, the Director shall submit to the Committees on the Judiciary and Small Business of the House of Representatives and the Committees on the Judiciary and Small Business and Entrepreneurship of the Senate a report on the results of the study conducted under subsection (a).

#### SEC. 4. EXTENSION OF FEE-SETTING AUTHORITY.

Section 10(i)(2) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 319; 35 U.S.C. 41 note) is amended by striking "7-year" and inserting "15-year".

#### SEC. 5. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Small Business Administration.

(2) AGENCY.—The term "agency" means a department, agency, or instrumentality of the United States Government.
(3) DIRECTOR.—The term "Director" means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Approved October 31, 2018.

CONGRESSIONAL RECORD, Vol. 164 (2018):

Oct. 11, considered and passed Senate. DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2018):

Oct. 31, Presidential statement.

LEGISLATIVE HISTORY-H.R. 6758:

HOUSE REPORTS: No. 115-966 (Comm. on the Judiciary).

Sept. 25, considered and passed House.



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# Patent Applicants With Female Names Face Bias: Yale Study

By Tiffany Hu

Law360 (April 13, 2018, 5:52 PM EDT) -- Inventors are less likely to get their patents approved when they have "common" female names, according to a recent study by the Yale School of Management.

In a new study published earlier this month, Yale researchers studied patent applications obtained from the U.S. Patent and Trademark Office and found what they identified as bias by examiners against inventors with female names. The study showed that those with distinctly female names had an 8.2 percent lower chance of getting their applications approved.

However, the difference of likelihood of approval dropped to 2.8 percent when it was tougher for the examiner to guess the gender of the inventor, according to the study.

In addition to fewer patents being granted to women, researchers also found that examiners added in more words for applications from women inventors, thereby narrowing the scope for which the patents covered.

And when all was said and done, the researchers said approved patents from women inventors were maintained less often by those who were assigned the patents. The patents are also cited less often by other inventors and patent examiners, according to the study.

According to the Yale Insights blog, Kyle Jensen, one of the researchers, said, "It's surprising just how ubiquitous the negative effects are. It's not just across one metric. They are less likely to have their patents accepted. Fewer claims are granted. The claims are longer, less often maintained, less often cited."

Researchers said closing the patent approval gap is crucial to driving innovation and economic growth.

One of the suggestions put forth by researchers is to make the patent applications anonymous, so that there would be less chance of examiner bias. This includes listing only the inventors' initials in the applications or providing an anonymous platform for the inventors and examiners to communicate, they said.

Colleen Chien, a professor at the Santa Clara University School of Law, told Law360 on Monday that she found the researchers' findings about common versus rare female names "particularly" interesting, saying that the study suggests that "gender detectability — not just gender of an inventor — matters."

"I think innovation prides itself on being a meritocracy — but this data suggests that administrative processes at the USPTO are not necessarily invulnerable to broader social disparities and stereotypes," Chien said. "Like the work of others about who becomes an inventor, the study troublingly suggests that there's a gap between women and men when it comes to patenting, and that personal traits of the inventor that have nothing to do with ability or talent end up making a difference."

The U.S. patent system has been weakened by "a yearslong onslaught" from legislative changes,

court decisions and negative rhetoric in recent years, the USPTO Director Andrew Iancu **said in a speech** earlier this week.

While Iancu's focus has been on improving the inter partes review process established by the America Invents Act, it appears that he is **also looking** to reshape the patent examination process as well.

--Additional reporting by Chuck Stanley and Ryan Davis. Editing by Alanna Weissman.

*Update: This story has been updated to include a comment from Santa Clara University law professor Colleen Chien.* 

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# Delivering through Diversity

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## **Executive** summary

Since *Why Diversity Matters* was published in 2015, we have seen growing awareness of the business case for inclusion and diversity (I&D). Widely cited, the report has influenced I&D policy-setting and transformation efforts by corporations, the public sector, and third-sector organizations worldwide. While social justice, legal compliance, or maintaining industry-standard employee environment protocols is typically the initial impetus behind these efforts, many successful companies regard I&D as a source of competitive advantage, and specifically as a key enabler of growth.

Yet progress has been slow. The 346 companies in our 2015 research (mostly based in the US and UK) have increased average gender representation on their executive teams only 2 percentage points, to 14%, and ethnic and cultural diversity by 1 percentage point, to 13%. What's more, many companies are still uncertain as to how they can most effectively use I&D to support their growth and value creation goals.

Delivering through Diversity both tackles the business case and provides a perspective on how to take action on I&D to impact growth and business performance. This latest research reaffirms the global relevance of the correlation between diversity (defined here as a greater proportion of women and ethnically/culturally diverse individuals) in the leadership of large companies and financial outperformance. The research is based on a larger data set of over 1,000 companies covering 12 countries and using two measures of financial performance – profitability (measured as average EBIT margin) and value creation (measured as economic profit margin). As importantly, we studied the I&D efforts of 17 companies representing all major regions and multiple industries to have a more granular view of where in the organization diversity matters most, and crucially, how leading companies have successfully harnessed the potential of I&D to help meet their growth objectives.

Re-examining the business case for I&D, we found:

- The relationship between diversity and business performance persists. The statistically significant correlation between a more diverse leadership team and financial outperformance demonstrated three years ago continues to hold true on an updated, enlarged, and global data set.
- Leadership roles matter. Companies in the top-quartile for gender diversity on executive teams were 21% more likely to outperform on profitability and 27% more likely to have superior value creation. The highest-performing companies on both profitability and diversity had more women in line (i.e., typically revenue-generating) roles than in staff roles on their executive teams.
- It's not just gender. Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability. That this relationship continues to be strong suggests that inclusion of highly diverse individuals and the myriad ways in which diversity exists beyond gender (e.g., LGBTQ+, age/generation, international experience) can be a key differentiator among companies.
- There is a penalty for opting out. The penalty for bottom-quartile performance on diversity persists. Overall, companies in the bottom quartile for both gender and ethnic/ cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in our data set. In short, not only were they not leading, they were lagging.

 Local context matters. On gender, while there is plenty more to do, some companies lead the way in both absolute average diversity and representation in top-quartile – Australia, UK, and US companies make up over 70% of this group. On ethnicity, there is less global progress, but South African and Singaporean companies have a higher representation in the top-quartile versus overall representation in data set, suggesting material progress on ethnic diversity.

Lessons learned from the 17 leading companies we studied – among those that are engaging effectively with I&D – support our earlier perspective on what likely drives the relationship with performance: that more diverse companies are better able to attract top talent; to improve their customer orientation, employee satisfaction, and decision making; and to secure their license to operate. While progress has been slow on average, individual companies have made real strides in improving their I&D outcomes and in effectively using these results to influence business outcomes. From their experiences, we identified four imperatives for delivering impact through I&D:

- **Commit and cascade.** CEOs and leaders must articulate a compelling vision, embedded with real accountability for delivery, and cascade down through middle management.
- Link I&D to growth strategy. The I&D priorities must be explicitly defined based on what will drive the business growth strategy. Leading companies do this in a data-driven way.
- Craft an initiative portfolio. Initiatives in pursuit of the I&D goals should be targeted based on growth priorities, and investments made to both hard- and soft-wire the programs and culture of inclusion required to capture the intended benefits.
- Tailor for impact. I&D initiatives should be tailored to the relevant business area or geographic region context to maximize local buy-in and impact.

This work sheds light on how companies can use diversity as an enabler of business impact. It articulates a clear opportunity for companies to promote I&D in senior decision-making roles, and specifically in line roles on executive teams. As was the case with *Why Diversity Matters*, correlation does not demonstrate causation. However, the statistically significant relationship observed between greater levels of diversity in the leadership of a large corporate organization and financial performance does prompt action. We encourage companies to examine the case for I&D and how it is directly relevant to their business, as leading companies are already doing.

Designing a truly effective I&D strategy is no small undertaking. But we and the many companies we studied believe the potential benefits of stronger business performance are well worth the effort.









### Introduction

Many successful companies regard I&D as a source of competitive advantage. For some, it's a matter of social justice, corporate social responsibility, or even regulatory compliance. For others, it's essential to their growth strategy.

It makes sense that a diverse and inclusive employee base – with a range of approaches and perspectives – would be more competitive in a globalized economy. A small but increasing number of companies have recognized an opportunity to go even further, reframing I&D as an enabler of two of the foremost goals for CEOs: growth and value creation.<sup>1,2</sup>

Yet progress is slow. Many companies struggle to materially increase representation levels of diverse talent, gain an understanding of where in their organizations diversity matters most, and create truly inclusive organizational cultures to reap the benefits of diversity. The tangible impact these efforts have on organizational effectiveness, but also on business performance, remains elusive. For many global CEOs, the extent to which taking action on I&D can contribute to their path to growth remains unclear.

*Why Diversity Matters* research established a statistically significant correlation – without claiming a causal relationship – between greater levels of diversity in company leadership and a greater likelihood of outperforming the relevant industry peer group on a key financial performance measure, profitability. *Why Diversity Matters* was our firm's most downloaded publication on diversity in 2016, demonstrating an increasing interest in the business case for diversity. Widely cited, the report has influenced I&D policy-setting and transformation efforts by corporations, the public sector, and third-sector organizations worldwide. Other reports, including our *Women Matter* series as well as research conducted by other organizations, have made similar findings. Corporate leaders we speak to appreciate the business argument for I&D. However, most wonder how to make I&D work for their firms and, more specifically, the extent to which this can support their growth and value creation goals.

Corporate leaders increasingly accept the business imperative for I&D, and most wonder how to make it work for their firms and support their growth and value creation goals.

Gartner 2017 CEO survey.
 <sup>2</sup> For more on how companies

can design effective growth strategies, see Chris Bradley, Martin Hirt, and Sven Smit, "Have you tested your strategy lately?" *McKinsey Quarterly*, January 2011. For a discussion of value creation, see Chris Bradley, Angus Dawson, and Sven Smit, "The strategic yardstick you can't afford to ignore," *McKinsey Quarterly*, October 2013.

- <sup>3</sup> Net Operating Profit Less Adjusted Taxes – (Invested Capital x Weighted Average Cost of Capital). Previous releases of our preliminary findings used absolute economic profit as the proxy for value creation. Please see the Methodology appendix for further details.
- <sup>4</sup> Sylvia Ann Hewlett, Melinda Marshall, and Laura Sherbin, "How Diversity Can Drive Innovation," *Harvard Business Review*, December 2013.

To shape answers to this, we built on our 2015 research to expand our data set to more regions globally and examine an additional financial performance measure. We explore not only *whether* and *where* in the organization diversity matters, but also *how* companies can put it to work in pursuit of their business goals. Our latest research improves our understanding of the correlation between diversity and company financial performance, and of the actions companies can take to develop a robust I&D strategy, in five ways:

- *Expanded, updated data set.* We nearly tripled the number of countries and companies researched to 12 countries and more than 1,000 companies globally.
- *Exploring diversity at different levels of the organization.* We correlated financial performance with the diversity of a company's total workforce, executive team, and board of directors, and within executive teams, we contrasted diverse representation in line versus staff roles.
- Additional lens on financial performance. We measured profitability, using EBIT margin, and longer-term value creation, using economic profit margin.<sup>3</sup>
- Broader, more holistic understanding of diversity. We considered through qualitative research how both inherent (e.g., gender, ethnicity and, where possible, sexual orientation) and acquired (e.g., international work experience, education and training, socioeconomic background) forms of diversity relate to financial performance.<sup>4</sup>
- Insight into company best practices. We developed in-depth profiles of 17 leading companies, articulating how they use diversity and inclusion to create value in their specific industry and geographic contexts.

Our latest research improves our understanding of the correlation between diversity and company financial performance and of the actions companies can take to develop a robust I&D strategy.

This research extends and deepens the quantitative correlation analysis approach taken by *Why Diversity Matters*, and complements it with qualitative company research, with the practical aim of sharing insights from the experiences of companies effectively engaging with I&D. The same caveats apply to the correlation analyses reported here as did in *Why Diversity Matters*: correlation is not causation. While not causal, we observe a real relationship between diversity and performance that has persisted over time and across geographies. There are clear and compelling hypotheses for why this relationship persists, including improved access to talent, enhanced decision making and depth of consumer insight, and strengthened employee engagement and license to operate. We encourage businesses to examine the case for I&D at a more granular level to craft an approach that is tailored to their business, learning from leading diverse companies around the world as to ways to do this with high impact.



It makes sense that a diverse and inclusive employee base – with a range of approaches and perspectives – would be more competitive in a globalized economy.







## Diversity and financial performance in 2017

<sup>5</sup> As defined by each company in our data set, typically C-2 and above.

<sup>6</sup> See Methodology section for detailed explanation of the financial performance benchmark

We first established a positive, statistically significant correlation between executive team diversity and financial performance in our 2015 Why Diversity Matters report (using 2014 diversity data). We find this relationship persists in our expanded, updated, and global 2017 data set. In Why Diversity Matters we found that companies in the top quartile for gender diversity on their executive teams<sup>5</sup> were 15% more likely to experience above-average<sup>6</sup> profitability than companies in the fourth quartile. Almost exactly three years later, this number rose to 21% and continued to be statistically significant. For ethnic/cultural diversity, the 2014 finding was a 35% likelihood of outperformance, comparable to the 2017 finding of a 33% likelihood of outperformance on EBIT margin, both statistically significant (Exhibit 1).

#### Exhibit 1

#### The correlations between diversity and performance still hold



Likelihood of financial performance<sup>1</sup> above national industry median by diversity quartile Percent

1 Average EBIT margin, 2010–13 in Why Diversity Matters and 2011–15 in Delivering Through Diversity

2014 results are statistically significant at p-value <0.1; 2017 results are statistically significant at p-value <0.05 Gender executive data: for 2014, N = 383; for 2017, N = 991 2014 re

4 Ethnic/cultural executive data; for 2014, N = 364; for 2017, N = 589

Percentages shown here are rounded to the nearest whole number; however, calculation of the differentials in quartile performance uses actual decimal values NOTE:

SOURCE: McKinsey Diversity Matters database

Companies in the top-quartile for gender diversity on their executive teams were 21% more likely to have above-average profitability than companies in the fourth quartile. For ethnic/cultural diversity, top-quartile companies were 33% more likely to outperform on profitability.



### Delivery example Sodexo: champion of gender diversity

Sodexo is an outspoken champion of diversity. Led by an enthusiastic CEO and board chairwoman, the global multinational services company has publicly committed to improving five dimensions of diversity: gender, people with disabilities, generations (age), cultures and origins, and sexual orientation and gender identity.

For Sodexo, achieving gender balance was the starting point. The company's internal research revealed that greater representation of women in management positions – between 40 and 60% women – correlated with superior performance on measures such as customer satisfaction and employee engagement. The company pledged to boost the number of senior female executives to 40% by 2025. Management incentives – including 10% of bonuses – are correlated to achieving gender goals. Additionally, I&D initiatives are tailored to specific regional contexts and supported by a mix of global and local initiatives.

These diversity efforts are already paying off. With women currently comprising half of the board, 32% of senior leaders and close to 50% of its total workforce, Sodexo is among the most gender-diverse companies in its industry group and home country. It is, notably, also among the most successful financially within our data set, with value creation that is 13% above the industry average.<sup>7</sup>

<sup>7</sup> Limited to industry peers with our data set. <sup>8</sup> For more on board gender diversity in Western Europe, see Sir Philip Hampton and Dame Helen Alexander, Hampton-Alexander, "Review: FTSE Women Leaders – Improving gender balance in FTSE leadership," November 2017.

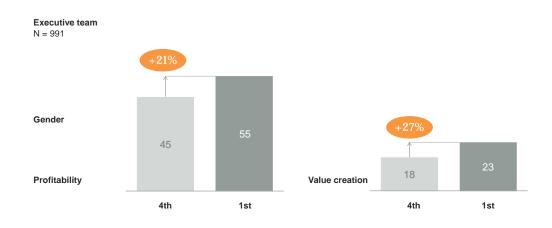
#### **Gender diversity**

**Gender diversity is correlated with both profitability and value creation.** In our 2017 data set we found a positive correlation between gender diversity on executive teams and both our measures of financial performance. Top-quartile companies were 21% more likely than fourth quartile companies to outperform national industry peers on EBIT margin, but also were 27% more likely than fourth quartile companies to have industry-leading performance on longer-term value creation, as measured using economic profit margin (Exhibit 2).

#### Exhibit 2

#### How gender diversity correlates with financial performance

Likelihood of financial performance<sup>1</sup> above national industry median by diversity quartile Percent



1 Average economic profit margin 2011–15 and average EBIT margin 2011–15

NOTE: Results are statistically significant at p-value <0.5. Percentages shown here are rounded to the nearest whole number; however, calculation of the differentials in quartile performance uses actual decimal values

SOURCE: Company websites; McKinsey Diversity Matters database

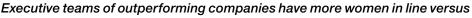




*For gender, the executive team shows the strongest correlations.* We observed a positive correlation between greater levels of gender diversity and higher likelihood of financial outperformance across geographies at the executive level. We believe this reflects that the executive team bears the preponderance of direct influence on operations and on driving business outcomes. At board level in the US and UK, correlations between gender diversity and financial performance continue to be positive, though not statistically significant. This is consistent with our 2014 analysis. Global findings vary considerably by financial metric and by region. We hypothesize that this could be linked to factors including geographic differences in the role and influence of boards on the managerial decisions most likely to drive financial performance,<sup>8</sup> and to government quotas for women on boards, which could dilute the ability for this to be a differential performance enabler. Further study of this dynamic is required to draw conclusions.



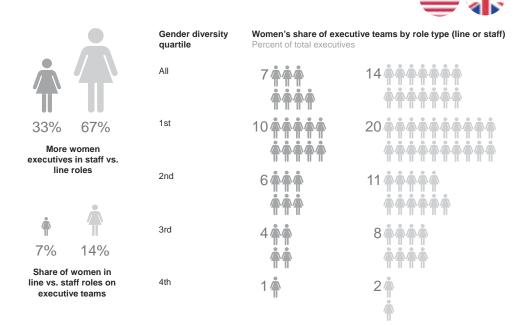
Companies in the top-quartile for gender diversity on executive teams were 21% more likely to outperform their national industry median on EBIT margin and 27% on EP margin.



**staff roles.** We used our US and UK data sets to test the hypothesis that having more women executives in line (typically revenue-generating) roles is more closely correlated with financial outperformance. We know from research such as our *Women in the Workplace* 2017 report that women are underrepresented in line roles; in our data set this holds true even for top-quartile gender-diverse companies experiencing above-average financial performance. Yet these top-quartile companies also have a greater proportion of women in line roles than do their fourth quartile peers: 10% versus 1% of total executives, respectively (Exhibit 3). Even aggregating the second, third, and fourth quartiles to avoid distortions due to smaller samples sizes yields a difference of 10% in the top quartile versus 5% in the rest of the sample.

#### Exhibit 3

#### Leading gender-diverse companies have a higher share of women in executive line roles



NOTE: EBIT margin used for the calculation of above-median financial performance SOURCE: Company websites; McKinsey Analytics; McKinsey Diversity Matters database

- <sup>9</sup> Brazil, Mexico, Singapore, South Africa, United Kingdom, and the United States.
- <sup>10</sup> As in our first report, we measure ethnic diversity using the normalized Herfindahl-Hirschman Index (NHHI). See Methodology appendix for details.

#### Ethnic/cultural diversity

*Top-team ethnic/cultural diversity is correlated with profitability.* In our 2017 data set, we looked at ethnic/cultural diversity in six countries where the definition of ethnic/cultural diversity was consistent and our data were reliable.<sup>9</sup> As in 2014, we found that companies with the most ethnically/culturally diverse executive teams – not only in terms of absolute representation, but also of the variety or mix of ethnicities<sup>10</sup> – are 33% more likely to outperform their peers on profitability. This is comparable to the 35% greater likelihood of outperformance reported in 2014, and both findings are statistically significant (Exhibit 4).

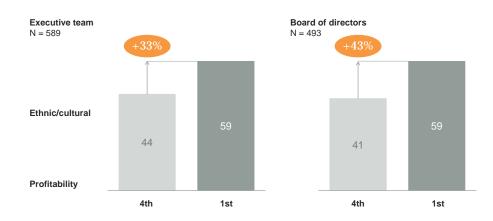


Women are underrepresented in line roles; in our data set this holds true even for top-quartile gender-diverse companies experiencing above-average financial performance.

#### Exhibit 4

#### How ethnic diversity correlates with profitability

Likelihood of financial performance<sup>1</sup> above national industry median by diversity quartile Percent



1 Average economic profit margin 2011–15 and average EBIT margin 2011–15

NOTE: Results are statistically significant at p-value <0.5. Percentages shown here are rounded to the nearest whole number; however, calculation of the differentials in quartile performance uses actual decimal values

SOURCE: Company websites; McKinsey Diversity Matters database

Ethnic and cultural diversity's correlation with outperformance on profitability was also statistically significant at board level. We found that companies with the most ethnically/ culturally diverse boards worldwide are 43% more likely to experience higher profits. We also found a positive correlation between ethnic/cultural diversity and value creation at both the executive team and board levels, though the relationship is not statistically significant. It may be the case that overall, the picture on top-team diversity globally is more complex due to significant geographic differences in the cultural contexts in which the companies we studied operate.



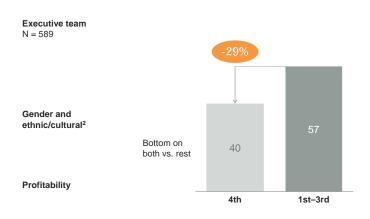
Overall, our findings that ethnic and cultural diversity on executive teams continues to correlate strongly with company financial performance support the argument that there is value in promoting ethnic/cultural diversity in company top teams around the world. We hypothesize that, for companies, addressing the challenge of building an inclusive company culture across cultural differences could significantly strengthen organizational effectiveness. Further, ethnic/cultural diversity at the highest levels of company leadership could serve as a signal to employees and other stakeholders that the organization truly understands and values the community and customers that they serve.



#### Exhibit 5

#### How low gender and ethnic diversity correlate to poorer financial performance

Likelihood of financial performance<sup>1</sup> above national industry median by diversity quartile Percent



1 Average economic profit margin 2011–15 and average EBIT margin 2011–15

2 Executive gender diversity analyzed for 991 companies in all regions. For 589 companies with gender and ethnic/cultural diversity data, in all regions except Australia, France, Germany, India, Japan, and Nigeria

NOTE: Percentages shown here are rounded to the nearest whole number; however, calculation of the differentials in quartile performance uses actual decimal values

SOURCE: Company websites; McKinsey Diversity Matters database

- <sup>11</sup> Average of bachelor's and master's degrees awarded in US from 2000–15. National Center for Education Statistics, 2000–15.
- <sup>12</sup> Includes undergraduate and postgraduate students of known ethnicity in 2015. UK Higher Education Statistics Agency.

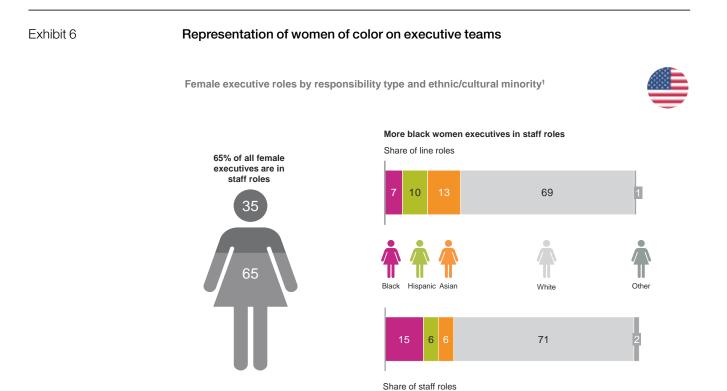
*The penalty for not being diverse on both measures persists.* Now, as previously, companies in the fourth quartile on both gender and ethnic diversity are more likely to underperform their industry peers financially. Specifically, they are 29% more likely than the other three quartiles to underperform on profitability (Exhibit 5).

*Ethnic/cultural diversity on executive teams is low.* We focused on our US and UK data set to examine ethnically/culturally diverse representation among companies, considering the pipeline starting with university graduates. Black Americans comprise 10% of US graduates but hold only 4% of senior executive positions in our sample, Latinos/ Hispanics comprise 8% of graduates versus 4% of executives, and for Asian Americans the numbers are 7% of graduates versus 5% of executives.<sup>11</sup> As expected, white executives are represented to a higher extent on these teams, with nearly 85% of C-suite positions for 68% of US graduates. In the UK, the disparity is even greater: 22% of university students identify as Black and Minority Ethnic (BAME),<sup>12</sup> yet only 8% of UK executives in our sample share this identity.

### Companies with the most ethnically/culturally diverse boards worldwide are 43% more likely to experience higher profits.



Black women potentially suffer a double burden of bias that keeps them from the uppermost levels of corporate leadership. Underrepresentation on executive teams in general, and in line roles in particular, could be an important piece of this story. Black women executives are underrepresented in line roles, and may face a harder path to CEO. We showed above that within our US and UK data sets overall representation of women on executive teams shows an apparent bias towards staff roles. Among our US sample, not only do women hold a disproportionately small share of line roles on executive teams, but women of color (including black, Latina and Asian women) hold an even smaller share (Exhibit 6).



1 Sample includes 341 companies with 872 female executives

SOURCE: McKinsey Analytics; company websites; McKinsey Diversity Matters database



Line versus staff roles on executive teams tend to differ in their ability to propel individuals to the CEO position, with line roles the more likely incubators of future CEOs. In our US sample, black female executives specifically are more than twice as likely to be in staff roles than in line roles, and our sample denotes an absence of black female CEOs. Other US studies, including our recent *Women in the Workplace* 2017 report, have found that black women suffer a double burden of bias that keeps them from the uppermost levels of corporate leadership. Underrepresentation on executive teams in general, and in line roles in particular, could be an important piece of this story. Corporate leaders will need a more granular understanding of the dynamics across inherent and acquired diversity dimensions to address this opportunity fully.





### Spotlight on diversity in the financial services and technology sectors

In our data set, financial services firms are overrepresented in the top quartile for gender diversity. As a whole, they have been able to improve gender diversity more than other industries we examined – with women comprising on average 18% of executive teams versus 13% among consumer and retail companies, for example. Since the publication of our first report, levels of gender-diverse representation in financial services firms have increased more than have levels of ethnic and cultural diversity. The telecom, media, and technology (TMT) companies in our sample, the majority of which are tech firms, are disproportionately represented in the fourth quartile for gender. The companies in this industry group are also among those that have seen the greatest decline in diversity representation since our 2015 report. This could reflect widely covered challenges that parts of the sector have faced with issues like gender bias, pay, and promotion.



Among US TMT companies, representation of women at whole company level is 30 to 35%, almost exactly the same as the proportion of STEM degrees granted to US women (35% and 33% of bachelor and masters, respectively).<sup>13</sup> Yet women make up only 17% of US TMT executives in our sample. With respect to ethnic and cultural diversity, 12% of TMT executives in our US data set are Asian, black, or Latino, whereas 30% of bachelor degrees in STEM were awarded to the three groups combined since 2000.<sup>14</sup>

<sup>13</sup> US National Center for Education Statistics, 2016 Digest of Education Statistics; and US Bureau of Labor Statistics, "Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity," Current Population Survey, February 2017.

<sup>14</sup> Ibid.



# Diversity around the world

The correlations between gender and ethnic/cultural diversity and financial performance generally hold true across geographies, though with some variations in certain regions.



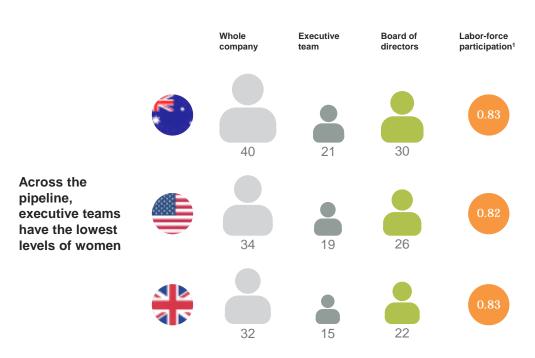
Exhibit 7

Our data yielded some noteworthy findings concerning the country level differences in executive team diversity. Specifically:

*Australian companies lead the way when it comes to women's share of executive roles* (21%), versus the US (19%) and the UK (15%), as shown in Exhibit 7. The same holds true for board positions, with Australian companies at 30%, US companies at 26%, and UK companies at 22%, and for women at the whole company level. These countries dominate among top performers, representing 47% of the data set but over 70% of the top-quartile companies. The disparity between them is interesting given women's workforce participation is similar in all three countries.

Comparing the changes in representation levels in the US and UK to those observed in our 2014 report, we found that progress on women's representation has been relatively low. The average percentage of women executives grew by only 2 percentage points.

### There's more variance across the pipeline within top-performing countries on gender diversity



1 Ratio of female-to-male labor force participation based on the percentage of the total population ages 15 and over

SOURCE: World Bank, 2016 ILO estimates; McKinsey Diversity Matters database

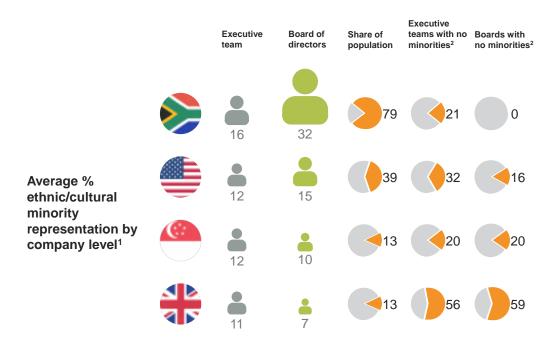


<sup>15</sup> We define ethnic/cultural minorities as it is understood in each country. Please see our Methodology section for details. *The picture on ethnic/cultural diversity on executive teams is nuanced.* Among our sample, South Africa has the highest levels of diverse representation on executive teams relative to other countries in the sample, with 16% of executive positions held by black South Africans (Exhibit 8). However, this must be understood in the context of local demographics: South Africa's population is 79% black, but among large corporations the impact of South Africa's complex social history means that the large majority of global/ national corporate entities are led by white executives (69% in our sample). As our work considers the local context with respect to ethnicity, we therefore evaluated South Africa's diversity from this perspective, defining black South Africans as the minority. The US, Singapore, and the UK follow with 11 to 12% of executive roles held by ethnic/cultural minorities.<sup>15</sup> Specifically considering ethnic/cultural minority representation in the broader population, British executive teams seem closer to achieving "fair share." This, however, masks huge variations within the UK data set. A large proportion of UK companies have no ethnic minorities on their executive teams.

Ethnically and culturally diverse representation on US and UK executive teams increased by an average of 5 and 6 percentage points, respectively, since 2014. This was offset by declines in other geographies, leading to an overall lower increase of 1 percentage point across regions.

### Exhibit 8

Ethnic minority representation varies considerably by both geography and leadership levels within companies



1 See Methodology section for the definition of ethnic diversity and countries covered

2 Percentage of companies with zero ethnic/cultural minorities represented at the executive level

SOURCE: Government of Singapore; UK Office of National Statistics; US Census Bureau; McKinsey Diversity Matters database

### Delivery example Allianz and acquired diversity

Companies' understanding of what diversity means varies worldwide and is continuously evolving. Hewlett et al. (2013) describe diversity as **inherent** attributes such as gender, age, or ethnicity, and **acquired** attributes such as education or socioeconomic background.<sup>16</sup> Initially companies' emphasis was on the inherent forms, and much remains to be achieved on this front. There is increasing appreciation that acquired diversity is also relevant, as it too contributes to the diversity of thought, leadership, and managerial styles companies seek.

Allianz, an international insurance firm headquartered in Germany, offers a good example of a company that understands the importance of including acquired traits in an I&D strategy, tracking progress against them and holding itself to account for impact. The company has set I&D goals which address five dimensions of acquired as well as inherent diversity: gender, age, disability, education, and nationality/ culture. Not only does the company promote acquired diversity – e.g., by employing people of different national origins and cultural exposure and by encouraging international rotations – it also shares its progress against all of its diversity goals, holds its managers accountable for delivery, and celebrates their successes.

<sup>6</sup> Sylvia Ann Hewlett, Melinda Marshall, and Laura Sherbin, "How Diversity Can Drive Innovation," *Harvard Business Review*, December 2013.

### Ways I&D can support business performance

We first hypothesized in *Why Diversity Matters* that there are five key ways I&D can contribute to a company's performance and help drive value creation:

- Win the war for talent. Strengthening human capital for their organizations remains one of the top challenges for CEOs globally, and it continues to be seen as a key source of competitive advantage. A diverse and inclusive workplace is central to a company's ability to attract, develop, and retain the talent it needs to compete. The effects of major trends – globalization, technology, and demographics – create new growth opportunities for companies, while disrupting traditional business models and organizational structures.<sup>17</sup> More diverse organizations have broader talent pools from which to source capability to compete in this changing world.
- Improve the quality of decision making. Published research from academia, corporations, and other organizations supports that diverse and inclusive groups make better quality decisions, often faster, and in a more fact-based manner, with less cognitive bias or groupthink.<sup>18,19</sup> Further studies show a positive correlation between better decision making and business performance.<sup>20</sup>
- Increase innovation and customer insight. Similarly, research supports that diverse and inclusive teams tend to be more creative and innovative than homogenous groups. Diverse teams bring different experiences, perspectives, and approaches to bear on solving complex, non-routine problems.<sup>21,22</sup> Diverse teams are also better able to target and distinctively serve diverse customer markets, such as women, ethnic minority, and LGBTQ+ communities which command an increasing share of consumer wealth<sup>23,24,25</sup> and which could represent untapped markets for some companies.



- Increase employee satisfaction.
   I&D management improves employee satisfaction and also reduces conflict between groups, improving collaboratio and loyalty. This can create an environment that is more attractive to high performers.
- Improve a company's global image and license to operate. Even before the current climate raised the stakes on I&D, companies who were leaders in this space benefitted from an enhanced reputation extending beyond their employees to their customers, supply chain, local communities, and wider society. Recent highly publicized issues with gender and racial discrimination highlight that, for many companies, this is also a matter of license to operate.

We believe these drivers of value through I&D continue to be very relevant today. Our current work aims to support companies in their efforts to capture these benefits.

- <sup>17</sup> Richard Dobbs, James Manyika, and Jonathan Woetzel, No Ordinary Disruption: The Four Global Forces Breaking all the Trends. New York: PublicAffairs, May 2015.
- <sup>18</sup> Heidi Grant and David Rock, "Why Diverse Teams Are Smarter," Harvard Business Review, November 2016.
  - <sup>9</sup> Scott Berinato, Thomas Malone, and Anita Woolley, "What Makes a Team Smarter? More Women," *Harvard Business Review*, June 2011.
- <sup>20</sup> Erik Larson, "New Research: Diversity + Inclusion = Better Decision Making At Work," Forbes, September 2017.
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- <sup>23</sup> Huasheng Gao and Wei Zhang, "Employment Nondiscrimination Acts and Corporate Innovation," *Management Science*, June 2016.
- <sup>24</sup> M.V. Lee Badgett et al, "The Business Impact of LGBT Supportive Workplace Policies," The Williams Institute, May 2013.
- <sup>25</sup> "Buying Power" series, Catalyst, May 2015.















### Delivering impact through I&D

Our research confirms that gender and ethnic/cultural diversity, particularly within executive teams, continue to be correlated to financial performance across multiple countries worldwide. In our first report, our hypotheses for what drives this correlation were: that more diverse companies are better able to attract top talent; to improve their customer orientation, employee satisfaction, and decision making; and to secure their license to operate.

As we mention in our introduction, companies report that materially improving representation of diverse talent within their ranks, as well as effectively utilizing I&D as an enabler of business impact, are particularly challenging goals. We compared levels of diversity on executive teams in 346 companies in our *Why Diversity Matters* data set (measured in 2014) to current levels at these companies. Overall, gender diversity on executive teams increased by 2 percentage points to 14%, while ethnic and cultural diversity increased by 1 percentage point to 13%. Considering the size of executive teams as defined in our sample (typically 10 to 15 executives) this suggests limited progress.

These aggregate numbers hide the fact that multiple companies worldwide are succeeding in making sizeable improvements to I&D across their organizations, and they are reaping tangible benefits. We sought to understand what CEOs could learn from the experiences of 17 companies who have been engaging actively with the topic about how to craft a high-impact I&D strategy.

We found that the most successful companies all developed I&D strategies that reflected their business ethos and growth priorities and to which they were strongly committed. Four imperatives emerged as key (Exhibit 9):

### Articulate and cascade CEO commitment to galvanize your organization.

Companies increasingly recognize that commitment to I&D starts at the top, with many publicly committing to an I&D agenda. Leading companies go further by cascading this commitment through their organizations and particularly to middle management. They promote ownership by their core businesses – encouraging role modeling and holding to account their executives and managers for delivery. They ensure these efforts are sufficiently resourced and supported centrally. For example, Sodexo has publicly stated its 40% target for women in senior executive roles, has resources in place to drive the strategy in each business line, and also ties 10% of executives' bonus to achieving its I&D goals.



Companies report that materially improving representation of diverse talent as well as effectively utilizing I&D as an enabler of business impact, are particularly challenging goals.



### Exhibit 9

### Four imperatives for building a successful I&D strategy



Define I&D priorities based on what drives your business growth strategy. Companies succeeding on I&D are able to clearly articulate the link between their I&D goals and specific business growth priorities. This is often the result of investment in internal research to understand what aspects of I&D act as performance enablers for specific business metrics, such as productivity, customer retention, risk management or time to market, stemming from an understanding of how I&D links to specific value drivers such as customer insight, innovation, or decision making. Leading companies are able to combine this with a detailed, data- and analytics-informed understanding of their pipeline to identify the mix of inherent and acquired diversity attributes that are most relevant for their organization, and should be central to their I&D approach. Westpac, for example, tightly correlates its I&D efforts to its growth goals, emphasizing the ten streams of diversity it believes will boost talent attraction and customer retention.

#### • Craft a targeted portfolio of I&D initiatives to transform your organization.

Leading companies use the above thinking to prioritize the portfolio of I&D initiatives they invest in, ensuring alignment with their overall growth strategy. They recognize the need for this to go hand in hand with building a truly inclusive organizational culture. They use this combination of "hard" and "soft-wiring" to create a coherent narrative and program which resonates with their employees and other stakeholders and helps drive sustainable change. One leading global consumer goods company, among others we profiled, has overhauled its talent management policies and processes (including de-biasing recruitment and advancement processes, promoting equal pay and deploying comprehensive sponsorship programs for high-potential talent), and is building capabilities among its management to support retaining and advancing specific diverse talent. It closely monitors its pipeline and employee perceptions and experiences around inclusiveness, along with business impact metrics.



Tailor the I&D strategy to maximize local impact. Lastly, leading companies we spoke to recognize that while there is an imperative for an overall consistent direction for their I&D strategy, there is both the opportunity and the need to adapt this to different parts of their businesses and the varying geographic and sociocultural contexts in which they operate. Across several of our researched companies, this translated to a degree of local customization of overall I&D goals and priorities (e.g., reflecting varying regulatory contexts and differing starting points), and differing extents of wider local stakeholder engagement and cross-sector collaboration. In some companies this took the form of active pursuit of an advocacy and anti-discrimination agenda that not only motivated employees but also fostered local partnerships with other companies in the industry. In each instance, global I&D teams were careful to ensure ownership by local teams and business units, while providing adequate central support.

While rigorous attention to all four imperatives helps position I&D as an effective enabler in support of a company's growth agenda, our experience suggests that there are critical areas companies tend to fall short on: these include leadership and management accountability, a fact-based and compelling business case for I&D, and the coherence and prioritization of the resulting action plan. We also found that while progress on representation can be brought about relatively rapidly with the right set of initiatives, embedding inclusion sustainably within the organization can take many years, often requiring action outside the organization. Companies that do this well are able to create a strong corporate ethos that resonates across employee, customer, supplier, investor, and broader stakeholder groups.

Companies succeeding on I&D are able to articulate the link between their I&D goals and specific business growth priorities.

### Delivery example Salesforce, an equality leader

Salesforce's commitment to diversity and inclusion is more than apparent from the rapid pace of initiatives rolled out over the past few years. In 2015, CEO Marc Benioff publicly announced that the company would aim to employ an equal number of men and women.<sup>26</sup> Moreover, Salesforce works to ensure that the diversity of its employees mirrors the diversity of the communities where the company is based and does business. It has also made important changes to its hiring processes to address unconscious bias, including more awareness training and competencies-based interviewing. In addition, interviewing for executive positions must include at least one female candidate or underrepresented minority.

In addition to broadening its hiring efforts, the company has taken steps to ensure men and women are paid equally for equal work. After analyzing the salaries of some 17,000 employees, in 2015 Salesforce adjusted the compensation of about 6% of employees, spending about US \$3 million to do so.<sup>27</sup> It now monitors salaries on an ongoing basis. Equal advancement is also a priority. Women now make up a minimum of onethird of attendees at executive management meetings and one-third of the speakers at customer events. In 2016, the number of women promoted increased by 33%.

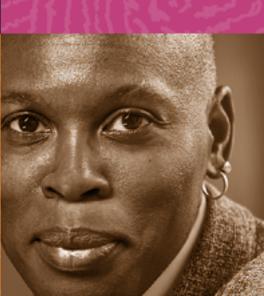
In the US, Salesforce is recognized as a leading proponent of LGBTQ rights, being one of the first companies to speak out against anti-LGBTQ legislation in Indiana.<sup>28</sup>



In Australia as well as the U.S., the company is known for its support for same-sex marriage. Salesforce's support for the LGBTQ community has not gone unnoticed. The company has been graded 100% by the Corporate Equality Index, which rates American businesses on their treatment of LGBTQ employees, consumers, and investors. It has also received a Brilliance in Diversity Award from The National Diversity Council and was named no. 4 on Fortune's Best Places to Work for Diversity. Perhaps most emblematic of Salesforce's commitment to I&D is the 2016 decision to create a new C-suite position, the Chief Equality Officer. Reporting to the CEO, Chief Equality Officer Tony Prophet is responsible for ensuring that Salesforce reflects the diversity of the communities it serves and is truly inclusive.

- <sup>26</sup> Hope King, "Salesforce CEO: I didn't focus on hiring women then. But I am now," CNN, June 12, 2015, http://money.cnn.com/
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### Conclusion

We show that the business case for diversity continues to be compelling and have global relevance. We highlight the opportunity for promoting diversity in senior decision-making roles, and specifically in line roles on executive teams. Although levels of diverse representation in top teams are still highly variable globally – with progress being slow overall – there are practical lessons from successful companies that have made I&D work for them.

We have distilled the I&D experiences of top and rapidly improving companies on diversity to four key imperatives, creating the opportunity for CEOs to engage with their executive teams to set ambitious I&D aspirations for their organizations that are truly aligned with their business strategy. Delivering on these goals will require developing a solid understanding of their I&D baseline, creating a bespoke mix of I&D priorities to maximize business impact, purposefully allocating the required time and resources, and maximizing ownership of business units, with active support from the talent management organization.

Crafting a truly effective I&D strategy is no small effort, and requires strong and sustained and inclusive leadership. But we, and many of the companies we studied in depth, believe the potential benefits of stronger business performance are well worth it.





Crafting a truly effective I&D strategy is no small effort, but the potential benefits of stronger business performance are well worth it.

### About the authors

#### Vivian Hunt, DBE

Vivian Hunt is the Managing Partner for McKinsey & Company's United Kingdom and Ireland offices and is a Senior Partner of the firm. Vivian previously led the firm's Pharmaceutical & Medical Products Practice in EMEA, and continues to advise leading companies on a broad range of strategy topics, with a particular focus on performance transformation and organizational development. In addition to her client responsibilities, Vivian is a leader within the firm on leadership and diversity. She frequently speaks on McKinsey & Company's flagship research and co-authored publications such as: *Women Matter, Diversity Matters* and *The Power of Parity: How advancing women's equality can add \$12 trillion to global growth*.

Vivian is on the board of several business groups in the UK, including BritishAmerican Business, the CBI London Council, and the Mayor of London's Business Advisory Board. She is also a member of the Trilateral Commission. Vivian is a trustee of The Henry Smith Charity and is Chair of HRH Prince of Wales' Business in the Community's "Seeing is Believing" program as well as a reader for the Queen's Anniversary Prize. She sits on the Advisory Council of the Tate Modern and the Southbank Centre, as well as Teach First's Business Leaders Council and on the Board of the US-UK Fulbright Commission. Vivian was appointed a Dame Commander of the Order of the British Empire by Queen Elizabeth II in the UK's 2018 New Year Honours List for her services to the economy and to women in business.

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In the continued pursuit of helping clients broadly in the areas of growth, talent and capability, Sara co-authored McKinsey's groundbreaking 2015 work, *Why Diversity Matters*, correlating financial performance and levels of gender and ethnic diversity in a company's leadership team. Sara has since partnered with a broad variety of global organizations to define their diversity strategy, deliver relevant capability-building programs, and develop advanced analytics approaches to drive desired organizational effectiveness and business outcomes using diversity and inclusion levers. Sara is on the Board of the Georgia region of the American Red Cross.

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As a forefront leader within the firm advocating for gender parity in business, Lareina is head of McKinsey's North American Women Program and leads the firm's ongoing research on women in leadership. In addition, she co-created McKinsey Academy for Women and counsels executive teams on improving diversity in their organization. Lareina leads *Women in Workplace*, a research partnership with LeanIn.org and the *Wall Street Journal*. She is a frequent speaker on women, including forums at the Council on Foreign Relations, *Fortune*, Techonomy, Makers and has been featured on NPR, CNBC and Bloomberg. Lareina has served on the board of the International Center for Research on Women and is currently on the board of Safe and Sound.

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### Design and art direction

Laurence Parc, McKinsey Design Project Lead

Exhibit design Janice Alexander, McKinsey Media Designer

### Methodology

### Company diversity and financial data

Our assessment gender and ethnic/cultural diversity is based on publicly available data from 1,007 companies across 12 countries globally. We reviewed corporate websites, annual reports, and other industry websites to gather statistics on the proportion of women and the split of ethnic/cultural groups for the whole company, the executive team, and the board of directors. We also gathered the representation of male and female executives (by ethnic/cultural group) in line and staff positions for most of the US- and UK-headquartered companies in our data set. Our data comes from the period of December 2016 to November 2017; however, most information dates to June 2017.

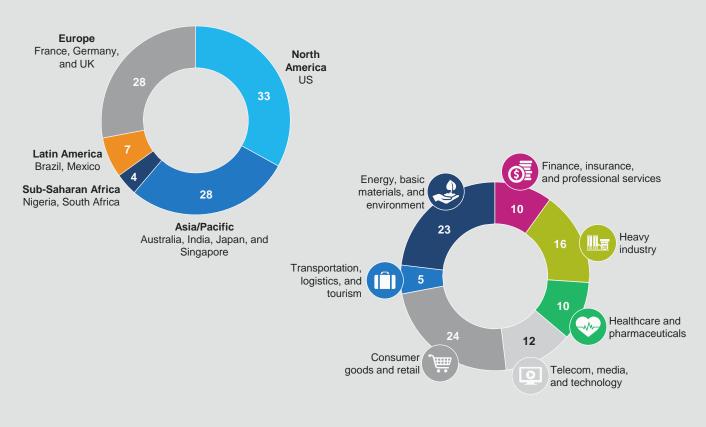
These demographic data were not available uniformly for each company in our data set. For this reason, the final tally of companies analyzed for a given correlation is less than the full sample of companies available, e.g., we have "whole company" gender data for 663 companies in ten countries only. The exact sample size for each correlation appears in the exhibits where our correlation findings are shown.

Financial data came from the Corporate Performance Analytics database by McKinsey and S&P Global. We measured profitability using average EBIT (earnings before interest and taxes) margins for non-financial companies and average ROE (return on equity) for financial companies over the five-year period from 2011 to 2015. We measured value creation for all companies using average economic profit as a percentage of average revenues (alternatively referred to as EP margin) over the same five-year period.

In a preliminary version of our findings, we measured value creation using absolute economic profit. We used EP margin rather than absolute EP as our chosen metric of value creation in order to normalize for company size. In the course of making the switch to the EP margin, we also increased our sample size by an additional 350 companies.

We limited our data set to those companies for which we could obtain complete financial data – both EBIT (or ROE in the case of financial companies) and EP – and at least one diversity data metric (gender or ethnicity) for at least one level of the organization (whole company, executive, or board of directors).

Our observations on other forms of diversity beyond gender and ethnic/cultural diversity, i.e., LGBTQ+ or age/generational diversity, were limited by a lack of access to publicly available representation data. We instead completed qualitative reviews of individual company's initiatives in these areas. We infer from our qualitative research that the correlations observed on gender and ethnic/cultural diversity would likely hold for others like LGBTQ+ identity.



Distribution of 2017 Delivery through Diversity sample by geography and industry group Percent, N = 1,007 companies

SOURCE: Companies websites; McKinsey Diversity Matters database

### **Definition of company levels**

Whole company refers to the full company headcount within the geographic boundaries of the headquarters' country, e.g., for a US-headquartered company, all personnel working in the United States. Executive team is defined in line with each company's definition of its executive management team or executive management committee. Typically, this refers to C-2, the CEO, and two levels below:

- The C-suite level executives who directly report to the CEO (e.g., the CFO, COO, and presidents)
- Executive/senior vice presidents who report to the CEO's direct reports.

In some cases, we also include C-3 (e.g., vice presidents) where these executives are listed on a company's website or annual report as being part of the executive management team. Board of directors refers to the official directors of the corporate board, including both independent and executive directors, responsible for governance and, in some cases, management of the business. The composition of boards varies considerably across the sample and the degree of diversity observed in particular geographies may be influenced by government diversity quotas.

### Methodology for determining diversity quartile

Companies in our global data set were grouped into quartiles based on the diversity of their organizations at each level. For gender diversity, quartiles were based on the percentage of women at a given level, and set relative to the total ("global" sample) of 12 countries: US, UK, Germany, France, Brazil, Mexico, Japan, India, Australia, Singapore, South Africa, and Nigeria.

For ethnic diversity, we reprised a metric used in our original *Why Diversity Matters* publication: the normalized Herfindahl-Hirschman Index (NHHI). Used by economists to measure market concentration and competition within an industry, we adapted the NHHI metric to differentiate diversity in companies that had the same number of non-majority executives, but where one executive team included a greater range of ethnic backgrounds. Since the publication of the original research, we inverted the ratio such that an NHHI measure of 0 indicates a team where everyone has the same race or gender. Increases in NHHI indicate an increase in ethnic/cultural diversity.

 $\begin{aligned} \text{HHI} &= \sum_{i=1}^{N} (s_i 2) \\ \text{NHHI} &= (\text{HHI} - 1/\text{N})/(1 - 1/\text{N}) \\ \text{NHHI}_{\text{new}} &= 1 - \text{NHHI}_{\text{old}} \end{aligned}$ 

### Where N is the number of ethnic groups in the specific geography

Ethnic diversity quartiles were also set globally. However, given the limited availability of ethnic/cultural demographic data, the sample was much smaller – only 6 countries out of 12: the US, UK, Brazil, Mexico, Singapore, and South Africa.

While our correlations are based on the companies' NHHI ratios, we also aggregated ethnic/cultural minority representation among the companies, by industry and by geography. We define ethnic group identity as it is understood in each geography:

- US: white/European ancestry, black/African ancestry, Latino/Hispanic of any race, Asian/Asian ancestry (including South Asian), other (including mixed race)
- UK: white/white British, black/Afro-Caribbean, Asian (including South Asian), other (including mixed race)
- South Africa: black, white, colored, other
- Singapore: Chinese, Malay, Indian, other (including white European)
- Brazil: black, brown (including mixed race), white, yellow (Asian), other
- Mexico: white, mestizo, indigenous, black, other

### Methodology for financial performance

We grouped companies into peer groups based on industry group and headquarters geography (nationally, or if necessary to ensure a sufficient sample size, regionally). Within each industry-geography pair, we then determined the relevant benchmark for "outperformance" for each financial metric:

- EBIT margin benchmark set to be above the median for the relevant industry-geography peer group
- EP/revenues benchmark set to be the top quintile for the relevant industry-geography peer group.

We fit all of the financial data to curves and determined that differentiating the bar for financial performance was a necessary step to ensure we were truly capturing those companies with superior profitability and value creation, respectively. Specifically, the EP margin has much less variance around the median, requiring us to focus in on the rightmost end of the curve, i.e., the top quintile, to identify above-average performance.

#### **Regression analyses**

We ran multivariate regressions to confirm the relationship between either type of diversity and financial performance exists. We generally publish all results and note statistical significance. We consider as statistically significant any correlations with a p-value of <0.05. We also note where p-values meet a slightly lower bar of <0.1.

#### **Deep-dive company profiles**

We identified 17 high-performing companies in our data set and developed case studies for each using publicly available information from their respective websites. We supplemented our findings with senior executive interviews at the following companies (relevant geography as noted): Westpac (Australia), Wipro (India), Allianz (Germany, France), Sodexo (France), Salesforce (US), and MetLife (Japan).

To know more about our case studies or if your company would like to participate in our research in the future, please contact the authors.

#### Limitations of this work

This work adds to a growing body of research on the business case for I&D, and sheds light as to how companies can use diversity as an enabler of business impact. Several caveats are worth highlighting:

Correlation is not causation. There are real limitations, and we are not asserting a causal link. As with many levers of business performance, particularly at such a high level, this would be challenging to demonstrate, likely requiring detailed longitudinal studies. Yet while not causal, the relationship is real. We have found statistically significant correlations between higher levels of diversity and above industry average financial performance, both in our original report and again in our 2017 update. Moreover, other research gives us good insight into what might underpin the relationship, and our interviews tell us how companies can make material differences in their I&D outcomes. Taken together, we think companies on the hunt for growth can get much more tactical on how they think about I&D as a lever to pull on the path to growth.

- Just as we cannot assert causality, we cannot say definitively what drives the correlations we find. It is theoretically possible that the better financial outperformance enables companies to achieve greater levels of diversity. Companies that perform well financially may choose to deploy more of their resources toward more advanced talent strategies, thus allowing them to attract more diverse talent, for example. However, in practice, this seems unlikely. We have observed that most companies only embark on a major transformation when they have a burning platform to do so.
- Standardized measures of inclusion need to be developed. It is now broadly accepted that inclusion is a requirement if diversity is to have a real impact. All leading companies we studied have developed ways to measure inclusion, including employee surveys and proxies. We would expect to see a positive correlation between inclusiveness and financial performance should a standardized measure of inclusiveness be available.
- Measuring diversity in critical value creation roles is a logical next step in this analysis, as an outside-in assessment of top teams is limited in its ability to focus on diversity in value-critical business areas and roles throughout the organization.



## **Diversity Matters**

Vivian Hunt Dennis Layton Sara Prince

February 2, 2015

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### Executive summary

Our "Diversity Matters" research looked at the relationship between the level of diversity (defined as a greater share of women and a more mixed ethnic/racial composition in the leadership of large companies) and company financial performance (measured as average EBIT 2010–2013). The research is based on financial data and leadership demographics compiled for this purpose from hundreds of organisations and thousands of executives in the United Kingdom, Canada, Latin America, and the United States. The size of the dataset allows for results that are statistically significant and the analysis is the first that we are aware of that measures how much the relationship between diversity and performance is worth in terms of increased profitability.

The analysis found a statistically significant relationship between a more diverse leadership team and better financial performance. The companies in the top quartile of gender diversity were 15 percent more likely to have financial returns that were above their national industry median. Companies in the top quartile of racial/ethnic diversity were 35 percent more likely to have financial returns above their national industry median. Companies likely to achieve above-average in the bottom quartile for both gender and ethnicity/race were statistically less likely to achieve above-average financial returns than the average companies in the dataset (that is, they were not just not leading, they were lagging). The results varied by country and industry. Companies with 10 percent higher gender and ethnic/racial diversity on management teams and boards in the US, for instance, had EBIT that was 1.1 percent higher; in the UK, companies with the same diversity level had EBIT that was 5.8 percent higher. Moreover, the unequal performance across companies in the same industry and same country implies that diversity is a competitive differentiator that shifts market share towards more diverse companies.

Variations by country show that the bar for competitive differentiation continues to rise. For example, in the US there continues to be a linear relationship between ethnic/racial diversity and better financial performance. In fact, in the US, ethnic/racial diversity has a stronger impact on financial performance than gender diversity, with earlier pushes to increase women's representation in the top levels of business having already yielded positive results. By contrast, in the UK, increased gender diversity on the executive team corresponded to the highest performance uplift in the global dataset. From an industry perspective, certain industries perform better on gender diversity and others on ethnic/racial diversity. No industry or company was in the top quartile for both dimensions.

The relationship between diversity and performance highlighted in the research is a correlation, not a causal link. This is an important distinction, but the findings nonetheless permit reasonable hypotheses on what is driving improved performance by companies with diverse executive teams and boards. It stands to reason—and has been demonstrated in other studies, as we indicate—that more diverse companies are better able to win top talent, and improve their customer orientation, employee satisfaction, and decision making, leading to a virtuous cycle of increasing returns. That in turn suggests that diversity beyond gender and ethnicity/race (such as diversity in age and sexual orientation) as well diversity of experience (such as a global mindset and cultural fluency) are also likely to bring some level of competitive advantage for firms that are able to attract and retain such diverse talent.

Moving the needle on diversity is harder than completing a typical transformation due to barriers like unconscious bias. This makes it even more important that companies have a robust transformation programme that explicitly addresses unconscious bias, and that there is visible commitment from the leadership team. This may require challenge from within or beyond the company: data-driven diversity programmes can often highlight unconscious biases that impair the exercise of good judgement throughout the organisation, even when best practices are systematically followed and best intentions are assumed and exercised. However, case studies from the emerging field of behavioural economics and what is known as "nudge theory", as well as our own experience in working with clients, provide evidence that such change is possible.

Diversity matters because we increasingly live in a global world that has become deeply interconnected. It should come as no surprise that more diverse companies and institutions are achieving better performance. Most organisations, including McKinsey, have work to do in taking full advantage of the opportunity that a more diverse leadership team represents, and, in particular, more work to do on the talent pipeline: attracting, developing, mentoring, sponsoring, and retaining the next generations of global leaders at all levels of the organisation. Given the increasing returns that diversity is expected to bring, it is better to invest now, as winners will pull further ahead and laggards will fall further behind.

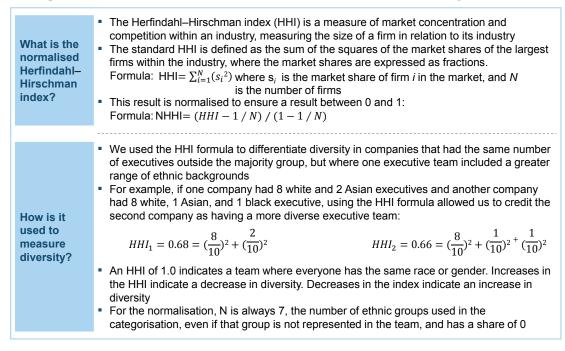
### The "Diversity Matters" project

For several years McKinsey & Company has been developing research and initiatives on the topic of diversity in the workplace. The first report, "Women Matter", published in 2007, identified a positive relationship between corporate performance and elevated presence of women in the workplace in several Western European countries, including the UK, France, and Germany. McKinsey has since expanded the focus of its research on the relationship between performance and diversity to include diversity in race and ethnicity and sexual orientation as well as gender.

The research proceeded through the creation of proprietary datasets for 366 public companies across a range of industries in the United Kingdom, Canada, the United States, and Latin America. The data collected included the composition of top management and boards in 2014 and financial data, earnings before interest and tax (EBIT), for the years 2010 to 2013.<sup>1</sup>

In addition to capturing gender information, the dataset also included ethnic and/or racial information from publicly available sources.<sup>2</sup> We measured the relationship between leadership diversity and financial performance with the aid of the Herfindahl–Hirschman Index (HHI), a tool used for decades by economists to determine the level of competitiveness within markets and industries. By adapting the index, the Diversity Matters team was able to recognise a company that, for example, has two board members from two different ethnic minorities as being more diverse than a company with the same size board that has two board members from the same ethnic minority (see box). The size of the dataset allowed for results that were statistically significant and enabled the value of the relationship to be quantified in terms of the observed uplift in EBIT relative to the diversity of the leadership teams analysed.

### Using the normalised Herfindahl-Hirschman index for diversity



<sup>1</sup> Companies were classified into seven groups: finance, insurance, and professional services; heavy industry; healthcare and pharmaceuticals; telecom, media, and technology; consumer goods and retail; transportation, logistics, and tourism; and energy and basic materials. Top management teams were as defined in company websites, and included positions from the C-suite to senior vice presidents. Almost 5,000 leaders were included in the research.

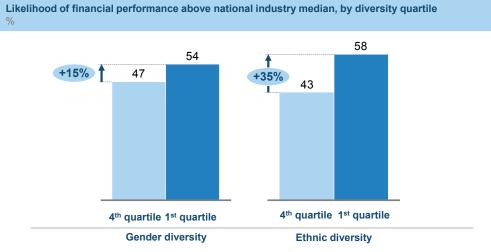
<sup>2</sup> Ethnic and racial categories used were African ancestry, European ancestry, Near Eastern, East Asian, South Asian, Latino, Native American, other.

### 1 The relationship between diversity and performance

Analysis of the data from the group of 366 companies revealed a statistically significant connection between diversity and financial performance. The companies in the top quartile for gender diversity were 15 percent more likely to have financial returns that were above their national industry median, and the companies in the top quartile for racial/ethnic diversity were 35 percent more likely to have financial returns above their national industry median (Exhibit 1). This correlation does not prove that the relationship is causal—that greater gender and ethnic diversity in corporate leadership automatically translates into more profit—but rather indicates that companies that commit to diverse leadership are more successful. The existence of the relationship is statistically significant and consistently present in the data.

### Exhibit 1

#### How diversity correlates with better financial performance

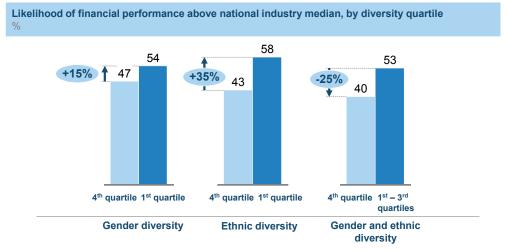


SOURCE: McKinsey Diversity Database

The reverse is also true, companies in the bottom quartile in both gender and ethnicity underperformed the other three quartiles (Exhibit 2).

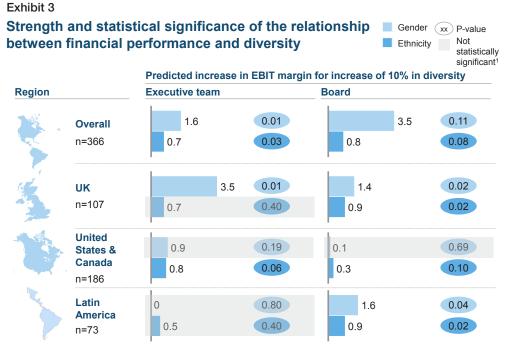
### Exhibit 2

### How low gender and ethnic diversity correlates with poorer financial performance



### ASPECTS OF THE DIVERSITY-PERFORMANCE RELATIONSHIP

The analysis of the data revealed a positive relationship between financial performance and greater diversity in leadership. The strength and significance of that relationship varied by type of diversity (gender or ethnicity), country, and industry (Exhibit 3).



1 P-values of 0.1 and under were considered statistically significant (90%).

SOURCE: McKinsey Diversity Database

### Nuances in gender and ethnic diversity

Closer inspection of the analysis revealed many interesting, non-intuitive findings. In the United States, for example, companies have made efforts in recent years to increase the number of women on executive teams and boards. Although representation is still limited, there has been measurable progress (Exhibit 4).

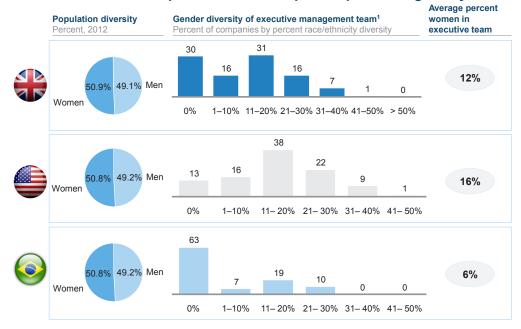
At the same time, the data appears to show that less attention has been given to the attainment of racial and ethnic diversity. By this measure it becomes apparent that US companies would need to make a dedicated effort to achieve a diversity of leadership that reflects the demographic composition of the country's labour force and population (Exhibit 5).

Interestingly, the US dataset shows no statistically significant correlation between gender diversity and performance until women constitute at least 22 percent of a senior executive team. From that point, the correlation observed for US companies is that for every 10 percent increase in gender diversity there is an increase of 0.3 percent in EBIT margin.

In the UK the relationship between gender diversity and performance is much more apparent and powerful. The correlated benefit is an increase of 3.5 percent in EBIT for every 10 percent increase in gender diversity in the senior executive team (and 1.4 percent for the board). That is, UK companies experience more than ten times the impact for their efforts in gender diversity than US companies do, even after reaching the 22 percent tipping point.

### Exhibit 4

### Women are still underrepresented at the top of corporations globally

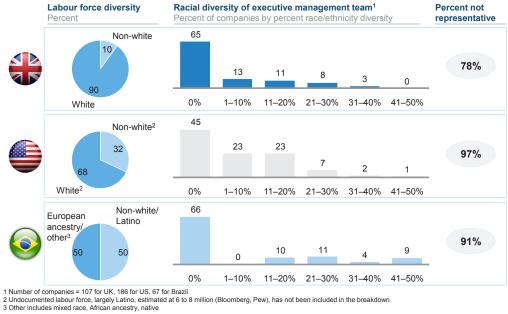


1 Number of companies = 107 for UK, 186 for US, 67 for Brazil

SOURCE: US Census Bureau, McKinsey Diversity Database

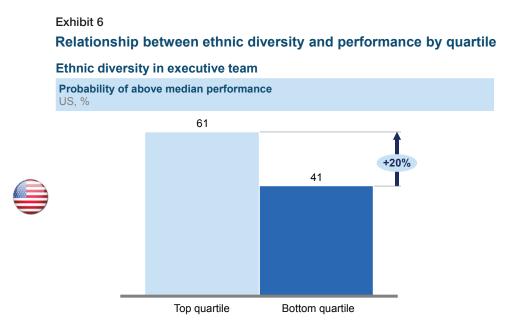
### Exhibit 5

### Compared with other countries, the UK is doing a better job in racial diversity, though it still faces challenges



SOURCE: Companies websites, McKinsey Diversity Database

For every 10 percent elevation in ethnic diversity in the executive leadership of US companies, there was a 0.8 percent improvement in EBIT. Cumulatively, more racially diverse companies had better financial performance: companies in the top quartile for ethnic diversity in leadership roles had a higher probability of above-average performance than those in the bottom quartile (Exhibit 6).



SOURCE: McKinsey Diversity Database

Above-median financial performance was achieved by a higher percentage of companies in the top quartile than the bottom quartile for ethnic diversity in all the countries and regions we investigated (Exhibit 7).

Region		Top quartile ethnic diversity	Bottom quartile ethnic diversity
	Overall	<b>5</b> 8%	<b>4</b> 3%
	United Kingdom	• 61%	<ul><li>45%</li></ul>
	United States & Canada	• 61%	<b>•</b> 41%
No.	Latin America	• 53%	• 47%

NOTE: Includes 186 organisations in United States and Canada, 107 in the United Kingdom, and 73 organisation in Latin America (67 from Brazil)

### Diversity as indicator: Some revealing details

A number of trends in the countries and industries reviewed suggest that the relationship between diversity and performance is likely to grow in importance. For instance:

- Demographics. In the United Kingdom approximately 30 percent of births in 2011 were to parents of non-European ancestry.\*
- Talent shortage. In Europe the acquisition of talent has been identified as a significant management challenge for the next five years. The ethnic composition of the UK labour force is now about 10 percent non-white, up from 6 percent in 1991. However, little more than 20 percent of UK companies attain 10 percent ethnic diversity on their top management teams.<sup>†</sup>
- Purchasing power. As customers, women are involved in 80 percent of consumer goods purchases in the UK. Gay and lesbian households increasingly represent a mainstream and sizable consumer segment.<sup>‡</sup>
- Legal requirements. Regulators in some European countries have introduced diversity targets for boards, such as those set out in the UK Equality Act 2010.

As a result of these trends, the relationship between diversity and performance will become more pronounced throughout these markets, and not just in particular segments.

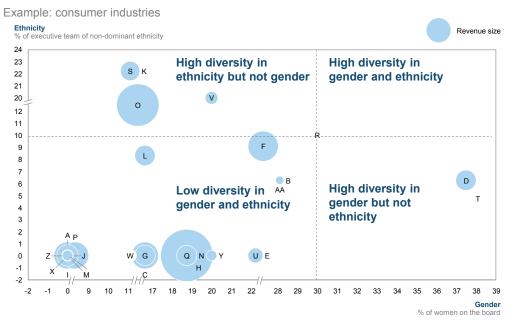
- \* David Coleman, *Immigration, Population, and Ethnicity: The UK in international perspective,* The Migration Observatory, 17 April 2013.
- † "Facing a skills shortage? Fix it yourself", McKinsey & Company, 2013; McKinsey Diversity Database.
- ‡ Women Matter: Moving corporate culture, moving boundaries, McKinsey & Company, 2013; The Power of "Out" 2.0: LGBT in the workplace, Center for Talent Innovation, 1 February 2013; African-American Consumers: Still vital, still growing, Nielsen, 21 September 2013.

### ONE PROGRAMME DOES NOT FIT ALL GROUPS

A glance at consumer industries in the UK reveals that some companies have made progress in leadership diversity in ethnicity or gender, but none has managed to lead by both measures (Exhibit 8).

### Exhibit 8

### No companies perform well on both gender and ethnic diversity



SOURCE: McKinsey Diversity Database, companies websites

The approach of many companies has been to adopt a single diversity programme to cover all action groups: racial/ethnic, gender, and sexual orientation. Yet the data suggests that such an approach is insufficient, resulting in a focus on a particular category rather than the issue as a whole. Tailored programmes and dedicated efforts are needed to ensure relevance to business and to make progress on any dimension.

# 2 Why do more diverse companies perform better?

The Diversity Matters research revealed that more diverse companies perform better, but the data did not indicate why this is so. To understand causation it was necessary to consult additional evidence, including other McKinsey research on diversity. This material allowed reasonable hypotheses to be made concerning the factors driving better performance by companies with diverse executive teams and boards. The most important drivers identified were advantages in recruiting the best talent, stronger customer orientation, increased employee satisfaction, and improved decision making.

#### Exhibit 9

### Diversity has a positive impact on many key aspects of organisational performance

Diversity manage- ment helps to…	Rationale
win the war for talent	<ul> <li>A strong focus on women and ethnic minorities increases the sourcing talent pool, a particular issue in Europe. In a 2012 survey, 40% of companies said skill shortages were the top reason for vacancies in entry-level jobs</li> </ul>
strengthen customer orientation	<ul> <li>Women and minority groups are key consumer decision makers: for example, women make 80% of consumer purchases in the UK</li> <li>Gay men and women have average household incomes that are almost 80% higher than average</li> </ul>
increase employee satisfaction	<ul> <li>Diversity increases employee satisfaction and reduces conflicts between groups, improving collaboration and loyalty</li> </ul>
improve decision making	<ul> <li>Diversity fosters innovation and creativity through a greater variety of problem-solving approaches, perspectives, and ideas. Academic research has shown that diverse groups often outperform experts.</li> </ul>
enhance the company's image	<ul> <li>Social responsibility is becoming increasingly important</li> <li>Many countries have legal requirements for diversity (e.g., UK Equality Act 2010)</li> </ul>

SOURCE: Women Matter, McKinsey & Company, 2007, 2008, 2010, 2012, 2013; Thomas Barta, Markus Kleiner, and Tilo Neumann, "Is there a payoff from top-team diversity?", *McKinsey Quarterly*, April 2012; Martin Dewhurst, Matthew Pettigrew, and Ramesh Srinivasan, "How multinationals can attract the talent they need", *McKinsey Quarterly*, June 2012; *Diversity wins!*, McKinsey & Company, November 2011; McKinsey qualitative survey; *The War for Diverse Talent*, Green Park, September 2010; Scott E. Page, *The Difference: How the power of diversity creates better groups, firms, schools, and societies*, Princeton University Press, 2007; McKinsey analysis

### THE ADVANTAGE IN TALENT RECRUITMENT

In the decade before the financial crisis, it became apparent that demographic pressures and economic growth would intensify competition for qualified leaders and experts in the advanced knowledge economies. McKinsey's 1997 research paper "The war for talent" demonstrated that better talent translates into better financial performance and concluded that companies could gain competitive advantage through superior talent management practices. A deliberate approach to talent management could yield measurably higher financial returns and create a powerful business-enhancing virtuous cycle.

Since the 1990s, the dynamics that defined this talent crunch have expanded in scope and power. Talent has become scarcer and pricier in emerging as well as developed markets, and the competition to recruit and retain talented employees has consequently intensified. Diversity in leadership can help a company secure access to more sources of talent, gain a competitive recruitment advantage, and improve its global relevance.

### Today's talent recruitment terrain

**Scarce top talent.** The pool of skilled experts and leaders has not kept pace with demand. More than a third of employers surveyed by McKinsey in 2012 said that the skills gap caused "significant problems in terms of cost, quality, and time".<sup>3</sup> In years to come society will need to address the educational and socioeconomic issues underlying these skills gaps; in the meantime, employers must continue to compete for scarce talent while building skills within their organisations. In a survey of 2,700 employers, only 31 percent believed they were doing a good job in recruiting and retaining young talent.<sup>4</sup>

**Scarce "interaction" talent.** It is widely recognized that technological changes have transformed job requirements in developed countries, but less well known that employment is growing fastest in positions requiring extensive human interaction, from legal and health professionals to frontline customer service staff in banking and retail.<sup>5</sup> This employment category already accounts for a large proportion of jobs: 41 percent in the US, 37 percent in Germany, and 26 percent in Brazil, for example. Leading companies are exploring new and better approaches to how, where, and by whom interaction work is performed.

**Scarce emerging-market talent.** Competition for talent is intensifying in emerging markets. Ambitious local companies are moving fast to hire and retain local talent, while companies in developed markets are thinking twice before making offshore commitments.<sup>6</sup>

**Geographic mismatches.** There are variations in the supply of and demand for talent from country to country, but differences in national systems of professional certification as well as language and cultural barriers make it difficult for skilled workers to move from market to market.

### Reflecting social change

Diversity management is one important means of addressing talent shortages. Diversity programmes give companies an advantage in competing for the best talent—an advantage that is growing as workforces in many advanced economies become more ethnically diverse as a result of immigration and birth-rate demographics. For example, in the US, half of all infants under the age of 1 in 2010 were members of a racial or ethnic minority group. In the UK, the percentage of workers of European ancestry within the total workforce has fallen by almost 10 percentage points in the past decade. In both the US and the UK, women make up almost half the workforce.

A recent Gallup poll found that only 13 percent of employees were actively engaged at work, and that the management behaviour most likely to affect engagement was "demonstrates strong commitment to diversity".<sup>7</sup> Level of engagement are lowest for the cohort born after 1980, and multiple surveys have indicated that diversity is particularly important to Generation Y or the Millennials, as they are known.

Because they are underrepresented, the groups targeted by diversity efforts are often good sources of desirable talent. A recent study found that on average, lesbian, gay, bisexual, and transgender (LGBT) recruits were more highly skilled and more likely to have advanced degrees.<sup>8</sup>

<sup>3 &</sup>quot;Facing a skills shortage? Fix it yourself", McKinsey & Company, 2013.

<sup>4 &</sup>quot;Facing a skills shortage? Fix it yourself", McKinsey & Company, 2013.

<sup>5</sup> Susan Lund, James Manyika, and Sree Ramaswamy, "Preparing for a new era of work", *McKinsey Quarterly*, November 2012.

<sup>6</sup> Susan Lund, James Manyika, and Sree Ramaswamy, "Preparing for a new era of work", *McKinsey Quarterly*, November 2012; "Facing a skills shortage? Fix it yourself", McKinsey & Company, 2013.

<sup>7</sup> State of the Global Workplace, 2013, Gallup, Inc.

<sup>8</sup> The Power of "Out" 2.0: LGBT in the workplace, Center for Talent Innovation, 1 February 2013.

### IMPROVED CUSTOMER ORIENTATION

By committing to diversity as a strategic imperative, companies align their own organisation more closely with an increasingly heterogeneous customer base. This enables them to forge stronger bonds with customers in two respects: reaching key purchasing decision makers and taking a customer perspective.

### Reaching key decision makers

Diversity groups represent the majority of the general population and an emphatic majority where purchasing decisions are concerned. In the UK, for example, 80 percent of purchasing decisions are made by women. By 2025, women are expected to own 60 percent of all personal wealth and control £400 million more per week in expenditures than men.<sup>9</sup> In the United States, estimates of buying power indicate that LGBT individuals controlled \$790 billion in 2012, and African Americans are expected to control \$1.1 trillion by 2015.<sup>10</sup> A top team that reflects these powerful demographic groups will have a better understanding of their market decision behaviour and how to impact.

### Taking a customer perspective

Corporate leaders with a customer perspective are able to respond to market developments more quickly and creatively. Diversity helps companies react more effectively to market shifts and new customer needs.<sup>11</sup> A senior executive at a global company in Asia stated an obvious if difficult truth when he said, "In our top-100 executive meetings we spend more than half of our time speaking about Asia. But if I look around the room I hardly see anybody with an Asian background". Fortunately, CEOs from many different industries are increasingly adopting the view that "it is crucial for a company's employees to reflect the people they serve".<sup>12</sup>

Many companies have put theory into practice in more closely reflecting their customer base. Coca-Cola, for example, has ensured that 38 percent of new US hires are people of colour and instituted mentoring programs to support the progression and retention of individuals from minority backgrounds. Walmart conducted benchmarking to understand the demographics of every country it operates in, and encouraged each country to create its own diversity and inclusion plan to reflect local needs.

### **GREATER EMPLOYEE SATISFACTION**

Diversity increases employee satisfaction and fosters positive attitudes and behaviours in the workplace. Workplace diversity increases job and life satisfaction for women and members of minority groups provided the workforce is diverse *enough*. For minority workers, for example, the boost in satisfaction kicks in when representation exceeds 15 percent of the workforce. Where diversity recruitment is a token effort, psychological outcomes are poorer.<sup>13</sup>

It is hardly surprising that workers from ethnic minorities report higher job and life satisfaction in more diverse workplaces. The presence of sufficient numbers of minority-group members (or women in traditionally male-dominated environments) boosts individuals' confidence and self-esteem, while breaking down the

<sup>9</sup> Women Matter: Moving corporate culture, moving boundaries, McKinsey & Company, 2013.

<sup>10</sup> The Power of "Out" 2.0: LGBT in the workplace, Center for Talent Innovation, 1 February 2013; African-American Consumers: Still vital, still growing, Nielsen, 21 September 2013.

<sup>11</sup> Diversity wins!, McKinsey & Company, November 2011.

<sup>12</sup> Boris Groysberg and Katherine Connolly, "Great leaders who make the mix work", *Harvard Business Review,* September 2013, pp. 68–76.

<sup>13</sup> Noemí Enchautegui-de-Jesús, Diane Hughes, Kristen E. Johnson, and Hyun Joo Oh, "Well-being in the context of workplace diversity", *Journal of Community Psychology*, 2006, volume 34, number 2, pp. 211–23.

prejudices that led to exclusion in the first place. Similarly, research has shown that gay employees in a diverse workplace feel more secure and positive about their employers and jobs than those in a less diverse environment.<sup>14</sup> A supportive culture among colleagues and supervisors is more important than the presence of a non-discrimination policy, necessary though such a foundations is.<sup>15</sup>

## BETTER DECISION MAKING AND INNOVATION

Managers working on tough problems have often assembled diverse teams of thinkers to challenge one another and improve the quality of their answers. A diversity of informed views enables objections and alternatives to be explored more efficiently and solutions to emerge more readily and be adopted with greater confidence. Research by Scott Page indicates that the presence of women and minority members on a leadership team enhances problem solving in the same way, since they add perspectives from their different experiences.<sup>16</sup> Ethnically and gender-diverse top teams offer companies more problem-solving tools, broader thinking, and better solutions.

This finding has resonated with leaders of top companies for inclusivity. For instance, Paul Block, CEO of US sweetener manufacturer Merisant, commented "People with different lifestyles and different backgrounds challenge each other more. Diversity creates dissent, and you need that. Without it, you're not going to get any deep inquiry or breakthroughs".<sup>17</sup>

Page's research was based on professional rather than demographic diversity—having an engineer and a lawyer on an executive team, for example. He understood that benefits derived from one form of diversity would not necessarily be derived from others, but believed that professional and demographic diversity often went hand in hand.

## Innovation, diversity, and market growth

A recent article reporting research by the Center for Talent Innovation (CTI) provided further support for Page's research on the correlation between diversity and better decision making, and stressed the importance of inclusive leadership in maximising the benefits of diversity.<sup>18</sup> It identified two forms of diversity:

- Innate diversity. Teams that reflect the composition of a company's customer base in terms of gender, ethnicity, culture, sexual orientation, and age are better positioned to understand its changing needs and develop winning innovations.
- Acquired diversity. Diversity at leadership level breaks down insular biases through personal experience, making the organisation more likely to act inclusively, foster a communicative culture, and create an environment where workers are free to voice unorthodox views and suggest creative solutions.

<sup>14</sup> C. S. Munoz, "A multi-level examination of career barriers for sexual minority employees", unpublished doctoral dissertation, 2005; C. R. Waldo, "Working in a majority context", *Journal of Counseling Psychology*, 2006, volume 46, pp. 218–32. The studies focused on lesbian, gay, and bisexual workers as they found insufficient data on transgendered employees.

<sup>15</sup> Ann H. Huffman, Kristen M. Watrous-Rodriguez, and Eden B. King, "Supporting a diverse workforce: What type of support is most meaningful for lesbian and gay employees?", *Human Resource Management*, 2008, volume 47, issue 2, pp. 237–53.

<sup>16</sup> Scott E. Page, *The Difference: How the power of diversity creates better groups, firms, schools, and societies,* Princeton University Press, 2007.

<sup>17</sup> Boris Groysberg and Katherine Connolly, "Great leaders who make the mix work", *Harvard Business Review*, September 2013, pp. 68–76.

<sup>18</sup> Sylvia Ann Hewlett, Melinda Marshall, and Laura Sherbin, "How diversity can drive innovation", *Harvard Business Review*, December 2013.

The CTI concluded that when leadership lacks innate or acquired diversity or fails to foster a "speak-up" culture, fewer promising ideas make it to market. Ideas from women, ethnic minorities, LGBT individuals, and members of Generation Y are less likely to win the endorsement they need to go forward because 56 percent of leaders don't value ideas they don't personally see a need for. This thinking can exert a stranglehold on an organization if its leaders are predominantly white, male, and heterosexual, for example, or come from similar educational and socioeconomic backgrounds. In short, the data strongly suggests that homogeneity stifles innovation.<sup>19</sup> This finding is supported by a new study that found that if a market is dominated by any one ethnicity, it tends to make worse decisions.<sup>20</sup>

<sup>19</sup> Sylvia Ann Hewlett, Melinda Marshall, and Laura Sherbin with Tara Gonsalves, *Innovation, Diversity, and Market Growth*, Center for Talent Innovation, 2013.

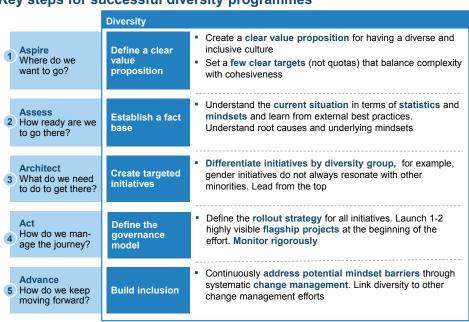
<sup>20</sup> Sheen S. Levine, Evan P. Apfelbaum, Mark Bernard, Valerie L. Bartelt, Edward J. Zajac, and David Stark, "Ethnic diversity deflates price bubbles", *PNAS*, 17 November 2014.

# *3 How can companies become more diverse?*

As the data shows, winning companies have achieved some success in attaining gender or other forms of diversity in their leadership groups. However, many companies have had mixed experience in attaining levels of diversity that make a difference. Progress is undeniable, but slow and incremental. One of the most important lessons is that diversity does not simply happen—it does not come from a memo or end with the recruitment of a few individuals from target groups. Rather, diversity in the top team and indeed at all levels of an organisation is best achieved through dedicated programmes that focus on specific goals.

Diversity programmes are in essence a form of change programme: they seek to alter the composition of leadership teams or staff and to disrupt old habits and routines. However, research into change management has found that change programmes have a high failure rate of about 70 percent.<sup>21</sup> Most efforts stall because those involved—management and employees—do not believe in them or make them a priority.

Successful diversity programmes have clear objectives and are led from the top (not just the CEO, but the entire top team). They foster active involvement from the wider organization and require the infrastructure to actively manage against targets (not quotas) to hold individuals accountable for outcomes. Exhibit 10 sets out questions for leaders to ask when planning a change programme and suggestions to help organizations reach their diversity goals.



### Exhibit 10

### Key steps for successful diversity programmes

SOURCE: Scott Keller and Colin Price, Beyond Performance: How great organizations build ultimate competitive advantage, Wiley, 2011

<sup>21</sup> Scott Keller and Colin Price, Beyond Performance: How great organizations build ultimate competitive advantage, Wiley, 2011.

Diversity programmes designed to raise the representation of women and minorities in organisations face particular challenges with resistance and inertia arising from unconscious (and sometimes overt) biases that can be deeply engrained in an organisation's culture and unknowingly practised by individuals.<sup>22</sup> Applying best practices in change management will be necessary but may not be sufficient to enable the organisation to attain meaningful diversity goals.

In addition to individual biases, there may be barriers in the composition of leadership teams and in the structure of the organisation as a whole. These barriers can have many causes and hinder progress even when companies are implementing other best practices. For instance, research by Groysberg and Connolly on creating diverse and inclusive organisations identified persistent institutional barriers to the recruitment of women such as exclusion from networks that open doors to development and unexamined assumptions about the tension between family demands and job requirements.<sup>23</sup>

McKinsey's own research found a number of additional and equally important barriers to the recruitment of all diversity groups: the lack of a clear and consistent mandate with visible support from leadership; inadequate collection and use of data on the advantages of more diverse organisations; and training that was limited and exclusive in its content and audience, rather than covering people inside and outside target groups. All these barriers can be overcome, but must first be identified and understood, and then addressed individually as part of a many-sided approach to inclusiveness.

## Lessons from behavioural economics and social psychology

Recent developments in the fields of behavioural economics and social psychology help to explain why diversity is lacking in organizations, and what methods can be used to increase it.

### 1. Underlying reasons for bias

A body of research in cognitive psychology and behavioral economics over the past 40 years has established that human behaviour is heavily influenced by subconscious, instinctive, and emotional "System 1" responses, rather than being under the exclusive control of rational, deliberate "System 2" thinking.\* As a result, behaviour and attitudes in the workplace are influenced by an array of cognitive biases that affect decision making. The most relevant for diversity are:

- Implicit stereotypes (sometimes referred to as "subconscious bias"): the association of groups of people with certain traits or activities, such as men with science and mathematics and women with arts and languages.<sup>†</sup> Without our being aware of it, these associations can powerfully influence decisions such as which candidate to hire.
- Ingroup favouritism: a preference for people who are like us, so that an individual might choose to work with someone of the same nationality, gender, and race.<sup>‡</sup>
- Outgroup homogenity bias: the tendency for an individual to think that the group of people they belong to (their "ingroup") is more diverse, while their "outgroup" is more homogeneous, with members who appear alike or even interchangeable.<sup>‡</sup>

<sup>22</sup> Allen R. McConnell and Jill M. Leibold, "Relations among the implicit association test, discriminatory behavior, and explicit measures of racial attitudes", *Journal of Experimental Social Psychology*, 2001, volume 37, pp. 435–442.

<sup>23</sup> Boris Groysberg and Katherine Connolly, "Great leaders who make the mix work", *Harvard Business Review*, September 2013, pp. 68–76.

## 2. Techniques for overcoming bias

Behavioural insights can be harnessed to increase diversity in three main ways: by training and educating people to reduce personal biases, by changing organisational processes to take bias out of decision making; and by incorporating behavioural principles in the design of programmes and communications to spur action.

### Educating and training people to reduce personal biases

Key success factors for raising awareness and building capability include:

- Tailoring delivery to the audience. For example, one engineering company used a computer simulation to show how a systematic 1 percent bias against women in performance evaluation scores caused women to be underrepresented in top positions.
- Getting people to experience bias personally. At Google, for instance, staff are encouraged to take a test that measures biases.
- Reminding people about biases at key moments, such as before reviews.
- Helping people to focus on differences to reduce homogeneity bias and stereotyping. In one experiment, French students discriminated against potential employers who were Arabs, but stopped doing so if asked to describe differences between their photos.<sup>‡</sup>
- Fostering empathy training and taking the side of the target group—a practice proven to reduce prejudice and discrimination. Simply asking "How would I feel in this situation?" can be enough to have a positive effect.<sup>‡</sup>

### Changing processes and structures to reduce bias in decision making

Another way to increase diversity is to introduce techniques to minimise the influence of individual biases on key decisions. These techniques can take several forms:

- Analytical. One approach to reduce bias in recruitment is to define scoring criteria for each candidate and use an algorithm rather than human judgement to make decisions based on the criteria. Daniel Kahneman has applied this technique to improve the assessment of candidates for the Israeli army.\* Modified versions of the technique have been used by a variety of companies, including McKinsey.
- Debate. One effective way to identify bias in decision making is to institute a "pre-mortem" by asking people to imagine what could go wrong if a particular decision is taken.<sup>§</sup> Another technique is to nominate an individual to act as devil's advocate and challenge assumptions behind decisions, such as implicit stereotypes. A number of studies have shown that this approach leads to better decisions.
- Organisational. Companies can, for example, create a decision challenge team.

### Applying behavioural economics principles to diversity efforts

McKinsey has identified seven ways to apply behavioural principles: use information about peers, use people's natural reflexes, make sure information comes from a credible origin, provide strategic context, trigger an emotional response, make information salient, and appeal to an individual's self-image. Many of these techniques can be used to enhance the effectiveness of diversity programmes; for instance:

- Peers: highlight the positive achievements of peers. This has been shown to be one of the most effective ways to influence people. For example, informing taxpayers that others pay their tax significantly increased tax contributions, whereas reminders of prosecution or how tax is used did not.<sup>1</sup> A company could use internal statistics from other departments or business units that are more advanced in achieving diversity, as well as external data on highly regarded competitors. Telling employees about their peers' contributions to diversity is another effective technique.
- Reflexes: prime people with images and words that discourage biases. A striking example of the effects of priming—or introducing subliminal clues—was provided by research that showed that when Asian women were reminded about their gender, they performed significantly worse in a maths test than when they were reminded about their ethnicity.\*\* Companies can use priming techniques strategically to reduce bias, for example by displaying pictures of well-known powerful women.
- Origin: make sure that diversity messages come from trusted opinion leaders within the organization, whether they are line workers or managers, rather than from a diversity group that may be seen as an outsider.<sup>††</sup>
- \* Daniel Kahneman, Thinking, Fast and Slow, Allen Lane, 2011.
- † Brian A. Nosek, Mahzarin R. Banaji, and Antony G. Greenwald, "Math = male, me = female, therefore math ≠ me", Journal of Personality and Social Psychology, 2002, volume 83, number 1, pp. 44-59.
- ‡ Scott Plous, editor, Understanding prejudice and discrimination, McGraw-Hill, 2003.
- § Gary Klein, "Performing a project pre-mortem", Harvard Business Review, September 2007.
- Ryan T. Hartwig, "Facilitating problem solving: A case study using the devil's advocacy technique", *Group Facilitation*, number 10, 2010.
- ¶ Richard H. Thaler and Cass R. Sunstein, Nudge: Improving decisions about health, wealth, and happiness, Yale University Press, 2008.
- \*\* Clayton M. Christensen, Stephen P. Kaufman, and Willy C. Shih, "Innovation killers: How financial tools destroy your capacity to do new things", *Harvard Business Review,* January 2008.
- †† Robert B. Cialdini, Influence: The psychology of persuasion, HarperCollins, 2007.

## Conclusion

Diversity matters. In a world that is both diverse and deeply interconnected, companies and institutions with greater levels of diversity are achieving better performance. Most organisations, including McKinsey, have more work to do to take full advantage of the opportunity presented by a more diverse leadership team. Organisations also have more work to do on their talent pipeline to attract, develop, mentor, sponsor, and retain the next generations of diverse leaders at all levels. But with the rewards of diversity set to increase, investing now is the best plan. Winners will pull further ahead and laggards will fall further behind.

## Authors



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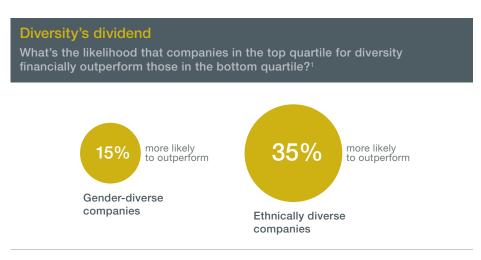
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## Why diversity matters

Vivian Hunt, Dennis Layton, and Sara Prince

New research makes it increasingly clear that companies with more diverse workforces perform better financially



<sup>1</sup>Results show likelihood of financial performance above the national industry median. Analysis is based on composite data for all countries in the data set. Results vary by individual country. Source: McKinsey analysis

**We know intuitively** that diversity matters. It's also increasingly clear that it makes sense in purely business terms. Our latest research finds that companies in the top quartile for gender or racial and ethnic diversity are more likely to have financial returns above their national industry medians. Companies in the bottom quartile in these dimensions are statistically less likely to achieve above-average returns. And diversity is probably a competitive differentiator that shifts market share toward more diverse companies over time.

While correlation does not equal causation (greater gender and ethnic diversity in corporate leadership doesn't automatically translate into more profit), the correlation does indicate that when companies commit themselves to diverse leadership, they are more successful. More diverse

companies, we believe, are better able to win top talent and improve their customer orientation, employee satisfaction, and decision making, and all that leads to a virtuous cycle of increasing returns. This in turn suggests that other kinds of diversity—for example, in age, sexual orientation, and experience (such as a global mind-set and cultural fluency)—are also likely to bring some level of competitive advantage for companies that can attract and retain such diverse talent.

McKinsey has been examining diversity in the workplace for several years. Our latest report, *Diversity Matters*, examined proprietary data sets for 366 public companies across a range of industries in Canada, Latin America, the United Kingdom, and the United States. In this research, we looked at metrics such as financial results and the composition of top management and boards.<sup>1</sup>The findings were clear:

- Companies in the top quartile for racial and ethnic diversity are 30 percent more likely to have financial returns above their respective national industry medians.
- Companies in the top quartile for gender diversity are 15 percent more likely to have financial returns above their respective national industry medians.
- Companies in the bottom quartile both for gender and for ethnicity and race are statistically less likely to achieve above-average financial returns than the average companies in the data set (that is, bottom-quartile companies are lagging rather than merely not leading).
- In the United States, there is a linear relationship between racial and ethnic diversity and better financial performance: for every 10 percent increase in racial and ethnic diversity on the senior-executive team, earnings before interest and taxes (EBIT) rise 0.8 percent.
- Racial and ethnic diversity has a stronger impact on financial performance in the United States than gender diversity, perhaps because earlier efforts to increase women's representation in the top levels of business have already yielded positive results.
- In the United Kingdom, greater gender diversity on the senior-executive team corresponded to the highest performance uplift in our data set: for every 10 percent increase in gender diversity, EBIT rose by 3.5 percent.
- While certain industries perform better on gender diversity and other industries on ethnic and racial diversity, no industry or company is in the top quartile on both dimensions.

<sup>1</sup> The Women Matter research McKinsey published in 2007 identified a positive relationship between corporate performance and gender diversity. We have since expanded the focus of this research to examine diversity more broadly, from gender to race and ethnicity to sexual orientation. Our latest research examined metrics such as total revenues, earnings before interest and taxes, and returns on equity for the years 2010 to 2013. In addition to capturing gender information, the data set included information on ethnicity, race, or both from publicly available sources. For a detailed explanation of how we conducted our research, please see our full report, Diversity Matters, on mckinsey.com.

• The unequal performance of companies in the same industry and the same country implies that diversity is a competitive differentiator shifting market share toward more diverse companies.

We're not suggesting that achieving greater diversity is easy. Women—accounting for an average of just 16 percent of the members of executive teams in the United States, 12 percent in the United Kingdom, and 6 percent in Brazil—remain underrepresented at the top of corporations globally. The United Kingdom does comparatively better in racial diversity, albeit at a low level: some 78 percent of UK companies have senior-leadership teams that fail to reflect the demographic composition of the country's labor force and population, compared with 91 percent for Brazil and 97 percent for the United States.

These numbers underline the work that remains to be done, even as the case for greater diversity becomes more compelling. We live in a deeply connected and global world. It should come as no surprise that more diverse companies and institutions are achieving better performance. Most organizations, including McKinsey, must do more to take full advantage of the opportunity that diverse leadership teams represent. That's particularly true for their talent pipelines: attracting, developing, mentoring, sponsoring, and retaining the next generations of global leaders at all levels of organizations. Given the higher returns that diversity is expected to bring, we believe it is better to invest now, since winners will pull further ahead and laggards will fall further behind.

#### This article is adapted from the report *Diversity Matters*, on mckinsey.com.

The authors would like to thank Andrea Alexander, Mauricio Arnau, Lori Dobeus, Kirill Dushkin, Lauren Miller, and Katie Smith for their contributions to this report.

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ATTORNEY TOOLKITS: Fostering a Diverse and Inclusive Work Environment





## Managing Partners' ToolKit: Fostering a Diverse and Inclusive Work Environment

Drafted by the Committee to Enhance Diversity in the Profession, Retention & Sponsorship Task Force January 2016

At the last Managing Partners' Roundtable held during the City Bar's diversity and inclusion CLE program in June 2015, managing partners requested a one to two page list of takeaways or tools they could implement to enhance the diversity and inclusiveness of their firms. Below is a list of those tools ranging from basic steps that can be taken on a day to day basis to more involved steps that require planning and attention like annual unconscious bias trainings and mentorship/sponsorship programs. The list also includes resources that discuss issues related to diversity and inclusion and reasons why diversity and inclusion matter. We hope these tools will be useful to managing partners' efforts to strengthen the diversity and inclusiveness of their firms.

- I. Inclusion Strategies
  - A. Basic Tools these strategies are often overlooked as obvious, but can have a tremendous impact on the inclusiveness of a firm
    - 1. Consider what it might be like to be in the numeric minority and help diverse attorneys navigate firm culture
      - a) Invite diverse attorneys to lunch/coffee
      - b) Sit next to diverse attorneys at a meeting
      - c) Say hello simply saying hello can spark conversation that interrupts biases and misperceptions
    - 2. Do not rely on the grapevine-form your own opinions about associates
      - a) Find ways to put associates at ease and let them know you believe in their capacity to succeed
      - b) When mistakes occur, share your own experiences of stumbling or overcoming a challenge in your career at the firm
      - c) Make an effort to give timely, constructive feedback to everyone, especially diverse associates
    - 3. Give associates a second chance to work with you
    - 4. Share your desire to increase diversity and inclusion regularly to set a "Tone from the Top"
    - 5. Create "fail safes" in the system
      - a) Rotate office house work (taking notes, planning parties) so that no one group is disproportionately doing the "low value" work
      - b) Institute practice of examining the full list of eligible associates by level rather than just who is top of mind

- c) Create explicit role for someone to speak up for implicit bias in written evaluations and in discussions rotate this responsibility
- B. Mentorship/Sponsorship Tools
  - 1. Mentor/Sponsor people who are not like you
  - 2. Staff associates whose names may be more difficult to pronounce
  - 3. Invite diverse attorneys to sit in on conference calls, client meetings, professional meetings
  - 4. Pay attention to the demographics of associates working on your matter
  - 5. Add at least one new associate to your pool of "go to" associates
  - 6. When giving assignments, be careful to explain what you want, don't assume the associate knows what you know
  - 7. Encourage the associate to return with follow-up questions or identify a more senior associate that can serve as a resource
  - 8. Tie compensation to formal mentoring/sponsorship program
- C. Training Tools we can train ourselves to notice and interrupt implicit bias
  - Hold annual or bi-annual unconscious bias or diversity and inclusion trainings Use Diversity and Inclusion professionals to develop infrastructure to address unconscious bias
  - 2. Review resources to understand why bias exists and the current reality in the legal profession and share with management of the firm
- II. Studies/Literature of Interest
  - A. Harvard's IAT

https://implicit.harvard.edu/implicit/takeatest.html

- B. Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills (Nextions Research Study) <u>http://www.nextions.com/wp-</u> content/files mf/14468226472014040114WritteninBlackandWhiteYPS.pdf
- C. Recruitment (University of Chicago Resume Study) http://www.chicagobooth.edu/capideas/spring03/racialbias.html
- D. Implicit Bias in the Courtroom (Jerry Kang UCLA study) http://faculty.washington.edu/agg/pdf/Kang&al.ImplicitBias.UCLALawRev.2012.pdf
- E. Mansplaining, Manterrupting & Bropropriating: Gender Bias and the Pervasive Interruption of Women (New Nextions Research Study) <u>http://www.nextions.com/library/articles-research-studies/yellow-paper-series-mansplaining-manterrupting-bropropriating-gender-bias-and-the-pervasive-interruption-of-women-nextions-original-research-042015/</u>
- III. Motivation for Change
  - A. Inclusion creates diversity, which inspire innovation, and law firms need innovation now more than ever
  - B. Creative thinking and innovative solutions arise from diversity of perception and thinking
  - C. The best way to create the most complete analysis of these perceptions and make the best decisions is with a lot of different thinkers



## Attorney ToolKit: Fostering a Diverse and Inclusive Work Environment

Drafted by the Committee to Enhance Diversity in the Profession, Retention & Sponsorship Task Force January 2016

Our goal is for attorneys to define what "success" means to them and be empowered to achieve the competence, credibility and confidence that will ultimately lead to such success. The steps and resources outlined below provide a framework for attorneys, particularly more junior attorneys, to be strategic about their careers. These tools are by no means limited to diverse attorneys. We acknowledge, however, that persons from traditionally underrepresented backgrounds in legal organizations may face a unique set of challenges that requires them to be all the more deliberate about their professional development. We hope this toolkit serves as a resource to individual attorneys and through their empowerment contributes to the advancement of diversity and inclusion in the legal profession.

- 1. Steps to Fortifying Your Success
  - A. Position yourself to be mentored and sponsored.
    - i. Build your brand.
      - (1) Producing stellar work product is a must. Work product must be accurate, succinct and performed in a timely manner.
      - (2) Be enthusiastic about your work and assignments.
      - (3) Speak up and ask for assignments that are of interest and will increase your skillset. As a junior attorney, you may be in a position to ask to observe proceedings, client meetings and strategy sessions.
      - (4) Ensure that your contributions are noticed. Identify ways to keep the senior attorneys with whom you work aware of your achievements.
      - (5) If you make a mistake, promptly acknowledge your mistake and, when practical, be prepared to offer potential solutions.
      - (6) Understand that your outside work activities can reflect either positively or negatively on both your and your organization's

brands. When using social media do not post inappropriate comments or other items that can be interpreted negatively.

- ii. Build relationships.
  - (1) Step outside of your comfort zone. Your mentors and sponsors need not look like you.
  - (2) Recognize that even senior attorneys may experience discomfort around difference. Expressing interest in their work, and potentially even outside interests, helps to breakdown any perceived or real barriers.
  - (3) Network. Attend a range of work-related events. While building relationships with those who share similar backgrounds with you is reaffirming and beneficial, be mindful to cultivate relationships with individuals whose gender, race, sexual orientation, etc. may be different than your own.
  - (4) Be a good citizen. Consider taking roles on committees, particularly committees that involve senior attorneys, while ensuring that such involvement does not negatively affect your ability to provide stellar work product. Also consider assisting with recruiting, CLE presentations and client alerts.
  - (5) Get to know people outside of your practice group. The more people advocating for you in your organization, the better.
- iii. Recognize that those influential persons who can sponsor you are looking for loyal, high-performing attorneys who can add value through their work product and perspective. In return these sponsors will advocate for you, provide space for you to take risks and help position you to advance.
- B. Become culturally competent.
  - Understand organizational culture and the unwritten rules. Identify those competencies and qualities that are valued by your organization. Listen to the terms senior attorneys use to describe well-regarded junior attorneys. Speak with diversity professionals, senior attorneys and others at your organization to determine core qualities.
  - ii. Make informed decisions about code switching versus covering/ assimilating. Code switching, such as adjusting your handshake or pace of speech, may enable you to conform to professional etiquette. On the other hand, covering may result in your hiding or denying a meaningful part of your identity. By assessing how your personality traits and characteristics align with those of your organization, you can then

determine how best to maintain your "authenticity" while exhibiting the qualities that are valued by your organization.

- iii. Understand the biases you may face and "interrupt" them. For example, prior to starting child care leave, consider meeting with the attorneys with whom you work and expressing your expectation and enthusiasm that you will return to work and continue to meaningfully contribute.
- C. Invest in your professional development.
  - i. Develop an individual development plan and regularly assess where you stand.
  - ii. Create an atmosphere that encourages others to give feedback to you.
    - (1) Ask for candid feedback in real time. You want to avoid only receiving feedback at your annual review.
    - (2) When receiving constructive feedback: listen openly, ask questions to clarify, circle back at a later time if appropriate and incorporate the feedback into your work.
    - (3) Do not get defensive. Take the opportunity to learn as much as you can.
  - Stay abreast of developments that impact your clients and your practice. It is easy to focus solely on your day-to-day work, but expanding your view can bring additional knowledge and fulfillment. Utilize "Google Alerts" or other similar tools to help you stay apprised of relevant developments.
  - iv. Continually focus on skill development. When work allows, attend bar association and other substantive conferences, as well as CLEs outside of your organization. Take on *pro bono* work that enhances your skills.
  - v. Become involved in external organizations, such as bar association committees. Not only will you have opportunities to meet others outside of your organization, but also you will likely gain leadership experience and skillsets that will add value to your work. Be intentional about leveraging the experience and knowledge of your external network.
  - vi. Be resilient. Despite your best efforts, times may arise when you feel that your professional development—including others' investment in your career—is not progressing as you would like. During these times it is imperative that you are resilient and remain engaged. Consider speaking with the diversity professional or other talent management professional at your organization to assess your overall career goals.

You may be able to rectify the situation and advance at your current organization or, if not, a deliberate career move may be in order.

- D. Recognize your role in shaping others' experiences.
  - i. Speak up for others when appropriate. Whether that means giving them credit when due or calling to others' attention when you see bias.
  - ii. Mentor others. Everyone can be a mentor. Mentoring others allows you to give back and with all likelihood you will also receive insight from those you mentor, and further solidify your own substantive knowledge by communicating it to others.
  - iii. Share your experiences with others so that they may learn and receive the benefit of your perspective.

## 2. Suggested Readings

- A. ABA Commission on Women in the Profession, *The Grit Project Program Toolkit:* Using Grit and Growth Mindset to Advance Women in the Law, <u>www.ambar.org/grit</u> (2014).
- B. Association of Law Firm Diversity Professionals and Corporate Counsel Women of Color, *Associate Individual Development Plan*, <u>http://bit.ly/2eAYQHu</u> (2011).
- C. Elaine Meryl Brown, Marsha Haygood and Rhonda Joy McLean, *The Little Black Book of Success: Laws of Leadership for Black Women*, One World/Ballantine Books, 2010.
- D. Cultural Competence: An Essential Skill for Success in an Increasingly Diverse World, http://www.practicepro.ca/lawpromag/Cultural Competence Bhasin.pdf.
- E. Carla A. Harris, *Expect to Win: 10 Proven Strategies for Thriving in the Workplace*, Plume, 2010.
- F. Sylvia Ann Hewlett, *Forget a Mentor, Find a Sponsor: The New Way to Fast-Track Your Career*, Harvard Business Review Press, 2013.
- G. Cecilia B. Loving, *Enlarge Your Territory*, New York Law Journal Magazine, April 2004.
- H. Maria Popova, Fixed vs. Growth: The Two Basic Mindsets that Shape Our Lives, <u>https://www.brainpickings.org/2014/01/29/carol-dweck-mindset</u> (January 29, 2014).
- I. Claude M. Steele, *Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do*, W.W. Norton & Company, 2010.

- J. David A. Thomas and John J. Gabarro, *Breaking Through: The Making of Minority Executives in Corporate America*, Harvard Business School Press, 1999.
- K. Joan C. Williams and Rachel Dempsey, *What Works for Women at Work: Four Patterns Working Women Need to Know*, New York University Press, 2014.

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## **Promotion, Retention Are Key to Inclusion**

Surveys released at Diversity Week show progress in hiring, areas where gains can be made

**R. Thomas Umstead** · Sep 23, 2019

Cable operators and programmers took heart from new survey results showing increased employment opportunities for people of color and women, the same week that companies contributed more than \$1.4 million to bolster diversity efforts during the industry's annual Walter Kaitz Foundation dinner.

Still, executives said the challenge remains to continue recruiting new, diverse and inclusive talent while working harder to keep executives of color and women from leaving for other industries.

"As we open the report card on our own [diversity] efforts and continue striving to advance the cause of diversity, we do so understanding that ... the business of a diverse America is diverse business," NCTA president and CEO Michael Powell said during the industry's Diversity Week programs in New York, including the annual Women in Cable Telecommunications (WICT) Leadership Conference and the National Association for Multi-ethnicity in Communications (NAMIC) Conference.

## Related: NCTA's Powell Urges Industry to Take a Stand

## **Signs of Progress**

Findings of the two-year AIM/PAR Workforce Survey from WICT and NAMIC include an increase in representation of people of color and women in executive and senior-level management positions by 3% and 2%, respectively, compared to the last survey in 2017. Hiring rates for people of color exceeded the rate for white people by roughly 15% compared with the last survey, while hiring rates for women exceeded the rate of men by nine percentage points.

The positive results stem from continued efforts to cultivate an industry culture that welcomes women, as well as people from all backgrounds, Comcast senior executive VP and chief diversity officer David Cohen said during the Sept. 17 town hall meeting where the report was unveiled.

"What other industry in America does what we're doing?" Cohen asked rhetorically. "We have senior executives, managers and executives, women and people of color collectively getting together to attend seminars, sessions and learning best practices in the D&I space. We've created an enlightened culture around D&I, and that is what is driving our success."

While the survey showed positive results, industry executives said it also showed some weaknesses in diversity efforts that need to be addressed. Paramount is turning around low promotion rates and high departure figures for women and executives of color.

Promotion rates for people of color are lower than for white people, and white professionals younger than 36 are promoted at more than two times the rate of young professionals of color, according to the survey. Also, the turnover rate for people of color is 11% points higher than their white counterparts, and for women it is 7.3% points higher than for men.

"A lot of time when we talk about inclusion, workplace and culture efforts, but internal mobility and having an opportunity to advance is part of inclusion," Johnita Due, senior vice president and chief diversity & inclusion officer for WarnerMedia News & Sports, said at the town hall.

Charter Communications senior vice president and chief diversity officer Rhonda Crichlow said that increased executive mentorship is one of the keys to retaining quality, diverse and inclusive executives.

"For anyone to be successful in a corporate environment, they need to make sure that they have adequate sponsorship in the organization to help them continue to [thrive]," Crichlow said. "What we know is that people of color ... are under-mentored and underdeveloped compared to their peers. So the question for us is, what are we going to do about it, because we know that when they get that level of sponsorship they are inclined to stay in organizations longer and they are inclined to be much more satisfied with their career experience."

Added Powell: "Mentorship is imperative to the industry's advancement of diversity and inclusion. If you're going to be a great mentor you're going to be a truth-teller ... you can't make someone a superhero if they haven't bought the right cape."

## See It, Then Be It

Comcast's Cohen said it is also important for young women and people of color to see diverse executives in the workplace if the industry is going to retain the best and the brightest talent. Fifty-three percent of Comcast's workforce now reports to a person of color or a woman, Cohen said, compared to a mid-40% share of employees five years ago.

"As the pressure gets put on other industries like the tech industry to hire diverse talent, they're coming for our diverse talent," he said. "The competition for our diverse talent is much more intense than it has ever been, and I think that's contributing to our turnover problem. It's a war everyday."

To aid in the industry's diversity efforts, the Walter Kaitz Foundation's annual fundraising dinner raised more than \$1.4 million, consistent with the numbers in recent years. The cash helps fund NAMIC, WICT, and internship-placing organizations Emma L. Bowen Foundation and T. Howard Foundation to help advance diversity, equity and inclusion within the industry.

"True inclusion is a sthroughtful, vigorous and disciplined exercise that is needed in order to develop strategies to ensure (the industry) lives up to our goals in business, in society and in life," Kaitz executive director Michelle Ray said.