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The State of Gender Diversity in Big Law

At this rate, women equity partners will not reach 30 percent until 2081. Without extraordinary new efforts, parity remains only a distant possibility.¹

Gender diversity has been a longstanding issue in most industries. Within the wider socioeconomic context of women’s role in society, women have struggled to achieve equality with men in terms of overall representation, compensation, and promotion at work. Women can easily become disenfranchised by implicit bias² when working on predominantly male teams, and there is a marked lack of women in top leadership roles. American society as a whole has made gains toward achieving parity, but there is a long way to go.

The legal industry is at a crossroads when it comes to gender diversity. As enforcers of equal opportunity, lawyers are at the forefront of the push for equality as a legal matter. At the same time, the law is consistently ranked as one of the worst industries for hiring and retaining a diverse workforce and has failed to improve despite efforts to change. In fact, the number of female lawyers in the Am Law 200 has flat lined for the past five years, at slightly over 30% of the workforce.

According to ALM Intelligence data, while female associates comprise approximately 45% of incoming Big Law classes – only a 2% difference from graduating law school classes (47%) – Big Law has seen a slow leakage of women retained year over year. While women make up nearly half of the classes of incoming associates, they comprise only a small portion of the leadership tiers: Over the past five years, women represented only 25% of the non-equity partnership tier and about 16% of equity partnerships. Most worryingly, there seems to be no ready solution to the stagnation in numbers.

Further, while societal pressures are undoubtedly a cause of female retention issues, ALM Intelligence data shows there is no specific age cohort that correlates with women leaving Big Law. Rather, there is a slow attrition of female talent year-over-year.

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2. For purposes of this paper, implicit bias refers to subconscious stereotypes that exist without intentional control. Explicit bias refers to conscious beliefs or conduct.
At the same time, the number of diversity-driven general counsels (GCs) and corporate diversity initiatives in Fortune 1000 companies has risen steadily, and so have their expectations for diversity within their outside counsel teams.\(^3\) GCs now demand diverse outside counsel teams, leading to an uncomfortable Request for Proposal process for many law firms.

In interviews with Am Law 200 partners, it was not uncommon to hear of gender diversity being the major roadblock in the RFP process. Anecdotes such as that of one firm that sent a group of white male partners to meet a female Asian American general counsel and the repercussions of that decision will only become more common over time.

While there is exogenous pressure on Big Law to ensure that they prioritize gender diversity, it is hard to ignore the expanding amount of research concluding that diversity makes good business sense internally as well. Studies indicate that gender-diverse teams are both more profitable and more innovative.\(^4\) Some high-level findings include the fact that gender-diverse companies outperform non-gender-diverse companies by 15%, an increase in women at the top is associated with a 30% rise in profitability, increased gender diversity is associated with higher levels of retention, and diverse teams achieve a greater degree of innovation than non-diverse teams.

In addition, there has been an upswing in actions against law firms and companies (the Chadbourne & Parke and Farmers Insurance class actions are two recent examples) that have not ensured equal pay and policy, and this trend is not expected to abate anytime soon, particularly as more legislation is enacted nationally to address gender inequality.

In sum, internal and external factors make this issue more critical than ever. If firms do not make significant progress soon, gender parity will remain only a distant possibility for the industry. The repercussions of this will disrupt the industry in two significant ways. On the firm level, lack of gender diversity will prevent firms from winning work from diversity-focused clients and building the most innovative and profitable teams. Industrywide, Big Law will become a distant competitor for top female talent, particularly at the middle and upper echelons.

Appendix I of the report (Gender Diversity Best Practices Checklist) on page 11 is a practical tool firms can use to help combat implicit bias and attain gender parity.

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\(^3\) In 2016, 24% of Fortune 500 GCs were female and 19% of Fortune 501-1000. Both are up from 2014, when 21% of Fortune 500 GCs were female and 16.8% of Fortune 501-1000. A Current Glande at Women in the Law, American Bar Association, 2014 and 2016.

Flashpoints Hindering Gender Parity

In much of the discourse surrounding gender diversity, the focus is on aggregate statistics. However, headline data cannot possibly capture the myriad of factors that underlie why firms have not achieved gender parity. A deeper dive reveals metrics that firms should be scrutinizing in order to improve.

Two of the primary metrics that firms should consider are:

1. Analyzing practice area data by gender
2. Analyzing location data by gender

The following analysis will focus on market metrics to illustrate the critical role that underlying data, such as practice area and location statistics by gender, may have on Big Law diversity.

It is important to note that the purpose of this analysis is to show how looking at the problem in a new way may assist in closing the gender divide. Critically, it can only be used as a proxy for firms analyzing their own underlying statistics.

Gender Diversity by Practice Area

Practice area data reveals substantial gender diversity variances.

Percentage of Am Law 200 Female Lawyers by Practice Area

As the figure above illustrates, women in Big Law are well represented only in niche practice areas, including immigration, family law, healthcare, education, and labor and employment, followed closely by trusts and estates. The majority of Am Law 200 practice areas average approximately 30% female headcount. The bottom five include bankruptcy, antitrust, M&A, admiralty, and aerospace. Big Law’s biggest practice areas at best boast middling female headcount and at worst represent the bottom of the barrel.
Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent

As seen in the bubble chart above, most of the practice areas that are well-represented by female attorneys are not areas of focus for Big Law, indicating that the majority of Big Law practice areas may suffer more from implicit bias by predominantly male teams and have fewer resources to mentor young female talent.

Only labor & employment, a niche practice area, is close to a leading practice area by total headcount among Am Law 200 firms and has a larger percentage of female headcount. However, it is important to note that labor & employment headcount numbers are skewed because only a small handful of Am Law 200 firms have labor & employment practices.

This data also suggests a disparity in compensation by gender. ALM Intelligence data shows that practice areas with the highest compensation ratios are the biggest bubbles on this chart. The middling percentage of female headcount in high-earning practice areas such as corporate, tax, litigation, and IP effectively means that female lawyers, largely employed in lower-paying practice areas, earn less as a group.

A barrier to gender equality in Big Law may lie in the lack of women in traditionally male practices. Extra hiring and training in practice areas with a lower percentage of female attorney headcount may help balance any inequality.

Firms should do a detailed assessment internally of gender representation by practice area to determine which firm practice areas are most at risk.
Gender Diversity by Location

Examining gender data by location also reveals some interesting challenges that are worthwhile for law firms to investigate internally to understand the cause of diversity issues they are facing.

According to American Bar Association (ABA) data, the states with the highest average of full-time female students at ABA-approved law schools (including Hawaii, Puerto Rico, DC, Massachusetts, and Maryland) have a student body that is approximately half female. States at the lower end of the spectrum have a student body that is just over one-third female (including Idaho, Kansas, Nebraska, Utah, and West Virginia). Note that Puerto Rico and Hawaii are very small markets, with the latter having only one ABA-approved law school with a total student body population of approximately 200 students.

Interestingly, many of the smaller US markets are at opposite extremes of female student headcount, while some of the larger markets tend to fall somewhere in the middle of the pack at just under half of the student body.

Logically, the states that have higher percentages of female graduates should be able to supply a larger pool of female talent. Law firms that operate in these states should, in theory, have an easier time hiring and retaining female talent.

However, according to ALM Intelligence data, states with a higher percentage of female graduates do not always correlate to the states that have higher percentages of female headcount in Big Law.

The question is, why not? Why are law firms struggling in some states with higher percentages of female law graduates and outperforming in some states with lower percentages of female law graduates?
There is no easy answer to these questions. This overview highlights some of the conundrums in the market data, but it is critical for law firms to ascertain for themselves where discrepancies exist within their own four walls. Comparing diverse talent availability and recruitment and retention will almost certainly result in some interesting follow-up analysis.

Firms hiring and retaining a lower percentage of female talent in states with a strong class of graduating female attorneys should analyze their data and reconsider diverse hiring in these areas. For areas lacking in a strong class of female graduates, firms may consider working with law schools and undergraduate universities in those areas to provide scholarships and mentorships to incentivize women to pursue law. As a stopgap, locations with low percentages of female headcount may consider looking into the ability to have women telecommute into that location from surrounding areas.
The Road Ahead

The data indicates that men are more apt to stay at the firm long term, reach higher levels of firm leadership, attain more origination credit in client relationships, and get paid more than their female colleagues. As illustrated in this analysis, this trend is likely to come under increasing scrutiny both externally and internally. In order to solve this issue and ensure success in diverse hiring and retention, law firms must analyze their gender diversity statistics on a deeper level, focusing on deeper-dive metrics such as practice area and location-level data.

Practice areas and locations with a lower female presence face more hurdles in battling unconscious bias and in providing necessary training and mentorship to both attract and retain female talent. Firms that understand the weak spots in their data can evaluate programs at the law school and firm level that will help alleviate this imbalance, including fellowships for female attorneys in mostly male practice areas and increased mentorship and sponsorship for locations and practice areas with low female headcount.

Firms should measure these statistics internally and determine whether discrepancies exist and why. While the headline data indicates that law firms are a long way off from solving this issue, the underlying data shows that there are defined areas where creative analysis and problem solving are the keys to crossing the gender divide.
About the Author

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Daniella is a senior analyst at ALM Intelligence. Her experience includes advising law departments in relation to strategy, technology, market intelligence, and operations. Prior to joining ALM Intelligence, Daniella was an analyst with Huron Consulting Group’s Law Department Management practice in the firm’s New York office and a secondee in London, where she provided legal consulting services to Fortune 500 companies, including legal spend assessments, outside counsel consolidations, contract management implementations, and matter management implementations. Before attending law school, Daniella spent three years in Beijing, China, where she worked in market entry consulting. A member of the New York Bar Association, Daniella holds a Juris Doctor degree from The Benjamin N. Cardozo School of Law, and a Bachelors of Arts in International Affairs (magna cum laude) from The George Washington University’s Elliott School of International Affairs.
Appendix

Gender Diversity Best Practices Checklist

Directions:
While gender diversity is a critical endeavor across Big Law, the specific solutions implemented will vary from firm to firm. The information below is intended to provide guidance to your firm in developing and/or improving gender diversity and inclusion. Use these best practices as a framework to spark discussion about how the firm can best progress in hiring and retaining a more diverse workforce.

Hiring
- Implement a gender-blind diversity review process.
- Ensure a quorum of women on hiring and lateral hiring committees.
- Perform entry and exit interviews to ensure that female career development options and goals are being communicated and met.

Training
- Create a diversity and inclusion committee and monitor diversity and inclusion initiatives to ensure that stated goals are being met.
- Ensure business development and rainmaking training is sufficiently robust based on individual levels.
- Institute unconscious bias training.
- Ensure that women have access to affiliation networks and are given time to participate.

Firm Practice
- Ensure that the allocation of origination credit is neutral by instituting a gender-diverse committee and third-party oversight.
- Encourage and recognize teamwork and collaboration in awarding origination credit.
- Institute a formal mentorship and sponsorship system – both associate mentors and sponsors as well as partner mentors and sponsors.
- Ensure the firm's succession plan is gender neutral.
- Implement gender diversity targets for partner classes to ensure gender equality.
- Ensure that critical executive committees – including management, compensation, and hiring committees – adequately represent female talent.
- Ensure compensation committee is diverse, and audit committee decisions to ensure equality.
- Establish anonymous channels for employees to voice any concerns.
- Conduct a pay audit to ensure that the firm is not vulnerable to a discrimination lawsuit under the federal Equal Pay Act, Title VII of the Civil Rights Act, or individual state laws.
- Monitor diversity of client teams and ensure diversity across client relationships.
- Ensure that work product without a billable hour count will be considered for promotion and compensation calculations.
- Consider integrating metrics in addition to class year to determine career progression and promotion opportunities.
- Implement review processes that permit both top-down and bottom-up reviews.
- Ensure that diversity initiatives are part of performance targets by implementing bonuses and other incentives for meeting diversity targets and consequences for failure to meet diversity targets.
- Establish a central and neutral party (such as a diversity manager) to monitor distribution of assignments and track staffing patterns.
- Ensure active involvement by firm management in diversity initiatives.
- Create a client plan that includes gender-diverse team members and allocates work to them on an ongoing basis.
Family Matters

☐ Encourage both male and female employees to take parental leave.
☐ Hire a career coach for working parents to assist in balancing work and home life.
☐ Invest in or develop a program to assist women in rejoining the legal workforce after taking time off.
☐ Establish part-time and flex-time programs to assist working parents in joining the workforce despite family obligations.
☐ Monitor “schedule creep,” when part-time attorneys are forced into working full time due to work obligations.
☐ Create a working parents network to enable working parents to connect and perhaps assist in sharing workloads when necessary.
☐ Support parent daycare needs and challenges.

Metrics

☐ Implement a metrics dashboard to track statistics such as gender diversity among practice areas and locations.
☐ Implement a baseline audit to determine diversity goals for the short and long term.
☐ Establish career progression targets and regularly communicate criteria for progress.
☐ Implement metrics for client pitch teams to account for diversity of pitch teams, credit for client pitch, and long-term involvement with the client.