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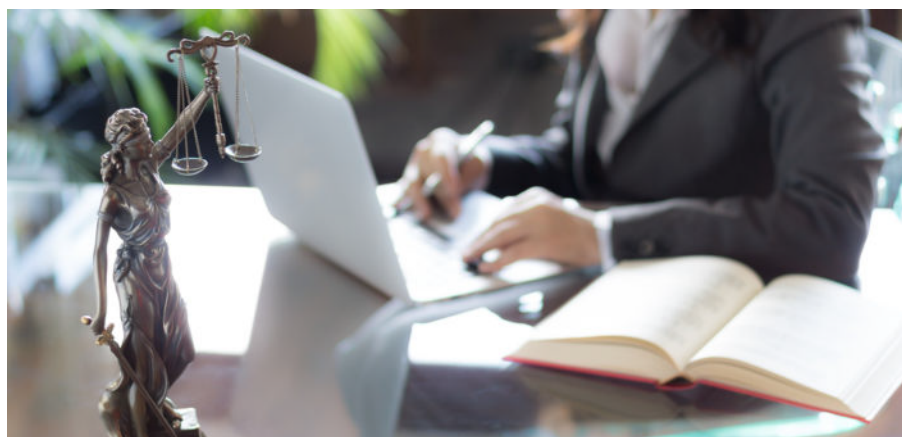
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## Where Are the Women's Voices? The Under-Representation of Women at the Highest Levels of the Legal Profession

BY SHERYL L. AXELROD ON OCTOBER 5, 2022



**I. BY THE NUMBERS: AT THE UPPER ECHELONS OF THE LEGAL PROFESSION, WHITE WOMEN ARE OUTNUMBERED BY MEN BY A FACTOR OF ALMOST AT LEAST 2 TO 1, AND THERE ARE NEARLY NO WOMEN OF COLOR AND LBT+ WOMEN<sup>1</sup>**

### A. In the Courts

<sup>1</sup> The "G" in "LGBT+" is used to refer to gay men. The term "LBT+" is used to refer to lesbian, bisexual, and transgender+ women, as is the common practice in literature, when talking about such women. Thus, this piece refers to LBT+ when referring to such women and LGBT+ when referring to women and men.



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## 1. The United States Supreme Court

Now that Justice Stephen Breyer has retired, there are 4 female justices serving on the Supreme Court of the United States. For the first time in history, women make up 44.4% (4/9ths) of the seats on its bench.

That's pretty good news and unfortunately, not at all reflective of the vast majority of the Supreme Court's history. In fact, the presence of *any* women on our highest court is a very recent phenomenon; the presence of women of color is more recent still.

There were *no women whatsoever* on the Supreme Court for 192 years. That did not change until 1981, when Justice Sandra Day O'Connor joined the Court. We did not have a woman of color serve on our highest court for 220 years until 2009, when Justice Sandra Sotomayor joined it.<sup>2</sup> No Black woman served on the Supreme Court for 233 years until 2022, when Justice Ketanji Brown Jackson joined it. Those are all the women justices of color who have *ever* served on our highest court.

To this day, we have never had an openly LGBT+ justice, male or female.

There have been 116 justices in the history of our Supreme Court. The overwhelming majority of them – 110 or in other words, almost 95% (94.8%) of them – have been male. In fact, there have been so few female justices, and they were appointed so recently, that many Americans know their names. The 6 female justices to have ever been appointed to our highest court are, in their order of appointment: Justices Sandra Day O'Connor, Ruth Bader Ginsburg, Sonia Sotomayor, Elena Kagan, Amy Coney Barrett, and Ketanji Brown Jackson.<sup>3</sup> The male justices who have served on the Supreme Court have outnumbered the females who have by a factor of over 18 to 1.

## 2. Federal Court Judges

The lack of gender diversity on the federal court bench is also pronounced. The [Report Examining the Demographic Compositions of U.S. Circuit and District Courts](#) found that as of November 2019, women comprised only about 34.5% of the active judges sitting on the federal courts of appeals. Women judges on the thirteen

<sup>2</sup> Every justice was white for 178 years until 1967, when Thurgood Marshall, an African-American, joined the Court.

<sup>3</sup> While two of the female justices were Jewish (Ruth Bader Ginsburg, who served until her passing, and Elena Kagan, who serves on the Supreme Court now), no justice hailed from a minority religion over the 127 years until 1916, when Louis Brandeis, who was Jewish, joined the Court.

federal courts of appeals are outnumbered by their male counterparts by a factor of nearly 2 to 1 (1.89 to 1).

At least 80% of the active federal courts of appeals judges are white. In fact, according to the [report](#), “[t]here is not a single circuit court whose majority comprises people of color” and “[e]ight of the 13 circuit courts — 61.5[%] — have no women of color actively serving as judges. Women of color do not comprise even one-fifth of any circuit court.”

### **3. State Court Judges**

The percentage of female state court appellate judges mirrors that of their federal appellate court counterparts. According to the [National Association of Women Judges](#), there are 347 judges serving on the nation’s highest state courts. Of them, only 124 are women, so women state court appellate judges are outnumbered by their male counterparts, by a factor of almost 3 to 1 (2.79 to 1). The percentage of women judges serving on the highest state courts is a paltry 36%, only a little more than the percentage of active federal court appellate judges who are female (34.5%).

According to the [National Association of Women Judges](#), there are 968 judges serving on state intermediate appellate courts. Of them, 377 are women and 591 are men, so 39% of the state intermediate appellate court judges are female, which is just a little higher than the percentage of female federal intermediate appellate judges (34.5%).

There appears to be no data on the percentage of women state court appellate judges of color, but it is likely appalling. According to the [State Supreme Court Diversity — April 2021 Update](#), which looked at the diversity of all state court justices, male and female:

- *In 22 states, no justices publicly identify as a person of color, including in 11 states where people of color make up at least 20 percent of the population.*
- *There are no Black justices in 28 states.*
- *There are no Latino justices in 40 states.*
- *There are no Asian American justices in 44 states.*
- *There are no Native American justices in 47 states.*
- *Across all state high courts, just 17 percent of justices are Black, Latino, Asian American, or Native American. By contrast, people of color make up almost 40 percent of the U.S. population.*
- *Women hold 39 percent of state supreme court seats [as opposed to their percentage across all state appellate courts].*
- *In 12 states, there is only one woman on the supreme court bench.*

#### 4. Openly LBT+ Judges<sup>4</sup> Across All Courts

According to [Wikipedia](#), there are approximately 113 openly LBT+ women<sup>5</sup> jurists in the United States. This includes all judges, magistrate judges, court commissioners, and administrative law judges. There are 30,000 state judges and 1,700 federal judges, so openly LBT+ women judges make up a jaw dropping less than 0.3% of all judges. It is believed from [Wikipedia](#), that there are only 4 openly LBT+ judges serving on all of the federal courts of appeals, combined.

#### B. [In Law Firms](#)

##### 1. Boards of Directors

Women even fare worse in law firms than they do on the bench. According to the McKinsey & Company report entitled, "[Women in law firms](#)," women hold only 26% of law firm board of directors seats. Men on law firm boards of directors outnumber women on them by a factor of virtually 3 to 1 (2.85 to 1).

According to the McKinsey [report](#), only a mere 4% of those serving on law firm boards of directors are women of color.

##### 2. Managing Partners

According to the same [report](#), the percentage of women serving on law firm boards of directors, is almost the same as the percentage of women holding law firm managing partner seats: 25%. For every woman holding such a seat, there are 3 men who do so; in either case, she's outnumbered by men by a factor of 3 to 1.

Also, according to the [report](#), only 4% of those serving on law firm management committees or as managing partners, are women of color, the same abysmal percentage as we have women of color serving on law firm boards of directors seats.

##### 3. Partners

The overconcentration of men is not only present among law firm boards of directors and managing partners. It permeates law firm partnership ranks, and to

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<sup>4</sup> As noted in n.1, the "G" in "LGBT+" is used to refer to gay men. The term "LBT+" is used to refer to lesbian, bisexual, and transgender+ women, as is the common practice in literature, when talking about such women. Thus, this piece refers to LBT+ when referring to such women and LGBT+ when referring to women and men.

<sup>5</sup> See n. 4, *supra*.

nearly the same degree. According to [Law360's seventh annual Glass Ceiling Report](#), which surveyed 300 law firms, women make up only 25% of law firm partners. Here again, as with law firm boards of directors and managing partners, on average, every woman partner is outnumbered by her male partners by a factor of 3 to 1.

Also here again, the numbers are atrocious for women of color. According to the National Association for Law Placement (NALP) [report](#), less than 4% of all partners are women of color. [Law360's Glass Ceiling Report: What You Need To Know](#) found that Asian women make up only approximately a grim 3% of law firm partners. According to the NALP [report](#), Black women and Latinx women are the most underrepresented in the partnership ranks. Together, they make up a staggering less than 1% of the partners in U.S. law firms.

While we do not have reliable data on the percentage of openly LBT+ partners, as of 2020, only 2.1% of all law firm partners identified themselves as LGBT+.

### **C. [In Corporations](#)**

There is a slightly higher percentage of female General Counsel as there are women heading the judiciary and law firms. In its recent report, [General Counsel Demographics and Statistics In The US](#), Zippia's data science team found that there are over 50,792 General Counsel in the United States, that 61.5% of them are men, and that only 38.5% of them are women. There are thus over 1.5 times the amount of male General Counsel as there are female.

On top of that, 4 out of every 5 General Counsel, 79.4% of them, are white. Thus, white General Counsel outnumber their General Counsel of color by a factor of 4 to 1. Less than a tenth of the General Counsel, 7%, are Hispanic or Latino, an even smaller percentage than that, 5.9%, are Asian, and an even smaller percentage still, 5.5%, are Black or African-American.

### **D. [Law School Deans](#)**

The percentage of women law school deans is similar to the percentage of women General Counsel. According to [The American Law School Dean Study](#) by the Association of American Law Schools and compiled by the National Opinion Research Center at the University of Chicago, women headed 41% of law schools in 2020. There are thus 1.5 men to every woman heading our nation's law schools.

On a relatively bright note, the study found that in 2020, 31% of the law schools had deans who were people of color or Hispanic.

## II. OVER 50% OF OUR LAW FIRM LEADERS SHOULD BE WOMEN

How many women *should be* law firm leaders (defined here as partners in law firms, management committee members, managing partners, and boards of directors members)? It generally takes around 10 years to become partner, and let's say 15 to 20 to become a law firm leader, so let's look at the percentage of law school students who were women 10-20 years ago.

According to the [American Bar Association](#), starting over 20 years ago, by the years 2001 and 2002, the ratio of male and female law students became nearly equal, with 49% of all law students being women. It's since risen. By 2016, the number of women enrolled in Juris Doctorate programs *surpassed* male enrollment for the first time.<sup>6</sup>

All things being equal, then, we would expect that by now, the percentage of women leaders in law firms should be over 50%. Of course, that would assume that women face no more barriers to advancement than men and that women remain in the profession to a similar degree as men. Unfortunately, *both* of these assumptions are false.

## III. WOMEN SHOULD MAKE UP OVER 50% OF THE PRACTICING LAWYERS, BUT WE MAKE UP ONLY 37% OF THEM

According to the [U.S. Census](#), only 37% of lawyers in private practice are women. This leads to an unmistakable truth: that while women have been attending law school in parity with men for over 20 years, and have actually surpassed the numbers of men doing so for the past 6 years, we leave the profession in much higher numbers than men.

Joyce Sterling and Linda Chanow found in the ABA report, "[IN THEIR OWN WORDS: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession](#)," that, "[w]omen are twice as likely to make early exits [from law firms] as men, and they continue to disappear even after making partner." Thus, *After the JD* found that just 40% of women were still in private practice 12 years after graduating from law school. In contrast, after the same 12 years, 49% of men were.

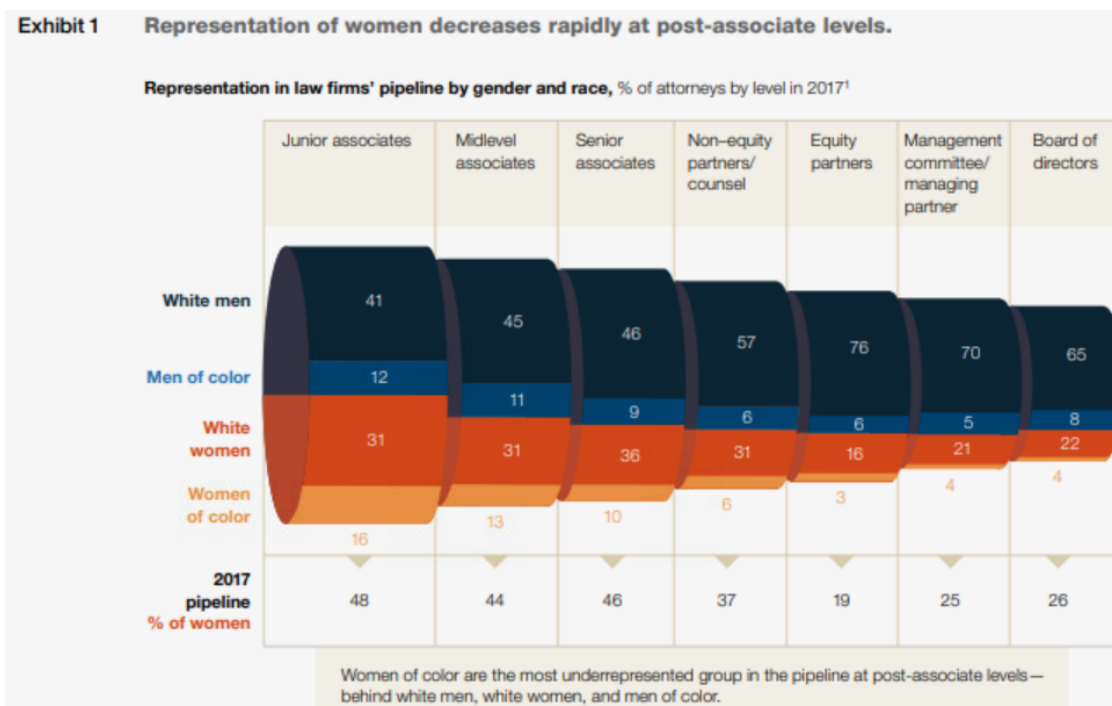
For women of color, the data is even bleaker. They have the highest rate of attrition from law firms. Women of color make up only approximately 8% of the lawyers in law firms, but the [2019 Vault/MCCA Law Firm Diversity Survey](#) found that they

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<sup>6</sup> Women have continued to outnumber men in the law school classroom, making up over 54% of all law students by 2020. In fact, according to the [Law School Admission Council](#) data on the demographics of the class that began law school in 2021, an astounding 57.4% of all incoming law students were female.

represented nearly *twice* that amount – an eye popping almost 19% – of *all* of the first- and second-year associates who left their firms in 2018, and perhaps even more shockingly, *1 and a half times* that amount – 12% – of *all lawyers* who left law firms. Put another way, while women of color represent less than 1 in 13 attorneys in law firms, they made up nearly 1 in 5 of all first- and second-year associates who left their firms in 2018, and amounted to over 1 out of every 10 lawyers who departed law firms.

This stunning graphic from the McKinsey report shows what is happening, as white men occupy greater and greater percentages of each successive rung from junior associates, to midlevel associates, to senior associates, to non-equity partners / counsel, to equity partners, to management committee / managing partners, to board of director members:



At each turn, white men squeeze more and more women out. White men start out representing 41% of the junior associate positions but wind up representing 70% of the management committee / managing partners. In contrast, women go from representing 47% of the junior associate positions to only 30% of the law firm management positions, and women of color go from representing 16% of the junior associate positions to only 4% of the management positions.

The awful data begs the question: why? Why do women as a whole, and women of color in particular, get left out of promotions to non-equity and equity partners, managing members, and board of director members, and why do they leave the profession in such great percentages as they rise in seniority?

## **IV. WOMEN LAWYERS ARE TREATED FAR WORSE THAN MALE LAWYERS, AND THAT IS ACUTELY SO FOR WOMEN OF COLOR**

As Sterling and Chanow discuss in their [report](#), researchers have examined a number of reasons why women leave private practice: those in power in law firms promote women less than men, pay women less than men, and unfairly distribute the better assignments to men.

As set forth below, women lawyers are also largely shut out of business inheritance, and are billed at lower rates than men, which can also explain why they don't get equally promoted.

Women also experience sexual harassment and assault in law firms and when they do, those in power in law firms leave women with little to no recourse, which is another reason women leave the profession.

In each of these areas, those in power treat women of color worse than white women.

### **1. Unfair Lack of Promotions**

We saw above how few women, and particularly women of color, get promoted to partnership. The data is clear: those in power in law firms unfairly advantage men seeking partnership, and to a stunning degree. According to the [2021 ABA Model Diversity Survey](#), "[m]ale attorneys were twice as likely to be hired into equity partner roles as female attorneys."

### **2. Unfair Exclusion from Business Inheritance**

As the Harvard Study, "On Gender and Origination in the Legal Profession (Perspective)" by Heidi Gardner, found, those departing law firms with books of business – mostly, men – generally also do not bequeath their books to women; instead, they give them to other men. This results in a huge disproportionate loss to women's professional portfolios. In fact, it may be the single greatest barrier to women's advancement to the highest ranks of leadership in law firms and beyond them.

### **3. Unfair Pay**

In addition to the loss of business women lawyers face by not being given their fair, equal share of business inheritance, those in power in law firms also grossly underpay women lawyers. Joan C. Williams, director of the Center for WorkLife Law



at UC Hastings College of the Law, found that, according to 2020 data, female law partners get paid on average approximately 44% less than male law partners, getting paid \$784,000 per year while their male counterparts are getting paid \$1,130,000 per year. This amounts to an average pay penalty of \$346,000 per year for women lawyers. Over a span of 20 years assuming 6% interest, this adds up to women lawyers losing an average of \$3,915,098.93 in earnings.

There is also a pay gap between partners of color and white partners. Those in power in law firms pay partners of color 20% less – a full one-fifth less – than their white counterparts: on average, \$869,000 per year versus \$1,046,000 per year. This amounts to an average pay penalty of \$177,000 per year for women lawyers of color. Over the span of 20 years assuming 6% interest, this adds up to women lawyers of color losing an average of \$2,030,176.06 in earnings.

Even women General Counsel are paid less than male General Counsel. Zippia found in its reported study that in 2021, that women General Counsel were **paid** on average 95% of what men were paid; the women were not paid what the women General Counsel **earned** which would be the same dollar for dollar pay as the men.<sup>7</sup>

#### 4. Unfair Billing Rates

The unequal pay might be claimed to be due to women lawyers bringing in less monies at the end of the year than men but as noted above, women lawyers are bequeathed a smaller share of business from exiting lawyers. This may account for the largest pay discrepancies between the sexes. In addition, women lawyers are billed at lower hourly rates than men, according to Sky Analytics' study of \$3.4 billion in legal spend across 3,071 law firms. Due to these things, at the end of the year, women lawyers are credited for less dollars brought in than men.

#### 5. Unfair Lack of Networking Opportunities

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<sup>7</sup> Zippia incorrectly states in its report that, "In 2021, women **earned** 95% of what men **earned**." That is **false**. What you **earn** is what you are entitled to receive. What you are **paid** is what you get, regardless of the amount you *should have been paid*.

The women General Counsel **earned** equal pay; the women General Counsel were entitled to be paid dollar for dollar what the men were paid. What their research shows, is that they were not **paid** all that they **earned**.

The inappropriate language around what women "**earned**" – language that should have been couched in what the companies "**paid**" the women – is in no way limited to Zippia; such language is pervasive in discussions about pay disparities.

Women lawyers are also largely excluded from the informal networking opportunities available to men. They don't get equally invited to lunches, dinners, golf, and other outings and meetings with clients that are critical to building the kinds of relationships with their partners that can lead to being made partner and becoming able to grow a client base. In fact, "female attorneys are at a great disadvantage compared to their male colleagues, who network with clients and each other and develop a business base in typically men-only settings," according to a [Los Angeles survey](#). The American Bar Association report, [Visible Invisibility: Women of Color in Law Firms](#), revealed that "46% of women of color and 60% of white women reported that they were denied informal or formal networking opportunities because of gender."

## **6. Unfair Assignments**

Those in power in law firms also assign women lawyers less plum assignments. As the sexes try to rise, the men are given more of the assignments that enable them to do so; women lawyers are tasked with doing more firm housekeeping, non-billable, and non-credited work. In fact, according to a survey of lawyers cited in Kim Elsesser's piece entitled, "[Female Lawyers Face Widespread Gender Bias, According to New Study](#)," women, especially women of color, are more likely than their male counterparts to be interrupted, be required to do more office "housekeeping," and have less access to prime job assignments.

Women lawyers suffer from being treated more negatively than men overall. [Jamie Augustinsky](#), Employment and Litigation Counsel at [PENN Entertainment](#), explains how people view women lawyers differently:

"I cannot even count the number of times I have appeared to take or defend a deposition and been mistaken for the court reporter. On one such occasion, I turned to my opposing male counsel and facetiously told him that I suppose he, too, is always asked whether he is the court reporter, to which he sheepishly (and unsurprisingly) responded that it had never happened to him."

## **7. Sexual Harassment and/or Assault**

Women also face sexual harassment in the legal profession, and have virtually no recourse when they do. [Women Lawyers On Guard Survey on Sexual Misconduct and Harassment in the Legal Profession](#) (the "Survey") found that the situation is so bleak, that the system for addressing sexual harassment in the legal profession is "broken." The Survey looked at "behaviors from offensive jokes about sex or gender, to rating of one's sexuality or sexualized name calling ... to stalking and physical, sexual assault." It found that the

“broad spectrum of sexual misconduct and harassing behaviors – from criminal to civilly actionable to simply unconscionable – continues to plague all walks of the legal profession.” In fact, it found that the extent and breadth of the misconduct are both “insidious and alarming.”

The Survey revealed that these behaviors resulted in “fear, extreme discomfort, sidelining, loss of productivity and advancement opportunities for the individual, and have a significant negative impact on the morale, reputation and productivity of the organization.” Despite this, the Survey showed that most harassers “face few to no negative consequences (financial or otherwise).”

## **8. Summarizing Why Women as a Whole Leave Private Practice**

In sum, there would be a higher percentage of women lawyers as a whole in law firms, over 50%, if it were not for the fact that in law firms, those in power are not promoting women equally, paying them equally, treating them equally otherwise including by equally bequeathing business to them, billing them out at equal rates to their male counterparts, and equally distributing the plum assignments to them. Women lawyers are also sexually harassed and assaulted and in nearly every case, nothing is done about it.

The mistreatment of women lawyers is so pervasive, that it even impacts how lawyers treat women judges. Tonja Jacobi and Dylan Schweers found in their empirical study reported in the *Harvard Business Review*, that even at the highest level, on the Supreme Court of the United States, female justices get interrupted more by both male justices and party advocates. In fact, according to the study, “[i]n the last 12 years [since the study’s publication in 2017], during which women made up, on average, 24% of the bench, 32% of interruptions were of the female justices, but only 4% were by the female justices.” (Emphasis in original).

As Lisa Savitt, a Partner in The Axelrod Firm and a former Chair of the American Bar Association Section of International Law notes, “The playing field for women never levels. Even those who make it to the highest levels of the legal profession, still face challenges, including harsh scrutiny, that men do not.” In fact, as discussed in the piece, “For Women Leaders, Likability and Success Hardly Go Hand-in-Hand,” by Marianne Cooper, “decades of social science research — by psychologists like Madeline Heilman at NYU, Susan Fiske at Princeton, Laurie Rudman at Rutgers, Peter Glick at Lawrence University, and Amy Cuddy at Harvard — ... has repeatedly found that women face distinct social penalties for doing the very things that lead to success.” In short, the data shows that the higher women rise, the more they are excluded and isolated by others.

[Fine and Staud](#) trial lawyer, Amanda Davidson, Co-Chair of the [Temple Law Alumni Association](#) Women's Leadership Initiative, explains the weight of this imbalance and why it is so important to have women equally represented at the top of the profession: "In the past thirty years, I have navigated my way through a male dominated profession wherein I have been constantly adapting myself to be more like my male counterparts. On the rare occasion that I encounter a top female lawyer, there is often the silent recognition, and comfort, that I do not need to do so. She walked the same gauntlet and understands what it means for me to be here."

## **9. 19.5% of Law Firm Leaders Should be Women of Color**

According to [Catalyst research](#), women of color made up approximately 19.5% of law school graduates in 2020. Women of color, then, should make up approximately that same percentage of practicing lawyers and law firm leaders. However, according to the [NALP 2020 Report on Diversity in U.S. Law Firms](#), only a little more than 9% of practicing lawyers are women of color and as we saw above, they make up only 4% or less of law firm leaders.

So why do they leave in such high numbers? Destiny Peery, Paulette Brown, & Eileen Letts studied this and discussed it in the ABA report, "[Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color](#)." Women of color face abject *hostility* in private practice. In fact, throughout their careers, women lawyers of color are so constantly mistreated, they wind up suffering the "death [of their legal careers] by a thousand cuts."

As reported in the "[Left Out and Left Behind](#)" study, women lawyers of color "consistently reported experiences with bias and stereotyping based on their identities as women, people of color, and women of color." The participants "shared experiences like the following to highlight the role of bias and stereotyping in their lives:"

'Some of the barriers you can't do [anything] about—like the (mis)perceptions people have in their own minds about your race or your sex or your background. So you start by having to overcome those negative assumptions, stereotypes, and presumptions. And then there's the 'black tax' of having to demonstrate outsized achievements just to get the same opportunities as everyone else. It's not by accident that at the firms at which I worked, every single black associate had at least two Ivy League degrees. Majority associates? Not so much.' —late 40s black woman."

## 10. Approximately 3.4% or More of Law Firm Leaders Should be LBT+ Women<sup>8</sup>

No reliable data could be found on the percentage of LBT+ women in law firms. According to the ABA Profile of the Legal Profession in 2020, while it could find “no reliable statistics ... on the total number of LGBT lawyers in all parts of the legal profession,” it found that “6.86% of law firm summer associates are LGBT.”

As you move from the percentage of summer associates who are LGBT to the percentage of associates who self-identify as LGBT, the percentage reported in the ABA Profile drops to 4.1. As you move from the percentage of all associates who self-identify as LGBT to the percentage of all lawyers in the firm who self-identify as LGBT, the percentage drops further, to less than 3% (2.99%). Finally, as you move from the percentage of all lawyers in the firm who self-identify as LGBT to the percentage of partners who self-identify as LGBT, the percentage drops to only 2.1%.

This drop likely represents the disenfranchisement of those who are LGBT in the profession, and also may explain why we have so few openly LGBT judges.

If half or more of the attorneys identifying as LGBT are women, then the percentage of partners, managing committee members, and executive committee members who are openly LBT women, should be what they started out as in their summer associate days, at 3.4% or more (half of 6.8% or more).

## V. CONCLUSION: OUR PROFESSION REMAINS IN CRISIS

### A. Women are Starkly Underrepresented at the Top

While women should represent roughly over 50% of our practicing lawyers and law firm leaders, women in fact represent only 37% of our practicing lawyers. *We lose almost 13% of all women in the profession.*

Also, while women should represent over 50% of our leaders, they represent only about 35% of our appellate judges (34.5% of our federal appellate judges and 36% of our state court appellate judges), 26% of our law firm board of directors members, and 25% of those on law firm management committees and serving as partners and managing partners, 38.5% of our General Counsel, and 41% of our law school deans. Thus:

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<sup>8</sup> As noted in the footnotes above, the “G” in “LGBT+” is used to refer to gay men. The term “LBT+” is used to refer to lesbian, bisexual, and transgender+ women, as is the common practice in literature, when talking about such women. Thus, this piece refers to LBT+ when referring to such women and LGBT+ when referring to women and men.

1. **We should have over 13% more women lawyers in private practice.** Only 37% of those practicing law in firms are women, whereas over 50% should be;
2. **We should have over 15% more women appellate judges.** Women account for only 35% of appellate judges whereas they should account for over 50% of them;
3. **We should have at least double the amount of women law firm board of directors members, law firm management committee members, partners, and managing partners.** Indeed, women account for only 26% of law firm board of directors members, and 25% of those serving on law firm management committees and as partners and managing partners, whereas they should account for over 50% of each of them;
4. **We should have over 11.5% more women General Counsel.** Only 38.5% of General Counsel are women, whereas over 50% of them should be;
5. **We should have over 9% more women law school deans.** 41% of our law school deans are women, whereas over 50% of them should be.

## **B. There Are Far Too Few Women of Color at the Top**

While women of color should represent approximately 19.5% of our practicing lawyers and law firm leaders, we do not have insight into the percentage of them serving as appellate judges or as General Counsel, but the percentage must be awful. We know that women of color in fact represent only 9% of our practicing lawyers and around 4% or less of our law firm leaders (on law firm boards of directors, management committees, as partners, and as managing partners). There is only 1 bright note: that 31% of the law schools had deans who were people of color or Hispanic.

Thus:

1. **We should have at least double the amount of women lawyers of color in our law firms.** Indeed, women lawyers of color account for only 9% of our lawyers in private practice, whereas they should account for about 19.5% of them; and
2. **We should have almost 5 times the amount of women lawyers of color we currently have in law firm leadership.** Only around 4% or less of our law firm leaders (those serving on law firm boards of directors, law firm management committees, as partners, and managing partners) are

women lawyers of color, whereas 19.5% -- nearly a fifth — of those in these positions should be women lawyers of color.

### C. LBT+ Women Appear Underrepresented at the Top

While LBT+ women should represent approximately 3.4% or more of our practicing lawyers and law firm leaders,<sup>9</sup> we do not have reliable figures on the percentage of them serving as appellate judges or as General Counsel, but it's clear it should be far higher. All openly LBT+ women judges make up roughly less than .3% of all judges.

Moreover, only 2.1% of all partners – male, female, and non-binary – self-identify as LGBT+. If half of them are women, then only about 1% of them are.

Thus,

1. **We should have at least 10 and two-fifths times the amount of LBT+ women judges.** Indeed, LBT+ women judges account for only .3% of all judges, whereas they should account for about 3.4% of them; and
2. **We should have 3 and two-fifths (3.4 times) the amount of LBT+ women than we currently have serving as law firm partners.** Only around 1% of our law firm partners are LBT+ women, whereas roughly 3.4% should be.

We are so conditioned to the mistreatment, and mass exodus, of women lawyers, and particularly that of women lawyers of color, and openly LBT+ women lawyers, that we accept it as a given. It is not, and the data is shameful. It has resulted in the voices and perspectives of women lawyers being largely shut out at the highest levels of our profession: among our law firm leaders, our courts, our law school deans' offices, and our corporate general counsel's offices. As Sharina Rodriguez of Nukk-Freeman & Cerra, a NAMWOLF member law firm, notes, "Unfortunately, women's voices in the legal profession are often muted despite the fact we offer meaningful contributions, shaped by our unique life experiences, racial backgrounds, cultural influences, and the absence of privileges freely enjoyed by dominant cultural groups."

To get a sense of how women experience the absence of privileges men enjoy, consider that many men take for granted not having to think about where they park for fear of getting physically and/or sexually assaulted. When men walk into a courtroom, they don't get asked whether they are the court reporter. Men don't

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<sup>9</sup> There may be many more LGBT+ lawyers than self-identify as such – we just don't know – so this figure could be far higher.

have to worry about mentioning whether they might want to have children. If they do, no one will think that means they will take time off, leave, or be less loyal to, or focused on, their law firms. Nor do they generally have to concern themselves with what suits or shoes they wear to the office or how they wear their hair. Women have to concern themselves about each of these things and many more including whether they are being shut out of business inheritance, underpaid, billed at lower rates, given less plum assignments, or not promoted, on account of their gender.<sup>10</sup>

In fact, the ranks at the top of our profession are so male dominated, men become partner at twice the rate of women, female Supreme Court justices get interrupted far more than their male counterparts, we expect our law school deans and general counsel to be white and male, and women of color in the legal profession go from being almost a fifth of all law school graduates to at almost extinction levels as they endeavor to rise in the profession.

The lack of women's equal participation at the highest levels of our profession, results in the entrenchment of women's disenfranchisement in the profession. As Rodriguez explains:

"It is through leadership positions that women can ensure the foundation of policies and procedures designed to aid women in reaching professional success while also addressing the challenges of being a mother, wife, daughter, sister, and the many other roles women hold outside of the profession."

As she puts so well, without our voices being heard, the barriers to advancement women lawyers face, do not get addressed.

Women lawyers' attrition from the profession leaves a profound loss in its wake. The women lawyers' departure represents an enormous talent drain, the loss of: the institutional knowledge the women take with them; the women's mentorship and sponsorship of others; and all the training the women received, that they won't be passing on.

There is also the loss of their unique way to transform the profession – our courts, law firms, corporations, and law schools. Women in co-equal leadership could revolutionize the way we interact with clients, grow our client bases, interact with each other, compensate our workers, assess what traits law firm partners should

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<sup>10</sup> See "[Male Privilege: What I learned from listening to women](#)," by Peter Pruyn. To begin to understand white privilege, see Tim Wise on "[White Privilege: Racism, White Denial & the Costs of Inequality](#)." To begin to explore the privileges of not being LGBT+, see [Unpacking the Invisible Knapsack II](#).



have, decide how our law firms will be structured, and so much more, and that is just in law firms. Women in co-equal leadership could transform our courts, our corporations, and our law schools.

Consider how women heads of state profoundly outperformed their male counterparts in responding to the pandemic, as an example of the fact women can bring hugely beneficial changes to the organizations they lead.<sup>11</sup>

But they must be in a position to lead to do so.

Marguerite Willis of Nexsen Pruet and a past President and now colleague as a Senior Fellow of Litigation Counsel of America, a by-invitation-only organization of top trial lawyers that accepts less than one-half of one percent of the country's lawyers, states, "I think it is time to consider whether we are at a 'speedbump' in progress or a closing door." The data shows we're progressing, but we are a lot farther from equity than may be comfortable to realize. In many ways, that door remains shut to women, and bolted shut to women of color and LBT+ women.

Jamie Rudman, Chair of the Board of Directors of NAMWOLF, a membership organization made up of the top women and minority owned law firms representing major organizations and our supportive in-house counsel, and a Partner at fellow NAMWOLF law firm member Sanchez & Amador, observes that "through the decades of studies culled above, women have told big law firms over and over again why they leave and yet, the data shows that the discrepancies that cause departures have barely changed since the 1990's. Big law firms know what they need to do to retain women and, while there are some exceptions, very few firms have made the institutional changes in compensation and credit necessary to make it attractive for women to stay. Nothing will change unless the law firms change."

Leslie Davis, CEO of NAMWOLF, calls upon us all to change this dynamic. "Women, and particularly minority women, have been overlooked and marginalized at the highest levels of the legal profession," she states. "It is time to stop ignoring the abysmal statistics and start taking meaningful steps to change this fact."

"We all must take the necessary actions to increase the representation of women and minorities," she smartly continues, "and give them the same opportunities that majority men have enjoyed throughout history."

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<sup>11</sup> In fact, as Jack Zenger and Joseph Folkman discuss in their empirical study entitled, "[Research: Women Score Higher Than Men in Most Leadership Skills](#)," "[a]ccording to an analysis of thousands of 360-degree reviews, women outscored men on 17 of the 19 capabilities that differentiate excellent leaders from average or poor ones."

We indeed must. To endeavor to realize the goal of justice to which we aspire, to create a true meritocracy, for the good of our profession, to encourage half our population to consider studying to become lawyers and working hard to rise to the top, to keep talented women attorneys from leaving the profession, to be able to benefit from the dynamic, breakthroughs women lawyers can bring to our profession, yes, we indeed must.



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*Ms. Axelrod provides strategic, results-driven advice and representation to companies regarding their commercial, employment, and products liability litigation matters, principally in Pennsylvania state and federal courts. Her cases have been the subject of Law360 articles, and she has been recognized by her peers as one of the 100 Top Super Lawyers in Pennsylvania, and one of the Top 50 Women Super Lawyers in Pennsylvania. She is a Senior Fellow in Litigation Counsel of America, a by-invitation-only organization of top trial lawyers that accepts less than one-half of one percent of the country's lawyers.*

*She served as Co-Chair of the NAMWOLF Advocacy Committee, which is dedicated to the advancement of women and minority owned law firms, for 9 years. She founded the Temple Law Alumni Association (TLAA) Women's Initiative, the TLAA Diversity Committee, the Women's Champion Award, and the Diversity Leadership Award, during her term as President of TLAA, the 4<sup>th</sup> woman to hold the post. She regularly presents at National Conference of Women's Bar Associations GOOD Guys programs, which were developed to encourage GOOD men (Guys Overcoming Obstacles to Diversity) in the legal profession to join women in the quest for gender and racial equity. She is a member of The Forum of Executive Women, and co-created its Male Champions for Women program, to expand the GOOD Guys program beyond the legal profession, to all industries. Ms. Axelrod is a Founder of the non-profit, The Fearless Women Network, and the creator of "The Axelrod Firm's Diversity Miniguide: Tools to Become A Diversity Champion." She serves on the Philadelphia Bar Association's Chancellor's Diversity Advisory Panel, and on the American Bar Association and Pennsylvania Bar Association Women in the Profession Commission (PBA WIP) Diversity Committees, and is a past member of the PBA WIP Executive Council and past PBA Diversity Team member. She has been awarded the NAMWOLF Yolanda Coly Advocacy Award, the Diversity Law Institute Award, and the TLAA Women's Champion Award, and is among the handful of attorneys to have been inducted into the The League for Entrepreneurial Women of Temple University Hall of Fame. She serves as Co-Chair of*

*the Diversity Law Institute Advisory Board, and on the Advisory Boards of the Gender Wealth Institute, Women Owned Law, on which she served for nearly 6 years as Co-Chair of its Diversity & Inclusion Task Force, and the Women Lawyers on Guard CWM program. She has undergone LGBT+ ally training twice, has attended multiple ally programs, and is assisting the Commerce Program in the Court of Common Pleas of Philadelphia in increasing the diversity of its cache of Judges Pro Tempore.*