The Gender Pay Gap: Feelings, Facts, and Implications

The lay-of-the-land, and a roadmap for firm leaders, comp committees, and partners

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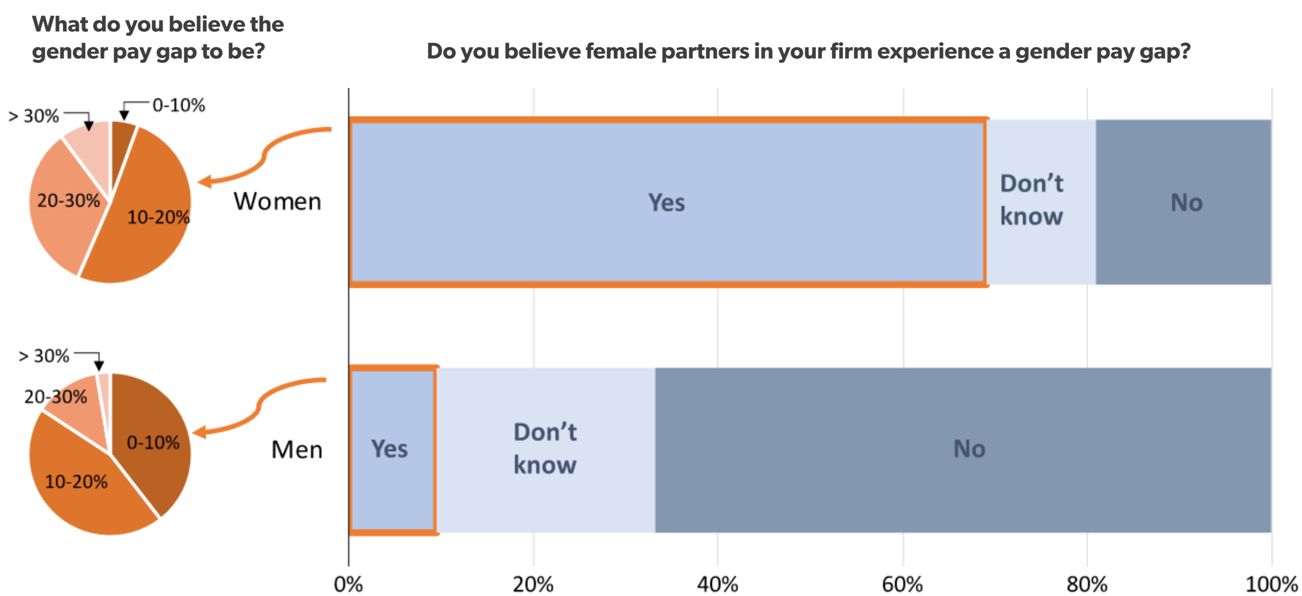
Fully 70 percent of women equity partners believe women partners are paid less than their male counterparts for the same work or contribution to the firm. That's not an encouraging number. It gets worse: only 9 percent of male partners[1] believe such a gender pay gap exists. And worse again: among women who believe there is a gender pay gap, 94 percent believe it's greater than 10 percent; among men who believe there's a gap, only 60 percent believe it to be so large (see Figure 1).

On top of this, emotions run high. In the 2018 Major, Lindsey & Africa (MLA) Partner Compensation Survey partners were asked how their firm's leaders had discussed the possibility of a gender pay gap with partners. Here are a few of the responses; and, yes, the respondents' genders are as you'll guess:

- *Having spent a good bit of time in law firm management, it is clear that any bias in comp has been favorable to women in our law firm.*
- *The firm has spent a disproportionate amount of money either supporting the business of, or retraining female partners who are not successful, or who do not have a profitable business model.*
- *Meetings in which they deny it exists and admonish women to 'stop complaining.'*
- *Women partners raised the issue and firm leadership is giving it lip service.*

Figure 1: Gender disconnect on the gender pay gap*



**Both on its existence and, if existing, its extent.*
For purposes of this survey, the gender pay gap is the difference in compensation received by women as compared to men for the same work or contribution to the firm.
Source: Major, Lindsey & Africa 2018 Partner Compensation Survey. No. of respondents (N) = 756.

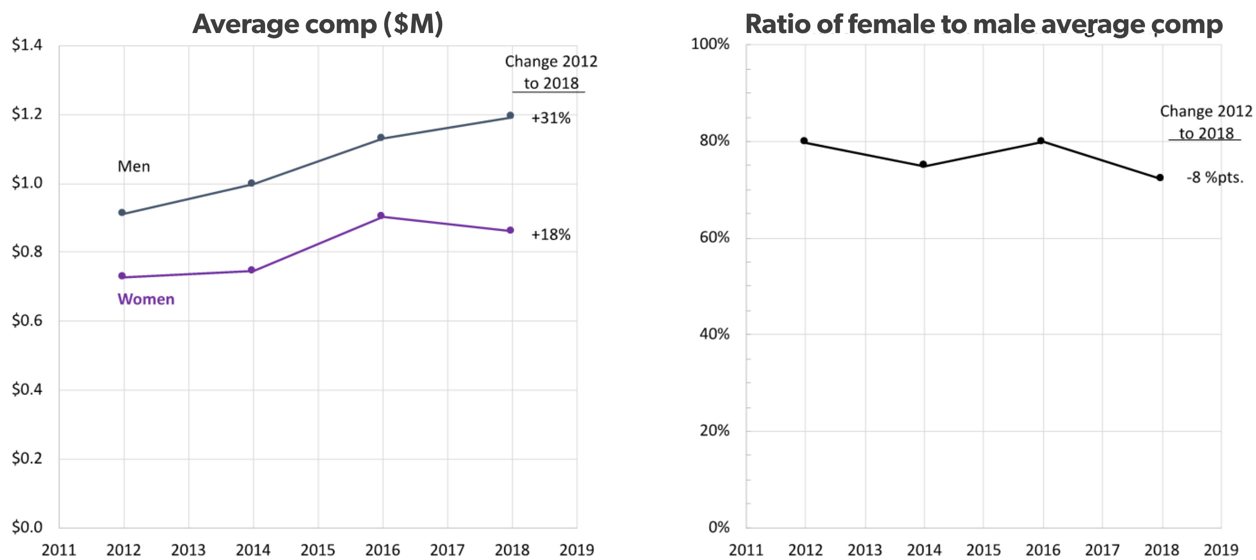
Stepping back, it seems a dispassionate look at the issue might be useful. Accordingly, the following uses data from the MLA Partner Compensation Surveys of 2012, 2014, 2016, and 2018 to describe trends by gender in comp and key practice drivers (i.e. originations, billed hours, billing rate, and tenure). It analyzes whether differences in practice metrics alone explain differences in comp and then discusses whether these metrics might capture differently the contributions of men and women. The paper concludes with action implications for leadership teams and for individual partners.

[1] *Here and throughout this paper, partner refers to equity partners only (unlike in the MLA survey reports).*

DATA: COMPENSATION AND PRACTICE METRICS

At one level, it's not hard to appreciate why women partners believe they are underpaid relative to their male counterparts: growth of male partner comp outpaced that of female partners through the recovery from the great recession. As Figure 2 shows, from 2012 to 2018 average male partner comp rose by over 30 percent, while average female partner comp rose 18 percent. This difference in relative growth is reflected in a decline in female partner comp as a percent of male partner comp—from 80 to 70 percent, again see Figure 2.

Figure 2: Male and female partner comp over time



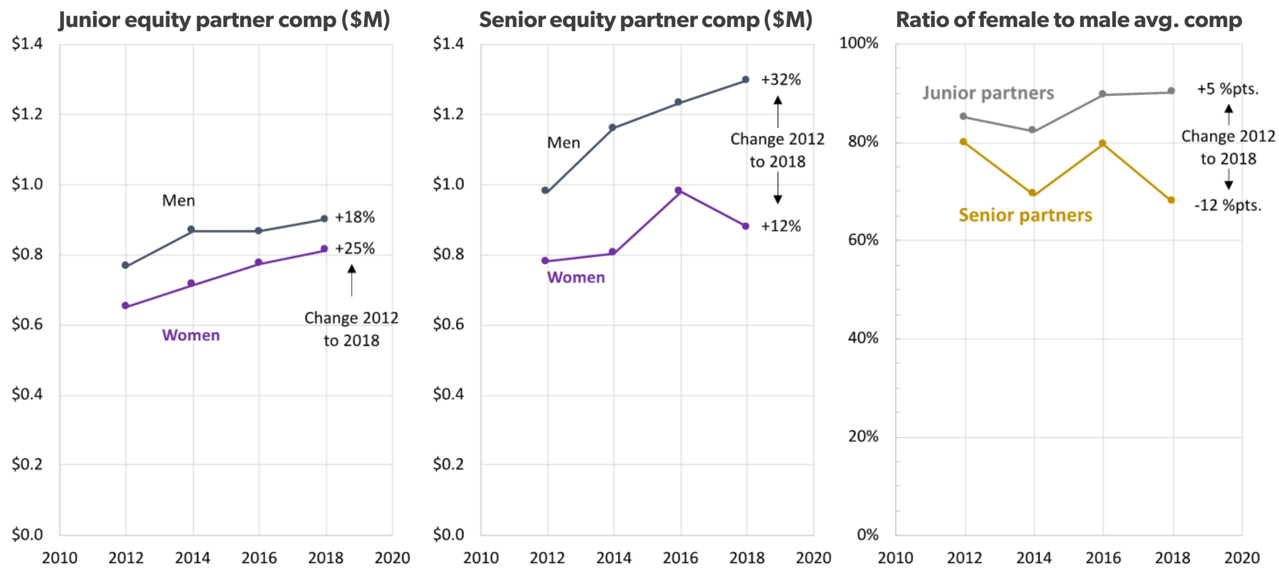
Source: Major, Lindsey & Africa Partner Compensation Surveys 2012, 2014, 2016, and 2018. Data are for full-time U.S. equity partners at firms with more than 50 lawyers only. Data are not inflation adjusted. No. of responses (N) = 1,088; 1,191; 1,421; and 666 for 2012 through 2018, respectively.

Beneath these summary figures lies a difference between junior (ten or fewer years as a partner) and more senior partners. The strongest comp growth has been for the senior male cohort, with the junior women partner cohort having the next strongest growth, see Figure 3 on the following page. This leads to differences in relative comp trends: among juniors, the female partner shortfall has contracted by 5 percentage points; among seniors, the gap has widened by 12 percentage points.

It is noteworthy that the female to male comp ratio among senior partners is lower than it is for junior women partners—68 to 80 percent as compared with 80 to 90 percent. This is counterintuitive. If women partners are playing the greater role in child-rearing then you'd expect to see women in the early years of partnership lag their male counterparts through the combined effects of taking more time away from work, being less able to work unscheduled long hours, and logging fewer cumulative years of experience. Among senior partners, such differences would diminish, albeit that aging parents create their own demands. Yet we see the opposite. One possible reconciliation: younger women partners are being treated more equitably than preceding generations because younger partners are breaking down the gender differences within firms, between firms and clients, and societally? One can only hope.

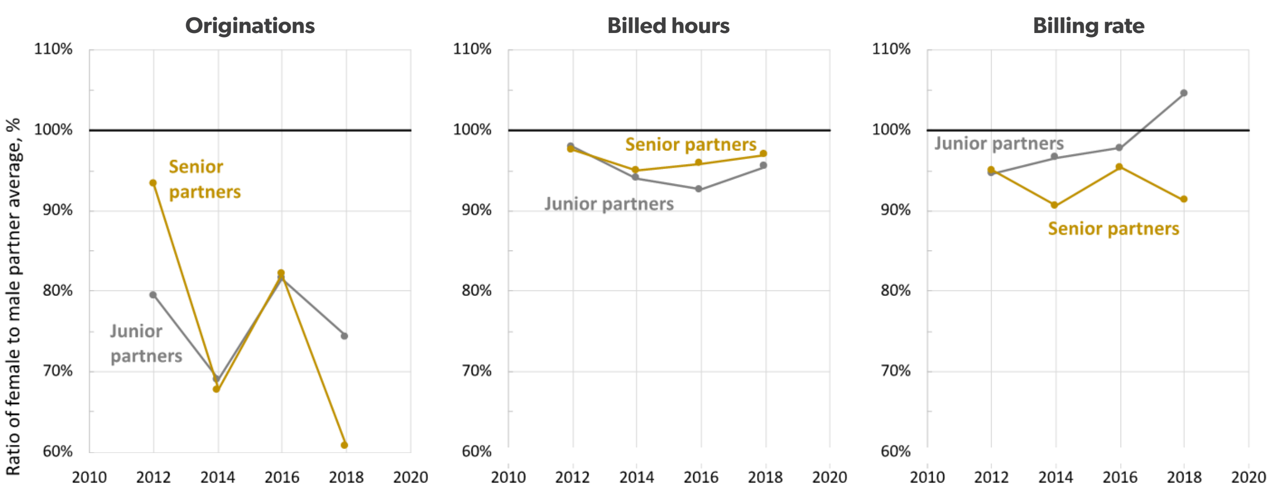
Of course, the litmus test on gender equity is not 'equal pay' but rather 'equal pay for equal contribution'. While we don't have perfect measures of contribution, we do have data from male and female partners on the typical practice metrics of billed hours, billing rates (an indicator of the profitability of the market segment in which a partner practices), and originations. As shown in Figure 4, there are differences between men and women on these metrics. The greatest difference is on originations. It's noteworthy that within this, there is a difference in the dynamics among junior and senior partners: while from 2012 to 2018 the female-to-male ratio for junior partners bounced around in the 70 to 80 percentage range, the senior partner ratio widened from 90 to 60 percent. In terms of billed hours, the ratios across tenures vary within the relatively narrow band of 93 to 97 percent. On billing rates, the variation is within a slightly wider band than for billed hours—90 to 105 percent.[2]

Figure 3: Trends by partner tenure



Junior and senior partners are those who have been partner for 1–10 and over 10 years, respectively.
Source: Major, Lindsey & Africa Partner Compensation Surveys 2012, 2014, 2016, and 2018. Data are for full-time U.S. equity partners at firms with more than 50 lawyers only. Data are not inflation adjusted. No. of responses (N) = 1,088; 1,191; 1,421; and 666 for 2012 through 2018, respectively.

Figure 4: Differences in practice metrics by gender and tenure



Junior and senior partners are those who have been partner for 1–10 and over 10 years, respectively.
Source: Major, Lindsey & Africa Partner Compensation Surveys 2012, 2014, 2016, and 2018. No. of responses (N) by survey year = 73, 143, 110, and 49 female junior partners; 291, 490, 318, and 134 male junior partners; 102, 78, 182, and 117 female senior partners; and 622, 380, 811, and 366 male senior partners for 2012 through 2018, respectively.

[2] *We probably shouldn't read too much into the 2018 outlier datum given the relatively low number of female respondents to that year's survey.*

Of course, just because women record lower numbers on these metrics does not mean there is equal pay for equal contribution. Rather, we have to look at two separate issues:

1. *Allowing for differences in practice metrics, are women being paid less than men?*
2. *Are the contributions of women and men reflected consistently in practice metrics?*

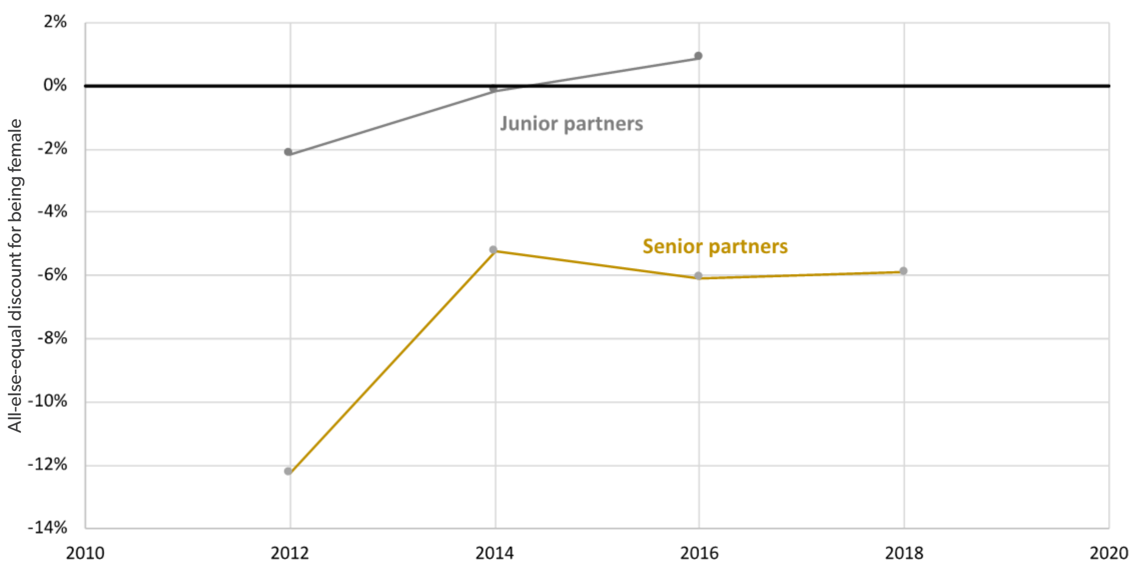
ALLOWING FOR DIFFERENCES IN PRACTICE METRICS, IS THERE A GENDER GAP?

A multiple regression analysis was used to examine the standalone effect of being female on comp. The multiple regression technique relates individual partner comp to a set of underlying variables, determining the weightings of the variables that, in aggregate, provide the best overall fit to the data for all partners. The variables used in the analysis included the practice metrics variables of originations, billable hours and billing rate (an indicator of the profitability of the market segment in which they practice) and the category variables of male vs. female, open vs. closed comp system (i.e. do partners see what each other earn), and lateral hire vs. home grown. Because originations etc. are included, the methodology is inherently adjusting for differences in practice metrics and hence quantifies the all-else-equal effect of gender on comp.

The analysis was undertaken separately for junior and senior partners for each biennial MLA Partner Compensation Survey dataset, details are included in the appendix. The results are shown in Figure 5 and reveal different dynamics for junior (ten or fewer years as a partner) and more senior partners:

- ***Junior partners:*** *the all-else-equal effect of being female ranges from -2 to +1 percent across the survey years, the practical consequence of which is to conclude there is essentially no gender-based difference in comp.*
- ***Senior partners:*** *the effect of being female has been about -6 percent for the last three surveys, the practical consequence of which is to conclude there is gender pay gap, of the order of 6 percent, even allowing for differences in practice metrics.*

Figure 5: All-else-equal discount for being female



Junior and senior partners are those who have been partner for 1–10 and over 10 years, respectively.
2018 estimate for junior partners not shown as not found to be statistically relevant.
Source: Major, Lindsey & Africa Partner Compensation Surveys 2012, 2014, 2016, and 2018.

DO PRACTICE METRICS CAPTURE PARTNER CONTRIBUTIONS CONSISTENTLY?

A friend of mine stepped back from his business career at age 55 to become what he'd always wanted to be: a lacrosse coach. He started out as assistant coach for a high school boys' team and then, upon an opening arising unexpectedly, he became head coach of the girls' team. He was taken aback at the differences in behavioral norms he encountered. One in particular struck me: with the boys, he routinely singled out individuals for public praise; when he first did this with the girls, he was approached afterward by the young woman he'd publicly lauded and was politely asked not to do so again.

This incident came to mind when I read the following comment from a male survey respondent on the topic of gender pay equity:

> *Equity partner compensation is based entirely on a formula based upon collected origination dollars, timekeeper dollars and credit for primary responsibility for heading cases regardless of origination, so there is no potential for gender bias.*

I see this differently. To me, it's dangerous to assume that men and women would get equal credit for, say, originations. Originations are widely perceived not just as the main driver of comp but also as public statements of accomplishment and worth. It's possible, if not probable, that men and women would, on average, exert different intensities of effort to secure such approbation. This would incline the originations credited to women partners to understate their relative contribution to securing client mandates.

A separate dynamic may be at play around billing rates. Raising one's billing rate entails risk—risk of offending clients and of having awkward conversations as they push back. We know from the psychological literature that in general men and women have different risk tolerances. Thus, it would not be surprising to see women raising their billing rates more slowly than do men. A similar dynamic may be at play when it comes to partners fully charging their time on matters and risking pushback from clients. Note, however, that there's an important distinction between these billing rate and hours dynamics and that around originations: on originations, how credit is apportioned doesn't affect the firm's profitability; on billing rates and hours the situation is different: holding back on rate increases, and under-billing time, lessens the profit contribution of a partner's practice to the firm.

We can't say definitively that traditional practice metrics under-represent the relative economic contribution of women partners. Personally, I am inclined to think that, without countervailing measures, such would be the case and thus it is something of which leaders, comp committees and individual partners should be mindful.

IMPLICATIONS FOR ACTION: LEADERSHIP TEAMS

Given the sensitivity of the issue, it's not surprising that relatively few firms have discussed gender pay equity with partners or taken steps to address the issue. Based on responses to the 2018 MLA Partner Compensation Survey:

- *20 percent of firms have increased female partner participation on management and compensation committees.*
- *11 percent of firms have intentionally increased women partner comp.*
- *8 percent of firms have hired consultants.*
- *4 percent of firms have adjusted their comp systems.*
- *2 percent of firms have lowered male partner comp.*

As more firms assess the issue, and the first movers refine their steps, it's useful to have framework of actions to consider. The following sections outline such a structure.

Strategic hiring

There's an opportunity here for firms with well-balanced comp systems: hire senior women partners away from rival firms.

Many senior women partners are being undercompensated relative to their worth. If your firm compensates men and women equitably, then you have an advantage relative to your competitors in attracting these partners. This is a non-trivial edge. We know from other research[3] that women partners in their 50's are more sought after as laterals than both younger women and equally-seasoned men (as demonstrated by higher portions moving to higher profit firms) and that senior women are more successful than senior men when they move (as demonstrated by higher retention rates when they move to higher profit firms).

Quantitative analyses

The classic quantitative assessment of gender equity is a multiple regression analysis (such as described above). To be compelling, the analysis requires at least 250 partners (so as to have 50+ women partners at a typical 20–22 percent female ratio). The analysis would provide an estimate of the effect that being female has on comp and of its statistical validity. It would also identify individual compensation outliers (both men and women). Most finance departments have the ability to perform such calculations; the tool is built into standard spreadsheet packages.

Other useful analyses are side-by-side comparisons of partners grouped by practice area and then, within practice area, by tenure as partner. With these, it's best to look first at the data with gender identified but without individual partners identified; it allows a more objective perspective to form. In like vein, it's useful to have the review undertaken by partners who have not been part of the comp committee deliberations; they come afresh to the dynamics.

In addition to contrasting individual partners' point-in-time compensation and practice parameters, it's useful too to look at average comp of men and women, comp ratios (female as a percent of male), and growth rates over time. This last can be especially important—even small differences compound to significant gaps over time.

On the matter of bias in how originations are shared amongst partners, I suggest the following 'guessing game' to check for such inconsistencies: for each major client, ask the finance department for two separate lists—names of partners who got origination credits for the client, and origination credit amounts that the (unnamed) partners got. Then ask a partner who is familiar with the client, but uninvolved in the allocation of origination credits, to align the names with the amounts in what they'd consider an equitable allocation. If you find the equitable estimates are higher than actual allocations for women more often than they are for men, then you may have an issue.

These kinds of analyses do not typically identify outliers requiring immediate intervention. However, if in aggregate over the various approaches, you find you've to work to explain relative under compensation of women partners then you may have a subtle but systemic issue.

Chartering a working group

Working groups comprising a mix of partners across tenure, gender, practice and location are a powerful way to tackle many issues within a partnership. Not only do they improve the potential for good decision making but they're also a help to leadership teams: they demonstrate leadership being inclusive while also giving leaders plausible deniability on particularly thorny issues that might arise. What might the charter for a comp equity working group include?

One work item could be the quantitative review of a firm's own comp data as described above. Another could be an assessment of partner perspectives and ideas-for-action on the issue. An anonymous on-line survey can be an effective means for accomplishing this, perhaps including gender pay equity as just topic in holistic assessment of partner satisfaction. A useful attribute of gathering such survey data is that they help in partner-to-partner discussions—rather than have partners sharing opposing views directly, all partners can look at the third-party dataset as a de-personalized discussion element.

The working group could also look at how compensation systems and processes work elsewhere. Information could come from interviewing recent laterals, consulting with peers at other law firms, and hearing from friends

[3] *Simons, H. A., & Cecchi-Dimeglio, P. (2018). Retaining Women Laterals.* The American Lawyer, (February), *pp. 46–49.*

at other professional services firms. It may just reflect the bias of my professional past, but I believe the elite consulting firms are streets ahead of law firms on this.

The output from the group's work would be a list of possible changes to make to the firm's comp committee processes (possibilities discussed in the next section) and, at least equally important, to individual partner behaviors.

Changes to the comp committee processes

There are a host of potentially valuable changes to comp committee processes. These can be separated into those effectuated before, during, and after the annual comp cycle.

The 'before' possibilities include:

- *Establishing norms for sharing origination credits that lean against any inclination to gender inequity.*
- *Having practice area leaders actively review and monitor distribution of credits during the year to keep an eye out for any departures from fair and equitable distribution.*
- *Establishing a network of ombudspersons (or comp committee members directly) for partners to approach if they feel they may not be getting appropriate credit in the firm's systems for their contributions.*
- *Inviting a selection of senior women partners to review the prior year's comp distributions with the comp committee to highlight particular situations where gender inequities may be at play.*
- *Reviewing billing rates to identify and counteract any downward tilt in women partners' rates.*

During the comp committee process, amendments to consider encompass:

- *Inviting an outsider to sit on comp committee deliberations to listen for implicit bias in the language used in discussing various partners.*
- *Tracking statistics in real time as comp numbers are being drafted: comp, relative comp, and comp growth rate for men and women partners by tenure cohort.*
- *Running a series of 'checks' (gender, age, race, office location) prior to finalizing comp recommendations, perhaps in concert with a labor and employment partner.*

After-the-cycle possibilities include:

- *Publishing for partners the summary statistics used to guide the comp committee on the potential for bias. Examples would include male and female partner averages of comp, comp as a percent of originations, comp in relation to billing rate, and three-year growth of comp.*
- *Introducing an appeal process specific to issues of potential bias.*

Targeted support for women partners

A number of firms make presentations to new women partners on the nuances of how gender differences can, if unchecked, play out in their compensation processes. They use these occasions to brainstorm on ways to ensure being appropriately credited for contributions, and to develop approaches for moving up the compensation ladder quickly.

This strikes me as really useful. So much so that there are many developments and extensions worth considering. One is to go beyond discussing allocation of origination credits to talking about assertiveness in recording hours and in raising billing rates. A second is to go from a one-off presentation to having follow up one-on-one discussions with partners annually. Given the disparities at the more senior levels, another high-value extension of the approach is to replicate the program for senior partners, or indeed for partners of all tenures.

Addressing gender bias more holistically

Many firms have chartered efforts aimed at greater representation and inclusion of women; comp equity can be supported by such efforts. Typical initiatives have included:

- *Adopting the law firm version of the NFL's Rooney Rule, e.g. at least 30 percent of the candidates for partnership, or for leadership or management positions, must be female.*
- *Internal training on implicit bias.*
- *Introducing flexible work options to retain more young women partners, e.g. pre-defined on-ramps for partners returning from leaves.*
- *Rolling out mentorship initiatives whereby senior male partners mentor junior women partners.*
- *Intervening with male partners as necessary to ensure women aren't been dissuaded from more profitable practices by a sense of not being wanted.*

IMPLICATIONS FOR ACTION: INDIVIDUAL PARTNERS

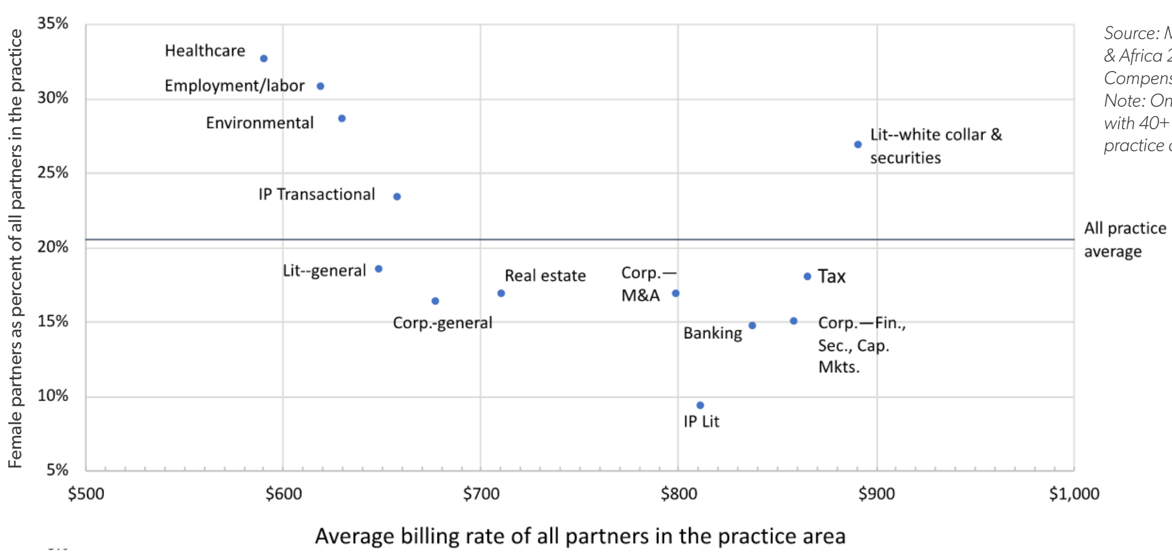
It's often tempting for individual partners to assume that action on issues like gender pay equity have to start with moves by leadership. Yet, as I look across firms I've known well over time, this is rarely the case. A small group of partners somewhere starts on some endeavor, it goes well, people hear positive things about it; eventually, leadership learns of its success, coopts the idea and promulgates it broadly. To purloin a sentiment from Margaret Mead: never doubt that a small group of thoughtful partners can change a firm; indeed, it is the only thing that ever has.

An issue well-suited to addressing in this way may be the sharing of origination credits. Small groups of partners can develop their own protocols for ensuring gender-neutral allocations through, for example, establishing a norm invariant by gender, standardizing a third-party review, or setting up pre-defined ramp-downs of the allocation to the partners who originally started the client relationship but are now little involved.

Similarly, on billed hours: partners can coach peers to be more assertive in recording their time. A powerful norm to establish is to record all worked time, and take write offs if necessary. Likewise, on billing rates: partners can encourage peers to raise their rates where they see discrepancies.

Moreover, partners in high-profit practice areas could perhaps do more to make their practice inviting to women. This could help in rebalancing the portfolio of practices of women partners. As Figure 6 shows, women partners are over-represented in low billing rate (and hence low profitability) practices and under-represented in high billing rate practices (with just one exception—while collar and securities litigation).

Figure 6: Female partner practice mix tilted to lower profit practices



Source: Major, Lindsey & Africa 2016 Partner Compensation Survey. Note: Only practices with 40+ respondents by practice are shown.

A CLOSING THOUGHT

Lawyers inhabit the world of facts. They can overlook, however, that feelings too are facts. It is fact that women partners feel they are being treated unfairly. It can also be taken as fact that senior women partners are undercompensated relative to what their practice metrics suggest and that the fundamental contributions of men and women will tend to be reflected differently in traditional practice metrics.

As matter of sound people-management practice, and also as a matter of principle, firms would do well to address the issue. ■

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Appendix
Analysis of Standalone Effect of Gender on Comp

The results presented above of the effect of gender on comp are derived from separate multiple regression analyses for junior and senior partners of the data from each of the four biennial surveys. Multiple regression is a technique wherein an individual partner's comp is assumed to be determined by a set of underlying variables; the technique then determines the weightings (or coefficients) of these variables that, in aggregate, provide the best overall fit to the data for all partners. The technique also provides an estimate of the statistical validity of the coefficients. Two types of variables were used in the analysis:

- ***Continuous:*** *originations; billable hours; billing rate (an indicator of the profitability of the market segment in which they practice); and, years as a partner.*
- ***Categorical:*** *male vs. female, open vs. closed comp system (i.e. do partners see what each other earn), and lateral hire vs. home grown.*

These variables were found to explain 72 to 75 percent (varying by year) of the variation in individual partner comp. This is a strong number (technically an 'adjusted R Square') for this type of analysis. The continuous factors were all found to be statistically valid drivers of compensation in all years, with billing rate the strongest driver when viewed in terms of sensitivity—a one percent change in billing rate implied a one percent change in comp. This may at first be surprising but recall that billing rate implicitly encapsulates much information about the profitability of the market segment in which a partner practices.

Of interest in addressing our question here are the results concerning the male vs. female categorical variable—its coefficient and, particularly, the statistical validity of the coefficient. Assessing statistical validity is an arcane science; (some readers may choose to gloss over the remainder of this section). The standard approach is to accept a claim as valid if its counterclaim is improbable. Thus, in the current analysis, one assesses the validity of being female having an effect on compensation by looking at the probability of being female having no such effect. This latter probability is quantified in a metric termed the p-value. Specifically, the p-value is the probability of obtaining the coefficient we've gotten (or, more precisely, a coefficient at least as extreme as the one we've gotten) if being female had no effect on comp.

Some examples may help. If the p-value is low, say 10 percent, this means there is only a 10 percent probability of getting the result we have if being female had no effect on compensation. As 10 percent is a low probability, we can believe with some comfort that the reverse is true: being female has an effect. At the other end of the range, if the p-value is, say, 70 percent then there's a 70 percent probability of getting the result we have if being female has no effect; 70 percent is perhaps high enough a probability to be comfortable saying that being female had no effect. And then, of course, there's a broad middle range of p-values, say from 30 to 70 percent, where we'd not be comfortable dismissing, or accepting, the possibility that being female had an effect. It's the agnostic middle ground.

Note that the statistical literature conventionally cites a 5 percent p-value as the cut off for validity. But, as described above, there's nothing special about this number. It's appropriate where one is focused on asserting some specific driver is valid with academic levels of precision in controlled systems (e.g. lab experiments). The present situation is different in fundamental ways: we are not looking to prove validity in one direction, rather we're interested in both the claim (being female has an effect) and counterclaim (being female has no effect). We are also dealing with real world data and looking to assess situations with business-like levels of confidence.

Continued…

The table below shows the number of partners in the analysis, regression coefficients (expressed as a percent of average comp by cohort by year) and p-values for the female category variable, i.e. value is 0 and 1 for male and female partners, respectively. As a practical matter, what are these data telling us? Firstly, the dynamics are different between the two tenure cohorts. For the junior partners, the p-values are all quite high (underweighting the 2018 datum given the relatively low number of female respondents in that year's survey) suggesting that being female had no effect on comp. Contrarily, the p-values for the senior partners are broadly quite low, suggesting we cannot readily dismiss the possibility that being female had no effect on comp, and therefore (through the double negative) should accept that being female probably has had an effect.

	Junior partners			Senior partners		
Year	**No. of partners**	**Coefficient**	**P-value**	**No. of partners**	**Coefficient**	**P-value**
2012	364	-2%	73%	724	-12%	1%
2014	633	0%	97%	458	-5%	35%
2016	428	1%	87%	993	-6%	10%
2018	183	-6%	40%	483	-6%	24%

P-values key:* *Green *= above 70% |* ***Orange*** *= below 30%*