

# The Persistent Gender Wage Gap in Legal Practice: What We Know and What to Do

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Joyce S. Sterling & Nancy Reichman, *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, 8 *Fla. Int'l. U. L. Rev.* (forthcoming, 2013), available at [SSRN](#).

Nearly twenty years ago, the Colorado Bar Association and the Colorado Women's Bar Association published a study that identified, among other things, a significant wage gap between male and female lawyers practicing in the local Denver community: the "average woman working full-time earned only 59 cents to the dollar earned by the average man working full-time." (P. 4.) This finding led to a commitment by the Colorado Bar to sponsor additional research on the "the mechanisms that produced the gap." (P. 4.) To the good fortune of the Bar and the community of scholars interested in issues related to gender and the legal profession, two University of Denver professors agreed to undertake this additional research with the "expect[ation that they would]... be able to expose the sources of bias, make recommendations, and move forward to remove the barriers to women's success in law." (P. 4.) Thus began the collaboration by [Joyce Sterling](#) and [Nancy Reichman](#) that has produced more than 25 published articles, working papers, and presentations on the gender gap. Taking an empirical approach to the problem, they have drawn on numerous sources, settings, and theoretical frameworks, all the while with quantitative and qualitative data at the core of their work, to produce both foundational research and cutting-edge insight.

In *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, one of their newest papers, Sterling and Reichman reflect on the continuing presence of the gender gap, and lament that their research has not led to the eradication of the wage gap much less other barriers to gender equality in legal practice. The article does more than lament, however. It is a call-to-arms, of sorts, that offers important ideas for advancing equality and simultaneously provides a comprehensive overview of what they have learned from their research and that of others about gender disparities in the legal profession. The dual focus of looking back and forward makes this article particularly significant. It offers an entrée to those unfamiliar with research about gender inequality in the legal profession and a map for those interested in joining research with activism.

First, the facts borne out by their research:

- The wage gap has neither been eliminated over time, nor does it disappear over the course of women's careers as they gain experience and stature in practice. A threshold measure of a gap of 59 cents to the dollar, based on a study of lawyers practicing in Denver in 1994, "had improved by one percent [by 1999, but] . . . the gap increased for women with more years of experience." (P. 11.) More than ten years later, in a new and unrelated study that drew from a national sample of law graduates who passed the bar in 2000, the gap clearly remained. Even women who had been practicing for only three years suffered lower earnings of 5% less than their male colleagues, while by seven years after graduation women earned 13% less than men. That is, the gap is evident very early in lawyers' careers and increases with years of practice.
- The wage gap is not explained by issues related to work-family balance. Instead, "gender matters more than parenthood when predicting compensation and hours worked." (P. 17.) By focusing explicitly on the "endowments" of lawyers, including credentials, hours worked, and other factors, Sterling and Reichman have clarified the role of gender. They find that it continues to matter: for example, "fathers had more opportunities to work with high-profile clients than both mothers and women without children..." (P. 17.) Their current work focuses on bonus compensation, and while their study of the subject is not yet complete, it, too, indicates that "women were significantly more likely to receive either no bonus or a bonus less than \$10,000, while men are

significantly more likely to receive bonuses over \$10,000.” (P. 17.)

- The explanation for the wage gap relates to the gendered nature of law firms. Sterling and Reichman explain that “[a] gendered organization is not necessarily populated predominately by men. Rather, it is an organization defined, conceptualized, and structured in ways that puts a premium on masculine characteristics, including a willingness to work ‘on demand,’ free from domestic responsibilities.” (P. 4.) This is not to suggest an intentional conspiracy among male lawyers; rather, the firms are “infused with stereotypes about the appropriate roles for men and women that . . . slow or prevent upward mobility of women . . . within them.” (P. 5.) The organizational characteristics structure—and limit—review and advancement, too. These organizational factors do not indicate malicious intent; rather, as Sterling and Reichman explain, “Even in gendered organizations, management may aim to increase the number of women in the workplace but throw up their hands, rather than contemplate change, when the women they recruit decide to move to other work, organizations, or drop out of the labor market because work structures and culture are inhospitable to them.” (P. 5.) Consequently, they view this character of firms as central in addressing the wage gap as well as other factors related to gender disparity in practice.

Second, the diagnosis:

- One approach to neutralizing the influence of the gendered nature of law firms is suggested by research on non-law professional services firms. Sterling and Reichman draw on work investigating gender inequality in engineering, among other services sectors, to suggest that “formalized procedures for hiring, evaluation and promotion” will help law firms address the wage gap, if not also other challenges to women lawyers. (P. 6.) Their research provides a substantial basis for concluding that law firms now do not rely on “formalized procedures.” (P. 6.) While there may be some uncertainty regarding whether differences between law practice and non-law professional services will prevent law firms from completely transforming themselves to the extent accomplished by engineering firms, there clearly is much that law firms can do to advance the objective of formalizing their career-related procedures.

Finally, proposals for going forward:

- Solving the problem of gender disparity requires a combination of two elements: information and responsibility.
- Information is key to addressing the wage gap and gender inequality more generally. As Sterling and Reichman put it, “You can’t change what you don’t observe.” (P. 20.) Promotion and hiring decisions in law are shrouded in mystery. In contrast, work on firms in other services industries suggests that transparency in this process is central to eliminating the wage gap and gender disparity generally. To address this, Sterling and Reichman refer to a proposal by Rachel Grand that would impose on law firms an obligation to disclose their standards for promotion; for each partnership decision, a firm would either disclose that it has abided by its stated standards or explain its variation from them. Grand’s proposal stems from the regulation of publicly held corporations regarding the nominating process for members of the board of directors. Sterling and Reichman do not delve into the details of how such a proposal might work for law firms or whether there are examples of law firms that already have adopted more explicit and formal processes for partnership decisions. It would be interesting to know whether such firms, if they could be identified, have had more success with regard to both the proportion of women in their partnerships and eliminating the wage gap. Perhaps future research will investigate this issue and related variations among law firms.<sup>1</sup>
- Explicitly prohibiting law firms and lawyers from discriminating on the basis of gender and race/ethnicity is a second element of Sterling and Reichman’s prescription for the future. They recommend an amendment to the Model Rules of Professional Conduct to specifically prohibit discrimination “both in the practice of law and in determining conditions of employment.” (P. 21.) Minnesota and New York already have adopted such a provision, and in New York the rule applies specifically to law firms as well as to lawyers. (Pp. 20-21.) While Sterling and Reichman do not specifically address the absence of regulation of law firms, as opposed to lawyers, in most U.S. jurisdictions, this vacuum presents a practical challenge to their proposal. Nonetheless, addressing discrimination by amending Rule 8.4, as they suggest, even if applied only to individual lawyers,

would provide a basis for disciplinary action. This may be of more symbolic than practical significance, but perhaps the signal is important in itself.

In their closing remarks, Sterling and Reichman briefly identify the need for research in new directions, to “fill the gap in our knowledge of the inner workings of law firm practice.” (P. 21.) My hope is that they will continue to investigate lawyers’ careers while also pursuing new research on law firms as organizations. It is only by pursuing both lines of inquiry that the interaction and significance of individual and firm choices, policies and practices will be clear.

1. In addition, research on non-law professional service firms may offer important comparative insight for purposes of understanding law firms and related practice organizations. One example is Paul Coombes’ study of women physicians, which suggests that women prefer certain practice areas and settings that offer certainty regarding scheduling and greater patient interaction. While current research on lawyers’ careers such as the After-the-JD research study does not support similar findings in law, this may reflect differences in fields related to the proportionate representation of women and the investment required for participation. [?]

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