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## 'The Progress Has Still Been Slow': The M&A Gender Gap, by the Numbers

UC Davis School of Law's Afra Afsharipour built a database of 700 transactions that highlights a persistent structural imbalance.

By Dan Packel | August 20, 2021



**Afra Afsharipour, senior associate dean for academic affairs and professor of law at University of California, Davis School of Law. Courtesy photo**

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Afra Afsharipour, the senior associate dean for academic affairs at University of California, Davis School of Law, brushed up against the lack of diversity in M&A work in her seven years as a young lawyer at Davis Polk & Wardwell. "I was often the only person that was like me in the room," the first-generation immigrant says.

But even if this structural imbalance in M&A is obvious, it hasn't been subjected to a rigorous empirical evaluation, unlike the gender gap in law firms or the question of women in the C-suite or on corporate boards.

Afsharipour is looking to change that with a new paper ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3898551](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3898551)) that uses a 700-transaction database to explore the paucity of women in lead roles in transactions, both in law firms and in the investment banking industry. In one damning snapshot, over a seven-year period, women made up just 10.5% of lead legal advisers on the buyer's side. Afsharipour talked about her research with *The American Lawyer*.

*This interview has been edited for clarity and brevity.*

**Do you have the sense that, over the last several decades, any significant progress has been made in eroding the structural biases that hold women back in M&A practice?**

I don't know if I'd say there have been significant changes. I would say that there have been changes. Even within my study, I see an uptick, if you look at the data on the target side from 2007 to 2020, in terms of the number of women who are leading in M&A transactions. Now, whether that is a permanent uptick, and what that represents, is something I can't capture with the data. But there have certainly been a lot of efforts made to focus on this issue. The progress has still been slow, just as the progress has been relatively slow if you look at addressing the partnership gap at large law firms generally, or addressing the even more stark racial gap in terms of partners at law firms.

**Is there any explanation for why women on average were more likely to serve as lead counsel on the target side rather than the buyer side?**

I think it's probably who represents the buy side. A lot of the very largest firms are on the buy side: Wachtell or Davis Polk, for example, or Cravath, Swaine & Moore. Those are the firms that, at least based on the data I have, have more of a gender disparity. If you look at firms that are helping sell companies a bit more, like Cooley, for example, there's less of that.

There are probably huge industry differences too, in terms of types of transactions, that this data doesn't capture. What happens if you take out big oil and gas or energy transactions, or what if you just focused on technology transactions? Would I see something different in the data? With that, you'd need a very, very large data set, which is hard to gather.

**The moral argument is clear here, but can you talk me through the instrumental case for having more women as M&A counsel?**

I make both arguments in the paper, and I think the equity arguments are really important, partly because of the compensation differences that not being in these positions can lead to.

I think there is an instrumental case to be made with respect to having more women in M&A transactions, and just generally more diversity. M&A transactions are impactful, they're very hard and complex decisions, they are decisions that benefit from a lot of what I refer to in the paper as cognitive conflict. You need people

to debate and discuss robustly in these types of dealmaking, and the research seems to indicate that, particularly when organizations are making complex decisions, those decisions benefit from having diversity in the room and particularly diversity at the leadership levels.

It's not about whether you have another first-year or second-year associate who's a woman on the deal, because usually that person isn't in the room with the board members and the members of the C-suite or the bankers who are involved in the advisory process for a large M&A transaction. It's really the partners who are in the room.

**You discuss a number of strategies for increasing the representation of women in this work—greater measurement, client pressure, focusing on pipeline, to name a few. Any sense of which of these could be most significant?**

I think it really needs to be a multipronged effort, and that involves a lot of different institutional actors. That's part of what I tried to do in this paper, by not necessarily just focusing on the law firms, but also thinking about the C-suite and the investment bankers and the board as well.

I think we all have a role to play here, including at law schools. Some of the very leading law schools in the country who are graduating students and pushing students into the large law firms, those schools have their own gender diversity issues with respect to their faculty.

I think the stakeholder pressure so far that has focused on board diversity has been very successful. That pressure could be focused more on the C-suite. Changes in the C-suite might lead to changes in who are selected as the bankers and who are selected as the lawyers in these deals.

**You intend to explore racial diversity in M&A next. Any preliminary hypotheses, beyond that there's not enough?**

I think there's an incredibly small amount of it. If you look generally at some of the very large law firms that I cite in the paper and you just go through the people who are in partnership roles in their M&A practice, I conjecture that the racial diversity is going to be significantly worse than the gender diversity.