WLJ WOMEN LAWYERS JOURNAL 2018 VOL. 103 NO. 2

NAWL Pay Equity Taskforce Series:

# In Name Only.

## Are Some Law Firm Partners Actually Employees?

> The Impact of the Artificial Intelligence Revolution on the Law

> Diversity Spotlight: A True Renaissance Woman - Charlotte Whitaker, Chief IP Counsel, USAA



WLJ WOMEN LAWYERS JOURNAL



For associates or of counsel trudging through the long hours of tedious diligence, tight deadlines, protracted negotiations, and pointed performance reviews, the first time those words are uttered by a colleague can evoke a tiny thrill from even the most hardened of cynics.

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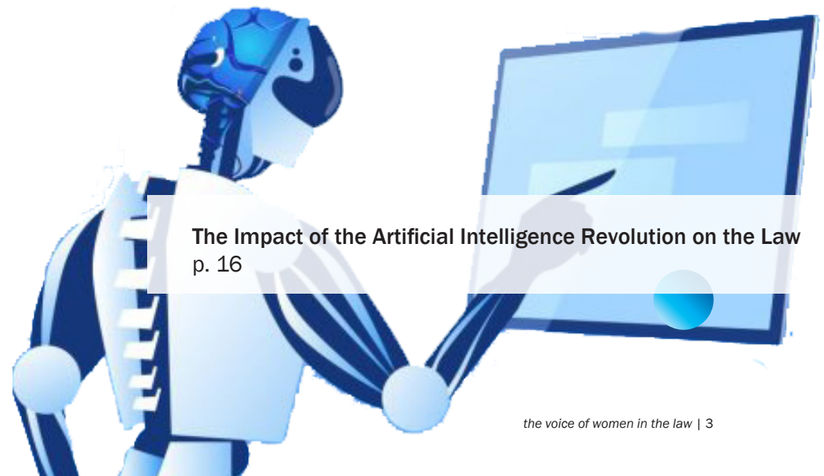
When Char Whitaker assumed the reigns as Chief IP Counsel at USAA at the start of this year, it marked the latest chapter in a remarkable career. Char is the epitome of a modern renaissance woman – she holds degrees in electrical engineering and law, she also spent 17 years studying ballet and taking classical and jazz voice lessons, and she supports the arts today by serving as a board member of the Lookingglass Theater Company in Chicago.



**The Impact of the Artificial Intelligence Revolution on the Law**
p. 16

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2018 VOL. 103 NO. 2



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Articles about current legal issues of interest to women lawyers are accepted and may be edited based on the judgment of the editor. Editorial decisions are based upon potential interest to readers, timelines, goals and objectives of NAWL as well as the quality of the writing. The WLJ also accepts book reviews related to the practice of law. We reserve the right to edit all submissions.

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Women Lawyers Journal (ISSN 0043-7468)
is published quarterly by the National Association of Women Lawyers (NAWL)®.



National Association of Women Lawyers
Empowering Women in the Legal Profession Since 1899

## About NAWL

The mission of the National Association of Women Lawyers is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success.

### BENEFITS OF MEMBERSHIP

- Access to career development and continuing legal education programs at reduced member rates
- Opportunities to build a national network via programs that bring women together, opening doors to an array of business development opportunities
- Leadership development through NAWL Practice Area Affinity Groups, committees, affiliations, and strategic partnerships
- Advocacy via NAWL's Amicus Committee, which reviews requests for participation as amicus curiae in cases of interest to NAWL members
- Community outreach through Nights of Giving
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## Focus on law and technology

*From Artificial Intelligence to Unicorns*

**By Elizabeth A. Levy**

In this issue we look at law and technology. We look at some issues within the burgeoning field of artificial intelligence (AI), and we meet a NAWL member whose career combines engineering and law in our Diversity Spotlight feature.

AI offers us both tremendous convenience and the ability to extend our reach into places that humans can't or won't go. Although we have yet to realize its full potential, we already contend with myriad issues of liability and agency, among others.

For example, who is liable for harm caused by the use, or misuse, of AI? Is it the developer of an AI system, or the user, or the beneficiary, or some combination of these? Is there a more appropriate paradigm for assigning responsibility?

Currently many applications of AI provide for human supervision or intervention in situations where an AI system cannot recognize or react appropriately (e.g., driverless cars). How does this fact affect liability, or does it? Under what circumstances is a human intervener responsible?

Do we expect – perhaps improperly - that the implementation of AI will absolve humans of certain responsibilities and liabilities altogether? Is that possible? Is it desirable?

Another important question: who is responsible if an AI system "behaves", as humans sometimes do, in duplicitous or malicious ways? Current AI systems lack a conscience and the ability to form intent apart from their specific objectives and task sets. They therefore cannot act in ways that we might consider devious or calculating. Humans, on the other hand, are motivated by greed, fear, anger, power, lust and other drivers that may defy reason and logic and may lead to unethical or immoral conduct. Our system of laws enables us to impose order and accountability on those whose behaviors are determined to be criminal or socially harmful. Is it possible, appropriate or even meaningful to impose our principles of law and order on AI systems? Do AI systems have agency apart from their creators?

These questions and many more require our thoughtful analysis and attention. I hope you find our feature on this topic stimulating and informative.

As our Diversity Spotlight shows, the combination of law and engineering or science is still relatively rare and unusual, even as more women with STEM (Science, Technology, Engineering and Mathematics) backgrounds have entered the practice of law. Recent efforts to expose more female students to STEM courses in our public and private schools have clearly made a difference in the number of young women exploring and pursuing a career in these fields. It is still vitally important for students who may lack exposure to, and self-confidence in, technical disciplines to see and know role models who look like them who are engaged in these disciplines and successful in technology-oriented careers. In this issue we introduce you to a NAWL member, Charlene Whitaker, who has taken just such a nontraditional career path, with impressive results.

I hope after you've enjoyed this issue you'll share it with your tech friends and colleagues!

In appreciation,

Elizabeth A. Levy is an intellectual property attorney and a pro bono hearing officer for attorney discipline matters with the Massachusetts Board of Bar Overseers. She is a NAWL board member and liaison to NAWL's Practice Area Affinity Groups.

# July 2018 President's Message

**Opportunities Abound**

Recently I came across an old NAWL folder that had been tucked into some hanging files in my office credenza. It held information relating to the very first NAWL event I was in charge of planning – the Minnesota Backpack to Briefcase event in 2007. For more than a decade and for over half my legal career, I have been very actively engaged in NAWL. As long as I have been involved, NAWL has strived to provide support and opportunities for women at every stage of their career. That has certainly been true for me. As my experiences in both NAWL and in the profession have changed, so have the opportunities that were available to me. NAWL provides opportunities for all if its members to network and grow; opportunities for leadership development; and opportunities to give back.

**Opportunities to grow.** No matter the stage of your career, there are ample opportunities to grow through NAWL. For more junior lawyers, this can mean finding other women outside of your school or employment setting who are going through or have gone through similar experiences early in their careers. It can also mean expanding your network to include incredible women around the country. Through participation in a Practice Area Affinity Group members can learn more about a particular practice area and sharpen substantive knowledge and skills. NAWL also fosters interaction between lawyers of different backgrounds and experiences which opens new ideas and viewpoints.

**Opportunities for leadership development.** One of the more tangible benefits of NAWL engagement is the opportunity to develop and demonstrate leadership skills. There are so many ways to get involved with committees and event planning. Being part of a committee allows members to first see how others navigate leadership positions. And when ready and willing, there are opportunities to lead substantive committees, conference planning committees, and potentially the organization through board service.

**Opportunities to give back.** We all have times where we are rightfully focused on ways to advance our own careers. That may mean landing a first or new job; making partner or getting a promotion; or gaining a new client or project. As exciting as these things can be, we all know that giving back is fulfilling in a different way. Giving my time and energy to help NAWL help women in the legal profession will undoubtedly be one of the most memorable and satisfying parts of my career. And even though my term as president is coming to an end, my active support of NAWL is not. Thank you to all of you and to NAWL for the tremendous opportunities.

What opportunities will you seek through NAWL in the coming year?

Take care,

Angela Beranek Brandt is a partner with Larson • King, LLP in St. Paul, Minn. She is an accomplished first-chair trial lawyer and has earned favorable results for clients in front of juries, arbitrators and judges. She practices in the areas of commercial litigation, employment law and products liability. In addition to her work with NAWL, Brandt is past president of the Ramsey County Bar Association. She has been elected to membership in the Federation of Defense and Corporate Counsel and American Board of Trial Advocates. She has been recognized as a "Super Lawyer" by Minnesota Law & Politics and is AV Rated by Martindale-Hubbell. Her work with women is balanced out at home where she has three sons—an 11-year-old and 8-year-old twins.

# In Name Only.

## Are Some Law Firm Partners Actually Employees?

*By: The Pay Equity Taskforce of the National Association of Women Lawyers*

**“I would like to introduce you to my partner…”**

•• For associates or of counsel trudging through the long hours of tedious diligence, tight deadlines, protracted negotiations, and pointed performance reviews, the first time those words are uttered by a colleague can evoke a tiny thrill from even the most hardened of cynics.

While law firm partnership is a prestigious professional accomplishment, the inner workings of this mysterious realm can leave partners themselves perplexed by even the most basic of fundamentals – compensation. In determining partnership draws and bonuses, firms can take a nuanced view of a partner’s contributions. A less than transparent process can leave some partners questioning the fairness of the evaluation process and the resulting profit allocations. But what remedy do partners have to challenge compensation decisions they believe to be discriminatory?

In years past, the title of “partner” meant that

an attorney was no longer afforded the protections granted to employees of a law firm. However, this bright-line demarcation has been increasingly challenged by partners who allege pay inequity on the basis of gender and other protected characteristics. While a consensus has not emerged of when partners can be deemed employees, several cases are illustrative of courts according varying levels of deference to the title of "partner" when analyzing whether employment discrimination laws are applicable.

**I. The Equal Pay Act and Title VII.**

While no one case has provided definitive guidance for distinguishing between an employee and a law firm partner, the current analysis of this distinction turns upon a contextualized interpretation of the Equal Pay Act, Title VII and related employment discrimination statues.

Under the *Equal Pay Act of 1963*, § 3(d)(1), 29 U.S.C.A. § 206(d)(1) (the "***Equal Pay Act***"), an employee must demonstrate that he or she is receiving less wages for equal work based on gender. *Carey v. Foley & Lardner LLP*, 577 Fed. Appx. 573, 579 (6th Cir. 2014). Upon demonstrating such disparity, the burden then shifts to the employer to prove that the wage differential is as a result of one or more of the following permissible defenses under the Equal Pay Act: "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex." 29 U.S.C. § 2069(d)(1)).

Many claims made the under the Equal Pay Act are frequently coupled with those asserted under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 ("***Title VII***"). Title VII prohibits employers from discriminating against, "any individual with respect to his compensation, terms, conditions, or privileges of employment" on the basis of a protected characteristic. *Id.* § 2000e-2(a)(1). The term "individual," has been construed to mean "employees" and courts have held that partners are employers, not employees, and thus they do not have standing to bring a claim under Title VII. *Solon v. Kaplan*, 398 F.3d 629, 634 (7th Cir. 2005).

In defense to claims brought by female partners under the Equal Pay Act and Title VII, law firms have countered with the traditional argument of distinguishing partners from employees as well as the affirmative defense that their compensation system consists of merit-based formulations supported by production metrics and other objective standards. However, recent and pending court cases have challenged these traditional notions of partnership and the argument that current compensation systems fairly allocate distributions between female law firm partners and their male counterparts.

**II. The Evolving Definition of Partner.**

"All partnerships are not created equal…" the Seventh Circuit stated in *EEOC v. Sidley Austin Brown & Wood*, 315 F.3d 696 (7th Cir.2002). In *Sidley*, the EEOC settled an age discrimination lawsuit against Sidley Austin on behalf of 32 former partners after the 7th Circuit remanded the case for discovery on the issue of whether a proposed class of demoted equity partners were, in fact, partners in name only. As part of the consent decree, the law firm conceded that the plaintiff-partners were employees within the meaning of the Age Discrimination in Employment Act. *EEOC v. Sidley Austin LLP*, 315 F.3d 696 (7th Cir. 2007).

Furthermore, the U.S. Supreme Court has stated that the mere fact that a person bears a, "a particular title—such as partner, director, or vice president" is not conclusive when determining if he or she is an employer or an employee for purposes of employment discrimination statutes. *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 450, 123 S.Ct. 1673, 1680 (2003) (internal citations omitted). In *Clackamas*, the Supreme Court then adopted the EEOC Compliance Manual's following factors for distinguishing between employers and employees in a professional corporation under the Equal Pay Act, Title VII and other related remedial statues (collectively, the "***Clackamas Factors***"):

(1) whether the organization can hire or fire the individual or set the rules and regulations of the individual's work;
(2) whether and, if so, to what extent the organization supervises the individual's work;
(3) whether the individual reports to someone higher in the organization;
(4) whether and, if so, to what extent the individual is able to influence the organization;
(5) whether the parties intended that the individual be an employee, as expressed in written agreements or contracts; and
(6) whether the individual shares in the profits, losses, and liabilities of the organization.

The Clackamas factors were discussed in depth in *Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 2009 WL 3602008 (W.D. Pa. Oct. 28, 2009), *aff'd Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 2010 WL 2780927 (3rd Cir. Jul. 15, 2010). In *Kirleis*, the federal district court held that a Class A equity shareholder in a law firm was an employer instead of an employee because, among other reasons: (1) she had equal authority with other Class A shareholders to hire and fire shareholders; (2) she had access to highly confidential financial information about the firm than employees and non-equity partners at law firms; (3) she "maintained almost complete autonomy" in her workload and schedule; (4) her compensation reflected the firm's profits; and (5) liability of the firm was borne by plaintiff and the other equity Class A shareholders of the firm. *Id. at *17-18*.

As demonstrated by *Kirleis*, the analysis of whether a law partner is an employer or an employee is highly fact intensive. In *Campbell v. Chadbourne & Park LLP* (Docket No. 16-6832 in S.D.N.Y. June 14, 2017), the court partially denied the law firm's motion for summary judgment, holding that discovery was needed to determine whether the female plaintiffs qualified as "employees" who are protected by the Equal Pay Act. *Id.* at 6. Similarly, in the ongoing case of *Doe v. Proskauer Rose LLP* (Docket No. 17-901 in D.D.C., March 29, 2018), the court similarly rejected the law firm's motion for summary judgment holding it was not clear on the merits whether a practice group head with the firm qualified as an owner or as an employee under the Fair Labor Standards Act and state and federal anti-discrimination laws.

**III. The Focus on Compensation Metrics.**

In addition to taking a more nuanced approach in scrutinizing whether a law firm partner is in reality an employee, courts are also being asked to examine the law firm compensation model itself to detect if there is any inherent gender bias in profit allocations. For example, in *Knepper v. Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, No. 3:18-cv-00303 (N.D. Cal. filed Jan. 12, 2018), a woman partner alleges that the firm's lack of female representation in leadership has led to pervasive gender discrimination. In particular, she has drawn attention to the firm's practice of allocating compensation credit based on "originating credits, managing credits, responsible credits, working credits, and billable hours." *Id.* The plaintiff is asserting that while originating and managing credits are the primary metrics used to determine compensation, women partners are not given proportionate opportunities to develop the business that would generate such credits. Furthermore, the plaintiff contends that women partners are assigned tasks that are not highly valued and that do not lead to business origination and matter managing credit.

In addition to asserting that profit generating opportunities are not equally accessible to female partners, other lawsuits assert that even when women partners have the same financial metrics as men, they are still paid less. In the *Chadbourne* case, the lead plaintiff (who was joined by two former Chadbourne female partners) alleged that while her collections and productivity were commensurate with those of her male counterparts, she nonetheless earned less than her male peers. The parties recently submitted a consent motion to settle the lawsuit for two million dollars to the named plaintiffs plus attorneys' fees.

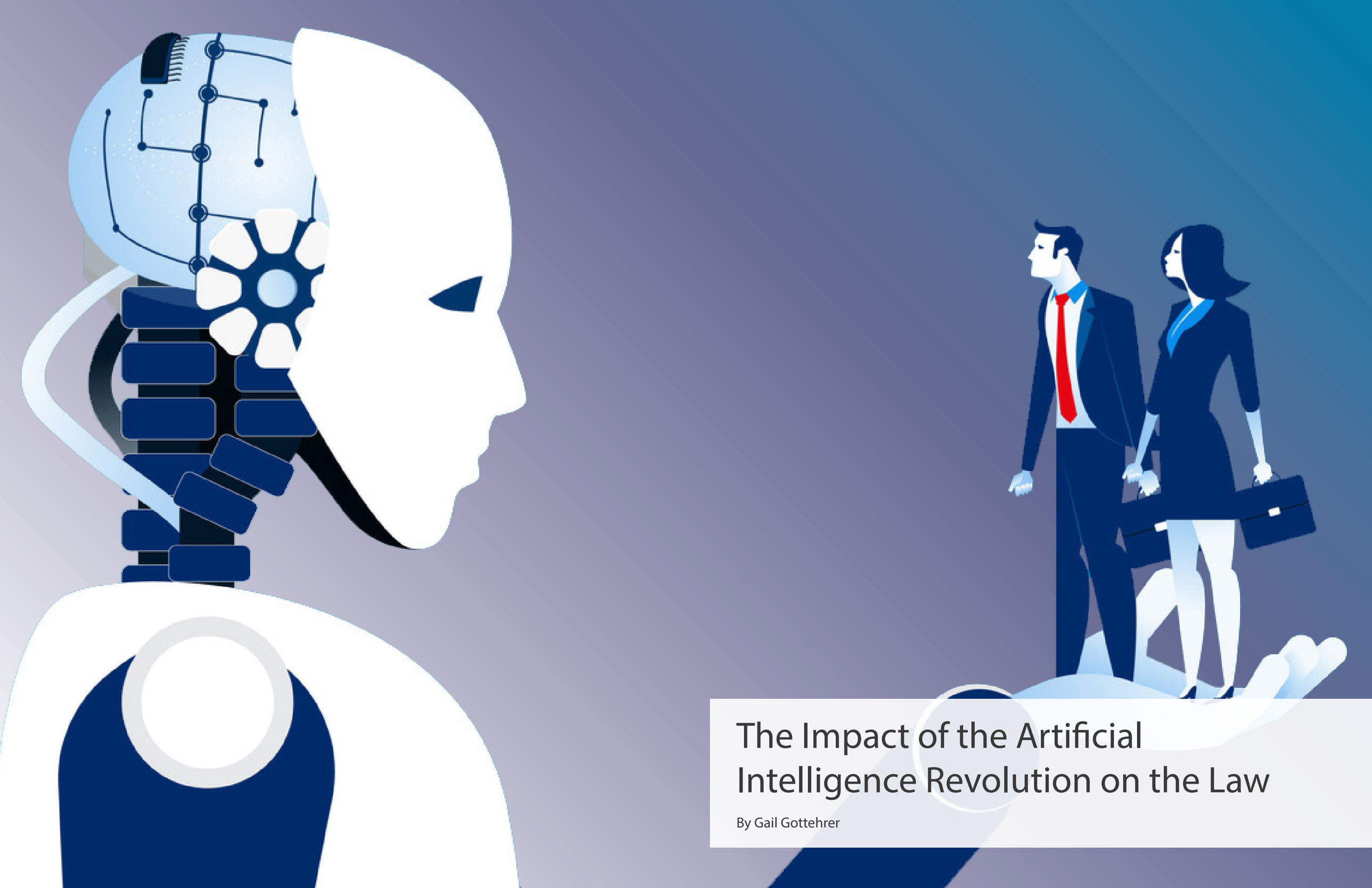
While they do not provide definitive guidance at this juncture, the *Ogletree* and *Chadbourne* cases underscore a trend of female law firm partners' increasing willingness to contest compensation systems because of alleged gender bias. Given the highly fact intensive review of the threshold employee/owner issue in these cases, law firms cannot reasonably expect that they will be able to quickly and inexpensively exit pay equity suits brought by current or former partners.

Furthermore, the dearth of judicial guidance for female law firm partners challenging their compensation is starting to diminish. While the Equal Pay Act's 55-year old "equal pay for equal work" standard remains intact, recent cases demonstrate that courts are increasingly taking a closer look at what it means to be a law firm partner and the compensation system designed to reward partner performance – a trend that is likely to continue in light of a wave of new state pay equity laws. As more and more law firms internally review their compensation systems, flashpoints provided by recent cases will likely cause greater scrutiny of how women partners are treated and ultimately compensated. While the title of partner still connotes success in the profession, women are increasingly asking their colleagues and courts to look past the title and examine the very essence of what it means to be partner. It's one thing to be a partner and an entirely different matter to be a partner in more than name only.

NAWL convened its Pay Equity Task Force to provide resources on the key issues that entities in the legal profession must consider as they work to identify and close any pay gaps that exist between their male and female attorneys. This is the first in a series of resources on pay equity's legal issues.

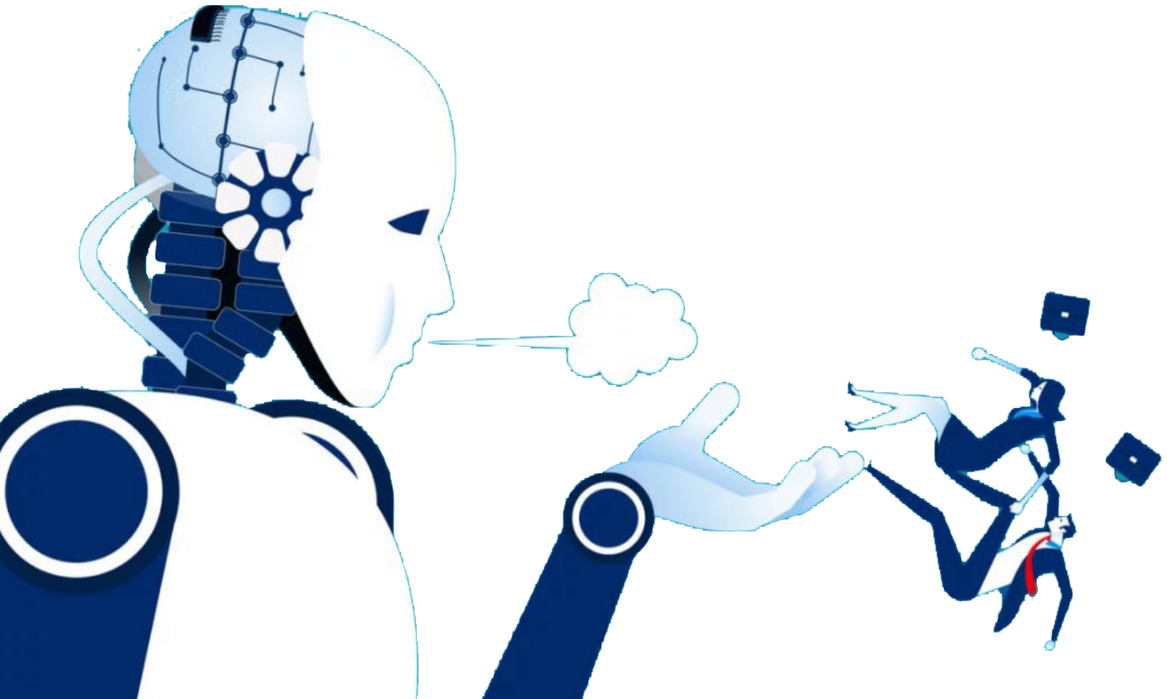
***"the dearth of judicial guidance for female law firm partners challenging their compensation is starting to diminish."***

***"the U.S. Supreme Court has stated that the mere fact that a person bears a, "a particular title—such as partner, director, or vice president" is not conclusive when determining if he or she is an employer or an employee for purposes of employment discrimination statutes."***



# The Impact of the Artificial Intelligence Revolution on the Law

By Gail Gottehrer



•• The term "Artificial Intelligence" ("AI") was coined by John McCarthy at a Dartmouth College workshop in 1956, when he and several of his colleagues unveiled a computer that played chess and adapted to a human player.[1] While there are different definitions of AI, it generally refers to "the capability of a machine to imitate intelligent human behavior."[2]

In the ensuing sixty years, AI has become prevalent in society. Machine learning[3] and big data have enhanced the productivity and personalization of products and services available to consumers. Virtual assistants like Amazon Alexa have developed skill sets that can help organize calendars, play music, and make purchases; medical robots are executing complex surgical procedures; and self-driving vehicles are performing active driving functions traditionally performed by human drivers. As AI takes on an ever-increasing role in our daily lives, it is also becoming a subject of legislation and judicial decisions.

**Studying the "FUTURE" of Artificial Intelligence**

At the end of last year, two significant pieces of AI-related legislation were introduced in the U.S. Congress. On December 12, 2017, a bipartisan group of members of the Senate and the House of Representatives introduced the Fundamentally Understanding the Usability and Realistic Evolution of Artificial Intelligence Act of 2017, also known as the FUTURE of Artificial Intelligence Act of 2017 (the "Future of AI Act").[4] Demonstrating the importance of AI, one of the stated reasons for the bill is lawmakers' belief that understanding AI, and how it is developing, is "critical to the economic prosperity and social stability of the United States."[5]

**The legislation defines AI broadly to include the following systems and techniques:**

• Any artificial systems that perform tasks under varying and unpredictable circumstances, without significant human oversight, or that can learn from their experience and improve their performance. Such systems may be developed in computer software, physical hardware, or other contexts not yet contemplated. They may solve tasks requiring human-like perception, cognition, planning, learning, communication, or physical action. In general, the more human-like the system within the context of its tasks, the more it can be said to use artificial intelligence;

• Systems that think like humans, such as cognitive architectures and neural networks;

• Systems that act like humans, such as systems that can pass the Turing test or other comparable test via natural language processing, knowledge representation, automated reasoning, and learning;

• A set of techniques, including machine learning, that seek to approximate some cognitive task; and

• Systems that act rationally, such as intelligent software agents and embodied robots that achieve goals via perception, planning, reasoning, learning, communicating, decision making, and acting.[6]

The bill seeks to create a Federal Advisory Committee to study and advise the Secretary of Commerce on the competitiveness of the U.S. in AI and the potential "promotion of public and private sector investment and innovation into the development" of AI.[7] Other areas of focus for the Committee include worker displacement, ethics, bias, privacy, and the law.[8]

The impact of AI on the workforce will be an area of study for the Committee, which will analyze ways in which AI applications and robots may create jobs and ways to maximize the number of new jobs created. It will also look at the ways in which AI may eliminate existing jobs and how AI can be used to retrain workers whose jobs may be eliminated due to advances in the technology. Similarly, the Committee will look at how STEM (science, technology, engineering, and math)

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1 *See* Bernard Marr, *The Key Definitions of Artificial Intelligence (AI) That Explain Its Importance*, Fortune.com, Feb. 14, 2018, https://www.forbes.com/sites/bernardmarr/2018/02/14/the-key-definitions-of-artificial-intelligence-ai-that-explain-its-importance/#e5c4f394f5d8.

2 *See* https://www.merriam-webster.com/dictionary/artificial%20intelligence.

3 "Machine learning is a subfield of artificial intelligence. Its goal is to enable computers to learn on their own. A machine's learning algorithm enables it to identify patterns in observed data, build models that explain the world, and predict things without having explicit pre-programmed rules and models." *Machine Learning for Humans*, Vishal Maini, Aug. 19, 2017, https://medium.com/machine-learning-for-humans/why-machine-learning-matters-6164faf1df12.

4 H.R. 4625 (introduced in House of Representatives on Dec. 12, 2017).

5 *Id.* at Sec. 2(1).

6 *Id.* at Sec. 3(a)(1)(A)-(E).

7 *Id.* at Sec. 4.

8 *Id.*

education can be used to prepare workers for the increasingly AI-driven workplace.[9]

The proposed legislation also directs the Committee to consider whether and how ethical standards should be applied to the development and implementation of AI, and what ethics training should be provided to technologists who work on AI. Specifically, the Committee would advise the Secretary of Commerce on ways to identify and eliminate machine learning bias and algorithmic bias in the development of AI. This includes bias with respect to the selection and processing of data that is used to train AI, diversity in the development of AI, and how AI technologies are deployed.[10]

Another area for study by the Committee would be how personal privacy rights are, or will be, affected by AI-related innovations. It would evaluate how existing data access and data privacy laws should be modernized to enable the potential of AI.[11] It would also make recommendations concerning the sharing of data and research on AI.

On the legal front, the bill instructs the Committee to consider "accountability and legal rights," which it describes as including who is responsible if an AI system violates the laws and the compatibility of international regulations.[12] The Committee would also assess whether advancements in AI have, or will, outpace consumer protection laws and regulations.[13]

***Understanding AI, and how it is developing, is "critical to the economic prosperity and social stability of the United States."***

**AI's Role in National Security**

The second AI-related legislative effort, the National Security Commission Artificial Intelligence Act of 2018 (the "AI Security Act"), was introduced in the House of Representatives on March 20, 2018.[14] The definition of AI in the AI Security Act is similar to the definition in the Future of AI Act.

**The AI Security Act defines AI to include:**

• Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets;

• An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action;

• An artificial system designed to think or act like a human, including cognitive architectures and neural networks;

• A set of techniques, including machine learning, that is designed to approximate a cognitive task; and

• An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.[15]

As its title suggests, the AI Security Act looks at advances in AI through a national security and defense lens. It seeks to create a Commission to consider the United States' competitiveness in AI matters relating to national security and economic security, ways for the United States to maintain a technological advantage in AI, and ways to encourage private, public, academic, and combined initiatives in AI.[16]

With regard to education and the workforce, the Commission would be tasked with identifying ways to attract and recruit leading talent in AI, and establishing data standards and incentives for data sharing within related data-driven industries. The Commission would also assess the risks associated with the use of AI by the U.S. military and the militaries of other countries, and the impact of military uses of AI on international law; the associated ethical considerations related to AI; and the development of measures to protect the privacy and security of AI data.[17]

**AI in the Courtroom**

Developments in AI are being addressed by courts, as well as Congress. In *State of Wisconsin v. Loomis*,[18] the Supreme Court of Wisconsin addressed the question of whether the use of an evidence-based risk assessment tool in the criminal sentencing process violated the defendant's right to due process. The tool at issue, called COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), was designed to predict recidivism. Petitioner Loomis appealed the denial of his post-conviction motion seeking a sentencing rehearing, contending that the sentencing court's consideration of a COMPAS risk assessment at sentencing violated his right to due process. Loomis's COMPAS scores indicated that he presented a high risk of recidivism.[19]

The Supreme Court of Wisconsin considered whether the use of a COMPAS risk assessment score at sentencing violates a defendant's right to due process, for reasons including that the defendant is not able to challenge the scientific validity of the assessment because the COMPAS algorithm is proprietary. The Supreme Court affirmed the lower court's denial of the motion for a resentencing hearing, in part because the COMPAS score had not been determinative in the lower court's decision. Instead, the record showed that the lower court's consideration of Loomis's COMPAS risk score was supported by other independent factors.[20]

In addition to discussing certain limits that should be placed on the use of COMPAS scores,[21] the Supreme Court of Wisconsin emphasized the need for courts to keep abreast of advances in technology, stating that "as data changes, our use of evidence-based tools will have to change as well. The justice system must keep up with the research and continuously assess the use of these tools."[22]

**Conclusion**

While it is unclear whether the FUTURE of AI Act and the National Security in AI Act will become law, there can be no doubt that we will continue to see advances in AI, and that those advances will impact our laws and judicial system. As technology becomes increasingly adept at imitating intelligent human behavior, existing laws may be flexible enough to address the legal issues brought about by bots, drones, and autonomous ships, or they may be supplemented by a body of AI-specific laws. *Loomis* is sure to be one of many cases in which courts will be called upon to consider the legal implications of AI and to develop a body of AI-related caselaw.

9 *Id.*

10 *Id.*

11 *Id.*

12 For example, the General Data Protection Regulation addresses AI and the use of data in analytics and machine learning. *See, e.g.*, EU General Data Protection Regulation, 2016/679, Recital 71.

13 H.R. 4625 at Sec. 4.

14 H.R. 5356 (introduced in House of Representatives on March 20, 2018).

15 *Id.* at Sec. 2(i).

16 *Id.* at Sec. 2(b)(2).

17 *Id.*

18 Case No. 2015AP157-CR, 2016 WI 68 (S Ct WI, July 13, 2016).

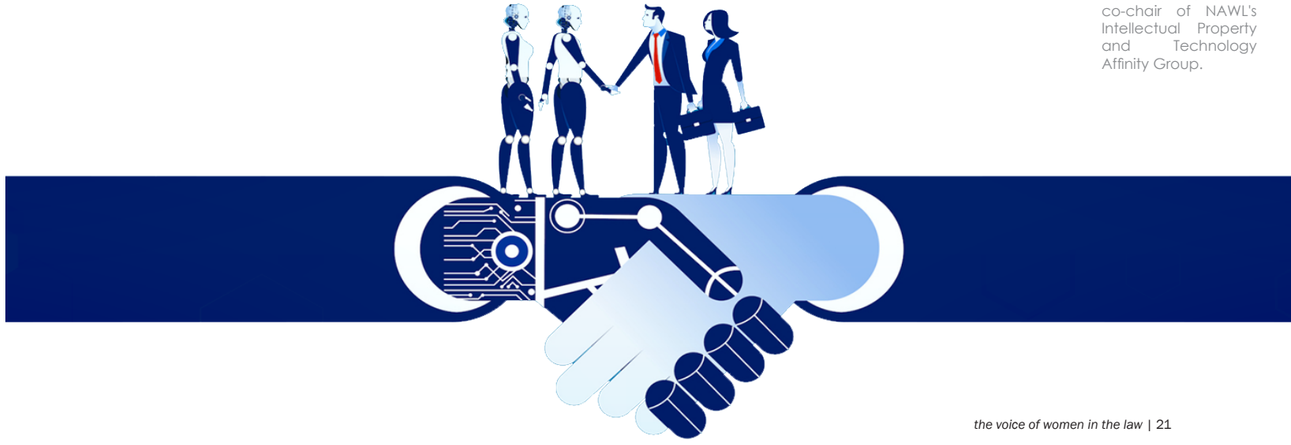
19 2016 WI 68, at 6-7.

20 *Id.* at 43-45.

21 "Although it cannot be determinative, a sentencing court may use a COMPAS risk assessment as a relevant factor for such matters as: (1) diverting low-risk prison-bound offenders to a non-prison alternative; (2) assessing whether an offender can be supervised safely and effectively in the community; and (3) imposing terms and conditions of probation, supervision, and responses to violations." *Id.* at 36

22 *Id.* at 4.

Gail Gottehrer is a Partner at Akerman, where her practice focuses on legal and regulatory issues related to emerging technology and innovation, including autonomous vehicles. She a member of the State of Connecticut's Task Force to Study Fully Autonomous Vehicles, and a co-chair of NAWL's Intellectual Property and Technology Affinity Group.



# Diversity Spotlight

## A True Renaissance Woman - Charlotte Whitaker, Chief IP Counsel, USAA

by Courtney Worcester

When Char Whitaker assumed the reigns as Chief IP Counsel at USAA at the start of this year, it marked the latest chapter in a remarkable career. Char is the epitome of a modern renaissance woman – she holds degrees in electrical engineering and law, she also spent 17 years studying ballet and taking classical and jazz voice lessons, and she supports the arts today by serving as a board member of the Lookingglass Theater Company in Chicago.

**Drawn to Engineering.** Char's father was an aerospace design engineer who would answer his four-year-old daughter's curiosity with science. His career, in combination with his puttering around the house working on plumbing and electrical projects, sparked Char's interest in how things worked, especially technology. "I wanted to know how the technology that we took for granted in everyday life worked." For her, this curiosity naturally led her to pursue a degree in electrical engineering at Cal State, San Francisco and then to work at Motorola, Inc. Over the next two decades she had a front row seat as technology, and cell phones in particular, rapidly evolved and became integral to everyday life. Now at USAA, Char's focus is not only leveraging technology to make life more convenient for the military families the association serves, but also ensuring that the technology its members depend on works in a mission-critical environment.

**Decision to go to Law School.** Char's decision to go to law school also had its roots in her childhood, prompted by her aunt letting her stay up late to watch Perry Mason. Years later, she saw how the protection of technology was becoming more and more important, and she realized that attorneys who could both understand the technology and how to protect it would be in demand. Char "found intellectual property law intellectually stimulating because it wasn't static, as ever-evolving technology pushed the law." This in turn meant that you had had to anticipate where the law was likely to go next by reading in between the lines of existing court decisions.

**Career Goals.** "I've never chased having letters and titles before and after my name," Char says, and she has eschewed a hierarchical focus. Instead, Char sought to be a strategic counselor. "I wanted to have depth in my area of command – intellectual property law – such that I could operate in that space and be competent with the services that I could provide." Her years at Motorola, first as an engineer and then as an attorney, gave her insight into how to become a strategic counselor. "Companies want you to have solutions to their legal problems that are practical and informed by a deep working knowledge of their business."

Additionally, Char looked for opportunities to pursue her passion of helping a company develop an IP strategy. In doing so, Char adopted a decision-making process from the Air Force called the OODA loop (observe, orient, decide and act), which requires constant observation and re-orientation that she believes helps companies break out of insular strategies. Char adopted this process before she joined USAA, and as a result, when the opportunity to join USAA arose, she felt it was "kismet" given that USAA was founded by military officers who were steeped in the model.

**Diversity & Inclusion.** While Char recognizes that diversity and inclusion programs can help improve diversity, particularly by providing metrics by which progress can be measured, nothing is as important as "walking the talk." "Look at the USAA website. From one decision maker to the next, you see a diverse group – in backgrounds, ethnicities, military branches represented, and so on. Your external face says whether or not you are serious about diversity." Indeed, one of the reasons Char gravitated to the so-called Silicon Prairie at the start of her career – as opposed to Silicon Valley – was that Silicon Valley's external face was very white and very male.

Char's belief that inclusion means being "in it and of it" carries over into her personal life as well. Char's mother, who was born in Greenville, Mississippi, and went on to obtain a degree in French, instilled in her an appreciation not only of learning, but of the significance of language. Before any trip, Char always takes time to learn at least a few phrases of the local language, to provide herself with the opportunity to be immersed in her surroundings.

**Being a Unicorn.** Throughout her career and life, Char never focused on what was "normal," because she was always the exception. Char credits her parents with instilling in her the strength to not only embrace that role, but to be comfortable in it. "When you are the exception, you can't follow in someone else's footsteps." Her mother, in particular, taught her to "step out on faith, do what's right, and that the right people usually show up." Char's experience is borne out of her mother's faith and wisdom, as well as her own.

***"When you are the exception, you can't follow in someone else's footsteps."***

Courtney Worcester is a litigation partner in the Boston office of Foley & Lardner LLP. She is an experienced trial attorney whose practice focuses on complex commercial litigation involving corporations, venture capital and private equity firms, financial institutions and their directors and officers.

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ADV Advertising
ANT Antitrust
APP Appeals
ARB Arbitration
AVI Aviation
BDR Broker Dealer
BIO Biotechnology
BKR Bankruptcy
BNK Banking
BSL Commercial/ Bus. Lit.
CAS Class Action Suits
CCL Compliance Counseling
CIV Civil Rights
CLT Consultant
CMP Compliance
CNS Construction
COM Complex Civil Litigation
CON Consumer
COR Corporate
CPL Corporate Compliance
CRM Criminal
CUS Customs
DEF Defense
DIV Diversity & Inclusion
DOM Domestic Violence
EDR Electronic Discovery Readiness Response
EDI E-Discovery
EDU Education
EEO Employment & Labor
ELD Elder Law
ELE Election Law
ENG Energy
ENT Entertainment
EPA Environmental
ERISA ERISA
EST Estate Planning
ETH Ethics & Prof. Resp.
EXC Executive Compensation
FAM Family
FIN Finance
FRN Franchising
GAM Gaming
GEN Gender & Sex
GOV Government Contracts
GRD Guardianship
HCA Health Care
HOT Hotel & Resort
ILP Intellectual Property
IMM Immigration
INS Insurance
INT International
INV Investment Services
IST Information Tech/Systems
JUV Juvenile Law
LIT Litigation
LND Land Use
LOB Lobby/Government Affairs
MAR Maritime Law
MEA Media
MED Medical Malpractice
M&A Mergers & Acquisitions
MUN Municipal
NET Internet
NPF Nonprofit
OSH Occupational Safety & Health
PIL Personal Injury
PRB Probate & Administration
PRL Product Liability
RES Real Estate
RSM Risk Management
SEC Securities
SHI Sexual Harassment
SPT Sports Law
SSN Social Security
STC Security Clearances
TAX Tax
TEL Telecommunications
TOL Tort Litigation
TOX Toxic Tort
TRD Trade
TRN Transportation
T&E Wills, Trusts & Estates
WCC White Collar Crime
WOM Women's Rights
WOR Worker's Compensation





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