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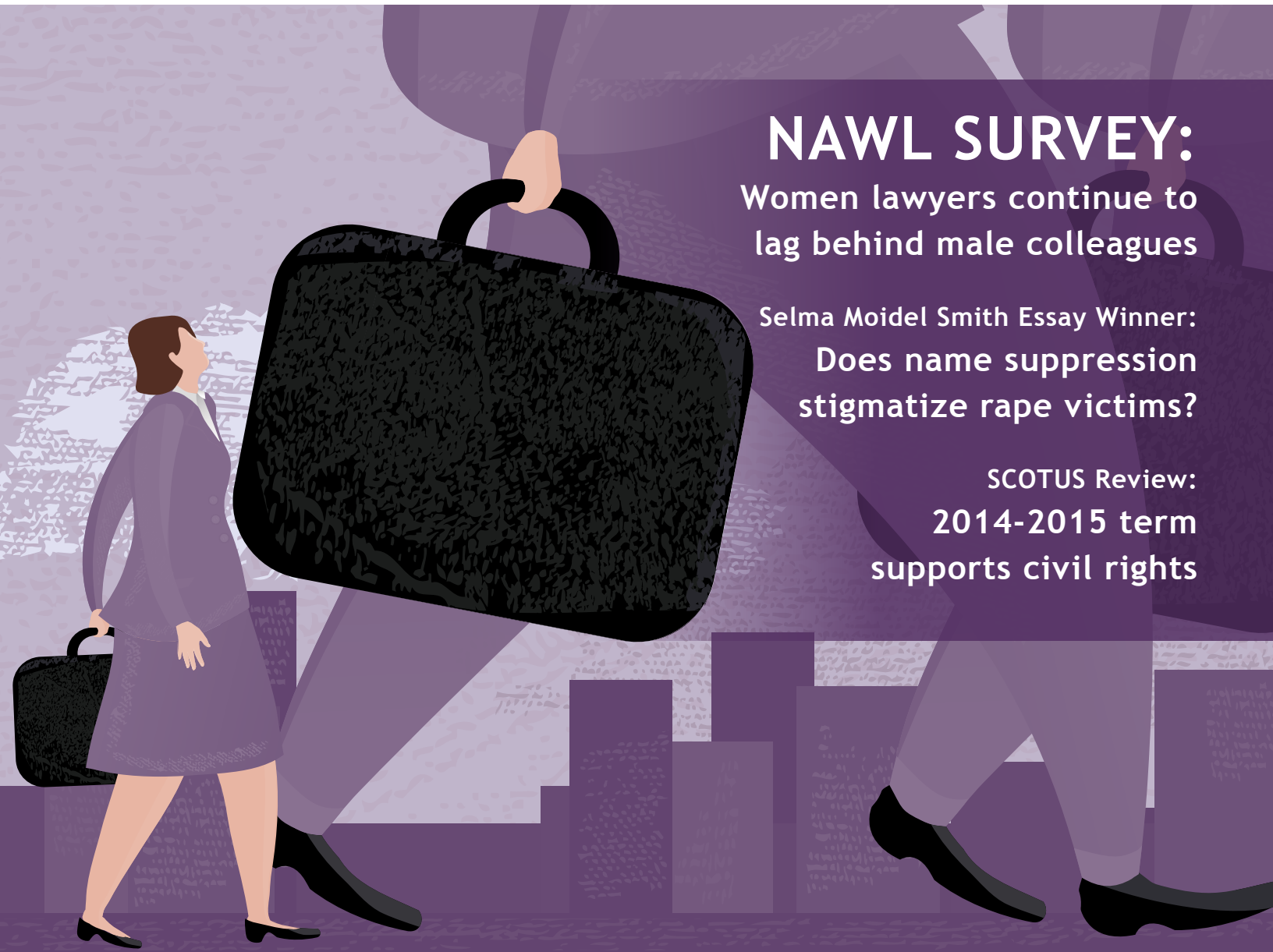

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Women lawyers continue to lag behind male colleagues

Selma Moidel Smith Essay Winner:
Does name suppression stigmatize rape victims?

SCOTUS Review:
2014-2015 term supports civil rights

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NAWL introduces new board

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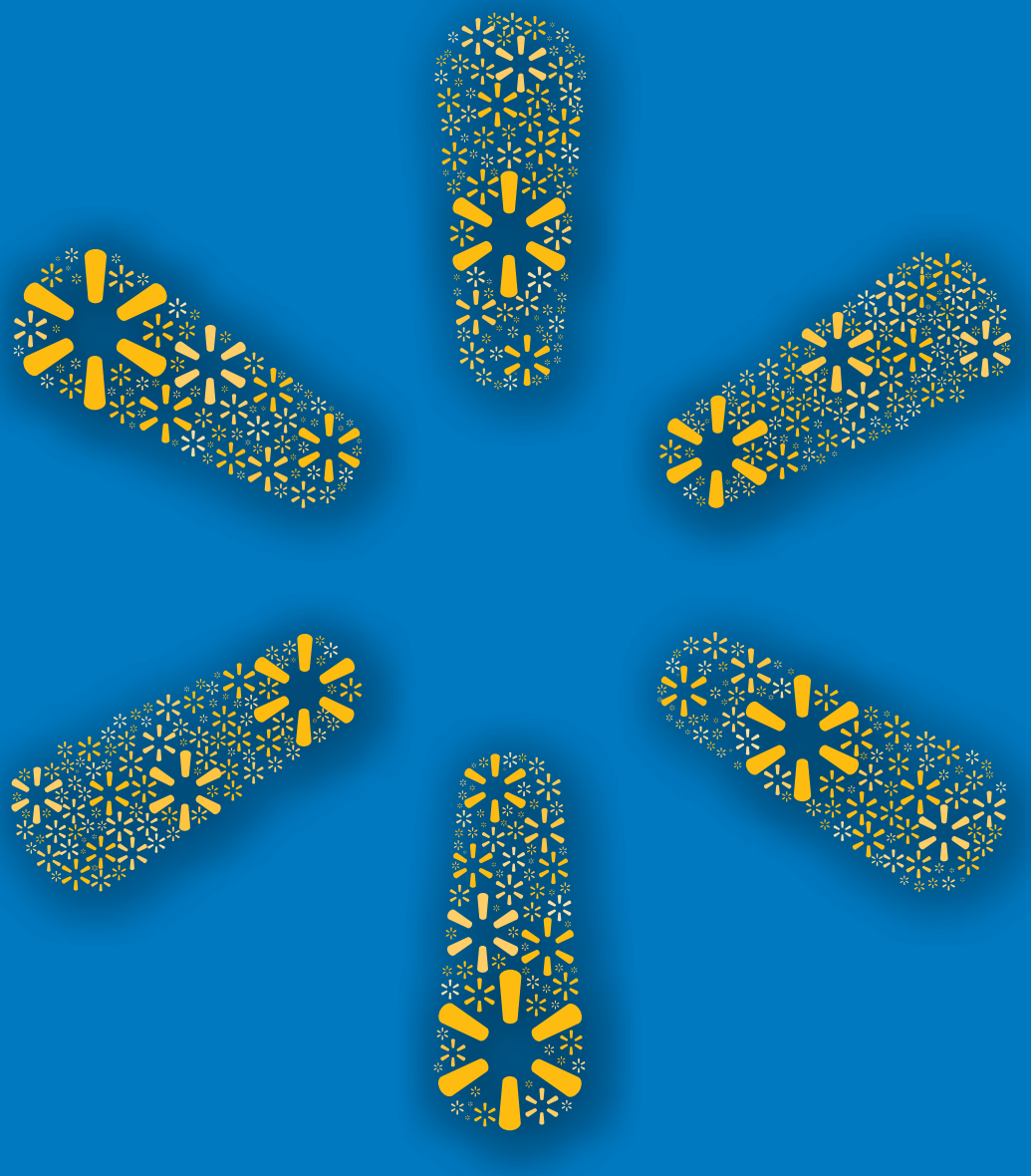

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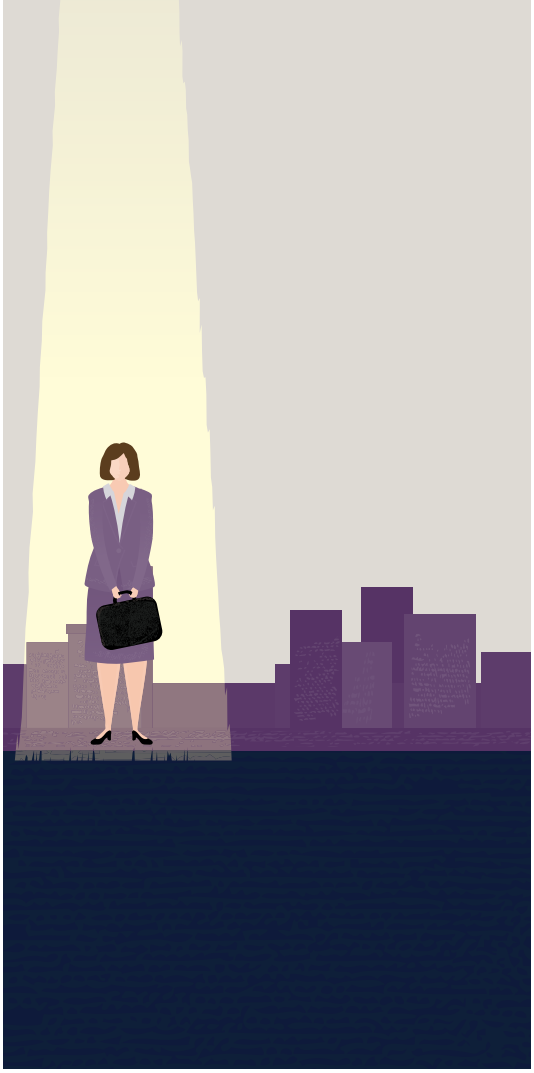
Ninth Annual NAWL National Survey On Retention And Promotion Of Women In Law Firms

This year's NAWL Survey of women in law firms demonstrates what we have long seen: The number of women equity partners in law firms has barely increased in the past 10 years, despite all the available talent. By Lauren Stiller Rikleen



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ABOUT WOMEN LAWYERS JOURNAL

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Women Lawyers Journal is published for NAWL members as a forum for the exchange of ideas and information. Views expressed in articles are those of the authors and do not necessarily reflect NAWL's policies or official positions. Publication of an opinion is not an endorsement by NAWL.

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 the association as well as the quality of the writing. WLJ also accepts book reviews related to the practice of law. We reserve the right to edit all submissions.

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CONTACT
National Association of Women Lawyers
American Bar Center
321 North Clark Street, MS 19.1
Chicago, IL 60654
t 312.988.6186 f 312.932.6450
nawl@nawl.org
www.nawl.org

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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 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.
- Continued learning with the *Women Lawyers Journal®*.

CONTACT NAWL

National Association of Women Lawyers
American Bar Center
321 North Clark Street, MS 19.1
Chicago, IL 60654
t 312.988.6186
f 312.932.6450
nawl@nawl.org
www.nawl.org

Women of NAWL make things better

We'll share tips to build your book of business or develop leadership skills to help you advance to the next level

By Marsha L. Anastasia

I CAN'T TELL YOU HOW THRILLED I am to have been selected to lead NAWL over the next year. Our organization really is "one of a kind!"

Just look at what we stand for:
- Empowering women in the legal profession.
- Equal opportunities for women.
- Challenging the status quo.

And we have enabled women to go from being denied admission to practice before the courts to being the lead lawyers in "bet-the-company" litigations.

Here's a story about just one woman who helped get us here:

Burnita Shelton Matthews became the president of the National Association of Women Lawyers in 1934. Born in 1894, she worked during the day and attended school at night. As a law student, she picketed the White House for the right to vote. She drafted many laws advancing the legal status of women. And she fought to get them passed.

Here are just a few of them:
- A law allowing women to serve on juries in the District of Columbia.
- Statutes in Arkansas and New York, eliminating the preference for men over women in questions of inheritance.
- Laws in Maryland and New Jersey that ensured women teachers were paid equally to male teachers.
- A U.S. State Department ruling that allowed a woman who hadn't changed her name when she got married to get a passport without taking her husband's name.

Burnita was the first woman named a Federal District Judge when she was appointed by President Truman in 1949. The judges she worked with tried to convince her that she was working too hard, that she was carrying more than her share of the load. She was. And she just kept doing it because she never wanted it said that a woman could not keep up with a man.

So, what are the qualities this fabulous woman had that enabled her to overcome so many obstacles and be absolutely steadfast in her dream?
- She had **Focus** – regardless of how blurred the way forward might look.
- She had **Resilience** – the ability to keep going, to "get back up" if necessary.
- She had **Passion** – for the "possibility," the *dream*, that she wanted to make happen.
- She was **Bold** – or perhaps "gutsy" is a better word.

Every one of us has those qualities or we wouldn't be here. Burnita Matthews isn't one of a kind. She's one of us.

Look at what we've done:
- NAWL completed its 9th annual survey that tracks the progress of women in law firms and makes suggestions for improvement. We're proud that the survey is not only nationally recognized, but widely quoted.
- NAWL testified in support of Justice Sotomayor when she

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Marsha L. Anastasia is vice president and deputy general counsel at Pitney Bowes Inc., where she is responsible for legal affairs of business unit operations in the U.S., Canada and Latin America. Prior to joining Pitney Bowes in 1997, Ms. Anastasia practiced at Day, Berry & Howard (now Day Pitney LLP) in Hartford and Stamford, Connecticut.

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Our practice areas include **antitrust, appellate, FDA/regulatory, licensing, life sciences, litigation, patent prosecution, and trademarks/copyrights.**

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was nominated to the Supreme Court.

- NAWL sent a letter to President Obama encouraging him to nominate a woman as U.S. Attorney General. And now we have the extraordinary Loretta Lynch.

But what about right now? What about us? How will we make a difference? How will we change the game?

Here's how:

- We are women who help other women succeed – however they define "success."
- We provide leadership training for women in corporations, in law firms, in government and in the nonprofit world.
- We provide women with the tools they need to become equity partners at law firms and general counsels at corporations.

'We are the ones to make the difference – to make it better. And we are the ones to play big.'

The National Association of Women Lawyers has been providing these tools and this support for more than 100 years. Back in the early 1900s we helped women who were entering the courtroom for the first time by advising them to "never appear in court in anything but a dignified street costume," and be sure to "remove your hat before addressing the judge."

Today we'll share tips to build your book of business or develop leadership skills to help you advance to the next level.

And why is it so important to help women get ahead? Why is it so important to hire women? Women make things better. Here's what the studies show:

- Both a Catalyst study and a McKinsey study showed that companies with more women on their boards tend to be more profitable.
- A Credit Suisse Research Institute report from 2012 found that over the prior 6 years, companies with female board representation outperformed those without it in terms of share price.

But it's not only women on boards that matter. McKinsey found that companies with a higher proportion of women on their management committees are also the companies that have the best performance.

Yes, women make things better.

And women in management positions also serve as role models to women rising in the ranks, and to young women and girls. Young women and girls today are strong.

My daughter Eva, who's 14 years old, gave a speech at her school about Lilly Ledbetter and the Fair Pay Act – how Ledbetter fought for our right to be paid equally to men. She talked about Justice Ruth Bader Ginsberg telling Ledbetter from the bench to "keep fighting." Eva said Ledbetter's story taught her to never take her own rights for granted and to do everything she could to contribute to the advancement of women (where do you think she got those words?).

I saw that our children, this next generation, are our hope. They represent our passion and the path to the future we want – where every woman has all of the opportunities that a man has. And lest you think that only the girls and young women will carry us forward, let me tell you that Eva has a twin brother Nathan who, thanks to his sister's infectious passion, cares as much about advancing women's rights as she does.

Yes, women – even a very young one – make things better.

You might know this marvelous quote by the renowned author Marianne Williamson. She writes: "Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond all measure. It is our light, not our darkness that most frightens us. We ask ourselves, 'Who am I to be brilliant, gorgeous, talented and fabulous?' Actually, who are you not to be? …Your playing small doesn't serve the world."

We are the ones to lead this spectacular organization of ours forward. We are the ones to make the difference – to make it better. And we are the ones to play big.

So join the National Association of Women Lawyers. Bring your passion, bring your energy, bring your crazy ideas, bring your infectious spirit and bring your guts. Help us empower women in the law. Help us make it – the world – better.

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Social change is more progression than event

The first step on the road is to find a core group that will support the individual cutting the path to change

By Jennifer Guenther

Major social change does not happen suddenly. It is a gradual progression of changes in speech patterns, in thoughts, in the general level of tolerance for ideas that are different from those that had previously been accepted. There must be a general consensus of acceptance for those ideas of social change from at least a small group of individuals or organizations. And then arises the need for someone to take a stand, because social change does not gently roll into the minds of the general population like an ocean wave on a sunny day.

This was true in the women's suffrage movement. In 1848, the first women's rights convention was held in Seneca Falls, N.Y. After two days of discussion, 68 women and 32 men signed a Declaration of Sentiments that contained 12 resolutions calling for equal treatment of women and men under the law and voting rights for women. Two years later, the first national convention was held. It was not until 12 years later after substantial effort and work, that the territory of Wyoming passed the first women's suffrage law. And in 1893 Colorado ratified a proposed constitutional amendment, HB 118, giving women the right to vote. In 1920, the 19th Amendment to the Constitution, granting women the right to vote, was signed into law. And not until more than a century

Jennifer M. Guenther is general counsel/director for FirstCarbon Solutions, a company that works with clients to improve profitability through sustainability consulting and energy and environmental data management solutions. An experienced land use and environmental attorney in controversial environmental, development and litigation matters, she has appeared before local, state and federal agencies, as well as the California Court of Appeals. She can be reached at jguenther@fcs-intl.com.

Historically, the Supreme Court looks only at cases where someone was willing to challenge the status quo

later was Title VII of the Civil Rights Act enacted, barring discrimination in employment on the basis of race and sex.

This long spread series of legislation actions, however, did not happen in a vacuum. In 1913, a group, later renamed the National Women's Party, formed to put pressure on elected officials through picketing the White House and other forms of civil disobedience. In 1916, Margaret Sanger opened the first U.S. birth-control clinic and was promptly arrested and shut down within 10 days. Not until after a long battle through the courts was she granted the right to reopen the clinic in 1923. Birth control advocates continued to engage in legal battles through the 1940s and 1950s, and continue today to challenge states that limit birth control options. In 1965, in *Griswold v. Connecticut*, the United States Supreme Court struck down the one remaining state law prohibiting the use of birth control by married couples.

Interpreting the Constitution, however, may mean ruling contrary to accepted social standards.

In 1968, the EEOC ruled, after being challenged, that posting sex-segregated newspaper ads for employment positions was illegal. In *Schultz v. Wheaton Glass Co.*, a 1970 U.S. Court of Appeals passed the "separate but equal" version of women's rights in the work place, stating that an employer cannot change the job title of a woman worker in order to pay her less but could offer separate accommodations, work areas, hours, entrances, etc. so long as they were "equal" to men's. In 1974, the U.S. Supreme Court ruled in the case of *Corning Glass Works v. Brennan* that employer's cannot justify paying women lower wages because that would be the "market rate" for women "simply because men would not work at the low rates paid women."

Then came the 1980s and the sexual harassment and discrimination cases, including the Supreme Court case of *Meritor Savings Bank v. Vinson*, in which the court found that sexual discrimination was a form of illegal job discrimination. The 1990s saw a plethora of cases advocating for access to all male schools, country clubs, and special training. "Separate but equal" was no longer sufficient.

In the 2000s, the Supreme Court began to revisit past decisions. In 2005, in *Jackson v. Birmingham Board of Education,* the Supreme Court ruled that Title IX, which prohibits discrimination based on sex, also inherently prohibits disciplining someone for complaining about sexual harassment. The court revisited abortion procedures and rights in 2006. And in 2009, President Obama signed the Lily Ledbetter Fair Pay Restoration Act, which allows the filing of a discrimination complaint 180 days from the employee's last paycheck, after an employee of Goodyear complained she was paid 15 percent to 40 percent less than her male counterparts.

And now, 170 years later, we can say women have made significant, even gigantic, strides. Women are allowed to enter the workforce in most mainstream areas. Discussions of birth control are no longer considered pornographic. Women and men may both take time off, if they work for a large enough employer, for the birth of a child or death or illness in the family. There are now laws to protect employees from poor working conditions. There are laws against blatant discrimination and unfair practices, and the right to birth control. And, for the most part, the general population has accepted the rulings of the court as elements of social change — although often times not without a fight.

And yet, in 2015, the Institute for Women's Policy Research found that women, on average, earned 22 percent less than what men earned, and that disparity continued across nearly every occupation for which there was data. That disparity increases significantly for women of color and based upon nationality. Outright discrimination in pay, hiring

and promotions continues to be significant. In some fields, like construction, the survey noted that there has been no progress in 40 years.

In the legal field, according to the 2013 American Community Survey, which organized the 2010 census data by occupation, the pay gap between men and women is startling: women in the law earn just 52.6 percent of what men make. This survey included court clerks, paralegals, judges, lawyers and legal staff. While it may then be argued that paralegals, clerks and legal staff are lower paid and primarily made up of women and thus account for the pay gap, looking deeper it can also be said that while women make up approximately 50 percent of the lawyers passing the bar each year, only 18 percent ever make it to the highest paying jobs in law firms. Others argue women lawyers are making great strides in law schools and in corporations, making up nearly a third of the professional staff. Given the wage gap figures, and the cost consciousness of law schools and corporations that must report to their shareholders, the pessimist in me wonders if this increase is as much a cost saving measure as a good will gesture to be more inclusive. After all, if you can hire someone who will perform the same job as or more competently for less cost, it makes the decision to be more inclusive in hiring much easier.

Historically, the Supreme Court looks only at cases where someone is willing to challenge the status quo. Congress tends to address the squeaky wheel. But for a woman lawyer, who is likely the primary breadwinner, taking that stand may mean the loss of her professional career and reputation, with years of her life tied up in the courts. The legal profession is a small universe with a long memory. And a lawyer will understand this from the start, entering any such process with eyes wide-open. Many simply endure and allow the lower standards offered to her to become the "new normal," while others simply quietly move on to a hopefully better situation. Is it any wonder, then, that the pay gap is so large in the profession? That the number of equity partners continues to stay the same?

Justice Scalia has argued, more than once, that the Supreme Court should not set social policy: that the court's sole responsibility is to interpret the Constitution. Interpreting the Constitution, however, may mean ruling contrary to accepted social standards. If there were not a dispute of policy or social norms, the issue would likely not be before the Supreme Court. The road to the Supreme Court is long, however, and the first step on that road is to take a stand; to find a core group that will support that stand and not let the individual on that road be decimated in the process.

It is for this reason, and many others, that NAWL has a long-standing Amicus Committee in which NAWL considers adding support to those cases that promote equity and justice as defined within NAWL's Mission Statement. No one should have to stand alone, risking her livelihood, reputation and social standing. It is for this reason that NAWL supports those women and men who stand up for what they believe in and voice their opinion in favor of justice, no matter how unpopular that opinion may be in some areas. It is for this reason that NAWL ensures that its members and sponsors are offered the means to gain knowledge, leadership skills, legal expertise and a community of lawyers who understand the risks and rewards. Membership in NAWL means adding your voice, taking a stand, and believing that progress and change should always be the new norm. ■

2014-2015 Supreme Court term supportive of civil rights

In addition to the court's landmark ruling in favor of marriage equality, other important civil rights cases were heard with implications for pregnancy, employment, housing and healthcare

By Megan Starr

THE RECOGNITION OF CIVIL RIGHTS IS A BASIC TENET OF THE CONSTITUTION and it is specifically addressed in numerous federal laws and statutes. However, in recent years, various groups have tested the extent of these rights and the Supreme Court, in recent terms, issued several high profile rulings restricting the reach and scope of some civil rights laws.

This term, the Supreme Court was asked to consider provisions of some of the most important civil rights laws. Although the various laws at issue and the court's reasoning in each case are different, taken as a whole, the court's rulings this term are encouraging for equal rights advocates.

In addition to the court's landmark ruling in favor of marriage equality in *Obergefell v. Hodges,* which captured much of the media attention, a number of other important civil rights cases were also heard with implications for pregnancy, employment, housing and healthcare. These

Megan Starr is an experienced land use and environmental attorney, with a strong interest in government and Supreme Court activities and their impacts. Formerly with Best Best & Krieger, she has taught environmental law and government classes at the University of California, Riverside, and now resides in Arizona.

cases concern a patchwork of civil rights laws designed to prevent discrimination. In its decisions on these cases, the court ruled in favor of civil rights and recognized the importance and continued validity of the various laws that protect those rights.

YOUNG V. UPS[1] - THE PREGNANCY DISCRIMINATION ACT PROTECTS EMPLOYEES SEEKING WORKPLACE ACCOMMODATIONS

In 1978, Congress passed the Pregnancy Discrimination Act ("PDA"), a law banning discrimination based on pregnancy. The PDA states that employers must treat "women affected by pregnancy… the same for all employment-related purposes… as other persons not so affected but similar in their ability or inability to work." However, almost three decades after its passage, employers and employees continue to question exactly what accommodations pregnant workers are entitled to and when employers must provide those accommodations. This question was raised, and partially answered, when the Supreme Court ruled on *Young v. UPS*.[2]

The facts of the case fall squarely within the purview of the PDA. Peggy Young, like all delivery drivers for UPS, was required to be able to lift items weighing up to 70 pounds. After Young became pregnant, she requested a light-duty assignment, limiting the weight she was required to lift to 20 pounds. Her request was not unusual. UPS had previously made such accommodations for three other groups of employees; those injured on the job, those eligible for an accommodation under the Americans with Disabilities Act, and those who had lost their commercial driver's licenses. UPS refused to grant Young's request for pregnancy-related accommodations. She was forced to take unpaid leave without medical benefits and did not return to work until after her child was born.

Young then filed a federal lawsuit claiming that UPS violated the PDA in refusing to accommodate her pregnancy-related weight lifting restrictions. Young argued that UPS' policy, which permitted light-duty accommodations for some workers, but not for pregnant workers, resulted in disparate treatment. UPS responded that Young's request for an accommodation was denied because she did not fall within the three accommodated groups – pregnancy was not an on-the-job injury, it was not a disability under the ADA and pregnancy did not involve the loss of a driver's license. The refusal to accommodate her, therefore, was not based on her pregnancy, and, UPS, argued, it had not discriminated against Young. Instead, UPS argued, its policy was pregnancy-blind and gender neutral in that it treated her just as it treated all "other" relevant "persons."

Young argued that UPS' policy, which permitted light-duty accommodations for some workers, but not for pregnant workers, resulted in disparate treatment.

The Federal Appeals Court sided with UPS, concluding that Young could not make out a prima facie case of discrimination because the groups with whom she compared herself – on-the-job injuries, disabled and driver's licenses categories—were too different from pregnancy to qualify as "similarly situated comparator[s]." But in issuing summary judgment, the appeals court never gave Young a chance to prove all the elements of her claim. The Supreme Court found this failure to allow an opportunity to make her claims at trial was a violation of federal civil rights law.

The court held that Young did not have to demonstrate that pregnancy was similar to one of the other groups of employees awarded an accommodation. Instead, the court found that a pregnant worker makes a prima facie case by showing that: 1) she belongs to the protected class; 2) she sought accommodation; 3) the employer did not accommodate her; and 4) the employer did accommodate others "similar in their ability or inability to work." By pointing to a policy that provided accommodations to workers who needed reduced weight and light weight lifting assignments, but not to pregnant women, Young satisfied the prima facie case of discrimination. She did not have to demonstrate that pregnant women as a group were similar to other groups. Instead, she only needed to demonstrate that the employer did accommodate others

The court held that Young did not have to demonstrate that pregnancy was similar to one of the other groups of employees awarded an accommodation

"similar in their ability or inability to work." The case was remanded.

As the court explained, the burden will fall on UPS, on remand, to articulate a legitimate, non-discriminatory reason for refusing to grant Young's request for a pregnancy-based weight lifting accommodation. When it attempts to do so, the court cautioned, it cannot use cost or convenience as an excuse for failing to make accommodations for a pregnant worker. If the employer's reasons do not sufficiently outweigh the burden on pregnant women in the workforce, the employer may be in violation of the PDA.

The ruling did not go as far as most women's rights supporters had hoped. The Supreme Court rejected Young's contention that any time an employer offered an accommodation to another employee with similar physical limitations, the employer had an obligation to give a pregnant employee the same accommodation. The court explained that the phrase "other persons" in the PDA did not require employers to treat pregnant employees the "same" as any single other person who received an accommodation due to an inability to work. But, it is unclear exactly how many "other persons" must be eligible for accommodations before a pregnant worker can expect the same treatment. This leaves the door open for companies, especially small businesses and those that are male dominated, to continue policies that fail to accommodate pregnancy because the pregnant worker lacks sufficient "other workers" to use as "similarly situated comparator[s]."

It is also unclear what evidence is necessary to prove that an employer's policies impose a "significant burden" on pregnant employees or what evidence is "sufficiently strong" to justify such a burden without violating the PDA. The court explained that one way of showing a significant burden is by demonstrating that the employer failed to provide accommodations to a large percentage of pregnant women who needed them while accommodating a large percentage of non-pregnant workers in the same manner. Again, this reliance on percentages and larger numbers, would seem to disadvantage the pregnant worker in a small company. Nonetheless, this Supreme Court decision puts employers on notice that denying accommodations to pregnant workers while providing accommodations to others, may be a violation of the law.

By pointing to a policy that provided accommodations to workers who needed reduced weight and light weight lifting assignments, but not to pregnant women, Young satisfied the prima facie case of discrimination.

EEOC V. ABERCROMBIE[3] - TITLE VII PROTECTIONS AGAINST RELIGIOUS DISCRIMINATION UPHELD

The old adage, "ignorance is no excuse" was upheld by the Supreme Court in *EEOC v. Abercrombie*. Here, the court almost unanimously ruled in support of religious rights and

equality when it affirmed that individuals may bring disparate treatment challenges based on unfair and unacceptable discriminatory effects, regardless of an employer's actual knowledge.

At issue in *EEOC v. Abercrombie* was whether an employer may be liable for failing to provide a religious accommodation under Title VII of the Civil Rights Act of 1964 when the employer did not know, and the applicant did not provide notice, that a religious accommodation was required.

In 2008, Samantha Elauf applied for a job as a "floor model" at Abercrombie & Fitch. She wore Abercrombie-type clothes and, consistent with her Muslim faith, a black headscarf, to her interview. Based on Abercrombie's ordinary system for evaluating applicants, Elauf was qualified to be hired. However, the store's assistant manager was concerned that her headscarf violated the store's "Look Policy" – a standard for how employees should dress to best promote the store's brand – and contacted a district manager for clarification. The district manager said that the headscarf would violate the "Look Policy," as would all other headwear, religious or otherwise, and said that Elauf could not be hired. At the time the decision was made, the district manager did not know that she wore the headscarf for religious reasons.

In a rare move, the EEOC sued Abercrombie on Elauf's behalf, on the grounds that its refusal to hire Elauf violated Title VII's prohibition against religious discrimination. That prohibition requires employers to make reasonable accommodations for religion, such as modifying dress codes, if they can do so without undue hardship. The district court granted the EEOC summary judgment and awarded Elauf $20,000. On appeal, the Tenth Circuit reversed that decision, concluding that, generally, an employer cannot be liable under Title VII for failing to accommodate a religious practice until the employer has actual knowledge of a need for an accommodation.

In an 8-1 decision, the court rejected Abercrombie's contention that an employer must have "actual knowledge" of the applicant's need for an accommodation on religious grounds. Writing for the majority, Justice Scalia agreed that, "an employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an 'aspec[t] of religious… practice,' it is no response that the subsequent 'fail[ure] … to hire' was due to an otherwise-neutral policy. Title VII requires otherwise-neutral policies to give way to the need for an accommodation."

The old adage, "ignorance is no excuse" was upheld by the Supreme Court in EEOC v. Abercrombie.

The court held that an applicant may make a religious accommodation claim by showing that her need for an accommodation was a motivating factor in the employer's decision. The court explained that it was important to distinguish between "motive" and "knowledge." As the court explained, "[a]n employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his *motive*." But, "an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed." Thus, the court found that to prevail in a disparate-treatment claim under Title VII, an applicant need show only that her need for an accommodation was a motivating factor in the employer's decision, not that the employer actually knew of her need.

The court's decision in *Abercrombie* protects the religious rights of individuals in the workplace against

The district manager said that the headscarf would violate the "Look Policy," as would all other headwear, religious or otherwise, and said that Elauf could not be hired.

In a narrow 5-4 victory for equal housing opportunities, the Supreme Court ruled that the 1968 Fair Housing Act (FHA) protects against unintentional disparate impact discrimination

even facially neutral and unintentional discrimination. This is essential to combatting the most subtle forms of discrimination.

TEXAS V. THE INCLUSIVE COMMUNITIES PROJECT[4] - THE FAIR HOUSING ACT (FHA) PROTECTS AGAINST UNINTENTIONAL DISPARATE IMPACT

In a narrow 5-4 victory for equal housing opportunities, the Supreme Court ruled that the 1968 Fair Housing Act (FHA) protects against unintentional disparate impact discrimination. Disparate impact discrimination occurs when a policy or practice is neutral on its face and nondiscriminatory in its intent, but regardless of motive, is shown to have a disproportionate adverse effect on a racial or other protected group.

Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, arose from an allegation by the non-profit group, Inclusive Communities, that the Texas Department of Housing and Community Affairs ("Texas") methodology for awarding tax credits for low income developments was a violation of the FHA. Inclusive Communities used statistical evidence to demonstrate that Texas disproportionately granted tax credits to developments within predominantly minority inner-city neighborhoods and denied credits to developments in predominately Caucasian suburban neighborhoods. In exchange for the tax credits, landlords are required to provide a certain amount of low-income housing and accept tenants with housing vouchers. Because the state determines who receives the tax credits, it effectively chooses the housing options available to lower-income families. By limiting the tax credits to inner-city minority neighborhoods, Texas essentially segregated minorities.

Inclusive Communities allowed that Texas' methodology was based on some legitimate reasons and that it may not have intentionally discriminated against minorities in direct violation of the FHA. But, regardless of intent, the "disparate impact" on minorities caused by segregating them into high-poverty areas demonstrated discrimination. The question before the Supreme Court was whether or not unintentional disparate impact was evidence of unlawful discrimination under the FHA.

The court looked to the text, legislative history, and purpose of the FHA and agreed that the FHA prohibits even unintentional disparate impact discrimination. Justice Kennedy, writing for the majority, wrote that the ability to bring disparate impact claims under the FHA is essential to "counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment."

Inclusive Communities used statistical evidence to demonstrate that Texas disproportionately granted tax credits to developments within predominantly minority inner-city neighborhoods and denied credits to developments in predominately Caucasian suburban neighborhoods.

This case shows that "[t]he court acknowledges the FHA's continuing role in moving the nation toward a more integrated society." Although, Justice Kennedy cautioned that "Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision," this case ensures the continued effectiveness and importance of the FHA. It also encourages those in

power to do more than just avoid outright inequality and discrimination. It challenges governments and businesses to actively review their policies and eliminate plans that unintentionally promote discrimination at the earliest step in the planning process.

KING V. BURWELL[5] - ACA SUBSIDIES ARE AVAILABLE TO ALL QUALIFIED INDIVIDUALS

One of the most anticipated and contentious cases this term concerning equality was *King v. Burwell*, which involved a challenge to the Patient Protection and Affordable Care Act (ACA). The ACA is a relatively new addition to civil rights law compared to some of the other decades-old civil rights laws the court considered this term. The 2010 law is designed and intended to provide equal access to affordable quality health care. Because the ACA provides especially important protections and benefits for women and low- and middle-income Americans, this case had the potential to impact healthcare for millions of people.

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Prior to the implementation of the ACA, healthcare in America was steeped in inequality. Over half of the women in the United States delayed or avoided preventative health care, like prenatal visits, regular mammograms, and HIV testing, because of the prohibitive costs associated with medical care.[6] A disproportionate number of low- and middle-income individuals did not have insurance and more low- and middle-income women than men were uninsured. Further exacerbating gender inequalities, women who did obtain insurance routinely paid significantly more for their coverage than men.

The ACA was designed to address these inequities and provide all individuals and families with quality health care. To ensure that everyone could afford to enroll in the ACA, the law provides financial assistance, in the form of tax credit subsidies, for low- and middle-income individuals and families. These subsidies are a cornerstone of the ACA and the only way many millions of Americans afford to purchase health insurance.

Under the ACA, insurance can be purchased via state or federally established American Health Benefit Exchanges (Exchanges). Only 16 states opted to establish their own Exchanges. The remaining 34 states defaulted to the federally managed Exchange. Individuals and families in the vast majority of states, then, are only able to purchase insurance from the federally operated Exchange.

Regardless of whether they purchase insurance on a state or federally facilitated Exchange, the Internal Revenue Service (IRS) allowed that subsidies were available to all financially eligible Americans. Despite the IRS finding, the plaintiffs in *King. v. Burwell* argued that the ACA only authorized financial assistance for individuals who purchased insurance on state-run Exchanges. The plaintiffs argued that those who purchased their insurance from a federal Exchange could not claim a subsidy.

The *King* plaintiffs argued that when the ACA made financial assistance available to those purchasing insurance from Exchanges established by the State it meant that only state Exchanges were eligible for subsidies. In a 6-3 decision authored by Chief Justice Roberts, the Supreme Court rejected this narrow reading of the ACA and found that otherwise qualified individuals were eligible for subsidies regardless of whether they purchased their health insurance on a state or federally run Exchange. The court found that because the four-word statement "established by the State" was

While these cases preserved several important civil rights laws and are victories for equal rights, it is also important to note that many of these cases were decided by a very narrow margin

ambiguous, the text, structure and statutory purpose of the ACA had to be considered.

Taken as a whole, the court ruled that the ACA was intended to apply to as many people as possible and that all eligible individuals who purchased insurance on any Exchange created under the ACA, regardless of whether it was state or federally run, could claim subsidies. Without the subsidies, the cost of insurance on the federal Exchange would be unaffordable and millions could be exempt from the individual mandate, the ACA's requirement that everyone have health insurance or pay a penalty.

If insurance were unavailable and not required in 34 of the 50 states, the federal Exchanges could be rendered useless and the ACA may become ineffective. As the Chief Justice wrote, "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them."

The Supreme Court's decision upholding subsidies for all Americans regardless of which Exchange they use, means that everyone has an equal opportunity to purchase quality affordable health insurance regardless of what state they live in. It directly benefits women who were previously uninsured and who finally obtained insurance via the federal Exchanges and those who had insurance that did not provide adequate coverage.[7]

Because the ACA provides especially important protections and benefits for women and low- and middle-income Americans, this case had the potential to impact healthcare for millions of people.

THE FUTURE FOR EQUALITY

The court's decisions during the 2014-2015 term further equality and promote equal access to benefits. The decision in *Young*, reaffirmed that pregnant workers are entitled to seek certain workplace accommodations. The reasoning in *Abercrombie* and *Inclusive Communities* encourage governmental and private entities to think about potential adverse impacts that may occur from neutral or even seemingly benevolent policies. The holding in *King* preserved access to affordable healthcare to millions of Americans.

While these cases preserved several important civil rights laws and are victories for equal rights, it is also important to note that many of these cases were decided by a very narrow margin. The narrowness of some of the victories also illustrates how easily the decisions could have gone the other way. During the 2015-2016 term, the court will, again, consider several cases with potentially serious implications for equality. No doubt court observers and equal rights advocates will be watching the court closely to see if the 2014-2015 term recognizing equal rights is the beginning of a trend that will continue.

ENDNOTES

1 Despite the passage of the PDA, pregnancy discrimination claims remain in the thousands. In 2014, the EEOC received 3,400 charges. http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm

2 Argued December 3, 2014. Vacated and remanded. Opinion by Justice Breyer on March 25, 2015.

3 Argued February 25, 2015. Reversed and remanded. Opinion by Justice Scalia on June 1, 2015.

4 Argued January 21, 2015. Affirmed and remanded. Opinion by Justice Kennedy on June 25, 2015.

5 Argued March 4, 2015. Affirmed. Opinion by Chief Justice Roberts on June 25, 2015.

6 http://www.hhs.gov/healthcare/facts/factsheets/2012/03/women03202012a.html

7 http://www.hhs.gov/healthcare/facts/factsheets/2012/03/women03202012a.html

Making democracy work

We need more immediate education initiatives to help the public gain direct access to and understanding of Supreme Court decisions that shape their lives

By Mary-Christine Sungaila

EACH SUMMER, THE ASPEN INSTITUTE, A NONPARTISAN THINK TANK, HOSTS THE JUSTICE & SOCIETY SEMINAR, co-founded by the late Supreme Court Justice Harry A. Blackmun. The seminar, held in breathtaking Aspen, Colo., brings together a small group of individuals from diverse backgrounds to discuss how a just society ought to structure its legal, judicial, and political institutions. This summer, I had the privilege of participating in a portion of the one-week annual seminar. Participants included law professors, federal district court and appellate judges, a state Supreme Court justice, a Unitarian minister, a doctor, and other partners in private law firms like me.

Over the same time period, I also participated in a two-day Aspen Institute Symposium on the United States Supreme Court's most recent term, designed for nonlawyers, which was largely attended by business people, philanthropists, and well educated, accomplished retirees,

Mary-Christine (M.C.) Sungaila is an appellate partner at Haynes & Boone LLP and a member of NAWL's Amicus committee.

Thomas Jefferson believed all members of society should be both educated and informed

all interested in furthering their knowledge about the court. The symposium, entitled "The Great Cases, Controversies, Trends and Personalities at the U.S. Supreme Court," was moderated by Jeffrey Rosen, president and CEO of the National Constitution Center and professor at George Washington University Law School, and Tom Goldstein, founder and publisher of SCOTUSblog and noted Supreme Court litigator. The discussion included recent and upcoming cases on voting rights, marriage, affirmative action, and health care reform.

Both programs were fascinating, and offered an opportunity to consider broader questions about law and society that we as practicing lawyers – even appellate litigators like me – do not often have the luxury to do. For example, the Justice & Society seminar included wide-ranging readings by Kurt Vonnegut as well as economists, lawyers and judges for its segment on Law and the Economy, and invited participants to consider what role the law and the legal system should play with regard to the economy. The experience was like mixing the best of undergraduate humanities with legal education, and then applying decades of experience in the world and the legal system to it.

The experience was like mixing the best of undergraduate humanities with legal education, and then applying decades of experience in the world and the legal system to it.

The Supreme Court symposium, in contrast, was designed to immerse participants directly into the decisions and arguments in major cases of the last term. Participants were required to read the full opinions and listen to the oral arguments, rather than read news reports or analysis of them. As Jeffrey Rosen put it, for a democracy to work, Thomas Jefferson believed that all members of society need to make it their responsibility to be both educated and informed about the issues of the day, and in the context of our symposium, the best way to do that was to dive directly into the decisions ourselves. The reaction of many seminar participants was surprising. Most were unaware that oral arguments, much less the decisions themselves, were publicly available online. Many noted that, after reading both the majority and dissenting opinions in widely reported cases, they had a fuller and sometimes very different understanding of the decisions. They remarked that news reports sometimes left out aspects of the decisions they felt to be important. A few even reported that their view of the decisions changed after reading them, and that their views sometimes coincided with those of the dissenting justices in some cases, which they had not realized from reading abbreviated news reports.

This experience impressed upon me the need for us as lawyers to educate the public about the Supreme Court, and the public resources the court itself makes available, whenever we can.

Through my work with civics education initiatives, I learned that there is a deep need to bridge the gap in civics education at the middle school and high

school levels. As California Chief Justice Tani Cantil-Sakauye has pointed out, "On the last national measure of K-12 school student civic knowledge, barely a third of students could name the three branches of government, and an equal number could not even name one." Civics education in California, for example, is largely relegated to the final year of high school; it needs to play a more prominent role in the school curriculum, earlier in a student's education.

The California Task Force on K-12 Civic Learning, a joint creation of the Chief Justice and State Superintendent of Public Instruction Tom Torlakson, last year published a blueprint for addressing the improvement of civics education in California. And through such online civics education resources as iCivics, founded by former U.S. Supreme Court Justice Sandra Day O'Connor, students can play online games in the classroom and at home where they can learn about the workings of the three branches of government by, for example, serving as virtual law clerks for Supreme Court justices and learning how judicial decisions are made.

Likewise, the National Association of Women Judges' "Informed Voters. Fair Judges" project, a nonpartisan voter education project started last year, helps voters make informed choices in state judicial elections. The project educates voters about the qualities that make a good judge – fair-mindedness, impartiality, integrity, knowledge of the law, and a willingness to decide cases on the evidence presented and the law – and about ways to learn about a judge's qualifications and performance record in order to exercise an informed vote.

As lawyers, we are uniquely positioned to do our part in this by alerting friends, family members, and business associates to the oral arguments and decisions publicly available on the Supreme Court's website and SCOTUSblog.

But my experience at the Aspen Institute convinced me that not only do we need to provide civics education to young people and ensure the voting public has the necessary information to make informed choices in judicial elections, we also need more immediate education initiatives to help the public gain direct access to and understanding of the Supreme Court decisions which shape their lives. As lawyers, we are uniquely positioned to do our part in this by alerting friends, family members and business associates to the oral arguments and decisions publicly available on the Supreme Court's website and SCOTUSblog, so that they can listen to and read firsthand the decisions and arguments that led to them, and in the process become more informed citizens in the finest Jeffersonian tradition. ■

WOMEN LAWYERS CONTINUE TO LAG BEHIND MALE COLLEAGUES

Report of the Ninth Annual NAWL National Survey On Retention And Promotion Of Women In Law Firms

By Lauren Stiller Rikleen

In 2006, the National Association of Women Lawyers issued its NAWL Challenge: Increase the number of women equity partners, women chief legal officers, and women tenured law professors to at least 30 percent by 2015.[2] As reported in the First Annual NAWL Survey, "The impetus for the Survey grew from the now familiar '50/15/15' conundrum: For over 15 years, 50 percent of law school graduates have been women yet for a number of years, only about 15 percent of law firm equity partners and chief legal officers have been women. The partnership pipeline is actually richer than these numbers suggest because, for over two decades, law schools have graduated women in substantial numbers and law firms have recruited women at the entry level in about the same ratio as men."[3]

The NAWL surveys focus specifically on women in law firms, as detailed in this report. With respect to the two other

Lauren Stiller Rikleen, president of the Rikleen Institute for Strategic Leadership, provides training, consulting and speaking on topics of women's leadership and advancement, unconscious bias, and the multi-generational workplace. A former law firm equity partner, Rikleen is the author of *Ending the Gauntlet: Removing Barriers to Women's Success in the Law* (Thompson West 2006) and of *You Raised Us – Now Work With Us: Millennials, Career Success, and Building Strong Workplace Teams* (ABA 2014). Among other American Bar Association leadership roles, Rikleen was a member of the Task Force on Gender Equity and author of its report, Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation (American Bar Association 2013). She is also a Visiting Scholar at the Boston College Center for Work & Family.

Among the non-equity partners who graduated from law school in 2004 and later, 38 percent were women and 62 percent were men

components of the NAWL Challenge, women in corporate general counsel positions and law school tenured faculty have fared better than women equity partners in law firms. Women now represent approximately 23 percent of Fortune 500 general counsels[4] and 37.5 percent of tenured positions.[5]

This year's NAWL Survey of women in law firms demonstrates what we have long seen: The number of women equity partners in law firms has barely increased in the past 10 years, despite all the available talent and opportunity present in 2006, and earlier. Indeed, the NAWL Challenge goal seemed like one that could reasonably be accomplished. With a full pipeline, there was every reason to be optimistic that the legal profession would achieve these goals.

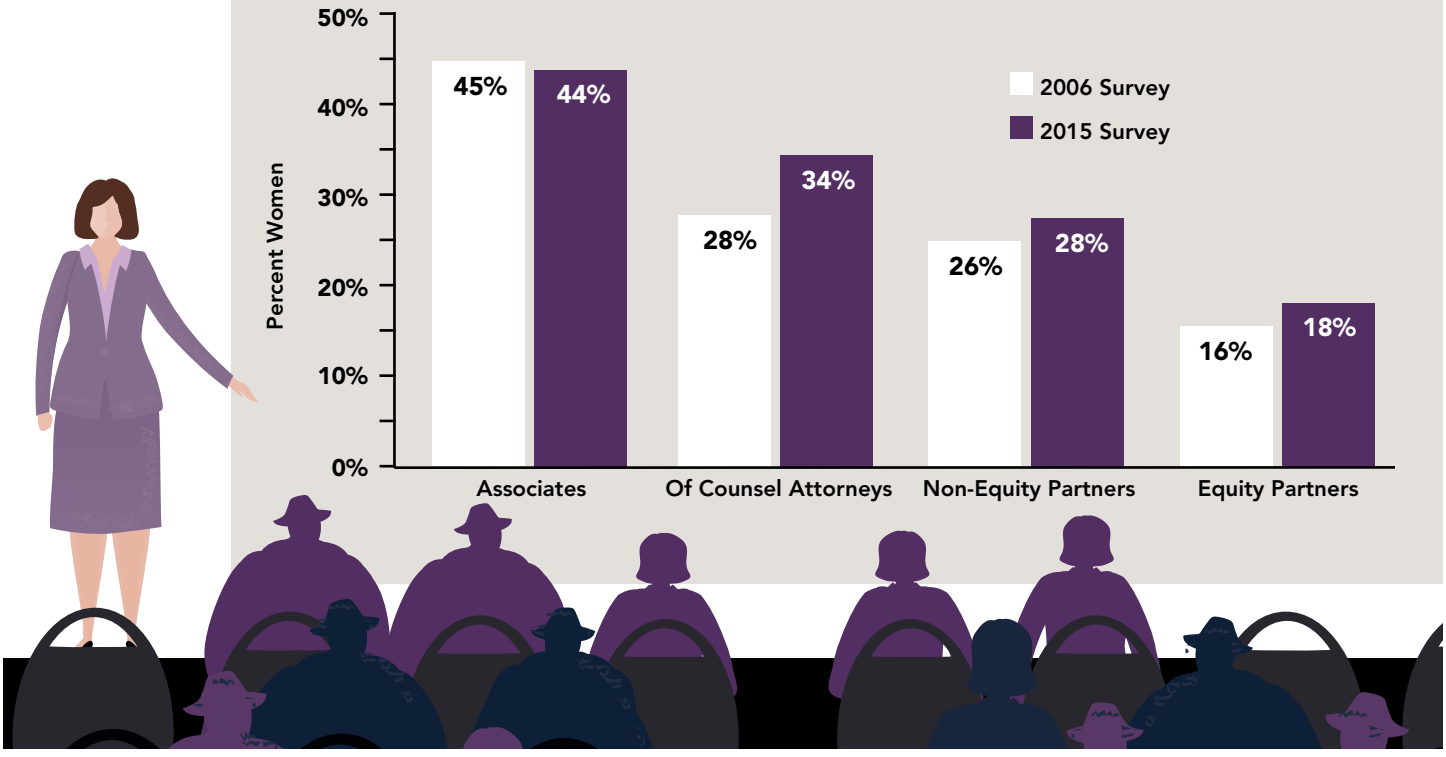
The data reported below, however, demonstrates that, particularly with respect to equity partner promotions and compensation, the gender gap is far more appropriately described as a gender gulf, and achievement of the NAWL Challenge within law firms remains an elusive goal. The survey responses report a level of stagnation with respect to achieving gender parity that ought to serve as a wake-up call to the profession.

Women still lag far behind their male colleagues in their promotion to equity partnership and senior leadership roles, as well as in the amount of compensation they are paid. Relative to their long-standing numbers in law school and as new lawyers, the results reported in this survey should be telling a vastly different story. That the results are generally similar to what we reported at the start of the NAWL Challenge nearly a decade ago is, instead, a story of institutional failure.

Recently, The American Lawyer, in its cover story addressing the continued challenges women are facing in achieving equality in private practice, wrote this about the NAWL Challenge: "The

Representation of women in attorney positions

Note: For equity partners, we restrict data to equity partner subsample. See appendix on survey methodology.



Ninth Annual Survey at a glance*

Firms have made no appreciable progress in the rate at which they are promoting women into the role of equity partner. The data demonstrate that women still comprise only approximately 18 percent of equity partnership.

Not only do the responses to the questions about equity partner elevation demonstrate the lack of progress for women, the data also suggest that the opportunities for equity partnership in general are diminishing for both male and female associates. For those who began their careers at their law firm, the overall elevation rates are lower than for lateral attorneys. Of new equity partners promoted in the year prior to the survey, the typical firm had one female equity partner who started with the firm and one who was a lateral. For men, the typical firm promoted one lawyer into the equity partnership who started with the firm and five who were laterals.

Men continue to be promoted to non-equity partner status in significantly higher numbers than women. Among the non-equity partners who graduated from law school in 2004 and later, 38 percent were women and 62 percent were men. This data remain vexing in light of the longstanding pipeline of women, as women have been graduating from law school in nearly equal numbers for decades.

The data continue to be challenging for other diverse groups. Lawyers of color represent 8 percent of the law firm equity partners. LGBT lawyers comprise 2 percent of equity partners.

The compensation gender gap remains wide. Not one of the responding law firms reported having a woman as its highest earner. Moreover, the gap between what women equity partners earn compared to men is striking: the typical female equity partner earns 80 percent of what a typical male equity partner earns.

Women continue to be under-represented on law firm compensation committees, yet law firms that report more women on their compensation committee have narrower gender pay gaps. In the 12 firms that reported having two or fewer female members on the compensation committee, the typical female equity partner earns 77 percent of that earned by a typical male equity partner. In the 18 firms that reported three or more women on the compensation committee, the typical female equity partner earns 87 percent of that earned by a typical male equity partner.

Men continue to outpace women in obtaining rainmaking credit. Moreover, client relationships are frequently passed down to the fortunate beneficiaries who inherit the internal credit, often with little client input on the decision. This year's survey shows a wider gender gap in client origination credit than last year. Among the firms that provided data regarding the gender of the 10 lawyers who generated the highest amount of revenue, 88 percent of the Top 10 were men and 12 percent were women. Similar to last year, approximately a quarter of the firms report that the current relationship partner selects his or her successor, meaning that valuable client credit is, in essence, an inheritance that can be passed from one individual to another.

There is a gender gap in revenues generated from client billings, even as women report overall higher working hours. The typical female equity partner bills only 78 percent of what a typical male equity partner bills. When asked to report total client billable and non-billable hours, however, the total hours for women equity partners exceeded the total hours for men equity partners. The median hours reported for the women were 2,224 and, for the men, were 2,198. The data raises questions about whether committee assignments, hourly billing rates, and the distribution of pro bono hours contribute to disparities in client billings.

Women continue to be under-represented on the highest governance committees. The typical firm has two women and eight men on their highest U.S.-based governance committee. Women do slightly better in achieving these key leadership roles at AmLaw 100 firms, compared to the Second Hundred, but both groups report numbers that demonstrate limited progress when compared to the decades-long pipeline of women in the profession.

Every respondent reported having a Women's Initiative, but the budgets allocated to these efforts reinforce that women's affinity groups lack sufficient resources to accomplish strategic goals. Seventy-five percent of the responding law firms reported having a formal budget for their Women's Initiative, which is lower than the 80 percent reported in the NAWL Foundation's 2012 survey of Women's Initiatives. Even as the responses indicate the limited overall financial resources available for Women's Initiatives, there is a significant variance between the average budgets in AmLaw 100 firms and the lower budgets reported in the Second Hundred. The median annual budget for the AmLaw 100 is $112,500; for the Second Hundred, the median annual budget is $82,000. Half of the reporting AmLaw 100 firms report that their Women's Initiative annual budget is $100,000 or less; only 25 percent report that the budget exceeds $200,000. None of the Second Hundred firms report an annual budget of $200,000; 73 percent report being in the $100,000 or less category.

Training programs vary significantly. Of note, 20 percent of the respondents reported that they do not provide training on diversity and inclusion, 26 percent reported that they do not provide training on unconscious bias, and 57 percent do not train on the topic of micro-inequities.

There are more male associates than female associates in the U.S. offices of the respondents, including at the more junior and senior levels, suggesting that women may be turning elsewhere for greater professional fulfillment. Women comprise 44 percent of associates. Even as the AmLaw 100 firms have more female associates than the Second Hundred, the AmLaw 100 also employs more females designated as staff attorneys.

**** Each of NAWL's nine surveys reflects annual data collected by responding law firms. Due to processing time, survey results have been tabulated and reported for nine out of the ten years since NAWL issued its challenge to the profession in 2006.***

100 percent of firms reported that its highest U.S. paid partner is male

goal seemed within reach. After all, since at least 1991 women have made up just under half of law school graduates and new associates, and partnership promotions would be expected to occur between eight and 10 years later, driving up the numbers. Across the country, firms responded: as of 2012, according to NAWL, 97 percent had rolled out women's initiatives to better retain and train women for advancement. But … [t]heir efforts have mostly failed."[6]

As the article reported, if the pace of progress over the past 10 years continues, women equity partners will not reach 30 percent until the year 2181. NAWL believes this failure to make measurable progress reflects poorly on the legal profession and makes law firms less attractive career options for women seeking professional growth and satisfaction.

Even a modest drop in the number of women in the pipeline may be an indication that women are choosing alternative career paths because of a perception that law firms have fewer opportunities for advancement.

Each year, NAWL has described the goal of this survey: to address the gap in objective statistics regarding the advancement of women lawyers into the highest levels of private practice. For many years, NAWL's Survey was the only national study that annually tracked the professional progress of women in the nation's 200 largest law firms by providing a comparative view of the careers and compensation of men and women lawyers at all levels of private practice, as well as by analyzing data about the factors that influence career progression.

By compiling annual objective data, the Survey continues to provide: (a) an empirical picture of how women forge long-term careers in law firms and what progress is being made in reaching the highest positions in firms; (b) benchmarking statistics for firms to use in measuring their own progress; and (c) over a multi-year period, longitudinal data for cause and effect analyses of the factors that enhance or impede the progress of women in law firms. The emergence of other surveys over the past several years analyzing similar aspects of women's progress confirms the troubling results seen by NAWL.[7]

Overview comparison of women in law firms — then and now

Images can be an effective substitute for words. This is particularly true when comparing law firm data from the 2006 NAWL Survey — when the NAWL Challenge was first announced — to the data collected for this Ninth Annual Survey, the NAWL Challenge goal year. The chart on page 2 demonstrates (1) the slow pace of change at the higher echelons, (2) the increasing numbers of women in "counsel" slots, and (3) a slight decline in the number of women associates.

As discussed in greater detail below, the pace at which women are promoted into the partnership ranks is barely improving. The data show that, for this Ninth Annual NAWL Survey 44 percent of associates are women; 34 percent of attorneys designated as counsel are women; and 28 percent of non-equity partners are women.

The percentage of women designated as "Of Counsel" has increased significantly since 2006. NAWL fully supports the availability of alternative career paths for men and women, and recognizes that the counsel designation can be a beneficial way to retain lawyers who are not seeking partnership. The difficulty arises, however, when women are slotted in these roles less by choice than by the impact of unconscious biases, leading to a limiting of career options.

The slight decline in women associates may be consistent with the similarly slight decrease in women attending law school during this time period, two trends of concern with respect to the future pipeline. Even a modest drop in the number of women in the pipeline may be an indication that women are choosing alternative career paths because of a perception that law firms have fewer opportunities for advancement.

In 2006, the concept of "staff attorney" rarely existed and was not included in the survey. Over the past few years, an increasing number of firms have added this category of lawyers, which is generally considered a non-partnership track position. Within the firms reporting data regarding this position, 54 percent of staff attorneys are women. The typical AmLaw 100 firm employs

16 women and 11 men in the staff attorney role, and the Second Hundred employs 8 women and 6 men as staff attorneys.

Advancement into partnership

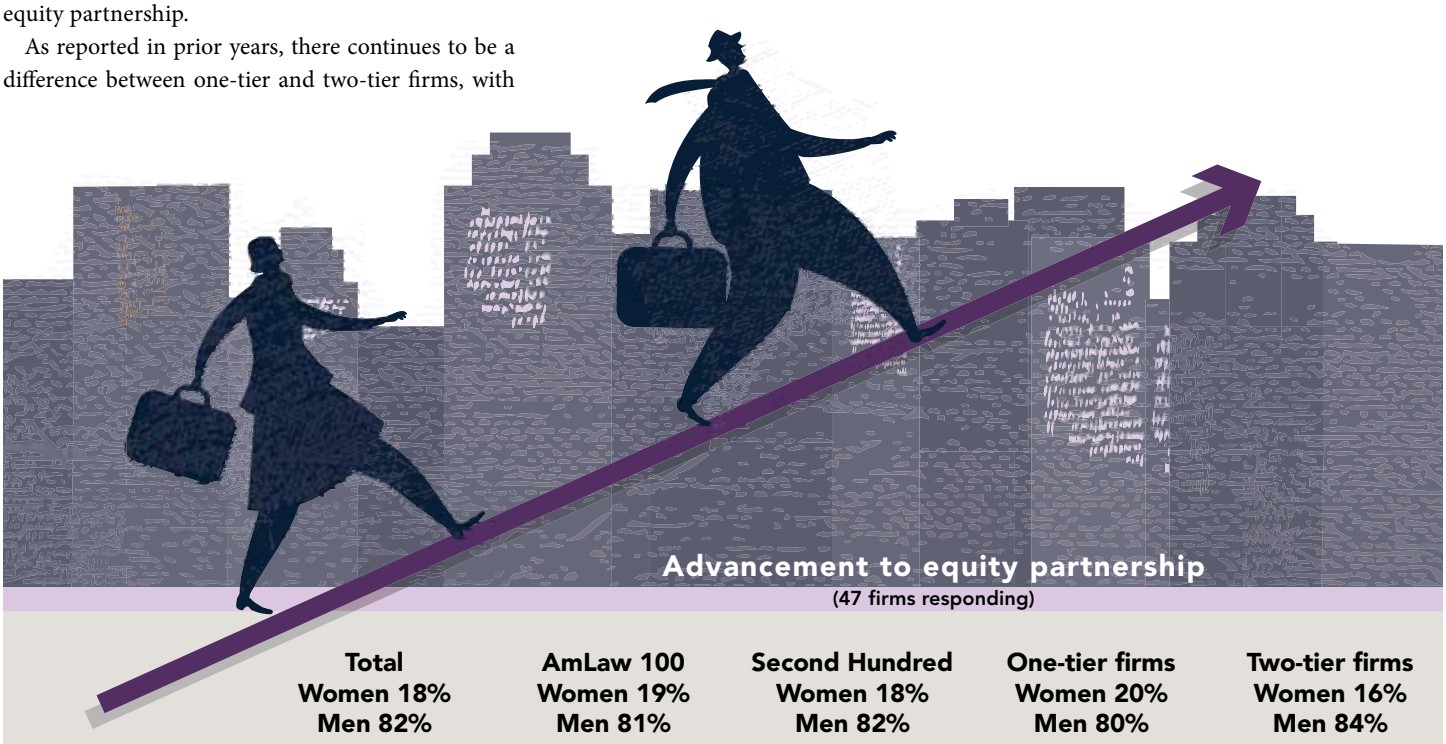
Only 64 percent of the law firms that responded to the NAWL Survey provided reliable data regarding equity partner counts by gender and law firm graduating class (47 of 73 firms overall).[8] Moreover, responses to the question about total equity partners in this year's survey are 43 percent lower than in the First Annual NAWL Survey. In light of that low response rate, it is reasonable to question whether the firms that respond to these questions tend to be those that believe they have a more positive story to tell, and that the number of those firms is declining.

These 47 firms reported that, in their U.S. offices, 18 percent of their equity partners were women and 82 percent were men. There was little difference in reported results between the AmLaw 100 and Second Hundred firms. Among the 25 AmLaw 100 firms reporting, the equity partner break-down was 19 percent women and 81 percent men; among the 22 Second Hundred firms reporting, women comprised 18 percent of the equity partnership.

As reported in prior years, there continues to be a difference between one-tier and two-tier firms, with women comprising a higher percentage of equity partners in the one-tier firms. Overall, women comprise 20 percent of the equity partners in one-tier firms and 16 percent in the two-tier firms. When the data is analyzed by AmLaw 100 and Second Hundred, the break-down is relatively similar.

The differential between one-tier and two-tier partnerships was noted in the First Annual NAWL Survey as well. At that time, women were reported to comprise 17 percent of equity partners in one-tier firms and 15 percent in two-tier firms.

For the second year in a row, NAWL asked respondents to provide data on equity partner elevations made in the past year. The question seeks to determine whether newer promotion decisions are more likely to include women. Of new equity partners elected between February 1, 2014, and January 31, 2015, 24 percent were women.



Minority women who advance continue to play the role of pioneers in the AmLaw 200

2015, 24 percent were women. This percentage is slightly lower than that reported last year.

In one respect, however, the responses regarding new equity partner promotions showed a significant decline from the data reported last year. The 2014 NAWL Survey reported that 40 percent of the newest equity partners in the Second Hundred were women, and further stated that "it remains to be seen if this is a one-year statistical aberration or whether it augers a new trend."[9] Based on this year's data, it was an aberration. Among the Second Hundred firms, 22 percent of the new equity partners were female.

Of new equity partners promoted in the year prior to the survey, the typical firm had one female equity partner who started with the firm and one who was a lateral. For men, the typical firm promoted one lawyer into the equity partnership who started with the firm and five who were laterals. Clearly, the majority of equity partner promotions do not come from the existing associate pool within the law firms. This troubling trend should serve as a warning for the law firm pipeline.

Various reports over the past 10 years show that virtually no progress has been made by the nation's largest firms in advancing minority partners and particularly minority women partners into the highest ranks of firms.

In asking firms to report on their non-equity partner numbers, the survey asked for data in class year groupings. The purpose of this question is to determine if parity is being achieved with the younger classes of senior associates elevated to the non-equity partner level, since these classes began their careers with relatively equal numbers of men and women. Among the non-equity partners who graduated from law school in 2004 and later, 38 percent were women and 62 percent were men.

The continued barriers faced by diverse lawyers

Last year's NAWL Survey observed: "It states the obvious to note that minority lawyers are not achieving partnership at the rate they are entering law firms. Minority women who advance continue to play the role of pioneers in the AmLaw 200. Indeed, various reports over the past 10 years show that virtually no progress has been made by the nation's largest firms in advancing minority partners and particularly minority women partners into the highest ranks of firms."[10]

We again report discouraging data regarding lawyers of color, based on the data in this year's survey. Lawyers of color constitute only 8 percent of the law firm equity partners. Among this small percentage of equity partners of color, even fewer are women. The typical firm has 105 white male equity partners and seven minority male equity partners, and 20 white female equity partners and two minority female equity partners. Women comprise only 24 percent of Hispanic equity partners, 33 percent of black equity partners, and 29 percent of Asian equity partners. So few Native American and Asian Pacific equity partners were identified that the median reported for both men and women was zero.

Law firms were also asked to report data regarding partners who identify as LGBT. According to the data provided by 56 firms, only 2 percent of female and 1 percent of male equity partners are LGBT.

The graphic on the next page describes, for each diverse group, the percentage of total equity partners within that group who are female compared to the percentage who are male.

Compensation

Last year's NAWL Survey noted the low response rate for questions regarding firm compensation, notwithstanding the promise of both confidentiality and complete anonymity. This year's total number of responses to the compensation questions was even lower.

Forty-one firms responded to the inquiry about the gender of the U.S. partner receiving the highest compensation; 100 percent of those firms reported that it was a male. When this question was posed in the First Annual NAWL Survey, of the 62 firms that reported

whether a male or female lawyer earned the most compensation in the firm, 57 firms – or roughly 92 percent – reported that their highest paid lawyer was a man.

When asked to provide the median compensation for equity partners in the firm, only 30 firms provided data. Of these responses, the typical female equity partner earns only 80 percent of what a typical male equity partner earns. The median compensation is reported as $504,000 for female equity partners and $629,407 for male equity partners.

The gender compensation gap shrinks within other levels in a firm, although the response rate limits the conclusions that can be drawn. Only 25 firms responded to the compensation question about non-equity partners. Among those, the data indicated that the typical female non-equity partner earns 96 percent of the typical male non-equity partner. The median compensation reported for women non-equity partners is $230,000 and, for men, the reported median is $239,000.

Of the 30 responses to the median compensation question for counsel and the 33 responses to the median compensation question for associates, the typical woman in each category made 93 percent of the typical man. The median compensation for women counsel is $189,000 and $204,121 for men. For associates, the median compensation reported for women is $151,162; for male associates, the median is $162,000.

A comparison to the data in the First Annual NAWL Survey suggests that women have made little progress in the past decade in closing this gap. In that first survey, 35 firms reported male and female median compensation for the equity partner position. Among those firms, the average median compensation of a male equity partner was reported as $510,000. The comparable figure for a female equity partner was $429,000, which is 84 percent of the compensation of a typical male equity partner.[11] The gap in compensation among male and female equity partners reported a decade ago in the First Annual NAWL Survey was less than the gap reported in this more recent data.

Also in 2006, 27 firms reported male and female median compensation for non-equity partners. Among these firms, the average median compensation for men was reported as $239,000 and for women as $207,400, which is 87 percent of the typical male compensation.

The 2006 NAWL Survey stated that 29 firms reported male and female median compensation for of-counsel positions. The average median compensation for men of-counsel was reported as $202,000, and the median for women was $184,000, which is 91 percent of the typical male compensation.

We know from other studies of salary inequality that the gender pay gap widens with seniority and with the degree of discretion that exists in the compensation process. This is similarly demonstrated in the legal profession, where the gender gap in compensation is narrower among associates and lawyers designated as counsel, and grows significantly at the equity partner level.

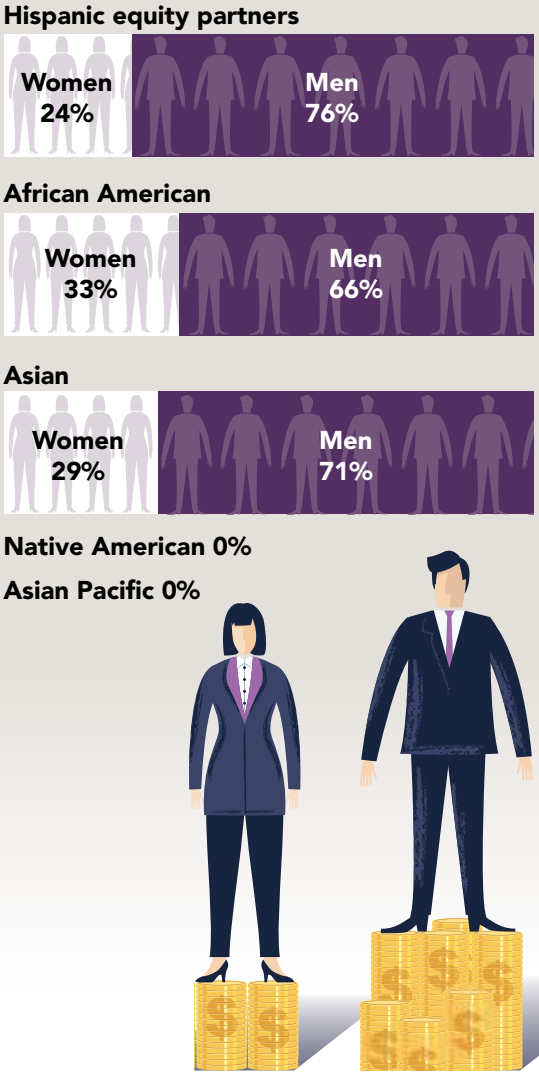
Rainmaking credit and client succession

As observed in the Eighth Annual NAWL Survey, delving too deeply into origination credit data poses many challenges, due to the wide

Minority law firm equity partners

(Total equity partners of color 8%)

The typical firm has 105 white male equity partners, seven minority male equity partners, 20 white female equity partners and two minority female equity partners.



A comparison to the data in the First Annual NAWL Survey suggests that women have made little progress in the past decade in closing this gap.

There is a gender gap in revenues generated from client billings, even as women report overall higher working hours

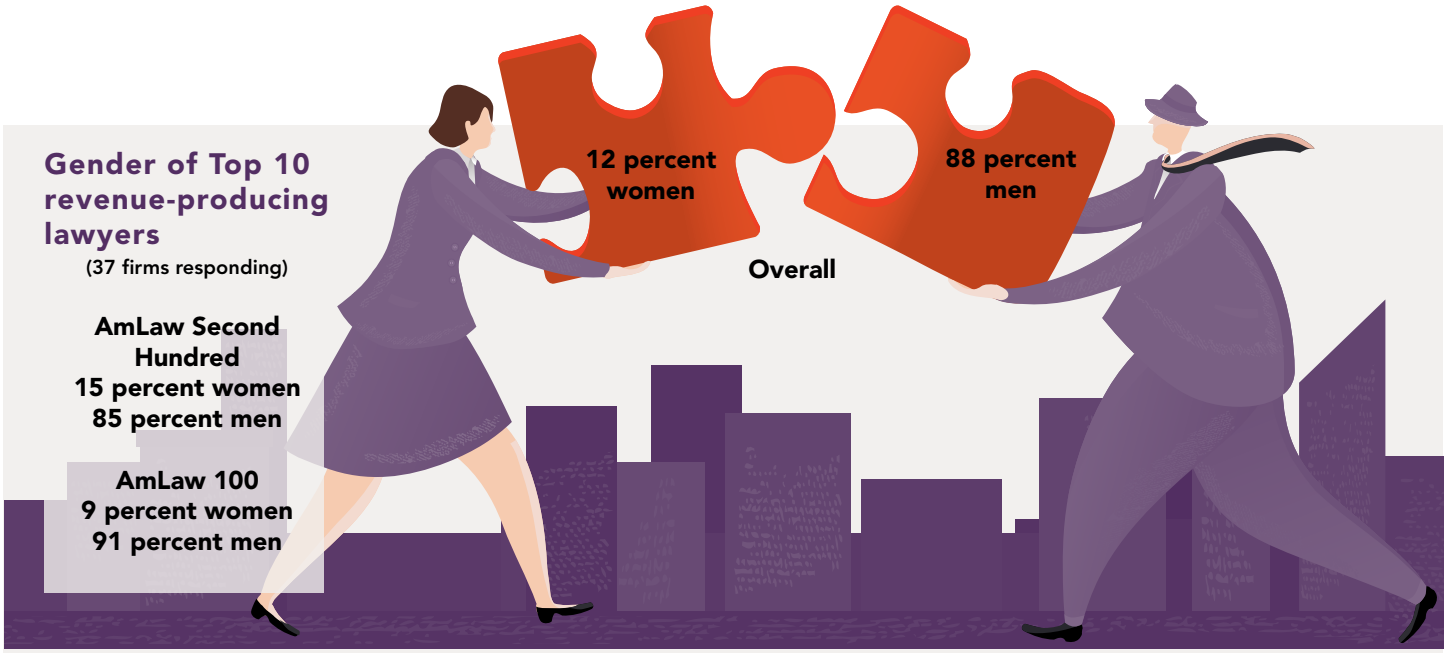
variations in how law firms attribute origination credit for new clients and new matters from existing clients. What remains clear, however, is that women continue to receive less credit than men for client work.

The limited data reported in this year's survey shows a wider gender gap in client origination credit than last year. Only 37 firms provided data regarding the gender of the 10 lawyers who generated the highest amount of revenue, which represents only about half of the overall survey respondents. Among these 37 firms, 88 percent of the Top 10 were men and 12 percent were women. When broken down by AmLaw category, it appears that women do better in the Second Hundred, where 15 percent of the top 10 business generators were women, compared to the AmLaw 100, where only 9 percent of the top 10 were women.

In the Eighth Annual NAWL Survey, firms were asked for the first time how the next client relationship partner is chosen when the current relationship partner retires or leaves the firm. Understanding this dynamic is critical, as many law firms generate significant revenue from institutional clients. For those lawyers who receive credit for clients when prior relationship partners are no longer with the firm, the impact on compensation can be significant, as can the advantage that comes with being perceived as a rainmaker.

Similar to last year, approximately a quarter of the firms report that the current relationship partner selects his or her successor, meaning that valuable client credit is, in essence, an inheritance that can be passed from one individual to another. In 6 percent of the firms, the Practice Group Leader chooses the successor, and only one firm reported that the client chooses its successor relationship partner. Of the firms indicating that the successor relationship partner is

Of the firms indicating that the successor relationship partner is selected with input from a variety of individuals, less than half included client input as part of the process.



selected with input from a variety of individuals, less than half included client input as part of the process.[12]

The bottom line is that compensation and business generation credit are integrally entwined. To achieve gender parity in compensation, law firms must provide a credit origination system that: ensures rainmaking opportunities and pitch teams are inclusive of women; fairly allocates credit among teams; offers a process for resolving credit disputes among partners; removes decisions about the "inheritance" of client credit from individual partners; and develops a system that systematically involves clients, firm leadership, and the partners who service the work in credit succession decisions.[13] Until firms engage in a genuine dialogue challenging historic practices in this area, these numbers are unlikely to improve significantly.

Billable hours and non-client billable time

Concerns regarding the gender gap in dollars billed, as discussed in the following section, are brought into sharper focus when analyzed against responses to questions about billable hours. Together, this data could suggest that women are working harder but with less opportunity and reward.

For example, when asked to report total client billable and non-billable hours, the total hours for women equity partners exceeded the total hours for men equity partners. The median hours reported for the women were 2,224 and, for the men, were 2,198.

Of importance, however, women had fewer client-billable hours and more pro bono hours. Specifically, the typical female equity partner's median client-billable hours were 1,545, compared to the typical male equity partner's median client-billable hours of 1,571; median annual pro bono hours were reported as 13.5 and 12, respectively.

When this data is analyzed by AmLaw 100 and Second Hundred firms, the results show a gap. The median client-hours billed for female equity partners in the AmLaw 100 are 1,585 and for male equity partners are slightly lower at 1,579. In the Second Hundred responses, the median client-billable hours for women equity partners are 1,450 and 1,530 for men equity partners.

Moreover, women equity partners in the Second Hundred are reported to have higher annual median pro bono hours than men equity partners: 12.2 compared to 9.4; in the AmLaw 100, the female to male ratio for annual median pro bono hours reported for equity partners is 14 to 13.

Female full-time non-equity partners are reported to bill slightly fewer client hours and more pro bono hours than their male colleagues. With respect to the AmLaw 100 respondents, the median client-billable hours for full-time non-equity women partners are 1,468, compared to a median of 1,482 for the men equity partners. Among the Second Hundred respondents, the median client-billable hours is 1,530 for the women equity partners and 1,536 for the men equity partners.

The gender gap for women non-equity partners in reported pro bono hours is primarily seen among the AmLaw 100 firms; in fact, Second Hundred firms reported that men non-equity partners have slightly higher pro bono hours than women non-equity partners. Among the AmLaw 100 responding firms, full-time female non-equity partners bill an annual median of 17.3 pro bono hours compared to an annual median of 11.6 billed hours by their male colleagues. In the Second Hundred responses, women non-equity partners are reported to bill an annual median of 15 hours, compared to 16.5 median annual pro bono hours billed by men non-equity partners.

Revenue generation as working attorney

Survey participants were asked to report the median amount of client billings in 2014 for full-time equity partners. Only 27 of the 73 respondents overall provided data (a 37 percent response rate among the respondents and only 13.5 percent of the total AmLaw 200 law firms). Among these responses, there were two noticeable gaps: one between the men and the women, and the other between the total amounts billed in the AmLaw 100 compared to the Second Hundred.

Female full-time non-equity partners are reported to bill slightly fewer client hours and more pro bono hours than their male colleagues.

The gender gap in client billings is significant. The median billings for male equity partners is $1,325,310, and $1,039,348 for female equity partners. Stated differently,

Are women being asked to undertake more non-billable roles, such as mentoring and associate recruitment than their male colleagues?

the typical female equity partner bills only 78 percent of what a typical male equity partner bills.

The data also reveals a significant gap between the total reported equity partner billings at AmLaw 100 and at Second Hundred firms. The overall median amount of client billings for full-time equity partners reported by AmLaw 100 respondents is $1,445,795 and, at the Second Hundred firms, is $812,345.

The gender gap in billings, however, narrows considerably in the Second Hundred firms. The median amount billed by men equity partners reported by the AmLaw 100 firms is $1,787,900, and for women equity partners, is $1,239,175. At the Second Hundred firms, the median amount billed by men equity partners is reported to be $864,239, and, by women equity partners, is $789,024.

Stated in terms of a percentage, the typical female equity partner in an AmLaw 100 firm bills only 69 percent of what a typical male equity partner bills. In the Second Hundred, the typical female equity partner bills 91 percent of what her male counterpart bills.

In light of the relatively similar levels of client billable hours billed by men and women, it is certainly reasonable to conclude that female partners work as hard as their male colleagues. It is also reasonable to conclude that women in the AmLaw 100 are as hard working as women in the Second Hundred. This data regarding client billings raises questions as to the possible reasons for this discrepancy. For example, are women being billed at significantly lower rates? Are women being asked to undertake more non-client billable committee roles, such as mentoring and associate recruitment that men are not asked, or possibly decline, to do? If so, does the time that women spend on these roles impede the time they might otherwise be able to devote to business development? Is it possible that there are differences in work flow and assignment opportunities?[14] These questions are part of important conversations that law firms should have, as resolving the gender gap in client billings will likely yield similar positive changes in resolving the gender compensation gap.

Of the 25 firms that reported having a single managing partner, 82 percent were men and only 18 percent were women.

Firm governance and compensation committee representation

One data point of critical significance emerged when we compared compensation committee representation to the gender pay gap. Firms were asked about the number of women on their compensation committee. That data was then compared to the equity partner compensation gap in those firms. For the firms that provided responses to both sets of questions, the results indicate that the gender gap closes significantly as more women participate on compensation committees.

In the 12 firms that reported having two or fewer female members on the compensation committee, the typical female equity partner earns 77 percent of that earned by a typical male equity partner. In the 18 firms that reported three or more women on the compensation committee, the typical female equity partner earns 87 percent of that earned by a typical male equity partner.

Firms were asked to provide data regarding the composition of their highest governance committee in the United States. The typical firm reported having two women and eight men, a ratio that changed little between the AmLaw 100 and the Second Hundred. By way of further analysis, 35 percent of the respondents had zero or one woman member, 41 percent had 2 or 3 women, and only 24 percent had four or more women on their highest governance committee. Of note, only one Second Hundred firm reported having four or more women on its highest governance committee, compared to 12 firms in the AmLaw 100.

Of the 25 firms that reported having a single managing partner, 82 percent were men and only 18 percent were women.

To compare the representation of women on the highest governance committee in this year's responses with the data reported in the First Annual NAWL Survey, the following bar graph tells the story of the limited progress made since the inception of the NAWL Challenge. Specifically, in the past 10 years, women's representation on law firms' highest governance committees has increased from 16 percent to 22 percent, meaning that the average firm's highest governance committee only expanded by approximately one woman over a 10-year period.

Reduced-hours as a barrier to promotion

Firms were asked whether they permitted part-time lawyers to be promoted to either equity or non-equity partner status. Even after years of research and articles demonstrating the benefits of flexible work arrangements,[15] there are still top law firms that do not permit women to advance if they are on a reduced-hours schedule. Of the 64 firms responding to this question, 14 percent reported they do not permit women to be promoted to equity partner if they work less than full-time. There is also a barrier, although less pervasive, for those seeking to become a non-equity partner while on a reduced-hours schedule: of the 46 respondents to this question, 7 percent said they would not promote someone on a part-time schedule to the non-equity partner ranks.

Women's Initiatives

In 2012, the NAWL Foundation conducted a separate survey on law firm Women's Initiatives.[16] As the report noted, firm-wide women's affinity groups have become a staple of law firm culture, but little was known about their resources or strategic design. The results of the Women's Initiatives survey revealed that Women's Initiatives generally lack both a specific mission and goals for the advancement of women. In addition, the survey responses revealed that Women's Initiatives are "woefully underfunded," noting that "the typical law firm spends far less on their [sic] women's initiatives than the salary of a first year associate."[17]

This year's survey incorporated questions on Women's Initiatives as a follow up to that 2012 survey, to determine whether firms were bringing a greater strategic direction or improved resources to their efforts. The results showed regrettably little progress.

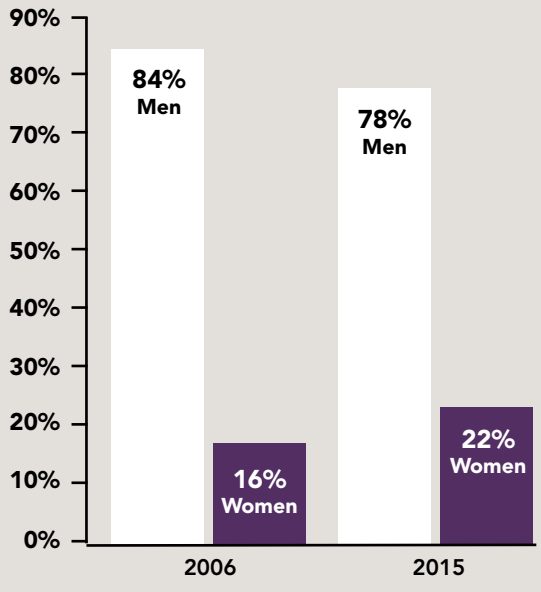
Even after years of research and articles demonstrating the benefits of flexible work arrangements,[15] there are still top law firms that do not permit women to advance if they are on a reduced-hours schedule.

All of the 70 firms responding to the question asking whether they had a Women's Initiative said yes. Asked if they had a formal budget for their Women's Initiative, 65 firms responded. Of these, 75 percent responded in the affirmative, which is a decrease from the 80 percent of respondents who reported affirmatively in the Women's Initiatives survey.

With respect to the actual budget allocation, the results were again woefully inadequate to the task of accomplishing many goals, particularly when compared to other investments made by law firms of this size. The median total annual Women's Initiative budget is $90,000, far less than the salary of a first-year associate at an AmLaw 100 firm. When analyzed by sector, the median annual budget for the AmLaw 100 is $112,500; for the Second Hundred, the median annual budget is $82,000.

Half of the reporting AmLaw 100 firms report that their Women's Initiative annual budget is $100,000 or less; only 25

Representation of women on firm's highest governance committee



Many respondents did not provide a response to the most critical questions regarding law firm equity partner metrics and compensation

percent report that the budget exceeds $200,000. None of the Second Hundred firms report an annual budget of $200,000; 73 percent report being in the $100,000 or less category.

The firms were also asked to state the strategic purpose of their firm's Women's Initiative. The results reveal a substantial disconnect between the potential and the reality of women's affinity groups. Most described an outward-facing mission: networking, events relating to the expansion of client relationships, community engagement, mentoring, coaching, programs focused on work-life integration, pro bono opportunities, sponsorships of non-profit organizations and their events, showcasing women's skills, and other career and leadership skills and development programming.

Each of these and related areas of focus are important, but absent a concerted effort to address the internal, institutional barriers to women succeeding in parity with men, the data is likely to continue to disappoint. Women's Initiatives can provide an important opportunity to assess internal structural and cultural barriers that prevent women from succeeding into leadership roles and equity partner positions, and that result in lower compensation levels.

When a Women's Initiative focuses primarily on female skill development, it unfairly assumes that women themselves are the barrier to their own achievement of parity. Decades of research prove otherwise.[18]

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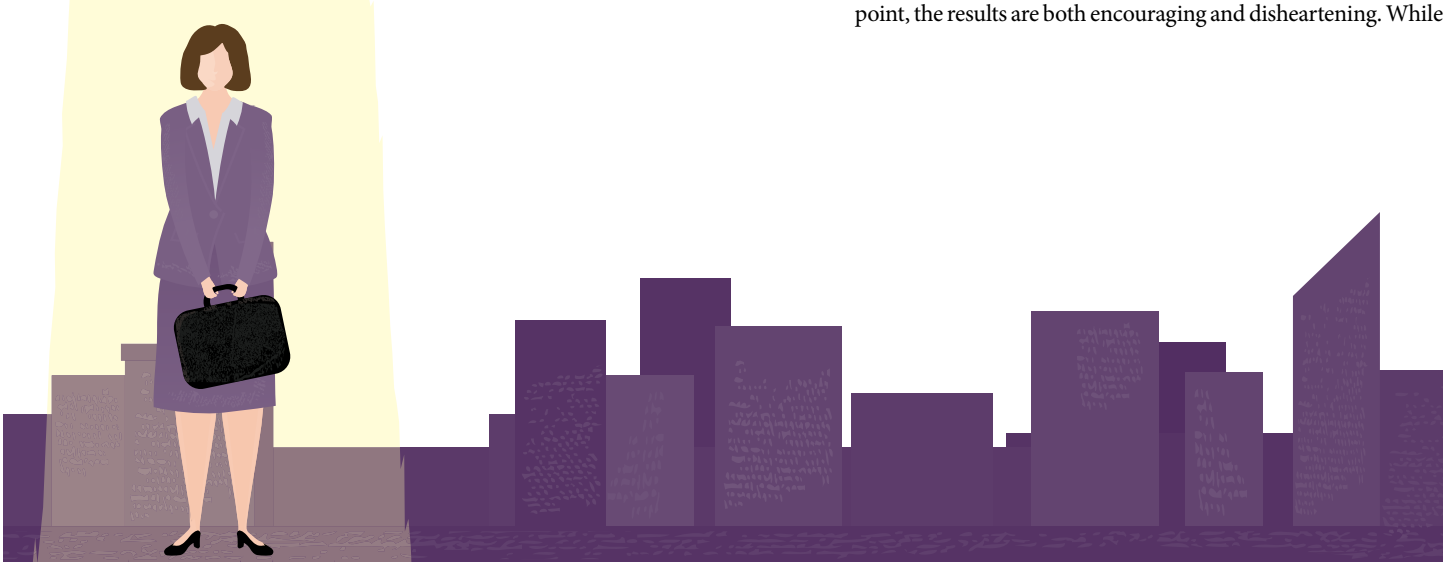
Conclusion

Over the 10-year period that NAWL has been tracking the percentage of women equity partners, the numbers have barely moved. Especially in this year in which the NAWL Challenge was intended to be met, it is disappointing that the slight improvement in the numbers do not seem to reflect a more inclusive legal profession for all lawyers. As stated in the First Annual NAWL Survey: "At this point, the results are both encouraging and disheartening. While



Response rate

It is axiomatic that what is not measured is not accomplished. Law firms know this well. Most law firms, for example, articulate billable hour expectations and targets for matter originations to drive profits and provide measurable data that is factored into compensation decisions. Yet, when it comes to diversity and inclusion metrics, numbers are harder to find.

Since its inception, the survey has been sent to the largest 200 firms in the country. As noted in the chart below, in 2008, the year with the highest response rate, 69 percent of the firms responded to the survey. By 2012, the response rate dropped to 54 percent and has declined since then.

This year, 73 law firms responded, a response rate of 37 percent. Like previous years, not one question was answered by 100 percent of the respondents. Many respondents did not provide a response to the most critical questions regarding law firm equity partner metrics and compensation, nor inquiries such as the total number of associates in their firm.

Appendix on survey methodology

The NAWL Survey was sent in February, 2015, to the 200 largest firms in the United States.[21] The top 200 law firms are selected based on the compilation provided annually in The American Lawyer, which ranks law firms according to measures of financial performance that includes profits per partner and revenue per lawyer. The firms are divided into the categories of: the AmLaw 100 (the top 100 firms as measured by financial performance) and the Second Hundred (the firms which rank 101-200 in financial performance). In referring to AmLaw, the AmLaw 100, and the Second Hundred, NAWL is referencing survey respondents that fall within these categories.

To measure representativeness of the Survey sample, we compare Survey respondents to the population, the 200 AmLaw firms. Of the 200 firms contacted, 73 responded.

On average the typical respondent to this year's NAWL Survey may be different than the typical AmLaw 200 firm. In this year's NAWL Survey, there are more AmLaw 100 firms responding, 42, than Second Hundred Firms, 31.

The typical firm that responded to this year's NAWL Survey has a higher total lawyer count, 511 lawyers, than the median firm in the AmLaw 200, 436 lawyers.

Measured by four financial indices published by AmLaw, the typical NAWL 2015 participating firm is slightly larger and more profitable than the typical non-participating firm. First, the typical (median) participating firm, has a higher gross revenue ($320,500,000) than the typical non-participating firm ($306,500,000). Second, the typical participating firm is slightly more efficient in terms of revenue per lawyer ($715,000 vs. $710,000). Third, the typical participating firm has a higher net operating income than the typical non-participating firm, $109,500,000 and $99,000,000 respectively. Finally, the typical participating firm is more profitable per equity partner. The typical participating firm earns $905,000 in profits per equity partner, slightly larger than the typical non-participating firm's $880,000.

We ran quality checks to verify survey responses. In doing so, we identified nine respondents that each had an implausible response to question 7, which asked firms how many equity partners they have by gender and by the year they graduated law school. Each of these respondents had conflicting responses to the subparts of question 7; accordingly, we dropped responses from these nine firms when we created analyses involving equity partner counts. We refer to the set of responses without these nine respondents as the Equity Partner Subsample. Other than this modification, all analyses use the full sample of data received.

Total survey respondents by year

Year	Requests	Responses	% Responses	Y-o-Y Change	% Change
2006	200	103	52%		
2007	200	112	56%	5%	9%
2008	200	138	69%	13%	23%
2009	200	116	58%	-11%	-16%
2010	200	117	59%	1%	1%
2011	200	121	61%	2%	2%
2012	200	107	54%	-7%	-12%
2014	200	92	46%	-8%	-14%
2015	200	73	37%	-10%	-21%

Without addressing the institutional barriers to women succeeding in parity with men, Women's Initiatives will continue to disappoint

there has been marked improvement in the number of women equity partners from the last generation of lawyers to this one — comparing women who graduated before 1980 with those who graduated between 1980 and 1995 — there is a considerably lower percentage of equity partners than the number of women law school graduates would predict.

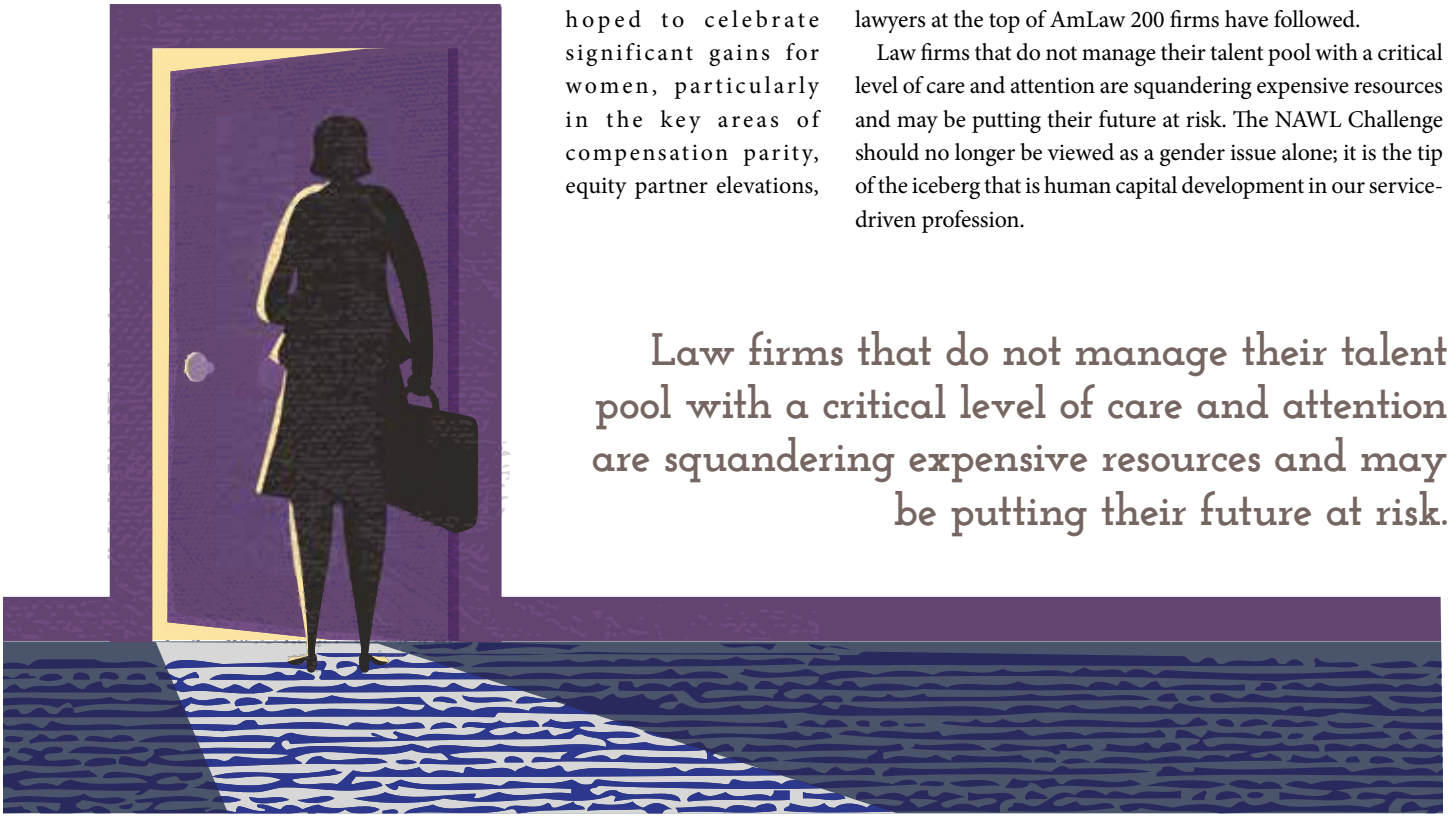
This is an especially striking finding given that the number of women and men who start out as associates in the large law firms is roughly the same, and has been for a number of years. In addition, these data cannot tell us whether the somewhat higher number associated with the most junior level of equity partner represents a meaningful increase in the rate at which women lawyers are currently achieving and maintaining the position of equity partner or whether, as these younger women progress in their legal careers, there will be a noticeable loss of women from the ranks of equity partnerships. One reason why NAWL intends to complete its Survey on an annual basis is to be able to address such questions with meaningful trend data."[19]

At a time when NAWL hoped to celebrate significant gains for women, particularly in the key areas of compensation parity, equity partner elevations, and participation in top governance committees, we, instead, are reporting little change.

The legal profession has learned a great deal about diversity and inclusion since the NAWL Challenge was first issued in 2006. We have the benefit of many studies that prove a clear business case for gender parity, demonstrate that women generally leave law firms only after all efforts to succeed have failed, and demonstrate that, when women do leave, they are generally successfully employed elsewhere.[20]

We also know that the legal profession is changing dramatically. Clients are demanding a stronger voice in the way their outside lawyers manage their legal issues and their bills. Equity partner opportunities are narrowing for both men and women, and the compensation gap between those at the senior levels and those at the junior levels has never been higher. Technology has introduced competitive threats to services that lawyers have historically performed, but now are available at the download of an app. Younger lawyers are paying attention to these dynamics, questioning the value of following the same traditional path that lawyers at the top of AmLaw 200 firms have followed.

Law firms that do not manage their talent pool with a critical level of care and attention are squandering expensive resources and may be putting their future at risk. The NAWL Challenge should no longer be viewed as a gender issue alone; it is the tip of the iceberg that is human capital development in our service-driven profession.



Law firms that do not manage their talent pool with a critical level of care and attention are squandering expensive resources and may be putting their future at risk.

Endnotes

1 The data is analyzed by Russell Bittmann, Ph.D. Candidate in Economics at the University of Chicago. This is Russell's third year assisting with the NAWL Survey.

2 Of importance, the NAWL Challenge was widely reported and influenced other organizations seeking to advance opportunities for women in the profession. For example, at the 2009 Women's Power Summit on Law and Leadership, convened by the Center for Women in Law at The University of Texas School of Law, the Austin Manifesto was adopted by acclamation. Through the Austin Manifesto, the attendees at the Women's Power Summit pledged: "…to identify goals and timetables that are specific, measurable, achievable, relevant, and trackable. We commit to achieve no less than 30% women equity partners, tenured law professors, and general counsel by 2015…"

3 Report of the First Annual NAWL National Survey on Retention and Promotion of Women in Law Firms, (October 2006), at 1.

4 Mark Roellig and Catherine Simes, "Storm on the Horizon: Implications of the Growing Diversity Disparity Between Corporate America and their Law Firms," (July 2015), http://www.lcldnet.org/media/mce_filebrowser/2015/07/28/Article_-_Storm_on_the_Horizon_-_Final_07.24.15.pdf.

5 Catalyst Knowledge Center, "Women in Academia", (July 9, 2015). http://www.catalyst.org/knowledge/women-academia. The summary further noted that 32.5% of women faculty are in non-tenure track positions compared to 19.6% of men faculty.

6 Julie Triedman, "A Few Good Women," The American Lawyer, at 38 (June, 2015). Her reference to women's initiatives in law firms is attributed to the NAWL Foundation 2012 study, Report of a National Survey of Women's Initiatives: The Strategy, Structure and Scope of Women's Initiatives in Law Firms.

7 See, e.g.: Major, Lindsey & Africa, "2014 Partner Compensation Survey"; Aaron Vehling, "Meager 4% of Wall Street Attorneys are Female Partners," Law360 (April 20, 2015).

8 Also note that this percentage drops considerably when viewed against the entire population of AmLaw 200 firms: a total of only 23.5% provided equity partner data. For analyses regarding equity partners, we use a subsample of the data, the Equity Partner Subsample. See Appendix on Survey Methodology.

9 Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms, (February 2014), at 8.

10 Id. at 15-16.

11 In 2006 and 2015, each firm reported median compensation by position. The 2006 first NAWL Survey summarized compensation by presenting the average of these responses. In this 2015 NAWL Survey, compensation is summarized by presenting the median of these responses.

12 The question about client succession also included an open-ended component for those whose responses did not fit within the multiple choices offered. Of the 33 Firms who provided additional information, most described varying combinations of consultation between the current relationship partner and the practice group leader(s). Less than half mentioned client input as a part of the process.

13 These issues and related recommendations were discussed in depth in the report issued by the American Bar Association Task Force on Gender Equity. See: Lauren Stiller Rikleen, Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation, (American Bar Association 2013). See also: Actions for Advancing Women in Law Firm Leadership and in the General Counsel's Office, Report of the National Association of Women Lawyers, Report on Second Summit, (July 2013).

14 A recent study of billing patterns and price realization in law firms revealed significant differences by gender, including females being billed at lower rates compared to their male counterparts, even as female partners billed more minutes in a day. See: Sky Analytics, White Paper – Gender Study of Legal Spend Management (Spring 2014).

15 See, e.g. information available on the Diversity & Flexibility Alliance website, http://dfalliance.com/research/

16 Report of the NAWL Foundation's National Survey of Women's Initiatives: The Strategy, Structure and Scope of Women's Initiatives in Law Firms, (November, 2012).

17 Id. At 5.

18 See, e.g., sources cited in: Lauren Stiller Rikleen, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*, (Thompson West 2006); Holly English, *Gender on Trial: Sexual Stereotypes and Work/Life Balance in the Legal Workplace*, (Law Journal Press, 2003); Judith S. Kaye, "Women Lawyers in Big Firms: A Study in Progress toward Gender Equality," 57 Fordham L. Rev. 111 (1988-1989); Joan C. Williams, *Unbending Gender: Why Family and Work Conflict and What To Do About It*, (Oxford University Press, 2000); Lauren Stiller Rikleen, *Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation,* (American Bar Association 2013); Boston Bar Association Task Force on Professional Challenges and Family Needs, "Facing the Grail: Confronting the Cost of Work-Family Imbalance," (1999).

19 Report of the First Annual NAWL National Survey on Retention and Promotion of Women in Law Firms, (October 2006), at 4 and 5.

20 See, e.g.: "Women Lawyers and Obstacles to Leadership: Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms" (Spring, 2007); McKinsey & Co., "Women Matter: Gender Diversity, A Corporate Performance Driver", (2007); Center for Talent Innovation, "How Diversity Drives Innovation: A Compendium of Best Practice," (2014); Michael Sinkinson, "The Business Case for Diversity," The Wharton Journal, (April 6, 2015).

21 As noted in prior NAWL Surveys, although most lawyers in private practice work in smaller settings, focusing on the top 200 firms provides a year-to-year benchmark, and serves as a bellwether for the profession as a whole.

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Opportunities to Build a National Network via programs that bring women together, both nationally and internationally, **opening doors to an array of business development opportunities**.

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BRANDING & NETWORKING:

Rapid-fire career development strategies to help you reach the top

By Shauna C. Bryce and Jared Redick

If you're an established lawyer, then you may already have a good sense of where you want to be in five, 10 or 20 years. If you're a current law student, then you may not have even decided what type of law you want to practice. Regardless of your category – or whether you're somewhere in between – now is the time for you to be thinking about your long-term career development.

To reach the top of the legal sector, you have to be more than a technically excellent lawyer. You also have to be an entrepreneur running a business called "You." Like any entrepreneur, you'll need to invest

This article is an adaption of two of six topics from Eye on the C-Suite: A Crash Course for Your Future. *We were asked to give to the presentation in June 2015 to the Harvard Club of Washington, D.C., which serves more than 20,000 Harvard alumni from all divisions, including Harvard Law School and Harvard Business School.*

in that business. Give your investment time to grow so it will be ready when you need to draw on it. It's never too late to start, but the sooner the better. And, ideally, as you rise in seniority, you'll be able live off the interest of your investment.

Personal Branding

You've probably heard the term, but what is a personal brand?

Your personal brand is what you stand for. If we say "Steve Jobs," "Oprah Winfrey" or "Tesla," you immediately think of what they stand for and aspects in which they excel. That is what we mean by personal brand. Brands can be good or bad, and they differ among audiences.

It's easy to see why a celebrity needs a brand or why a company has a branding statement, but it can be less clear why an attorney – especially a law student or entry-level attorney – needs one. That reason is to define yourself in the market.

Think of it this way: When a hiring attorney is sifting through 300 resumes looking for an intern, what reason does she have to pick up yours? When a lawyer refers out a client, what reason does she have to call you? That reason is likely your strong personal brand, as explicitly and implicitly articulated in your career documents portfolio.

How do you identify your personal brand?

First, recognize two things: objective self-assessment is difficult, and, second, you cannot be all things to all people.

To transcend these common roadblocks, answer these questions:

- What are the top three things you want an employer to know about you?
- Why should someone hire you or work with you?
- What do you bring to the table? What value do you add?
- Who is your ideal client, internally or externally?
- What types of problems do you solve for those ideal clients? And how do you do it?

'It's easy to see why a celebrity needs a brand or why a company has a branding statement, but it can be less clear why an attorney – especially a law student or entry-level attorney – needs one.'

- What are five words supervisors, clients and other people use to describe you?
- What do they focus on in performance evaluations and letters of recommendation?

It's important to recognize that "bad" answers can be as important as positive ones. Negative feedback is critical because it lets you know what you need to work on to turn your brand around. And you should also recognize that your brand will change over time:

- As a junior professional, decision-makers look at your potential.
- As a mid-level professional, decision-makers look at your technical skill.
- As a senior-level professional, decision-makers increasingly evaluate your leadership style, values, and how you'll fit into the executive team.

Your brand will necessarily shift as well.

Networking

Networking is the No. 1 way to find new jobs and career opportunities. According to the U.S. Bureau of Labor Statistics, 70 percent of all jobs are found through networking rather than job listings or postings.

However, networking can be intimidating, and one reason is we tend only to think about it when we're

Shauna C. Bryce is a graduate of Harvard Law School with 20 years in law and legal careers. She is a career strategist for lawyers at all levels — from law students to executive-level attorneys in Global 100 law firms and Fortune 500 businesses in the U.S., Europe and Asia. As a lawyer, she worked in the Manhattan flagship office of a Global 100 law firm and served on the hiring committee of an Am Law 200 law firm. Her advice column, Ask the Hiring Attorney®, is published by Bloomberg Law. She's the author of several books and the Bryce Legal® Career Advice for Lawyers blog. www.BryceLegal.com

Jared Redick works with stealth job seekers in the Fortune 50 and beyond – using the writing process as a tool for personal discovery and professional positioning. As an executive recruiter in New York and San Francisco for two nationally retained executive search firms, he conducted searches for Fortune 15 companies, top ten law firms and leading nonprofits. He is the creator of Jared Redick's Job Description Analysis tool, presently used by a leading university. www.TheRedickGroup.com

Networking is the No. 1 way to find new jobs and career opportunities

looking for a new job. Networking is, in fact, a long-term and continuous effort of building contacts, friends, allies and others who help each other reach their goals. It's a combination of quantity and quality, an effort to stay top of mind, and about "who you know." But networking is also about who knows you, and who thinks about you when opportunities open up – before those opportunities are publicly posted.

So again, ideally, over time your network grows and expands to include not just lawyers, but board members, C-level executives and others of all levels who might be able to influence the hiring process. Over time, you may have hundreds of professionals who understand your brand and who think of you when the perfect opportunity comes along.

Networking is critical whether you're just starting out, or you're a lawyer with 10,15 or 30 years of practice experience. The more senior you are, the more likely you'll be a candidate for positions emphasizing leadership, authority, and trust. In those cases, employers and clients are likely to hire a lawyer with whom they already have a direct relationship, or who is referred by someone with whom they have a relationship.

SO HOW DO YOU START NETWORKING?

Calling people you don't know to ask them to help you get a job at their employer is *not* networking. That's "calling people you don't know to ask for a job." Not surprisingly, people don't like that! Instead, true networking is reciprocal.

To build a robust professional network, start with your existing network and then build from there:

- ***Reconnect with existing contacts*** like old colleagues and classmates either through a social platform such as LinkedIn or directly through an email. Your efforts can range from lunch, to a chat on the telephone, to a simple email.
- ***Branch out to people who are likely to respond positively*** and with whom you have an obvious connection, like fellow alumni, fellow bar association members, lawyers in your geographical area and lawyers in your practice area (regardless of geography). LinkedIn is a great platform for this. Introduce yourself. Say hello. Don't ask for assistance in your job search until you've built a relationship.
- ***Look for opportunities to promote*** your contacts, as well as people you want to meet. Congratulate them on their courtroom wins. Share their LinkedIn posts. Refer work their way. Recommend them for opportunities that seem like a good fit. Offer to introduce them to contacts that may be beneficial, including recruiters.
- ***Have something to offer***. Again, your work on building your personal brand will pay off. Understand the value you offer as a lawyer, as well as the value you offer in other contexts. Find points of affinity with others. For example, are you a rock climber? World traveler? Pastry chef? Look for ways to be a thought-leader, mentor, volunteer or simply be of assistance.
- ***Keep your name top of mind*** by reaching out periodically. You need people to remember you when opportunities cross their paths. How often you need to reach out to an individual will depend upon your relationship with that person, along with your goals. Maybe an annual holiday card is all you need. But if you stumble across an article you know would be interesting to that person, send it along! This is a great, low-risk excuse to say hello.

'Negative feedback is critical because it lets you know what you need to work on to turn your brand around. And you should also recognize that your brand will change over time.'

Not everyone networks the same way. Some people can work a room and enjoy networking on a large scale. Some people network through golfing or charity events. Some network through one-on-one lunches. Others don't. Some people need an excuse to network, especially to meet people they don't know. Writing an article lets you cold-contact people, leading to quotes and publicity for your article, but also to interesting conversations that may have long-term benefits. If you need one, build a script you can use as a basis for your call.

If you're an introvert who wants to better work a room, then quality networking events are a great place to practice. By definition, everyone there *wants* to meet new people, so they will be receptive. Other shy or introverted attendees may be relieved

Keep your name top of mind by reaching out periodically

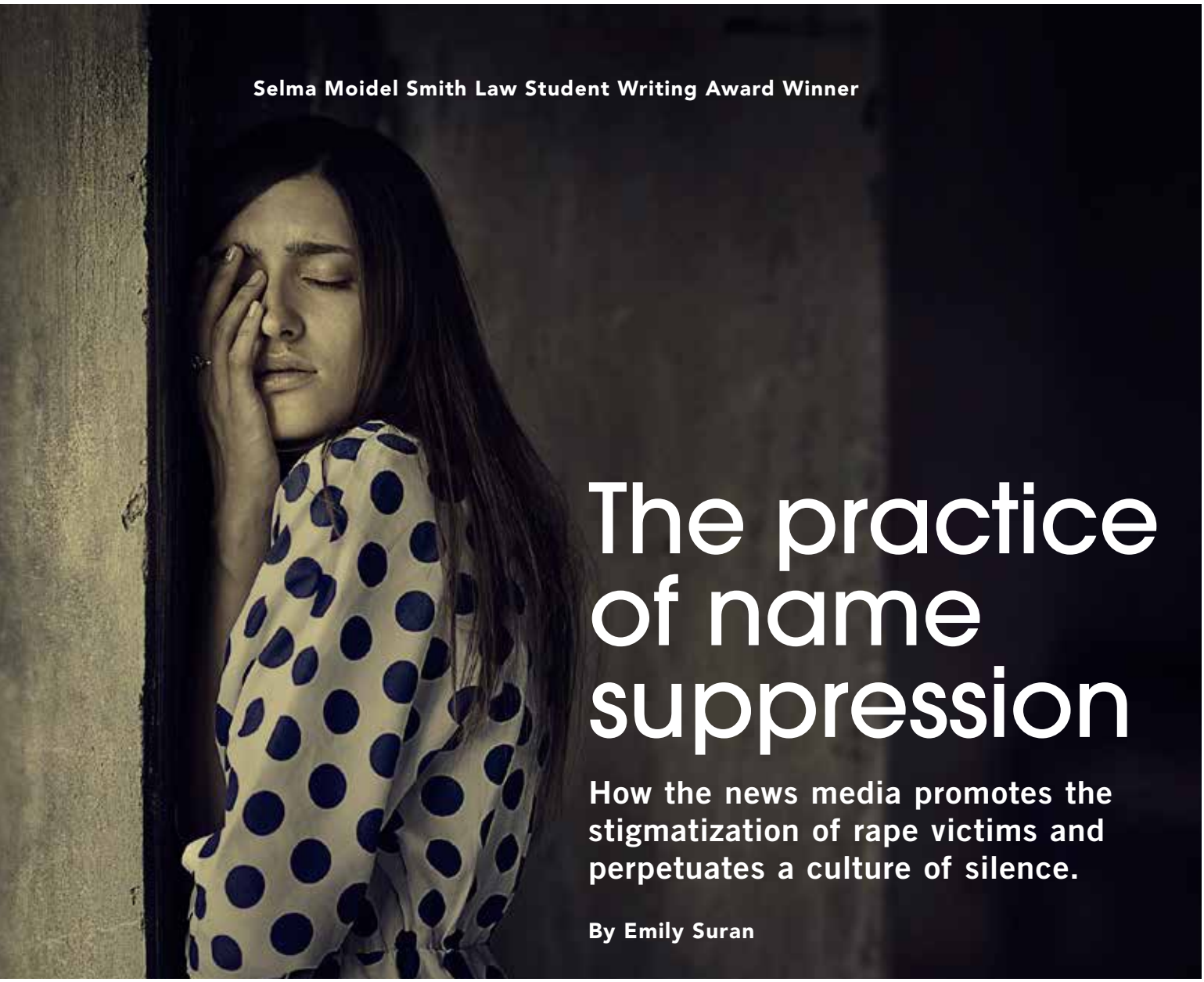
you're taking the initiative! Networking events aren't effective job search or career development tools per se, but they are solid training grounds for becoming a better conversationalist. They can help you become comfortable about talking about yourself and what you do, as well as asking others about themselves.

What's important is not the method you choose to build your network. What's important is that you choose a method natural to you. If you feel uncomfortable and forced, then you're going to come across as uncomfortable and forced. Likewise, if you're comfortable and genuinely enthusiastic, then you're going to come across that way.

'Some people can work a room and enjoy networking on a large scale. Some people network through golfing or charity events. Some network through one-on-one lunches.'

Notice that when you effectively network, you simultaneously move forward on short-term goals ("I need a job in six months" or "I need to meet lawyers in my new geographical area"), mid-term goals ("I want to build expertise in this trending practice area" or "I want to build a portable book of business") and long-term goals ("I want to be a nationally recognized subject matter expert" or "I want to be general counsel of a multinational biotech").

Networks need to be nurtured over time so that they are robust when it comes time for you to make an "ask." Some kinds of asks – like introductions to a hiring attorney or for some other opportunity – require your contact to put her own reputation on the line on your behalf. This is why it's a mistake to wait until you're job search to build your network. To be most effective, your network must be in place and ready to help when you need it. ■



Selma Moidel Smith Law Student Writing Award Winner

The practice of name suppression

How the news media promotes the stigmatization of rape victims and perpetuates a culture of silence.

By Emily Suran

Introduction[4]

On April 17, 1991, *The New York Times* did something unusual: It printed the name of Patricia Bowman, an alleged rape victim.[5] While unusual, the editorial choice was not unreasonable. The man accused (and readily named) was a Kennedy.[6] The location of the alleged crime was the Kennedy estate.[7] And other news outlets, including NBC Nightly News, had already identified the woman by name.[8] But even though the alleged crime was the sort that unquestionably sparked public interest, and even though the identity of the victim was already public knowledge, the outrage against *The Times* for its decision to use Ms. Bowman's name was immense.[9]

The Times met opprobrium both from within and without the newspaper.[10] An assistant managing editor of *The Times* justified the paper's decision by pointing to the general duty of newspapers to tell readers what they know. He noted "whenever a newspaper withheld a complainant's identity, it found itself in the 'uncomfortable position of naming the accused when we are not naming the accuser.'"[11] Granted, the outrage was about more than the woman's name; the article also made

Emily J. Suran graduated from The University of Michigan Law School in May 2015. Emily received her B.A. in English from Yale University in 2012. While at Yale, Emily served as a Communication and Consent Educator and helped create and lead the pilot workshops on bystander intervention. At Michigan Law, Emily was an active board member of the Women Law Students Association and the Editor-in-Chief of The Michigan Journal of Gender & Law, for which she received the Journal Award for Exceptional Service. The winning paper is an adaptation of a paper Emily submitted for Michigan Law's 'Problems in Media Law' seminar. Emily would like to thank Professor Len Niehoff for encouraging her to explore this topic.

statements that could be construed as victim-blaming.[12] However, those admittedly dubious bits of background information were just a distraction from the more central controversy over whether or not a victim should ever be named. "[S]ome people applauded the decision by the NBC News president, Michael G. Gartner, to use the woman's name, saying that it would help destigmatize rape victims."[13] Others criticized *The Times* for using the NBC broadcast as an excuse to make an unethical and inhumane choice.[14] Some even accused *The Times* of starting a trend that would "terrorize victims into not reporting a rape to the police."[15] The latter criticism could be extremely important from a public policy perspective, but it is unfounded.[16] Sexual crimes are notoriously underreported to the police, and the general policy of newspapers to not print the identities of victims has not been shown to impact reporting rates.[17]

Although there is a powerful line of thought that naming victims will lead to fewer women reporting, this hypothesis has never been systematically tested.[18] Given the consistently low numbers of reports, the control practice of withholding names clearly has not effectually encouraged more reporting—perhaps because the decision to not report has more to do with the initial trauma than some subsequent trauma inflicted by a media revelation.[19] Arguably, the suppression of identity by the news media exacerbates the trauma by confirming the stigmatic nature of the event.[20]

In this paper, I will explore the rationale for name suppression from a legal perspective and an industry perspective. By examining Supreme Court and state court opinions, I aim to prove in Section II of my paper that there is no legal reason for the practice of name suppression. The courts have never come close to asserting that names should be published, but by offering consistent protection against privacy lawsuits, the courts have made clear that the news media has the legal upper hand to set and apply its own standards. And so in Section III, I aim to expose the normative flaws in the journalistic tradition of name suppression. I argue that the tradition relies on a patronizing view of the privacy doctrine and dehumanizes victims on an individual and societal level. In Section IV, I will delve into the troubling connection between the suppression of names and the suppression of the subject matter. By normalizing anonymity and highlighting the speech of self-identified survivors as aberrant, I contend that the news media perpetuates a culture of silence. In Section V, I will explore the growing grassroots movement of victims naming themselves in public forums. These women are using their personal right to privacy and their personal right to free speech to create a powerful change in the zeitgeist—a change that I believe illuminates the way for my argument in Section VI. In Section VI, I propose that the news media make a substantial departure from its long-held tradition.

Privacy qua rape shields yield to the constitutional freedom of the press

Because the gravamen of the claimed injury is the publication of information, whether true or not, the dissemination of which is embarrassing or otherwise painful to an individual, it is here that claims of privacy most directly confront the constitutional freedoms of speech and press.[21]

Three states have passed laws that prohibit the media from publishing the names of sex crime victims: Florida, Georgia, and South Carolina.[22] The idea behind these laws is to protect the victim from revictimization by the public. The rationale behind these so-called media rape shield laws is similar to the one behind the prosecutorial rape shield laws. But while the prosecutorial rape shield laws are designed to protect an alleged victim from insidious (and irrelevant) questions on the stand and thereby safeguard the integrity of a judicial inquiry into

The general object in view is to protect the privacy of private life, and to whatever degree and in whatever connection a man's life has ceased to be private, before the publication under consideration has been made, to that extent the protection is to be withdrawn . . . [I]t is not perhaps desirable even to attempt to repress everything which the nicest taste and keenest sense of the respect due to private life would condemn.[1]

— Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*

Three states have passed laws that prohibit the media from publishing the names of sex crime victims: Florida, Georgia, and South Carolina[22]

a specific crime of violence,[23] the media rape shield laws have a misguided purpose and a muddled effect. Not only do the media rape shield laws assume the premise that victim identification will lead to victim blaming, but they also lead to a stilted system of reporting that biases public opinion and could thereby undermine the integrity of due process.[24]

In addition to being conceptually flawed, the media rape shield statutes fail to provide plaintiffs with much legal muscle for lawsuits. While the courts do not uniformly declare the statutes and policies protecting victim names to be facially unconstitutional, the consensus is that a free press cannot be sanctioned for publishing lawfully obtained information that is of public interest.[25] Given the stability of the case law in this area, it seems almost certain that any plaintiff who brings a claim for damages based on media rape shield statutes (or a claim based on the common law privacy these statutes are intended to protect) will lose.[26] The generic, vaguely defined right to privacy is simply not compelling enough to counter the concrete weight of the First Amendment.[27]

The United States Supreme Court decisions in *Cox Broadcasting*, 420 U.S. 469 (1975) and *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) essentially settled any question of whether privacy rights could overcome the First Amendment in favor of the news media.[28] In *Cox Broadcasting*, the court decided that the state could not impose sanctions on a newspaper where the newspaper obtained the victim's name from public courthouse records.[29] The court noted that if the State wants to protect information from being published, the State should take steps to avoid public documentation at the outset–because the privacy interest, exist though it may, ceases to be compelling when the information is publicly accessible.[30] In *Florida Star*, the name of the victim was accessible, as well; in this case, the newspaper learned of the victim's name via a publicly documented incident report.[31] The court in *Florida Star* affirmed the context- and fact-specific route taken in *Cox Broadcasting*: "We continue to believe that the sensitivity and significance of the interests presented in clashes between First Amendment and privacy rights counsel relying on limited principles that sweep no more broadly than the appropriate context of the instant case."[32] In both cases, the court emphasized the fact that the State was hypocritically attempting to sanction a newspaper for publishing information that the State itself had failed to protect.[33] The holdings, therefore, were based on the

The right of privacy is unquestionably limited by the right to speak and print . . . . [T]he law considers that the welfare of the public is better subserved by maintaining the liberty of speech and of the press than by allowing an individual to assert his right of privacy in such a way as to interfere with the free expression of one's sentiments, and the publication of every matter in which the public may be legitimately interested.[2]

— Pavesich v. New England Life Ins. Co.

absurdity of the State's position not the untouchable right of a free press. The dicta, however, has had broader implications for the news media.

While the court certainly did not assert that names ought to be printed when they are available in the public record, the court expressed its desire to avoid a self-censorious press: "We are reluctant to embark on a course that would make public records generally available to the media but forbid their publication if offensive to the sensibilities of the supposed reasonable man."[34] The court deliberately avoided making a holding on "whether the State may ever define and protect an area of privacy free from unwanted publicity in the press"[35] but the court's wary treatment of the proposed privacy concerns cast doubt on whether such privacy could ever be meaningfully invoked.

Despite the narrow holdings in both *Cox Broadcasting* and *Florida Star*, the decisions are referenced in nearly every opinion where a lower court is deciding a privacy lawsuit against a newspaper. In *Macon Telegraph Pub. Co. v. Tatum*, the Supreme Court of Georgia held that the United States and Georgia Constitutions protected the newspaper from civil liability for a sexual assault victim's invasion of privacy claim.[36] Tatum did not bring a claim based on a rape shield law violation, but rather on the common law invasion of privacy tort. Despite the different standards, the court looked to *Florida Star* (the state cannot constitutionally punish publication of lawfully obtained truthful information of public interest unless there is a compelling state interest)[37] and *Cox Broadcasting* (to determine a compelling state interest, the court must weigh the individual right to privacy against the public's right to know and the press's right to publish)[38] in order to reach its conclusion that Nancy Tatum lost her right to keep her name private when she shot and killed her perpetrator, and consequently made herself an object of public interest.[39] Though the homicidal retaliation certainly played a role in the decision, an earlier case from Georgia established a precedent that protected a newspaper's right to print the names of victims simply because of the public's interest in crimes and legal investigations.[40] In *Tucker v. News Publishing Co.*, a student sued a newspaper after it published his name in a story about an attack on school grounds that was then under legal investigation.[41] The court denied the student a tort remedy: "[T]he commission of a criminal

In addition to being conceptually flawed, the media rape shield statutes fail to provide plaintiffs with much legal muscle for lawsuits

act and the response of law enforcement officials thereto is a matter in which the public, as well as the victim, has an interest."[42] In *Star-Telegram, Inc. v. Doe*, the court in Texas, like the court in Georgia, held that a newspaper could not be liable for invasion of privacy based on public disclosure of embarrassing facts where the facts are of legitimate public concern.[43] In this case, a woman sued a newspaper after it published identifying features—not her name—in a story about a sexual assault.[44] In the dicta, the Texas court asserted that requiring the media to cull through all its facts to determine which ones were of legitimate public interest and which were not would be an impossible task and ultimately do the public a disservice.[45]

The courts have made it practically impossible for plaintiffs to succeed on invasion of privacy claims (regardless of whether the claim is bolstered by a media law rape shield statute) where a newspaper has printed truthful and lawfully obtained information. The public has an interest in crimes and the ensuing legal investigations, and it is not difficult to argue that the identity of the victim is highly relevant to a story about the crime. So from a legal perspective, newspapers have little to worry about when they print the names of victims. And yet, most newspapers choose to do the one thing the Supreme Court feared most: they censor themselves.

A tenet of journalism holds that we ought to come as close as possible to printing the facts as we know them. Going against this rule in the case of rape victims feels to me very much like participating in the onus, the stigma, that I find so unjust.[3]

— Geneva Overholser, Op-Ed., *Why Hide Rape?*, N.Y. TIMES

The news media's tradition of name suppression

News organizations' widely observed practice of withholding the names of rape victims is one of modern journalism's few conspiracies of silence. Most of the nation's news organizations routinely do not publish the names of those who say they have been raped, either when the rape is reported or when the victim testifies at a public trial.[46]

In a news article published shortly after the *Florida Star* decision came out, the *New York Times* explored the ethical conundrum newspapers face when deciding whether or not to publish the identities of rape victims.[47] The article suggests that up to 95 percent of newspapers opt to suppress the names of victims, even though, as one voice from within the industry pointed out, "'It goes against everything we believe as journalists in terms of commitment to printing the facts as we know them.'"[48] Geneva Overholser, then an editor of *The Des Moines Register*, contended that the news media's treatment of rape victims not only

contradicts journalistic principles, but also contradicts feminist ones. By acting on the assumption that identification is "devastatingly damaging," newspapers implicitly promote that chauvinistic conception.[49] Despite her personal beliefs, she "added that her paper's policy is not to publish the names and that changing the policy would prompt 'great dissent' among her staff and readers."[50]

But without a convincing legal basis for suppressing the names of victims, the news media is hard-pressed to come up with a cogent journalistic basis. It does not take a constitutional law expert to recognize that a general practice of self-censorship is hostile to the goals of the First Amendment. Of course, one could argue that news organizations are free to draw ethical lines as they please, but the rationale behind the self-imposed rape shields is flawed for the same reasons as is the rationale behind the state-imposed rape shields.[51] The self-imposed media rape shields expose a hypocritical system wherein the news media has opted to violate its mandate to disseminate truthful information to the public.

The media does not have to publish every truthful fact, and often the media does not do so for important reasons. The media often protects the names and images of children regardless of newsworthiness. In general though, withholding information is "an alien position" for journalists.[52]

The policy implications: suppressing names or suppressing a subject?

The practice of withholding the names of sex crime victims may have begun as an effort to avoid exacerbating the effects of a traumatizing event.[53] But the news media often uses its editorial discretion to publish the names of victims of traumatizing events. By electing to make name suppression the default practice (as opposed to just an editorial option) for the victims of sex crimes, the news media promotes a perception that the victims of sex crimes are fundamentally different from the victims of other violent crimes.

The premise begs the question: What is fundamentally different about the victims of sex crimes? There is no satisfactory answer. The main difference, it seems, is the level of stigma attached to the victims. News organizations have almost uniformly chosen to respect and condone that stigma by treating the victims of sex

In withholding the identities of victims, journalists presume that identification will lead to harassment and shame and revictimization

crimes differently. The news media have created a self-fulfilling cycle wherein they do not print the names of victims because of the stigma and by not printing names they perpetuate the stigma.

By working under the assumption that women want to be anonymous, that women want to be silent, the news media perpetuates a problematic trope of a sex crime victim as a faceless, nameless object that things happened to. By withholding names, the news media chooses to tell a story of victimhood.[54] Conversely, a story that identifies a victim by name would reaffirm that person's individual autonomy, and thus allow a different story to be told: a story of persistent personhood in the face of violence, a story of survival, a story that might inspire instead of condemn. A newspaper that routinely declines to print the names of victims tells its readers that what happened to these people needs to be talked about in veiled terms; that these victims, unlike other victims, need a shroud of secrecy.

Because the gravamen of the claimed injury is the publication of information, whether true or not, the dissemination of which is embarrassing or otherwise painful to an individual, it is here that claims of privacy most directly confront the constitutional freedoms of speech and press.[21]

— Cox Broad. Corp. v. Cohn

The lack of a custom suppressing the name of an alleged perpetrator illustrates the normatively flawed reasoning at play in this journalistic practice. Until convicted, the alleged perpetrator should be the one who warrants protection from the public's judgmental eye. And yet, his name is always published. This practice cannot be justified as necessary to protect society; after all, he is not confirmed guilty.[55] His name is published because there is no story without any names. Adding another name to the story would not only be in the public's interest, but it would also fight the invisibility of victimhood. The practice of suppressing the names of victims is effectually an allocation of shame. The news media makes a paternalistic decision to suppress the names of victims for the purpose of protecting them from having a personal shame become a public one.[56] In making this decision, the news media intrinsically engages a view of sexual violence that blames the victim.[57]

In withholding the identities of victims, journalists presume that identification will lead to harassment and shame and revictimization. But the crime already happened. The news media's general consensus to protect the victims from further harm "reeks of the desire to suppress the subject, to pretend rape doesn't happen to people we know."[58] By anticipating further harm to a victim, the news media creates a construct in which society is led to deduce that silence and non-identification are key to avoiding such future harm.

In a *New York Times* editorial, the public editor, Arthur S. Brisbane, wrote that protecting the privacy of victims is a social purpose that outweighs the human-interest element a name might add.[59] However, naming victims serves a quite broad social purpose that Mr. Brisbane seems to ignore. While many victims do not want to be named, the media's presumption and traditional assertion that they should not be named perpetuates a sociologically detrimental stigma. If names were always published, the stigma of victimization would correspondingly and logically reduce. Far from respecting the victims of sexual crimes, the media's self-imposed rape shield entrenches and formalizes the stigma attached to being a survivor of such a crime.[60]

Victims speak out

I had been far too silent, far too ashamed.
That night I told them everything.
For the first time I told my story and I was not ashamed.[61]

In 1989, Geneva Overholser urged women to speak out about the crimes committed against them.[62] In 2012, the nation's women suddenly seemed ready to heed her call. Angie Epifano's personal account of a rape and its aftermath was not the first of the genre, but it sparked a remarkable reaction.[63] Perhaps inspired by her graphic recounting of the crime and her barrier-breaking path to find solace, perhaps inspired by the numerous Title IX lawsuits that have been filed against colleges and

universities across the country, perhaps inspired by the social media-driven spirit of the times—staggering numbers of women have begun telling their stories in print and with names. The impact of names in breaking down the stigma of rape cannot be quantified. But it is undeniable that when one victim breaks through the rape shield to assert her identity as a survivor, more follow.[64]

Women survivors are recognizing that the general practice of suppressing names encourages the dangerous thinking that these experiences are ones that should not be shared. Not sharing, in turn, leads to a feeling of isolation—an isolation that feeds into the shame that prevents so many from reporting the crimes committed against them. By seizing a platform generally considered taboo, the women who name themselves as survivors are reclaiming agency from both the perpetrator of the original crime and the news media that would otherwise perpetuate their victimized status.[65]

When women name themselves, news organizations follow suit but with a caveat: they attach disclaimers.[66] The disclaimers perhaps mollify those who still believe that rape victims ought to not be named as a general rule. But to those who want to change the story being told, the disclaimers do a disservice. They highlight the voluntary speech of survivors as aberrant, as isolated incidences. The disclaimers confirm the general practice of suppressing the identities of victims and thereby work to defeat the progress these women are making. The choice to name oneself as a survivor of a sexual assault is still considered newsworthy in itself, separate from the newsworthiness of the crime. But the more women who name themselves, the less radical the choice to speak becomes and the more ridiculous these disclaimers appear.

We are now in an era of personal publicity; the average person can publicly assert her identity with relative ease and become an activist with the click of a mouse. In 1890, Warren and Brandeis could not have foreseen a society in which the majority of people have public personas. Their conception of privacy, at least in part, depended on the categorical differences between men who "may reasonably claim as a right, protection from the notoriety entailed by being made the victims of journalistic enterprise" and those "who, in varying degrees, have renounced the right to live their lives screened from public observation."[67] In the modern world, these differences are far less categorical. The court

The media does not have to publish every truthful fact, and often the media does not do so for important reasons

decisions in the 1990s deemed sexual assaults to be crimes that engaged the public interest,[68] and nowadays, with most people thoroughly documenting their lives online, a quasi-public figure argument might be compelling to counter privacy actions, as well.

A convincing argument can be made that the right to privacy and the First Amendment are rooted in the same principles.[69] The First Amendment protects free speech. It promotes self-expression and self-fulfillment through that expression. This underlying principle of the First Amendment connects to the underlying principle animating the right to privacy in an unexpectedly coherent way. Like the right to free speech, the right to privacy is meant to allow individuals to control fundamental aspects of their lives. The right to privacy protects the right of individuals to be autonomous and present themselves in public as they wish to appear. The right to free speech coalesces well with the right to privacy in that both rights promote individuals forming and expressing their identities. The women who are choosing to publish their identities as sexual assault survivors seem to have (perhaps subconsciously) seized upon this crux between the First Amendment and the right to privacy.

By speaking out, the victims of sex crimes present themselves in the public sphere as they wish to be presented. In using the freedom of speech to tell their stories and in compelling the news media to use the full freedom of the press, these women are not eschewing their right to privacy, but rather they are harnessing it to satisfy both their individual needs and the public good.

A proposed solution

The reality is that society still stigmatizes victims of sexual assault. Journalists thus face a difficult choice: should they abide by a policy that pushes society forward or policy that reflects the status quo? I propose that the news media abandon its pervasive policy of name suppression and instead abide by a default policy of publishing the entirety of the facts, as rigorously and accurately as possible. There are undeniably some cases where a victim's identity should be suppressed because of safety or judicial concerns,[70] but for these exceptional cases, the burden should be on the victim (or her lawyer) to assert the special need and justification for withholding her name.[71] The media should be pushing society forward, and forward is a world where victims do not have to hide behind *Anonymous*.

I am not ignorant of the fact that many women might consider public disclosure re-traumatizing. I am not ignorant of the fact that some women may not want their names to come up in a Google search, forever and indelibly connecting their identities with a crime committed against them. I am not ignorant of the fact that not every rape survivor wants to be an activist. But unlike Ms. Overholser in 1989, I am willing to sacrifice some of today's unwilling victims "eyes fixed on distant virtue."[72] The referenced virtue, after all, is no longer so distant.[73]

News organizations' widely observed practice of withholding the names of rape victims is one of modern journalism's few conspiracies of silence. Most of the nation's news organizations routinely do not publish the names of those who say they have been raped, either when the rape is reported or when the victim testifies at a public trial.[46]

—Alex S. Jones, *Naming Rape Victim is Still a Murky Issue for the Press*

The current policy of name suppression implicitly and explicitly fuels a culture of silence. A new policy—one that brings heightened public awareness to an issue that will not go away no matter how many rape shields we concoct—will compel victims and readers to question why anonymity seems so important. As stated above, I do not deny that there may be compelling reasons for anonymity, but generic privacy concerns rooted in a self-reinforcing stigmatic view of victimhood are not legally or sociologically compelling.[74]

Despite the burgeoning trend I touched upon in Section V, the culture around sexual violence is still largely one of silence. While many people applaud individual survivors for speaking out, those same people and more might consider printing names as a general rule to be appalling. But the news media plays a powerful role in shaping how stories are told and perceived. If publishing the names of victims were general practice and identification were the norm, the stigma would systemically decrease.

I sympathize with the many women who choose to not report and who would choose to not be identified if given the option. I do not argue against the right of a woman to make this personal choice. But I argue against the news media throwing its support behind one choice and thereby creating a social construct in which many women are encouraged to believe that they should not be identified.

By zealously keeping the victims of sexual crimes anonymous, the news media promotes the idea that we should not, as a rule, want our names tied to these types of crimes. The general practice of name suppression perpetuates a society in which sex crime victims are made to believe anonymity is the only way to move on with their lives. But anonymity is a double-edged sword. The media's traditional protection of victims promotes silence and instills a perception of rape as something that happens to nameless, faceless women. Not to me. Not to you. The control group of anonymity has yielded feelings of isolation and shame. The limited experimental group of identification has yielded feelings of solidarity and compassion. The experimental group of identified survivors has thus far been mostly voluntary, but in order to broaden its impact, I am wholeheartedly in favor of inclusion by default.

It is odd that women are both encouraged to report and encouraged to remain anonymous. If anonymity is the

The media should be pushing society forward, and forward is a world where victims do not have to hide behind Anonymous

goal, then reporting seems the wrong route to take. If we want to promote better reporting and better outcomes, the news media can play an admittedly controversial but undoubtedly powerful role. A significant number of women experience sexual violence but most of them feel alone in their experience. The media's imposition of anonymity has created a myth of a victim with no name or voice. Anonymity is a lonely state. If the news media chooses to start eradicating the myth that anonymity has fostered, higher rates of reporting and better outcomes for victims may result.

News organizations have a huge impact on the way society functions. I do not think a general presumption of printing names will be well received at first. But I think it could change the way bystanders perceive sexual violence and change the way victims of sexual violence perceive themselves. In my opinion, those changes are important enough to overcome any initial discomfort with the practice. The identification of victims by name forces readers to confront the human face of sexual violence. The more readers who comprehend the pervasiveness and humanness of sexual violence, the better off each generation of survivors will be.

It is difficult to upend a tradition, but it is time for the news media to admit that the legal and ethical underpinnings of name suppression are normatively flawed and have an accordingly detrimental impact. Reporters and editors are not psychologists, and they should not play a role in determining what is in a victim's best interest. They are gatherers and disseminators of the news. By suppressing the names of sexual violence victims, the news media takes on an absurd censorial role based on a weak legal hook and a damaging cultural framework. It is time for the news media to stop condoning the stigmatization of rape and start doing its part to deconstruct the culture of silence, one name at a time. ■

I had been far too silent, far too ashamed. That night I told them everything. For the first time I told my story and I was not ashamed.[61]

—Angie Epifano, *An Account of Sexual Assault at Amherst College*

Endnotes

1 Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 215-16 (1890).

2 Pavesich v. New England Life Ins. Co., 50 S.E. 68, 74 (Ga. 1905).

3 Geneva Overholser, Op-Ed., *Why Hide Rape?*, N.Y. TIMES (July 11, 1989), http://www.nytimes.com/1989/07/11/opinion/why-hide-rapes.html.

4 Throughout this paper, I refer to female rape victims only. I excluded male rape victims from discussion for a couple of reasons: 1) The vast majority of rape victims are women, and 2) Most of the relevant sourcing for this paper refers to female victims. I do not think it is possible to use gendered sourcing to make a gender-neutral argument.

5 Fox Butterfield with Mary B. W. Tabor, *Woman in Florida Rape Inquiry Fought Adversity and Sought Acceptance*, N.Y. TIMES (Apr. 17, 1991), http://www.nytimes.com/1991/04/17/us/woman-in-florida-rape-inquiry-fought-adversity-and-sought-acceptance.html?pagewanted=all&src=pm

6 *Id.*

7 *Id.*

8 Deidre Carmody, *News Media's Use of Accuser's Name is Debated*, N.Y. TIMES (Apr. 18, 1991), http://www.nytimes.com/1991/04/18/us/news-media-s-use-of-accuser-s-name-is-debated.html?src=pm ("[I]n a statement issued Tuesday, Michael G. Gartner, president of NBC News, said that because Ms. Bowman's name was well known in the Palm Beach area, officials at NBC believed that 'we should report this news to our viewers.'")

9 *Id.* ("The Times article was sent by The New York Times News Service to about 650 newspapers around the world. As a result, calls poured in all day yesterday from people expressing surprise and outrage that The Times had published the woman's name.")

10 William Glaberson, *Media Memo, Times Article Naming Rape Accuser Ignites Debate on Journalistic Values*, N.Y. TIMES (Apr. 26, 1991), http://www.nytimes.com/1991/04/26/nyregion/media-memo-times-article-naming-rape-accuser-ignites-debate-journalistic-values.html?src=pm ("A petition expressing "outrage about the profile" signed by some 100 Times employees, including many reporters and editors, raised three concerns: the article's tone, the lack of a similar profile of Mr. Smith and the publication of the woman's name."); *See also* Carmody, *supra* note 8 ("'I think it's appalling,' said Anne Seymour, director of communications at the National Victim Center. […] 'If you want to seriously reduce the number of men and women who come forth and report cases of rape to the authorities, just publish and broadcast their names and addresses in the media. That will do it.'")

11 Carmody, *supra* note 8.

12 The Times appended a correction to the original article naming the woman: "The article should have explicitly asserted that nothing in the woman's known background could resolve the disputed testimony about her encounter with Mr. Smith. The Times regrets its failure to include such a clear statement of the article's limits and intent. It remains The Times's practice to guard the identities of sex crime complainants so long as that is possible and conforms to fair journalistic standards. In cases of major political or civic interest, that practice needs to be continually reviewed. And as The Times explained when it finally disclosed the name of the woman in this case, it did so only after her identity became known throughout her community and received detailed nationwide publicity […] Whenever possible, The Times intends to continue its longstanding practice of withholding the names of sex crime victims while informing its readers in the fullest and fairest ways about major cases." Butterfield, *supra* note 5.

13 Glaberson, *supra* note 10.

14 *Id.*

15 *Id.*

16 While many baselessly conjecture that fear of identification leads to less reporting, there is anecdotal evidence that identification creates a culture of solidarity that encourages reporting. *See, e.g.,* David Margolick, *A Name, a Face and a Rape: Iowa Victim Tells Her Story*, N.Y. TIMES (Mar. 25, 1990), http://www.nytimes.com/1990/03/25/us/a-name-a-face-and-a-rape-iowa-victim-tells-her-story.html?pagewanted=all&src=pm (Nancy Ziegenmeyer saw a column in The Des Moines Register in which Geneva Overholser, an editor of The Register, urged rape victims to name themselves publicly. Ziegenmeyer called Overholser and said she wished to tell the story of her recent abduction and rape in print and with her name. The paper published the graphic story and then braced itself for widespread outrage. It never came; in its place was near-universal praise. Notably, many survivors wrote in to thank Ziegenmeyer and the paper for giving a face to rape victims. The story won a Pulitzer in 1991.)

17 Glaberson, *supra* note 10. ("Until last week, virtually all major news organizations protected the identities of women who said they were rape victims unless they chose to come forward.")

18 *See* Nicholas Kristof, *A reason not to report rape*, ON THE GROUND, (May 1, 2009, 8:07 AM), http://kristof.blogs.nytimes.com/2009/05/01/a-reason-not-to-report-rape/?_r=0 for some interesting thoughts on the hypothetical of reporting victim names. His thoughts ("I agree that it would be better if we could name victims of rapes as we do victims of armed robberies and assaults, but I don't think we're there yet as a society. The practical consequence of naming victims in newspapers would, I think, be a disaster: even fewer women (and men) would report rapes. So I vote for sticking with the existing policy until we're all more enlightened") and the comments are worth mulling.

19 Louise Arkel, Letter to the Editor, *Violence to Women, Not the Victim's Name, is the Real Issue*, N.Y. TIMES (July 12, 1990), http://www.nytimes.com/1990/07/12/opinion/l-violence-to-women-not-rape-victim-s-name-is-the-real-issue-755290.html?src=pm ("Many rape survivors will relive the rape for the rest of their lives without prompting from sales clerks.")

20 Overholser, *supra* note 3. ("Editors do not hesitate to name the victim of a murder attempt. Does not our very delicacy in dealing with rape victims subscribe to the idea that rape is a crime of sex rather than the crime of brutal violence that it really is? Surely the sour blight of prejudice is best treated by being subjected to strong sunlight.")

21 Cox Broad. Corp. v. Cohn, 420 U.S. 469, 489 (1975).

22 FLA. STATE. ANN. § 794.03 (West 1976 & Supp.1992) (This statute was revised to include public record exceptions after the Florida Supreme Court deemed the original version "facially invalid under the free speech and free press provisions of both the United States and Florida Constitutions." State v. Globe Commc'ns Corp., 648 So. 2d 110, 114 (Fla. 1994)); GA. CODE, ANN. § 16-6-23 (1988) (This statute was held unconstitutional in *Dye v. Wallace*, 553 S.E.2d 561 (Ga. 2001)); S.C. CODE ANN. § 16-3-730 (Law.Co-op.1985) (This statute was held to be constitutional but not viable for the purposes of a private cause of action in *Dorman v. Aiken Commc'ns, Inc.*, 398 S.E.2d 687, 689 (S.C. 1990)).

23 Mary E. Bahl, *Rape Shield Laws: Who Really Needs Protecting?*, IMPACT PRESS, http://www.impactpress.com/articles/aprmay00/rape4500.html (last visited Nov. 20, 2015).

24 *See, e.g.*, David Shaw, *If the accused is named, the accuser should be* too, L.A. TIMES (Jul. 27, 2013), http://articles.latimes.com/2003/jul/27/entertainment/ca-nushaw27

25 Michelle Johnson, *Of Public Interest: How Courts Handle Rape Victims' Privacy Suits*, 4 COMM. L. & POL'Y 201, 210-12 (1999). ("[S]uch suits are nearly always lost at the appellate level because courts find information related to the commission, investigation and prosecution of crimes to be of public interest.")

26 For a thorough examination of case law, *see id.* at 210-12.

27 *See id.* at 210-12 ("These cases demonstrate a fundamental weakness in the private facts branch of privacy law: regardless of the hurt caused by disclosure of personal information, judges tend to believe they must find such disclosures to be in the public interest or risk creating a chilling effect on coverage of public problems.")

28 *See id.* at 210-12 ("By requiring the state to show a compelling interest to override the First Amendment protection given to the publication of truthful information, the Court made it difficult—if not impossible—for rape victims to win privacy suits against media that identify the victims.")

29 420 U.S., at 492.

30 *Id.* at 496.

31 491 U.S. at 538.

32 *Id.* at 533.

33 *Cox Broad. Corp.*, 420 U.S. at 494-5; *Florida Star*, 491 U.S. at 525.

34 *Cox Broad. Corp.*, 420 U.S. at 496.

35 *Id.* at 491.

36 436 S.E.2d 655, 657 (1993).

37 491 U.S. at 533.

38 420 U.S. 491-97.

39 436 S.E.2d 655, 657-58.

40 *Tucker v. News Publishing Co.,* 397 S.E.2d 499, 501 (1990).

41 *Id.*

42 *Id.* at 501.

43 915 S.W.2d 471, 474 (Tex. 1995).

44 *Id.*

45 *Id.* at 474-475.

46 Alex S. Jones, *Naming Rape Victim is Still a Murky Issue for the Press,* N.Y. TIMES (June 25, 1989), http://www.nytimes.com/1989/06/25/us/naming-rape-victim-is-still-a-murky-issue-for-the-press.html.

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *See supra* the opening paragraphs of Section II.

52 Holly Selby, *Rape Story Spurs New Debate About Naming Victims*, The Baltimore Sun (Apr. 27, 1990), http://articles.latimes.com/1990-04-27/news/vw-344_1_victims.

53 "In large measure, the practice of withholding names grew out of a new sensitivity in the late 1960's and 1970's to the plight of rape victims, who were often characterized as having been raped twice: once by the rapist and once when their identities became known by the press." Jones, *supra* note 46.

54 "Rape remains for many the unspeakable crime. We like to think we help by not mentioning it, by treating the survivor as if it never happened. But rape does happen, every day […] [T]he paternalistic platitudes that editors offer are useless, even dangerous. They reek of the desire to suppress the subject, to pretend rape doesn't happen to people we know." Arkel, *supra* note 19.

55 *See* Jones, *supra* note 46. (""It seems unfair to me with the presumption of innocence to report one party of a trial and not the other,' Mr. Gay said. ''You're not doing your duty if you make an exception."")

56 *See id.* ("Some say withholding rape victims' names is rooted in male chauvinism. 'The newspaper publisher is big daddy saying, 'Don't you worry, little lady," said Henry G. Gay, publisher of The Shelton-Mason County Journal in Washington, one of the few American newspapers that publishes the names of rape victims.")

57 *See, e.g.*, Arthur S. Brisbane, The Public Editor, *Name Withheld, but Not His Identity*, N.Y. TIMES (Dec. 17, 2011), http://www.nytimes.com/2011/12/18/opinion/sunday/name-withheld-but-not-his-identity.html?pagewanted=2&_r=1&adxnnlx=1381873169-AN8dld2nFB0hU2CJED65OQ ("'Most victims, based on the research, are very reluctant to report,' said Mr. Kilpatrick, a clinical psychologist at the Medical University of South Carolina and director of its National Crime Victims Center. When they are asked why they don't report the crimes, he said, 'some of the top concerns are: 'I am afraid,' 'I don't want other people to find out,' 'I am afraid that people will blame me for what happened.'"")

58 Arkel, *supra* note 19.

59 Brisbane, *supra* note 57. ("The traditional mandate to preserve privacy is there to protect sex crime victims — a broader social purpose that, in my mind, outweighs the transient benefits of a single human-interest story.")

60 *See, e.g.*, Zerlina, *Rape Victims and Anonymity*, Feministing (July 26, 2011), http://feministing.com/2011/07/26/rape-victims-and-anonymity/ ("Critics of rape shield laws argue that this further stigmatizes rape victims and perhaps even sets back the gender equality movement.")

61 Angie Epifano, *An Account of Sexual Assault at Amherst College*, The Amherst Student (Oct. 17, 2012), http://amherststudent.amherst.edu/?q=article/2012/10/17/account-sexual-assault-amherst-college.

62 Overholser, *supra* note 3.

63 Tyler Kingkade, *Amhert College Sexual Assault Survivor's Column Inspires Other Students to Come Forward*, The Huffington Post (Oct. 26, 2012, 4:01 PM), http://www.huffingtonpost.com/2012/10/26/amherst-rape-survivor-speak-out_n_2013411.html?1358269836.

64 *See, e.g.*, Tucker Reed, *After Being Failed by my College's Administration, I Posted My Rapist's Name and Photo on the Internet*, xojane (Apr. 25, 2013, 12:00 PM), http://www.xojane.com/issues/tucker-reed-outs-rapist-at-usc. ("'Two months ago, I wrote a Tumblr post in which I revealed my name and the name of my rapist and included several photographs, including one of us together. I wrote, 'I'm not going to hide behind anonymity. I am a part of this society.'")

65 See Gina Tron, *I Got Raped and Then My Problems Started*, Vice (June 27, 2013), m.vice.com/read/i-got-raped-then-my-problems-started for a harrowing account of one survivor's quest to reclaim her agency.

66 See Nicola Goulding & Phil O'Sullivan, *Norwegian Woman: I was raped in Dubai, now I face prison sentence*, CNN (Jul. 21, 2013, 4:41 PM), http://www.cnn.com/2013/07/20/world/meast/uae-norway-rape-controversy/index.html for an example of a typical news media disclaimer: "As a rule, CNN does not identify victims of sexual assault, but Dalelv went public with her story."

67 Warren & Brandeis, *supra* note 1. In the 1990s, various state courts deemed sexual assaults to be sufficiently of public interest to counter any claims of invasion of privacy, but in today's world where most people have an active online presence, a quasi public figure argument could be compelling to counter privacy claims, as well.

68 *See supra* Section II.

69 *See* Sean M. Scott, *The Hidden First Amendment Values of Privacy,* 71 Wash. L. Rev. 683, 723 (1996). ("With privacy, people are able to develop themselves. Part of that development includes the formation of values, morals and opinions. Often, this development occurs in response to information that the First Amendment makes available. Having formed opinions, people often desire to express themselves. The First Amendment then protects that expression. Because both are critical to autonomy, it is desirable to give proper weight to both.")

70 Cases with celebrity involvement, for instance, can be tricky. Often in these cases, a judge might make an order that there be no leaks to media for fear of violating the prosecutorial rape shield laws. This decision should belong to the court system not the editorial system.

71 The Second Restatement of Torts actually places the burden of proving lack of newsworthiness on the plaintiff where a plaintiff seeks damages in a private facts tort action. Restatement (Second) of Torts § 652D cmt. d (1977).

72 Overholser *supra* note 3.

73 It is worth noting that Ms. Overholser amended her argument in 2003: "As a practical matter, whether shielding rape victims was the right thing to do or not, it no longer makes sense. Newspapers are not — as they once were — the gatekeepers of such information. The culture has changed." Geneva Overholser, *Name the Accuser and the Accused,* Poynter. (July. 23, 2003, 5:18 PM, updated Mar. 2, 2011, 2:10 PM), http://www.poynter.org/archived/journalism-junction/13913/name-the-accuser-and-the-accused/.

74 Even if a woman succeeds in convincing the news media there is a compelling reason to not print her name, I propose the media should give her a false name rather than simply referring to her as a nameless victim. A name is a powerful thing and giving a person a name instead of a label changes the way these stories are perceived.

2015 Outstanding Law Students

Selected by law schools as their outstanding students, these talented and dedicated award winners are among the best and brightest. They are honored for academic achievements and for the impact they have made beyond their classrooms. The men and women listed below have worked to further the advancement of women in society and promoted the concerns of women in the legal profession with tenacity and enthusiasm that inspired their fellow law students and their professors.

NAWL salutes these individuals who have begun working early in their careers to promote justice for women. We encourage them to continue making a difference as their careers blossom.

Aparna Agnihotri
University of the Pacific
McGeorge School of Law

Nicole F. Beck
The George Washington
University Law School

Calli Leigh Burnett
Loyola University
Chicago School of Law

Leanne E. Carberry
Creighton University
School of Law

Danylle M. Carson
University of Maine
School of Law

Joyce L.T. Chang
Loyola Law School,
Los Angeles

Christa Currie
The University of Tennessee
College of Law

Julie A. Davis
Texas Tech University School
of Law

Katie Dix
Samford University
Cumberland School of Law

Kate Durkin
Saint Louis University
School of Law

Petra D. Ehlert
Ohio Northern University
Claude W. Pettit College of Law

Elizabeth R. Emanuel
The University of Akron
School of Law

JoEllen Flanagan Engelbart
University of Missouri
Kansas City School of Law

Elizabeth Etchells
The University of Iowa
College of Law

Kathryn Geisinger
Case Western Reserve
University School of Law

Rebecca Goddard
Valparaiso University Law School

Sidney E. Goldstein
Touro College
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Aura Gomez-Lopez
St. John's School of Law

L. Marissa Grace
West Virginia University
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Gabriella Haywood Grosso
The Pennsylvania
State University
The Dickinson School of Law,
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Jennifer E. Hanna
Quinnipiac University
School of Law

Erin J. Hoyle
Stetson University
College of Law

Karianne Jones
University of Minnesota
Law School

Whitney Judson
The University of Georgia
School of Law

Jennifer Daniel Kahl
William & Mary Law School

Kristyn M. Kelley
The Catholic University
of America
Columbus School of Law

Courtney Kiehl
The Pennsylvania
State University
Dickinson School of Law,
University Park Campus

Dominique King
University of Arkansas Little Rock
William H. Bowen School of Law

Katrina S. Lawrence
Duquesne University
School of Law

Emma Lord
Southwestern Law School

Sheherezade Carino Malik
The University of Richmond
School of Law

Hannah M. Marchant
J. Reuben Clark Law School
Brigham Young University

Meagan McElroy
University of Pittsburgh
School of Law

Meagan McKeown
St. Mary's University
School of Law

Brianna McLarty
University of Nebraska
College of Law

Jennifer Monterroso
California Western School of Law

Madeline T. Morcelle
Washington and Lee University
School of Law

Erica Williams Morris
Golden Gate University
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Amelia Kathleen Murphy
Cornell University Law School

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School of Law

Sara Page
Belmont University
College of Law

Trisha Pande
The George Washington
University Law School

Emily C. Pappas
Campbell University
School of Law

Catherine Lopez Parker
West Virginia University
College of Law

Katherine C. Parris
University of Maryland
Francis King Carey
School of Law

Britany Passalaqua
The University of New Mexico
School of Law

Jennifer R. Pence
University of Louisville
Brandeis School of Law

Kate E. Rapp
Mississippi College
School of Law

Danyel Rickman
University of Cincinnati
College of Law

Laurie Rogers
University of Wyoming
College of Law

Courtney Ross
Roger Williams University
School of Law

Ravyn Rowland
Chapman University
Dale E. Fowler School of Law

Sydney Safley
Willamette University
College of Law

Allie Smith
The University of Virginia
School of Law

Kathryn Somerset
Rutgers School of Law

Heather Spielmaker
Western Michigan University
Cooley Law School

Erica R. Tamariz
The University of Memphis
Cecil C. Humphreys
School of Law

Abigail L. Thiel
Drake University Law School

Uchenna Mary-Anne Uzoka
Atlanta's John Marshall
Law School

Jamie Vaughan
Texas Tech University
School of Law

Elizabeth Vennum
Wake Forest University
School of Law

Jenna N. Verity
Arizona State University
Sandra Day O'Connor
College of Law

Emily C. Vogt
Whittier Law School

Estelle Catherine Wagner
Fordham University
School of Law

Kara S. Wallis
The City University of New York
School of Law

Ashley Welsch
Vermont Law School

Welcome to new NAWL Board members, from left, Kristin D. Sostowski, Angela Beranek Brandt, Leslie Richards-Yellen, Diane E. Ambler, Sharon E. Jones, Leslie D. Minier, Deborah S. Froling, Carol Robles-Román, Marsha L. Anastasia, Elizabeth A. Levy, Lisa M Passante, DeAnna D. Allen, Susan L. Lees, Sarretta C. McDonough, Karen S. Morris, Peggy Steif Abram, Lauri A. Damrell, Kristin L. Bauer, Jennifer A. Champlin.

NAWL's 2015 Annual Meeting Photos: Marty Morris/MPM Photography LLC

NAWL introduces new Board

New officers took up the cause at NAWL's 2015 Annual Meeting

Outgoing NAWL President Lisa M. Passante passed the reigns to Marsha L. Anastasia during the Annual meeting. Anastasia is vice president, deputy general counsel – The Americas at Pitney Bowes Inc. She is responsible for legal affairs of business unit operations in the U.S., Canada, and Latin America.

Marsha Anastasia, left, and Lisa Passante

Prior to joining Pitney Bowes in 1997, Anastasia practiced at Day Berry & Howard (now Day Pitney LLP) in Hartford and Stamford, Conn. Anastasia is admitted to the Connecticut bar. She received a B.S. from Tufts University and a J.D. from the University of Connecticut School of Law. She will serve as president of NAWL for 2015-2016, and previously served as president-elect, vice president and co-chair of NAWL's Program Committee for 2013-2014. She was NAWL's Treasurer in 2012-2013, a recipient of NAWL's Virginia S. Mueller Outstanding Member Award in 2008, and served as Chair of the 2008 NAWL General Counsel Institute. She can be reached at 203.351.7940 or marsha.anastasia@pb.com.

Passante recently served as vice president and associate general counsel at Thomson Reuters. She was also a member of the legal department of E. I. du Pont de Nemours & Co. for 19 years, where was the founder of the acclaimed DuPont Women Lawyers' Network. Passante chaired the 2009 General Counsel Institute and co-chaired the 2011 and 2014 Mid-Year Meetings. She has held multiple offices and committee leadership positions with NAWL. ■

2015 class of award winners named at NAWL's Annual Meeting

Left: Mary Jo White with NAWL President Marsha Anastasia.

Arabella Babb Mansfield Award: Mary Jo White

The Arabella Babb Mansfield Award is the oldest award given by NAWL in recognition of professional achievement, positive influence, and valuable contribution to women in the law and in society. The award is named after the first woman admitted to a state Bar in the United States.

This year, the Arabella Babb Mansfield award went to Mary Jo White, who was sworn in as the 31st Chair of the U.S. Securities and Exchange Commission in April 2013. She brings to the agency decades of experience as a federal prosecutor and securities lawyer.

As the U.S. Attorney for the South District of New York from 1993 to 2002, she prosecuted complex securities and financial frauds and international terrorism cases. She is the only woman to have held that post. After leaving the U.S. Attorney's Office, Chair White became the head of the litigation department at Debevoise & Plimpton in New York, where she led a team of more than 200 lawyers.

Chair White earned her undergraduate degree from William & Mary in Williamsburg, Va., her master's degree in psychology from The New School for Social Research, New York, and her law degree from Columbia Law School, New York. She has served as a director of The NASDAQ Stock Exchange and on its executive, audit, and policy committees. ■

The President's Award: Exelon Corp.

The President's Award is presented by NAWL's President as a special recognition of an organization that has championed policies, programs, and procedures to retain, promote, and advance women attorneys.

This year, NAWL honors energy provider Exelon Corp. (NYSE: EXC). Exelon does business in 48 states, the District of Columbia, and Canada with 2014 revenues of approximately $27.4 billion. Headquartered in Chicago, it is one of the largest U.S. power companies, with more than 32,000 megawatts of owned capacity.

At Exelon, 39 percent of the legal department's lawyers are female. Women hold 29 percent of the legal department's leadership positions; 60 percent of the department's legal professionals are female. Exelon shares its own numbers with its law firms and in 2005, it introduced the Awareness, Action and Assessment (AAA) program, which asks law firms to track their numbers of partners of color, women partners and at what levels they are.

At the end of the year, if the law firm does not measure up, Exelon can choose to take its business elsewhere. The award was accepted by Exelon's Vice President and Deputy General Counsel, Verónica Gómez. ■

Left: NAWL Immediate-Past President Lisa Passante with Verónica Gómez.

NAWL Vice-President Angela Beranek Brandt with Jonathan Feigelson.

Lead by Example Award: Jonathan Feigelson, TIAA-CREF

The Lead by Example Award is presented to a male lawyer who is a leader in his law firm, company, government unit or public interest entity and supports the advancement of women. He works in a company, firm or government/public interest unit that demonstrably supports such advancement. In his own department, measurable metrics support the award.

This year, NAWL honored Jonathan Feigelson, senior managing director, general counsel and head of corporate governance with TIAA-CREF with its Lead By Example Award. TIAA-CREF is a national financial services group of companies and the leading provider of retirement saving products and services in the academics, medical, cultural and research fields.

Feigelson conceived, developed and leads the diversity initiative within the legal department. He assigned staff members to the effort and gave the authority to implement change. As a result, 66 percent of TIAA-CREF attorneys are women and more than 50 percent are people of color, LGBT, veterans, etc., 60 percent of Feigelson's direct reports are women and women lawyers lead key, mission-critical teams in the Law area.

Additionally, the diversity team works with outside firms to promote women and diverse lawyers. And TIAA-CREF partners with New York Bar Association, and diverse bar associations such as CCWC, NAMWORLF and NAWL to expand its pool of potential diverse applicants. ■

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M. Ashley Dickerson Diversity Award: JoAnne A. Epps

The M. Ashley Dickerson Diversity Award is named after trailblazer Mahala Ashley Dickerson, NAWL's first African-American President (1984-85) and is presented to a lawyer who has promoted and advanced diversity in the legal profession.

JoAnne A. Epps, Dean of Temple Law School in Philadelphia, is the recipient of the M. Ashley Dickerson Diversity Award. She has held the position since 2008. She is the author of numerous books and articles on Evidence and Trial Advocacy.

In February 2015, U.S. Senator Robert P. Casey, Jr. honored Dean Epps for Black History month at the U.S. Senate.

In March 2015, Mayor Michael Nutter appointed Dean Epps to chair a newly created Police Department Oversight Board. Last year, Dean Epps was awarded the Justice Sonia Sotomayor Diversity Award by the Philadelphia Bar Association and in 2009 she received the Association's Sandra Day O'Connor Award, conferred annually on "a woman attorney who has demonstrated superior legal talent, achieved significant legal accomplishments and has furthered the advancement of women in both the profession and the community."

A three-time honoree by Lawyers of Color Magazine as one of the 100 most influential black lawyers in the country, Dean Epps was named by National Jurist Magazine in 2013 and 2014 as one of the 25 most influential people in legal education. She is the court-appointed monitor in the settlement of *Bailey v. City of Philadelphia*, a lawsuit challenging the city's stop-and-frisk activity and in December 2014 she started a term on the Philadelphia Board of Ethics.

A former Deputy City Attorney for the City of Los Angeles and Assistant United States Attorney for the Eastern District of Pennsylvania, Dean Epps' teaching areas include evidence, criminal law, criminal procedure and trial advocacy. ■

JoAnne A. Epps

From left: NAWL Treasurer Saretta C. McDonough with Sheila M. Murphy, Joy C. Fuhr and Kelly A. Clark.

Virginia S. Mueller Award: Kelly A. Clark, Joy C. Fuhr, Sheila M. Murphy

The Virginia S. Mueller Outstanding Member Award is presented to NAWL members for exemplary contributions to NAWL.

KELLY A. CLARK has served as CLE Chair for the 9th Annual General Counsel Institute, Co-Chair of the Sponsorship Committee 2014 Annual Meeting, Logistics Chair for the 10th Annual General Counsel Institute.

She is a corporate counsel in the Insurance Operations Law Division at Allstate Insurance Co. In that position, Clark is the general counsel for the business-to-business group and the chief attorney for the claims department. She is responsible for providing advice and counsel to senior leadership team members on a wide variety of insurance matters including regulatory, compliance, and product management.

Clark received her A.B. from the University of Michigan, and J.D. from the DePaul University College of Law, Chicago. In her 18 years at Allstate she has held a wide variety of positions within the Law Department including counseling and compliance, claim litigation, regulatory and legislative advocacy, strategic product development and as a trial attorney defending insureds for Allstate's staff counsel office in Chicago.

Prior to joining Allstate in 1996, she was in the private practice of litigation in Chicago. Clark can be reached at Kelly.Clark1@Allstate.com.

JOY C. FUHR has been an active member of NAWL for many years where she has chaired several committees for the Annual and Mid-Year Meetings.

She is a litigation partner at McGuireWoods LLP and represents corporations and other organizations faced with product liability, toxic tort, environmental and commercial claims throughout the United States.

She has served as national coordinating counsel and national trial counsel on product liability, environmental and public nuisance matters. Most recently her efforts led to a defense verdict in a $1.5 billion public nuisance claim in California.

Fuhr graduated from Princeton University where she was a two-time All-American and Captain of the Women's Tennis Team. She played tennis professionally for several years and is a member of Princeton's Silver Anniversary Team. Fuhr is currently a regional chair for the Princeton Alumni Schools Committee.

Fuhr received her law degree from the College of William and Mary Marshall Wythe School of Law, Williamsburg, Va., where she was inducted into the Order of the Coif and was an editor of the Administrative Law Review.

Before joining McGuireWoods LLP, she was a law clerk for the Honorable Robert F. Chapman of the U.S. Court of Appeals for the Fourth Circuit. Fuhr has practiced law at McGuireWoods LLP for more than 20 years. She is active in firm management where she serves as National Chair of the Women Lawyers Network and is a member of the board of partners and associates committee. Fuhr is a recipient of the DuPont Women Lawyers Network Themis Award in recognition of her leadership in the retention and promotion of women lawyers. She can be reached at jfuhr@mcguirewoods.com.

SHEILA M. MURPHY is an active member of NAWL and has served on and chaired a number of committees including the International and General Counsel Institute committees.

She is a Senior Vice President and Associate General Counsel at MetLife Inc. where she leads the Distribution and Products Unit providing litigation advice to the Retail Group of the Americas. Murphy serves on the Advisory Board to MetLife's Women's Business Network and U.S. Diversity Task Force, and is co-chair of Legal Affair's Academy. She is a member of Legal Affair's Diversity Committee and the WBN Mentoring Programs. Murphy is co-chair of the Steering Committee of the CARE Women's Initiative of New York and is a member of the Board of Directors of Read Alliance. Because of her commitment to nurturing other women in business, Murphy was presented with the Highest Leaf Award from the Women's Venture Fund. In 2011, she was named a Most Influential Irish Woman by the Irish Voice.

She is a graduate of the University of Pennsylvania Law School, and the School of Management at the State University of New York at Binghamton where she graduated cum laude. Prior to joining MetLife Inc. Murphy was at the law firm of Thacher Proffitt & Wood. ■

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This group from Perkins Coie LLP, attended NAWL's 2015 Annual Meeting. From left, Adrienne C. Baranowicz, Laura K. Mujenda, Ann Schofield Baker and Yilu Zhang.

Photo: Marty Morris/MPM Photography LLC

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Sheehan & Sheehan PA
Albuquerque, NM

Danielle Perlman
The Honorable Beth Bloom
New York, NY

Alina Pesenson
Goodwin Procter LLP
New York, NY

Christine E. Poile
Goodwin Procter LLP
New York, NY

Noelle Anneliese Polk Clark
Polk Law Office
St. Petersburg, FL

Jennifer Post
Pacific Gas And Electric Co
San Francisco, CA

Kimberly Prior
Goodwin Procter LLP
Boston, MA

Caitlin E. Proper
Goodwin Procter LLP
New York, NY

Catherine Recinos
UCLA School of Law
Los Angeles, CA

Christina Irene Reichert
Nicholas Institute for Environmental Policy Solutions, Duke University
Raleigh-Durham, NC

Aidee Reyes
OHL USA
New York, NY

Sarah Ann Rice
University of Denver Sturm College of Law
Denver, CO

Debra Rubenstein
Flextronics International
San Jose, CA

Kristen Sagafi
Lieff Cabraser Heimann & Bernstein LLP
San Francisco, CA

Niccole Sandora
University of Richmond School of Law
Richmond, VA

Anna Schaffner
George Mason University School of Law
Arlington, VA

Alyssa Schuster
University of San Diego School of Law
San Diego, CA

Susan E. Seabrook
Buchanan Ingersoll & Rooney PC
Washington, DC

Anne Marie Segal
Segal Coaching
Stamford, CT

Caroline C. Setliffe
Buchanan Ingersoll & Rooney PC
Washington, DC

Lata Setty
UnitedLex Corp.
Tiburon, CA

Caitlin Shadek
Sherman Wells Sylvester & Stamelman LLP
Florham Park, NJ

Karen B. Shaer
Garden City Group, LLC
Lake Success, NY

Gwendolyn L. Shelton
University of Arkansas at Little Rock William H. Bowen School of Law
Pine Bluff, AR

Tori C. Simmons
Hill Ward Henderson
Tampa, FL

Alessandra L. Simons
Goodwin Procter LLP
San Francisco, CA

Maria Dinora Smith
Benjamin N. Cardozo School of Law
New York, NY

Annie Stevens
University of Maine School of Law
Cumberland, ME

Keiara A. Stevenson
Whittier Law School
Costa Mesa, CA

Saige Subick
Seton Hall University School of Law
Newark, NJ

Katherine Riopel Suell
Bressler Amery & Ross PC
Florham Park, NJ

Margaret Sullivan
Goodwin Procter LLP
Boston, MA

Lauren Suss
OHL USA, Inc.
Staten Island, NY

Carol Sweeney
Goodwin Procter LLP
Boston, MA

Julie Sweet
Accenture
Arlington, VA

Jill Szczerbiak
Maurice A. Deane School of Law at Hofstra University
Manhasset, NY

Diana Szego
Orrick Herrington & Sutcliffe LLP
Washington, DC

Elizabeth Telefus
Goodwin Procter LLP
Menlo Park, CA

Autumn Misiolek Tertin
Goff Wilson PA
Concord, NH

Kim Kiel Thompson
Fisher & Phillips LLP
Atlanta, GA

Kayleigh Lynn Toth
Charlotte School of Law
Charlotte, NC

Shannon M. Traylor
Katten Muchin Rosenman LLP
New York, NY

Caroline McLean Turner
Columbia Law School
New York, NY

Collin O'Connor Udell
Jackson Lewis P.C.
Hartford, CT

Emily Unger
Goodwin Procter LLP
Boston, MA

Danielle Urban
Fisher & Phillips LLP
Denver, CO

Karla Renee Williams
The City University of New York
New York, NY

Amy Woltman
Prudential Financial Inc.
Newark, NJ

Christina S. Wong
Goodwin Procter LLP
Menlo Park, CA

Shauna E. Woods
Goodwin Procter LLP
Los Angeles, CA

Kerri A. Wright
Porzio, Bromberg & Newman PC
Morristown NJ

JJ Yapp
Special Counsel
Washington, DC

Summer Joy Young
Thomas Jefferson School of Law
San Diego, CA

Julia Young
Federal Housing Loan Bank of San Francisco
San Francisco, CA

Jessica H. Zafonte
Frommer Lawrence & Haug LLP
New York, NY

Nancy Zangrilli
McDonnell & Associates
King of Prussia, PA

NEW INSTITUTIONAL MEMBERS

Davis Wright Tremaine LLP
dwt.com

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daypitney.com

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dpklaw.com

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laborlawyers.com

Nextiva
nextiva.com

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robinskaplan.com

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shermanwells.com

Sills Cummis & Gross PC
sillscummis.com

Tower Legal Solutions
towerls.com

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ARIZONA

Karin Scherner Aldama
Perkins Coie LLP
2901 N. Central Ave.,
Suite 2000
Phoenix, AZ 85012
kaldama@perkinscoie.com
602.351.8270
INS, COM, ARB, INT

CALIFORNIA

Ashley Ann Dorris
Snyder Law LLP
420 South Fairview Ave.
Suite 102
Santa Barbara, CA 93117
adorris@snyderlaw.com
805.692.2800

Angela Leann Grant
Esurance
1011 Sunset Blvd.
Rocklin, CA 95765
agrant@esurance.com
916.435.3457
INS

Danielle Hultenius Moore
Fisher & Phillips LLP
4747 Executive Drive, Suite
1000
Irvine, CA 92121
dmoore@laborlawyers.com

Ellen A. Pansky
Pansky Markle Ham LLP
1010 Sycamore Ave., Suite 308
South Pasadena, CA 91030
epansky@panskymarkle.com
213.626.7300
ETH

Debra Rubenstein
Flextronics
6201 America Center Drive
San Jose, CA 95002
debra.rubenstein@flextronics.com
408.576.7796
EPA, OSH

CONNECTICUT

Jennifer Kate Hluska
Prudential Financial Inc.
One Corporate Drive
Shelton, CT 6484
jennifer.hluska@prudential.com
203.402.1679
SEC, INS, EEO, IN

Jessica Mitchell Standish
The Hartford Law Department
One Hartford Plaza
Hartford, CT 06155
jessica.mitchell2@thehartford.com
860.547.4442

DELAWARE

Shannon S. Frazier
Morris James LLP
500 Delaware Ave. Suite 1500
Wilmington, DE 19810
sfrazier@morrisjames.com
302.888.6916
COR

FLORIDA

Ileana Cruz
Miami-Dade County
Attorney's Office
111 N.W. First St., Suite 2810
Miami, FL 33128
icruz.law@gmail.com
305.375.5296
BKR, TAX

Karen H. Curtis
Clarke Silverglate PA
799 Brickell Plaza, Suite 900
Miami, FL 33131
kcurtis@cspalaw.com
305.377.0700

Christine Howard
Fisher & Phillips LLP
101 E. Kennedy Blvd., Suite 2350
Tampa, FL 33602
choward@laborlawyers.com

Gigi Rollini
Messer Caparello PA
2618 Centennial Place
P.O. Box 15579
Tallahassee FL 32317
grollini@lawfla.com
850.553.3454
APP, LIT, ELE, COM

Katherine Earle Yanes
Kynes Markman & Felman PA
100 S. Ashley Drive
Suite 1300
Tampa, FL 33602
kyanes@kmf-law.com

GEORGIA

Aurelia Mitchell Durant
AMD LAW
100 Postmaster Drive
No. 2831
McDonough, GA 30253
a.durant@amdlawgroup.com
202.505.2995
ILP, INT, CMP, IS

Meredith Lackey
Colonial Pipeline Co.
1185 Sanctuary Parkway,
Suite 100
Alpharetta, GA 30009
mlackey@colpipe.com

Theresia Maria Moser
Moser Law Co.
112 Krog St. NE
Unit 26
Atlanta, GA 30307
tmoser@moserlawco.com
404.537.5339
EEO, LIT, SHI, CAS

ILLINOIS

Cynthia Photos Abbott
Motorola Mobility LLC
222 West Merchandise Mart Plaza
Chicago, IL 60654
cabbott@motorola.com
847.334.7131

PRACTICE AREA KEY

ACC Accounting
ADO Adoption
ADR Alt. Dispute Resolution
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

Maggie Callaghan
2 South 536 Cynthia Drive
Warrenville, IL 60555
callaghanmj@yahoo.com
M&A, COR, RES, EEO

Julie Egan
Ehrenberg & Egan LLC
321 N. Clark St., Suite 1430
Chicago, IL 60654
jegan@ehrenbergeganlaw.com
312.253.8640
BSL, RES, BKR

Kirstin Ives
Williams Montgomery & John Ltd.
233 S. Wacker Drive, Suite 6100
Chicago, IL 60606
kbi@willmont.com
312.443.3878
LIT, ACC, HCA, COM

Dana Geneen Jones
Dana G. Jones Health Care Associates
5201 S. Cornell, Unit 5C
Chicago, IL 60615
ncbhalaw@aol.com
919.308.4502
HCA, CMP, ARB, INS

Jaime Myers
Caterpillar
100 N.E. Adams St., AB 7
Peoria, IL 61614
jaime.myers@cat.com
309.675.4278
LIT, PRL, BKR

Pia Norman Thompson
Transworld Systems
1375 E. Woodfield Road,
Suite 110
Schaumburg, IL 60173
pia.thompson@tsico.com
COR, EEO, BKR, LIT

Julie Lynn Trester
Meckler Bulger Tilson Marick & Pearson
123 N. Wacker Drive, Suite 1800
Chicago, IL 60660
julie.trester@mbtlaw.com
312.474.7960
EEO, LIT, INS

KENTUCKY

Lauren Van Sickle
3000 Talisman Road
Louisville, KY 40220
leschu02@gmail.com

Marsha L. Anastasia, NAWL President.

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MASSACHUSETTS

Patricia Comfort
Women's Bar Association of Massachusetts
27 School St., Suite 500
Boston, MA 2108
pcomfort@womensbar.org
617.973.6666

MARYLAND

Shauna C. Bryce
Bryce Legal Career Counsel
1783 Forest Drive, Unit 304
Annapolis, MD 21401
scbryce@brycelegal.com
202.674.2000
CLT

Courtney Davenport
The Davenport Law Firm LLC
18805 Porterfield Way
Germantown, MD 20874
courtney@thedavenportlawfirm.com
PRL, CAS, CON

Tiffany Russo
Verizon
5647 Old Chester Road
Bethesda, MD 20814
russoaudas@verizon.net
703.403.4398
COR, TEL

MINNESOTA

Sandra Smalley-Fleming
Ross Orenstein & Baudry LLC
222 S. Ninth St.
Suite 470
Minneapolis, MN 55402
ssmalley-fleming@rossbizlaw.com
612.436.9807

Sharda Kneen
Ross Orenstein & Baudry LLC
222 S. Ninth St.
Suite 470
Minneapolis, MN 55402
skneen@rossbizlaw.com
612.436.9811
LIT, SEC

MISSISSIPPI

Kristina M. Johnson
Jones Walker LLP
190 E. Capitol St.
Suite 800
Jackson, MS 39205
kjohnson@joneswalker.com
601.949.4785
BSL, BKR, LIT

MISSOURI

Judith Ngum Ndoping
Salans FMC SNR Denton
4520 Main St., Suite 1100
Kansas City, MO 64111
judith.ndoping@dentons.com
816.460.2519
BSL, CMP

NEW HAMPSHIRE

Linda A. Monica
Monica & Associates PC
1 New Hampshire Ave., Suite 125
Portsmouth, NH 03801
lmonica@monicalaw.com
603.430.7900
CLT, TOL, TOX

Autumn Misiolek Tertin
Goff Wilson PA
Two Capital Plaza, Suite 403
Concord, NH 03301
atertin@goffwilson.com
603.228.1277
IMM

NEW JERSEY

Rachel S. London
Wall & London LLC
15 S. Haddon Ave., Suite 4
Haddonfield, NJ 08033
rlondon@wallandlondon.com
856.428.1480
EEO, MUN, CRM, SHI

Stephanie Ripley Wolfe
Riker Danzig Scherer Hyland & Perretti LLP
One Speedwell Ave.
Morristown, NJ 07962-1981
swolfe@riker.com
973.538.0800
LIT, WCC

NEW YORK

Michelle J. d'Arcambal
d'Arcambal Ousley & Cuyler Burk LLP
40 Fulton St., Suite 1005
New York, NY 10038
mdarcambal@darcambal.com
212.971.3175
BSL, ERISA, INS

Ellen Casey
MetLife Inc.
1095 Avenue of the Americas
New York, NY 10036
ecasey@metlife.com
212.578.9852
EEO, IMM, INT

Martha E. Gifford
Law Office of Martha E. Gifford
137 Montague St.
Unit 220
Brooklyn, NY 11201
giffordlaw@mac.com
718.858.7571
ANT

Margaret Laura Hanson
AXIS Capital Holdings
1211 Avenue of the Americas
New York, NY 10069
margaret.hanson@axiscapital.com
212.500.7688
COR, M&A

Anne Kershaw
Knowledge Strategy Solutions LLC
161 Grove St., Suite 200
Tarrytown, NY 10591
anne@
knowledgestrategysolutions.com
800.372.7992
IST

Marianne Kurlandski
Jewish Federations of North America
134 E. 22nd St., Apartment 508
New York, NY 10010
mkurlandski@hotmail.com
COR, M&A, NPF

Maeve Moran
Arthur Cox
One Rockefeller Plaza, 15th Floor
New York, NY 10010
Maeve.Moran@arthurcox.com
212.782.3292 COR

Katrina H. Murphy
Segal McCambridge Singer & Mahoney Ltd.
850 Third Ave.
Suite 1100
New York, NY 10022
kmurphy@smsm.com
212.651.7500
TOX, PRL, COM, COR

Jennifer Raviele
Kelley Drye & Warren LLP
101 Park Ave.
New York, NY 10178
jraviele@kelleydrye.com
212.808.7684
BKR

Aidee Reyes
OHL USA
780 Third Ave., 9th Floor Suite
New York, NY 10017
Areyes@ohlusa.com
703.399.5097
CMP, CNS

Diana Shafter Gliedman
Anderson Kill PC
1251 Avenue of the Americas, 42nd Floor
New York, NY 10020
dgliedman@andersonkill.com
212.278.1036
INS, LIT

Eliza Stoker
Major Lindsey & Africa
521 Fifth Ave., 5th Floor
New York, NY 10175
estoker@mlaglobal.com
212.421.2276

OHIO

Theresa Morelli
684 Triplett Blvd.
Akron, OH 44306
tmorelli@neo.rr.com
330.724.2916
RES, CCL, LIT, CON

PENNSYLVANIA

Tiffany Marie Alexander
Campbell Campbell Edwards & Conroy PC
1205 Westlakes Drive, Suite 330
Berwyn, PA 19312
talexander@campbell-trial-lawyers.com
610.964.6385
LIT, PRL, COM, PIL

Sheryl L. Axelrod
The Axelrod Firm PC
The Beasley Building
1125 Walnut St.
Philadelphia, PA 19107
saxelrod@theaxelrodfirm.com
215.471.1768
LIT, EEO, COM, APP

Donna Gerson
Drexel University Thomas R. Kline School of Law
3320 Market Street, Room 324
Philadelphia, PA 19104
donna@donnagerson.com
215.571.4720

Deborah Epstein Henry
Flextime Lawyers
P.O. Box 654
Ardmore, PA 19003
dehenry@flextimelawyers.com
610.658.0836
GEN

Mary Ann Mullaney
Jacobs Law Group PC
2005 Market St., Suite 1120
Philadelphia, PA 19103
MMullaney@jacobslawpc.com
215.569.9701
BSL, COM

TENNESSEE

Siyi Shen
Vanderbilt University Law School
2006 Broadway, Apartment 104
Nashville, TN 37203
siyi.shen2010@gmail.com
917.821.5221

TEXAS

Sharla J. Frost
Tucker Ellis LLP
1001 Texas Ave.
Suite 1400
Houston, TX 77002
sharla.frost@tuckerellis.com
972.537.4205
COM, PRL, TOX, LIT

VIRGINIA

Stacy D. Allocca
Stacy D. Allocca PC, Attorney at Law
1115 Franklin Turnpike, Suite 1
Danville, VA 24540
stacy@salloccalaw.com
434.835.4950
FAM

WASHINGTON, DC

Rachel A. Alexander
Wiley Rein LLP
1776 K St. N.W.
Washington, DC 20006
ralexander@wileyrein.com
202.719.7371

Christina Crockett
Ogletree Deakins Nash Smoak & Stewart PC
1909 K St. NW
Suite 1000
Washington, DC 20006
christina.crockett@ogletreedeakins.com
202.263.0266
ERISA

Sara Kropf
Law Office of Sara Kropf PLLC
1001 G St. N.W., Suite 800
Washington, DC 20001
sara@kropf-law.com
202.627.6900
WCC, COM

JJ Yapp
Special Counsel
1400 I St. N.W., No. 325
Washington, DC 20005
jj.yapp@specialcounsel.com
202.737.3436

INTERNATIONAL

Therese Keelaghan
Cabinet Keelaghan
555 Avenue Mozart
Aix En Provence
France 13770
tk@cabinetkeel.com
+33 442 93 20 54
ILP, INT, IST, BIO

Deborah Salzberger
Blake Cassels & Graydon LLP
199 Bay St., Suite 4000
Commerce Court, West
Toronto, ON M5L1A9
debbie.salzberger@blakes.com
416-863-4014
ANT, BNK, TEL, CMP

From left, Emily Miller, Jamie Shipley, Ann LaFeir, Karen S. Morris, Cheryl Barber, Shahin Karim and Kristen Millan, all from USAA, attended the Annual Meeting.

Photo: Marty Morris/MPM Photography LLC

Join the Club!

Join the **NAWL Challenge Club** – work together to make lasting change in the legal profession.

In 2006, the National Association of Women Lawyers issued the NAWL Challenge to increase to at least 30 percent the number of women equity partners, women chief legal officers and women tenured law professors. While the profession has made strides in two of the areas, the number of women equity partners remains relatively stagnant. The NAWL Challenge Club is for those law firms and corporate legal departments committed to increasing the number of women equity partners in law firms.

Corporate legal departments that join the Club will have access to a network of top female talent from firms that are dedicated to advancing and retaining women attorneys. Law firms that join the Club will have the opportunity to select women on the equity partner track to participate in networking events and pitch sessions with corporate Club members.

Corporations are encouraged to join the Club by contacting Caitlin Kepple at kepplec@nawl.org. Law firm members must be Sustaining Sponsors of NAWL to receive membership in the Club. The number of memberships is dependent on Sustaining Sponsorship level. For information on becoming a 2015 NAWL Sustaining Sponsor, visit www.nawl.org/sustainingsponsor and contact Caitlin at kepplec@nawl.org.

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PRSRT STD
U.S. POSTAGE
PAID
PERMIT #6563
SLC UT 84115

National Association of Women Lawyers
American Bar Center
321 North Clark Street, MS 19.1
Chicago, IL 60654