



NAWL'S 6TH ANNUAL GENERAL COUNSEL INSTITUTE IN NEW YORK, NEW YORK

At NAWL's 6th Annual General Counsel Institute in New York, New York, the planning committee gathered for posterity. From left to right, front row: Suellen Galish, Babette Orenstein, Dena Rosenzweig, Dorian Denburg, Merrie Cavanaugh, Karen Morris, Lisa Passante, Heidi Osborne, Shawn White and Lesley Weber; back row: Jeannette Blanco, Lisa Cesare, Megan Hurley, Vicky DiProva, Jane McBride, Liz Levy, Melissa Caen, Sheila Murphy, Ellen Samuels, Julia Brickell and Katie Hoffman.

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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 policies or official positions. Publication of an opinion is not an endorsement by NAWL. We reserve the right to edit all submissions.

ARTICLES

Book reviews or articles about current legal issues of general 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 and the quality of the writing. No material can be returned unless accompanied by a self-addressed, stamped envelope.

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Women Lawyers Journal (ISSN 0043-7468)
is published quarterly by the
National Association of Women Lawyers (NAWL)®
321 North Clark Street, MS 15.2, Chicago, IL 60654.

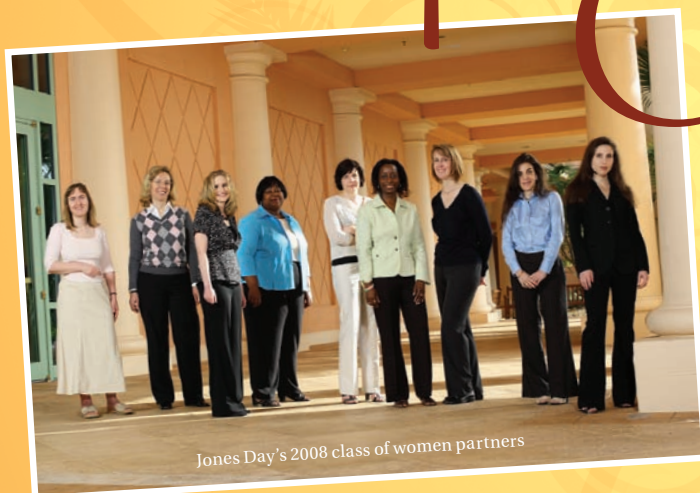
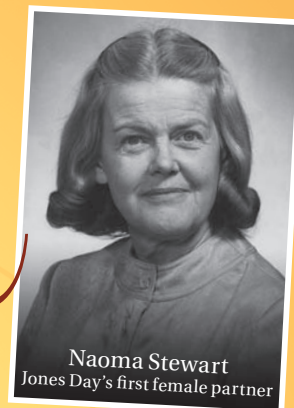
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Photos from the General Counsel Institute taken by Marty Morris.

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the voice of women in the law®

About NAWL

Founded in 1899, NAWL is a professional association of attorneys, judges and law students serving the educational, legal and practical interests of the organized bar and women worldwide. Both women and men are welcome to join. Women Lawyers Journal®, National Association of Women Lawyers®, NAWL, and the NAWL seal are registered trademarks.

By joining NAWL, you join women throughout the United States and overseas to advocate for women in the legal profession and women's rights. We boast a history of more than 100 years of action on behalf of women lawyers. For more information about membership and the work of NAWL, visit www.nawl.org.

BENEFITS OF MEMBERSHIP

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- Networking opportunities with women lawyers across the United States
- Access to programs specifically designed to assist women lawyers in their everyday practice and advancement in the profession
- A subscription to the quarterly Women Lawyers Journal and the ability to be kept up to date on cutting edge national legislation and legal issues affecting women
- The opportunity to demonstrate your commitment and the commitment of your firm or company to support diversity in the legal profession.

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To learn more about our Women's Leadership Initiative (WLI), contact WLI Co-Leader Elaine Metlin at (202) 420-2263 or metline@dicksteinshapiro.com

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EDITOR'S NOTE

In October, NAWL and the NAWL Foundation published the fifth annual National Survey on Retention and Promotion of Women in Law Firms and it is included in this issue for everyone to read. This year's Survey included information regarding women as rainmakers in their firms as well as the impact that lawyer terminations have had on women lawyers. Unfortunately, the Survey found that not much has changed since NAWL began tracking this information from the country's top law firms. Women continue to be underrepresented in the leadership ranks, equity partner ranks, and as rainmakers and continue to earn less than their male counterparts. In fact, this year, the compensation gap widened to 15% (women equity partners earned only 85% of the compensation earned by their male colleagues). The terminations made throughout law firms that began in 2009 and continued into 2010 showed, as did last year, that while lawyer terminations in general were proportionate to the overall numbers, the substantial majority of terminations of part-time lawyers were women. The Survey helps make the business case for advancement of women into law firm leadership. A copy of the Survey is also available for download on the NAWL website – www.nawl.org. I urge you to read the entire Survey and circulate it to your colleagues. The information contained in it can help in implementing changes that will move women forward into law firm leadership.

In past issues, we have also addressed the road being traveled by women of color and the obstacles they face and in this issue we are addressing the path to success for in-house lawyers. The Executive Summary from the Women's Bar Association of the District of Columbia's report, *"Navigating the Corporate Matrix: Advancing Women in Corporate Law Departments,"* also provides action steps for corporate legal departments to help promote and retain their female in-house legal talent.

Also included in this issue is a review of Deborah Epstein Henry's book, *Law & Reorder: Legal Industry Solutions for Work/Life Balance, Retention, Promotion & Restructure*. The book is ambitious and thought-provoking and Maritza Ryan's review will definitely make you want to read the entire book. Negotiation is something lawyers do almost on a daily basis. The article entitled *"Adhering to Ethical Obligations in Settlement Negotiations While Maximizing Results for Your Client"* by Meredith N. Reinhardt will help guide you to an ethical, but successful, result.

I hope you enjoy all of the information contained in this issue. There is a lot of food for thought and ways to make some changes going forward so that 2011 will be a successful year for all.

Enjoy the pictures from NAWL's Sixth Annual General Counsel Institute in New York this past November as well as the pictures from some of NAWL's National Nights of Giving held in Chicago and Newark, New Jersey.

I love hearing from our members and readers about what they like and don't like about the *Women Lawyers Journal*. If you have suggestions or want to write an article, please drop me an email. I hope you enjoy the issue!



Warm wishes,

Deborah S. Froling, Editor

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PRESIDENT'S LETTER



We need to recognize our male colleagues!

Three decades ago, Daniel Patrick Moynihan wrote a series of memoranda to President Nixon which remain relevant, like this from August 20, 1969 excerpted in *Daniel Patrick Moynihan: A Portrait in Letters of an American Visionary*, edited by Steven R. Weisman:

The essential fact is that we have educated women for equality in America, but have not really given it to them. Not at all. Inequality is so great that the dominant group either doesn't notice it, or assumes the dominated group likes it that way. (An old story!) Did you happen to note, for example, Erik Erikson's comment that there were no women present at our meeting of educators.[H]igher education subtly perpetuates the notion that women have equal rights, but not really equal potentialities, etc.

....I repeat: Male dominance is so deeply a part of American life that males don't even notice it.

Moynihan went on to suggest that Nixon "take advantage" of this in his appointments and pronouncement and urged: "This is a subject ripe for creative political leadership and initiative."

Forty-one years later, this subject is still ripe for leadership and initiative as women lawyers still seek equality in the workplace. Because 50% of law graduates were women but only 15% were equity partners, general counsel and tenured faculty, NAWL challenged firms, corporations and law schools in 2006 to double those numbers to 30% by 2015. NAWL also held a national Summit, the first of its kind, to devise best practical practices to achieve these goals which resulted in the Report on Actions to Advance Women into Law Firm Leadership, containing Best Practices on leadership, retention and promotion, business development and compensation. We measured the progress with the NAWL Survey, a comparative view of the careers and compensation of women versus men, now a 5 year longitudinal study of Am Law 200 firms—institutional rather than anecdotal.

This year's Survey findings, which are included in this issue (past years' surveys are available at www.nawl.org), are stunning for their constancy. Women continue to lag behind their male counterparts in firm leadership, equity positions and as rainmakers—3 areas so critical to law firm success where women need to be present and be represented.

Equity Partnership: The percentage of women equity partners is unchanged over the last 5 years; women still only account for about 15% of equity partners. It continues to be much more difficult for women than men—by a factor of almost 6:1—to become equity partners in big firms.

Law Firm Leadership: The average firm's highest governing committee includes only 1 or 2 women. And about 10% of the nation's largest firms have no women on their governing committees.

The Compensation Gap: Female associate compensation is on par with male associates but the compensation gap widens at every higher level. This year women equity partners earned about 85% of what their male counterparts earned.

Rainmaking: There are no women in the top 10 rainmakers of 46% of the country's largest firms.

Inhouse statistics are better by a digit: approximately 17 to 18% of GCs of Fortune 500 are women. Unlike law firms, corporate legal departments are generally flat and have no defined career path. Unlike law firms, the path upward in corporate law departments is unique to each corporation and is often driven by factors additional to and apart from the legal department itself.

Much has been written about the situation and the solutions, beginning with pipelines and ending with partnership. NAWL itself has begun a series of summits around the country with GCs of Fortune 500 companies, chairs and senior partners of Am Law 200 firms and key opinion leaders because the stagnation makes clear that stakeholders need to refine and hone existing best practices. I believe law schools need to begin teaching basic business skills, distinct from corporations or securities law, because lawyers need to understand basic business fundamentals to advance inhouse or in a firm of any size, including a solo practice.

I hope 2011 is momentous; I hope we see the job market rebound, the stock market rise, and the housing market recover. I hope we enjoy health and happiness, tranquility and peace.

I also hope we see a significant percentage of women lawyers advance in their careers. But one thing is certain. Hope is not a strategy. All challenges need champions. Consequently, NAWL is creating a Lead by Example Award and will recognize at its Annual Luncheon in July a male lawyer who is a principal of the profession--a leader in his law firm, company, government unit or public interest entity who advocates for the advancement of women, demonstrates the metrics and, to borrow from Senator Moynihan, exercises "creative political leadership and initiative."

And while I know hope isn't a strategy, I still hold out the hope that 2011 is the year when we see men and women work together, hand in hand, urgently moving to a common goal, fully understanding that when women succeed, men win, too, and leaving handprints on the future.

On behalf of the entire NAWL Board, best wishes and regards.

Best wishes and regards,

Dorian Denburg

NAWL President 2010-2011

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EVENT HIGHLIGHTS

NAWL 6th Annual General Counsel Institute

November 4-5, 2010, New York, New York

This premier program for senior in-house women lawyers celebrated its sixth-year hosting hundreds of attendees from all regions of the country and beyond. The Institute provided participants a unique opportunity to learn from leading experts and experienced legal colleagues about the pressure points and measurements of success for general counsel in a supportive and interactive environment. Participants enjoyed plenary and workshop sessions with general counsel of major public corporations and other professionals in a collegial atmosphere while also engaging in networking opportunities with other senior legal professionals.



Marsha Anastasia, NAWL Board Member, with Merrie Cavanaugh, Chair of the Institute, Karen Morris, Co-Chair of the Institute, and Elizabeth Levy.



Babette Orenstein, Lisa Bromberg, Suellen Galish, Christianne Chen and Susan Lofrumento enjoy the cocktail reception during the General Counsel Institute.



Sandra Cassidy, Prudential, and Helen Yu, American Airlines, pose for the camera during a break in the action at the General Counsel Institute.



Keynote Speaker Dee Dee Myers signs copies of her book, *"Why Women Should Rule the World"* after her speech.

EVENT HIGHLIGHTS

NAWL National Nights of Giving

On November 10, 2010 at the Chicago offices of K&L Gates, NAWL sponsored a National Night of Giving in support of Women Veterans of Jesse Brown Veterans Medical Center, which provides care to approximately 58,000 enrolled veterans, and its Women's Health Program serves 2,200 women annually. This event was also sponsored by K&L Gates, Dykema, Hinshaw & Culbertson, McDermott Will & Emery and LexisNexis.



On November 18, 2010 at the Newark, New Jersey offices of Gibbons P.C., NAWL sponsored a National Night of Giving in support of The Pajama Program, which provides new pajamas and books to children in need, many who are waiting and hoping to be adopted. This event was sponsored by Braff, Harris & Sukoneck, Chicago Title Insurance Company, Drinker Biddle & Reath LLP, Gibbons, LexisNexis, Littler, Lowenstein Sandler, McCarter & English, Patras Williams & Johnson, Prozio Bromberg & Newman, Prudential and Seton Hall Law School.



Report Of The 2010 NAWL Survey On The Retention And Promotion Of Women In Law Firms¹

by Stephanie A. Scharf and Barbara M. Flom

The National Association of Women Lawyers® (NAWL) and The NAWL Foundation® are pleased to report the results of the fifth annual National Survey on the Retention and Promotion of Women in Law Firms (“Survey”).^{4,5}

The Survey program began in 2006 to address the gap in objective statistics regarding the advancement of women lawyers into the highest levels of private practice. NAWL’s Survey is the only national study that annually tracks the professional progress of women in the nation’s 200 largest law firms⁶ by providing a comparative view of the careers and compensation of men and women lawyers at all levels of private practice, as well as analyzing data about the factors that influence career progression. By compiling annual objective data, the Survey aims to provide (a) an empirical picture of how women forge long-term careers in 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 firms.⁷

Apart from the desire to develop objective statistics, there was a second impetus for the Survey: to cast additional light on the reasons why women lawyers were not advancing into the upper levels of firms as many of us had thought would happen once women began graduating from law schools in large numbers. In 1985 and 1986, when the authors of this Report started their legal careers in one of the nation’s largest firms, women made up approximately 35% of law school graduates, a marked change from even the previous five years. When we interviewed for our first law firm jobs, we were assured by the interviewing law firm partners – virtually all men – that the lack of women in partnership positions was a function of demographics: women had not been going to law school in large enough numbers for a long enough time to reach positions of equity partner or leadership in firms. That was certainly the prevailing view at the time and one that made perfect sense to us.

By 1990, women had progressed to 43% of law school graduates and by 2000, the percentage had increased

to 48%. The proportion has bounced around the 50% mark ever since. Year after year, however, we watched as the availability of women law graduates entering firms far exceeded the number of women who were promoted into the upper levels of firms. We also watched dozens of talented, educated women lawyers leave large firms – some went in-house, some went to smaller law firms, and some gave up the practice of law entirely. Over time, we realized that the advancement of women in firms was not simply a matter of a large pipeline. Nor was it only a function of what women individually could or could not do. Based on many anecdotes and personal observations, it was not the case that women were unwilling to work the hours, or would not travel, or did not want to take the lead at trial or on deals, or could not develop business – a few of the prevailing explanations to explain the poor levels of advancement. Other, unidentified reasons must have existed.

In the last decade, there has been marked improvement in the availability of programs and policies expected to impact the advancement of women in a favorable way. There is hardly a large firm today that does not have a maternity leave policy, a part-time policy, and a diversity initiative, all programs designed to enhance the retention and advancement of women lawyers. Yet, many firms that have implemented these programs still struggle to promote women into higher positions.

So the question remains: What firm characteristics actually enhance the ability of women to advance into leadership roles? By developing a cache of objective data about firms over time, including data about their structure and operating characteristics, we hope to better understand what firms can be or do in order to have a meaningful impact on the long-term advancement of women. With this context in mind, we turn to the results of the 2010 Survey.

Snapshot of the 2010 Survey Results

- **Women in Law Firm Leadership.** Women continue to be markedly underrepresented in the leadership ranks

of firms. The average firm's highest governing committee includes only one or two women among its members – and about 10% of the nation's largest firms have no women at all on their governing committees. Although a number of firms report having women as managing partners of branch offices, very few firms place women in the role of overall managing partner.

- **Women as Equity Partners.** Women lawyers account for about 15% of equity partners, those lawyers who hold an ownership interest in their firms and occupy the most prestigious, powerful and best-paid positions. This number is essentially unchanged in the past five years – in spite of the commitment expressed by large firms to advance women lawyers.
- **Women Rainmakers.** Few firms report that women are playing major rainmaking roles. Almost half the firms – 46% – report no women at all among their top 10 rainmakers. Although the reasons behind this data are unclear, the lack of credit for rainmaking adversely affects the prospects of women for firm leadership and compensation.
- **Partner Compensation.** As has been the case ever since the Survey began collecting data on compensation, women equity partners earn less than their male counterparts. This year the difference widened, with women equity partners earning only 85% of the compensation earned by their male colleagues.
- **Impact of Use of Staff and Contract Attorneys.** Firms are increasingly using these nontraditional categories of attorneys for low-level or repetitive legal work. Women represent 60% of staff attorneys, the highest percentage of women lawyers in any category of practice. There is some evidence suggesting that firms may be using contract attorneys rather than letting their own women lawyers work part-time.
- **Impact of Partnership Tiers.** The phenomena of two-tier and mixed-tier⁸ partnership structures continue to have a negative impact on women lawyers. Our 2010 data show that about 9% of the nation's largest firms now function as mixed-tier firms. Women lawyers appear to be more successful in one-tier firms. Fewer women are equity partners in two-tier and mixed-tier firms than in one-tier firms. Two-tier and mixed-tier firms also have involuntarily terminated more lawyers, both women and men, in the current economic downturn, than have one-tier firms.

- **Impact of Partnership Structure.** Women represent a surprising 73% of “fixed-income equity partners,” those lawyers in mixed-tier firms who are required to contribute capital to the firm, but nevertheless receive only an annual salary and performance-based bonus rather than sharing in the overall profits of the firm.
- **Impact of Recent Involuntary Terminations.** In both 2009 and 2010, men and women generally have been terminated in rates proportionate to their numbers as associates and partners. The exception concerns terminations of part-time lawyers, positions that are occupied largely by women. The substantial majority of part-time lawyers who were cut were women, further decreasing the ranks of those who can position themselves to become equity partners or law firm leaders in the future.
- **Diversity Positions in Firms.** Over 90% of AmLaw 100 firms report that they staff a diversity program. However, since these programs are relatively new and vary widely in both content and goals, we have not yet been able to evaluate their effect on the advancement of women lawyers.

We now turn to more detailed analyses.

I. The Changing Structure of Law Firms and the Impact on Women Lawyers

Not so many years ago, the typical law firm had a very simple structure. A junior lawyer entered a firm as an associate and, after perhaps half a dozen years of satisfactory, full-time training and experience, was invited to become a partner in the firm. Partners were the owners of the firm and shared in the overall profits or losses of the firm's annual operations. Typically lawyers who graduated from law school in a given year would receive the same compensation and advance to partnership at the same time (a practice colloquially called “lockstep”). Firms touted the “home-grown values” of the firm, as exemplified by their partners, and lateral partners were virtually unknown. Partner terminations were rare. The career path for a fledgling lawyer was straightforward towards a well-understood goal. There was some risk that an associate would not “make” partner but when that happened, the firm handled the termination with discretion and gave the departing lawyer time and assistance to obtain another position.

Today, in sharp contrast, the typical large law firm is a byzantine structure where the career path for a new lawyer is anything but clear. A law firm will still have

The average firm's highest governing committee includes only one or two women among its members – and about 10% of the nation's largest firms have no women at all on their governing committees.

NAWL SURVEY

Women lawyers account for about 15% of equity partners, those lawyers who hold an ownership interest in their firms and occupy the most prestigious, powerful and best-paid positions. This number is essentially unchanged in the past five years – in spite of the commitment expressed by large firms to advance women lawyers.

associates and partners, but now these basic categories have nuanced stratifications that did not exist a generation ago. A lawyer working in a large law firm may be a contract attorney, staff attorney, associate, counsel, non-equity partner, or equity partner. Lawyers in any of these roles may work part-time. A beginning lawyer may be placed into the “Class of 2010,” but class year designation is a slippery concept and may not correlate with actual year of law school graduation if, for example, the lawyer has changed firms, changed specialties, or worked outside of a law firm after graduating law school. Lawyers in the “Class of 2010” at the same firm may not receive the same compensation and may not advance to partnership on the same track; advancement is based on far more complicated criteria than year of law school graduation. Lateral movement is now an accepted way to achieve equity partnership; and abrupt lawyer terminations are the norm.

For a number of reasons, changes in law firm structure could potentially affect the careers of women lawyers differently than men. For several years, the Survey has collected data on various structural characteristics of law firms in an effort to determine how structure impacts advancement. Our data suggest that, for the most part, the structural changes that have occurred in firms have not benefited the women lawyers who practice there.

A. The Impact of Non-Partner-Track Positions in Firms.

In 2010, we surveyed for the first time, at the suggestion of the Commission on Women in the Profession of the American Bar Association, the role that women and men play as staff attorneys and contract attorneys. We believe that this is the first study to systematically gather data from large firms on the extent of these positions and their impact on women lawyers.

The traditional lawyer roles in firms are well known: associates, partners, or counsel. These positions are viewed as long-term and, with respect to associates and counsel, also positions from which lawyers can advance to partnership. Over the past five years, however, firms have increasingly added new roles to the professional spectrum, in the form of “contract” attorneys and “staff” attorneys.

Contract attorneys are not employees of the law firm. Rather, they are typically employed by legal staffing enterprises and provided to a large firm on a one-time engagement basis for relatively short term, project-specific work that is managed by the firm. The firm is not responsible for their compensation or benefits; rather, it pays an hourly or project rate to the agency for the

lawyer’s time. Typically the contract lawyer earns 50% or less of what the agency is paid for the time worked. Once the project is completed, the lawyer either moves on to another project in another firm or waits for another contract assignment.

In essence, when hiring contract attorneys, the firm is outsourcing certain work, often but not always to lawyers who are in the same location as the firm’s office. Typically, contract attorneys are retained for repetitive “grinder” work such as document review, coding, and administrative filings. Contract attorneys are rarely hired by a firm they work at and may be released from a project on very short notice. The advantages to firms are that they can put contract lawyers on a project without any long-term commitment to the lawyers, offer far reduced fees to clients for work that in the past an associate would perform (even though the firm may charge the client more than the firm itself pays for the work), and can assign the same lawyer to relatively boring work for long periods of time without the lawyer complaining about the lack of continuing legal education and promotion.

An even more recent phenomenon is that many firms today hire “staff” attorneys. These lawyers are permanent employees of the firm, but are hired with the understanding that they are not on a partnership track. Thus, they are not expected to and almost never have prospects for promotion to partner. Staff attorneys usually receive less compensation than associates of similar seniority. Unlike contract attorneys, firms typically advertise staff attorneys as lawyers of the firm. The advantage of staff attorneys is that the firm can retain lawyers it deems to be reliable and well qualified, at reduced cost and without offering the types of professional experiences and supervision necessary to qualify a lawyer for partnership. In the current economy, when firms have made extensive layoffs, especially at the associate level, these positions have become more attractive to junior lawyers, even though they are evidently of lower status than associate positions in law firms.

The use of staff and contract attorneys is widespread in large law firms. The majority of the nation’s large firms (80% of AmLaw 100 firms and 50% of AmLaw 200 firms) hire staff attorneys, about half the large firms hire contract attorneys, and about half of the large firms hire both staff attorneys and contract attorneys.

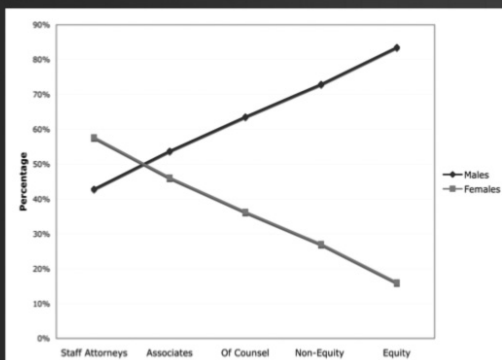
The typical firm employs nine staff attorneys.⁹ The proportion of staff attorneys is admittedly small compared to the number of other legal jobs in firms. Our data shows that in the typical firm, about 40% of lawyers are associates, about 10% are counsel, about 20% are non-equity partners and close to 30% are equity

partners. The percentage of equity partners does not vary substantially by size of firm (AmLaw 100 vs. AmLaw 200), although the percentages of attorneys in other roles vary depending on whether the firm has one or two tiers of partnership.

The Survey shows that over 60% of staff attorneys are women. This is the highest percentage of women lawyers in any category of practice, and by definition it is a category with little possibility of career advancement. Even if the status of staff attorney is not immutable, there is no guarantee that any staff attorney will find an “on-ramp” back to the partnership track. If, as one would expect, staff attorneys receive the less desirable legal assignments, then it would be even less likely that someone who spent any substantial time in this status would be considered a viable candidate for partnership. Since the widespread use of entry-level staff attorneys has only existed for a few years, it is perhaps too soon to predict that it is or will become a “pink” ghetto. Nevertheless, it is a phenomenon worth watching, and further research into its uses and effects is warranted.

The much greater proportion of women in staff attorney positions – 50% more women than men – is in striking contrast to the proportion of women in higher positions in the firm. Women occupy 46% of associate positions, 36% of counsel positions, 27% of non-equity partner and 16% of equity partner positions. In other words, at each higher rung up the ladder of large law firms, women occupy an increasingly smaller and less visible role. This is a phenomenon that we have consistently found in previous Surveys and the additional measure of staff attorneys makes that finding even more striking, as shown in Exhibit 1.

Exhibit 1: Legal positions occupied by women and men in firms



These data do not reflect that contract lawyers, not employed by the firm but working in the firm, number about half women and half men. These numbers are roughly proportional to the percentages of women and men in law school graduating classes. Our guess is that relatively junior lawyers are filling these jobs and that the numbers reflect the challenging job market in which recent graduates find themselves.

Are firms using these nontraditional categories of attorneys in addition to, or instead of, having classic partnership-track women lawyers working part-time? Although that question is unlikely to be answered directly, we examined the degree to which firms that hire contract attorneys, staff attorneys, or both, had more or less than the median percentage of women lawyers working part-time. There is some evidence that firms may be using contract attorneys rather than allowing their own women lawyers to work parttime. However, it appears that hiring staff attorneys is not correlated to whether a firm is above or below the median percentage of part-time women lawyers. A decrease in parttime positions may have adverse implications for the advancement of women lawyers.

B. The Impact of Tiered Structures.

Since 2008, the Survey has explored whether a law firm’s partnership structure affects the career prospects of women lawyers. Partnership structure is a term that would have been almost meaningless a generation ago, when practically the only distinction among lawyer personnel was whether one was an associate or a partner. Today, in contrast, the term “partner” has multiple meanings, so much so that the Survey distinguishes among three basic partnership structures that firms employ: one-tier, two-tier and mixed-tier.

For purposes of the Survey, we define a one-tier partnership as one in which at least 95% of the partners own equity in the firm and are compensated on the basis of their equity investment.

A two-tier partnership, in contrast, boasts both equity partners and “non-equity” partners. In a two-tier firm, equity partners are compensated the same as in one-tier firms – on the basis of their ownership interest in the firm, with some occasional additional compensation in the form of a bonus. Equity partners also are required to buy shares in the firm and may have to make additional contributions on the basis of their shares. Nonequity partners in a two-tier firm do not own shares, and are not compensated on the basis of shares. They are typically paid a fixed annual salary

with additional compensation, such as a bonus based on performance. Non-equity partners also have little if any voice in firm governance. Although non-equity partners are marketed to firm clients as “partners,” they do not possess the level of compensation, the authority, or the financial obligations of an equity partner. Firms and partners alike are typically secretive about who is or is not an equity partner.

A “mixed-tier” firm, although it may describe itself to the outside world as “two-tier,” has a sufficiently different partnership structure that it belongs in a separate category.¹⁰ In mixed-tier firms, some number of “equity” partners is required to contribute capital to the firm, and may receive some relatively small number of shares. But such partners receive the vast majority, or sometimes all, of their regular compensation through a fixed annual salary and/or a performance-based bonus. This financial arrangement significantly limits the upside potential of being an equity partner. However, these “fixed-income equity partners,” as we call them, stand to lose their capital if the firm fails, and may be held liable for firm debts in the same way as other equity partners. We also understand that fixed-income equity partners do not have the standing or governance rights of full equity partners. For purposes of NAWL’s Survey, we categorize a firm as “mixed-tier” if at least 5% of its partners are fixed-income equity partners.

The 2010 Survey found that 28% of the nation’s largest firms are one-tier firms, 63% are two-tier firms, and 9% are mixed-tier firms. For purposes of this Report, the important question is the extent to which practicing in a particular tier of firm enhances or impedes the career prospects of women lawyers.

In some respects, women lawyers fare better in one-tier firms. In 2010, women lawyers constitute 18% of equity partners in one-tier firms, 17% of equity partners in mixed-tier firms and 14% of equity partners in two-tier firms. In general, one-tier firms are more likely to be above the median percentage in having minority women lawyers (67%, vs. only 39% for two-tier firms).¹¹

In addition, it appears that one-tier firms have been more resilient during the current economic downturn. Our data show that in 2008, 69% of one-tier firms terminated lawyers, compared to 89% of two-tier firms and 100% of mixed-tier firms. In 2009, 75% of one-tier firms, 84% of two-tier firms and 89% of mixed-tier firms terminated lawyers. In 2010, as the downturn continues, 85% of one-tier firms have terminated lawyers, while the corresponding percentages in two-tier and mixed-tier firms are 96% and 100%, respectively.

Another noteworthy feature of mixed-tier firms is that they are not transparent to the marketplace. Clients

typically do not concern themselves with the partnership structures of their outside counsel. Even many of the lawyers who work at a mixed-tier firm may not be aware of the existence of fixed-income equity partners. It is entirely possible that an associate who has worked hard, for a decade or more, with the expectation of becoming a partner someday may be astonished and dismayed to be offered only a fixed-income compensation deal in exchange for writing a six-figure check for his or her equity contribution.

The most important difference between mixed-tier and the other firm types is the extent to which women are clustered in the category of fixed-income equity partner. In the typical mixed-tier firm, approximately 6% of all equity partners are fixed-income equity partners, and an astonishing 73% of these are women. The median number of women in this category is five. Although five doesn’t seem like a big number, standing on its own, it looms large when compared to 20, which is the median number of women equity partners at a typical large law firm. In other words, since women partners are not that numerous to begin with, subtracting even five from that number potentially makes a significant difference.

We understand that some enlightened corporate clients – who themselves often have many senior in-house women lawyers – will seek to work with law firms that promote and support their women lawyers. Some clients specifically ask that a woman partner be named as an engagement partner or relationship partner for that client. Presumably, when a client takes that step it does so thinking that the woman equity partner in question will benefit financially from being chosen for this role. However, since we have not observed law firms marketing themselves to the outside world as mixed-tier, and since a client generally has little insight into the internal structure of the firm which it engages, such a client is unlikely to know whether the woman “partner” with whom it works is a fixed-income equity partner.

C. Part-Time Policies.

The 2010 Survey revisited the issue of part-time work, which it first explored in 2007. In the typical large firm, about 6% of the lawyers are working part-time, and 75% of these part-time lawyers are women. Moreover, 80% of women working part-time were doing so during their first 20 years of practice while, in contrast, 70% of the men working part-time had been in practice more than 20 years. This latter finding is consistent with the results of the 2007 Survey and suggests that men work part-time as they are winding down their practice while women work part-time during the formative years of their practice.

This timing pattern raises the concern that, although part-time policies have the salutary effect of allowing women lawyers to balance career and family obligations, women who take advantage of these policies may be hampering their careers. We do not have data on the extent to which part-timers return to full-time practice and achieve equity partnership, in comparison to those lawyers who worked full time throughout their careers. Anecdotally, we are aware that associates and junior partners working part-time are frequently viewed by their firms as insufficiently committed to their careers. This results in their receiving less training and less desirable assignments, which in turn impedes their advancement toward partnership. Moreover, in the current economic downturn we have seen that part-time attorneys are much more vulnerable to termination than their full-time counterparts. (See Section I.D. of this Report, immediately below.)

D. The Impact of Involuntary Terminations on Women.

The United States and global economies continue to struggle. As a result, law firms continue to have insufficient client work and, therefore, continue to lay off significant numbers of lawyers, paralegals and staff. Beginning in 2009, with the strong support of the American Bar Association Commission on Women in the Profession, the Survey has included questions about involuntary terminations in order to explore whether women have been more or less affected by this phenomenon than similarly situated men. The 2010 Survey questions cover the time period from February 1, 2009 through January 31, 2010. As with the 2009 Survey, we found that many firms were unwilling to respond to the questions about lawyer terminations, although the response rate for 2010 was slightly higher than in 2009. It appears that firms view this issue as highly sensitive.

Overall, 93% of large law firms terminated lawyers during the Survey period. As in 2009, roughly 80% of those terminated were associates.¹² Therefore, as noted in the 2009 Report, large law firms are reducing their “leverage,” i.e., the ratio of associates to partners, which had been increasing in recent years. In addition to actual terminations, most large law firms have also reduced their costs for junior lawyers by either deferring the start date of their 2009 and 2010 classes of incoming associates, rescinding job offers to some law students, decreasing the size of their summer associate programs, or all of the above.¹³

When examined by gender, it generally appears that women were laid off in rough proportion to the percentage of positions they hold at each level of seniority.

In the typical firm where layoffs occurred, women constituted about 38% of associates and 50% of counsels who were terminated. However, for all positions, there was large firm-to-firm variability in these proportions. Some firms laid off nearly 70% women, while others laid off as few as 13% women.

For women in part-time positions, the impact is different. In the 2009 Report, we noted that almost 2/3 of firms terminated one or more part-time attorneys and that, in the typical firm, 100% of those laid off were women. For 2010, the numbers and percentages have not improved substantially: 56% of firms terminated one or more part-time employees, and in 83% of those firms, more women than men were terminated. These results support the conclusions that (1) there is no significant gender effect from the involuntary terminations of full-time lawyers, and (2) women bear the brunt of layoffs of part-time lawyers.

The second conclusion has important long-term implications not only for those women who want or need to work part-time, but for the profession as a whole. When so many educated, talented and skilled women are choosing to work part-time – often for a limited number of years to accommodate family commitments – a firm’s decision to terminate part-time employees means that those women will not have the opportunity to return to full-time practice with the firm. Thus the firm’s pipeline of partnership-track women lawyers will be depleted. Absent countervailing trends, women will constitute an even smaller percentage of lawyers at successively higher strata of firms. In other words, terminating a part-time woman associate today means that there will be one less woman counsel, or non-equity partner, or equity partner, some years down the road. Given that women lawyers were already leaving firms disproportionately more than men, at every level, we can anticipate that the effects of today’s layoffs will be seen in disappointingly smaller numbers of women partners and firm leaders for many years to come.

Furthermore, we can only speculate as to the chilling effect that these layoffs will have on other women who might otherwise have opted to take advantage of a firm’s parttime policy. If women lawyers observe that working part-time renders them more vulnerable to layoff, then it is reasonable to expect that these women will make different life choices – perhaps deferring childbearing, or opting to continue to work full-time after the birth of one or more children, or perhaps worst of all, exiting large law firm practice before these issues become pressing.

In both 2009 and 2010, men and women generally have been terminated in rates proportionate to their numbers as associates and partners. The exception concerns terminations of part-time lawyers, positions that are occupied largely by women. The substantial majority of part-time lawyers who were cut were women, further decreasing the ranks of those who can position themselves to become equity partners or law firm leaders in the future.

II. Women Lawyers in Law Firm Leadership

A. Women in Law Firm Governance.

Women play a lesser role in firm leadership than would be expected from the numbers of women entering large law firms. One example is the number of women who are members of the highest governing committees of law firms.¹⁴ These are the bodies responsible for the firm's strategies, policies and practices, including policies for recruiting, training and promoting lawyers.

The median number of total members on these highest governing committees is 10 and, in the typical firm, women represent only one or two of those members. Looking at individual firms rather than the median, the statistics are even more disheartening. More than 10% of firms report that they do not have *any* women members on the firm's highest governing body. Some 40% of firms report having only one woman member of the highest governing committee. Another 30% of firms reported that they have two women members of their highest governing body. Thus, more than 80% of firms have *at most* two women members of their highest governing committee. Thirteen percent of firms reported three women members on their highest committee, and fewer than 10% of firms had four or more women members.

These numbers have been relatively unchanged in the five years we have collected the data on membership of governing committees. The low number of women on these committees parallels the low percentage of women who are equity partners in these firms. In addition, we believe that the small number of women at the highest level of firm leadership has broader implications for the advancement of women lawyers. This is the level of management at which decisions are made regarding firm policy, strategic growth and direction, recruiting and lateral hiring, compensation, billable hour requirements, elevation to partnership, prospects for part-time or time-off policies, all of which set the tone for overall firm culture. When women are not part of the dialogue and the decision-making body that charts the future direction of firms, the chances are greater that the policies and practices implemented will be less responsive to the career needs of women lawyers. Moreover, the quality of a law firm's decisions about all aspects of governance will be different and for the worse when a firm lacks a critical mass of women leaders.¹⁵

B. Advancement of Women into Equity Partnership.

To our continuing surprise and consternation, the proportion of women who are equity partners in large firms remains stuck at close to 15%, a proportion that has been about the same – never more than 16% – across

the five years we have collected such data. This year, the typical firm in the AmLaw 200 counted about 15% of its equity partners as women, slightly down from previous years. The slight decrease over previous years may be a function of sampling error or of lateral movement at the equity level, which we have previously noted tends to be disproportionately male.¹⁶ As noted in Section I.B. above, two-tier firms had a slightly smaller percentage of women equity partners and one-tier firms had a somewhat larger percentage, but the differences are not so large that they explain away the overall finding.

It thus continues to be much more difficult for women than men – by a factor of almost 6 to 1 – to become equity partners in large firms. The figures are in contrast to growing gender diversity in other leadership segments of the legal community. For example, the number of women general counsels among the Fortune 500 companies has been growing and, at 19%, is larger than the proportion of women equity partners in large firms.¹⁷ Along the same lines, the National Association of Women Judges reports that 26% of state court judges in the United States are women,¹⁸ in marked contrast to the proportion of senior women partners who practice in courtrooms. On the other hand, the percentage of women equity partners does mirror law firm clients in other ways. *Catalyst* recently reported that in the nation's Fortune 500 companies, the percentage of female corporate officers was a little over 15% and the percentage of female board members was just under 15%.¹⁹

C. Women and Credit as Rainmakers.

Many within the profession have observed the strong relationship between credit for rainmaking and successful advancement in firms. Nevertheless, whether individual rainmaking should continue to be the dominant factor in compensation and other benefits provided to lawyers in the upper echelons of firms is open to question, one of many valuable insights articulated in the recent joint publication by PAR and MCCA, "New Millennium, Same Glass Ceiling?"²⁰

Given the current importance of rainmaking, the Survey asked firms to identify by gender the persons credited as their top 10 revenue generators. The 2010 results show a similar pattern to 2009, the first year in which this question was asked. About 46% of firms credit no women at all among their top 10 revenue generators. Another 33% of firms credit only one woman among their top 10 rainmakers, and 17% credit two women. The numbers on all of these statistics are worse for AmLaw 100 firms, where, for example, almost 55% of firms count no women at all among their top 10 rainmakers.

In essence, among the nation's largest firms, almost 80% count either one woman or no women at all among their top 10 rainmakers. The reasons for these results are, we suspect, both blunt and subtle. The PAR/MCCA report elucidates many of those factors including, among others, that women are often excluded from rainmaking opportunities and thus from the benefits that flow from such opportunities;²¹ women frequently do not receive credit from their contributions to firms as institutions and participation as team players for business development; and women too often bear the brunt of disputes over fee credit, described as both common and painful.²²

D. The Compensation Gap between Men and Women Partners.

Each year since 2006, the Survey has measured the compensation of women and men lawyers in large firms. In 2010, as in previous years, female associate compensation appears to be on a par with male associate compensation. Meaningful differences in compensation show up, however, at every higher level in the firm – a result that has been consistent in each year of the Survey. In 2010, female counsel earned roughly 88% of male counsel. The gap between non-equity female and male partners narrowed, with women earning 94% of what their male counterparts earned. The gender gap was widest at the equity level, a finding that has been consistent in each year of the Survey. In 2010, women equity partners earned about 85% of the amount earned by their male counterparts.

Thus, not only do women have a far smaller chance than men of becoming an equity partner, but when they do reach that level of partnership, they are likely to earn less money than their male colleagues. Other research has described the dynamics of why compensation is more limited for women than men – we refer again to the PAR/MCCA research for a recent comprehensive view.

The data showing a substantially smaller than expected number of women in top positions in firms are not without consequence. We continue to believe that the absence of women at the highest level of firm leadership has broad implications for the advancement of women at all levels of practice in firms. That is because it is the leadership of firms that make the important decisions about elevation to partnership, compensation, and implementation of personnel policies, and the strategies that guide the direction and future of the firm. It has become a truism that when decision-making bodies are not diverse, they suffer in the quality and reach of their decisions. It bears repeating that when women are not part of the decision-making hierarchy that charts the future of a firm, it is likely that the firm's

policies and practices will be much less responsive to the career needs of women lawyers and continue to be less effective for advancing women in the law.

III. Law Firm Approaches to Achieving Diversity

Largely in response to corporate clients' demands that firms play proactive roles in staffing matters with a more inclusive mix of lawyers, law firms have developed diversity goals and diversity program initiatives. The success with which these diversity initiatives are carried out depends, in part, on what resources firms commit to the process, such as whether there is a professional designated to oversee and promote the implementation of such goals.

About 75% of firms reported that they employ a person whose primary responsibility it is to oversee the firm's diversity goals, with a greater percentage of AmLaw 100 firms staffing such a position. Nearly 90% of the AmLaw 100 firms have created such a position compared to about 60% of the Second Hundred firms.

The professional background of the person in the diversity position varied widely: about 55% of these positions are held by persons with a law degree, even if in their current post they are not practicing law, and 22% are held by non-lawyers. The rest of the firms have various other staffing arrangements for this position.

Whether there is any relationship between the presence of diversity initiatives and the likelihood of success for women lawyers in a firm is unclear, because (a) such a large proportion of firms report having diversity programs and (b) these programs have not been in place long enough, with focused enough goals, to demonstrate whether they are having a long-term impact.

Conclusion

We report the results of the 2010 Survey with some consternation. Progress for women lawyers in large firms is not occurring quickly. Moreover, the evolving structural changes in law firms – such as expansion of jobs at the lower end of firms, the increasing dominance of two-tier or multi-tier firms, and other non-traditional factors – along with the difficulty of obtaining credit for business development, portend stagnation or, at best, continued slow improvement in key areas such as numbers and compensation of women equity partners. Against this disappointing background, we are all the more heartened by and appreciative of the continued cooperation of participating law firms, whose efforts make a very meaningful contribution to a goal that we all share: parity of women lawyers in private practice.

NAWL SURVEY

Appendix on Survey Methodology

The NAWL Survey was sent in early Spring 2010 to the 200 largest firms in the U.S. as reported by *The American Lawyer*.²³ Although most attorneys in private practice work in smaller settings, we chose to focus on the largest firms because they are an easily defined sample, include firms from all parts of the U.S., and are viewed as benchmarks for the larger profession.

The Survey solicited information about the firm as a whole, including all U.S.-based lawyers, as of February 1, 2010. As part of the Survey, as in each of the prior years, NAWL committed not to publish individual law firm data. We also believe that, at the current time, aggregate analyses rather than a focus on particular firms encourages greater response rates on sensitive questions and is consistent with the twin goals of tracking how women are doing overall and setting benchmarks.

The Survey was designed and developed by Stephanie Scharf, a practicing lawyer and former Senior Study

Director at NORC. The survey was first administered in 2006 and conducted annually since then. The 2010 analysis was assisted by Amelia Branigan, MPES Fellow, in the Department of Sociology at Northwestern University.

A total of 120 firms responded to the 2010 Survey, which is an overall response rate of 60%. The response rate in the AmLaw 100 was 65% and the response rate in the Second Hundred was 55%. Responding firms generally mirrored the overall AmLaw 200 in terms of net operating income, profits per partner, gross revenue and regional distribution, although responding firms had substantially more revenue per lawyer. Most firms answered all questions. However, questions on compensation and involuntary terminations had higher rates of non-response, indicating that even when promised complete anonymity, some firms are reluctant to present such data. Based on anecdotal reports, the lower response rates for compensation and termination data suggest that the Survey results are likely to under-represent levels of gender disparity on these dimensions.

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³ Barbara Flom, retired, practiced law for more than two decades, primarily in AmLaw 100 firms.

⁴ In addition to the authors, Lorraine Koc, General Counsel of DebShops, Inc., NAWL Foundation Board member and former President of NAWL, supported the concept and implementation of the annual Surveys and continues to provide strategic and practical advice for Survey activities. Survey Committee Co-chair Cheryl Tama Oblander, partner at Butler Rubin Saltarelli & Boyd LLP, has participated in the writing of and strategic decisions regarding the Survey since 2007 and was principal editor of this year's Report. Additional 2010 Survey Committee members who participated in this year's Survey work include: Bodie Bristol, Laura Elliott, Amanda Groves, Joni Landy, Kathleen Russo and Susan White. Courtney Murtaugh provided administrative assistance and we thank her for her fine service.

⁵ We gratefully acknowledge the support of the American Bar Association Commission on Women in the Profession. In particular, we thank Chair Roberta Liebenberg for her impetus to study the impact of law firm terminations on women lawyers, of the expanded use of contract and staff lawyers, and of new alternatives for evaluating associates.

⁶ As compiled by *The American Lawyer*. For more detail, see Appendix of Methodology.

⁷ Several state and local bar associations have used the Survey to enhance their dialogues about the progress of women in particular regions. We would be pleased to work with other organizations to extend the Survey into local and regional areas.

⁸ The 2008 NAWL Survey was the first study to identify and collect data on a new type of law firm structure, the "mixed-tier" firm, in which all equity partners are required to contribute capital to the firm but some are paid as if they were income partners.

⁹ The reported numbers for contract attorneys are less reliable given the ephemeral nature of their engagements.

¹⁰ The NAWL Survey was, to our knowledge, the first research to identify the mixed-tier phenomenon and measure its prevalence among large firms and its impact on women lawyers.

¹¹ This statistic is specifically calculated for firms that responded to the Survey in both 2008 and 2010 as compared to the benchmark of minority lawyers in all AmLaw 200 firms. Further research on this subject may be instructive.

¹² No equity partners were reported as being terminated during the period surveyed.

¹³ This information is obtained from numerous stories in the American Lawyer, AbovetheLaw.com, and other legal media.

¹⁴ Such committees are called the Executive Committee, Policy Committee, Management Committee, or similar title.

¹⁵ V. Kramer, et al., Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance (Executive Summary) (2006). http://www.wcwonline.org/component/page,shop.getfile/file_id,21/product_id,1113/option,com_virtuemart/Itemid,175.

¹⁶ See 2008 and 2009 Survey reports at www.nawl.org.

¹⁷ See July/August edition of Diversity & Bar, "MCCA's 2010 Survey of Fortune 500 Women General Counsel."

¹⁸ http://nawj.org/us_state_court_statistics_2008.asp.

¹⁹ <http://www.womenonbusiness.com/new-us-women-in-business-statistics-released-by-catalyst>.

²⁰ <http://www.pardc.org/Publications/SameGlassCeiling.pdf>.

²¹ Id. at 7.

²² Id. at 6.

²³ The list of the nation's largest 200 firms was published by The American Lawyer in 2009 and was the basis for the population of firms surveyed in early 2010. Certain other data about these firms was obtained from lists published in The American Lawyer at various times during 2009 and 2010.

Law & Reorder: Legal Industry Solutions for Work/Life Balance, Retention, Promotion & Restructure

By Deborah Epstein Henry and reviewed by Colonel Maritza Sáenz Ryan



Colonel Maritza Sáenz Ryan, since September 2006, is the Professor and Head of the Department of Law, United States Military Academy at West Point. Upon graduating from the United States Military Academy at West Point in 1982, she was commissioned as a Lieutenant in the Field Artillery. Colonel Ryan received her Juris Doctorate, Order of the Coif, in 1988 from Vanderbilt University Law School. Among her positions with U.S. Army, Colonel Ryan served as Senior Trial Counsel (Prosecutor) at Fort Sill, Oklahoma. In 1990, she deployed to Operation Desert Shield/Desert Storm as a Brigade Legal Counsel, returning to Fort Sill to be the Senior Defense Counsel.

Other assignments include Assistant Professor, Department of Law, West Point; Chief of Military Justice and Officer-in-Charge, Fort Shafter Branch Office, 25th Infantry Division (Light), Hawaii; Deputy Staff Judge Advocate for the Army Medical Department Center and School, Ft. Sam Houston, Texas; and Academy Professor and Deputy Head, Department of Law, West Point. Colonel Ryan, a member of the New York State Bar, holds a Master of Laws in Military Law from the Army Judge Advocate General's School, and a Master of Arts in National Security and Strategic Studies from the Naval War College. She is a cancer survivor, and is married to a West Point classmate and retired Army officer and has two children.

At first blush, the moment doesn't seem right for an ambitious book like this: we are still feeling the pain of a prolonged national economic downturn. The recession may indeed be over, but many sectors of the economy still appear to be mired in a jobless recovery, and nowhere is that more evident than in law, or the "legal industry," as author Deborah Epstein Henry refers to it in her new book, *Law & Reorder*. After all, the Sunday New York Times recently led its Business section with an article entitled, "Is Law School a Losing Game?"¹ According to the Times, "a generation of J.D.'s face the grimmest job market in decades." The article cites a Northwestern Law study that, in the last two years, large law firms have shed 15,000 attorney and legal staff jobs. Unprecedented lay-offs of associates, summer law student internships abruptly cancelled, partners encouraged to retire early or leave the firm, and recruitment of new talent reduced or cut altogether are no longer shocking developments. Previously stalwart corporate clients, also busy tightening their belts, are balking at rising legal fees, and have actually begun outsourcing basic legal work to temporary employees in the U.S. as well as in India and other countries.

Is this the time to be talking about completely restructuring the profession—to include radically changing how attorneys work, are compensated and promoted—so that women lawyers can compete, contribute, and succeed? With the economic outlook as bleak as

it seems now, is this the moment to be suggesting that the legal industry treat initiatives to promote diversity in the profession and in its top leadership as business necessities, rather than luxuries they can do without?

Most emphatically "Yes!" replies Ms. Henry—in fact, the time has never been better. "I see today an unprecedented opportunity to empower not just women lawyers, but all lawyers, to take charge of their careers, to improve the control they have over their lives, and to change how and where work gets done," she continues, "I also believe that the time is ripe for employers to revamp their traditional models or invent new ones." Law firms and legal employers who fail to innovate and adapt in a changed and still rapidly changing business environment—who don't strive to stay ahead of the competition in terms of the work/life balance, retention, promotion and organizational structure that the author lists in her book's subtitle— not only forego the chance to create "a more hospitable, productive, and profitable environment for all," but risk extinction in the very near future.

"Change is good."

Extinction, evolution, adaptation, survival of the fittest—these terms figure prominently throughout this lively, inspiring, and ultimately very practically-oriented book. But this is not a biology text, an argument against cre-

Ms. Henry offers some innovative ideas for striking changes in the way lawyers are hired, compensated, and retained, and examines a number of firms and companies, old and new, that are already applying and profiting from the proverbial thinking outside the billable-hour, partner-track-filled box.

BOOK REVIEW

Legal employers are not the only ones needing a makeover in their world view: attorneys at every stage must likewise change their perspectives, career goals and self-management styles to succeed in this brave new world.

ationism, nor even an argument for some sort of Social Darwinism. Ms. Henry uses the language of evolution to describe what must go on at the legal employer level if the organizations they lead are to be successful now and especially later, as the economy recovers more fully. Many of her suggestions are particularly directed toward law firms, but the author also provides timely advice to all sorts of entities that employ lawyers. Whether they are firms of any size, companies, government agencies, or non-profits, each will need to adapt to a “new norm,” in which the exception will become the rule. Thus, the author directs Part I of her book at employers, providing a keen-eyed description of today’s legal environment, and identifying what the catalysts are for change. Among these are: dissatisfaction on all sides with the traditional, oppressive billable hour; sustained business retrenchment and lowered firm profitability; and the accelerated loss of legal talent and diversity, particularly at the higher levels of leadership. Ms. Henry then offers some innovative ideas for striking changes in the way lawyers are hired, compensated, and retained, and examines a number of firms and companies, old and new, that are already applying and profiting from the proverbial thinking outside the billable-hour, partner-track-filled box.

“Change cannot take hold if only one party changes.”

Ms. Henry minces no words in calling for what amounts to visionary new leadership for the legal profession. A mere collection of half-measures in policies and procedures will not do, but rather a radical restructuring—“a realignment,” “a makeover”—of the legal industry is the only adequate response to pending developments in the near future, as well as those that are already underway. But legal employers are not the only ones needing a makeover in their world view: attorneys at every stage must likewise change their perspectives, career goals and self-management styles to succeed in this brave new world. In Part II of her book, Ms. Henry provides sage advice for lawyers and law students as well. Nugget of Wisdom #1 in Part II? Read and study Part I of this book. “[A] lawyer cannot thrive in today’s legal environment,” warns the author, “without understanding the economic and managerial issues his or her employer is facing.” Her “how-to” strategies for enhancing personal and group productivity and business development, rising to and succeeding in leadership roles, and attaining satisfaction and accomplishment in one’s work while still having a life, are thus all couched in this very reality-based context.

Fortunately for all concerned, the business case for developing more “women-friendly” (and “family-friendly”) workplaces, as Ms. Henry illustrates in various ways throughout the book, can be found in the positive numbers on the bottom line. These legal organizations are not just more rewarding personally and professionally for attorneys, and more responsive and cost-effective for clients, but they are also proving quantifiably more profitable for all concerned.

“The key to the future lies in embracing reorder.”

Returning to our evolutionary change analogy, when what appear to be errors occur in the replication of genomes from one generation of organisms to the next, “the phenomenon of evolution” results.² Given a constantly changing natural environment—with often starkly different conditions and potential threats and opportunities appearing without warning—some of those errant mutations turn out to be beneficial over time, allowing “species to evolve into forms better able to survive in their environment, a process called adaptation.” The days when success or failure rested almost solely on the cold, hard numbers of billable hours logged; when expressing concerns about work/life balance, or inquiring about working flexible or reduced hours while caring for a child or ailing spouse or parent, signaled a career-dampening lack of commitment; and when steep attrition rates in the ranks of high-performing women, minorities, and talented but burned-out men was economically sustainable and professionally acceptable—those days are long-gone, according to Deborah Epstein Henry.

These challenging times call for intelligent, thoughtful flexibility in attitudes and approaches to legal work; seeking win-win solutions for clients, attorneys and employers alike; and creating and promoting hospitable and profitable workplaces for everyone. To survive and thrive in our new legal environment (indeed, Ms. Henry notes that many of her observations and suggestions are not limited to the profession of law, but cut across many industries), both organizations and individuals must adapt and evolve, and they must do so through their own well-informed initiative, rather than through chance or knee-jerk reaction. As the author incisively notes, the legal profession is one naturally attuned to looking backwards in search of precedent on which to rely, even as forward-looking, trail-blazing, and highly creative solutions are urgently needed. Reading and thinking about the concepts presented in this immensely well-written, thoroughly researched and provocative book is a highly recommended step in the right direction.

¹ David Segal, “Is Law School a Losing Game?” January 8, 2011, Business Day, The New York Times, http://www.nytimes.com/2011/01/09/business/09law.html?_r=1&src=me&ref=homepage

² “Genetic Change,” News-Medical.Net - Latest Medical News and Research from Around the World, accessed at <http://www.news-medical.net/health/Genetic-Change.aspx>

Adhering to Ethical Obligations in Settlement Negotiations While Maximizing Results for Your Client

By Meredith N. Reinhardt



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In settlement negotiations, a lawyer strives to obtain the best possible resolution for the client. In attempting to meet this goal, however, the lawyer must not overlook ethical obligations. The lawyer is legally required to abide by these obligations and a violation of such obligations during settlement discussions could later lead to a settlement being rescinded on the ground that it was achieved through improper means. This result not only would frustrate the negotiation process but could expose the lawyer to sanctions, disciplinary action or potential malpractice liability if a settlement is vacated based on the lawyer's unethical behavior during negotiations.

The primary ethical duty of a lawyer negotiating a settlement is stated in ABA Model Rule 4.1(a), which provides that "in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person." Most state Rules of Professional Conduct have adopted an identical or substantially similar Rule.¹ Rule 4.1(a) has been interpreted to permit "puffing" or "posturing" by a lawyer because an ordinary person in negotiations would not reasonably rely on these types of statements. In 2006, the ABA issued a formal opinion on this issue, concluding that, in settlement negotiations (and caucused mediations), a lawyer representing a party may not make a false statement of material fact but "statements regarding a party's negotiating goals or its willingness to compromise, as well as statements that can fairly be characterized as negotiation 'puffing,' ordinarily are not considered 'false statements of material fact' within the meaning of the Model Rules."² Both the 2006 Opinion and comments to Rule 4.1(a) acknowledge that it depends upon the circumstances of the case whether a statement can be

characterized as one of material fact, or one of a party's negotiation goals or intentions. Since the 2006 Opinion, the debate regarding what constitutes permissible puffing or statements of material fact has continued and the boundaries of permissible puffing can be viewed as a somewhat unsettled matter.

In order to comply with ethical obligations while at the same time maximizing results, practitioners should consider the following factors when zealously representing their clients in settlement negotiations.

When it comes to the facts, make sure you are accurate. The ability to engage in puffing or posturing is not intended to allow parties to provide misleading information, or to omit information that can be characterized as misleading. Indeed, those cases where it has been determined that a lawyer violated his or her ethical obligations, or where a settlement was ultimately vacated, involved situations where the lawyer simply failed to disclose material information or provided misleading material information to opposing counsel in negotiations.³ The 2006 Opinion makes clear that statements made unknowingly, pertaining to immaterial matters, or neither relating to fact nor law are not subject to the requirements of Rule 4.1(a).⁴ Nonetheless, practitioners should be particularly careful when discussing *material* facts in negotiations as those types of statements are not likely to be characterized as puffing or posturing.

Preserve your credibility. If puffing or posturing is taken too far and crosses the line to include material misrepresentations, there will be a significant negative impact on a lawyer's credibility.⁵ Even in a situation where a lawyer's statements do not technically constitute material misrepresentations, but otherwise fall

It depends upon the circumstances of the case whether a statement can be characterized as one of material fact, or one of a party's negotiation goals or intentions.

By using puffing and posturing effectively while maintaining an appropriate balance, the lawyer will maximize results for the client and preserve his or her credibility throughout the process.

into the gray area, the lawyer's credibility will likely be compromised. This is not to say that some puffing and posturing is not appropriate in certain settings. Certainly, in many circumstances, puffing and posturing can be an important negotiation tool. By using puffing and posturing effectively while maintaining an appropriate balance, the lawyer will maximize results for the client and preserve his or her credibility throughout the process.

A lawyer's duty of candor to a tribunal imposes additional ethical obligations. If parties are engaged in a court-annexed mediation or other type of negotiation before a judicial officer, additional ethical obligations will apply. ABA Model Rule 3.3 prohibits a lawyer from knowingly making untrue statements of fact or law to a

tribunal. Rule 3.3 does not have an exception for puffing and posturing. The 2006 ABA Opinion specifically distinguished a caucused mediation where puffing and posturing is permissible from a negotiation before a judicial officer or a tribunal where puffing and posturing is not permissible.⁶ Thus, practitioners must be aware of this distinction when participating in negotiations involving a tribunal.

ABA Model Rule 4.1(a) provides some flexibility for lawyers to puff and posture in a non-judicial settlement negotiation. When used appropriately, puffing and posturing can be an effective negotiation tool. By thinking through these ethical issues when developing negotiation strategies, a lawyer will be able to achieve the best result for his or her client.

¹ ABA Lawyers' Manual on Professional Conduct: Practical Guides, Obligations to Third Persons, Truthfulness in Statements to Others, § 71:202 (listing variations of Rule 4.1 in other states).

² ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-439 (2006).

³ *E.g., Virzi v. Grand Trunk Warehouse and Cold Storage Co.*, 571 F.Supp. 507 (E.D. Mich. 1983) (settlement set aside because attorney failed to disclose during settlement negotiations that client had died prior to entry of settlement); *In re Graveley*, 805 P.2d 1263, 1264 (Mont. 1990) (lawyer violated Rule 4.1 when he told opposing party that he would be paid in full his share of certain insurance proceeds if he endorsed the insurance draft even though lawyer did not pay party in full as represented until two years later); *In re McGrath*, 468 N.Y.S.2d 349 (N.Y. App. Div. 1983) (lawyer suspended from practice of law for six month for ethical violations including negligent misrepresentation of insurance coverage in settlement negotiations in violation of New York DR 1-102(A)(6) for "conduct which reflects adversely on his fitness to practice law"); *In re Eadie*, 36 P.3d 468 (Or. 2001) (lawyer received three-year suspension of his license to practice law for ethical violations including lawyer's intentional failure to include in settlement agreement that he intended to seek his costs because lawyer's omission that he intended to seek his costs was a material omission of fact); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 95-397 (1995) (lawyer engaged in settlement negotiations regarding personal injury lawsuit must disclose that the plaintiff had died).

⁴ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-439 (2006).

⁵ Charles B. Craver, *Negotiation Ethics for Real World Interactions*, 25 Ohio St. J. on Disp. Resol. 299, 307-08 (2010) ("... [O]ther risks are associated with inappropriately dishonest negotiating conduct. Whether attorneys function as generalists in smaller communities or specialists in larger areas, they begin to see the same persons repeatedly. If someone is discovered misrepresenting what the other side has the right to know, their reputation will suffer. ...").

⁶ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-439 (2006).

Navigating the Corporate Matrix: Advancing Women in Corporate Law Departments

An Executive Summary

By Consuelo A. Pinto and Monica G. Parham



Consuelo A. Pinto is the Immediate Past President and **Monica G. Parham**, Diversity Counsel at Crowell & Moring, LLP, is the President-Elect of the Women's Bar Association of the District of Columbia. Together, they played lead roles in organizing the WBA's March 10, 2010 Navigating the Corporate Matrix Summit, and drafting the post-Summit Report, *Navigating the Corporate Matrix: Advancing Women in Corporate Law Departments*. The Report is available at www.wbadc.org.

Women comprise only 17% of General Counsels in Fortune 500 companies and a mere 15.2% of General Counsels in the Fortune 501-1000, statistics that have held steady since 2005.¹ Yet, the conversation on the advancement of women in the legal profession has focused almost exclusively on women in large law firms, with virtually no discussion of the unique issues impacting the advancement of women in corporate law departments. Recognizing the need to broaden the discussion to include women in-house counsel, the Women's Bar Association of the District of Columbia (WBA) launched *Navigating the Corporate Matrix*, Phase III of its groundbreaking Initiative on Advancement and Retention of Women (Initiative).

Advancing Women In The Profession

In 2006, the WBA launched the first phase of the Initiative – *Creating Pathways to Success: Advancing and Retaining Women in Today's Law Firms* – which took a hard look at barriers to women's advancement in law firms. One of the key findings to emerge from this phase of the Initiative was that women, regardless of factors such as seniority level or parental status, leave firms when their capabilities are not valued, and their contributions are not acknowledged or recognized. Through a series of town hall meetings, a core strategy for stem-

ming this pattern of attrition emerged: the need to help all women, including part-time lawyers, begin their development into senior partners and rainmakers from day one. The WBA "Roadmap," a series of pragmatic solutions for developing and advancing successful women, captured many of the best practices identified and strategies developed. The overall findings from Phase I of the Initiative are reported in *Creating Pathways to Success* (2006)².

Building on the momentum and findings from its 2006 Initiative and Report, the WBA Initiative moved into its second phase in 2008 with *Creating Pathways to Success for All: Advancing and Retaining Women of Color in Today's Law Firms*, which focused on the dearth of women of color at law firms. Phase II echoed many of the themes from Phase I, but with a focus on the combined effects of race and gender, and how this combination impacts the recruitment, retention and advancement of women of color in the profession. At a one-day summit, stakeholders exchanged ideas about the nature of this "double hit," and how its devastating impact can be best addressed. The findings of the summit are detailed in the WBA's 2008 Initiative Report, *Creating Pathways to Success for All*,³ which presents concrete steps that all stakeholders with an interest in advancing women lawyers of color – law firm leaders, lawyers, clients, law schools and bar associations – can take.

The Unique Challenges Facing In-House Counsel

In 2010, the WBA Initiative Task Force turned its attention to women in corporate law departments. An Advisory Board of nationally recognized experts and in-house counsel from a range of industries was convened for initial discussions and, together with the Initiative Task Force, developed a framework for assessing the status of women in corporate law departments. Based on input from the Advisory Board, the Task Force, and information gathered through an informal survey of in-house counsel, the WBA convened a day-long Summit of in-house counsel and other key stakeholders to examine the unique context in which women in-house counsel operate, where the law department is generally not the business driver but rather a function supporting economic drivers on the business side. This critical distinction between in-house law departments and law firms underlies many of the unique challenges facing women in corporate law departments:

- **The relative ambiguity of career tracks within corporate law departments.** Corporate law departments are essentially “flat.” Unlike law firm partnership tracks, there is no defined career track, and traditional milestones for measuring advancement, such as changes in job title and promotions, are often lacking.
- **The concurrent navigation of two distinct “ladders.”** Women in corporate law departments must master not only substantive legal areas but also the technical aspects of the underlying business. Indeed, “knowing the business” is a touchstone of in-house success and advancement.
- **The need to obtain mentoring and professional development opportunities internally and externally and on both the legal and business sides of the house.**
- **Ensuring that flexibility and concepts of work/life balance are built into the corporate matrix.** While in-house law departments may arguably offer more flexibility than large law firms, women in corporate law departments face the same pressures – long hours and client demands – faced by women elsewhere in the legal profession.

For each of these areas, Summit participants discussed approaches for ensuring the advancement and ultimate career success of women attorneys operating within the unique in-house environment.

Best Practices for Measuring and Achieving Success in a Flat Organization

Law Departments and Managers

- *Position the Legal Department for Success:* A key factor for ensuring the growth and development of in-house lawyers is the positioning of the legal department within the larger corporation. It is difficult for any in-house lawyer to develop a fulfilling and meaningful practice if the law department is seen as a hindrance to the business. Department leadership must ensure that business clients respect the legal department, seeing it as a resource to be used proactively. This will position in-house attorneys, including women attorneys, as strategic business partners.
- *Ensure Equal Access to High Profile Matters and Exposure to the Business Side:* The key to keeping bright people motivated is to give them good work that is interesting, has variety, and provides increasing levels of client contact and responsibility. Periodic check-ins with line attorneys and monitoring allocation of routine and high profile assignments will ensure that women in-house lawyers have equal access to the kinds of challenging and fulfilling work, with meaningful client contact, necessary for advancement.
- *Implement a Plan for Advancement:* The use of formal career path programs varies widely across companies and has had mixed results. The in-house career path is often dependent on factors – ranging from changing business environments to the vagaries of individual business line growth to the pace of senior-level turnover – that can’t be fully anticipated in even the most well thought-out career planning instrument. For some law departments, however, the development of formalized career paths that take into account corporate structure and culture has been useful as an advancement tool.
- *Offer Competitive and Equitable Pay:* Pay decisions that are fair, equitable, and based on uniformly applied criteria tied to the strategic goals and core values of the larger company and the legal department are critical to attracting and retaining top in-house talent, including women.

Individual Women Lawyers

While promotions may, in a traditional sense, be relatively infrequent in corporate law departments, women in-house counsel must nonetheless position themselves as valuable contributors so that they are on the proverbial radar screen when such positions do open up. The following best practices will enable women corporate counsel to position themselves for such opportunities:

- *Be Proactive:* Women lawyers must seek out a breadth of work, and make sure that they are getting high-profile cases or deals. Having open, proactive and robust discussions with supervisors and senior attorneys about professional development and ways of adding value, in addition to doing stellar work, contribute to the kind of profile-raising needed for advancement.
- *Take Career Ownership:* Women in corporate law departments should take affirmative career ownership early in their careers and subsequently engage in continual career planning in order to avoid falling into a rut where they are doing only routine work.
- *Be Vigilant:* Women in-house counsel should always keep an eye open for new opportunities in new areas. The ability to spot opportunities and take advantage of them is critical to maximizing opportunities along the corporate matrix.
- *Self-Promote, Including in the Compensation Process*

Climbing Two Distinct Ladders Simultaneously

The dominant theme at the Summit, and in pre-Summit discussions, was the need to climb two distinct ladders simultaneously – the business ladder and the legal ladder. Those on the business side quickly divide in-house attorneys into two categories – those who “get it” and those who don’t. Those in the former group become “go-to” people, with access to more challenging and high profile work assignments, and heightened mentoring and networking opportunities on both sides of the house – and ultimately have increased opportunities for advancement. Those who don’t “get it” may find their in-house careers stalled. For this reason, mastering and navigating both, often very distinct, sides of the corporate matrix is perhaps the single most critical factor in surviving and thriving in-house.

Mastering and Maneuvering Within the Business Side

Lawyers entering an in-house practice without an understanding of the company’s specific business as well as a working knowledge of financial concepts face a steep learning curve. Success is not, however, out of reach, and there are a number of strategies women in-house counsel can employ to close the gap.

- *Assess the Corporate Culture:* Women in-house counsel must accurately assess and strategically react to and within their corporation’s corporate culture. Assessing the corporate culture includes understanding the structure and dynamics of the legal department within the larger corporation, as well as those of the larger corporation itself.
- *Make a Connection While Remaining True to Yourself:* Women in-house lawyers need to strike the balance between “being authentic” and working within “the system.” A woman does not have to fundamentally change who she is or what she is interested in order to fit into her law department and the overall corporate culture. At the same time, she does have to determine how to develop relationships with key players on the legal and business sides in order to get access to information vital for advancement, and to otherwise integrate herself into the corporate culture.
- *Understand the Role of an In-House Counsel:* In-house lawyers must recognize that they are in service to the business drivers – not business drivers themselves. An in-house lawyer must therefore have “humility” and be willing to pitch in as needed, without regard for formalities like “rank” or specific practice area. Particularly in small legal departments, “everyone has to do a little of everything,” and every lawyer must be vested in the success of every other lawyer and the overall corporation.
- *Find a Subject-Matter Mentor:* Women in-house attorneys should seek out mentors on the business side for assistance in learning the business. These mentors do not necessarily need to be executives or high ranking managers. Regardless of level or title, each subject matter mentor should be a respected colleague knowledgeable about the day-to-day business of the company.
- *Employ Effective Verbal and Written Communication Styles:* Effective written and verbal communications with those on the business side are critical. Few things will marginalize an in-house lawyer faster than not

making the transition from speaking “legalese” to using the type of short, concise, business-oriented communications expected in-house. An in-house lawyer must also “learn the lingo” of the business (here again, a subject matter mentor may be critical) and use it in written and verbal communications.

The Legal Side of the Corporate Matrix Still Matters

While mastery of the business side is critical to successfully navigating the corporate matrix, women in-house counsel are still lawyers, and the legal side of the matrix remains in place. While a majority of respondents to the WBA in-house counsel survey reported having general access to meaningful professional development opportunities, they nonetheless identified a number of obstacles faced in taking full advantage of such opportunities. These included travel restrictions, lack of funding, lean staffing that precludes taking time to pursue training opportunities, and a lack of recognition for the skill sets and knowledge gained through such training. Summit speakers identified a number of approaches to maximizing in-house access to professional development opportunities:

- *Approaches for In-House Counsel:* Taking advantage of up-to-the-minute alerts and substantive newsletters prepared and distributed by outside counsel is time and cost-effective, as is the broader utilization of teleconferences and webinars. Keeping certain substantive projects, rather than delegating them to outside counsel, may also be a way of gaining exposure to new areas of practice, and to new developments in existing areas.
- *Approaches for Corporate Law Departments:* Law departments can develop internal training programs. The growth of tools such as webinars makes it possible to provide cost-effective training internally, and internal networks and databases are excellent tools for sharing substantive information and work product corporation-wide.
- *Approaches for Law Firms:* Outside law firms should recognize that training opportunities represent a prime opportunity to give back to, rather than seeking something from, in-house legal departments, and offer clients training sessions led by firm lawyers on cutting-edge legal developments of interest. Passing along information relating to outside upcoming training opportunities that clients may find interesting or helpful is also a solid approach.

Navigating Corporate Culture to Access Skill-Building Tools

A significant percentage of in-house counsel responding to the WBA survey reported that advancement and promotion in-house were not based solely on merit, with factors such as “politics” or “who you know” often as, if not more, important as merit. Self-promotion and networking are the two skill building tools most critical to successfully assessing and navigating through workplace politics and addressing the “who you know” component of one’s career. Through self-promotion, women can cultivate important business relationships and position themselves to take advantage of new positions or projects when they become available. Networking, both internally and externally, is essential to identifying opportunities for professional advancement within the company; for gaining the support, confidence, and trust of executives on the legal and the business sides; and for developing leverage and adding value with knowledge and skills not strictly limited to one’s substantive role.

Building Flexibility into the Corporate Matrix

While some Summit participants believed that there may be *slightly* greater flexibility in-house, there was general consensus that the notion of going in-house because it is “easier” or “less demanding” is a myth. Women in corporate law departments, like all lawyers, are service providers, with schedules largely driven by client needs. Today’s global workplace often creates an expectation that business and legal teams will be available 24/7 – an expectation that makes balancing professional and personal responsibilities extremely difficult. Despite these business realities, work/life balance is not completely out of reach.

The Business Case for Flexibility

The business case for flexibility in corporate law departments is not unlike the business case for flexibility in law firms. When attorneys don’t have flexibility, they leave, taking with them invaluable knowledge about the company’s business and well-developed business relationships. A new hire, however skilled, will have to start at square one on the business and relationship fronts, with significant costs to the law department and corporation generally.

Availability v. Usability of Flexible Options

Fifty-seven percent of WBA survey respondents indicated that their corporation offered some type of flexible work program. Only 23% of survey respondents, however, had taken advantage of the flexible work program

at their current employer, and 60% felt that adopting a flexible work schedule would have a negative or strongly negative impact on their career. According to Summit participants, corporate culture is the most significant factor in determining whether or not women in-house counsel working flex-time schedules have meaningful work and advancement opportunities.

Structurally, flexible work programs may vary based on corporate and law department culture, client and attorney needs, type of business, and legal department size. Regardless of structure, the key to a successful flexible work program is eliminating flexibility stigma – the marginalization attorneys encounter or perceive they will encounter if they work flexibly. Best practices for creating a non-stigmatized flexible hours program in corporate law departments include the following:⁴

- Implementation of a formal written policy demonstrating the law department's commitment to providing its attorneys with flexible work options that allow them to meet their outside responsibilities while continuing to advance their careers.
- Demonstration, by law department leaders and managers, of their personal commitment to flexibility by regularly communicating their support for flexible work programs and incorporating the values of a flexible workplace into their decision making.
- Making flexible work programs available to all attorneys – women and men – regardless of their reason for requesting a flexible schedule, provided that the proposed schedules are consistent with business needs.

- Ensuring that employees participating in reduced hour programs receive pay, bonuses, and benefits that are proportional to the number of hours they are scheduled to work, with eligibility for the full complement of benefits available to full-time attorneys.
- Ensuring that attorneys participating in flexible work programs continue to receive high profile and challenging work and remain eligible for promotional opportunities.
- Having visible role models – senior women who have been promoted while on a flexible schedule.

Conclusion

Through *Navigating the Corporate Matrix*, the WBA learned that women in-house counsel are generally satisfied with their careers. At the same time, they are impacted by issues facing women profession-wide, including lack of access to information regarding how to best position their careers, lack of mentoring, and the lack of non-stigmatized flexible work arrangements. Simultaneously, they also face unique challenges, such as working within a flat organizational structure with limited upward mobility, and navigating both the legal and business sides of the company. Through discussions with and input from a variety of stakeholders, the WBA identified and developed best practices and suggested approaches for assessing and addressing each of these key issues. These recommendations are, however, just a start, with much work left to be done by individual lawyers, law firms, corporate law departments, researchers, law schools and bar associations. Collective action by these stakeholders will ensure the further advancement of women through the corporate matrix.

¹ The Minority Corporate Counsel Association does an annual assessment of the number of women General Counsel in Fortune 1000 companies. Between 2005 and 2009, the percentage of female GCs in Fortune 500 companies ranged from a low of 15% to a high of slightly over 18%, for a total swing of less than 3.5%. In Fortune 501-1000 companies, the total swing for the same period was 2%. See Rachel Ray, MCCA 2009 Survey of Fortune 500 Women General Counsel, DIVERSITY & THE BAR, July/Aug. 2009 at 14-23, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageID=1931>; Rachel Ray, MCCA 2008 Survey of Fortune 500 Women General Counsel, DIVERSITY & THE BAR, July/Aug. 2008 at 28-40, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageid=1766>; Rachel Ray, MCCA 2007 Survey of Fortune 500 Women General Counsel, Diversity & the Bar, July/Aug. 2007 at 22-39, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageid=1479>; Rachel Ray, MCCA 2006 Survey of Fortune 500 Women General Counsel, DIVERSITY & THE BAR, July/Aug. 2006 at 26-40, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageid=1207>; Rachel Ray, MCCA Annual Survey of Fortune 500 Women General Counsel, DIVERSITY & THE BAR, Sept/Oct 2005 at 23-32, <http://www.mcca.com/index.cfm?fuseaction=page.viewPage&pageid=1294>. As of the MCCA's 2009 survey, women comprised 17% of Fortune 500 General Counsel, and 15.20% of Fortune 501-1000 general counsel. See Rachel Ray, MCCA 2009 Survey of Fortune 500 Women General Counsel, *supra*.

² Creating Pathways to Success is available at www.wbadc.org.

³ Creating Pathways to Success for All is available at www.wbadc.org.

⁴ See Better on Balance? The Corporate Counsel Work/Life Report, Project for Attorney Retention, <http://www.pardc.org/Publications/BetterOnBalance.pdf>. See also Creating Pathways to Success: Advancing and Retaining Women in Today's Law Firms, Women's Bar Ass'n of the District of Columbia (2006). See also Diversity & Flexibility Connection Best Practices, Project for Attorney Retention (2009); http://www.pardc.org/Publications/DiverFlexConn_BestPractices. The Project for Attorney Retention's (PAR) Diversity & Flexibility Connection is a unique collaboration of twelve General Counsel and 12 Chairs of PAR member firms who have met in facilitated discussions to consider how law firms and corporate law departments can best develop non-stigmatized balanced hour programs, and more generally foster great inclusion in the profession.

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The Honorable Laurel M. Isicoff, U.S. Bankruptcy Court for the Southern District of Florida

The Honorable Barbara Lagoa, Florida Third District Court of Appeal

The Honorable Ellen Leesfield, Eleventh Judicial Circuit of Florida

The Honorable Jacqueline H. Scola, Eleventh Judicial Circuit of Florida

Leading the Way to Economic Success: Compensation Models for the 21st Century, moderated by **Lorraine Koc**, Vice President and General Counsel, Deb Shops, Inc. and Past President, National Association of Women Lawyers.

Hilarie Bass, Esq. Greenberg Traurig LLP

Edith G. Osman, Esq. Carlton Fields

Gretta Rusanow, Senior Client Advisor, Citi Private Bank Law Firm Group

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Col. Lettie J. Bien, President, Martial Venue, Inc.

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Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance

by Debbie Epstein Henry

Deborah Epstein Henry is a nationally recognized expert on workplace restructuring, talent management, work/life balance, and the retention and promotion of lawyers, with a focus on women.

A former practicing litigator, Debbie is President of Flex-Time Lawyers LLC, a national consulting firm she founded in the late 1990s focused on new models of legal practice, work/life balance and women. In 2010, she founded the Law & Reorder™ consulting practice, providing advisory, training and speaking services on workplace restructuring, talent management, work/life balance, and the retention and promotion of lawyers, with a focus on women.

Debbie has garnered extensive press coverage and visibility for her work from The New York Times, NBC Nightly News with Brian Williams, The Wall Street Journal, The Washington Post, National Public Radio, The National Law Journal, The Los Angeles Times, New York Law Journal, The Boston Globe, The Philadelphia Inquirer, among numerous others. Debbie is a Liaison to the American Bar Association Commission on Women in the Profession and a Consultant to the New York State Bar Association Committee for Lawyers in Transition. She is a member of the Law360 Advisory Board and the Honorary Advisory Board of Pace University School of Law's New Directions program for attorneys seeking re-entry into the profession. Debbie received her B.A. in Psychology from Yale University and her J.D. cum laude from Brooklyn Law School. Following law school, Debbie clerked for the Honorable Jacob Mishler in the United States District Court for the Eastern District of New York.

Law & Reorder is two books in one. Part I focuses on the needs of legal employers, providing solutions for the changes facing the legal industry. These include the threat to the billable hour, the rise of new models of practice, the morphing of large law firms, the development of talent management strategies, and the creation of work/life and women-friendly employers. Part II is directed to lawyers and law students and provides a roadmap for how to navigate today's—and tomorrow's—changing legal environment. Law & Reorder provides essential understanding of the new legal world of productivity, work/life balance, transition, leadership, mentoring, promotion, compensation, and networking. This ground-breaking and timely book will inspire you to effect changes in your own work methods and those of your employer. It will provide you with the foundation, insights and strategies you need to redesign the legal workplace, re-align the interests of lawyers, clients and legal employers, hone your individual skills as a lawyer, and embrace a more hospitable, productive and profitable environment. Lawyers and law students must take charge of their careers and become entrepreneurs.

➤ For more information contact NAWL at 312.988.6729 or nawl@nawl.org

Upcoming NAWL Programs

FEBRUARY 9, 2011

LGBT Public Forum

6:30 P.M. – 8:30 P.M.

ASSOCIATION OF THE BAR OF
THE CITY OF NEW YORK

42 WEST 44TH STREET
NEW YORK, NY

The New York City Bar Association's Committee on Lesbian, Gay, Bisexual and Transgender Rights presents a Public Forum:

LGBT Youth In Crisis: Causes, Impact and Prevention of Bullying

The recent and tragic suicides of young people who identify (or are perceived) as lesbian, gay, bisexual or transgender, following bullying and harassment, have focused widespread public attention on the crisis in schools, in the LGBT community and in our society. This public forum will bring together leading experts, advocates and educators to examine the political, legal and cultural factors that contribute to the current crisis. It will also include a discussion of the alarming statistics related to bullying as well as its individual and social impact. The panel will make recommendations for intervention, prevention and other steps needed to address bullying and harassment of LGBT youth.

The Forum will panel will include:

Bill de Blasio, Public Advocate for the City of New York

Eliza Byard, PhD, Executive Director, Gay, Lesbian and Straight Education Network (GLSEN)

Dr. Jeffrey Fishberger, The Trevor Project

Susan Sommer, Senior Counsel and Director of Constitutional Litigation, Lambda Legal

Randi Weingarten, President, American Federation Of Teachers, AFL-CIO

The 2-hour forum will begin with brief introductory remarks given by each panelist. During the remainder of the program, the panelists will answer questions from a moderator and the audience. The program will be moderated by Lisa A. Linsky, Partner, McDermott Will & Emery, and member of the LGBT Rights Committee.

This program is co-sponsored by the City Bar's Sex and Law Committee and the Council on Children. Community co-sponsors include the Lesbian, Gay, Bisexual & Transgender Community Center and the National Association of Women Lawyers.

➤ Register to attend at: www.nycbar.org

Upcoming NAWL Programs

FEBRUARY 11, 2011

Women and Power: Getting Ambitious About Ambition

10:00 A.M. – NOON

CENTENNIAL BALLROOM I

HYATT REGENCY HOTEL

ATLANTA, GA

Based on their numbers, women lawyers are positioned to exercise power and influence and effectuate change. Women constitute a significant percentage of the lawyers in law firms, corporate legal departments, and government. Women have also represented approximately 50% of law school graduates for more than 25 years. Yet most women lawyers are not exercising power. Women lawyers still represent a very small percentage of law firm leaders, general counsel, law school deans and government leaders. Women lawyers earn considerably less than male colleagues even though they are just as productive. Many are reluctantly relinquishing their ambitions.

Registration & Cost: ABA members \$20; Non-members \$30; Law students (with student id) \$10. Note the cut-off for advance registration is February 1, 2011. After February 1, participants must register on-site and an additional \$5 will be charged. We recommend you register in advance as seating is limited. If you cancel through February 1st, you will receive a refund of your registration fee less \$4.50 to cover the cost of the handout. No refund requests will be processed after February 1st.

ABA Co-sponsors: Commission on Mental and Physical Disability Law; Commission on Racial & Ethnic Diversity; General Practice, Solo & Small Firm Division; Government & Public Sector Lawyers Division; Section of Antitrust Law; Section of Family Law; Section of Individual Rights & Responsibilities; Section of Intellectual Property Law; Section of International Law; Section of Litigation and Section of Public Utility, Communications & Transportation Law

➤ For more information contact NAWL at 312.988.6729 or nawl@nawl.org

MARCH 3, 2011

Appellate Advocacy in the New Jersey Supreme Court

5:30 P.M. – 7:00 P.M.

REGISTRATION, COCKTAILS

7:00 P.M. – 9:00 P.M. PROGRAM

NEW JERSEY LAW CENTER

ONE CONSTITUTION SQUARE

NEW BRUNSWICK, NJ

On the evening of March 3, 2011, the National Association of Women Lawyers (“NAWL”) will host a panel of all sitting and retired female Justices of the New Jersey Supreme Court at the New Jersey State Bar Association.

\$40.00 Members/Non-Members

\$25 for Students/Government/Non-Profit (Use Promo Code AANJ11 for \$25 Pricing)

➤ Register online at www.nawl.org

Recent NAWL Programs

NOVEMBER 4 & 5, 2010

**6th Annual General
Counsel Institute**

WESTIN NEW YORK
TIMES SQUARE
NEW YORK, NY

This premier program for senior in-house women lawyers celebrated its sixth-year hosting hundreds of attendees from all regions of the country and beyond. The Institute provided participants a unique opportunity to learn from leading experts and experienced legal colleagues about the pressure points and measurements of success for general counsel in a supportive and interactive environment. Participants enjoyed plenary and workshop sessions with general counsel of major public corporations and other professionals in a collegial atmosphere while also engaging in networking opportunities with other senior legal professionals.

NOVEMBER 9, 2010

Connect, Listen & Learn Series

FACILITATED BY
KAREN KAHN ED.D. PCC

Women on Top: The Woman's Guide to Leadership and Power in Law Firms
by Ida Abbott

NOVEMBER 10, 2010

**National Night of Giving
in support of Women
Veterans of Jesse Brown
Veterans Medical Center**

K&L GATES
70 W MADISON
CHICAGO, IL 60602

The Jesse Brown Veterans Medical Center provides care to approximately 58,000 enrolled veterans who reside in the City of Chicago, southern suburbs, and Northwest Indiana. Their Women's Health Program serves 2,200 women annually.

This event was generously sponsored by K&L Gates, Dykema, Hinshaw & Culbertson, McDermott Will & Emery and LexisNexis.

Recent NAWL Programs

NOVEMBER 16, 2010

**National Night of Giving
in support of Girls to Women**

FOUR SEASONS HOTEL
2050 UNIVERSITY AVENUE
SAN FRANCISCO, CA

Girls to Women (G2W) is a non-profit organization serving East Palo Alto kindergarten through middle school age girls and their families. G2W partners with families, other local youth development agencies, and local schools to provide after school and summer learning programs that offers a nurturing environment along with academic support and enrichment opportunities for the girls' they serve. At the core of the program is respect for and belief in the ability, knowledge and potential of every girl. The girls they serve thrive among the positive, culturally-reflective female role models they find at Girls to Women. G2W is the only girl-centered youth development program in the East Palo Alto community.

This event was generously sponsored by Duane Morris, The Four Seasons Hotel, Hinshaw & Culbertson, Jones Day, LexisNexis and Townsend.

NOVEMBER 18, 2010

**National Night of Giving
in support of The Pajama Program**

GIBBONS P.C.
ONE GATEWAY CENTER
NEWARK, NEW JERSEY

The Pajama Program provides new pajamas and books to children in need, many who are waiting and hoping to be adopted. Thousands of these children live in orphanages, group homes and shelters and are shuffled often between temporary living facilities. Many have been abused or abandoned and have never enjoyed the simple comfort of having a mother or father tuck them in at bedtime and read to them.

This event was generously sponsored by Braff, Harris & Sukoneck, Chicago Title Insurance Company, Drinker Biddle & Reath LLP, Gibbons, LexisNexis, Littler, Lowenstein Sandler, McCarter & English, Patras Williams & Johnson, Prozio Bromberg & Newman, Prudential and Seton Hall Law School.

DECEMBER 14, 2010

Connect, Listen & Learn Series

FACILITATED BY KAREN
KAHN ED.D. PCC

No Ceiling, No Walls: What Women Haven't Been Told about Leadership from Career-Start to the Corporate Boardroom

by Susan Colantuono

Member News

Selma Moidel Smith, who is known as both a lawyer and composer, was honored on July 15, 2010 with the performance of her suite for orchestra, *Espressivo*, at Walt Disney Concert Hall by the Los Angeles Lawyers Philharmonic, conducted by its founder, Gary S. Greene, Esq. The concert was the Disney Hall debut for the Lawyers Philharmonic, which consists of more than 65 lawyers and judges. Most recently, on September 16, Smith was recognized with the performance of the piano score of *Espressivo* as a “Musical Interlude” at the annual Installation of the Women Lawyers Association of Los Angeles by outgoing president Helen B. Kim, who is also a Juilliard graduate. The event was held in the Crystal Ballroom of the Millennium Biltmore Hotel.

Pat Gillette, a partner with Orrick, was honored, along with co-chair Cara Lowe, with the San Francisco Bar Associations’ Award of Merit for the work she and her committee have done in reviving the No Glass Ceiling Initiative. In addition, Pat was the Keynote Speaker at the Toronto Summit for Law Firm Managing Partners sponsored by Justicia in November, speaking on the changes in law firm structure that she believes will inure to the benefit of women.

Jennifer E. Gillespie became an associate at the law firm, the Law Offices of Andrew F. Garruto, where she focuses her practice on plaintiff’s personal injury and workers’ compensation claims.

Vicki R. Walcott-Edim, of Jones Day in New York was recently named a 2010-2011 Diversity Fellow for the New York State Bar Association’s Labor and Employment Law Section.

Lauren Stiller Rikleen, was appointed a Visiting Scholar at Boston College, where she will serve as an Executive-in-Residence at the Center for Work & Family in the Carroll School of Management, and teach an adjunct course in the Law School. Ms. Rikleen will continue her work as a consultant and speaker through a new entity: the Rikleen Institute for Strategic Leadership.

Jennifer Guenther, a shareholder at Gresham Savage Nolan & Tilden, PC, will become the President of the San Bernardino County Bar Association, the oldest continuous Bar in the State of California.

Kelly A. Merkel of Wolfe, LPA’s article entitled “No Privilege for In-House Counsel Documents” published in the November 8, 2010 edition of the National Law Journal. The article addressed the ECJ’s ruling in *Akzo* and how that ruling may affect US counsel serving multinational companies. Ms. Merkel presented on this same topic at the annual Corporate Patent Seminar in Austin in November 2010. Ms. Merkel also had an article published in the Oxford Journal of Intellectual Property Law and Practice entitled “A Private Practitioner’s Guide to the Perils of Dealing with In-House IP Lawyers.”

Deborah Froling, a partner at Arent Fox LLP in Washington, D.C., was awarded the Distinguished Service Award from the Real Estate Investment Securities Association at its Annual Conference in October in Las Vegas. Ms. Froling was also elected to the Board of Directors of REISA for a two-year term beginning in January 2011.

Law Firm News

McCarter & English LLP announced today that partner and former co-chair of the Firm's Women's Initiative Steering Committee, Stephanie J. Cohen, has been appointed to the newly created position of Firm-wide Diversity Partner, effective November 1, 2010. Ms. Cohen is based in the Newark office, where she is a partner in the Business & Financial Services Litigation Group. She will maintain her legal practice. In addition, in her new role as Diversity Partner, she will coordinate the implementation of various initiatives designed to enhance the recruitment, development, and retention of women and attorneys from diverse backgrounds and liaison between McCarter's Diversity Committee, Women's Initiative, and Executive Committee to ensure the Firm is meeting its strategic goals. Ms. Cohen has been associated with McCarter for approximately fourteen years. She is an experienced trial attorney, representing Fortune 100 Companies as well as large financial institutions in state and federal courts and arbitration proceedings in New Jersey, New York, and other jurisdictions throughout the United States. Ms. Cohen concentrates her practice on complex commercial litigation involving sales practices, suitability, securities fraud, ERISA, and broker-dealer matters. In addition, she has extensive class action experience.

Schoeman, Updike & Kaufman, LLP announced that Andrea D. Ascher joined the Firm as a partner in its New York office and Joseph M. Paolucci has joined the Firm as counsel in its Chicago office. Andrea D. Ascher has a multi-faceted national real estate practice, with a special focus on secured financing transactions, workouts and restructurings and leasing transactions, representing lenders, borrowers, landlords and tenants. In addition, she has substantial experience advising clients on acquisitions and dispositions of real estate and general complex real estate law issues with respect to all types of properties located throughout the country.

Ms. Ascher received her B.S. from Cornell University and her J.D. from Emory University School of Law. Prior to joining Schoeman, Updike & Kaufman, LLP, Ms. Ascher was a partner at Proskauer Rose LLP. Ms. Ascher's arrival marks the expansion of the firm's real estate practice and she will join partners Mindy H. Stern and Nancy Ann Connery in the real estate practice group.

Joseph M. Paolucci has joined the firm after serving as long-time Chief Legal Officer & General Counsel for Equity Group Investments, L.L.C., a renowned and highly regarded private investment firm, whose principal is Sam Zell. Mr. Paolucci has extensive experience executing complex and innovative business transactions world-wide, including acquisitions, mergers, dispositions, private equity, venture capital, financings, refinancing, white knight transactions, joint ventures, third party fund investments and public securities transactions. Mr. Paolucci received his J.D. from Cornell University Law School and his M.B.A. and B.A. from the University of Chicago.

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RECOGNITION

NAWL Recognizes

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NEW MEMBER LIST

New Members

From September 1, 2010 through December 31, 2010, the following have become NAWL individual members.
Thanks for your support of NAWL.

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Networking Roster

The NAWL Networking Roster is a service for NAWL members to provide career and business networking opportunities within NAWL. Inclusion in the roster is an option available to all members, and is neither a solicitation for clients nor a representation of specialized practice or skills. Areas of practice concentration are shown for networking purposes only. Individuals seeking legal representation should contact a local bar association lawyer referral service.

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

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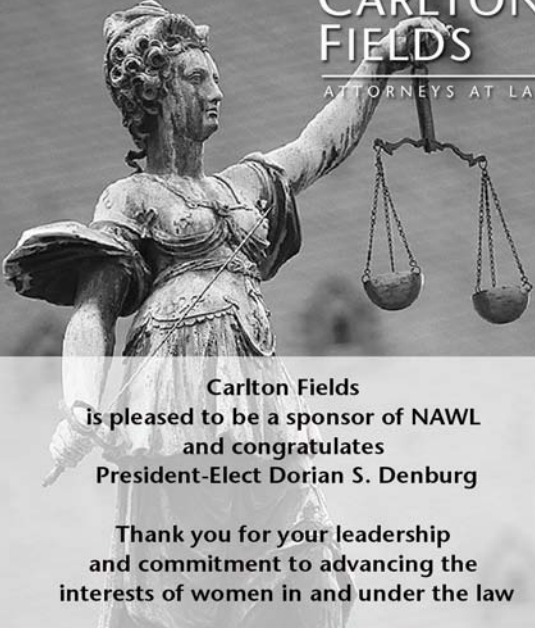
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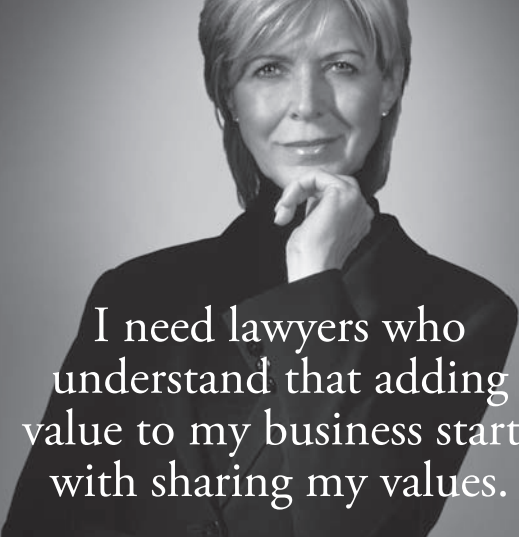
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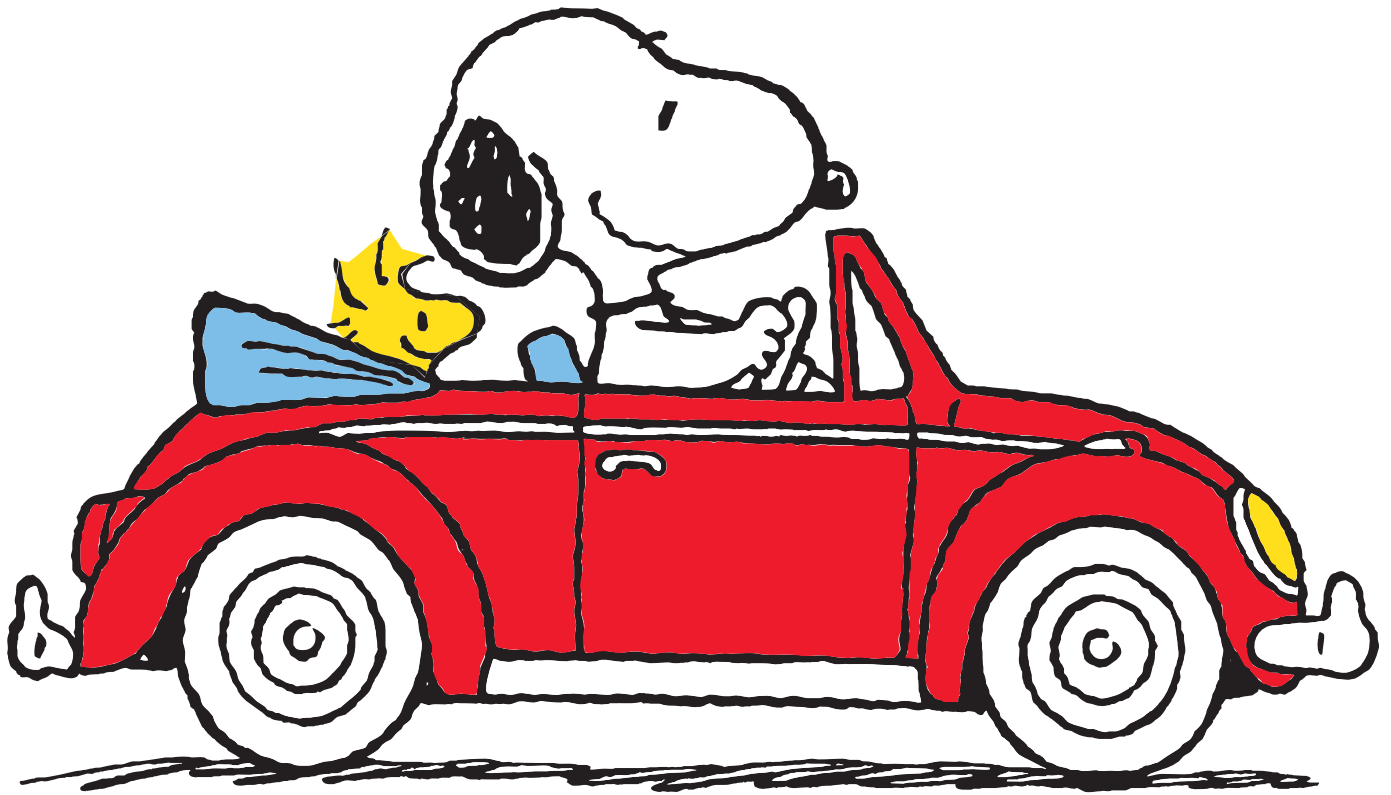
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