



**The National Association of Women Lawyers[®]
and The NAWL Foundation[®]**

**REPORT OF THE SIXTH ANNUAL
NATIONAL SURVEY ON RETENTION AND
PROMOTION OF WOMEN IN LAW FIRMS**

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Report of the 2011 NAWL Survey on the Retention and Promotion of Women in Law Firms

by

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The National Association of Women Lawyers[®] and The NAWL Foundation[®] are pleased to report the results of the sixth annual National Survey on the Retention and Promotion of Women in Law Firms (“Survey”).^{3,4} The NAWL Survey is the only national study that annually tracks the professional progress of women in the nation's 200 largest law firms⁵ 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 annually compiling objective data about firms as whole, the Survey aims to provide (a) an empirical picture of how women forge long-term careers into leadership roles, (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.⁶

This sixth year of the Survey presents a sobering picture of the prospects for women in “Biglaw.” Not only do women represent a decreasing percentage of lawyers in big firms, they have a far greater chance of occupying positions – like staff attorneys, counsel, and fixed-income equity partners – with diminished opportunity for advancement or participating in firm leadership. We recognize that the current economy has led to continuing challenges for big firms. Nevertheless, those challenges explain neither the uneven progress made by women lawyers compared to their male counterparts nor the backward slide of gender equity in law firms.

We look to the Survey results in an effort to explain some of the reasons behind the current status of women in firms and in hopes of developing a better understanding of what firms can do in order to positively affect the long-term advancement of their women lawyers.

I. **Snapshot of the 2011 Survey Results.**

- **Women's Ranks In Firms Are Thinning.** For the first time since the Survey began in 2006, we have noted a slight decline in the percentage of women lawyers who are associates and non-equity partners in the nation's largest firms. This narrowing of the pipeline bodes ill for advancing significant numbers of women into the ranks of law firm leadership in the foreseeable future.

- **Women Have a Much Lower Rate than Men in Promotion to Equity Partnership.** Women lawyers account for barely 15% of equity partners, those lawyers who hold an ownership interest in their firms and occupy the most prestigious, powerful and lucrative positions. This number is essentially unchanged since 2006, the first year of the Survey. Anecdotally, that level of equity partnership has been fixed at the same level for 20 years.

- **Women Lawyers Are More Likely to Occupy Positions that Are Not Partner Track.** More than three-quarters of responding firms employ nontraditional “staff” attorneys, which are not partner-track jobs. Women represent 55% of staff attorneys, the highest percentage of women lawyers in any law firm position. Moreover, these staff attorney positions are typically not entry-level. A significant percentage of lawyers holding these positions graduated from law school between ten and twenty years ago.

A similar phenomenon occurs at the counsel level. Women lawyers comprise 34% of counsel positions in firms — a lower proportion than would be expected based on the number of women associates starting out in firms. In many firms, lawyers in the counsel position view it as the stepping stone between associate and promotion to partner. In fact, only a minority of firms indicate that most of their counsel are eligible to become partners. Responding firms gave a variety of reasons for their disinclination to promote counsel. The most common response was that counsel were “not considered suitable” or “do not have sufficient business” for promotion to partner. When

women are in the first instance promoted less often than men to counsel and then, like many men in that position, are also relegated to the counsel position with limited prospects for promotion, the long-term result will be fewer women in the senior levels of firms.

- **Women Are Not Credited as Rainmakers.** Our data show that women partners are less likely than men to receive credit for even a relatively modest \$500,000 “book of business.” Parallel research shows numerous problems that women experience within firms in obtaining credit for business development, opportunities for team development of new business, credit for new matters from existing clients and other similar measures of who is deemed to be a “rainmaker.” Whatever the source of the problem, it is clear that the lack of credit for substantial business hampers women lawyers in maximizing compensation, advancing into firm leadership, or negotiating an advantageous lateral move.

- **Women Have Low Representation in Law Firm Leadership.** Women continue to be markedly underrepresented in the leadership ranks of firms. The majority of large firms have, at most, two women members on their highest governing committee. A substantial number have either no women (11% of firms) or only one woman (35% of firms) on their highest governing committee. Along the same lines, only 5% of firms place women in the role of overall managing partner — a percentage that is the same as in 2006, the first year of the Survey. We suspect that the relatively low percentage of equity partners explains the low representation in law firm leadership and until law firms figure out how to facilitate a greater number of women to equity partners, the leadership ranks will continue to under represent women.

- **Compensation Decisions Disfavor Women.** As has been the case ever since the Survey began collecting data, women at every stage of practice earn less than their male counterparts, with the biggest difference at the equity partner level. In 2011, women equity partners are earning 86% of the compensation earned by their male peers. In less senior positions, women do

not receive their proportionate share of bonuses, but they fare better in lockstep firms than in firms that have abandoned a lockstep compensation system.

- **Two Tier/Mixed Tier Firms Are Less Favorable to Women.** The phenomena of two-tier and mixed-tier⁷ partnership structures continue to have a negative impact on women lawyers. In terms of both compensation and advancement to equity partnership, women lawyers appear to be most consistently successful in one-tier firms. Two-tier and mixed-tier firms also have involuntarily terminated more lawyers, both women and men, in the current recession, than have one-tier firms. Moreover, women represent an astonishing 80% of “fixed-income equity partners,” those lawyers in mixed-tier or other firms who are required to contribute capital but do not share in the overall profits of the firm.

We turn now to more detailed analyses.

II. The Pipeline of Women Lawyers May Be Diminishing.

In previous iterations of the Survey, we have been wont to say that “[w]omen start out in about equal numbers to men when they enter law firms as first-year associates.” However, the percentage of women entering law schools may have peaked.⁸ According to the American Bar Association, women comprised only about 47% of the law school population and 45.9% of all law school graduates in 2009-10.⁹ Commensurate with that decline, for the first time we are seeing a slight fall-off in the percentage of women entering big-firm practice. Women constitute only 47% of the current crop of first- and second-year associates, down from 48% in prior Surveys. It may not be a huge change, but it suggests that the pipeline may be shrinking. And, a decreasing number of entry level women lawyers only further decreases the pool of women left at the end of the pipeline who are available for promotion into higher positions. As we have seen in prior years, women lawyers leave big-firm practice at a greater pace than men, beginning quite early in their careers.

Female flight gains momentum at each level of seniority, ultimately shrinking the percentage of women lawyers in the partnership pool. In 2011, women constitute 44% of 7th-year associates,

34% of counsel, 25% of non-equity partners, and barely 15% of equity partners.

Nearly every large firm has expressed a commitment to advancing women in private practice, so why have the numbers not improved over the six years that the Survey has been tracking this data? Although there may be many reasons why women aren't succeeding in proportionate numbers, the Survey has identified a number of factors – including firms' structural choices, the absence of women in firm leadership, and the lack of credit for business development – that have undoubtedly contributed to the current lackluster situation.

III. The Changing Structure of Law Firms and its Impact on Women Lawyers.

Law firms are much more complicated than they used to be. At one time, the typical law firm had associates and partners, and perhaps a few counsel. Partners were all owners of the firm and shared in firm profits. Entering lawyers were generally placed into an associate “class” defined by graduation year, and often everyone in the same class received the same compensation. Associates typically advanced to partnership within the course of a decade, based on satisfactory full-time practice. Lateral attorney movement was rare, part-time practice was nonexistent. Attorneys who performed unsatisfactorily would be terminated, but discreetly, since their failure also reflected poorly on the firm.

Today, the typical firm looks much different. It is a two-tier or even three-tier partnership, with “non-equity” as well as levels of “equity” partners. A significant number of the firm's lawyers began their practice at some other firm. Below the partnership tier, there are many attorneys who have little to no chance of ever becoming partners. Associates may be on a “partnership track,” but the firm recognizes that most of these people will wash out or leave before final partnership decisions are made. And any attorney – even an equity partner – may be terminated abruptly, at the firm's discretion.

All of these changes in law firm structure have the potential to affect women lawyers differently than men. The data collected by the Survey suggest that, in general, the structural

changes occurring in firms have not benefited women lawyers practicing there.

A. Impact of Non-Partner Track Positions.

The use of “staff attorneys” and “contract attorneys” is growing. Staff attorneys are employed by the firm but are typically not eligible for partnership. Contract attorneys are employed by agencies and are also not eligible for partnership.

In the 2010 Survey, we found that a majority of firms hired staff attorneys and about half hired contract attorneys. This year, the number has gone up. Over three-quarters of firms hired either staff attorneys or contract attorneys, and the propensity to hire in these classification was only slightly less for AmLaw 100 than for Second Hundred firms.¹⁰ The median number of staff attorneys employed at a typical big firm is nine; and the median number of contract attorneys working at any one time in a typical firm is nine.

Although contract attorneys are equally likely to be men or women, 55% of staff attorneys are women. This is the highest percentage of women in any category of attorney practice. And since staff attorneys are not on a partnership track, by definition this is a category with little if any potential for women to achieve equity partnership.

One might view staff attorneys differently if these employees consisted of recent graduates, whose job prospects may have been adversely affected by the continuing global economic malaise, or of more senior attorneys. Based on the responses to the 2011 Survey, *almost all staff attorneys graduated prior to 2007, and nearly half of them graduated from law school prior to 2000.* If women at this level of seniority are accepting non-partnership-track positions within large law firms, the question arises whether they were recruited for these positions originally or somehow gravitated into these positions after being on a firm's partnership track for some years. Either way, though, these positions dampen the prospects for advancement of women in firms.

B. The Decline of Lockstep Compensation and the Impact on Women Lawyers.

Not so many years ago, it was common practice for big firms to pay the same salary and even

the same bonus to associates in the same class – a practice colloquially called “lockstep.” Some firms followed this approach only for their first-year associates although other firms were known to pay lockstep to all associates in a given class. While a lockstep system does not reward an associate for any individual contributions to firm success, one of the rationales for lockstep is that it minimizes subjective factors in evaluation of associates, including gender-based distinctions.¹¹ Another benefit is that it does not punish lawyers who have different rates of developing skills along multiple dimensions. Too often, firms get fixated on early “stars.” We are not so convinced that it benefits the firm to distinguish early frontrunners to the discouragement of others who, over a 5 to 8 year period, may actually develop better skills for the benefit of the firm and its clients. This is a complicated issue although anecdotally, men benefit more than women in non-lockstep systems and not necessarily for reasons of pure merit.

For 2011, the Survey asked about the status of lockstep promotion at large U.S. law firms. The responses clearly indicate that lockstep promotion is a minority approach. Only 27% of responding firms indicated that they pay true lockstep – both salary and bonus – to all of their first-year associates. And only 9% of responding firms continue to pay true lockstep after the first year. At the other end of the spectrum, almost 25% of firms vary both salary and bonus amounts even for first-year associates. And after the first year, 56% of firms vary both salary and bonus amounts.

From the Survey's perspective, the important question is whether the abandonment of lockstep compensation structures has had an untoward impact on women lawyers. Once a degree of discretion is introduced into the compensation process, it is possible that the discretion will be used, even unintentionally, to pay women less than their male peers. To examine this possibility, we asked about the percentage of salaries and bonuses firms paid in 2010 to all women associates, and compared those answers for lockstep vs. other firms.

The good news is that, when it comes to salaries, there is no appreciable difference in what firms pay men and women associates, whether or not the firms follow a lockstep approach.

However, the payment of bonuses shows a more troubling pattern. Since very few firms pay “true lockstep” after the first year, in analyzing the women's percentage of the aggregate bonuses we distinguished between (a) firms which pay salaries in lockstep and (b) firms which do not apply a lockstep approach to either salaries or bonuses.¹²

We found that women associates do not receive their proportionate share of bonuses in either type of firm. Nevertheless, it appears to be marginally better for a woman associate to practice in a lockstep firm. In the typical lockstep firm, the difference between the percentage of women associates and the percentage of aggregate bonuses they received was nearly 6%. However, in the typical non-lockstep firm, the difference between the percentage of women associates and the percentage of aggregate bonuses they received was almost 8%. In other words, women associates are likely to receive smaller bonuses than their male peers no matter what type of firm they work in, but the difference is slightly more pronounced in non-lockstep firms.

Firms cite a number of reasons why they pay different amounts to different associates, whether they are first-years or more senior. One common answer is that firms vary salary depending on the office in which an associate practices. Another frequent response is that bonuses are dependent on billable hours, which naturally might vary from person to person. However, a number of the criteria firms cite for paying different amounts are less objective, for example: (a) work quality, (b) corporate citizenship, and (c) non-billable activities such as pro bono, recruiting and business development.

It strains credulity to believe that women associates across the board are underperforming their male colleagues along all of the dimensions of practice which are considered when bonuses are determined. At least provisionally, therefore, the data suggest that firms' bonus systems incorporate a degree of discretion that permits gender-biased decision-making. Further study of this area could be enlightening.

C. The Evolving Prospects for Lawyers in the Counsel Position.

The Survey has long recognized that firms apply the title of counsel to many types of lawyers but until 2011 we explored only the raw numbers of lawyers in this category. This year, as was true in 2010, we found that women constitute 34% of counsel attorneys at the typical firm – a lower proportion than would be expected considering that firms start out with women occupying close to 50% of associate positions.

For 2011 we drilled deeper. We asked firms whether 90% of their counsel, in essence almost all of the lawyers in that position, were eligible to be promoted to partner and, if so, whether it was the firm's policy to promote counsel to partnership within two years. We also listed a number of possible statements that a firm could make about the roles its counsel play within the firm, with specific emphasis on the reasons a firm might give for not promoting its counsel to partner. The answers we received were astonishing, and highlight that the counsel role in many firms is not something to be sought after.

One third of responding firms indicated that 90% of their counsel were eligible to be promoted to partner. However, among that group of firms, only one firm stated that it had a policy of promoting counsel to partner within two years. Thus, at most of the responding firms, the position of counsel may be “off track” for partnership or even a permanent backwater from which no egress is likely. And at almost none of the responding firms can a lawyer – man or woman – be confident of consideration for partnership in the near future.

What do firms think is the role of counsel in their organizations? Prompted by the Survey, firms made a variety of non-exclusive statements on this subject. Over 80% of responding firms agreed that “[i]n our firm, lawyers in the counsel position are more experienced than associates but for one reason or another are not considered suitable for promotion to partner.” The next most common statement, from 63% of firms, was that counsels “do not have sufficient business to become a partner.” A third common response, from 61% of firms, reflects one of the traditional

understandings of the counsel role, that these lawyers “are winding down their careers and moving towards retirement.” And, 35% of firms agreed that at least some of their counsel “were previously partners of the firm but have been de-equitized.”

Clearly, the title of counsel covers a wide variety of roles and expectations within large law firms. However, women are much more likely than men to be “counsel” in firms than partners or equity partners – and therefore, more likely than men to be viewed as “not suitable” for partnership or not having “sufficient business” for partnership. We would encourage women lawyers and their firms to take a harder look at the counsel position, especially because someone in the role of counsel who has never been a partner (and is not edging to retirement) has a less than strong chance of becoming a partner.

D. The Impact of Partnership Tiers.

Back in a simpler time, being a partner in a law firm meant that you were an owner. A partner shared the profits of the firm in a good year, but might lose that investment if the firm failed. Some firms with those structures are still around; the Survey defines them as “one-tier” partnerships if at least 95% of the partners own equity in the firm and are compensated on the basis of their equity investment.

Over the years, however, firms have invented different ownership structures, which in one way or another strain the original definition of partner. A common structure today is what is termed a two-tier partnership, in which there are both “equity” partners and “non-equity” partners. Equity partners are required to invest capital in the firm and usually receive most of their compensation on the basis of their relative ownership interests. Non-equity partners, in contrast, typically own no shares in their firms and receive their compensation in the form of a fixed annual salary, often supplemented by some kind of performance-based bonus. Non-equity partners are marketed to firm clients as “partners,” but they receive lower compensation, have less authority to make important decisions, and have little if any voice in firm governance. Persons outside of the firm are unlikely to

know for certain whether any particular firm partner is an equity partner, since the firms and partners themselves are reluctant to share this information.

In addition to one-tier and two-tier partnerships, the Survey has identified a third type of partnership structure, which we call a “mixed-tier” partnership. A mixed-tier firm typically characterizes itself as “two-tier” although in fact it has *three* tiers: (1) partners paid on an income basis, (2) partners paid on a combined income-equity basis (what we call, “fixed-income equity partners”), and (3) partners paid on a full equity basis. The Survey categorizes a firm as mixed-tier if at least 5% of its partners are fixed-income equity partners. The 2011 Survey found that 28% of firms are one-tier partnerships, 60% of firms are two-tier partnerships, and 13% of firms govern under a mixed-tier structure.

In a mixed tier structure, a partner in the fixed-income equity tier is required to contribute capital to the firm and may receive a (relatively inconsequential) number of shares. However, these partners receive all or nearly all of their compensation in the form of a fixed annual salary and a performance-based bonus. Fixed-income equity partners enjoy little or none of the upside potential of being a true equity partner. Yet these partners 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. It is also our understanding that fixed-income equity partners do not possess the governance rights or business authority of true equity partners.

From our perspective, perhaps the most important difference between mixed-tier and other types of firms is the extent to which women are clustered in the category of fixed-income equity partners. In the typical mixed-tier firm, women constitute five out of every six fixed-income equity partners – meaning that women constitute an overwhelming majority in this category. When we look at all mixed tier firms, of the many hundreds of lawyers who are fixed-income equity partners in firms with that category of lawyer, close to 80% of them are women.

We find that the women in the fixed-income equity tier are in the prime of their careers and it

is perplexing as to why they should occupy this lower level equity tier in such high numbers. The Survey asked firms to specify the decade during which each of its fixed-income equity partners graduated from law school in an attempt to determine whether seniority, or perhaps the lack of seniority, might lead firms to consign lawyers to the mixed-tier category. It turns out that the majority of lawyers who are fixed-income equity partners graduated after 1980, including about 36% who graduated during the 1980s and almost 30% who graduated in the 1990s.¹³ One might speculate that a fixed-income equity partner who graduated from law school in 2000 or later has been placed into the fixed-income equity partner category for some limited period of time prior to being granted full equity partner status. At the other end of the spectrum, it is likely that some of the attorneys who graduated before 1980 are in the process of winding down their practices in preparation for retirement and have been consigned to the fixed-income equity partner category in recognition of their lessened contributions to the overall success of their firms. But, about two-thirds of the fixed-income equity partners have been practicing law somewhere between 12 and 31 years. And, women are disproportionately placed in this tier; about three-quarters of fixed-income equity partners who graduated in the 1980s and 1990s are women. By all accounts, the lawyers who graduated in that time frame should be in the most successful and lucrative years of their practice, and yet they are put into a position within their firms with less authority and upside potential than men with whom they graduated from law school.

The Survey data do not tell us why firms have fixed-income equity partners but several reasons stand out as likely. First, from the firm's perspective, it would appear that a fixed-income equity partner is not counted as a partner when the all-important "profits per equity partner" are calculated.¹⁴ In other words, firms can show higher profits per partner if they are allowed to exclude some partners from the calculation. This alone might be a reason for firms to create such a category of partnership. On the other hand, by promoting women to fixed-income equity status, firms can present better gender statistics to the outside world by categorizing these positions as "equity

partners.” Yet another factor may be the level of business required by a firm to promote lawyers to full equity status. Consistent with the problem of women generating and receiving credit for business, lawyers who are fixed-income equity partners may not be viewed as generating sufficient business to warrant full equity status, or as having sufficient portable business to threaten a lateral move.

Finally, as we have found in previous years, in some respects women lawyers fare better in one-tier firms. Women constitute 18% of the equity partners in one-tier and mixed-tier firms, versus only 14% of equity partners in two-tier firms. Moreover, throughout the current recession, one-tier firms have been less likely to reduce lawyer headcount than either two-tier or mixed-tier firms. During the year preceding February 1, 2011, 75% of one-tier firms, 95% of two-tier firms, and 84% of mixed-tier firms, terminated lawyers.

E. The Impact of Involuntary Terminations on Women.

Beginning in 2009, the Survey has asked firms to share data about involuntary terminations of lawyers in an attempt to determine whether women have been more or less affected by the ailing economy than their male peers. A number of firms selectively chose not to respond to questions about termination of male versus female lawyers. In the group of responding firms, close to 90% of firms terminated attorneys during the period from February 1, 2010 through January 31, 2011. As was true in the two previous years, roughly 80% of those terminated were associates.¹⁵ Thus, firms are continuing to decrease their “leverage,” i.e., the ratio of associates to partners, which had been increasing in the years prior to the downturn.

Regarding the impact of gender, women were laid off in very rough proportion to the percentage of positions they held. Thus, in the typical firm where layoffs occurred, women constituted about 38% of terminated associates (actually fewer than expected) and 50% of terminated counsels (a little more than expected). However, there was large firm-to-firm variability in these proportions and it is, therefore, hard to generalize to all firms about gender differences.

Nonetheless, women being laid off at the rate which they occupy positions means yet another threat to the long-term pipeline for senior women in firms.

There were fewer terminations of part-time lawyers, a position occupied in large part by women lawyers, than in the preceding two years. Fewer than half of responding firms terminated one or more part-time attorneys in 2010, a marked decrease from 2009 and 2008, when a majority of firms terminated lawyers in these positions. However, in about two-thirds of the firms in which part-time lawyers were laid off, the majority of those terminated were women.

Overall, we continue to be concerned that law firm terminations of recent years are depleting the pipeline of partnership-track women lawyers. Our conclusion from last year's Survey remains the same: the disproportionate departures of women lawyers at every level will result in disappointingly smaller numbers of women partners and firm leaders for many years to come.

IV. Women Lawyers in Law Firm Leadership.

A. Women in Law Firm Governance.

As in previous years, the 2011 Survey requested data about women's representation on the highest governing committee of each firm.¹⁶ This committee is responsible for a firm's strategies, policies and practices, including policies affecting the recruitment, training and advancement of lawyers in the firm.

Among the large firms, the median number of members of the highest governing committee is ten. There is substantial firm-to-firm variation in the number of women who sit on these committees. In 2011, 11% of firms have no women on the highest governing committee, 35% have one woman member, and 31% have two women members. Only 23% of firms include more than two women on their highest governing committee. In essence, the majority of the big firms have, at most, two women members on their highest governing committee, with almost half the firms showing none or one women member.

We continue to be concerned that the small number of women at the highest level of firm

leadership has broad and negative implications for the advancement of women lawyers. A firm's chief governing committee makes decisions regarding firm policy, strategic growth and direction, recruiting and lateral hiring, compensation, billable hour requirements, elevation to partnership, and policies for time off or part-time or flex-time work. The firm's highest governing committee sets the tone and the policies for overall firm culture. When so few women are part of the dialogue on these important and sensitive topics, it is less likely that the policies and practices implemented by the firm will be responsive to the career needs of women lawyers.

B. Advancement of Women into Equity Partnership.

For the sixth year in a row, we reluctantly report that the proportion of women who are equity partners in large law firms remains dismally low; in 2011, it is barely 15%. As noted above, two-tier firms had a slightly smaller percentage of women equity partners (14%) than one-tier or mixed-tier firms (18%).¹⁷ However, in no category of firm can the numbers be called encouraging.

What does this mean for the progress of women in private practice and their firms? It means a continuing shortage in firms of lawyers in active practice for reasons connected to their gender, deeply jeopardizing the talent pool of lawyers available to firms and their clients. It means that firms will continue to be unable to fully address the diversity requests and requirements of their clients. It means a continuing dearth of female role models for women associates, counsels and non-equity partners, further jeopardizing retention of many talented lawyers. It means fewer senior-level women available to be recruited into law firm leadership or firm management with the result that women's voices will be fewer and less likely to be heard in important firm discussions about policies and strategies that can make a positive difference for women lawyers coming up through the ranks. To the detriment of private firms, today's scarcity of senior-level women lawyers is likely to result in a continuing scarcity of senior law firm members in the years to come unless firms proactively and aggressively change their policies and practices for retaining and promoting women lawyers.

C. Women and Business Development.

How important is business development to success in a law firm? “A lawyer's ability to generate business is the single most determinative factor in whether a lawyer will become an equity partner.”¹⁸ Although some have questioned whether this standard should continue,¹⁹ it cannot be assumed that in the current economic environment, the focus on rainmaking will change anytime soon.

As we have seen in past Surveys, almost half of large firms count no women at all among their top ten rainmakers. Nevertheless, the relative absence of women at the highest levels of business generation does not necessarily mean that women aren't generating business at all, only that few women have achieved the nationwide or specialty-wide level of prominence that would put them in the top 2,000 American big-firm lawyers along this dimension.

In 2011, we broadened our approach to data on business generation. The 2011 Survey asked firms how many of their partners, male and female, were responsible for generating at least a \$500,000 “book of business.”²⁰ The choice of \$500,000 was based on anecdotal discussions that \$500,000 is the minimum for initial recognition of “business” in many large firms (although not the very largest firms) and that firms seeking lateral partners often cite the \$500,000 number as one that would interest them in further discussions with a candidate.

We were surprised and somewhat disappointed by the responses about business generation. At the typical firm, women partners constitute only 16% of those partners who received credit for at least \$500,000 of business, which approximates their percentage as equity partners. To put that number in context, the majority of women partners do not appear to receive credit for a sufficient amount of business to cover their compensation and overhead, or to embark upon advantageous discussions with respect to a potential lateral move. Moreover, it appears to be harder for women than men to be recognized for that level of business. We found that a much higher percentage of women partners were relatively “bookless” compared to men — 56% of women partners compared

to 38% of men partners.

If a partner does not have her or his “own” business, it means that her or his value to the firm inheres in the ability to service other people's clients. Perhaps it's because a given partner is the “go to” person for Partner X, or perhaps it's because a given partner is a nationally recognized expert in some esoteric legal field. Either way, from the perspective of the firm, if a partner does not pull her or his weight as a rainmaker, that partner is viewed as a service partner. The responses to this year's Survey tell us that women are much more likely to be service partners than men, based on the proportion of women partners who are relatively bookless. Another possible inference from the data is that the firm's top rainmakers, who are almost all men, are more apt to protect a “bookless” male colleague than a female colleague. In addition, the general correspondence between the percentage of women having \$500,000 book of business and their proportionate share of equity partner positions might be read to suggest that the lack of rainmaking credit explains why women continue to represent such a small proportion of a firm's equity partnership.

Whatever the reasons, it appears that women across the spectrum are challenged in their ability to bring in their own business and in the current economic environment that can only make them more vulnerable. Overall, the data clearly underscore the importance for a woman partner to demonstrate that she can develop her own clients and also that she receive credit for the business.²¹

D. The Continuing Compensation Gap Between Men and Women.

Since the Survey began in 2006, one of the perennial sets of questions has been whether men and women in the same positions are compensated similarly. In 2011, overall female associate compensation is slightly less than male associate compensation, although the difference is not large and is likely explained by greater female attrition at the senior associate level. 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, the gap between female counsel and male counsel narrowed, with women earning roughly 92% of what their male peers earned. The gap

between non-equity female and male partners also narrowed slightly, with women earning 95% of the income earned by their male counterparts. Finally, as has been true in each year of the Survey, the gender gap was widest at the equity level. For 2011, women equity partners are earning 86% of the amount earned by their male peers. That means that in a typical firm, male equity partners are earning roughly \$70,000 more than female equity partners.

In short, women are underrepresented in the ranks of counsel, non-equity partner and equity partner; and at each stage of their career progression in a firm, women are likely to earn noticeably less money than their male peers. Our data also show that compensation generally is affected by a firm's structure. One-tier firms had higher lawyer compensation than two-tier firms at all levels. Compensation in two-tier firms exceeded that of mixed-tier firms at all levels.²²

V. Conclusion

The NAWL Foundation, in cooperation with NAWL, sponsors an annual Survey designed to provide reliable benchmarks about the status of women lawyers in private law firms and the factors that impede or advance their retention and promotion. We know from our communications and interactions with large law firms that there is a desire within firms to implement concrete steps that will assist greater numbers of women lawyers in advancing their careers. In particular, we are heartened by the fact that 95% of responding firms disclosed that they sponsor a women's initiative, with the goal of overcoming barriers to success that women may face.

We express our appreciation to all of the firms that participated in the Survey. We especially applaud NAWL's Law Firm Members and Sponsors for their interest in initiatives like the Survey and their cooperative efforts to enhance the role of women in the profession.

Appendix on Survey Methodology

The NAWL Survey was sent in early Spring 2011 to the 200 largest firms in the U.S. as reported by *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 each firm's U.S.-based lawyers as of February 1, 2011. The 2011 questionnaire included comparative questions about associates, counsel, non-equity and equity partners, staff and contract attorneys, law firm structure, compensation, governance, rainmakers and involuntary terminations. As in each prior year, NAWL does not to publish individual law firm data. We believe that, at the current time, aggregate analyses rather than highlighting individual firm data allows greater response rates on sensitive questions and is consistent with the goals of tracking how women are doing overall and setting benchmarks.

A total of 121 firms responded to the 2011 Survey, which is an overall response rate of 61%. Responding firms were not significantly larger than non-responding firms in terms of net operating income, profits per equity partner, or gross revenue. However, responding firms were larger than non-responding firms in terms of revenue per lawyer. Not all firms answered every question. The Survey's questions on compensation, books of business, and involuntary terminations obtained the lowest response rates with, on average, 50 firms responding to questions about compensation, 60 firms responding to questions about books of business, and 70 firms responding to questions about involuntary terminations. Based on anecdotal reports, the lower response rates for these questions suggest that the Survey results are likely to under-represent the levels of gender disparity along these dimensions.

The Survey was designed and developed by Stephanie Scharf, a practicing lawyer and former Senior Study Director at NORC, a national survey research center based at the University of Chicago. The Survey was administered first in 2006 and has been administered annually since then. The 2011 analysis was assisted by Amelia Branigan, MPES Fellow, in the Department of Sociology at Northwestern University.

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² Stephanie Scharf is President of the NAWL Foundation and chairs the Foundation's research initiatives. She practiced law as a partner in AmLaw 100 firms before joining Schoeman Updike Kaufman & Scharf. Her email contact is sscharf@schoeman.com.

³ We thank Cheryl Tama Oblander, Butler Rubin Saltarelli & Boyd, for her contributions to the design of the 2011 Survey and editing this Report. We also acknowledge and thank the hardworking members of the Survey Committee, without whom this Report would not have been possible: Renee Bergman, Thorp Reed and Armstrong; Ya Marie Chan, SNR Denton; Sally Church, Thorp Reed and Armstrong; Margaret Denton, Realogy; Felice B. Ekelman, Jackson Lewis; Mindy Block Gordon, NAWL Foundation; Linda Lemel Hoseman, Winston & Strawn; Mary A. Kelly, Prudential; Joni L. Landy, Thorp Reed and Armstrong; Charlotte Pashley, McGuire Woods; Christine Stanitski, Finn Dixon and Herling; Lynn A. Whitcher, McGuire Woods; and Susan White, Westlaw-Thomson Reuters. We also thank Courtney Murtaugh, Survey Administrator, for her dedication and attention to detail in her work on the Survey.

⁴ We gratefully acknowledge the support of the American Bar Association's Commission on Women in the Profession, and in particular the contributions to survey content of Roberta Liebenberg, Commission Chair 2008-2011.

⁵ As compiled by *The American Lawyer*. For more detail, see Appendix of Methodology.

⁶ Several state and local bar associations have used the Survey to enhance their dialogues about the progress of women in particular geographic regions. We would be pleased to work with other organizations to extend the Survey into local and regional areas.

⁷ The 2008 NAWL Survey was the first national 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 non-equity partners. To our knowledge, although this is a growing category of partner, it has not been studied by any other entity.

⁸ *Women Spurn Law Schools*, <http://thecareerist.typepad.com/thecareerist/2011/05/fewer-women-at-nations-law-schools.html>, May 16, 2011. See also *IILP Review 2011: The State of Diversity and Inclusion in the Legal Profession*, Table 4 (showing that women's highest percentage of J.D. Degrees awarded occurred in 2004 and has since been on the decline).

⁹ *Women Spurn Law Schools*, cited in preceding footnote.

¹⁰ Specifically, we found that 72% of AmLaw 100 firms and 82% of Second Hundred firms use staff attorneys, while 71% of AmLaw 100 firms and 82% of Second Hundred firms use contract attorneys.

¹¹ A recent provocative study suggests that the unconscious biases of decision makers may be at least partly responsible for various disparities between men and women lawyers. Levinson & Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 Duke J. of Gender Law & Policy 1 (2010). See also Biernat, Tocci and Williams, *The Language of Performance Evaluations: Gender-Based Shifts in Content and Consistency of Judgment*, Social Psychological and Personality Science, published online 18 July 2011 at <http://spp.sagepub.com>.

¹² Almost no firms pay bonuses in lockstep unless they also pay salaries in lockstep.

¹³ Of this group, 27% graduated before 1980, 36% graduated during the 1980s, 29% graduated during the 1990s, and 8% graduated in 2000 or later.

¹⁴ The American Lawyer defines equity partners as "those who receive no more than half their compensation on a fixed-income basis." A fixed-income equity partner would thus not be counted in this calculation.

¹⁵ No equity partners were reported as having been terminated during the period surveyed.

¹⁶ Such committees are called the Executive Committee, Policy Committee, Management Committee, or some similar title.

¹⁷ It is worth keeping in mind, however, that a significant number of the women equity partners in mixed-tier firms are fixed-income equity partners.

¹⁸ *Actions for Advancing Women Into Law Firm Leadership*, Report of the National Association of Women Lawyers (July 2008). <http://nawl.timberlakepublishing.com/files/2008%20Summit%20Report.pdf>.

¹⁹ *New Millennium, Same Glass Ceiling?*, <http://www.pardc.org/publications/SameGlassCeiling.pdf>.

²⁰ For this question we did not distinguish between equity and non-equity partners, recognizing that non-equity partners may also be generating business and receiving credit for it within their firms.

²¹ For more on this phenomenon from the perspective of women lawyers, see the PAR/MCCA study of 2010, conducted at the encouragement of the ABA Commission on Women in the Profession, which studied many of the factors that hamper women in their rainmaking efforts, including, among others, that women are often excluded from rainmaking

opportunities, that they frequently do not receive credit for their contributions to business development, and that they often become embroiled in disputes over billing credit.

²² For equity partners, median compensation was \$773,550 in one-tier firms, \$680,000 in mixed-tier firms, and \$492,000 in two-tier firms. For counsel, median compensation was \$280,000 in one-tier firms, \$216,000 in two-tier firms, and \$174,593 in mixed-tier firms. And for associates, median compensation was \$197,067.50 in one-tier firms vs. \$160,000 in both two-tier and mixed-tier firms.

²³ The list of the nation's largest 200 firms was published by *American Lawyer* in 2010 and was the basis for the population of firms surveyed in early 2011. Certain other data about these firms was obtained from lists published in *American Lawyer* at various times in 2009, 2010 or 2011.