



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

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

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**REPORT OF THE 2010 NAWL SURVEY ON THE RETENTION AND PROMOTION OF
WOMEN IN LAW FIRMS¹**

by

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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 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.



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 part-time. 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 part-time 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. Non-equity 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

part-time 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.

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.

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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² Partner, Schoeman Updike Kaufman & Scharf, sscharf@schoeman.com.

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.