The National Association of Women Lawyers®
and The NAWL Foundation®

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

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REPORT OF THE 2008 NAWL SURVEY ON THE STATUS OF WOMEN IN LAW FIRMS[1]

The National Association of Women Lawyers® (NAWL®) and the NAWL Foundation® are pleased to report the results of the third annual National Survey on the Status of Women in Law Firms ("Survey").

The Survey program began in 2006 in recognition of 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 firms[2], by providing a comparative view of the careers and compensation of men and women lawyers at all levels of private practice, including senior roles as equity partners and law firm leaders, and 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. Several state and local bar associations have used the Survey to begin their own 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.

Snapshot of the 2008 Survey Results

- In spite of more than two decades in which women have graduated from law schools and started careers in private practice at about the same rate as men, women continue to be markedly underrepresented in the leadership ranks of firms. Women lawyers account for fewer than 16% of equity partners, those lawyers who hold an ownership interest in their firms and occupy the most prestigious, powerful and best-paid positions. The average firm's highest governing committee counts women as only 15% of its members – and 15% of the nation's largest firms have no women at all on their governing committees. Only about 6% of law firm managing partners are women.
- There is evidence that more recent women graduates are being promoted to equity partner at a somewhat greater rate. Women constitute fewer than 10% of equity partners who graduated from law school before 1982. Of those equity partners graduating from 1982 through 1997, women comprise roughly 19% of equity partners. And, for those relatively few equity partners who graduated in 1998 or later, women constitute 24% of the total. These numbers show, however, that even in the best of circumstances, women are promoted to equity partner only about half as often as men.
- Women of color are hired as associates in large firms in roughly the same proportion that they graduate from law school. But women of color are much less likely to be in partnership positions than white lawyers of either gender or men of color. In the average firm, women of color account for about 11% of

associates but only 3% of non-equity partners and only about 1.4 % of equity partners. Thus, in the average firm, the percentage of women of color at the equity level is a small fraction -- 1/8 -- of the number of associates who are women of color. Clearly the combination of being female and a lawyer of color presents additional challenges within law firms.

- The Survey has captured data on a newly identified category of law firm, the "mixed-tier" firm, which has a different partner compensation structure than the traditional one-tier or two-tier partnership. In the traditional structure, an equity partner is both required to invest in the firm and compensated on the basis of his or her ownership share. In the mixed-tier firm, in contrast, all "equity" partners are required to contribute capital to the firm but some of them are paid as if they were income partners, receiving fixed compensation and not sharing in firm profits or losses. This is not an equity structure that has been reported very often although our data show that about 15% of the nation's largest firms are mixed-tier firms. The preliminary data also indicate that mixed-tier firms are less likely to retain and advance women lawyers to partnership than either one-tier or two-tier firms.
- At every stage of practice, men out-earn women lawyers, a finding that is consistent with NAWL'S previous Surveys and data from other sources.[3] At the level of equity partner, the income difference is greatest. Male equity partners earn on average over $87,000 a year more than female equity partners. In 99% of large firms, the most highly compensated partner is a man.

- The market for lateral partners impacts promotion to equity partner. For both male and female lawyers, moving is likely to be a better strategy than staying in the lawyer's original firm. Laterals account for roughly two-thirds of the women and three-quarters of the men who were newly promoted to equity partnership. A startling 31% of new equity partners are recent laterals, suggesting that they were specifically recruited for or negotiated a move for equity positions. It also appears that males are recruited more often for equity partnership than females. Firm structure impacts the extent to which home-grown lawyers or lateral hires are promoted to equity partner. One-tier firms are almost equally likely to promote women from within or import female talent, while two-tier and mixed-tier firms are much more likely to import equity level women lawyers than to advance their home-grown women lawyers.
- Today it is the rare large firm that does not make some effort to enhance career prospects for its women lawyers. Nearly 97% of law firms have implemented women's initiatives, which provide a combination of programs on professional development, networking, mentoring and/or business development. Indeed, over 90% of firms include business development activities as part of their women's initiatives, perhaps in recognition that women have not historically developed as much business as their male peers and that women frequently seek help in navigating the cultural and social issues associated with the development of business relationships. Given that

women's initiatives and formal programs for business development skills are relatively new activities in firms, it is too early to say whether these programs will enhance the level of business development by women lawyers.

We now turn to more detailed analyses.

How Well Do Women Lawyers Progress in Law Firms?

Women start out in about equal numbers to men when they enter law firms as first year associates. But the fall-off of women lawyers begins early in their careers and gains momentum at each level of seniority, which ultimately shrinks the partnership pool of women lawyers. Women constitute 48% of first- and second-year associates, a percentage that approximates the law school population (especially considering the pool of law schools from which the nation's largest firms recruit first-year associates). There is a small fall-off at higher levels of the associate ranks, with women constituting 45% of mid-level associates and 44% of 7th-year associates. The associate statistics have not changed substantially for over 20 years, demonstrating that for over two decades there has been a steady pipeline of women lawyers entering large firms at the same rate as men.

Beyond the associate level, however, the number of women shrinks at each level of the firm. Women constitute 34% of of-counsels, 27% of non-equity partners, and fewer than 16% of equity partners. To put an image on what these statistics mean, if a client were to enter a conference room of 50 first-year associates in the average large firm, about 23 (almost half) of the associates would be women. In contrast, if that same client were to enter a conference room of 50 equity partners in the average large firm, only eight equity partners would be women. Recent graduates have had a somewhat greater chance of becoming equity partners than those who graduated more than 25 years ago. Nevertheless, considering that women have been entering firms in roughly equal numbers with men for more than two decades, these percentages are much smaller than expected.

With respect to of-counsel lawyers, in the average firm, there is a greater percentage of men than women and the majority of women in of-counsel positions have graduated since 1982. In contrast, the highest percentage of men in the of-counsel position are those who graduated before 1982. It appears that men are more likely to occupy the of-counsel position as they approach retirement years. The of-counsel role was traditionally reserved for senior lawyers transitioning to retirement, but in recent years has increasingly been used by firms as an intermediate position for lawyers who are not promoted to partner but have many similar practice skills as partners. Anecdotally, the of-counsel title has also been given to partners who were "de-equitized" by their firms but who, for various reasons, continued to be employed by the firm.

In measuring the advancement of women in firms, in the first instance we focus on equity partnership because other than a law firm leadership role, there is no more important criterion of professional success than being an owner of a firm. Equity partners are the highest paid lawyers and enjoy the highest status and influence within a firm. Given the current fragile state of the U.S. economy, however, we are concerned about the near-term prospects for improving the number of women equity partners. As of May 2008, legal employment was down from the preceding year and since then, there have been highly publicized downsizings and even dissolutions among AmLaw 200 firms.[4] Moreover, women leave firms at a higher rate than men during the years preceding equity partnership decisions. Since the data show that women start out at slightly less than half of incoming associates and taper off over time, even an equivalent departure rate may translate into a substantial decline in the percentage of women lawyers practicing in the large firm environment. If senior women lawyers are not visible as colleagues, role models, and mentors, their contributions may be overlooked or devalued, and firms may come to accept as a given that women will not advance into senior positions in substantial numbers.

The year-over-year failure to move the needle, in spite of near-universal commitment to remedies such as women's initiatives and part-time work policies, raises the concern that firms have not yet implemented effective strategies and practices to bring about needed change. Certainly there are beneficial actions to take. In this regard, NAWL has recently issued a report outlining its recommended actions for law firms to take for advancing women lawyers. *See* Report of the National Association of Women Lawyers National Leadership Summit, "*Actions for Advancing Women into Law Firm Leadership,*" (2008) (hereinafter "NAWL Summit Report").[5]

Race/Ethnic Background of Lawyers and Position in Firm

The 2008 NAWL Survey asked firms to report for the first time the race/ethnic background of their equity partners, non-equity partners, of counsels, and associates, both male and female.[6] While race/ethnicity data are available from other sources for lower levels of lawyers within firms[7], we were especially interested in data beyond the level of first-tier partner. A few trends are worth noting. The data suggest that women of color are being hired at the associate level in numbers roughly proportional to the number graduating from law school. But there is only a very small percentage of women of color who are law firm partners -- at either the equity or non-equity level -- and the low percentage is not especially due to a lack of candidates.

For more than 10 years, some 20% of all J.D. degrees have been awarded to lawyers of color, and in the past few years, degrees awarded to lawyers of color accounted for about 22% of total law degrees.[8] Assuming that graduates of color are about equally divided between male and female lawyers, it would appear that women of color enter private practice at a rate consistent with the number who graduate from law school: the Survey found that on average, roughly 11% of associates in firms are women of color.

At the same time, it appears that once women of color enter firms, they are much less likely to move up the partnership ladder than the pipeline of graduating lawyers suggests they should, and substantially less likely to advance than either white women or men of color. Thus, while women of color account for about 11% of associates, they account for only 3% of non-equity partners and about 1.4 % of equity partners.[9] By way of contrast, in the average firm, white women account for some 35% of associates, 23% of non-equity partners, and 14% of equity partners. Women of color also have a lesser chance of promotion than men of color, who in the average firm account for a smaller number of associates (8%) but constitute 6% of non-equity partners and 4% of equity partners. Thus, even though there is a greater percentage of female associates of color than male associates of color, the women are less likely than men to hold the position of non-equity partner or equity partner.

The Survey data complement research on the felt experiences of women of color in law firms[10], reinforcing the conclusion that women of color face more impediments to advancement in private firms than either white men and women or men of color. Focusing on firms as a whole, the Survey found that, on average, the percentage of women of color at the equity level is a small fraction -- only 1/8 -- of the number of women associates of color.[11] In contrast, the number of white women at the equity level represents roughly 40% of the number of white women associates.[12] These statistics suggest that, apart from smaller starting numbers, different dynamics apply to the process of retaining and advancing women of color.[13] Along the same lines, it is not clear to us if the higher statistics for men of color are an outgrowth of more intense lateral recruitment for male partners and/or the dynamics of large firms which result in better outcomes generally for men than women.

Clearly the combination of being female and a lawyer of color presents additional challenges associated with promotion within law firms. The emergence in many (but certainly not all) large firms of diversity committees, among other practices, is just one of a range of strategies that firms may undertake to address the gaps.[14] With corporations continuing to clamor for minority lawyer representation on their cases/matters, it will be telling to see how firms without minority representation in higher positions respond to such pressures.

The Impact of Firm Equity Structure: One-Tier, Two-Tier and "Mixed-Tier" Firms

While statistics about careers in law firms traditionally focused on the blunt distinction between associate and partner, in many firms, the term "partner" now carries some meaningful distinctions as firms have moved from the traditional one-tier structure to a two-tier or even a "mixed-tier" structure. About 31% of the largest U.S. firms are one-tier partnerships, meaning that at least 95% of their partners own equity in the firm and are compensated on the basis of their equity investment. About 54% of firms govern themselves under a two-tier structure, in which some but not the large majority of partners are equity partners (known variously as "equity," "share," "point," or "principal" partners) who contribute capital in exchange for an ownership stake in the firm, receive annual compensation on the basis of their ownership interest, and have governing authority. The non-equity partners are paid a fixed annual salary with bonus based on performance and have less say, if any, in the overall governance of the firm. While typically marketed to the outside world as "partner," within the firm, non-equity partners have neither the level of compensation, status nor obligations of an equity partner.

Variations on these models were bound to emerge. Today, some large firms officially describe themselves as "one-tier" or "two-tier" firms but in fact implement a mixed structure. In these "mixed-tier" firms, there are partners deemed "equity" partners who are required to contribute capital to the firm but at the same time are paid on a fixed income basis -- an arrangement that significantly strains the meaning of the term "equity partner." In 2008, we asked for the first time about mixed-tier firms and found that overall, 15% of firms fit this category. Moreover, mixed-tier firms are spread throughout the AmLaw 200.

Our data raise intriguing questions. For example, mixed-tier firms have a higher median attorney headcount and higher median firm revenue than two-tier firms. A mixed-tier structure, which in essence adds another tier to the firm's partnership, might be a way of achieving a larger geographic footprint or greater visibility for a firm while nevertheless keeping the concentration of firm profits in a subset of the identified "equity partners." A mixed-tier structure might also be a way of infusing capital into the firm by forcing more people to contribute capital than will see a return on that capital, in exchange for employment.[15]

One important question is: for a woman lawyer, is a mixed-tier firm a better or worse place to fashion a career than either a one-tier or two-tier firm? The numbers, although preliminary, suggest that working in a mixed-tier firm is somewhat disadvantageous for a woman lawyer. In mixed-tier firms, women constitute fewer than 13% of equity partners and 24% of non-equity partners, lower levels than in one-tier or two-tier firms. It is also the case that women who begin practicing law at mixed-tier firms have a substantially lower chance of advancing to equity partnership within those firms than do women in either one- or two-tier firms.[16]

Mixed-tier firms do not usually publicize their structure and even attorneys in the firm may not have a clear understanding of what the structure means.[17] And we do not as yet know how many equity partners receiving fixed compensation are working in these firms. If these turned out to be a few senior attorneys in the process of winding down their practices (after many years of being paid like any other firm owner), we might conclude that such treatment did not have an untoward effect on women lawyers. On the other hand, if the majority of equity partners receiving fixed compensation were women, that would lead to a different conclusion. Further study is required in order to determine why firms choose this structure and the longer term impact on women.

Are Women in Law Firm Leadership?

Women play a lesser role in firm management than would be expected from the pipeline of women entering firms. The groups of people responsible for overseeing law firm governance provide the principal example. Virtually every large firm identified a highest governing committee[18], which oversees the firm's strategies, policies and practices, including policies for recruiting, training and promoting lawyers. The highest governing committee consists, on average, of 11-12 members. These committees, however, are overwhelmingly male. Whether in one-tier or two-tier firms, on the average governing committee, 85% of members are male. To our surprise, 15% of the nation's largest firms have no women at all on their highest governing committees.

An even less diverse picture emerges when we look at managing partners. While almost all of today's big firms (95% of those surveyed) report that they have managing partners, only 6% of managing partners are women. Women have a slightly greater chance of being a managing partner in a two-tier firm.

What are the implications of these statistics? One is that women are unlikely to play high-level leadership roles in U.S. firms in large numbers in the near future. We could debate the reasons, but it is unequivocal that there are few women currently involved in leadership at large firms and a smaller pipeline of women than men at the equity partner level to draw from in filling these top positions.

A second implication is that the quality of a law firm's decisions will be different when it lacks a critical mass of women leaders. Research about corporate boards, analogous to law firm governing committees, shows that decision-making suffers when there are only one or two women on a governing board.[19] To paraphrase: one woman can make a positive contribution, and having two women is generally an improvement, but it takes three or more women on boards for an organization to benefit the most from women's contributions. And women make distinctive types of contributions. "They broaden boards' discussions to include the concerns of a wider set of stakeholders, including shareholders, employees, customers, and the community at large; they are more persistent than male directors in pursuing answers to difficult questions; and they often bring a more collaborative approach to leadership, which improves communication among directors and between the board and management."[20]

<u>The Continuing Compensation Gap Between Men and Women Attorneys</u>

If money equals power, there is little question that with each move up the law firm ladder, power increasingly rests with male lawyers. Women start out earning roughly the same as men. We emphasize "roughly" because even at the associate level, gender differences exist. Male associates earn, on average, a median income of about $175,000 and female associates earn, on average, a median income of about $168,000.[21,22] At levels above associate, compensation differences persist and accelerate. Male of-counsels earn, on average, $14,000 more than female of-counsels, with an average median income for males of $220,000 and for females of $205,000. Male non-equity partners earn on average $292,000 while female non-equity partners earn on average $269,000. The most striking difference is seen at the equity level, where in the average firm, men earn some $87,000 more than women. The average median compensation for male equity partners is $660,000 and for female equity partners, $573,000 (or 87% of the average median male compensation).

These numbers show that at each level of seniority, women in large firms do less well than men, and the size of the difference increases as women move up the law firm ladder. Associate women earn 97% of the compensation earned by male associates; women of-counsels earn 93% of the compensation earned by male of-counsels; women non-equity partners earn 91% of the compensation earned by male non-equity partners; and women equity partners earn 87% of the compensation earned by male equity partners. While promotion to a higher position provides increased status and compensation, it also promotes lawyers to the level of greatest compensation differences between men and women.

<u>The Market for Lateral Partners: How Does It Affect Women? (or, "Should She Stay or Should She Go?")</u>

As recently as twenty years ago, few lawyers changed firms. The operating presumption was that a competent and hardworking lawyer would advance to partnership within his (or less frequently, her) original firm in due time. A lawyer who made a lateral move, particularly within the same city, was regarded skeptically, often with an implicit presumption that he was either incompetent, impossible to work with, or both.

In the current marketplace, legal talent moves around frequently, for a whole host of reasons. No longer is there an onus associated with a change of firms. Both individual lawyers and practice groups with portable business are in great demand and may change firms to capture a greater share of the value of that business. Lawyers who begin practice in a steeply structured firm may be forced to move when equity partnership is unavailable to them. Partners may be "de-equitized" and move when their firm decides that it needs to be higher in the all-important "profit per partner" metric. As lawyers mature, they may seek a firm with different values and culture. And mergers of entire law firms, even at the AmLaw 200 level, have become a regular feature of the legal news.

The growing phenomenon of lateral partners raises questions about its impact on women lawyers.[23] In the 2008 Survey, we asked questions designed to determine whether it is a better strategy for promotion to equity partnership for a woman lawyer to stay with her original firm or to make a lateral move.

The responses indicate that for both male and female lawyers, moving is likely to be a better strategy than staying. Among all "new" equity partners in our sample (i.e., those promoted between March 1, 2007 and March 1, 2008), two-thirds of the women and three-quarters of the men are laterals. A startling 31% of all new equity partners were "recent" laterals (i.e., joined the firm after March 1, 2006), suggesting that they were specifically recruited or negotiated for equity positions. We cannot tell from these numbers whether home-grown lawyers are being passed over for partnership in favor of laterals or whether the large number of laterals reflects the growth of many large firms over the past few years by recruiting broadly from other firms both within and outside of the AmLaw 200. But it is clear that the cadres of new equity partners in large firms are largely made up of persons who have not been practicing law together throughout their careers. This phenomenon, particularly if it persists in future years, may have important implications for firm culture and long-term stability.

It also appears that men laterals are recruited more often for equity partnership than women. In the average firm, women made up almost 30% of new home-grown equity partners but only 17% of new equity partners who are recent laterals. These numbers suggest that a woman lawyer's career strategy would favor staying at her original firm although the conclusion is tempered by the fact that a high percentage of laterals become equity partners.

The data also show that type of firm structure impacts the extent to which home-grown lawyers or lateral hires are promoted to equity partner. On average, in one-tier firms, new female equity partners were 48% home-grown and 52% laterals; in two-tier firms, new female equity partners were 28% home-grown and 72% laterals; and in mixed-tier firms, 17% of new female equity partners were home-grown, with the remaining 83% being laterals.[24] Thus, one-tier firms are almost equally likely to promote women from within or import female talent, while two-tier and mixed-tier firms were far more likely to import equity level women lawyers than to advance their home-grown women lawyers.

Another way to look at the data is to ask whether firm structure affects the proportion of women, home-grown or lateral, who are newly promoted to equity partner. Among all one-tier firms, women represent 28% of new equity partners; among all mixed-tier firms, 21%; and among all two-tier firms, 18%. At these rates, and over time, one-tier firms are on track to have a much more gender-diverse equity partnership than firms with mixed-tier or two-tier structures.

These data raise a number of intriguing questions that deserve further exploration, either in subsequent Surveys or other studies. Are women lawyers pursuing lateral moves in the same proportion as their male peers, or does their lower representation in the lateral new-partner category reflect a lower rate of participation in the lateral market? Do women laterals evince different salient characteristics from women who do not pursue lateral moves or from men laterals? For example, do women laterals have better or worse educational credentials, more or less portable business, fewer or more years of practice, more or less practice specialization? Are there different standards or practices that enhance the prospects for women in one-tier firms? Additional study could shed important light on whether women lawyers are taking appropriate advantage of lateral opportunities, and bring us closer to answering the question whether a woman lawyer should "stay or go."

Women's Initiative Programs and Business Development

The NAWL Survey asked firms whether they have women's initiatives in place which provide professional development activities, social networking events, and/or a formal mentoring program. The 2008 Survey also included specific questions about business development activities directed to women lawyers.

Virtually all firms -- including 100% of one-tier firms and 97% of two-tier firms -- reported that they have women's initiatives. Whether these programs are designed to improve recruiting, retention, and/or the promotion of women lawyers within firms is unclear. However, because of their prevalence it can be inferred that these programs are viewed as adding value to firms with a specific focus toward women lawyers.

Women lawyers' presence on these committees is predominant. Forty-four percent of firms with women's initiatives report that the initiative's committee consists of women partners and women associates. Another 18% report that their committees consist solely of women partners. Twenty percent report that their committees are not all-women and 17% report that they have some "other" composition.

The scope of women's initiative programs varied. All firms reported offering social networking events as part of their program and 94% offered professional development activities. This is an increase over the number of firms that reported such events and activities last year. Clearly networking and education are two elements of women's initiatives which appear to be widespread.

By contrast, however, women's initiatives did not uniformly offer programs in an area known to have a direct impact on the ability of women to progress in firms: mentoring. To the extent mentoring affects women's advancement in law firms[25], nearly half of the nation's largest firms have yet to add this component to their women's initiatives. Fifty-five percent of women's initiative programs include a formal mentoring component. It is not possible to tell whether the absence of mentoring components in women's initiatives reflects a firm's desire not to provide mentoring programs along gender lines or reflects the imbalance between the number of women who have achieved a senior status and those at more junior levels seeking mentoring.[26]

The ability to develop business is another critical skill for advancement in firms, and nowhere is the skill more critical than in the decision to promote a lawyer to equity partner or to a position of leadership.[27] Ninety-one percent of firms indicated that their women's initiatives included business development activities. If one credits the anecdotal evidence that women lawyers encounter additional challenges developing business within the traditional "male model" (e.g. attending sporting events, playing golf or having drinks after work), then the relatively high number of women's initiative programs containing a business development component may be a first step in addressing this need.

While firms are sponsoring women's initiatives with business development components, it also appears from the Survey that firms with these programs are focused on providing support generally for business development activities of partners and associates, men and women alike. A substantial majority of firms (83%) offer individualized or small-group coaching within the firm to strengthen business development skills. Only 11% of firms direct this support to women lawyers only. Ninety-five percent of firms offer some type of group program to strengthen business development skills. Nine percent of firms target these programs to women only. Eighty-four percent of firms offer business development training to male and female attorneys at all levels by an organization outside the firm. Seven percent of these programs are for women only. Ninety-seven percent of firms hold some form of large social event for clients and potential clients of the firm. Eight percent of firms conduct these events only for women lawyers. Seventy-seven percent of firms conduct in-firm business development programs to which clients are invited as guests or speakers. Eleven percent of these programs are exclusive to women lawyers.

Our data show that training in business development has become pervasive in firms. We cannot tell from the data whether women are being given training and coaching opportunities to help them overcome business development and networking social biases and concerns about cultural norms[28] or whether such support is focused on non-gender specific skills in areas commonly cited by women as challenging, i.e., asking for the business, stating accomplishments, transitioning personal relationships into business relationships, identifying comfortable venues for developing business relationships, and other concerns about cultural norms and socially reinforced conduct. Certainly from a purely economic standpoint, the extent to which firms can support and train women lawyers to grow their own books of business has positive financial implications that reach beyond the achievement of equity partnership status and/or holding a leadership position within the firm.

Conclusion

The NAWL Foundation oversees an annual Survey designed to provide reliable benchmarks about the status of women lawyers in private firms and the factors that impede or advance their retention and promotion. We know from our communications and activities with law firms that there is a desire within firms to implement meaningful, concrete steps that assist women lawyers in advancing to more senior levels in greater numbers. We thank all of the firms that participated in the Survey, and we also thank NAWL for its leadership in initiating the Survey in 2006 and its generous ongoing support. Finally, we 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 2008 to the 200 largest firms in the U.S. as reported by *American Lawyer.*[29] 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 March 1, 2008. The questionnaire included questions about total law firm size; numbers of male and female associates, of-counsel, non-equity and equity partners; whether the firm was a one-tier, two-tier or "mixed" tier partnership; median and highest compensation by gender; representation on the firm's highest governing committee; gender of the managing partner; business development programs; lateral promotions; and racial/ethnic diversity within firms.

As part of the Survey, NAWL committed not to publish individual law firm data. The particular statistics of any given firm were of less interest than our goals of finding out how women were doing overall and setting benchmarks. We also believe that at the current time, aggregate analyses rather than a focus on particular firms allows greater response rates on sensitive questions.

The Survey was designed and developed by Stephanie Scharf under the auspices of NAWL and first administered in 2006 and annually since then. The 2008 analysis was assisted by CRA International, Inc., which generously contributed significant time and resources to analyzing the survey data. The analyses, conclusions and opinions expressed in this report are solely those of NAWL.

A total of 137 firms responded to the Survey. In the 2008 Survey, responding firms were not significantly larger than non-responding firms in terms of gross revenue, revenue per lawyer, net operating income, profits per equity partner, number of lawyers or regional distribution. The Survey's compensation questions obtained a lower response rate than any other portion of the Survey, with 59 firms responding at least in part.

 This report was authored by members of the NAWL Survey Committee, including Committee Chair Stephanie A. Scharf, Schoeman, Updike, Kaufman & Scharf; Committee Co-Chair Barbara M. Flom; and Committee Member Marianne M. Trost, The Women Lawyers Coach, LLC. Other members of the Survey Committee who provided substantial assistance implementing the 2008 Survey include Lynn Whitcher Alvarez, McGuire Woods LLP; Jacqueline Beaumont, Morrison & Foerster LLP; Monika Blacha, Winston & Strawn LLP; Marty Beard Duncan, Texas Advocacy Project; Lucinda Glinn, Nauman Smith Shissler & Hall LLP ; Amanda Groves, Winston & Strawn LLP; Alicia Harrison, Starnes & Atchison LLP; Grace Ho, Jenner & Block LLP; Betsy Katten, Winston & Strawn LLP; Lorraine Koc, DebShops, Inc.; Jennie La Prade, Pillsbury Winthrop Shaw Pittman LLP; Catherine MacDonagh, Legal Sales and Service Organization; Linda Monica, Monica & Associates, PC; Cheryl Tama Oblander, Winston & Strawn LLP; Jenny Pickell, Jenner & Block LLP; Kathleen Russo, formerly Hughes Hubbard & Reed LLP (now at FDIC); and Liisa Thomas, Winston & Strawn LLP. Courtney Murtaugh and Katherine Petrusek provided administrative assistance and we thank them for their fine service. In addition, this report was greatly benefited by the generous contribution of time and analytic services provided on a *pro bono* basis by CRA International, Inc., through a team lead by Felix Verdigets under the auspices of CRAI Vice President Elizabeth Davis.

[2] As compiled by *The American Lawyer* and reported in May and June 2007.

[3] *See, e.g.,* U.S. Census Bureau data, as recently reported in *National Law Journal*, Sept. 29, 2008, vol. 31, no. 5 at 1. Also see reports of the 2006 and 2007 Surveys conducted by NAWL, at www.nawl.org.

[4] As of May 2008, the legal services sector had shed 9700 positions in the preceding twelve months. http://amlawdaily.typepad.com/amlawdaily/2008/06/legal-sector-lo.html . Since then, there have been highly publicized downsizings among AmLaw 200 firms. *See, e.g., National Law Journal*, Oct. 20, 2008, vol. 31, no. 8 at 10 (describing layoffs of partners and/or associates at Orrick, Herrington & Sutcliffe; Katten Muchin Rosenman ; Sonnenschein Nath & Rosenthal; Clifford Chance; and the dissolution of Heller Ehrman).

[5] Available at http://www.nawl.org/Assets/Summit+Report+2008.pdf.

[6] We asked specifically about percentages of lawyers who were: Black/African American; Hispanic/Latino; White/Caucasian; Asian; Native Hawaiian/Other Asian Pacific; American Indian/Alaska Native American; or two or more races. Because small percentages in any given

category made analyses based on a given racial/ethnic group statistically unreliable, for this Report we concentrated on analyzing all lawyers of color combined.

[7] Most notably, data compiled annually by the National Association for Law Placement, www.nalp.org. *See also A Closer Look at Women and Minorities in Law Firms – By Race and Ethnicity* (NALP *Bulletin*, February 2008).

[8] See http://www.abanet.org/legaled/statistics/stats.html.

[9] We observed no meaningful differences by law firm structure.

[10] *See, e.g., Visible Invisibility: Women of Color in Law Firms*, ABA Commission on Women (2006).

[11] 11.1% associates compared to 1.4% equity partners or roughly an 8 to 1 ratio.

[12] 35% associates compared to 14% partners or roughly a 2 ½ to 1 ratio.

[13] We also recognize that one factor in the reduced numbers at the equity level may reflect a smaller pipeline of minority lawyers in decades past. Minorities across all ages comprise some 11% of lawyers in the U.S. See 2000 U.S. Census, Bureau of the Census, Lawyer Demographics as compiled by the American Bar Association Market Research Department (© 2008). However, in the younger cohorts, there has been a large enough pool of women lawyers of color graduating from law schools that the numbers for equity partner should be better than they are today.

[14] *See From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, ABA Commission on Women (2008).

[15] Because U.S. law firms are not public companies, we are unable to determine the historical return to equity partners of their capital investments in the firm. Nevertheless, even the most modestly-compensated equity partner who is compensated on an equity basis comes out ahead of a fixed compensation partner who stands to risk the loss of her contributed capital if the firm fails, and who does not fully participate in the upside when the firm is profitable.

[16] *See* section of this report discussing the market for lateral equity partners.

[17] Anecdotally, it is certainly possible that an attorney, upon being promoted to equity partner, only learns for the first time that s/he will have to make a significant capital investment but not share in firm profits.

[18] Called by such names as the Executive Committee, Policy Committee, Management Committee, and others.

[19] 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.

[20] *Id.*

[21] Our compensation statistics comparisons are based on data about median income within a given firm for a given lawyer position. When we speak of income within the average firm for a given category of lawyer, we are referring to the average median income for the particular lawyer category.

[22] It is possible, though, that the gender difference between male and female associates reflects the loss over time of women lawyers within the "associate" category, so that there is a greater number of senior male associates (who are presumably higher earners based on seniority) than senior women associates.

[23] When we speak of a "lateral" lawyer, we mean a lawyer who started practice in a different firm from his or her current firm.

[24] There is a similar pattern, but not as pronounced, for male equity partners in different types of firms: home-grown men represent 35% of new partners at one-tier firms, 22% of new partners at two-tier firms, and 21% of new partners at mixed-tier firms.

[25] *See "Navigating the Bridges to Partnership"*, NALP Foundation (2007); New York City Bar Committee on Women in the Profession, *"Best Practices for the Hiring, Training, Retention and Advancing of Women Attorneys"* (2006); NAWL Summit Report at 10-12. As an example, one area where having a mentor might be a substantial advantage is for those women on a part-time schedule who are working toward partnership. Those are tricky waters to navigate. Women who have successfully worked part-time and become partners are in a unique position to mentor other women encountering the same challenges. Although the part-time years are usually few for women when viewed as part of a lifetime career, they are often critical to the advancement and promotion (and retention for that matter) of women in law firms.

[26] We expect that many firms try to match junior women with senior women mentors. As noted in the NAWL Summit Report at 12, that strategy has both advantages and disadvantages, one of which is that typically, there are not enough senior women available to act as mentors to the pool of junior women within the firm.

[27] NAWL Summit Report at 17-22.

[28] Alice H. Eagly and Linda L. Carli, *Women and the Labyrinth of Leadership,* Harvard Business Review (Sept. 2007 at 62-71); Cynthia Fuchs Epstein, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession,* 64 Fordham Law Rev. 291 (1995)

[29] The list of the nation's largest 200 firms was published by *American Lawyer* in 2007 and was the basis for the population of firms surveyed in early 2008. Other data about these firms was obtained from lists published in "The AmLaw 100", *American Lawyer* May 2007, and "The AmLaw 200", *American Lawyer,* June 2007.