

# **BRIDGING THE GAP FOR FEMALE ATTORNEYS: WHAT IS “SUCCESS” AND WHO DEFINES IT?**

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## EXECUTIVE SUMMARY

For decades, feminist lawyers defined the holy grail of equality in becoming a partner at a top tier law firm. Of recent years, the battle cry has been mixed with the angst of interpreting statistics to read that women lawyers are stagnating in their rise to power and possibly even failing to hold the line.

But has this singular definition of “success” within the legal profession undercut recognition of the inroads made by women?

Worse, has it turned off some female lawyers from engaging in the request for pay equity, family-friendly work policies to benefit both employees and their partners, and exploring non-traditional positions?

If we are committed to workplace equality that is healthy for all lawyers, staff, and families, we will have to find a way to bridge the gap between the singular feminist definition of the successful female lawyer and the working woman’s definition of a fulfilling career. Balance between work and family is increasingly the articulated goal among women, and harnessing this rallying cry may provide a segway for more widespread success for women in the legal profession – and beyond.

## THE FEMINIST DEFINITION OF THE SUCCESSFUL FEMALE ATTORNEY

For decades, the gold star of performance for female attorneys has been making partner. But, if you’ve been paying attention to the fine print, there’s been a certain amount of creepage in that equation that “success” equals “partner.” Somewhere along the way and not too long ago, the definition of the successful female attorney became not just “partner” but “equity partner in a top 200 law firm.” Second prizes are awarded to those female attorneys at top 200 firms who are the Managing Partners. And bronze goes to those who are on the Governance Committees at top 200 firms.

It makes it easy to understand why female attorneys are disgruntled: so few female attorneys can and will ever achieve the feminist definition of the “successful” female lawyer, yet all are held to that standard. Feminist attorneys define “success” to such an exacting standard that it is as if to say the only women in politics who are successful are those who are elected to the United States Senate.

### WHO DEFINES “SUCCESS?”

Before we question the feminist definition of “success” for female attorneys, we must understand how it is currently defined and by whom.

One organization dominates the conversation of the issue of women in the law, namely the National Association of Women Lawyers (“NAWL”). The message of NAWL reverberates through the megaphone of traditional and social media to create norms among female attorneys. NAWL messaging is heard from high schools to retirees, and is internalized by women as surely as they adopt messages on body images.

The message?

“...the career path for lawyers in firms culminates with seizing the brass ring of equity partnership. Equity partners hold an ownership interest in their firms and occupy the most prestigious, powerful and lucrative positions.”<sup>1</sup>

Founded in 1899, NAWL is “a national voluntary legal professional organization devoted to the interests of women lawyers and women’s rights.”<sup>2</sup> Among its program offerings is the “Pipeline to Equity Partnership,” launched in 2012 “to target women non-equity partners, counsel, and senior associates who aspire to move into the equity partnership ranks

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<sup>1</sup> “National Survey on Retention and Promotion of Women in Law (2012),” National Association of Women Lawyers, pp. 11-12; accessed 03/27/2014 at <http://www.nawl.org/p/cm/ld/fid=82#surveys>. All NAWL Studies referenced in this report can be found at this webpage.

<sup>2</sup> National Association of Women Lawyers website, “About NAWL,” accessed 01/18/2014 at <http://www.nawl.org/p/cm/ld/fid=9>.

at their respective law firms.”<sup>3</sup> This program supports a goal of increasing the percentage of female equity partners to 30% by 2015,<sup>4</sup> which would double the current percentage of female equity partners from 15% (as reported by NAWL in 2012).<sup>5</sup>

Certainly, there are other organizations, commissions, and academic centers. Each of these organizations puts out some combination of annual reports, summit reports, and specialized reports. The content of these writings is a combination of statistics, trends, analysis, and recommendations for changes by law firms to enhance opportunities for female attorneys to reach one of the coveted seats. While variations in approaches are offered, no other organization is as clear in their drive for such a specific pinnacle of success as NAWL.

And so we begin with NAWL and its goal for female lawyers: achieve equity partnerships at top 200 law firms.

## THE FEMINIST DEFINITION OF “SUCCESS”

The voice of NAWL and the ABA Commission on Women in the Law is part of a larger, feminist philosophy – or at least one branch of it. American women, in general, are bombarded by definitions of success that include becoming CEO of a Fortune 500 company, making the Board of Directors of a Fortune 500 company, and becoming the President of the United States. While our inquiry focuses on female attorneys and their relationship with the practice of law, the definition of “success” with which they are confronted is neither an anomaly nor a singular event. And from the standpoint that success standards in business and politics often pull from the same pool of female attorneys, the pressure upon female attorneys to become an elite can be relentless.

Our first task then is to identify, isolate, and evaluate the messages of NAWL. We will later consider the impact of its message across female attorneys and our broader culture. Let’s start by looking into the primary source materials of NAWL to review and reflect upon the presentation of its message.

In particular NAWL publishes an annual survey on retention and promotion of women in the 200 largest law firms in the U.S. The first such report, published in 2006, was launched “...from the now familiar “50/15/50” conundrum: for over 15 years, 50 percent of law school graduates have been women yet for a number of years, only about 15 percent of law firm equity partners and chief legal officers have been women.”<sup>6</sup> The most recent published report was the 2012 annual survey.

Briefly, before we get into the methodology used by NAWL, let’s take all of one paragraph on the concept of “metrics.” What is it that happened when NAWL signaled 15/50/15 was a critical benchmark NAWL judged to be “stagnant?” NAWL made a values-based

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> NAWL Study 2012, *supra*, p. 3.

<sup>6</sup> “National Survey on Retention and Promotion of Women in Law (2006),” National Association of Women Lawyers, page 1.

decision that a perpetuation of 15% of 50% of women becoming lawyers going on to achieve equity partner status, as of 2006 represented a failure. Setting its metric around the equity partner as the apex of legal power, NAWL discounted the admission of women to the graduate program of Juris Doctor, all those sworn in to practice, and the inherent power associated with being a licensed professional. It also discounted the additional power gained by all women who became attorneys, whether a part-time solo practitioner of family law or a U.S. Supreme Court Justice.

We should be conscious as we move through this review that a dominant organization studying a narrowly tailored metric can lead to a pinhole photograph effect. We may be thinking we are seeing a complete image because we are handed a photograph, when, in reality, it has already been edited by the photographer's point of view when the shot was framed.

The NAWL survey methodology is consistent for each year of their 2006-2012 annual surveys. Each year, NAWL surveys are sent to the 200 largest law firms in the U.S. as identified by American Lawyer.<sup>7</sup> The response rate to the NAWL surveys ranged from a low of 107/200 (54%)<sup>8</sup> to a high of 137/200 (69%),<sup>9</sup> and the NAWL surveys further clarify that not all responding firms answer every question in whole or in part. CITE

Turning to the American Lawyer, its methodology in its ranking of the "top 200 law firms" is "firms ranked by gross revenues."<sup>10</sup> The American Lawyer ranking is driven by a single number: gross revenue. "Gross revenue" is simply defined as the total income (receipts) of a business, prior to the subtraction of allowable expenses and deductions, which then defines "net revenue."

There is a tension already expressed in the business world around this system of ranking companies that is equally applicable to "gross revenue" as the sole metric for ranking law firms. The Fortune 500 list is a staple,<sup>11</sup> but, even Fortune Magazine also presents the accepted, competing standard of "best companies to work for," determined by a multi-factorial analysis.<sup>12</sup> The business world can be said to be "ahead" of the legal world for not only recognizing and defining the duality of corporate cultures driven by profits from corporate culture driven by employees as people.

NAWL's reasoning for this approach is simply stated:

"Although we recognize that most attorneys in private practice work in smaller organizations, we have chosen to focus on the largest firms because they

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<sup>7</sup> *Id.*, page 2.

<sup>8</sup> NAWL Survey 2012, *supra*, p. 20.

<sup>9</sup> "National Survey on Retention and Promotion of Women in Law (2008)," National Association of Women Lawyers, p. 22.

<sup>10</sup> Website of the American Lawyer, accessed 01/17/2014 at <http://www.americanlawyer.com/id=1202601376804>.

<sup>11</sup> Fortune 500 list of top companies, ranked by gross revenues at [http://money.cnn.com/magazines/fortune/fortune500/?iid=F\\_Sub](http://money.cnn.com/magazines/fortune/fortune500/?iid=F_Sub).

<sup>12</sup> Fortune, "100 Best Companies to Work For" at <http://money.cnn.com/magazines/fortune/best-companies/>.



are an easily defined sample, include firms from all parts of the U.S., and are viewed as benchmarks and bellwethers for the larger profession.”<sup>13</sup>

As we study the NAWL surveys, we should keep in mind both the NAWL single metric of equity partners in top 200 law firms and The American Lawyer single metric of ranking by gross revenues. It is this understanding that should trigger our further analysis into the details of the NAWL annual reports.

The core data of the NAWL surveys is annual information on the number of female associates, the number of female “of counsel,” the number and pay for “non-equity partners” and “equity partners,” the number of women serving on a “governing committee,” and the number of women serving as a “managing partner.” Reports after 2010 also cover the percentage of women working as “staff attorneys.”

Each of these terms should be defined. Although NAWL surveys do not define each term in each report, here are some basic definitions.<sup>14</sup>

The Equity Partner: specifically as per NAWL:

“The Survey defines an equity partner somewhat more restrictively than other definitions we have seen: for our purposes, an equity partner is a lawyer who owns an interest in her or his firm and who typically receives the majority of her or his compensation as a distribution with respect to that ownership interest (rather than in the form of a fixed salary or performance-based bonus).”<sup>15</sup>

Other Positions:

- “Managing Partner” – a formal position with responsibilities for overall practice, management, and daily operations. Akin to a company CEO.
- “Governance Committee” – a group of persons with administrative control in defined areas around legal, institutional, and regulatory areas.
- “Partner (non-equity)” – one who has an ownership interest in the law firm.
- “Of Counsel” – a title to designate a “close, regular, and personal relationship... not otherwise false or misleading;”<sup>16</sup> commonly found in part-time, retired, in-bound lateral, or post-associate attorney at a firm.
- “Staff Attorney” – a non-partnership track attorney; may be contract, temporary, or overflow work related.

Now turning our attention to the NAWL surveys, Table 1 compiles the data from the NAWL reports for these law firm positions on an annual basis across seven annual surveys from 2006-2012. There are some blank fields because not every NAWL report included the same data. Viewing the compiled material, it generally illustrates that there is a consistent

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<sup>13</sup> NAWL 2012 report, *supra*, p. 19.

<sup>14</sup> One caveat should be underscored that attorneys would do well to research each of these positions, particularly in the context of becoming a new hire, accepting a promotion, or engaging in a lateral hire. Individual firms may vary in their use of these terms.

<sup>15</sup> NAWL 2012 Survey, *supra*, p. 22, ftnt. x.

<sup>16</sup> ABA Op. 90-357 (May 10, 1990).

percentage of female attorneys in the various firm positions. The number of "Of Counsel" female attorneys appears to have grown by perhaps 5% across these years. And the number of female attorneys who are Staff Attorneys is the greatest segment of female attorney employees at top 200 law firms from 2010 through 2012, the only years for which the data was provided.

## ANALYSIS OF NAWL DATA

NAWL DATA	2006	2007	2008	2009	2010	2011	2012
Firms responding	(not reported)	112/200	137/200	116/200	120/200	121/200	107/200
Associates	45%	47%	48%	48%	46%	47%	46%
							T = 188
Of-counsel	28%	30%	34%	34%	36%	34%	35%
							T = 54
Non-equity partners	26%	26%	27%	27%	27%	25%	26%
							T = 91
Equity partners	16%	16%	16%	16%	16%	15%	15%
							T = 151
Governing Cmtee	16%	15%	15%	15%	(not reported)	(not reported)	(not reported)
	avg. 12 mbrs	11-12 mbrs	11-12 mbrs	10-25 mbrs.	10 median	10 median	10 median
Managing partner	5%	8%	6%	6%	(not reported)	5%	4%
Staff attorney	(not included)	(not included)	(not included)	(not included)	60%	55%	70%
							T = 11
Part-time attorney	(not included)	(not included)	(not included)	(not included)	75%	(not included)	(not included)

### ADDITIONAL INFORMATION:

# hours	women of color	highest \$\$	no \$\$ data	no \$\$ data	rainmakers
p-t schedule	laterals	rainmakers	staff attys	lockstep comp	billable hours
		laterals	contract attys	rainmakers	
		involuntary termination	rainmakers	book of business	
		diversity positions	Fortune 500		
			judges		
			involuntary		
			diversity		
			p-t attys		

NAWL came into the analysis in 2006 with the position of “equity partner” front and center as a dual indicator of power and prestige. In 2009, NAWL began to nuance the complexity of the criteria upon which associates and lateral hires were evaluated to become an equity partner at a top 200 firm: it included the “rainmaker” criteria. Here was a confrontation of gender-driven analysis into one of three chambers of the heart of revenue-driven firms. In 2011, NAWL included discussion of the “book of business” partnership criteria. In 2012, it got to the billable hours criteria. It was at that point now only missing the “start quality” factor.

NAWL started adding these additional data points beginning in 2009 as it pushed harder on its singular question of why the percentage of female equity partners at top 200 law firms was stagnating. Frankly, so much has been written and said on the topic that a contribution to the subject may be to simplify the criteria for success for an attorney at such a firm as follows:

- “billable hours” – time billed against a client or project
- “book of business” – the clients associated with a lawyer that represent a certain percentage of billable hours, contract work, or other quantifiable variable in relationship to the gross revenues of the firm; generally believed to be sufficiently connected to the lawyer to be willing to or at least strongly consider following a lawyer if a lawyer leaves a firm
- “rainmaking” – the ability to bring in new and desirable clients and revenue
- “star quality” – headlines, talk shows, organization leadership and awards, and anything else resulting in “earned media” to enhance the firm brand

The timing of the NAWL rollout of these factors influencing equity partnership selection isn’t news. These factors have long been common knowledge among attorneys in private practice. What is surprising is how long it has taken feminist attorneys pushing the equity partnership icon to acknowledge that revenue-driven firms use such criteria and to question whether female attorneys are equally positioned to compete on the basis of such criteria.

The 2010-2012 NAWL reports crawl inside how these numbers get compiled over the course of a legal career. These three reports, in particular among all material review for this report, stand out as both taking the mystery out of the multi-year grind to build a winning equity partner presentation and also how the long-standing internal workings of the revenue-driven firm perpetuates male dominance.

Although it recently reached into these criteria, the NAWL studies do not ask firms to quantify the capital contribution, if any, requested of its equity partner invitees when making the offer to ascent to the position or for other reasons at any given point. This may be the most telling weakness of the failure lack of analysis of work in conjunction with life. **The NAWL studies reflect no research on a woman’s access to personal wealth<sup>17</sup> or how the access to capital can be effected when serving as a female-headed household or after**

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<sup>17</sup> See, for example, “The Shriver Report” at <http://shriverreport.org/>.

divorce<sup>18, 19, 20</sup>. There is no reflection of overtime expectations<sup>21</sup> or that only seven percent of mothers work overtime (defined as more than 49-hours per week)<sup>22</sup>. These factors, seemingly inextricably intertwined, with each other as well as with questions of ascending to an equity partnership at a large, private firm must too be confronted.

Something of what is ironic about these portions of the NAWL surveys and a few other specialty reports is this: defining "success" using top revenue firms means having to acknowledge these firms use multiple, numerically objective criteria as a standard part of the equity partnership selection process. This is not to say gender bias could not exist in such a process. But it is, however, to ask the question whether the majority of female attorneys share the goal of adopting the profit-driven culture of a top 200 firm as the basis for practicing law?

## NAWL ON THE NUMBERS

The first challenge with the NAWL methodology identified above was the question of whether defining the most desirable position for female attorneys is at a top 200 law firm, defined by gross receipts. Indeed, not even just a female lawyer at a top 200 firm, but either an equity partner, a managing partner, or a member of the governing committee.

And what of the other female lawyers working at top 200 firms?

To them, NAWL says:

"When we asked the same question last year, women only constituted 55% of the staff attorneys in the typical firm. A one-year increase, even of this magnitude, is not sufficient to confirm a trend, but it is disturbing to see growing female predominance in a low-status role. Our expressed fear that this role would become a "pink-collar ghetto" may have been prescient."<sup>23</sup>

Putting on hold for a moment the value of fellow female attorneys at top 200 law firms, let's calculate how many female attorneys in the United States would benefit if we achieved NAWL's 30% goal.

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<sup>18</sup> Although dated, and one would use more recent analyses, this publication remains the seminal publication in its category: Weitzman, Lenore J., *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*, Free Press (1985).

<sup>19</sup> Jenkins, Stephen P., "Marital splits and income changes over the longer term," Institute for Social & Economic Research (February 2008); accessed 03/27/2014 at [https://www.iser.essex.ac.uk/files/iser\\_working\\_papers/2008-07.pdf](https://www.iser.essex.ac.uk/files/iser_working_papers/2008-07.pdf).

<sup>20</sup> deVaus, David; Gray, Matthew; Qu Lixia; and Stanton, David, "The consequences of divorce for financial living standards in later life," Australian Institute of Family Studies (February 2007); accessed 03/27/2014 at <http://www.aifs.gov.au/institute/pubs/rp38/rp38.html>.

<sup>21</sup> A useful compilation of billable hours information is accessible through the National Association for Legal Professionals ("NALP") at <http://www.nalp.org/billablehours>.

<sup>22</sup> Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* (Oxford University Press, 1999).

<sup>23</sup> NAWL 2012 Survey, *supra*, p. 21, ftnt. viii.

Let us start with the Managing Partner and the Governance Committee Member. Indeed, these positions are important, whether at a top 200 law firm or the smallest of boutique practices. As described by NAWL:

“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.”<sup>24</sup>

With these two positions, we can make a reasonable calculation of the number of attorneys in these positions at top 200 law firms and the percentage of female attorneys those numbers would represent out of the total population of attorneys.

	PERCENTAGE (NUMBER)	30% GOAL	TARGET
Managing Partner	4% <sup>1</sup> (8)	30% (60)	52 new seats
Governing Committee	15% <sup>2</sup> (300)	30% (600)	300 new seats

<sup>1</sup> NAWL Survey 2012, *supra*. N.B.: No raw data was provided for this position. The only reported data was the percent of Managing Partners at the firms which responded to this NAWL survey question. No data was reported for 2010.

<sup>2</sup> NAWL Survey 2012, *id.* N.B.: No raw data was provided for this position. The only reported data was the percent of Managing Partners at the firms which responded to this NAWL survey question. No data was reported for 2010, 2011, or 2012.

Using NAWL’s figures, it is not unreasonable to do some figuring on the basis of one Managing Partner per firm and generally ten members on a Governance Committee.<sup>25</sup> This places the figure of Managing Partners at 200 and Governance Committee members at 2,000. To be at 30% parity would be to hold 660 of such governance-related seats.

Looking to the figures on Managing Partners at top 200 law firms, the most recent NAWL survey data is a low of 4% of firms having a female attorney in the position of Managing Partner. We should take a moment to consider that on the assumption that every one of the top 200 firms has a single person who is an attorney who acts in the role of a “Managing Partner” that we are talking about a total of 200 Managing Partner positions. Assuming that the goal is having a woman hold that position 30% of the time, the number of positions is narrowed to 60 such positions. If we say that already approximately 8 such positions are filled by female attorneys, then it would take another 52 women to achieve the 30% goal.

Looking at the figures for women who are Members of a Governing Committee, the data was not consistently reported, however, if we estimate that there are approximately 10 members on Governing Committees at top 200 law firms, of which generally there are

<sup>24</sup> NAWL Survey 2010, *supra*, p. 19.

<sup>25</sup> NAWL Surveys, years 2006 through 2012 (inclusive).

zero to four female attorneys (using an estimated average of two), then of the 2,000 seats available, to hit the 30% target about 600 would be filled by women. Using two female attorneys per firm already in these seats, it would take another 200 female attorneys to advance into seats on Governing Committees to achieve the 30% target.<sup>26</sup>

These figures mean that there are approximately 308 female lawyers who are already in positions of Managing Partner and on Governance Committees, and 352 female lawyers still to get there.

To perform similar calculations for the equity partner position – again, using NAWL data – the percentage of equity partners remains fairly consistent throughout the Survey years. It is only in the 2012 Survey that a raw data figure is used and the 15% of female equity partners is quantified at 151 women.

	<b>PERCENTAGE (NUMBER)</b>	<b>30% GOAL</b>	<b>TARGET</b>
Equity Partner	15% <sup>1</sup> (151)	30% (302)	151 new seats

<sup>1</sup> NAWL Survey 2012, *supra*.

The NAWL figures and goal suggest that there are 962 coveted seats for successful female lawyers, of which 504 have yet to be filled.

## **NAWL NUMBERS IN AN ABA CONTEXT**

Even as estimated raw numbers, you should be feeling some sense of concern that just on the number of seats NAWL is talking about a very, very select group of female lawyers. This is not the bell of the Bell Curve. This is the very front end of figures.

But can you guess just how small a percentage of female attorneys in the United States would be reflected if all 962 seats were filled and women were 30% of equity partners, managing partners, and governance committee members at top 200 law firms?

Let’s put the NAWL numbers in the context of the American Bar Association figures and calculate a rough estimate of just how small of a fraction of a percentage this represents.

First, let’s select a figure for our use as to the number of women in the profession. The ABA reports there are 1,268,011 licensed lawyers as of 2013. In 2005, the most recent year for which gender data is available from the ABA, 30% of licensed attorneys were

<sup>26</sup> For purposes of this publication, figures are used for illustration as if the managing Partner does not occupy a seat on the Governing Committee. This approach allows the computation of the parity goals with the greatest number of available seats.

female and 70% were male.<sup>27, 28</sup> Doing an estimate for 2013, there were 380,403 female lawyers.

Second, let's understand how many total attorneys are in private practice and in law firms, and apply the percentage of female attorneys to those figures. The same ABA survey data includes that 75% of attorneys are in private practice, and of those private practitioners 51% are in law firms. According to that ABA 2005 survey, there were 47,562 law firms in the U.S., "firm" being defined as two or more attorneys. This would mean that there were 951,000 attorneys in private practice, of which approximately 485,014 were in law firms of two or more attorneys.

The 2005 ABA reported statistics will allow us to take this one step further. Of the 75% of attorneys who are in private practice, only 16% are in law firms of 101 or more attorneys – which we'll refer to as big law firms. This would mean that approximately 152,161 attorneys are in big law firms, or, 12% of total licensed lawyers are in big law firms.

Translating these big law firm numbers to women, it would mean that of the 30% of licensed attorneys who are women, 285,302 (75%) are in private practice, of which 45,648 (16% of 75%) are in big law firms.

What this means is that of the 45,648 female attorneys at law firms sized at 101+ attorneys, only 0.02% of those women will achieve a position of either an equity partner, Managing Partner, or Member of the Governance Committee.<sup>29</sup>

Simply put: the feminist definition of success will only be achieved by less than one quarter of one percent of female attorneys.

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<sup>27</sup> Some caution is noted around this figure. On the ABA "Lawyer Demographics" annual sheets, no survey methodology or raw numbers are reported. In the annual "A Current Glance at Women in the Law (January 2013)" at page 2 there is a note that methodology is "44 states, representing 59% of the lawyer population" without any further detail as to states selected or other methodology.

<sup>28</sup> (The ABA historical data shows that in 2005, there were 1,104,766 licensed lawyers.) In a not unreasonable computation using the 2013 total number of licensed lawyers, if approximately 30% of licensed lawyers are women, then roughly 380,400 licensed lawyers are women. If anything, given the rising number of female students enrolled in Juris Doctor programs in the years since 2005, using the 2005 30% gender ratio will give us conservative estimates.

<sup>29</sup> Expressed as a percentage of total female attorneys, As a percentage of total female attorneys, only 0.002503% of women will reach these positions.

## WHAT IS YOUR PERSONAL DEFINITION OF SUCCESS?

It’s a tough analysis to stomach. On the one hand, there is an importance to the vigil kept by NAWL and other organizations. There are a number of valid questions to be asked around the data, which, when viewed in isolation, does appear to suggest that women may not be advancing within the top 200 law firms at desired rates. NAWL is fulfilling the sentry function by annually collecting, compiling, and publishing the survey, keeping alive the question of what forces and factors could be impeding female attorneys from rising in the ranks at the top 200 law firms.

But, it is equally worth asking the question why the singular definition of the pinnacle of a woman’s career as an attorney is being defined by a position that so few women will ever hold, even if women achieve 30% of the equity partner and governance positions at top 200 firms.

### APPLYING THE NAWL STANDARD

As part of a rigorous examination of the NAWL standard, let’s rewind our lives into some of the major milestones along the path to becoming a female attorney. Top high school grade point averages, standardized college admissions testing, and valedictorian and salutatorian first and second place class ranking positions. Let’s not even include something like the National Honor Society because it is not strictly a numbers-driven event; the NHS selection criteria includes scholarship, leadership, service, and character.<sup>30</sup>

Likewise, at the college level, let’s single out college degrees awarded *summa cum laude*, with highest Latin honors, generally at a GPA level of 3.85 or higher. For college, the Phi Beta Kappa National Honor Society inducts only the top 1% of college students, nationwide, we we’ve included it on this grid.<sup>31</sup> The Ivy League colleges like Princeton, Harvard, and Yale University have such rigorous admissions standards that it seems appropriate to include them on this point compilation, eliminating attrition during studies and looking more favorably upon those who achieve a degree from these schools.

Law school begins with the unavoidable LSAT score, for which the top 1% is a raw score of 93, scaled to at or over 174. It is also customary to consider law students in the top tier when they achieve positions of editor of the law review, and/or, arguably, captain of a mock trial competition team. Top ranked law schools include Yale, Harvard, Stanford, Columbia, University of Chicago, and New York University, at least.<sup>32</sup>

It’s possible to create a grid to supplement all of this text and digits and turn it into a self-administered 14-point scale of whether you can claim to be in the top 1% of up-and-

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<sup>30</sup> Website of the National Honor Society at <http://www.nhs.us/>.

<sup>31</sup> Website of The Phi Beta Kappa Society at <https://www.pbk.org/home/index.aspx>.

<sup>32</sup> Top U.S. law school rankings (2014) as per U.S. News & World Report, accessed 03/17/2014 at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings>.



coming female attorneys. It’s a more generous set of criteria than the NAWL single-metric approach, but it’s still brutal.

### **WERE YOU IN THAT LESS THAN ONE PERCENT BRACKET?**

1. High school GPA 3.85 or higher
2. High school valedictorian/salutatorian
3. SAT scores at 2200 (top 1%) or 2050 (2%)
4. Ivy League college degree
5. College GPA 3.85 or higher
6. Degree, *summa cum laude*
7. Phi Beta Kappa (top 1% college students nationwide)
8. LSAT score 93/174 or above
9. Degree, *summa cum laude*
10. Top tier law school degree
11. Law Review (Editor-in-Chief)
12. Moot Court (Captain)
13. Juris Doctor, *summa cum laude*

How did you score on this grid defining the pre-bar admissions 1% indicators? Did you start to resist the validity of the assessment once you started rating yourself against it?

When we process our resumes through a lens as narrow as the top one percent of the steps it took to get to where we are, the so-called “objective benchmarks” can become a highly off-putting process. And yet, do we have the same reaction when we read the headlines associated with the NAWL statistics? Surely, the difference between our reaction to generalized notions of success and failure are quite different than our reaction to the application of those same notions of success and failure to our own lives. It’s what makes the NAWL messaging so difficult for female attorneys, and perhaps not all that different from the waif modeling standards against which we rebelled in the 1980s.

### **CHANGING THE QUESTIONS TO ASSESS “SUCCESS.”**

Instead, let’s rephrase from the dichotomous yes or no top rankings list into a personal conversation. Here are some individual questions that might help you to formulate your own opinion of whether the feminist definition of “success” is one with any meaning for you as a female attorney.

1. Is there an objective measure by which I ranked in the top 1%, whether through national, standardized testing or within the academic setting?
2. Did I try to achieve one or more of these benchmarks?

3. If so, what was my literal and emotional investment in achieving one or more of these benchmarks and what impact did it have upon me when I did (or didn't) reach that goal?
4. If not, was I aware of these benchmarks and the impact they could have upon my career goals and did I make a conscious decision not to pursue such goals?

Isn't it interesting what happens when we dig into the NAWL survey and reframe it into a personal perspective? Aren't we at this point in our discussion asking who wants to climb the highest mountains? In 1808, Marie Paradis climbed Mont Blanc,<sup>33</sup> but it would be until 1975 before the first woman would scale Mount Everest, namely, Junko Tabei of Japan.<sup>34</sup> It would then be another 18 years before Tabei could claim victory for completing the Seven Summits in 1992.<sup>35</sup> Is it what you want out of your career and your life, and should you consider yourself any less successful if you decide not to follow in that path?

## **WHAT HAPPENS TO THOSE WHO WALK A DIFFERENT PATH?**

That said, let us pose a new question: even with a formula to equip a recently-admitted female attorney with a path to at least equity partnership applicant status, should she be made to feel a less-than-successful sister of feminism if she elects to walk down another path?

Here's how NAWL sets up their position:

“Anecdotally, we understand some women staff attorneys are pleased with their situation: they work in a pleasant environment with intelligent colleagues, earn good wages, and can achieve the kind of work-life balance that simply isn't possible for partner-track lawyers and partners in the large firm environment. Some even view their exclusion from a partnership track as beneficial, since they don't face the same competitive stresses as associates and don't have to concern themselves with firm “up or out” policies.

“On the other hand, many, many women choose to be on a partner track and aim for partnership. Our ideal would be that, as more women entered big-firm legal practice, the standards and expectations would evolve to be more accepting of all women's lives and goals – not to slot more women at the lowest, non-partner track position. That approach sends an unfortunate message: “Yes, Ms. JD, you can work in BigLaw, but the right to advance, along with profits, professional status and the most interesting projects, are

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<sup>33</sup> Brown, Rebecca A., *Women on High: Pioneers of Mountaineering*, Appalachian Mountain Club Books (Boston, 2002), pp. 3-11.

<sup>34</sup> Otake, Tomoko, “Junko Tabei: The first woman atop the world,” *The Japan Times*, May 27, 2012; accessed on line 03/25/2014 at <http://www.japantimes.co.jp/life/2012/05/27/people/junko-tabei-the-first-woman-atop-the-world/>.

<sup>35</sup> *Id.*

restricted to those who accept the 24/7 on-demand mentality in every year of their practice, and the resultant stresses and warping of their lives."<sup>36</sup>

The simple manner in which NAWL's language begins with "anecdotally" reflects a lack of appreciation of and for the overwhelming mass of female lawyers. The perspective is to say that only Navy SEALs will be valued, while ignoring the value of the Navy. Without the Navy as a whole, the shorelines of the country are vulnerable to attack. No small unit, no matter how specialized, would be able to compensate for the rank-and-file, every other specialized unit, and all officers serving in the chain of command.

Therein lies the curse of the feminist lawyer: more than 99% of female attorneys have failed to meet feminist standards. Even if you don't consider yourself a "feminist," you are still exposed to the headlines and the peer pressure and you are still vulnerable to the internalized sensation of failure. From mainstream media to individual bloggers to autobiographical narratives, the NAWL annual survey reports are treated as the standard-bearer for female attorneys.

It is impossible to be a female lawyer and escape the headlines annually covering the NAWL survey data. "Women lawyers struggling in law firms: NAWL."<sup>37</sup> "NAWL Reports Troubling Statistics on the Progress of Women Attorneys."<sup>38</sup> "Women Attorneys' Futures in Big Law Not Promising."<sup>39</sup>

The language of failure expanded to include that female attorneys were "dropping out"<sup>40</sup> The scolding through the use of NAWL and women's summit data became "Maybe with these tips in hand, women will be able to speed up the process of equalizing the partnership gender gap at large law firms."<sup>41</sup> "BigLaw Partner Ranks Still Crowd Out Women, Survey Says."<sup>42</sup> "Is the "Old Boys Club" Alive and Well in 2013? Despite Efforts, Female Attorneys Succeed in Disproportionate Numbers."<sup>43</sup>

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<sup>36</sup> NAWL 2012 report, pp. 8-9.

<sup>37</sup> "Women lawyers struggling in law firms: NAWL," International Business Times (November 16, 2010), accessed 01/18/2014 at <http://www.ibtimes.com/women-lawyers-struggling-law-firms-nawl-247408>.

<sup>38</sup> "NAWL Reports Troubling Statistics on the Progress of Women Attorneys," FindLaw (October 26, 2010), accessed 01/18/2014 at <http://practice.findlaw.com/practice-guide/nawl-reports-troubling-statistics-on-the-progress-of-women-attorn.html>.

<sup>39</sup> "Women Attorneys' Futures in Big Law Not Promising," Technorati.com (November 11, 2011), accessed 01/18/2014 at <http://technorati.com/women/article/women-attorneys-futures-in-big-law/>.

<sup>40</sup> Bray Chanow, Linda, "Where Are All the Women Partners?" on WomenLawyers.com, accessed 03/17/2014 at <http://www.womenlawyers.com/partners.htm>.

<sup>41</sup> Zaretsky, Staci, "Which BigLaw Firms Actually Make Women Equity Partners?" on AboveTheLaw.com (blog date July 24, 2012), accessed on 03/17/2014 at <http://abovethelaw.com/2012/07/which-biglaw-firms-actually-make-women-equity-partners/>

<sup>42</sup> "BigLaw Partner Ranks Still Crowd Out Women, Survey Says," blog by Daniel Siegal on Law 360 (dated February 25, 2014), accessed on 03/25/2014 at <http://www.law360.com/articles/513075/biglaw-partner-ranks-still-crowd-out-women-survey-says>.

<sup>43</sup> "Is the "Old Boys Club" Alive and Well in 2013? Despite Efforts, Female Attorneys Succeed in Disproportionate Numbers" blog by Angeline N. Ioannou (dated May 31, 2013); accessed 03/25/2014 on <http://www.dritoday.org/feature.aspx?id=561>.

Perhaps the longest, most emotional, and best known article on "Why Women Still Can't Have it All," appeared in the summer 2012 edition of *The Atlantic*.<sup>44</sup> Written by Anne-Marie Slaughter, who reached the position of "first woman director of public planning at the State Department," in President Obama's first term, her article is a 22-page print-out plus an on-line video. As Slaughter stated: "Yet the decision to step down from a position of power – to value family over professional advancement, even for a time – is directly at odds with the prevailing social pressures on career professionals in the United States."<sup>45</sup> She articulates what we know is the question "How could anyone voluntarily leave the circles of power for the responsibilities of parenthood?"<sup>46</sup>

Yet even while Slaughter's missive arcs across intergenerational feminism, her concluding paragraph reflects the second major question to confront the female attorney: the notion that a few women in key power rolls will create equality for all women. In Slaughter's words "We may need to put a woman in the White House before we are able to change the conditions of women working at Walmart."<sup>47</sup>

From 1979 to 2001, women swelled the ranks of law school graduations and bar admission ceremonies, going from 33.1% of first year enrollment to 49.4% of first year enrollment.<sup>48</sup> The figures have slightly declined to hover around the 47% mark since then.<sup>49</sup> Fall 2009 total first year enrollment was 51,646 of which 24,305 students were women.<sup>50</sup>

But, if these figures represented an up-tick in the numbers of women pursuing a Juris Doctor graduate degree, the voice of the feminist attorney only grew stronger and more strident. The accusations and attacks started to fly. The glass was less than half empty.

The self-inflicted gender assault became as raucous as "Well, whoop-dee-doo at all of these wonderful [NAWL] statistics that we've been choking down for the past decade..."<sup>51</sup> And, the attacks were aimed specifically at Slaughter. "And yes, contrary to Ann-Marie Slaughter's words you can have it all."<sup>52</sup>

Even looking at the range of analysis findings on why women do not achieve equity partnerships ranges from a no-responsibility point of "implicit bias" to a victimized point of "harassment" and "discrimination" to attack-and-blame for being "weak negotiators."

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<sup>44</sup> Slaughter, Anne-Marie, "Why Women Still Can't Have It All," *The Atlantic* (July/August 2012), accessed on 03/17/2014 at <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>.

<sup>45</sup> *Id.*, on-line .pdf version page 4.

<sup>46</sup> *Id.*, on-line .pdf version page 5.

<sup>47</sup> *Id.*, on-line .pdf version page 22.

<sup>48</sup> American Bar Association, "First Year and Total J.D. Enrollment by Gender (1947-2010)" at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/1947\\_2010\\_enrollment\\_by\\_gender.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/1947_2010_enrollment_by_gender.authcheckdam.pdf). The year 1979 was selected as the point at which female enrollment approximated one-third of entering first year Juris Doctor candidates.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Zaretsky, *supra*.

<sup>52</sup> *Id.*

For a few individual female attorneys who published, what appeared at first glance to be an effort to stare down the “biglaw” apex, revealed a deeper disturbance within the ranks of female attorneys.

“Beginning my second year of law school and after a hard look at the statistics, I realized that my chances of actually having a long term career in a law firm are slim. Even less likely is the possibility that I will make partner at a large law firm. This knowledge forced me to take a hard look at what I need to do to have a successful law practice because I did not go to law school, and rack up close to \$100,000 in debt, only to leave the profession in a few years.”<sup>53</sup>

For attorney, Linda Bray Charow, quoted above, the equation was that a non-partnership experience equated to dropping out of the profession altogether. It is the not uncommon voice of female attorneys who have been confronted with the feminist attorney definitions of “success” and of “failure.” Through the NAWL lens, it is as if there is no other appropriate use of the law degree or the license to practice law other than fighting to become an equity partner at a top 200 law firm.

So what about the “other” statistics reflected by the NAWL annual surveys and how do those statistics help our analysis? What about the female attorneys at top 200 law firms who are “non-equity partners,” “of counsel,” and “staff attorneys?” Surely, they have climbed at least part way up the proverbial mountain and deserve some credit?

Apparently not according to the NAWL surveys. The NAWL interpretation of these figures is that these women are self-marginalizing and giving firms an opportunity to push women in those directions instead of elevating them into equity partnership, managing partnership, and governance committee positions. In NAWL terms, any lesser position is a “low-status role.”<sup>54</sup>

Let’s take a step back and consider not only these statistics, but statistics of female lawyers in positions other than equity partners at top 200 law firms. Here is a sampling of “firsts” compared to current figures across federal and state positions:

- **SCOTUS** – first female justice appointed 1981; three current female justices
- **Federal Circuit Court of Appeals** – first female justice to this court appointed in 1934<sup>55</sup>; 53 of 164 active judges of the federal courts of appeal<sup>56</sup>
- **Federal District Court** – one third of judges<sup>57</sup>; 451 of 1,874 current judges<sup>58</sup>
- **White House** – (not yet applicable)

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<sup>53</sup> Bray Chanow, *supra*.

<sup>54</sup> NAWL Survey 2012, *supra*, p. 21.

<sup>55</sup> Federal Judicial Center, “Milestones of Judicial Service” at [http://www.fjc.gov/history/home.nsf/page/judges\\_milestones.html](http://www.fjc.gov/history/home.nsf/page/judges_milestones.html).

<sup>56</sup> National Women’s Law Center, “Women in the Federal Judiciary: Still a Long Way to Go” (December 12, 2013) at [http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1#\\_edn4](http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1#_edn4).

<sup>57</sup> *Id.*

<sup>58</sup> Refki, Dina; Eshete, Abigya; and Hajiani, Selena, “Women in Federal and State-Level Judgeships,” Center for Women in Government & Civil Society, State University of New

- **Cabinet positions** – first female Cabinet Member appointed 1933; seven current Cabinet Members out of 15<sup>59</sup>
- **U.S. Senate** – first woman U.S. Senate (by appointment) in 1922<sup>60</sup>; 20 current U.S. Senate Members out of 100
- **U.S. House of Representatives** – first woman elected to the U.S. House of Representatives 1916<sup>61</sup>; 79 current U.S. Representatives out of 435 Members<sup>62</sup>
- **State court judges** – 27% of female judges<sup>63</sup>
- **State Governors** – first woman elected Governor of a state was in 1925<sup>64</sup>; currently, 5 women are Governors
- **State Legislators** – the first women elected to state legislature – and there were three in the same election cycle – occurred in 1894<sup>65</sup>; currently, 411 women are elected to state senate seats (21%) and 1,377 women are elected to state house seats (25%)<sup>66</sup>

If less than one quarter of one percent of female attorneys are going to become an equity partner at a top 200 law firm and if female attorneys have become approximately 50% of the growing number of attorneys, then the progress of female attorneys in all positions of leadership and enhanced authority within the profession are noteworthy and economically necessary.

In reality though, it's not just NAWL that casts off these women and their accomplishments. These statistics and the accompanying personal narratives are harder to find. These and other results don't readily pop up in search engines. These women are not the focal point of bar organizations or general media coverage unless they are a long-standing

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York at Albany (2012), p. 9; accessed on 03/25/2014 at [http://www.albany.edu/womeningov/publications/summer2012\\_judgeships.pdf](http://www.albany.edu/womeningov/publications/summer2012_judgeships.pdf).

<sup>59</sup> White House, "The Cabinet" as of February 8, 2014 at <http://www.whitehouse.gov/administration/cabinet>.

<sup>60</sup> United States Senate, "Women in the Senate" accessed at [http://www.senate.gov/artandhistory/history/common/briefing/women\\_senators.htm](http://www.senate.gov/artandhistory/history/common/briefing/women_senators.htm).

<sup>61</sup> United States House of Representatives, "Women in Congress" accessed at <http://history.house.gov/Exhibition-and-Publications/WIC/Women-in-Congress/>.

<sup>62</sup> Center for American Women and Politics, Rutgers, "Fact Sheet: Women in the U.S. House of Representatives 2014" at [http://www.cawp.rutgers.edu/fast\\_facts/levels\\_of\\_office/documents/house.pdf](http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/house.pdf).

<sup>63</sup> Refki, *supra*, p. 8. See, also, the National Association of Female Judges for an interactive state map based upon the resources of Forster-Long at [http://www.nawj.org/us\\_state\\_court\\_statistics\\_2012.asp](http://www.nawj.org/us_state_court_statistics_2012.asp).

<sup>64</sup> Center for American Women and Politics, Rutgers, "Fact Sheet: History of Women Governors" at [http://www.cawp.rutgers.edu/fast\\_facts/levels\\_of\\_office/documents/govhistory.pdf](http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/govhistory.pdf).

<sup>65</sup> Center for American Women and Politics, Rutgers, "Firsts for Women in U.S. Politics" at [http://www.cawp.rutgers.edu/fast\\_facts/resources/Firsts.php](http://www.cawp.rutgers.edu/fast_facts/resources/Firsts.php).

<sup>66</sup> National Foundation for Women Legislators, "Facts About Women Legislators" at <http://www.womenlegislators.org/women-legislator-facts.php>; please note that it states "This research was conducted by the Center for American Women and Politics, Eagleton Institute of Politics, Rutgers University."

feminist figure like U.S. Senator Barbara Boxer or one of the very few in the tier of female presidential candidates like Hillary Rodham Clinton. These women came into the media spotlight at an earlier point in the feminist attorney movement, at a time when the ranks were much smaller, and they have stayed their iconic positions.

In the meantime, here has come thousands upon thousands of newly-minted female attorneys. These attorneys didn't simply bring the number of women to 50% while the number of male attorneys stayed steady; these women flooded an ever-growing tide of lawyers of both genders. The doors had opened and women of every motivation and description poured through on a swift current at high tide.

It didn't take a female president to make that happen, nor did it take an equalization of equity partners to create near equal hiring rates for female and male associates along with a narrowing gap in associate pay computed by gender.

Is it that female lawyers are abandoning the dogma of the movement or is the movement resistant to the voices of female lawyers in all of their far-flung iterations of the various career choices for a Juris Doctor graduate degree and a license to practice law?

## FINDING YOUR OWN PATH

It should be pointed out that this report seeks not to start a movement to compete with feminism, nor does it offer commentary on roadblocks to women in the profession. It takes a group of Polaroids, makes them into a collage, and says: we must bridge the gap between the feminist definition of “success” and the growing ranks of female attorneys.

The premise upon which the assertion is made is the exact opposite of the feminist assertion found in everything from NAWL surveys to Slaughter’s missive that putting women into one or two or three specific positions of power will equalize all aspects of the practice of law for all women. It says, instead, success will come as female attorneys are integrated with each other, made to feel valuable, and able to balance individual work goals with all other aspects of their lives.

Already, we asked a series of four questions on previous efforts to achieve goals and the impact of pursuing those goals (or not). These may have been goals set in your teens to early 20s, and may represent a much earlier point in your life journey. It was a juncture of life with time to daydream, and without the weight of failed expectations, guilt, competing demands, and a whole host of other, afflictive emotions.

## CONFRONTING AND ADJUSTING EXPECTATIONS

Instead of shuttering those dreams and being dominated by negative messaging, what if the path to greater success for female attorneys as a class began with your individual determination of what you would consider to be a successful legal career in direct relationship to your earlier dreams? To build a bridge between ourselves and a fulfilling future, we have first to drive pylons into the river with sufficient force to withstand the flow of the currents around us, however calm or strong. Perhaps the single most important thing to keep in mind during this exercise is putting some distance between the feminist definition of success for the female lawyer and the absolutely overwhelming number of your fellow colleagues who, along with you, will not meet that less than one-quarter of one percent standard.

The personal exercise consists of placing your dreams alongside your responsibilities and then looking for the opportunities that could represent the bridge between the two.

Be conscious that the first step in this exercise is focusing on your own individual dreams, however long ago and however naïve or simple they may now seem. The goal of the exercise is not to set yourself up for self-criticism; it is to be conscious of yourself as opposed to the competing messages around you. Part of what we are doing with this exercise is identification of increasing responsibilities as we age, and part of it is remembering that we may have started our career path with relatively few responsibilities.

Insert #3 is a short questionnaire of some of the additional and changing responsibilities that we face as we grow older. These are some of the more common responsibilities we face as we age. You should add your own responsibilities to those not printed on the chart, as appropriate.



## ADDITIONAL AND CHANGING RESPONSIBILITIES

As a high school student, I was responsible for:

➔ \_\_\_\_\_

➔ \_\_\_\_\_

➔ \_\_\_\_\_

As a college student, I was responsible for:

➔ \_\_\_\_\_

➔ \_\_\_\_\_

➔ \_\_\_\_\_

As a law school student, I was responsible for:

➔ \_\_\_\_\_

➔ \_\_\_\_\_

➔ \_\_\_\_\_

As a newly-admitted attorney, I was responsible for:

➔ \_\_\_\_\_

➔ \_\_\_\_\_

➔ \_\_\_\_\_

How many years have gone by since admission? \_\_\_\_\_ years.

What responsibilities do you have now that you didn't have when you were sworn in?

PEOPLE	FINANCE	EMPLOYMENT
<input type="radio"/> children	<input type="radio"/> mortgage(s)	<input type="radio"/> unemployment
<input type="radio"/> spouse/partner	<input type="radio"/> health insurance	<input type="radio"/> underemployment
<input type="radio"/> parent/in-law	<input type="radio"/> auto loan/lease	<input type="radio"/> less than 6-months living expenses in liquid assets
<input type="radio"/> extended family/friend	<input type="radio"/> student loan	<input type="radio"/> earnings that do not keep pace with inflation
<input type="radio"/> medical or mental health condition	<input type="radio"/> other, fixed debt	<input type="radio"/> interruption in continuity of employment

In connection with Insert #3 is Insert #4, a questionnaire in three parts to capture your dreams, your job history, and the potential to bridge between those worlds. In part, the word “dreams” is more authentic because when we are younger we don’t fully understand either what is involved with accomplishing what we think is a “goal,” nor can we foresee the challenges and responsibilities we will face on our life journey. But that doesn’t mean you can’t bridge between your dreams, the jobs you have held, and your future.

Pay some attention to the pivot point of the very first job after admission to the bar and the question of whether that first job “aligned with your dreams” or not. For some, the dreams fluidly translated into execution. For others, there was the immediate necessity of earning a living to satisfy student loan and other obligations.

The work path may have been an immediate disconnect from internal visions of the future. If there was a break between the imagination and the hard work to gain admission to the bar, its impact cannot be overlooked. If, however, you had a smooth transition into the workforce, then dig deep for that moment at which the departure occurred.

Again, remind yourself that these questions are not about “passing” or “failing.” These questions are about taking the time to reflect more upon yourself than how the profession of law may have presented its set of expectations to you. The question is what did you hope for and expect of yourself and did there come a time when you allowed the expressions of others to overwhelm your own voice?

## **DREAMS**

### **The Dreams**

- What were your dreams and are they still with you?
- In high school, I dreamed I would:
- In college, I dreamed I would:
- In law school, I dreamed I would:
- Upon admission to the practice law, I dreamed I would:
- My first job after admission to the bar was:
- My first job aligned with my dreams: TRUE or FALSE

### **The Employment**

- My current position is:
- My current position is in line with what I thought I would be doing when I was pursuing my studies: TRUE or FALSE

### **The Opportunities?**

- What would I like to be doing?

- Am I aware of an existing position that would align my career path with my dreams?
  1. If I could land that position, could I do it well and still meet my current non-career responsibilities?
  2. If not, what accommodations would have to be made either/both at work or home for me to take on that position?
  3. Can I negotiate those accommodations or is it time to get creative?
  4. How much time and energy would I be willing to invest to achieve this outcome?
- If “no” to any of the above, could I design my own office around my dreams and goals?

Now, as a third and final part of the personal questionnaires, ask yourself about the arc of your employment history after admission to the bar – no matter the position, the hours, the gaps in continuous employment, or anything else that anyone else could argue against you through the single-metric lens.

Even when we have taken undesired positions or interrupted work, it is highly probable that the female attorney has acquired transferable skills. Perhaps in navigating Medicare for an aging parent, you have started to develop a boutique practice in elder law. Maybe getting your child’s “Individualized Education Plan” means that you were up nights studying education law. Or, during your “time off” did you volunteer at free legal clinics and might that contribute to a position as an instructor at a law school seeking to start-up law student run clinics?

## **REMEMBERING THE ORIGINAL FRAME OF REFERENCE**

The value of doing an exercise such as is set forth in these deceptively brief questionnaires may be to put yourself back in touch with yourself. In all the research completed for this report, both cited and not cited, this is perhaps the most articulate, personal narrative of what it is to be a modern female attorney:

“I sat across the white-linen table from my mentor, hands clasped over my gray Calvin Klein suit, sweating. She had worked at the corporate law firm for more than 25 years, starting as a summer student like myself at the time. She became one of two female equity partners in a firm of close to 80 lawyers, had a husband, two kids, and was consistently named a top lawyer in the field I wanted to practice in.

“She was a perfect role model on paper. But as she told me, over whipped chocolate mousse – even though she had a nanny, a cook, a husband with an opposite work schedule, parents and in-laws to help out – that it wasn’t until her children reached high school that she finally had time for a hobby.

She said – in “can-do” tones – how exhausting it is to be a lawyer and a mother, but that it “can be done.” I started to panic.

“I’m not the only one panicking.”<sup>67</sup>

It’s a feeling female attorneys know all too well. The juxtaposition between ourselves and the expectations we internalize or perhaps even those literally confronted face-to-face. The literal is the confrontation of the feminist definition of “success,” but in a journey to find balance and well-being, we have also to confront our internal drivers and self-expectations.

When the female lawyer walks into the courtroom is she there to accept a judge’s ruling on its face, as a foregone conclusion or is she prepared to zealously fight for the individual relief sought by her client and backed by countless hours of preparation?

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<sup>67</sup> Silver Sweeney, Marlissee, “The Female Lawyer Exodus,” on Women in the World (July 31, 2013), accessed 03/18/2014 at <http://www.thedailybeast.com/witw/articles/2013/07/31/the-exodus-of-female-lawyers.html>.

## **ENERGIZING YOUR CAREER, YOUR WORKPLACE, AND THE NEXT GENERATION**

Eventually, to find career satisfaction, one must balance work and life. There is no way around this simple truth. To leave it misbalanced is to invite everything into your life from emotional to physical illness, to relationship breakdown, to walking away from the practice of law.

### **CONSCIOUSLY SET AND REVIEW PERSONAL GOALS**

Achieving balance involves setting priorities and making choices about what one will and won't accept within the life journey. To the next point, it is then about finding the people and the resources that will help you self-actualize. In this frame of reference, all career choices of the female lawyer are valid, including the choice to try to become an equity partner at a top 200 firm. The difference over the feminist perspective is that it becomes an all-inclusive definition of “success,” rather than an exclusive one.

Here are two examples of how this internal conversation might sound.

Example #1:

I want to become an equity partner at a top 200 law firm. I believe I can achieve my career and personal goals. I am ready to place my career ahead of my short-term personal goals for things like dating, travel, and community sports. But I may not be willing to place my job ahead of a meaningful family experience. Just as the law firm will be doing annual evaluations of my work, I'm going to be doing annual evaluations of my life to ensure that I retain my current level of satisfaction and specific goal.

Example #2:

I'd like to staff a legislator on a part-time basis, which might mean no higher than a county or smaller population state legislature. Those legal and political issues are interesting to me, and will allow me to pursue and meaningful career while finding balance to engage within and grow our family with my partner.

When we give ourselves permission as an individual to listen to our own voice and reflect upon the life we have lived and are living, we can at least define where we are, our status, where we would like to go. What is necessary in either of these two or countless other self-directed goals is doing so in a conscious manner. The tricky bit, of course, is that we are not 15 years old and in 9<sup>th</sup> grade. We are female attorneys engaged in our careers and our lives. Just as we negotiate settlements on behalf of clients – all the time – we likely will have some negotiating to do to bridge the gaps in our own life.

For example:

I will increase from part-time to full-time employment, once my youngest child is in fourth grade.

Or, for example:

I will increase to full-time employment once accepted for a position, at which point my partner will decrease from full to part-time employment, an overlap that we anticipate will take one to six months, depending upon my partner's existing caseload. We'd like to accomplish the entire transition by the first of next year.

This is where we can perhaps see a need for choices that is missing from the NAWL single goal approach. Look back at the numbers of female attorneys in the various non-equity partnership roles. Now what do you see? Stagnation and failure, or, a portrait of who you are as a female attorney? The list of positions within the NAWL survey is one cut at the extensive list of the opportunities for all female attorneys at all stages of their legal careers, balancing all types of personal and family responsibilities.

If at an earlier time of perhaps the 1950s or 1960s the small ranks of women pursuing law school admissions and careers shared a unified culture and dream, times have changed. The barriers to entry into the legal profession have been significantly lowered for decades and a mass of female attorneys has arrived and gone to work. And in the process of any number of those female attorneys rejecting a career path to equity partner at a top 200 firm, these women have established a wide variety of paths to the terminal position in many fields.

## **JOINING IN THE BROADER CONTEXT OF FEMALE ATTORNEYS**

The climate among female attorneys has now also to respond to reflect that there is an army of more than 380,000 female lawyers in the U.S. A multitude of goals can now be set, and can be done by looking at the rates of growth of female lawyers in various labor segments, including numbers, percentages, rate of rise, and continuing opportunities for growth.

It does appear, however, that there are some systemic areas that will require adaptation, too, in order to allow for meaningful progress in all areas of work. There are women in all capacities, working to define the problem and articulate methods through which greater equities can be achieved. Included is a brief outline of selected papers and topics, written up to illustrate the breadth of organizations putting out such work, as well as the types of workplace policies being addressed.

## ADDITIONAL RESOURCES

1. “Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation,” by Lauren Stiller Rikleen for the ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession (2013).<sup>68</sup>
2. “21st Century App: Inclusion,” submitted by Linda Bray Chanow, Attorney, for the State Bar of Texas 19th Annual Minority Counsel Program (2011).<sup>69</sup>
3. Department of Health & Safety Laboratory, “Working Long Hours,” (HSL/2003/02, 2003),<sup>70</sup> a global literature review on the relationship between long working hours and fatigue, health and safety, and work-life balance (exclusive of shift work); “long working hours” as defined by the 1993 European Directive on Working Time at no more than 48-hours/week averaged over a 17-week period, a minimum daily rest period of 11 consecutive hours and a minimum weekly rest period of one day averaged over 14 days.
4. “Actions for Advancing Women Into Law Firm Leadership,” prepared and written by Linda Bray Chanow for the national Association of Women Lawyers, National Leadership Summit (July 2008).<sup>71</sup>
5. “Effective Policies and Programs for Retention and Advancement of Women in the Law,” *WorkLife Law*, UC Hastings College of the Law (2011)<sup>72</sup>
6. “Opt Out or Pushed Out?: How the Press Covers Work/Family Conflict,” *WorkLife Law*, UC Hastings College of the Law (2006).<sup>73</sup>

Where this brings us is back to the “lesser successes” of female attorneys who work as Managing Partners and on Governance Committees. Obtain those job descriptions. Ask that ones be written up (if not already available), including selection criteria. Question whether such can be designated, especially at small and mid-size firms, and create your own position.

While the equity partner may have influence over a given client or practice group within a firm, Managing Partners and Governance Committee Members have the greater influence over the daily lives of all firm employees and, potentially, over the operating culture of the firm. Law firms that we might know of or heard of to be “family friendly” were not created by spontaneous combustion. Some one (or some group of some ones) with governance influence imprinted the conduct and culture of the firm.

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<sup>68</sup> Accessed 03/27/2014 at [http://www.americanbar.org/content/dam/aba/administrative/women/closing\\_the\\_gap.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/women/closing_the_gap.authcheckdam.pdf).

<sup>69</sup> Accessed 03/27/2014 at [http://www.texasbarcle.com/materials/special/TMCP/14\\_Chanow.pdf](http://www.texasbarcle.com/materials/special/TMCP/14_Chanow.pdf). Materials include the “Austin Manifesto on Women in Law” and the Houston Bar Association “2009 Gender Initiative Commitment Statement” for adoption by law firms and legal departments.

<sup>70</sup> Accessed 03/25/2014 at [http://www.hse.gov.uk/research/hsl\\_pdf/2003/hsl03-02.pdf](http://www.hse.gov.uk/research/hsl_pdf/2003/hsl03-02.pdf).

<sup>71</sup> Accessed 03/25/2014 at <http://www.nawl.org/p/cm/ld/fid=82#reports>.

<sup>72</sup> Accessed 03/25/2014 at [http://www.worklifelaw.org/pubs/worklife\\_retention\\_FINAL.pdf](http://www.worklifelaw.org/pubs/worklife_retention_FINAL.pdf).

<sup>73</sup> Accessed 03/25/2014 at <http://www.worklifelaw.org/pubs/OptOutPushedOut.pdf>.

The profession could revolutionize the workplace through leadership in governance, policies to benefit all workers and their families, and supporting female colleagues where and however they practice as having already achieved success through becoming a lawyer. One way to look at the present moment is to say that there are 600,000 female attorneys positioned to revolutionize the practice of law, the judiciary, the government, the law school setting, and any other workplace setting in which she finds herself

There is a temptation to break down this opportunity for women to be change-makers into two, distinct tracks. On one track, a woman will become an employee, in some fashion or another, in a workplace setting, whether a law firm or otherwise. On the second track, a woman will achieve a leadership role within the workplace. But to make even this much distinction is to begin replicating the division among women in and out of the workplace, when the more holistic approach is to say that every female lawyer is uniquely positioned to be an agent of change.

Female attorneys would also do well to be mindful of staying abreast of the law and understanding both the time requirements to change subject areas and the time requirements to ramp back up to fluency in one’s own specialty. It is highly probable that at some point during a lawyer’s career her need and desire to respond to life responsibilities will decrease her work-available hours, potentially compromise her work product, or take her out of the workplace altogether.

An understanding and a strategy for best use of such junctures can actually enhance one’s career. For example, perhaps the lawyer was already dissatisfied with either the employer or the assignments? The work shift, even if involuntary, can allow for exploration and growth, if such time is wisely managed as such.

If the departure from the current position is an interruption of an otherwise desired track, then other strategies must be deployed. Ask the firm if some rate of pay might be offered for conducting the pro bono obligations of the firm, the social media and newsletters of practice groups, public speaking engagements, external publications and law reviews, and other activities that raise the firm profile in the community simultaneously with raising the resume of the female lawyer.

Additional approaches to tackle the barriers to re-entry include:

- up-to-date on the law: offer CLEs on-going to current and former employees (keep going back to the potential well of future hires)
- up-to-date on client activity: set up periodic teleconferencing with clients as a free 30-60 minutes on a periodic basis to recap progress, identify pending questions, go over status of current work, and adjust any goals
- use those on leave as mentors
- pay those on leave to do pro bono work with local free clinics, attend bar functions, do charity work as a firm ambassador
- be realistic about the return to work as a phase-in designed for success



As a further aid to this conversation, from studies to commissions to personal narratives, we’re including a list of resources with specific, itemized tactics you can apply to your circumstances and bring to your workplace.

## **INDIVIDUAL DEFINITIONS TO BENEFIT THE NEXT GENERATION**

Even as we think about ourselves and our workplace, we must concurrently consider the next generation. What message are we sending to the generation of young women, approaching their studies and testing with various markers that separates their experiences from ours. Huge student loan debts. Tensions between pursuit of a high-paying position as against opportunities to enter into public service. And more.

It may well be that the greatest gift we could confer is the opening of the conversation to say, “What do you want to do,” listening to their individual responses, and then sharing ideas for how they can embark upon a career that will help them to achieve their individual dreams and goals. Be frank about the challenges they will and they may face, without presenting them as roadblocks. And continue to work with them through specific examples and instances to allow for their individual development and self-fulfillment.

It shouldn’t sound like a radical notion, but it is for female lawyers.

We have spent our careers caught in the cross-hairs of high pressure messaging that has only risen over the past 20 to 30 years. There is no clear path to success by feminist standards, and the consequence of a one-fits-all goal may be contributing to a loss of the very elements that might contribute to reaching that summit. Lofty structures are built upon solid foundations.

This notion should begin with training in law school on how to evaluate the law firm or workplace, using your own personal goals. Women should value their status as a licensed professional, and should not be encouraged to strive only for the big firm interviews conducted on campus. Workshops could be conducted to reflect upon dreams and confront current gender and economic realities.

More importantly, female law students should be shown how to identify a “progressive” law firm and work settings. Here are some topics that could be covered:

1. Is the firm litigation driven and one where “overtime” is the norm because hiring is a fishing net where the firm expects competition to thin down the catch?
2. Does the firm have a mixed practice and does it allow for lawyers to move between disciplines that require more or less overtime and more or less courtroom and client face time?
3. Can the firm defend a claim of being “family-oriented?”

Let’s take a minute to write-up a basic checklist of workplace policies and other written documents that you can tailor to create your own metric for evaluating the desirability of working for a particular employer. This basic list might be thought of as the gold standard of family friendly workplaces. It goes without saying that written policies do not guarantee adherence, but the creation of a list that you can use during the hiring process can both

challenge the employer and professionally convey your values. Wouldn't it be interesting to participate in a job interview and ask for copies of such policies? Even the reaction of whether the interviewer had a confident awareness of the existence of such policies and the ability to produce them would be telling.

We encourage in them the values and metrics we believe will give them a greater opportunity for a more fulfilling life – reflected as a whole. For some, the career will represent more than 50% of their personal drive, either consistently, or shifting through different life circumstances. For others, the career will be put in a context of various people and pursuits that a woman deems important.

It may be cliché that there are only so many hours in a day, but it is a cliché because it is true. The female attorney may well be able to have it all, but the question should not be pre-determined for her. Instead, let her ask “all of what” and “in what measures?”

## AFTERWORD

### **Getting There Together: An Inter-Disciplinary (and International) Perspective**

by Jens P. Näsström

Lawyers are remarkably open-minded, but it takes so much more to convince them. Once they are through resistance, then they embrace, motivate, are diligent

Conditions in America are much harsher. In Sweden, lawyers can take 18-months (compared to American 6 months and only at employers with more than 50 employees). Sweden has various free supports

In common though are women who are haunted by the notion that their career is stalling. It's a “performance based self-esteem” known as “thaasophobia.”

And there is a paradox to success. The very drive that pushes the output that directly influences the eligibility for a partnership will not let her quiet down for even ten minutes.

### **The Reluctant Feminist**

by Paloma A. Capanna

I was in high school 1980-1984, which puts me at that point of being somewhat after Betty Friedan and somewhere in the midst of the fad of parents wanting daughters to be lawyers, doctors, and accountants.

I don't remember a time that my parents said anything to me about having a family or children. It may be how I have processed memories, but all that I can hear and feel is the relentless drum of expectations from families, teachers, and partners, from female bar association members, and society at large. Career! Achievement! Success!

The dichotomy still has not released me from its tension, even after 20 years of practicing law and running as a candidate for federal and state offices. The grace I have achieved is only that when the messages pop up to say “it has all amounted to nothing – you failed,” I ask myself who that is who is speaking. At least I have sufficient wisdom to understand that this level of judgmentalism does not comport with my personal and spiritual beliefs.

It has always bothered me that the feminist movement proclaimed “you can have it all!” Was there really truly no woman who stood up in the 1970s or 1980s and said “you must set priorities and make choices?” Or, as I more often wonder, was her voice squelched by feminists or was it too quiet for the media or was it absent because she who knew better was off living a healthy life?

We professional women now in our forties and fifties were given the gift of an open door of possibilities, swung wider than any previous generation. Studying that history and having gratitude to those female pioneers is both important and necessary.

But, having waited decades for a more balanced, more holistic, and by my standards more authentic voice to emerge, perhaps these few words may offer an opportunity for a conversation to begin which is long overdue. For those I know, including myself, who could not "have it all," in spite of our best efforts, we're caught in between rejection by feminists and the impact within our lives of the sacrifices we made.

May the next generation of young female attorneys find themselves in a position of greater awareness of the choices they will be asked to make and may they make them in a timely and conscious manner.

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