

# DEFENSE COMMENT

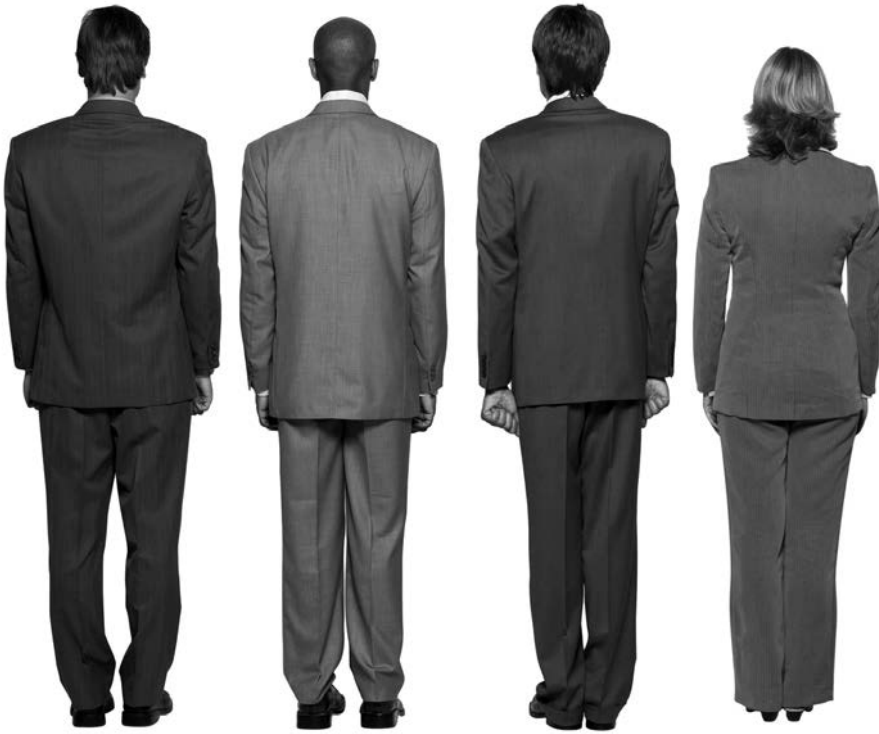
ASSOCIATION OF DEFENSE COUNSEL OF NORTHERN CALIFORNIA AND NEVADA – *Serving the Civil Defense Bar Since 1959*

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# Zeno's Paradox: Women's (In)equality In the Legal Profession

**By Maria S. Quintero**  
**Hinshaw & Culbertson**

In 1878, Clara Foltz became California's first female lawyer. Ten years later, she delivered a closing argument in a criminal trial in San Francisco on behalf of a young Italian immigrant accused of arson. The prosecution, represented by a former captain in the Confederate Army, repeatedly attacked Foltz's legal ability on the basis that she was a woman. During closing argument, Foltz embraced the overt prejudice and used it as a weapon to show the weakness of the prosecution's case. Foltz, defending both her client and her professional honor, argued to the jury:

"The speech of the district attorney was neither complimentary to this body who are sworn to decide according to the law and the evidence, nor honorable to the profession he should strive to adorn. If he hoped to draw your attention from the real merits of the case, let me say it was a course obnoxious to his official oath and foreign to his professional duty. But perhaps it was the woman lawyer that has troubled him. I think myself that the fact of being a lawyer has been a good deal more troublesome than the fact of being a woman. Counsel intimates with a curl on his lip that I am called the lady lawyer. I am sorry I cannot return the compliment, but I cannot. I never heard anybody call him any kind of a lawyer at all...

If I have remained silent when others would have retorted, it is because of my respect for the courts and halls of justice, which I grieve to see become the arena of personal encounter. But the patience which at first may have been a virtue would become criminal by longer exercise. This controversy was not of my seeking – a long series of abuses have forced it upon me.

"When I so far forget the dignity of my profession, when I so trample upon its courtesy, when I so shut my eyes to the honor and respect due this bench as to introduce such irrelevant matter, I hope that I may be barred the profession and banished the country."<sup>1</sup>

The jury, without leaving the box, returned a verdict of "not guilty."

Over 100 years later, despite a pipeline of women attorneys and concentrated and sustained efforts to reject gender bias, the equality that Foltz indomitably fought for within the legal profession has yet to be achieved. Numerous studies on the subject conclude that law firms have not made any real progress in this regard and confirm that women attorneys continue to lag behind their male colleagues. Two such studies, the Ninth Annual National Association of Women Lawyers (NAWL) National Survey On Retention And

Promotion of Women In Law Firms, and Law360's Third Annual Glass Ceiling Report, demonstrate a continued gender gulf and a stagnating level of gender parity in our legal profession.

## REPORT OF THE NINTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS

The First Annual NAWL Survey began as an effort to measure the progress of women in achieving increased numbers of equity partners, women chief legal officers, and women tenured law professors. The Report described its humble beginnings: "The impetus for the Survey grew from the now familiar '50/15/15' 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. The partnership pipeline is actually richer than these numbers suggest because, for over two decades, law schools have graduated women in substantial numbers and law firms have recruited women at the entry level in about the same ratio as men."<sup>2</sup>

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The current NAWL National Survey concludes that the results of its benchmark survey are generally similar to the results seen over a decade ago, revealing an alarming level of stagnation with respect to achieving gender parity. The Survey made a number of key findings<sup>3</sup>, including:

1. Men continue to dominate equity partnership ranks, while women still only comprise approximately 18% of equity partnership, only 2% higher than in 2006.
2. Despite a longstanding pipeline of women graduating from law school in almost equal numbers as men, among non-equity partners who graduated from law school in 2004 and later, 38% were women and 62% were men.
3. Women equity partners earn 80% of what a typical male equity partner earns, down from 84% in 2006. No responding law firm reported having a woman as its highest earner.
4. Women continue to be underrepresented on compensation

committees, yet law firms that report more women on their compensation committees have narrower gender pay gaps.

5. Women continue to lag behind men in rainmaking credit, and the gender gap in client origination credit is wider than in 2006. The Survey observes that compensation and business generation credit are integrally entwined.
6. Women report higher overall working hours, but men continue to generate higher revenues from client billings than women. The median hours reported for women were 2,224 compared to 2,198 for men. The typical female equity partner bills only 78% of what a typical male partner bills.
7. Women comprise only 44% of associates, compared to 45% in 2006. There are more male associates than female associates including at the more junior and senior levels.

8. Diverse lawyers continue to face barriers. Virtually no progress has been made within the last 10 years by the nation's largest firms in advancing minority partners, and particularly minority women partners, in the highest ranks of firms.

### THE LAW 360 GLASS CEILING REPORT

The recently published Law 360 Glass Ceiling Report, an annual survey of over 300 firms, also concludes that law firms have made little progress toward gender equality.<sup>4</sup> The Report observes that for the past three years, men continue to make up almost two-thirds of all attorneys and nearly 80 percent of partners at U.S. firms surveyed. Firms that have higher levels of women at the partnership level tend to be smaller firms. The vast majority of intellectual property firms had lower percentages of women than law firms in general, both at the partner level and firm-wide. At Wall Street firms, the share of

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women partners remains well below the overall average. The Report found that of 8,549 attorneys practicing at Wall Street firms, 3.9 percent are female partners, while 17.1 percent are male partners.

## PUTTING EQUITY IN EQUALITY

There are a number of ways that law firms can help break through the stagnation and reach gender parity. One of the most significant ways is the development of better credit origination systems. According to the NAWL Survey, to achieve gender parity in compensation, “law firms must provide a credit origination system that ensures rainmaking opportunities and pitch teams are inclusive of women; fairly allocates credit among teams; offers a process for resolving credit disputes among partners; removes decisions about the ‘inheritance’ of client credit from individual partners; and develops a system that systematically involves clients, firm leadership, and the partners who the work in credit succession decisions.”<sup>5</sup>

In addition, law firms should evaluate whether there are any differences in work flow and assignment opportunities; whether women are being asked to undertake more non-client billable committee roles, such as mentoring and associated recruitment that men are not asked or decline to do. Firms should also strive to integrate women into meaningful leadership roles, and permit flexible work arrangements. Women’s initiatives, such as women’s affinity groups, can also be beneficial if they seek a specific mission and goals for the advancement of women and are properly funded.<sup>6</sup>

Just as important, continuing education in bias identification is also helpful in recognizing and eliminating bias in our legal profession. Firms should also articulate what their gender equality goals are, and provide a system of measuring success against those goals.

## THE BENEFITS OF EQUALITY

The legal profession, and society in general, benefits greatly from women’s equality. Beyond the simple (and powerful) reason

of endorsing and encouraging basic fairness, equality allows firms to access a larger pool of talent and to attract the strongest candidates. Fair compensation not only attracts top women candidates but provides a stronger incentive to stay. Diversity in leadership allows a broadened perspective, increased creativity and can help improve results. In addition, gender equality within a firm creates a strong law firm culture, where energies can be spent on issues other than the development of ideas on how to achieve gender equality. Gender equality in our legal profession should not be an unattainable goal. With the right mind, intent and effort, we can bridge the gender gulf and breach the hold of inequality. ☐

## ENDNOTES

- 1 Ladies and Gentlemen of the Jury, Michael Lief, Mitchell Caldwell, Ben Bycel (1998), Chapter 6: A Man’s World No More, at 220-221.
- 2 Report of First Annual NAWL National Survey on Retention and Promotion of Women In Law Firms (October 2006), at 1.

- 3 NAWL Survey Release, October 27, 2015. The Survey methodology included sending a survey to the 200 largest firms in the United States, as ranked by The American Lawyer, and divided into two categories: the AmLaw 100 and the Second Hundred (firms that rank 101-200 in financial performance).
- 4 The Glass Ceiling Report, Law 360 (April 2015).
- 5 Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (2015), at 9.
- 6 The NAWL Survey found that most women’s initiatives are underfunded and that “the typical law firm spends far less on their women’s initiatives than the salary of a first year associate.” Report of the Ninth Annual NAWL National Survey at 11.



**Maria Quintero**

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## Opening The Dialogue



**D**o you have an experience or insight to share with the ADC, or thoughts on how law firm culture, practices and partner tracks impact women lawyers? What has worked in your firm, and what has not? Are there different ways our legal profession can promote and encourage the growth and success of women attorneys? Help start the dialogue –

we invite your thoughts and comments which can be sent directly to Maria Quintero, Diversity Committee Chair for the ADC, at [mquintero@hinshawlaw.com](mailto:mquintero@hinshawlaw.com).