

Same Glass Ceiling Report Shatters Complacency

By Hannah Hayes

In March, the Bar Association of San Francisco (BASF) and the American Bar Association's Commission on Women in the Profession (CWP) cosponsored a conference in San Francisco focused on how the legal profession is responding to the changing economics of law firms and the opportunities and challenges faced by women.

Descriptions of the invitation-only program warned, "This is not your ordinary event."

The symposium brought together the managing partners from local law firms and the general counsels of Fortune 500 companies. Originally planned as two separate meetings, event organizers brought the two groups together at a session at the end of the conference.

"It was quite a powerful event," says Patricia Gillette, a partner at Orrick, Herrington, & Sutcliffe LLP in San Francisco and chair of BASF's No Glass Ceiling Initiative. "We had panels of very prestigious women in powerful positions talk about what they expect from law firms and what they wanted to see if they were to get their business, and the managing partners who were mostly men had to listen. It was really an incredible day."

While the conversation around advancing women leadership in the legal community continues, the game has changed. For example, Gillette points out that general counsels have been "using carrots rather than sticks" to bring law firms on board with diversity initiatives. But the call for increased transparency around issues like origination credit and succession means that diversity initiatives must involve more than token members on committees and pitch teams.

What's more, the message has moved past panel discussions and workshops and into the boardrooms and offices of managing partners. "In order to make change effective, all of the stakeholders need to be in the room," says Deborah Epstein Henry, founder and president of Flex-Time Lawyers LLC, a legal consultancy firm focusing on workplace restructuring, work/life balance, and the retention and promotion of lawyers, particularly women. Henry says the San Francisco meeting was very well done and effective. "I've done a lot of preaching to the choir, and it's time to change the audience."

Taking the Message on the Road

It has been a year since the CWP released its study on the impact of compensation systems on advancing women in law firms titled *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*. Cosponsored by the Project for Attorney Retention (PAR) and the Minority Corporate Counsel Association (MCCA), the survey of 700 women in medium- to large-size

law firms found that existing compensation systems were rife with subjectivity, lacked transparency, and left large openings for inherent gender bias, particularly in the way origination credit and succession are handled.

Since then, all three organizations have taken the message on the road, and across the country, people are starting to listen. According to Joan Williams, coauthor of the report, who is cofounder of the Project for Attorney Retention (PAR) and director of the Center for WorkLife Law at the University of California Hastings College of the Law in San Francisco, the response has been tremendous. "I've heard from very accomplished women who feel that finally they're being heard," she says. "What's more, they say they are taking this right to the firm and they are going to work on these issues. Someone is going to listen."

One year after the report's release, the response to its disturbing revelations about bullying and intimidation over origination credit and compensation has been discussed in conferences in Austin, Texas; Chicago; Philadelphia; New York; Miami; and Washington, D.C.

"Not only do we discuss the survey's results, which in some sense were shocking, but we're following up in terms of how to change this problem and continue the education process by looking at best practices," Commission Chair Bobbi Liebenberg says.

Swapping the Carrot for the Stick

Nearly a decade after corporations first issued a "Call to Action" to increase diversity, the moral imperative to bring women and minorities into

the upper echelons has become an economic issue.

"Firms are focused on reestablishing themselves after two very challenging years," Henry says. "The benefit of the economic downturn is that firms are more analytical about the way they perform their services. Only when there's a threat to the way you practice law do they decide to change."

Henry's recent book, *Law and Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, addresses many of the issues raised by the compensation study, including the need to ensure that women are on influential committees and to make structural changes in the way origination and inheritance is done. And the time is ripe, she says, for such structural change.

"The billable hours method has generally been very profitable and

there is a reluctance to move away from that. But in the recession, firms could not increase hours or rates because of a decreasing demand for legal services," Henry explains. Hence, clients pushed for alternative fee structures. This in turn led to the need for alternative ways to measure success. "The measure becomes quality of work, efficiency, and results—all areas where women historically can compete." (See "Changing the Rules," below.)

Large corporations impacted by the downturn also are using diversity measures when it comes to choosing their outside counsel. For example, Gap Inc. this year trimmed its preferred provider list from 100 to 20 and "diversity was an important factor," according to Michelle Banks, the corporation's executive vice president, general counsel, corporate secretary,

and chief compliance officer.

"We don't just survey statistics but we ask who is on the account—who is actually doing the work and who is getting credit for it," Banks says. "I think corporate legal departments have become more aware and are starting to ask more specific questions about demographics and which lawyers actually get the credit." For law firms, this means diversity is not only "the right thing to do; now it's a business imperative" she points out.

Defining Success

Shortly after the compensation study was released, the National Association of Women Lawyers (NAWL) in Chicago reported on the Fifth Annual National Survey on Retention and Promotion of Women in Law Firms. Despite increasing numbers of women

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CHANGING THE RULES IN RAINMAKING, ORIGATION, AND SUCCESSION

While many aspects of the *New Millennium, Same Glass Ceiling?* compensation study hit home for many women, certain issues like rainmaking, origination credit, and succession policies seemed to strike a chord.

Dewey & LeBoeuf, an international law firm with 26 offices in 15 countries, has won numerous awards for its innovative approaches to increasing the numbers of women and minorities in leadership. The Project for Attorney Retention (PAR) recently cited the firm for its innovative metrics in measuring a lawyer's achievements, an important step in overcoming inherent bias that so often keeps women and minorities from progressing. Dewey & LeBoeuf also established two initiatives aimed at giving women the opportunity to increase origination opportunities and fairly inherit the work of retiring partners.

Rainmaking: It's All in the Numbers

Women often say they are not offered the networking opportunities that would allow them to become rainmakers. Further, while the work they do is important for a firm's long-term success, it does not translate to billable hours.

Dewey & LeBoeuf decided to take "a deeper

dive" beyond billable hours. It created four categories in each practice group and examined a cross section of utilization and most important matters based on revenue. The top tier involved the number of hours on the most important matters, and the bottom tier reflected the least important matters and least number of hours. The firm then mapped the numbers for each population to get a clear picture.

"We felt it was a more telling way to determine whether there were issues in different populations," says Vivian Polak, chair of the firm's diversity committee. "It has given us a more accurate picture and an evaluation process to learn if any population or individual is underutilized." She adds that the firm also can assess the importance of work that might not be based on revenue.

Origination: The Rooney Rule

In 2003, the National Football League (NFL) began requiring teams to interview minority candidates for coaching and management positions. Thus was born the Rooney Rule, named after the chair of the NFL's diversity committee, Dan Rooney, owner of the Pittsburgh Steelers who was appointed U.S. ambassador to Ireland in 2009.

Dewey & LeBoeuf brought the Rooney Rule to the legal community and sent letters to all of its clients asking them to insist on interviewing senior women or women of color when they went looking for clients. The firm also encouraged clients to inquire whether the women or minori-

ties on the pitch team received origination credit as well as being assigned the work. "Too often women are trotted out to create a perception of diversity but then they never see the work or the credit," says Joan Williams, co-author of *New Millennium, Same Glass Ceiling?*

The newly organized Leadership Council on Legal Diversity has now adopted the Rooney Rule as a best practice.

Succession: Moving Away from the "Shoulder Tap"

Transparency and planning in the succession process is vital when it comes to advancing women, according to the *Same Glass Ceiling?* report. With tens of thousands of baby boomers approaching retirement, succession planning must be on every law firm's agenda. And, the lack of transparency or clear structure for succession planning usually means a male associate receives a tap on the shoulder—arbitrarily.

Dewey & LeBoeuf has established a mentoring relationship by pairing a partner near retirement with a young female associate. The associate then receives the opportunity to inherit the book of the retiring partner and further develop client relationships.

To read about the report on compensation systems, New Millennium, Same Glass Ceiling?, visit the Project for Attorney Retention's website at www.attorneyretention.org/Publications.

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in the profession, the percentage of partners who are women has remained virtually unchanged in five years—stuck at about 15 percent.

“The ABA study is a good fit because individual women expressed how they experience compensation, and the NAWL survey shows that women are not compensated at the same level as men,” says Stephanie Scharf, a partner at Schoeman Updike Kaufman & Scharf LLP in Chicago and president of the NAWL Foundation.

The NAWL report also reflected that women are not recognized as rainmakers. Nearly half of the 200 firms surveyed

reported no women among their top 10 rainmakers. “We don’t know why it is—we don’t know if they’re not given credit or if they’re not part of pitch team,” Scharf says.

Scharf is heading up an in-progress survey examining women’s initiatives carried out in various law firms. The impetus for this study came from CWP Chair Bobbi Liebenberg and other women leaders, according to Scharf, and will examine defined missions, goals, structures, and impact.

In the meantime, Liebenberg promises that “the commission will continue to shine the spotlight and

will continue to work to ensure best practices are implemented.”

At the ABA Annual Meeting in Toronto in August, the Woman Advocate Committee of the ABA Section of Litigation will sponsor a CLE program with the study as its focus. “This is not just for women who already know what they’re subjected to—we want management and team leaders to show up,” says Jennifer Hoekel, a partner in the St. Louis firm of Armstrong Teasdale LLP, who is organizing the session. “We’re done preaching to the choir.”

Hannah Hayes is a Chicago-area freelance writer.

West Coast Summit Convenes Women General and In-House Counsel

The ABA Commission on Women in the Profession and the San Francisco Bar Association’s No Glass Ceiling Initiative joined forces on March 22, 2011, to bring together power brokers in law firms and corporations to discuss the collective power of women.

Seventy-five women general counsels and senior legal officers heard from their colleagues on issues including the status of women in the legal profession, best practices for implementing diversity measures that work, and how to leverage in-house positions to get onto corporate boards. These women, who hold the power to decide which law firms get work and which lawyers are assigned the work, exchanged information and proactive measures their organizations take to ensure that women lawyers are assigned such corporate matters and get credit for bringing in the work.

Denise Keane, executive vice president and general counsel of Altria Group Inc., spoke about how she uses a “boot camp” to train women and minority lawyers for first-chair trial positions on her company’s litigation matters. Michelle Banks from Gap Inc. and Jennifer Ivan from Microsoft Corp., along with other senior women from Fortune 100 corporations, shared information and experiences on how to encourage and promote diversity.

While these discussions were under way, 45 law firm managing partners met in a separate room. Barry Salzberg, CEO of Deloitte LLP, offered a key-

note address on the importance of leading diversity efforts from the top and the “return on investment” that comes from mandating inclusiveness. Deborah Epstein Henry, author of *Law and Reorder*, moderated a panel of law firm leaders who discussed changes in law firm structures and the expectations of associates and clients.

The conference concluded with a joint session titled “Sharing the Message,” moderated by Cathy Benko of Deloitte. Hilary Krane of Nike, Hilary Ware of Google, and consultant Peter Zeughauser emphasized the increasing number of in-house women who have the power to decide which law firms do their work. They made it clear that these women expect law firms to present diverse teams of lawyers and ensure that these diverse lawyers get credit for bringing business to their firms.

The day was capped by a reception with the first woman and first African American attorney general for California, Kamala Harris. Harris praised the ABA Commission and the San Francisco No Glass Ceiling Initiative for bringing legal industry power brokers together to receive one consistent message: In-house lawyers actively seek law firms that talk the talk and walk the walk on issues of diversity.

For more information about the conference, contact Pat Gillette at pgillette@orrick.com or 415-773-5773.