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EQUITY PARTNER DIVERSITY (OR LACK THEREOF?)

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Women currently make up forty-nine percent (49%) of all law school students and forty-five percent (45%) of all firm associates, but women make up only thirty percent (30%) of non-equity partners and twenty-three percent (23%) of all partners. Most dramatic, however, is that only eighteen percent (18%) of all equity partners are women. The numbers regarding lawyers who are minorities trace a similar, albeit even less “equitable,” pattern: twenty-seven (27%) of all law school students today are minorities and twenty-three percent (23%) of all firm associates are minorities, but only seven percent (7%) of minority attorneys have made it to equity partner. What is creating this dichotomy? Law school student bodies are as diverse as they have ever been. Law firms are hiring female and diverse attorneys in larger percentages than ever. However, representation of Diverse and Women Equity Partners (“DWEPS”), which is admittedly higher than it has ever been in history, is still at numbers that are a fraction of the percentages further down the seniority pyramid. Why?

Of the Am Law 200 firms, only six have female equity partner (“EP”) representation above one quarter of their lawyers. Only one Am Law 200 firm in the entire nation - global immigration firm Fragomen, Del Rey, Bernsen, & Loewy, LLP



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John is a trial lawyer. He has tried dozens of cases in state and federal courts and in front of judges, juries, and binding arbitration panels. To date, he has won twenty-three of the last twenty-four cases he has tried. Although most of his trials have been on the defense, John has four 7-and 8-figure Plaintiffs’ verdicts. He practices throughout the United States and, in addition to substantial work in California and elsewhere, he heads the firm’s Nevada practice (where he has tried – and won – six cases to verdict). He is the leader of the firm’s litigation practice group in San Francisco. John was named the San Francisco Bar Association’s 2015 Lawyer of the Year. For several years, John has taught at UC-Hastings School of Law and currently teaches Evidence.

- can boast that more than a third of its EPs are female (forty-one percent, 41%). Part of the explanation can be attributed to the EP selection process itself. Law firms nationwide are increasingly trying to be more inclusive in their hiring so



that their entering classes of attorneys more closely reflect society in general. However, few firms ever admit anyone as an EP unless he/she already has a strong client base or shows a significant likelihood of building a large book of business. Firms take into account a number of factors when deciding whom to hire in or to promote to other positions. Although firms may not admit it publically, it is undisputed that firms do not consistently admit lawyers as EPs unless the lawyers have business, regardless of what other characteristics the lawyers may bring to the table.

Another part of the explanation for the dismal number of DWEPs may also have to do with the incubation time that is necessary for any EP, regardless of demographic, to develop as a lawyer and develop a client base.

According to a recent survey performed by legal search firm Major, Lindsey & Africa, female EPs at larger firms brought in an annual average of \$1.7 million of business, compared to \$2.6 million for their male counterparts. Since we know great lawyers come in all shapes and sizes and from all walks of life, why do female partners lag behind in attracting business and/or getting credit for bringing the business into the firm? And why is it that fewer female and diverse lawyers are able to generate sufficient client bases to ascend to EP? There is no question that many straight, white males developed large books of business on their own without being handed clients by more senior, straight, white males. And there is no doubt that many DWEPs have inherited large firm clients from more senior lawyers. But the numbers do not lie: there are still major differences between the number of DWEPs with sufficient books of business compared to the number of white males.

A female EP at a big law firm in New York provided the following insight: “It all depends on access to business, and it is all about mentors helping introduce junior lawyers to clients and potential clients. Just making partner for some is seen as the end of the need for mentoring. I had some great male mentors. When I became partner, it was my perception that my mentors felt their job was done. But that is when I needed the most help. They like having female associates around, and they invite them to many things. But when you become a middle-age woman, you become invisible and that is really when you need the most help.”

A diverse male EP in a Los Angeles firm explained: “When it comes to the big cases with the biggest risk, clients like to stay with the attorneys with whom the clients are comfortable -- usually those attorneys are the older, white, male partners. No one wants to deliver bad news, but if they do have to deliver bad news, they want to be able to say they went with the lawyer that they have known for years. It is hard to break

into that group. Perhaps with the new generation of start-ups being led by younger executives, newer people will be invited into that old boys’ club.”

A diverse male EP at a respected Chicago firm put it this way: “Part of it has to do with the lack of examples, especially for female lawyers, of people like them who can get to EP without sacrificing their lives completely. Oftentimes, this is due to lack of mentorship and opportunities to grow. Other times, there is a perception that EP is not the right path for diverse attorneys because of difficulties in generating business or too much of a sacrifice from family and work/life balance. This is especially a problem in litigation, where the perception is, perhaps accurately, that it requires a commitment and is not appropriate for someone planning to raise a family, etc. This is why we see more [DWEPs] in transactional areas or trust and estates, where the schedule is more controllable.”

A female EP at a large midwestern firm says implicit (or explicit) bias was a major issue early in her career. Her male partners took male clients to baseball games and told her that “the male clients would be more comfortable if male firm members attended” instead of others or that the clients would be more comfortable with “people who look or seem like them.” Another issue for women is that “the time when firms generally want lawyers to be working the hardest and developing the most is also the time when many women want to have children.” She added that sometimes well-intentioned lawyers try to be supportive, but it backfires. Recognizing that a woman is about to embark on or has just returned from parental leave, “partners who mean well may refrain from piling on [work], which in fact makes it more difficult for the more junior lawyer to meet hours expectations, denies that person certain opportunities,” etc.

Another part of the explanation for the dismal number of DWEPs may also have to do with the incubation time that is necessary for any EP, regardless of demographic, to develop as a lawyer and develop a client base. The age of the average EP is somewhere in the mid-fifties. Over thirty years ago when EPs now in their mid-fifties were starting law school, less than forty percent (40%) of all law students were female. Since women and minorities now make up forty-nine percent (49%) and twenty-seven percent (27%), respectively, of today’s law school classes, can we extrapolate that thirty years from now, when many of these women and minorities are in their mid-fifties, the numbers of DWEPs will correlate accordingly? We can hope.

For now, there are signs of slow progress. According to a recent survey report by the National Association of Woman Lawyers, the percentage of women on compensation or management committees or serving as managing partners or practice group leaders has doubled to almost twenty-five



percent (25%) in the last ten years. Moreover, in the last class of Big Law EPs, thirty-three percent (33%) were women. See *2017 Annual Survey Report, National Association of Women Lawyers Survey on Promotion and Retention of Women in Law Firms*, available at www.nawl.org/2017Survey.

Virtually everyone interviewed for this article confirmed that the environment is changing, attitudes are changing, and progress is being made. But, as much as many law firms (especially the larger ones) tout their diversity numbers, until the DWEP percentages improve, are the firms truly a place where lawyers of all walks of life are welcome? The answer is different at every firm, but at virtually every firm the DWEP numbers lag so far behind the numbers of diverse and female candidates in other positions that it cannot simply be a matter of coincidence. Statistics in this instance do not lie.