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Fixing the dearth of women in M&A

Diane Franke, a partner in the Silicon Valley office of Kaye Scholer LLP, concentrates her practice on M&A and corporate governance.



A wide gender gap persists in law firm M&A practices, despite substantial female enrollment in the law schools that supply associates. There is consistently higher representation of women both in corporate practices and in law firms generally than in M&A practices, from entering attorneys through senior partners. Moreover, only a fraction of the women who start out in M&A practices advance to equity partner roles in the field.

Jennifer Muller is a managing director at Houlihan Lokey, where she co-heads the firm's fairness and solvency opinion practice.



Both anecdotal evidence and the results of our own survey research (described below) suggest how and when this gap emerges, as well as some possible ways to close it.

Eric Talley is a law professor and Rosalinde and Arthur Gilbert Foundation Chair in Law, Business and the Economy at the UC Berkeley School of Law.



The dearth of women in M&A jobs is at first glance not so surprising given the under-representation of women in top law firm positions generally. Indeed, only 10 percent of AmLaw 100 firms have a female managing partner or chair, and only four percent of the nation's top 200 law firms have female

firm-wide managing partners. But the even larger gender disparity within M&A practice by comparison makes it particularly striking.

To get a handle on female M&A practice representation and put it in a broad context, we sought to understand the prevalence of women in different roles and practice areas by conducting a survey of more than 17,500 lawyers at more than 25 firms nationwide.

Our survey findings show the onset of an M&A gender gap even as women enter the law firms. Though women are well represented in the associate ranks early on, their representation in M&A practice significantly lags other areas of practice. Female representation continues to wane as tenure increases.

Women hold 48 percent of first- and second-year associate positions at surveyed firms, but the numbers decline thereafter and most women don't achieve equity partner roles. Women go from comprising 48 percent of first and second year associates to only 18 percent of senior equity partners (five or more years as a partner). During that same period, women lawyers in corporate practice positions decline from 43 percent to 16 percent of senior equity partners. However, women represent only 40 percent of attorneys in first and second year M&A practice positions, declining to only 15 percent of M&A senior equity partners. Thus, although rates of attrition of women in M&A appear roughly to match those in other fields, their significantly lower rates of entry into M&A practice means that they never catch up.

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Thursday, September 18, 2014

Government

Longtime public interest attorney regrets email exchange with PG&E executive

Mike Florio, a longtime public interest attorney turned regulator, said Wednesday he messed up in discussing which administrative law judge should decide a rate hike case with an executive from Pacific Gas and Electric Co.

Bankruptcy

Bankruptcy boutiques adjust to drop in filings nationwide

Insolvency boutiques have noticed a decline in business, a trend that experts attribute to the nationwide decrease in bankruptcy filings and a general change in the economics of the practice. Several firms have taken steps to adapt.

Constitutional Law

Neutral laws, unequally applied

The case of *Will Walters v. City of San Diego*, currently pending before the 9th Circuit, provides a clear opportunity to address the crucial and timely issue of discriminatory enforcement of a facially neutral law. By **John J. Duran**

Mergers & Acquisitions

Dealmakers

Post your M&A, IPO and financing deals at www.dailyjournal.com/dealmakers.

Bar Associations

Beverly Hills Bar Association president-elect to push 'low bono'

Linda E. Spiegel's goals include focusing on the concept of "low bono," in which novice lawyers counsel clients who cannot afford an attorney but also do not qualify for legal aid.

Litigation

Thomas Jefferson law school is working to cure defaults on \$133 million in bonds

Officials at the troubled school say they have made up most of the missed payment and are devising options to restructure the school's debt.

Law Practice

Skin cancer treatment company hires first general counsel

OncoSec Medical Inc. announced Wednesday the hire of Merck & Co. Inc.'s senior patent counsel, Sheela Mohan-Peterson.

Mergers & Acquisitions

Inbound deals from Europe help fuel

To gain some greater perspective on the low entry rate of women into M&A, it makes some sense to consider trends within law schools. Women are well represented overall in the 12 top law schools, which tend to produce the most M&A attorneys. In 2013, for example, female enrollment within these student bodies averaged around 45 percent at these top schools: Berkeley, Chicago, Columbia, Duke, Harvard, Michigan, Northwestern, NYU, Penn, Stanford, Virginia and Yale. (In recent years, female enrollment across all ABA-accredited law schools has been similar, at around 47 percent.) Thus, while female enrollment rates in law schools run slightly below U.S. population averages, this modest shortfall cannot fully explain the gender gap in M&A.

To drill a little deeper, we sought clues about the level of interest in the discipline among women at the M&A feeder schools, using enrollment figures in advanced, M&A-related elective courses. We obtained relatively reliable data from six of the above schools. The data from all six show consistently low female enrollment in M&A-related courses relative to school-wide enrollment averages. The average disparity between the percentage of women in the student population (46 percent) and female enrollment in M&A-related courses (37 percent) is significant. Thus, there are indications that women's disinclination toward (or discouragement from) M&A practice may begin when they're still in law school. The reasons behind this early attrition deserve further study via surveys of law firms, and women lawyers and law students.

Nevertheless, there is abundant anecdotal evidence suggesting some reasons for disinclination and attrition. Women may avoid an M&A practice due to their perceptions (possibly misplaced) about the nature of the practice. For example, women may think that the rigors of the discipline necessarily require longer hours than other practice areas, and that work-life balance is even less sustainable. Women may be concerned about possible gender bias in the area by prospective clients or referral sources. Women may perceive a dearth of effective professional networks for female M&A professionals. There may be a lack of tailored educational and motivational programs sponsored by firms. Although we readily concede that M&A practice may not be for everyone, if female students and new attorneys are opting out of M&A because of mistaken or distorted perceptions, it is bad for the attorneys, bad for clients, and bad for the profession. Women often have key skills that are critical to dealmaking, including relationship-building, collaboration, and an ability to build consensus. Moreover, dealmaking can be exciting, and we should be encouraging more young women to try their hands at it.

Addressing the issues presented above would go a long way toward generating more interest in M&A among female law students and, once they enter the field, removing obstacles to their advancement. Consider these constructive steps:

- Law schools could invite women lawyers to speak on the discipline's lifestyle, addressing any perceptions female students may have about either longer work hours or the need for extensive travel.
- Because there tend to be fewer women undergraduates in finance-related majors, women may be less exposed to business and finance terms going into law school. Law professors can help demystify business language by introducing it incrementally - explained in plain English - in the classroom.
- Law firms could sponsor continuing education in accounting and finance, providing tuition reimbursement and hosting in-house education sessions led by experts from investment banks, accounting firms and universities.
- Law firms could encourage clients to work with their female professionals, and obtain meaningful diversity commitments from clients and staff engagement teams accordingly.
- Firm managers could foster a greater awareness of potential unconscious gender bias in their firms and obtain buy-in on the goals of identifying and eliminating it.
- Managers and leading women M&A attorneys could initiate marketing and business development events for women conducive to relationship building.
- M&A practices could identify high-potential women and provide them with more leadership and client development opportunities.
- Firms could also provide executive coaching services and establish more tailored mentoring programs for female M&A associates.

By working together on these and other creative remedies, the legal M&A community would be able to interest more young women in M&A and increase their chances of long-term success.

merger boom

An influx of inbound deals from Europe has helped fuel a significant uptick in merger and acquisition activity this year, according to data released this week from transactions tracking firm Mergermarket Ltd.

U.S. Court of Appeals for the 9th Circuit Federal law does not protect company from liability, 9th Circuit rules

The Communications Decency Act does not shield a website owner from a negligence claim by an aspiring model who used the site and fell victim to a rape scheme, a 9th U.S. Circuit Court of Appeals panel held on Wednesday.

Litigation Oil companies to face suit over groundwater contamination

An almond and cherry farm in the Central Valley has sued several oil companies alleging they are contaminating its groundwater supplies and killing its trees by injecting salty wastewater into leaky underground wells.

Intellectual Property Judges hesitant to shift fees in patent cases

Federal judges across the country remain hesitant to shift fees to victors in patent disputes even though the U.S. Supreme Court has given judges greater authority and flexibility to do so.

Immigration Alone, together in immigration court

Children and families have recently become a priority for the Obama administration. But not in the way one might expect. By **Robin Goldfaden and Bianca Sierra Wolff**

Corporate Fixing the dearth of women in M&A

A wide gender gap persists in law firm M&A practices, despite substantial female enrollment in the law schools that supply associates. By **Diane Frankle, Jennifer Muller and Eric Talley**

Technology & Science It's time to repeal and replace the outdated ECPA

Congress should repeal the ECPA before it reaches its 30th birthday, and replace it with a new privacy statute that reflects current Internet and communication technology. By **Peter J. Toren**

Contracts Discounts for timely payments: unenforceable 'penalties'?

It has long been a practice among commercial litigators and their clients to settle with a defendant/borrower and allow a discount if payments are timely made. No more. By **Susan L. Vaage and Ellen Kaufman Wolf**

Judicial Profile Michael J. Popkins

Superior Court Judge San Diego County (Vista)

Diane Frankle, a partner in the Silicon Valley office of *Kaye Scholer LLP*, concentrates her practice on M&A and corporate governance. **Jennifer Muller** is a managing director at *Houlihan Lokey*, where she co-heads the firm's fairness and solvency opinion practice. **Eric Talley** is a law professor and *Rosalinde and Arthur Gilbert Foundation Chair in Law, Business and the Economy at the UC Berkeley School of Law*.

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Government

Despite quiet opposition, penalty-reducing ballot initiative gaining traction

Proposition 47, which proposes reducing penalties for some drug and property theft crimes, has so far received less fanfare than other state criminal justice measures in the past, legal observers said.

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