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Commentary

Rutgers Law School Launches Study to Advance Women in Law

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Women in Law

By Penny M. Venetis, Kirsten Scheurer Branigan and Beth P. Zoller

On Oct. 9, 2023, Harvard economist Claudia Goldin was awarded the Nobel Prize for her work in economics, for creating "the first comprehensive account of women's earnings and labor market participation through the centuries." Goldin's vast work has shown that despite having equal education and qualifications, women still earn less than men. Her research has also shown that strong economies and technological advancements have not leveled the playing field for women.

Goldin's findings, unfortunately, are all too true in the legal profession. Women lawyers still lag behind men in reaching the upper levels of leadership, compensation, and career satisfaction, even though for more than a quarter of a century women have made up at least half of all graduating law school classes across the country. As the Rutgers Center for Women and Work (CWW) stated in its 2022 report "Women In Private Law Firms: Slow Progress on Equality of Promotion and Compensation," (CWW 2022 Report), women lawyers' rate of career advancement is the same as it was in the 1990s. The CWW 2022 Report also revealed that little has changed in New Jersey since the release of the CWW's 2009 study of the same topic, "Report on Legal Talent at the Crossroads: Why Women Lawyers Leave Their Law Firms and Why They Choose to Stay."

In 1995, women comprised 26.4% of all lawyers in the U.S. In 2021, they made up 37.9%. CWW 2022 Report, p. 2-3, Table 1, citing data of the "Current Population Survey" by the Bureau of Census, Bureau of Labor Statistics. Despite this welcome increase, women's overall

representation in the legal field is still considerably lower than women's overall representation in the labor force (47.0% in 2021). *Id.* Moreover, the increase in representation is only at the lower echelons of the legal profession. Rather than moving up the ranks, women are leaving the profession.

- In 2009, women comprised 45.7% of associates and 19.2% of partners. CWW 2022 Report, p. 7-8, Table 6, citing data from the National Association of Law Placement (NALP) "2021 Report on Diversity in U.S. Law Firms" (NALP 2021 Report). In 2021, women comprised 48.2% of all associates but held only 25.9% of all partnerships (equity and non-equity combined). CWW 2022 Report, p. 7-8, citing data from the NALP 2021 Report.
- For women of color, these percentages are significantly lower. In 2009, women of color comprised 11% of associates. In 2021, women of color comprised 15.9% of associates. In 2009, women of color comprised only 1.9% of partners. In 2021, women of color comprised 4.1% of partners. *Id.* at p. 7-8 citing data from the NALP 2021 Report.
- In 2021, women accounted for only 22% of law firms' equity partners and only 32.5% of the non-equity partners. This was up from 2011, when women accounted for 15.6% of law firms' equity partners and 27.7% of the non-equity partners. CWW 2022 Report, p. 8, Table 7, citing data from the NALP 2021 Report.
- As of 2020, data reflects that women are firm-wide managing partners in only 19% of law firms, and office managing partners in only 28% of law firms. CWW 2022 Report p. 10, citing data from The National Association of Women Lawyers (NAWL) 2020 "Survey Report on the Promotion and Retention of Women in Law Firms" (NAWL 2020 Report).
- As of 2020, data shows that women also make up a very small portion of other law firm leadership positions: 28% of governance committees; 29% of compensation committees; and 25% of practice group leaders. *Id.*

Given these statistics, it is not surprising that compensation of women lawyers continues to lag nationally:

- In the first three years of practice, women and men had a 5% income gap. After seven years of practice, that gap increased to 15%. After ten years, the gap was 20%. CWW 2022 Report, p. 12, citing data from "After the JD III: Third Results from a National Study of Legal Careers," commissioned by the American Bar Foundation and NALP (2014).
- Male partners make on average 53% more than women partners at the largest firms (\$959,000 per year vs. \$627,000 per year). CWW 2022 Report, p. 10, citing, "In Their Own Words Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession," Joyce Sterling and Linda Chanow, American Bar Association (2021).
- Male equity partners earned 27% more than women equity partners. *Id.*

- Data from a study of independent lawyers and small law firms show that women partners made 36% less than men. Id.

New Jersey women lawyers fare worse than women lawyers nationally. Even though New Jersey is progressive in many respects, including on gender-related issues, our state lags behind in advancing women in the legal profession, based upon the limited data that has been compiled. In 2022, even though women made up 26.65% of the law firm partnerships nationally, New Jersey women accounted for only 24.52% of partnerships. The percentages of women of color who are partners remains in the single digits both nationally and in New Jersey. Nationally, they make up 4.39% of partner roles and, in New Jersey, they fare only slightly better, where they make up 4.81%. NALP 2022 "Report on Diversity in U.S. Law Firms," p. 25, Table 9.

These statistics show that we need to do more to achieve gender equality in the legal profession. But they only tell part of the story. Gender inequality also exists in the public sector and is virtually invisible.

Gender inequality in the public sector has not yet been studied. To address this information gap, and to understand the full extent of gender inequality for New Jersey lawyers, the International Human Rights Clinic at Rutgers Law School launched a cutting-edge study in spring 2023 (Rutgers Law School IHRC Study and/or the study). The study is the first study of its kind nationally as it is also gathering information from women lawyers in the public interest, and government sectors, as well as from academia and the judiciary.

The Rutgers Law School IHRC Study aims to do more than just compile data. Following in Goldin's footsteps, this ambitious project's goal is to provide a roadmap of solutions to help the legal profession address the persistent impediments to the advancement of women, the perpetuation of unequal pay, and the departure of women lawyers from the profession after just a few short years of practice. The study will fully explore the viability and impact of the CWW Report's proposed "best practices" for retaining and advancing women lawyers. These best practices include: (1) implementing work/life balance with flexible work arrangements; (2) being proactive and transparent about compensation and promotion policies; (3) developing gender- focused initiatives for mentoring women lawyers in all areas, including business development; and (4) removing bias by eliminating stereotypes of women in the workplace. The study will assess the impact on recruiting, productivity, and client services if the best practices are implemented. Additionally, the study will examine employer cost savings related to decreased attrition associated with high attorney turnover.

Advocates around the country have shown great interest in the study and see it as a model to be replicated in other states, as well as internationally. The Rutgers Law School IHRC Study is being spearheaded by distinguished clinical professor of law Penny Venetis, and her former student, Kirsten Scheurer Branigan, the managing partner of KSBranigan Law a woman-owned law firm in New Jersey.

The study will also explore the impact that the United States Supreme Court's recent decision in *Students for Fair Admissions v. Harvard*, is having on women lawyers. Even though the Equal Employment Opportunity Commission (EEOC) has stated that that the Harvard decision does not directly implicate employers, and that employers should continue to foster diverse and inclusive workplaces, there is evidence that there will be a negative impact on women lawyers and other underrepresented lawyers. Law firms have already been sued over their efforts to diversify their summer programs and their overall workplaces. Additionally, many companies, including law firms, are eliminating their chief diversity officer positions, many of which are held by women, particularly women of color, who are also attorneys.

The Rutgers Law School IHRC Is Seeking Broad Participation To Impact Positive Change

We invite all New Jersey lawyers to participate in this important study. The first round of focus groups successfully took place in spring 2023 (virtually and in-person) for the following sectors within the profession: private practice, public interest, government, and in-house counsel. The focus groups included over 70 participants. We are continuing to run focus groups through fall 2023 for the above sectors, as well as academia and the judiciary.

The focus group participants work as a team to develop sector-specific survey questions so that the study can elicit the most relevant and comprehensive information about what it is like for women to practice law in each field that is being studied. The focus groups also develop questions about impediments to advancement in each sector as well as solicit suggestions to end gender inequality in each sector. Lawyers qualify to participate in a focus group if they have ever practiced law in New Jersey. Participation in the focus groups or any part of the study will be kept anonymous and remain confidential.

The study team will analyze data with faculty and students from other departments within Rutgers University, including the Rutgers Business School.

The focus groups are expected to continue in the coming months. After that, the project will move into its data-gathering phase. If you are interested in participating in a focus group or the study, or know someone who is, please contact Kirsten S. Branigan at kirsten@ksbraniganlaw.com or (973) 542-8096. If you have any questions, please feel free to email Professor Penny Venetis at venetis@law.rutgers.edu.

Penny M. Venetis is a Distinguished Clinical Professor of Law and Director of the Rutgers Law School International Human Rights Clinic. **Kirsten Scheurer Branigan** (Rutgers '95) served as adjunct professor with the Rutgers Law School International Human Rights Clinic in the spring of 2023 to help launch the study. She is the managing partner at *KS Branigan Law*, a woman-owned law firm in Montclair, which provides services on diversity, equity, and inclusion, employment compliance, training, investigations, culture assessments, equal pay audits, expert opinions & alternative dispute resolution. **Beth P. Zoller** is counsel at *KS Branigan Law*. Rutgers Law IHRC

*student **Katie Ann Insinga** ('24) has contributed to the preparation of this article and is involved in the study.*