

THE AMERICAN LAWYER

An **ALM** Publication

americanlawyer.com

MARCH 27, 2017

M&A'S MISSING WOMEN

BY LIZZY MCLELLAN

WHEN SARAH HEWITT STARTED OUT AS AN M&A LAWYER, she faced closed doors. Bathroom doors.

“The men used to go into the men’s room to decide how they were going to respond to deal terms or how they were going to negotiate, and I obviously couldn’t go into the men’s room with them,” says Hewitt, now co-chair of the mergers and acquisitions group at Schnader Harrison Segal & Lewis.

So Hewitt, who now works on deals in communications, technology, energy and other industries, would wait outside the door.

Not any longer. Hewitt is one of a league of women lawyers who have emerged as leaders in mergers and acquisitions practices. Many of them started their careers in the 1980s and 1990s, and most if not all of their colleagues were men. Now they are leading practice groups at their firms, or heading up deal teams on major transactions. And every so often, they’re leading deal teams comprised entirely of women. At Cravath, Swaine & Moore, a female M&A lawyer has taken leadership as presiding partner. Faiza Saeed became the first woman to assume that post in January, after leading the firm’s M&A practice for four years. (Saeed declined to be interviewed for this story.) Things are changing for women in M&A. But they’re changing slowly. M&A work can pose particular challenges for women’s advancement, as it carries the cultural remnants of a traditionally male-dominated practice, and requires all-nighters and a willingness to drop everything,



Credit: Michelle Thompson

which can be difficult to balance with the expectations of motherhood.

And with top M&A lawyers commanding top pay, the barriers to success for women carry a huge potential cost. There’s still implicit gender bias and outright sexism. And let’s face it: The women who have managed to dominate in this field are exceptional. They didn’t ride a wave

of change; they forced their way past a tide of obstacles.

Alison Ressler of Sullivan & Cromwell—a mother of four—says people told her over and over that she could not be a mom and grow her M&A practice.

Laurie Cerveny, deputy leader of Morgan, Lewis & Bockius' M&A practice, recalls that when she got involved in deal work about a decade ago, already a partner at the time, it was her, not her male colleagues, who was asked to hand out printed copies of PowerPoint slides. On multiple occasions, clients assumed she was junior to her male colleagues, even if she was senior by a number of years.

“I have a title now,” Cerveny said. “That helps.”

Megan Harmon, who co-chairs Schnader Harrison's M&A group with Hewitt, remembers standing outside the door of a meeting in the late 1990s, telling her male colleague what to say next to a client who would not take advice from a female lawyer.

Each of the M&A lawyers who spoke with *The American Lawyer* recalls a time, or more likely a number of occasions throughout her career, when she was the only woman in the room.

But being the odd one out wasn't all bad, they say.

“Everyone knew who I was. In certain ways that's a good thing,” says Kathryn King Sudol of Simpson Thacher & Bartlett, who recently represented Ant Financial Services Group in its \$880 million acquisition of MoneyGram International Inc. “You stick out because you're rarer. People are surprised when you're smart and tough and good at what you do.” Recent numbers show slow progress toward gender equity in M&A practices.

A 2016 survey of more than 16,500 lawyers, led by the American Bar Association's Women in M&A Task Force, found that 40 percent of first- and second-year M&A associates were women, and only 16 percent of senior M&A partners were women. Overall, women made up 36 percent of lawyers surveyed, but only 30 percent of M&A lawyers surveyed.

That's a slight uptick since 2014, when the task force conducted a similar survey and found that 35 percent of lawyers—and 27 percent of M&A lawyers—were women.

“The good news is that there is some improvement, and I think it goes to show that if there is some effort put behind these things it can make a difference,” says Jennifer Muller of Houlihan Lokey, who chairs the ABA task force and helped conduct the study.

Muller says the proportion of women had been stagnant for some time. After the first few women had broken into M&A law, she says, the next generation may have thought the work was done. But it takes additional effort to push past having just one or two women in the boardroom or at the deal table.

Meanwhile, this practice is one of the higher-paying areas of law, and the lower numbers of women in M&A have contributed to the pay gap between men and women in law. According to Major Lindsey & Africa and ALM Intelligence's 2016 Partner Compensation Survey, corporate partners, which include venture capital, finance and M&A lawyers, had the highest average compensation, at \$1.055 million. The same survey found that in 2016, male partners made 44 percent more than female partners on average.

“I'm not sure how optimistic I am that there's going to be a dramatic shift,” Sudol says. “At the same time, I think the ‘I'm-the-only-woman-in-a-room-of-50’ thing is a thing of the past.”

Fitting the Profile

Early on, says Barbara Becker of Gibson, Dunn & Crutcher, she didn't think about gender as an issue in the profession she had chosen. “I thought the world was our oyster. It was the late 80s, there were a million opportunities for law students,” Becker says. “It wasn't until starting into my career that you look up and you notice that there were few women partners.”

A major obstacle for women seeking leadership on deal teams was the perception of what an M&A

lawyer should be, and what a woman should be. The two didn't always match. "There was an impression ... that the type of people who did it were more aggressive, voluble people who were pound-on-the-table people," Sudol says.

At a time when there were fewer women in law overall, says Eileen Nugent of Skadden, Arps, Slate, Meagher & Flom, dealmaking "was viewed as a very aggressive, adversarial process. Whether it was right or not." Adds Nugent, who advised Endo International on its \$8 billion acquisition of Par Pharmaceutical Holdings in 2015, "there may have been a view that it wasn't the right field for women."

And some clients didn't hesitate to say so.

Harmon, who works with strategic buyers, private equity and financial institutions, recalls working with several male clients early in her career, who did not want to negotiate with women or take advice from women.

"It's not an unconscious bias. It's a real bias," she says. "When women negotiate and she's a hard negotiator, it's the same stereotype: 'She's such a bitch.'"

Women also faced assumptions that affected business development opportunities. Asking a male client to a dinner could have the wrong connotation. Several lawyers say they have found ways around that, like planning family-friendly outings with clients and their children. Still, making sure business development is not misconstrued is a consideration.

"I'm not married, but I wear a ring when I go out to networking events," Harmon says. "It can be awkward until they get to know you."

Women face a combination of unconscious bias and behavioral expectations, Muller says. As an example of unconscious bias, she says, an interviewer might favor a male candidate over a female because the man is more similar to others who have succeeded at the firm.

And there's still an expectation, she says, that women should use traditionally feminine traits in order to succeed, while men should use more masculine traits. "If the woman shows the successful-male

traits, then she is failing because she's not fulfilling the female traits that are expected of her," Muller says. "There are a lot of studies that show that women who are aggressive, confident and forceful tend to be less likeable."

Increasingly, she adds, firms are implementing training to counteract these biases by making their lawyers more aware of them. *Shifting the Balance*

Then there's the family equation. Many of the M&A lawyers who spoke with *The American Lawyer* are mothers. Despite a shift in child-rearing responsibilities over the decades, they say, the fact remains that women are often the primary caretakers, and face a greater pull toward child-rearing duties. Being able to balance those duties with professional ambitions is tricky for any lawyer. But the M&A lawyers say they face an added challenge because of the all-nighters and weeks away from home they must put in during a major deal.

"Everyone told me you can't have kids and do it," says Ressler, who recently represented Alphabet company Verily Life Sciences in an \$800 million investment deal. "I didn't see why not."

Ressler had four children in six years, from 1987 to 1993. She made partner a year early, when she was pregnant with her third child. Ressler says she had supportive colleagues and constant help at home with her children. And she says she simply did not allow her pregnancies and maternal responsibilities to impact her clients: "I also didn't turn off the switch."

Muller says law firms are in the early stages of creating more flexibility to allow lawyers to stay on top of deals while attending to family responsibilities. For instance, she says, some firms have implemented a two-person lead for deals, so the lawyers can take turns being on-call for the client. However, she says, some "deal junkies" don't want the model to change.

"It's really hard to talk about because there are a lot of men and women in the field who say, 'I toughed it out. I made it work. You can do it too,'" Muller says.

Sudol provides a slightly different perspective, having moved to Hong Kong six years ago, when the oldest of her two children was 1 year old. She says hiring domestic help is more common and more affordable in Hong Kong than it was in the United States, but in her home, her husband is a stay-at-home dad. That allows her to leave home for weeks at a time, with no set end date, when a deal is taking place, or to pull all-nighters when the job calls for it. Still, she says, she often works remotely at night so she can log back in after putting her children to bed.

“I hate to say if women are to be successful, they need to be able to work less and take time off. ... I don’t think that’s the answer here,” Sudol says. But, she adds, “to have a little more flexibility I think would benefit women disproportionately.”

‘Pay It Forward’

While being the woman in the room has come with its challenges, the lawyers who climbed the ranks say they made their differences an asset. “My advice would be, ‘Don’t think of being female as a drawback,’ because it’s not,” Nugent says. “The thing that mattered most in keeping clients was working hard, being there for them, giving good advice and just being a good lawyer.”

Sudol says women should be aware of the fact that they stand out from their male colleagues, so they need to make sure they speak up. That doesn’t have to mean shouting and pounding on tables. But it does mean having a voice.

“For me, it’s keeping calm and being well prepared,” Becker says, recalling counterparts who screamed and shouted throughout negotiations. “Maintaining the calm leaves little room for the counter-party to go off the rails.”

Becker says young lawyers can look to mentors for examples of the style they might take in negotiations and how to make their voices heard. Several of the M&A lawyers echoed this advice, urging young

women in the field to find mentors, whether male or female. And several lawyers say they have focused on becoming mentors to the next generation of women in the room: As Becker says, they “pay it forward.”

Muller, chair of the ABA task force on women in M&A, says the next generation of female M&A lawyers could be larger, as the legal profession aims to better understand why the number of women in the field has stayed stagnant so long.

Clients are becoming used to working with more diverse advisers, says Cerveny, whose work has included representing Citrix Systems Inc. in a number of acquisitions. People don’t assume she’s the junior lawyer anymore, she says.

Becker, who represented Kraft in its \$19 billion acquisition of Cadbury in 2010, says she is still the only woman in the room at times. But she notes that’s the case in a lot of Wall Street practices. And on the flip side, she says, she often works on all-female teams now. “It’s noticed by opposing teams and counsel in a positive way. And clients,” Becker says. “Boards of directors are definitely more diverse, CEOs are more diverse and general counsel.”

And female GCs may be more willing to give female lawyers a shot, she says.

An increase in the presence of women won’t make for an easy career path, Ressler says. But support for women in law firms—the kind she says she received from colleagues through four pregnancies in six years—may become more widespread. People often look for hard-and-fast rules in the professional world, she says, but with the right preparation and support, the rules can change.

“People told me, ‘You can’t do X, you can’t do Y.’ I never thought about it. I just kept working on my deals,” Ressler says. “The one good piece of advice I can give is don’t listen to people who tell you what you can and can’t do.”

Email: lmclellan@alm.com.