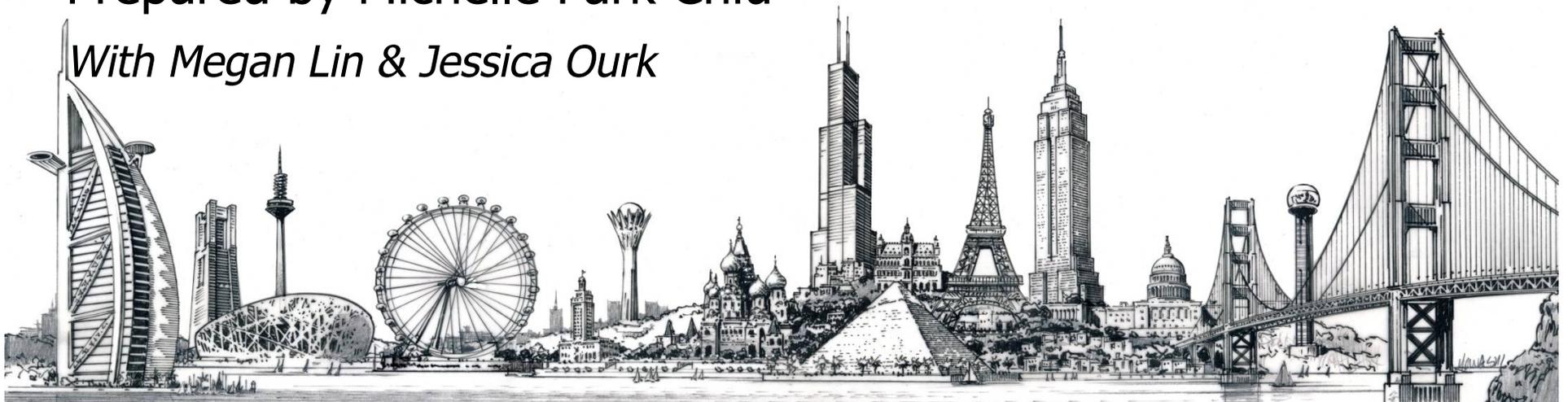


Morgan Lewis

**SHATTERING DOUBLE
CEILING: HOW TO
INCREASE APA WOMEN
LEADERS IN LAW**

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With Megan Lin & Jessica Ourk



PROGRAM OVERVIEW

There remains much to be done regarding the representation of APA women in positions of leadership in the law. APA women lawyers often face double ceilings in their path to leadership. What can we do to increase the representation of APA women in leadership positions in law? Come hear APA women trailblazers in law discuss challenges they faced as their careers developed; thoughts and ideas on the challenges facing newer generations of APA women lawyers; and practical and proactive advice on how we can move forward to increase the number of APA women leaders in law.

PANELISTS

Hon. Judge Lucy Koh, N.D. Cal.

U.S. District Judge Lucy Haeran Koh in San Jose presided over three Apple v. Samsung jury trials as well as privacy cases involving Google, Apple, LinkedIn, and Yahoo. She also presides over data breach cases involving Anthem and Adobe and antitrust employment cases involving numerous technology companies.

She previously served as a California Superior Court Judge, a McDermott Will & Emery litigation partner, an Assistant U.S. Attorney, a Special Assistant to the U.S. Deputy Attorney General, and a Women's Law and Public Policy Fellow on Sen. Ted Kennedy's U.S. Senate Judiciary Committee staff. One of her jury instructions is a Ninth Circuit Court of Appeals Model Criminal Jury instruction. She received an award from former FBI Director Louis J. Freeh for prosecuting a significant securities fraud case. Her McDermott colleagues and she litigated the *In re Seagate Technology* case, in which the Federal Circuit overturned the 24 year old standard for willful patent infringement.

She received her undergraduate and law degrees from Harvard. She is married to California Supreme Court Justice Mariano-Florentino Cuellar. They have two children.

Under Secretary Michelle K. Lee

As Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Michelle K. Lee provides leadership and oversight to one of the largest intellectual property offices in the world. Ms. Lee serves as a principal advisor to the President, through the Secretary of Commerce, on both domestic and international intellectual property matters, and provides leadership and oversight of the day-to-day management of the policy, budget, and operations for an agency of over 12,000 employees. She also promotes innovation domestically and drives international harmonization efforts, in support of the administration's top economic priorities to increase economic growth. Ms. Lee is the first woman and person of color to serve as Director of the USPTO. Prior to her current role, she was the Deputy and acting Director of the USPTO, and before that the first Director of the USPTO's Silicon Valley office.

Ms. Lee was named a 2015 Washingtonian Tech Titan by Washingtonian Magazine and one of D.C.'s Top 50 Women in Tech in 2015 by Fedscoop. The San Francisco Business Times and San Jose Business Journal recognized Ms. Lee as Best Bay Area IP Lawyer in 2012 and one of the top 100 most influential women in the Silicon Valley in 2013.

She holds a B.S. and an M.S. in electrical engineering and computer science from M.I.T., as well as a J.D. from Stanford Law School.

Jennifer Wu, Paul Weiss Partner

A partner in the Litigation Department of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Jennifer H. Wu focuses her practice on patent litigation matters. Ms. Wu has been extensively involved in all aspects of patent litigation, including jury trials in federal district courts, trials before the International Trade Commission, and appeals to the United States Court of Appeals for the Federal Circuit and the United States Supreme Court.

Ms. Wu clerked for Judge Alan D. Lourie at the United States Court of Appeals for the Federal Circuit. She also received the Vanderbilt Medal for Service to the Law School Community and the President's Service Award for Leadership at New York University.

Salle Yoo, General Counsel of Uber

As General Counsel for Uber Technologies, Salle Yoo ensures that Uber can rapidly expand its global presence and sustain long-term growth in existing markets. She and her team oversee an increasingly complex set of legal and regulatory matters worldwide, as Uber continues to attract hundreds of thousands of driver-partners and riders globally.

Prior to joining the company in 2012, Salle was a litigation partner at Davis Wright Tremaine LLP, where she represented leading energy, telecommunications and technology firms. When she left her partnership to join Uber, it was because of her excitement about its potential to literally change the way millions of people move around cities.

Salle currently serves on the Museum Council for the Asian Art Museum and is a member of the Council of Korean Americans. She previously served as Secretary, Director and Chair of the Judiciary Committee for the Asian-American Bar Association of the Greater Bay Area. She graduated from Scripps College and Boston University School of Law.

Joan Haratani, Morgan Lewis Partner

Over the past three decades, Joan M. Haratani, a litigation partner at Morgan Lewis, has honed crisis management and courtroom skills in high-exposure cases. A co-lead counsel on some of the largest mass tort litigations in the United States, Joan defends her clients in class actions, product liability litigation, complex licensing agreements, and trade secret indemnity issues. While her litigation experience spans industries, including retail and finance, she focuses much of her practice on the pharmaceutical and medical device industries.

Known for her work as a California litigator, Joan has been recognized as one of the "Top 100 Lawyers in California" and as a "Top 75 Women Litigator" by the Daily Journal. She was selected by the corporate members of the Minority Corporate Counsel Association as a "Female Litigator on the Rise" in Diversity & the Bar. She was also named one of the 500 most influential Asian Americans in America by Avenue Asia Magazine. Joan plays an active role in the legal community, and has served as a member of the American Bar Association's House of Delegates. She also served as president for the Bar Association of San Francisco, the first woman of color to hold that position. She is also a past president of the Asian American Bar Association of the Greater Bay Area, as well as past regional governor of the National Asian Pacific American Bar Association. She is a past board member of several philanthropic organizations, including the Leukemia and Lymphoma Society of Northern California (Team In Training).

Joan received her B.A. from Saint John's College, Santa Fe and her J.D. from the University of California, Davis School of Law

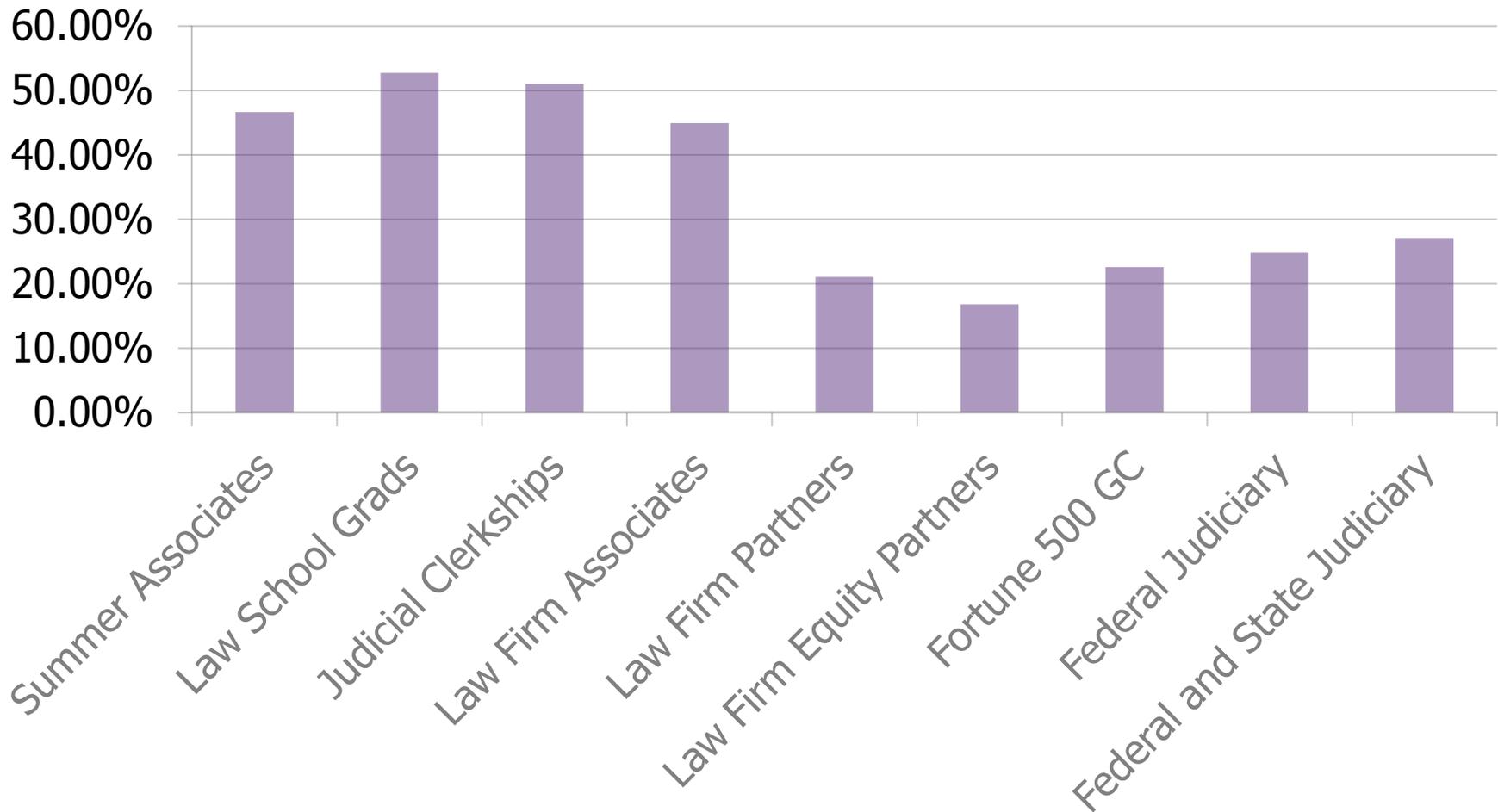
THE GLASS CEILING

Key Statistics

| | MEN | WOMEN |
|------------------------------------|------------|--------------|
| Summer Associates | 53.37% | 46.63% |
| Law School Graduates | 47.3% | 52.7% |
| Judicial Clerkships | 49% | 51% |
| Law Firm Associates | 55.06% | 44.94% |
| Law Firm Partners | 78.95% | 21.05% |
| Law Firm Equity Partners | 83.2% | 16.8% |
| Fortune 500 General Counsel | 77.4% | 22.6% |
| Federal Judiciary | 3162 | 402 |
| Federal and State Judiciary | 73.9% | 27.1% |

A Troubling Trend

Women in Law



The “Glass Ceiling”

- Women working full time earn **82.5 cents** for every dollar a man earns.
- According to the U.S. Department of Labor, **women lawyers** earn **56.7 cents** for every dollar earned by a male lawyer.
- In 2004, women lawyers earned 73.4% of what male lawyers earned. In 2013, that had only increased to 78.9%.

The “Glass Ceiling”

- Women lawyers are underrepresented in positions of leadership in law firms.
 - Of firms that responded to The American Lawyer, “one firm in five” still does not have a woman represented in the firm’s top leadership.
 - 40% of firms have one or zero women on the compensation committee.
 - Approximately 25 out of the Am Law 200 firms have a female firm chief executive, or about 12.5%.

Contributing Factors

- The American Lawyer reports that generally, more women than men leave law firms among all lawyer positions.
 - Flextime/part-time tracks have not made a significant impact on retaining women in firms.
 - Women continue to face challenges in balancing family and work responsibilities.
 - Firms are recruiting partners laterally “in a market where male partners far outnumber women.”

Derived from Julie Triedman, “A Few Good Women,” The American Lawyer (June 2015)

A SECOND CEILING

Key Statistics

| | ALL WOMEN | ASIAN AMERICAN WOMEN |
|------------------------------------|------------------|-----------------------------|
| Associates in Law Firms | 44.94% | 5.81% |
| Partners in Law Firms | 21.05% | 0.99% |
| Fortune 500 General Counsel | 4.2% | <1% |
| Federal Judiciary | 402 | 11 |

Key Statistics

| | ASIAN AMERICAN TOTAL | ASIAN AMERICAN WOMEN |
|--------------------------------|-------------------------|-------------------------|
| Associates in Law Firms | 10.8% | 5.81% |
| Partners in Law Firms | 2.74% | 0.99% |
| Fortune 500 General Counsel | 2.8% | <1% |
| Federal Judiciary | 25 | 11 |

Key Statistics

| | ALL LAWYERS OF COLOR | AFRICAN AMERICAN | HISPANIC | ASIAN AMERICAN | ASIAN AMERICAN WOMEN |
|---|-------------------------------------|-----------------------------|-----------------|---------------------------|-------------------------------------|
| Associates in Law Firms | 21.63% | 4.01% | 3.95% | 10.8% | 5.81% |
| Non- Traditional Track Lawyers | 20.79% | 6.47% | 4.56% | 7.66% | 4.91% |
| Partners in Law Firms | 7.33% | 1.72% | 2.16% | 2.74% | 0.99% |
| Fortune 500 General Counsel | 10.8% | 5.8% | 2% | 2.8% | <1% |

Asian Americans in the Law

- Minority representation in law firms has reached a “plateau.”
 - In 2008, minorities represented 13.9% of lawyers at firms.
 - In 2013, minorities represented 14.1% of lawyers at firms; in 2014, that number inched to 14.4%.
- Asian American lawyers are leaving firms at a rapid rate.
 - From 2000-2012, the number of Asian American lawyers “dramatically declined” from 29% to 9%.
 - There is a large gap between the number of Asian American partners at law firms, and Asian American non-partners, suggesting Asian American attorneys encounter obstacles to promotion.

Asian Americans in the Law

- Of the Fortune 500, only **14** companies have an Asian American general counsel.
 - In 2006, there were 6 Asian American general counsel in the Fortune 500.
 - By 2007, that number doubled to 12, in part due to efforts by NAPABA's "10 x 10 Initiative."
- Since 2007, progress appears to have stalled, as the numbers have not grown significantly.

Contributing Factors

- “The issues facing Asian Pacific Americans are larger than ever, in my view. Many of us are still seen as followers, not leaders.”
 - Don H. Liu, General Counsel of Xerox
- “The stereotyping of minorities often continues long after law school graduation and bar exam passage.”
 - Lydia Lum, MCCA’s 15th Annual General Counsel Survey
- Affinity bias: “[I]n private practice, partners get to choose the teams with which they work and share clients, and tend to choose people like themselves.”
 - MP McQueen, *The American Lawyer* (May 28, 2015).

LESSONS FROM THE ELLEN PAO CASE

Unconscious Bias

- Gender Bias can be Unconscious and Implicit.
 - This makes discrimination lawsuits difficult to win.
 - Much of the testimony and evidence Ellen Pao offered at trial showed “micro-indignities,” which are “small acts of exclusion and devaluation that individually may seem minor but cumulatively create an atmosphere that is unwelcoming to women.”
- The Double Standard: An Impossible Balancing Act for Women.
 - Women are faulted for the same characteristics or traits that men are praised for.
 - Ellen Pao was criticized for being too “reticent” and “passive,” but was simultaneously criticized for speaking up, demanding credit, having “sharp elbows,” and “always positioning.” Meanwhile, Pao’s male coworker was promoted even though he was described as “arrogant” and “overbearing.”
 - Social science confirms this double standard. Studies show that women who self-promote are viewed as less likeable. Behavior that is viewed as domineering, abrasive, and disabling in a woman is viewed as tolerable in a man.

Informal Assignment/Workflow

- Kleiner Perkins, like many law firms, distributed assignments informally. In many cases, the distribution appeared to be based on who “hangs out” together.
- The more informal assignments get, the harder it is for leadership to control what is happening, and to ensure everyone is getting the opportunities they deserve based on the work they have done.
- Women and the Dangers of “Office Housework”
 - Ellen Pao and a female colleague were asked to take notes at partners’ meetings on multiple occasions.
 - These tasks and other “office housework” have “opportunity costs” for women.

Vague, Undefined Promotion Criteria

- Kleiner Perkins testimony explained that Ellen Pao was passed over for a promotion because she lacked the right “chemistry” and failed to demonstrate “thought leadership,” “pattern matching,” and “magnet skills.”
- However, Kleiner Perkins failed to demonstrate clear standards for identifying these attributes or for achieving partnership.
- In fact, the jury asked the judge to explain “thought leadership” and whether it was something that could be learned over time.

Possible Solutions?

- Pay Attention to the Numbers
 - Any disparity in numbers or high attrition rates may signal issues in the way law firms (or similar companies) promote or support men versus women.
 - Are evaluation and promotion decisions too subjective?
 - Are men and women given similar opportunities?
 - Are men and women being judged on the same scale?
 - Launch an internal review of the company culture
- Change the Company Culture
 - Commit to female advancement
 - Educate supervisors and managers about unconscious bias
 - Establish transparent criteria for promotions and advancement

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THANK YOU

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