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Women in Law: A Statistical Review of the Status of Women Attorneys in Idaho

Jessica R. Gunder

Women make up 50.8% of the population of the United States,¹ receive over 57% of the bachelor's degrees awarded in the United States,² and fill 52.3% of first-year law school classes across the country.³ But are women advancing within the legal profession? And are they doing so at the same rate as their male counterparts?

This is by no means the first time an author has considered the status of women lawyers in Idaho: previous articles have addressed the surprising variance between the number of women who join the profession and the number who advance to leadership roles within the legal field in Idaho.⁴

This article seeks to update the data presented in previous articles with current statistics regarding how women are advancing in the profession. Additionally – where possible – this article includes national data to assess how women in Idaho are faring compared to women in other states. Finally, this article concludes by raising a series of questions with the hope that the answers to these questions may both explain why women are not advancing to some leadership roles and ultimately increase the number of women advancing to leadership roles across the profession.

Percentage of women lawyers

There are more than 1.3 million lawyers⁵ who practice in the United States and 36% of them are women.⁶ The percentage of women practicing in Idaho, however, is just 27% of the state Bar.⁷ See figures 1 and 2 at the top of the following two columns.

The number of women attending law school has increased in recent years, to the point that in 2016 – and for the first time ever – more women

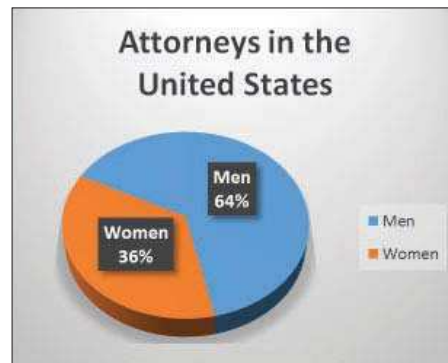


Figure 1



Figure 2

entered law school than men.⁸ In the most recent year for which data is available, 2016, women received 47.3% of all J.D.'s awarded.⁹

However, despite the fact that women have entered the profession at rates nearly equal to men for two decades,¹⁰ women are not advancing to roles providing the greatest influence, status, and financial reward – e.g., partners in law firms, leadership positions in the bar, professors, and judges – at the same rate as their male counterparts.

Women in private practice

In 2004, the ABA's Commission on Women in the Profession evaluated data compiled regarding women in private practice, finding

that women filled 17.1% of partner positions in law firms and 43.4% of associate spots.¹¹ These percentages have increased slightly over the last 14 years. The most recent report from the ABA's Commission on Women in the Profession found that women constitute 22.7% of partners and 45.0% of associates in law firms within the United States.¹²

A review of women in private practice within the state of Idaho reveals similar, small gains. In 2004, women made up 35.2% of the associates and 15% of the partners at large firms.¹³ In the last 14 years, the number of women partners has increased slightly, and women now comprise 18.8% of the partnership positions at large law firms in Idaho.¹⁴ The change in women associ-

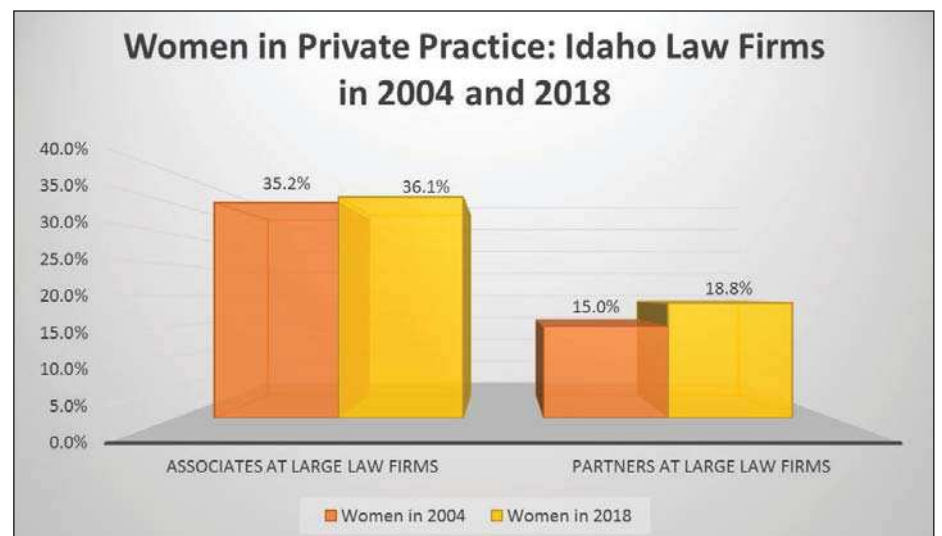


Figure 3

ates has been much more minute, with women currently filling 36.1% of associate positions in large law firms in Idaho.¹⁵ See figure 3 at the bottom of page 23.

While these numbers have improved over the last 14 years, they are troubling in several ways. First, Idaho continues to lag behind the nation on hiring women as associates and promoting women into partnership positions at large law firms. Second, this data shows that – at both the state and national levels – women who pursue careers in private practice and obtain positions as associates at law firms are not being promoted into partnership roles at the same rate as their male counterparts. Third, while the percentage of women associates at large law firms in the United States and in Idaho has increased slightly since 2004, that number has not reflected the number of women law graduates over that time.

Women in leadership roles in the bar

Despite making up just 27% of the active members of the Idaho State Bar,¹⁶ women serve as 57.1% of the Idaho State Bar’s Section chairs.¹⁷ This percentage is a large increase from 2008, when women held 37% of the section chair positions (despite comprising just 24% of the Idaho State Bar at that time).¹⁸ These numbers exceed even the number of women holding leadership roles in the American Bar Association, where women hold 45.1% of ABA leadership roles.¹⁹

Women in academia

Among the full-time faculty at

	Women	Men
Assistant Professors	50%	50%
Associate Professors	61.1%	38.9%
Professors	53.3%	46.7%
Deans	28.5%	71.5%

Chart 1

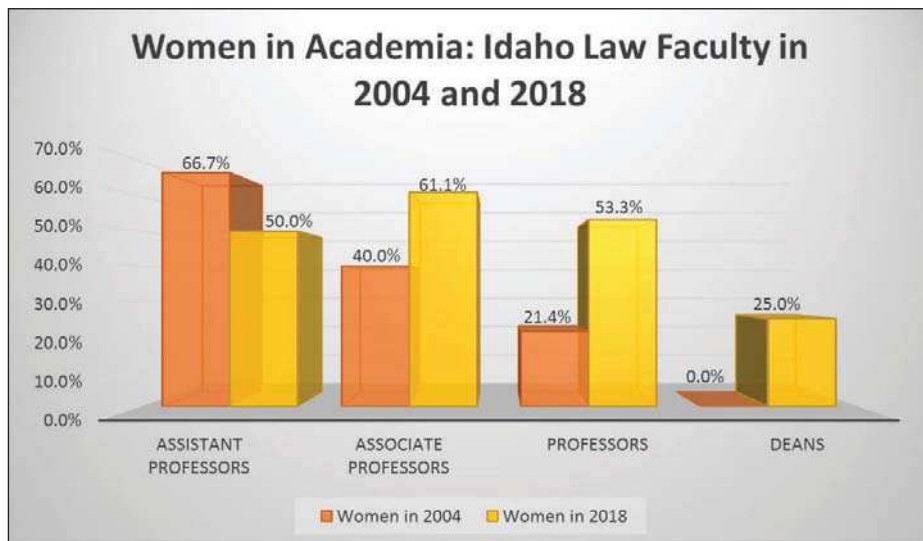


Figure 4

the two law schools in Idaho – the University of Idaho College of Law and Concordia University School of Law – the findings are as follows: (1) men outnumber women in dean and in full-professor faculty positions; (2) there are more women associate professors than men who hold that title; and (3) women hold the same number of assistant professor positions as men.²⁰ See chart 1 below in left column.

While women still lag behind their male counterparts in both dean and full-professor faculty positions, these numbers represent significant gains from 2004.²¹ See figure 4 above.

Additionally, women law faculty in Idaho have reached tenure at a rate that exceeds their colleagues in other states. 42.9% of the tenured faculty at Idaho’s two law schools are women,²² while the ABA’s most

recent survey of law school faculty in the United States found that women made up 32.7% of the ranks of tenured professors nationwide.²³

The ABA’s most recent survey of law school faculty in the United States found that women made up 46.4% of law school deans (including individuals holding the title of dean, associate dean, or vice dean) across the country,²⁴ however, as previously noted, only 28.5% of those same deanship positions at Idaho law schools are held by women.²⁵

Women in the judiciary

Approximately 33% of our nation’s state court judges are women,²⁶ however, Idaho’s numbers lag behind those nationwide figures.²⁷

Currently, 22 of the 93 magistrate judges in Idaho are women.²⁸ The first woman District Court judge



Figure 5

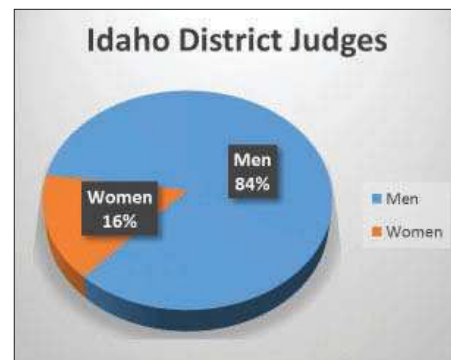


Figure 6

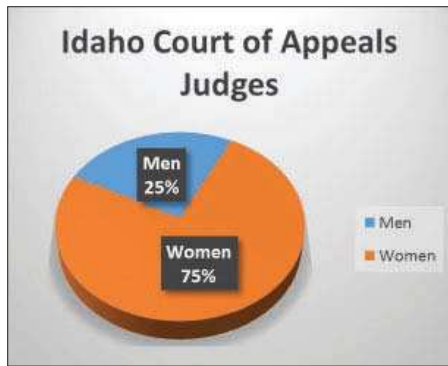


Figure 7



Figure 8

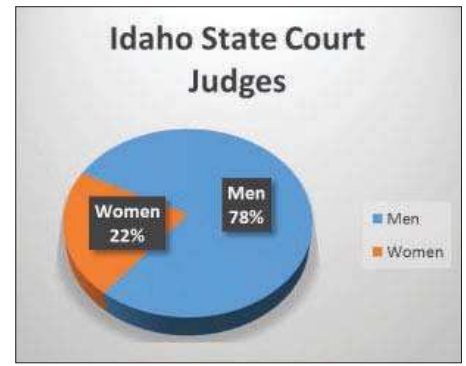


Figure 9

was not appointed until 1983.²⁹ At the time only seven out of the 38 district judges in Idaho are women.³⁰ See figures 5 and 6 at the bottom of page 24.

There were no female Idaho Court of Appeals Judges before 1990;³¹ women now hold three of the four seats on the Court of Appeals.³² The first female Supreme Court justice was not appointed in Idaho until 1992.³³ Currently, only one of the five seats on the Idaho Supreme Court is held by a woman.³⁴ See figures 7 and 8 above.

In sum, across all levels of the Idaho judiciary, women hold only 32 of the 147 total judgeships.³⁵ See figure 9 above in far right column.

In 2013, Nicole Hancock noted that “when female applicants total 25-30%, there is a direct correlation to an increase in the appointments of women to the bench in Idaho” and discussed three instances in 2011 and 2012 in which women were ultimately appointed after reaching that application threshold.³⁶ A review of recent appointment data to see if that trend still held true found that it does not.³⁷

As an initial note, it is rare for women applicants to reach the 25% level.³⁸ But in the limited handful of appointments in which women comprise at least 25% of the applicants for district and appellate judge positions (and, therefore, men comprise 75% or less of the total applicants), men were appointed in eight out of nine instances, or 88.9% of the

time.³⁹ Indeed, in recent years, women actually have been appointed at a higher rate – 20% – when they make up between 1% and 25% of the applicant pool.⁴⁰

What next?

The statistics discussed in this article demonstrate that, despite making some progress in all of the categories discussed, women attorneys in Idaho are underrepresented in positions that provide the greatest influence, status, and financial reward.

A common misperception has been that time will solve this problem, and that we will see more women judges or law partners as women continue entering the profession at numbers equivalent to their male counterparts. This idea is flawed, however, because: (1) studies have found that men and women attorneys with similar qualifications are not equally likely to obtain similar positions,⁴¹ and (2) women have been graduating from law schools at rates near those of men for almost two decades,⁴² but are not advancing in the field at the same rate. For example, men are at least twice as likely as similarly qualified women to obtain partnership⁴³ and median pay for full-time female lawyers is only 77.4% of the pay received by full-time male lawyers.⁴⁴

That this problem extends to Idaho is borne out in the data detailed in this article, showing that women – despite holding 35.2% of the associate positions in large law firms

in Idaho in 2004 – only hold 18.8% of the partnership positions at those same firms today. Additionally, while not the focus of this article, these problems are exacerbated for women of color.⁴⁵

The gap between women’s academic achievements and subsequent professional success is alarming and deserves further inquiry.

Why is the number of active women attorneys in the Idaho State Bar so low? Are they leaving the profession, and if so, why? If women are not advancing to partnership roles at large law firms or the judiciary, where are they practicing?

Additionally, the number of women holding leadership positions in the Bar presents a stark difference from the number of women who have advanced in the other roles described in this article and merits consideration. Why have women been so successful in pursuing leadership positions within the Idaho State Bar when they are not advancing at a similar rate in large law firms, academia, and the judiciary?

Perhaps by learning the answers to those questions we can begin to increase the number of women advancing to leadership roles across the profession.

Endnotes

1. U.S. Census Bureau, Census Quick Facts, <https://www.census.gov/quick-facts/fact/table/US/PST045217>.
2. National Center for Education Statistics, Table 318.30. Bachelor’s, master’s, and doctor’s degrees conferred by post-

secondary institutions, by sex of student and discipline division: 2015-16, https://nces.ed.gov/programs/digest/d17/tables/dt17_318.30.asp.

3. ABA Law School Data: JD Total 1L Enrollment Data, Fall 2017 (posted 04/02/2018), available at https://www.americanbar.org/groups/legal_education/resources/statistics/

4. See, e.g., Nicole Hancock, *Are We There Yet: A Statistical View of Equality for Women in Idaho*, 56 *Advocate* 28 (2013); Lynn Lubamersky, *The Status of Idaho Women Lawyers Today*, 51 *Advocate* 30 (2008); Syrena Case Hargrove & Karin Dwelle, *Women in the Profession*, 47 *Advocate* 17 (2004).

5. The ABA's data is based on demographic data reported by 56 states and territories. ABA National Lawyer Population Survey: 10-Year Trend in Lawyer Population by State (2018), https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_by_State_2008-2018.authcheckdam.pdf.

6. ABA National Lawyer Population Survey (2018), https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.authcheckdam.pdf.

7. This percentage includes all active members of the bar. If all women, regardless of status (active, inactive, judicial, etc.), are counted, women make up 28% of the membership of the Idaho bar. Idaho State Bar Association, *Membership Statistics – Gender and Age Breakdowns*, March 14, 2018.

8. Stephanie Francis Ward, *Women outnumber men in law schools for the first time, newly updated data show* (2016), http://www.abajournal.com/news/article/women_outnumber_men_in_law_schools_for_first_time_newly_updated_data_show.

9. American Bar Association – Commission on Women in the Profession, *A Current Glance at Women in the Law* (Jan. 2018).

10. Elizabeth Olson, *More Law Degrees for Women, but Fewer Good Jobs*, *The New York Times*, Nov. 30, 2016.

11. American Bar Association – Commission on Women in the Profession, *A Current Glance at Women in the Law* (2005) (based on reports published in 2004).

12. American Bar Association – Commission on Women in the Profession, *supra* note 9.

13. Large firms were defined as having more than 10 attorneys. Hargrove & Dwelle, *supra* note 4, at 18.

14. Data is from November 2018 and was compiled from websites of Idaho law firms with more than 10 attorneys.

15. *Id.*

16. Idaho State Bar Association, *supra* note 7.

17. Data is from November 2018 and

was compiled from the Idaho State Bar's website.

18. Lubamersky, *supra* note 4, at 31.

19. Data is from November 2018, and was compiled from the ABA's website. This calculation includes the ABA's Officers, Members of the Board of Governors, and chairs of committees of the Board of Governors.

20. Data is from November 2018 and was compiled from websites of Idaho law schools. Individuals serving in the role of Dean, Assistant Dean, or Associate Dean are all counted as 'Dean' and not included in the tally related to faculty.

21. Hargrove & Dwelle, *supra* note 4, at 18. Concordia did not open until 2012, and as a result, this article only considered the University of Idaho College of Law. Additionally, the 2004 data included both 'Instructors' and 'Assistant Professors' in the tally for Assistant Professors. At this time, neither the University of Idaho nor Concordia list any 'Instructors' among its full-time faculty.

22. Data is from the author's personal knowledge and from correspondence in December 2018 with Victoria J. Haneman. The author appreciates Professor Haneman's assistance.

23. American Bar Association, *ABA Approved Law School Staff and Faculty members, Gender and Ethnicity: Fall 2013*. The ABA's data does not delineate Associate Professors and Assistant Professors.

24. *Id.*

25. Data is from November 2018 and was compiled from websites of Idaho law schools.

26. The American Bench 2018, Forster-Long, LLC.

27. Email from Andrea Patterson, HR Director, Idaho Courts, to author (November 6, 2018 14:01 MST) (on file with author). The author is grateful for Ms. Patterson's assistance.

28. *Id.*

29. Lubamersky, *supra* note 4, at 31.

30. Email from Andrea Patterson, *supra* note 27.

31. Lubamersky, *supra* note 4, at 30.

32. The data for this article was collect-

ed in November 2018 from the Idaho Supreme Court's website. At that time, women held two of the four seats on the Idaho Court of Appeals. However, on November 30, 2018, Amanda Brailsford was appointed to fill Judge Gutierrez's seat on the Idaho Court of Appeals when he retires.

33. Hancock, *supra* note 4, at 29.

34. Data is from November 2018 and was compiled from the Idaho Supreme Court's website.

35. Email from Andrea Patterson, *supra* note 27.

36. Hancock, *supra* note 4, at 30.

37. Email from Suzanne Guinard, HR Specialist, Idaho Courts, to author (November 19, 2018 16:20 MST) (on file with author). Many thanks to Ms. Guinard who gathered recruitment statistics for all currently sitting judges.

38. *Id.*

39. *Id.*

40. *Id.*

41. Deborah L. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, ABA Commission on Women in the Profession (2001).

42. Elizabeth Olson, *supra* note 10.

43. Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 356 (1995).

44. Debra Cassens Weiss, *Full-time female lawyers earn 77 percent of male lawyer pay* (2016), http://www.abajournal.com/news/article/pay_gap_is_greatest_in_legal_occupations/. Indeed, a recent study found that the average compensation paid to male partners is 53% more than the average amount paid to female partners. Debra Cassens Weiss, *Study finds male partners make an average of 53% more than female partners at top law firms* (posted 12/06/2018), http://www.abajournal.com/news/article/study_finds_53_percent_gap_in_pay_between_male_and_female_partners/.

45. Rhode, *supra* note 41.

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