

Women in the Courtroom Symposium: Judges, in-house counsel and law firms as change agents

Agenda and speaker biographies

April 17, 2018



Agenda | Tuesday, April 17, 2018

Sky Philadelphia, Three Logan Square, 1717 Arch Street, 51st Floor, Philadelphia, PA 19103

12:30 – 1:00 p.m.	Registration and lunch
1:00 – 1:45 p.m.	Welcome address <ul style="list-style-type: none">• Sandy Thomas, Global Managing Partner, Reed Smith• Sara Begley, Partner, Global Chair – Women’s Initiative Network, Reed Smith Keynote: Diversity among practicing attorneys and in ADR <ul style="list-style-type: none">• Hon. Shira Scheindlin, U.S. District Judge (ret.) and AAA Arbitrator and Mediator
2:00 – 2:45 p.m.	Panel I: A view from the bench <p>Panelists:</p> <ul style="list-style-type: none">• Hon. Cynthia M. Rufe, U.S. District Judge• Hon. Shira Scheindlin, U.S. District Judge (ret.) and AAA Arbitrator and Mediator <p>Moderator:</p> <ul style="list-style-type: none">• Roberta Liebenberg, Senior Partner, Fine, Kaplan and Black; and co-author of the ABA report “First chairs at trial: More women need seats at the table” <p><i>Light refreshments will be served between panel I and panel II</i></p>
3:00 – 3:45 p.m.	Panel II: The in-house counsel perspective <p>Panelists:</p> <ul style="list-style-type: none">• Lynn Charytan, EVP and GC at Comcast Cable, and SVP and Senior Deputy GC at Comcast Corporation• Jennifer Dubas, SVP and Chief Compliance Officer at Endo Pharmaceuticals• Malini Moorthy, Head of Global Litigation, VP and Associate GC at Bayer Corporation• PD Villarreal, SVP – Global Litigation at GlaxoSmithKline <p>Moderator:</p> <ul style="list-style-type: none">• Sara Begley, Partner, Global Chair – Women’s Initiative Network, Reed Smith
4:00 – 5:00 p.m.	Cocktail reception

Speaker biographies



Hon. Shira Scheindlin (Ret.) – Keynote Speaker

Former United States District Court Judge Shira A. Scheindlin serves as an arbitrator, mediator and special master. She also conducts neutral evaluations, mock trials and arguments as well as internal investigations.

Judge Scheindlin, who was appointed to the bench in 1994 by President Bill Clinton, presided over numerous criminal and civil cases during her 22-year tenure with the Southern District of New York. Among many important cases, her opinions in electronic case management are recognized as case law landmarks. Since leaving the bench in May of 2016, she has conducted many mediations and arbitrations and has handled a number of mock trials and arguments.

Judge Scheindlin is an adjunct professor at NYU Law School and a member of the College of Commercial Arbitrators and the CPR Panel, where she serves as Co-chair of the Diversity in ADR Task Force. She is also a member of the American Arbitration Association and the International Centre for Dispute Resolution. She is the Chair of the Federal Courts Subcommittee of the American Bar Association's Standing Committee on the American Judicial System, and Co-chair of the New York State Bar Association Task Force on Women's Initiatives. She serves on the board of directors of the Lawyers Committee for Civil Rights under Law, the American Constitution Society, the Bronx Defenders and the Justice Resource Center.



Sara A. Begley – Symposium Chair Reed Smith

Sara Begley is a seasoned employment litigator known for her results-driven, practical approach to solving complex, high-stakes matters for corporate employers. Her practice includes a wide scope of employment litigation, including defending employers against discrimination, retaliation, sexual harassment and whistleblower claims. Ms. Begley represents employers in EEOC investigations involving claims of systemic discrimination, as well as EEOC class actions and matters involving commissioner charges. She is frequently tapped to conduct internal investigations of employment-related complaints involving the highest levels of client organizations, and advises general counsel and c-suite executives on implementing post-investigation recommendations.

Ms. Begley is recognized by *Chambers USA* as an “outstanding” trial lawyer who “stands out for her strategic thinking and practical advice.” She is also recognized by *Legal 500* and *Best Lawyers in America* for excellence in employment law. Ms. Begley served as the Global Practice Group Leader for Reed Smith's Labor & Employment Group from 2012 to 2017 and is presently the Global Chair of Reed Smith's award-winning Women's Initiative Network.



Lynn R. Charytan

Comcast Cable and Comcast Corporation

Lynn Charytan serves as Executive Vice President and General Counsel of Comcast Cable. In this role, she is responsible for overseeing the full range of legal affairs of Comcast Cable and the wide array of technologies, products and services delivered to both consumers and businesses in 39 states and Washington, DC. Additionally, in her continuing role as Senior Vice President and Senior Deputy General Counsel for Comcast Corporation, Ms. Charytan oversees the company's regulatory compliance with the NBCUniversal transaction requirements.

Ms. Charytan previously served as Senior Vice President of Legal Regulatory Affairs and Senior Deputy General Counsel of Comcast Corporation, responsible for providing corporate-wide legal advice on regulatory matters and overseeing the company's legal regulatory advocacy.

Prior to joining Comcast in 2010, Ms. Charytan spent more than 17 years at WilmerHale, where she served as the chair of its Communications, Privacy and Internet Law Practice Group. Prior to joining WilmerHale in 1993, Ms. Charytan spent two years as in-house counsel to the *Washington Post*. She also clerked for Judge Stanley Sporkin on the U.S. District Court for the District of Columbia.

Ms. Charytan has received many accolades for her exceptional legal skills, having been ranked by *Chambers USA: America's Leading Lawyers for Business*, included in *The Best Lawyers in America* in the area of communications law and ranked for several years running with the highest possible rating on Martindale-Hubbel's Top Rated Lawyers list. She has also been widely recognized for her leadership and achievements in the cable industry, having been repeatedly named one of the "Most Powerful Women in Cable" by *CableFax Magazine*, recognized as a "Wonder Woman" by Multichannel News and named as a CableFax Top Lawyer and one of the CableFax 100.

Ms. Charytan earned a B.A. from Columbia University and a Juris Doctor from Harvard Law School, and graduated from both institutions with honors.



Jennifer E. Dubas

Endo Pharmaceuticals

Jennifer E. Dubas has been Senior Vice President and Chief Compliance Officer at Endo Pharmaceuticals since October 2016. In this role, she is responsible for the strategic direction and operations of Endo's corporate compliance program.

Ms. Dubas joined Endo in 2011 and has been a valued member of Endo's legal leadership team, previously serving as Senior Vice President, Associate General Counsel where she was responsible for managing all non-intellectual property, non-employment litigation for Endo and its subsidiaries. In 2015, she accepted the additional responsibility of managing the legal support for Endo's U.S. Branded Pharmaceutical business. In addition to advising the business on legal matters, Ms. Dubas also provided legal support to Endo's compliance organization, including advising on the successful management of Endo's 2014 Corporate Integrity Agreement and Deferred Prosecution Agreement.

Ms. Dubas has spent her legal career providing effective advice to pharmaceutical, medical device and consumer products companies. She began her professional career as an associate in Dechert's litigation group where she represented various pharmaceutical and consumer product companies. In 2005, Ms. Dubas joined Wyeth's in-house litigation team and then served in a similar capacity for Pfizer, following its acquisition of Wyeth. She holds a Juris Doctor, magna cum laude, from Temple University, and a Bachelor of Arts, magna cum laude, from Bryn Mawr College.



Roberta Liebenberg
Fine, Kaplan and Black

Roberta Liebenberg, a partner at Fine, Kaplan and Black, represents both plaintiffs and defendants in antitrust class actions and other complex commercial litigation. She served as one of the trial counsel for the class in *In re Urethanes Antitrust Litigation*, which resulted in a record-setting judgment against Dow Chemical Company for \$1.06 billion after a four-week jury trial that was affirmed by the Tenth Circuit. Dow ultimately settled for \$835 million, the largest settlement in a price-fixing case from a single defendant. She also represents corporate defendants, including Southwest Airlines, in antitrust cases and successfully defended a shipping executive in a criminal antitrust case of first impression where the court dismissed the indictment after a three-week hearing.

Ms. Liebenberg has led numerous organizations focused on the advancement of women lawyers, including serving as Chair of the Commissions on Women in the Profession for the American Bar Association (ABA), Pennsylvania Bar Association (PBA) and Philadelphia Bar Association. She is Chair of DirectWomen, the only organization devoted to increasing the number of women attorneys on corporate boards, and is Co-chair of the ABA Presidential Initiative on Achieving Long-Term Careers for Women in Law. Ms. Liebenberg has received numerous awards and honors, including being named by the *National Law Journal* as one of the country's 75 most "Outstanding Women Lawyers," and received the Margaret Brent Women Lawyers of Achievement Award from the ABA, the Lynette Norton Award from the PBA and the Sandra Day O'Connor Award from the Philadelphia Bar Association.



Malini Moorthy
Bayer Corporation

Malini Moorthy is the Head of Global Litigation and Vice President and Associate General Counsel of Bayer. She oversees, directs and sets strategy for the company's litigation and leads its civil justice reform efforts. Recognized for her handling of some of the most challenging and complex litigation in the life sciences industry, Ms. Moorthy was named a Visionary Leader in litigation by *Inside Counsel* magazine. She also has been recognized by the National Center for Law and Economic Justice for her extraordinary service to the legal profession and the nonprofit community, the South Asian Bar Association for her achievements as corporate counsel, and Lawyers for Civil Justice for her outstanding contributions to civil justice reform.

Prior to joining Bayer, Ms. Moorthy headed the Civil Litigation Group at Pfizer Inc., where she and her team were awarded In-house Counsel Litigation Team of the Year in 2012 by *Benchmark Litigation*. Earlier, she worked as a litigation associate at law firms in the United States and Canada, including the New York office of Salans, now known as Dentons, and Genest Murray DesBrisay Lamek and McCarthy Tétrault, both in Toronto.

Ms. Moorthy received her bachelor's degree with honors in political science and economics from the University of North Carolina at Chapel Hill, where she was a Morehead Scholar, and her law degree from Queen's University in Ontario, Canada, where she was the editor of the *Queen's Law Review*.



Hon. Cynthia M. Rufe

Hon. Cynthia M. Rufe has been a Judge of the United States District Court, Eastern District of Pennsylvania (EDPA) since 2002. Prior to her appointment to the federal bench, Judge Rufe served as a Judge of the Court of Common Pleas of Bucks County, Pennsylvania.

Judge Rufe has been appointed to lead several product liability/sales and marketing multi-district litigations: for the diabetes drug, Avandia; for Zolof; for Effexor; and, most recently, for *In Re Generic Digoxin and Doxycycline Antitrust Litigation*. Judge Rufe was a member of the State-Federal Multi-Jurisdiction Task Force, which published “Coordinating Multi-Jurisdiction Litigation: A Survival Guide for Judges” available on the JPMDL website.

Judge Rufe also devotes many hours to civics education, chairing the EDPA’s Judicial Outreach and Public Relations Committee and co-chairing the Third Circuit Courts and Community Committee. She remains an appointed member of the Third Circuit Judicial Council Committee on Magistrate Judges.

Judge Rufe has served as a visiting judge with the Third Circuit and Ninth Circuit Court of Appeals. She has also served the Federal Judges Association as an elected board member, Secretary, Vice-President of Communications and now President-Elect. Judge Rufe received a Bachelor of Arts in political science and education from Adelphi University, New York, and a Juris Doctor from the State University of New York at Buffalo Law School.



Elpidio (PD) Villarreal **GlaxoSmithKline**

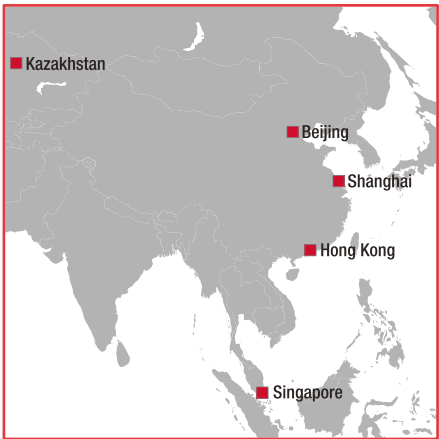
Elpidio (PD) Villarreal is Senior Vice President – Global Litigation of GlaxoSmithKline (GSK). He leads a team of approximately 50 lawyers, paralegals and other professionals, and has responsibility for all of the company’s non-patent litigation. Prior to joining GSK, Mr. Villarreal was Vice President for Litigation at Schering-Plough; prior to that, Mr. Villarreal was Senior Litigation Counsel for the General Electric Company. Before GE, he was a partner at what is now Dentons in Chicago.

Mr. Villarreal has spent his entire career successfully litigating and managing high-stakes, big-ticket litigations and investigations. He has been one of the nation’s pioneers and authorities in the systemic application of alternative dispute resolution techniques and principles to the problem of conflict management. Mr. Villarreal has been responsible for managing many billions of dollars of potential liability and has litigated an extremely broad range of litigation matters, from hostile takeovers to Supreme Court Employee Retirement Income Security Act cases, to product liability cases, to numerous criminal investigations.

Mr. Villarreal is a graduate of Columbia University (magna cum laude, Phi Beta Kappa) and the Yale Law School. He clerked on the United States Court of Appeals for the Seventh Circuit in Chicago for the late Honorable Luther M. Swygert.

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Federal Judges Say Firms, Clients Favor Male Litigators at Their Peril

At a Reed Smith event, former SDNY Judge Shira Scheindlin and current U.S. District Judge Cynthia Rufe highlighted the costs of ignoring gender diversity.

By Dan Packel
April 17, 2018

Client outcomes suffer when both law firms and their clients fail to push for gender diversity, former U.S. District Judge Shira Scheindlin and her Pennsylvania colleague, U.S. District Judge Cynthia Rufe, told an audience in Philadelphia on Tuesday.

Scheindlin, continuing a flurry of public appearances in the wake of a New York State Bar Association report last summer on the paucity of women in court speaking roles, joined Rufe, known for her work overseeing a slew of multidistrict litigations in Pennsylvania's Eastern District, at an event on women in the courtroom at the offices of Reed Smith.

The former New York federal judge, introduced at the event as a "rock star" for her 22-year judicial career and opinions on subjects from stop-and-frisk to e-discovery, provoked the audience with a story from a lawyer at a top New York firm who was asked by a new client for a top trial lawyer for a big case.

"He says, 'I'm going to give you our best. She's fabulous,'" Scheindlin recalled.

"He never met her, but he said, 'I need somebody stronger.' The lawyer said, 'OK, she's our best, but if



Former U.S. District Judge Shira Scheindlin, center, with Len Bernstein and Sara Begley of Reed Smith on April 17, 2018.

you don't want her, we'll give you Mr. So-and-So. The guy was good, but not as good as Ms. X, who didn't get that particular assignment."

Attendees reacted strongly to the tale, with one attorney questioning whether that jilted litigator would have been in her rights to pursue a

discrimination claim against the firm for honoring the client's request.

But one of Scheindlin's immediate points was that putting women in charge of trial teams could win better client results, beyond the larger social ramifications. She followed the story by citing a recent study by jury consultancy DOAR, which found that women jurors tended to favor women attorneys by a greater margin than male jurors favored male attorneys.

"Women have an implicit bias in favor of women attorneys: something to keep in mind for those of you who do jury selection," she said.

Rufe, who uses her role in appointing lead counsel and liaison counsel in MDLs to push for gender diversity, also highlighted the practical benefits of diversity, saying that firms that didn't take the matter into account were selling their clients short.

"Diversity isn't necessarily part of succession planning in law firms, but don't you have a responsibility to make sure clients are taken care of by the best?" she asked. "The best is the best qualified, and diversity provides a better path to success."

Rufe drew a connection between her role tapping MDL leaders and how firms can advance their own top talent.

"I would hesitate to interfere in the inner workings of your law firm, but what I must do is get the best qualified persons—be they male, female, or persons of color—to work with the court on appointments, and I would hope you would want to do the same for your client," she said.

The event also featured perspectives from general counsel, who debated their own role in pushing diversity. One in-house leader questioned the leverage that corporations actually hold over law firms in any long relationship involving significant and continuing litigation.

"They know we're not walking, I know we're not walking, and it's a problem," the general counsel said.

But another panelist was unpersuaded, arguing that clients must be willing to do more.

"The keys are with us, but we're not turning the key," the second general counsel said, before referencing a beauty contest where a law firm came in with eight middle-aged white men, after being told the client was looking for a diverse group of lawyers.

The message for that firm was succinct: "I'm sorry to do this, but you really are wasting our time. This meeting is over."

Ex-Judge Calls On Men To Help Close Litigation Gender Gap

By **Matt Fair**

Law360 (April 17, 2018, 6:59 PM EDT) -- Retired U.S. District Judge Shira Scheindlin told an audience at a Reed Smith LLP symposium on gender diversity in the courtroom on Tuesday that she hoped to see more senior male attorneys acting as allies to help younger, female lawyers more regularly take on prominent roles in litigation.

Scheindlin, who currently serves of counsel at Stroock & Stroock & Lavan LLP, said she hoped that recent attention to the lack of gender parity in the courtroom — highlighted by a recent report that women represented just one quarter of lawyers in civil and criminal cases in New York state — would not be seen as an affront to the class of white, male lawyers who have traditionally taken the lead in litigation.

"There are a lot of white males in this room, and I like you, I love you," she said to laughter. "I do not want you to think I have any animus towards white males, because I don't. We need you. If you're on our team, we're going to win, but if you're adverse to us, nothing will change."

The retired judge's keynote address in Philadelphia comes after she co-authored a report released by the New York State Bar Association in August finding that female attorneys made up only 24.4 percent of all attorneys and 23.1 percent of lead counsel to appear before the bench.

The report was based on surveys solicited by the bar association from judges to track participation rates for female lawyers across different types of cases.

Representation rates dropped, the report found, as cases became more complex, with women serving as lead counsel in 31.6 percent of single-party cases, 26.4 percent of two-party cases and 19.5 percent of cases involving five or more parties.

Scheindlin, who served more than two decades on the federal bench, beginning with her appointment as the first-ever female judge in the Eastern District of New York, told Law360 in an interview before her keynote address that the results of the survey were not especially surprising.

"I knew exactly what the results would be," she said. "I had the experience constantly of walking into court, particularly in a big case, and seeing a sea of men, not a woman in sight, and I mean 20 lawyers, 25 lawyers, big cases. And, of course, the more money that was at stake, the less you saw women involved."

The lack of female attorneys taking lead roles in litigation, while not surprising, was frustrating, she said,

given the advances being made in the federal courts, where now roughly a third of judges are women.

"We had parity on the bench," she said, adding that female judges had an equal shot at overseeing major cases thanks to randomized assignments. "We were equal in every way, but not in terms of the advocates who came in front of us. So that was frustrating to see that we were making progress on the bench but not in the practice as much."

Scheidlin said law firms and major clients were often victims of implicit biases that have helped to maintain the cycle of major business being passed from one male attorney to another over the years.

"I don't think it's a conscious conspiracy to exclude women, but I do think that, over time, you'll have a powerful male partner who's probably been grooming another, younger male partner," she told Law360. "It's kind of natural. People are comfortable with people who look like them and that's the truth of it. The client is inherited and it's hard for a woman to break through that barrier."

These sorts of implicit biases, she said, were also at play on the part of major clients.

"If you're in a big company, and you have a big case, maybe a bet-the-company case, then you don't want to take a risk," she said. "If you think it's a risk to have a woman standing up and arguing your case, you're not going to do it."

She said she believed men in leadership roles in large firms would be willing to help break the cycle as they learned more about the persistent gender disparities in litigation.

"I think they very much can be trusted to do so if they have the willingness to do so," Scheindlin said. "You have to speak to audiences, you have to speak to individuals, you have to encourage them to be conscious of it. I think once their consciousness is raised, most men are very good people and will do it, but they don't think of it."

Scheidlin also told Law360 that law firms need to take concrete steps to keep tabs on how young female attorneys are being put to use, including tracking how many depositions they take, how many court appearances they make, and how many client meetings they attend relative to their male counterparts.

"I think they have to do a lot more tracking to convince themselves whether they're really acting in a gender-neutral way," she said. "If, after you track, you find out that it's disparate, wow, that's a wake up call."

More so than mentors, who might be able to teach how to better argue a motion or draft a brief, Scheindlin said young female attorneys need people to act as sponsors willing to push for the advancement of their careers.

"A sponsor is someone who advocates for you within the company and goes to top management and says, 'This lawyer is really terrific and she should be promoted, she should become lead counsel, we should put her in more client meetings, we need to elect her to the partnership, we need to teach her how to do business development,'" she said.

-- Additional reporting by Matthew Perlman. Editing by Pamela Wilkinson and Marygrace Murphy.

Women in the Courtroom Symposium: Judges, in-house counsel and law firms as change agents

Background reading

April 17, 2018



Background Materials

WOMEN IN THE COURTROOM SYMPOSIUM

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IF NOT NOW, WHEN?

**Achieving Equality for Women Attorneys in
the Courtroom and in ADR**

Report of the New York State Bar Association

**Prepared by the Commercial and Federal Litigation Section's
Task Force on Women's Initiatives: Hon. Shira A. Scheindlin
(ret.); Carrie H. Cohen; Tracee E. Davis; Bernice K. Leber;
Sharon M. Porcellio; Lesley F. Rosenthal; Lauren J. Wachtler**

**Approved by the House
of Delegates
November 2017**

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**IF NOT NOW, WHEN? ACHIEVING EQUALITY FOR WOMEN ATTORNEYS
IN THE COURTROOM AND IN ADR
REPORT OF THE COMMERCIAL AND FEDERAL LITIGATION SECTION
2017 WOMEN’S INITIATIVE STUDY**

I. Introduction

During the last two decades, much has been written and discussed about whether women attorneys appear in court with the frequency expected given their numbers in the legal profession. The Commercial and Federal Litigation Section of the New York State Bar Association is a preeminent bar group focused on complex commercial state and federal litigation. The Section counts among its former chairs a substantial number of prominent women litigators from both upstate and downstate, including a former United States District Judge who previously served as a federal prosecutor and an attorney in private practice, a former President of the New York State Bar Association who is recognized as one of New York’s top female commercial litigators and also serves as a mediator and arbitrator of commercial disputes, a former federal and state prosecutor who now is a partner in a large global law firm, an in-house counsel at a large non-profit corporation, and senior partners in large and mid-size private law firms located both upstate and downstate. With the full support and commitment of the Section’s leadership, these female alumnae Section chairs met and formed an ad hoc task force devoted to the issue of women litigators in the courtroom. The task force also examined the related issue of the apparent dearth of women who serve as arbitrators and mediators in complex commercial and international arbitrations and mediations (collectively referred to herein as Alternative Dispute Resolution (“ADR”)).

As an initial matter, the task force sought to ascertain whether there was, in fact, a disparity in the number of female attorneys versus male attorneys who appear in speaking roles in federal and state courts throughout New York. Toward that end, the task force devised and distributed a survey to state and federal judges throughout the State and then compiled the survey results. As fully discussed below, based on the survey results, the task force found continued disparity and gender imbalance in the courtroom. This report first details recent studies and research on the issue of gender disparity in the legal profession, then discusses how the court survey was conducted, including methodology and findings, and concludes with recommendations for addressing the disparity and ensuring that women attorneys obtain their rightful equal place in the courtroom. This report further details the task force’s findings with respect to the gender gap in the ADR context.

II. Literature Review: Women in Litigation; Women in ADR

There is no shortage of literature discussing the gender gap in the courtroom, which sadly continues to persist at all levels—from law firm associates, to equity partnerships at law firms, to lead counsel at trial. To orient the discussion, the task force sets forth below a brief summary of some of the relevant articles it reviewed.

A. Women in Litigation: Nationwide

ABA Commission on Women in the Profession

The ABA Commission on Women in the Profession (the “ABA Commission”) was founded in 1987 “to assess the status of women in the legal profession and to identify barriers to their achievement.”¹ The following year, with Hillary Rodham Clinton serving as its inaugural chair, the ABA Commission published a groundbreaking report documenting the lack of adequate advancement opportunities for women lawyers.² Thirty years later, the ABA Commission is perhaps the nation’s preeminent body for researching and addressing issues faced by women lawyers.³

In 2015, the ABA Commission published *First Chairs at Trial: More Women Need Seats at the Table* (the “ABA Report”), “a first-of-its-kind empirical study of the participation of women and men as lead counsel and trial attorneys in civil and criminal litigation.”⁴ The study was based on a random sample of 600 civil and criminal cases filed in the United States District Court for the Northern District of Illinois in 2013—a sample that offered a limited but important snapshot into the composition of trial courtrooms at that time.⁵ As summarized by its authors, Stephanie A. Scharf and Roberta D. Liebenberg, the ABA Report showed at a high level the following:

[W]omen are consistently underrepresented in lead counsel positions and in the role of trial attorney In civil cases, [for example], men are three times more likely than women to appear as lead counsel That substantial gender gap is a marked departure from what we expected based on the distribution of

¹ Stephanie A. Scharf & Roberta D. Liebenberg, ABA Commission on Women in the Profession, *First Chairs at Trial: More Women Need Seats at the Table—A Research Report on the Participation of Women Lawyers as Lead Counsel and Trial Counsel in Litigation* at 25 (2015).

² *See id.*

³ *See id.*

⁴ *Id.* At 4.

⁵ *See id.*

men and women appearing generally in the federal cases we examined (a roughly 2 to 1 ratio) and the distribution of men and women in the legal profession generally (again, a roughly 2 to 1 ratio).⁶

The ABA Report also provided more granular statistics about the sample population, including that out of the 558 civil cases surveyed, 68% of all lawyers and 76% of the lead counsel were male.⁷ The disparity was even more exaggerated in the class action context, in which 87% of lead class counsel were men.⁸ The 50 criminal cases studied fared no better: among all attorneys appearing, 67% were men and just 33% were women.⁹

Contextualizing these statistics, the ABA Report also outlined factors that might help to explain the gender disparities evidenced by the data. In particular, the ABA Report posited that:

The underrepresentation of women among lead lawyers may. . . stem from certain client preferences, as some clients prefer a male lawyer to represent them in court. . . . In addition, women may too often be relegated by their law firms to second-chair positions, even though they have the talent and experience to serve as first chairs. The denial of these significant opportunities adversely affects the ability of women to advance at their firms. All of these issues apply with even greater force to women trial attorneys of color, who face the double bind of gender and race.

Id. at 15 (footnote omitted). The ABA Report concluded by offering some “best practices” for law schools, law firms, clients, judges, and women lawyers, many of which focus on cultivating opportunities for women to gain substantive trial experience.¹⁰

Other research corroborates the extent to which gender disparities continue to persist within the legal profession, particularly within law firm culture. This research shows that the presence of women in the legal profession—now in substantial numbers—has not translated into equal opportunities for women lawyers at all levels. For example, a recent law firm survey, conducted by the New York City Bar Association, found that just 35% of all lawyers at surveyed firms in 2015 were women—“despite [the fact that

⁶ *Id.*

⁷ *See id.* at 8-10.

⁸ *See id.* at 12.

⁹ *See id.* at 12-13.

¹⁰ *Id. See also id.* at 14-17.

women have] represent[ed] almost half of graduating law school classes for nearly two decades.”¹¹ That same survey found a disparity in lawyer attrition rates based on gender and ethnicity, with 18.4% of women and 20.8% of minorities leaving the surveyed firms in 2015 compared to just 12.9% of white men.¹² Serious disparities also have been identified at the most senior levels of the law firm structure. Indeed, a 2015 survey by the National Association of Women Lawyers found that women held only 18% of all equity partner positions—just 2% higher than they did approximately a decade earlier.¹³ Based on one study by legal recruiting firm, Major, Lindsey & Africa, it is estimated that the compensation of male partners is, on average, 44% higher than that of female partners.¹⁴

In April 2017, ALM Intelligence focused on Big Law and asked, “Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent.”¹⁵ The author found that certain niche practices such as education, family law, health care, immigration, and labor and employment had the greatest proportion of women; other areas such as banking, corporate, and litigation had the lowest number of female attorneys.¹⁶

Promisingly, however, there also have been significant calls to action—across the bar and bench—to increase advancement opportunities for women lawyers. In interviews conducted after the ABA Report was published, top female trial attorneys cited factors such as competing familial demands, law firm culture (including a desire to have “tried and true” lawyers serve as lead counsel), and too few training opportunities for young lawyers as reasons why so few women were present at the highest ranks of the profession.¹⁷ Those interviewed suggested ways in which law firms can foster the development of women lawyers at firms, including by affording female associates more

¹¹ Liane Jackson, *How can barriers to advancement be removed for women at large law firms?*, ABA Journal (Jan. 1, 2017), http://www.abajournal.com/magazine/article/visible_difference_women_law.

¹² *See id.*

¹³ Andrew Strickler, *Female Attorneys Should Grab High-Profile Work: Bar Panel*, Law360 (Jan. 27, 2016), <https://www.law360.com/articles/750952/female-attorneys-should-grab-high-profile-work-bar-panel>.

¹⁴ *See id.*

¹⁵ Daniella Isaacson, ALM Intelligence, *Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent* (Apr. 2017).

¹⁶ Meghan Tribe, *Study Shows Gender Diversity Varies Widely Across Practice Areas*, The Am Law Daily (Apr. 17, 2017) <http://www.americanlawyer.com/id=1202783889472/Study-Shows-Gender-Diversity-Varies-Widely-Across-Practice-Areas> (citing Daniella Isaacson, ALM Intelligence, *Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent* (Apr. 2017)).

¹⁷ Mary Ellen Egan, *Too Few Women in Court*, The American Lawyer (Apr. 25, 2016), <http://www.americanlawyer.com/id=1202755433078/Too-Few-Women-in-Court>.

courtroom opportunities and moving away from using business generation as the basis for determining who is selected to try a case.¹⁸ Among those interviewed was Ms. Liebenberg, one of the co-authors of the ABA Report. She stressed that clients can play an important role by using their economic clout to insist that women play a significant role in their trial teams.¹⁹

In another follow-up to the ABA Report, Law360 published an article focusing on the ABA Report's recommendation that judges help to close the gender gap by encouraging law firms to give young lawyers (including female and minority associates) visible roles in the courtroom and at trial.²⁰ The article highlighted the practice of some judges around the country in doing this, such as Judge Barbara Lynn of the Northern District of Texas. As explained in the article, Judge Lynn employs a "standard order"—adapted from one used by Judge William Alsup of the Northern District of California—that encouraged parties to offer courtroom opportunities to less experienced members of their teams.²¹ One such order provides: "In those instances where the court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing."²² As explained in the article, Judge Lynn said that, while her order does not mention gender, younger lawyers in her courtroom tend to include more women.

Indeed, a recent survey revealed that nineteen federal judges have issued standing orders that encourage law firms to provide junior attorneys with opportunities to gain courtroom experience.²³ Here are some examples of such orders:

- Judge Indira Talwani (D. Mass): "Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned judge, as a matter of policy, strongly encourages the participation of relatively inexperienced attorneys in all courtroom proceedings including but not limited to initial scheduling conferences, status conferences, hearings on discovery motions, and examination of witnesses at

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ Andrew Strickler, *Judges Key to Closing Trial Counsel Gender Gap*, Law360 (July 20, 2015) <https://www.law360.com/articles/680493/judges-key-to-closing-trial-counsel-gender-gap>.

²¹ *Id.*

²² *Id.*

²³ Michael Rader, *Rising to the Challenge: Junior Attorneys in the Courtroom*, 257 N.Y.L.J. 4 (Apr. 28, 2017).

trial.”

- Judge William Alsup (N.D. Cal.): “The Court strongly encourages lead counsel to permit young lawyers to examine witnesses at trial and to have an important role. It is the way one generation will teach the next to try cases and to maintain our district’s reputation for excellence in trial practice.”
- Magistrate Judge Christopher Burke (D. Del.) “indicates that the court will make extra effort to grant argument—and will strongly consider allotting additional time for oral argument—when junior lawyers argue.”
- Judge Allison Burroughs (D. Mass) offers law firm associates the chance to argue a motion after the lead attorneys have argued the identical motion.²⁴

As explained in the article cited below, there are benefits to both the lawyer and the client in having junior attorneys play a more significant role in the litigation:

When it comes to examining a witness at trial, junior lawyers frequently have a distinct advantage over their more senior colleagues. It is very often the junior lawyer who spent significant time with the witness during the discovery process In the case of an expert witness, the junior lawyer probably played a key role in drafting the expert report. In the case of a fact witness, the junior lawyer probably worked with the witness to prepare a detailed outline of the direct examination. . . . [C]lients should appreciate that the individual best positioned to present a witness’s direct testimony at trial may be the junior attorney who worked with that witness The investment of time required to prepare a junior attorney to examine a witness or conduct an important argument can be substantial, but this type of hands-on mentoring is one of the most rewarding aspects of legal practice.²⁵

At the same time, practitioners also have urged junior female attorneys to seek out advancement opportunities for themselves—a sentiment that was shared by panelists at a conference hosted by the New York State Bar Association in January 2016. Panel members—who spoke from a variety of experiences, ranging from that of a federal District Court Judge to a former Assistant U.S. Attorney to private practice—“uniformly called for rising female attorneys to seek out client matters, pro bono cases, bar roles, and other responsibilities that would give them experience as well as profile beyond their

²⁴ *Id.*

²⁵ *Id.*

home office.”²⁶

ABA Presidential Task Force on Gender Equity

In 2012, American Bar Association President Laurel G. Bellows appointed a blue-ribbon Task Force on Gender Equity (“Task Force”) to recommend solutions for eliminating gender bias in the legal profession.²⁷ In 2013, the Task Force in conjunction with the ABA Commission published a report that discussed, among other things, specific steps clients can take to ensure that law firms they hire provide, promote, and achieve diverse and inclusive workplaces.²⁸ Working together, the Task Force concluded, “general counsel and law firms can help reduce and ultimately eliminate the compensation gap that women continue to experience in the legal profession.”²⁹

The Task Force recommended several “best practices” that in-house counsel can undertake to promote the success of women in the legal profession. As a “baseline effort,” corporations that hire outside counsel, including litigators, should inform their law firms that the corporation is interested in seeing female partners serving as “lead lawyers, receiving appropriate origination credit, and being in line for succession to handle their representation on behalf of the firm.”³⁰ Corporate clients can also expand their list of “go-to” lawyers by obtaining referrals to women lawyers from local bar associations; contacting women lawyers in trial court opinions issued in areas of expertise needed; and inviting diverse lawyers to present CLE programs.³¹ This allows the corporate clients to use their “purchasing power” to ensure that their hired firms are creating diverse legal teams.³²

The Task Force also reported that clients can utilize requests for proposal and pitch

²⁶ Andrew Strickler, *Female Attorneys Should Grab High-Profile Work: Bar Panel*, Law360 (Jan. 27, 2016) <https://www.law360.com/articles/750952/female-attorneys-should-grab-high-profile-work-bar-panel> (emphasis added).

²⁷ *ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession, Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* (2013).

²⁸ *Publications from the ABA Presidential Task Force on Gender Equity*, AMERICAN BAR ASSOCIATION (2012), https://www.americanbar.org/groups/women/gender_equity_task_force/task_force_publications.html.

²⁹ *Id.*

³⁰ *Id.* at 6. For an in-depth discussion of recommendations for steps clients can take to combat the gender disparity in courtrooms, see *infra* Part F.

³¹ *Id.* at 9.

³² *Id.* at 8.

meetings to convey their diversity policies to outside firms and “specify metrics by which they can better evaluate a firm’s commitment to women lawyers.”³³ When in-house counsel ask their outside firms to provide data, they demonstrate to the firms their consciousness of metrics, and the data allows them to benchmark the information against other firms.³⁴

Perhaps the most impactful practice corporate clients can undertake is a “deepened level of inquiry,” which involves investigating how work is credited within law firms.³⁵ For example, a general counsel may tell a firm that she wants “the woman lawyer on whom she continually relied to be the relationship partner and to receive fee credit for the client’s matters” even if that means “transferring that role from a senior partner” that might cause “tension in the firm.”³⁶

Finally, clients can “lead by example, both formally and informally” by partnering with law firms committed to bringing about pay equity.³⁷ The Task force professed that by doing so, corporate clients have the power to shatter the “last vestiges of the glass ceiling in the legal profession.”³⁸

Call for Diversity by Corporate Counsel

The ABA was not the first and only organization to recognize the growing importance of gender equity in the legal profession. In 1999, Charles R. Morgan, then Chief Legal Officer for BellSouth Corporation, developed a pledge titled Diversity in the Workplace: A Statement of Principle (“Statement of Principle”) as a reaction to the lack of diversity at law firms providing legal services to Fortune 500 companies.³⁹ Mr. Morgan intended the Statement of Principle to function as a mandate requiring law firms to make immediate and sustained improvements in diversity initiatives.⁴⁰ More than four hundred Chief Legal Officers of major corporations signed the Statement of Principle,⁴¹

³³ *Id.* at 10.

³⁴ *See id.* at 11.

³⁵ *See id.* at 13.

³⁶ *Id.* at 10.

³⁷ *Id.* at 15.

³⁸ *Id.*

³⁹ Donald O. Johnson, *The Business Case for Diversity at the CPCU Society* at 5 (2007), <https://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf>.

⁴⁰ Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴¹ Donald O. Johnson, *The Business Case for Diversity at the CPCU Society* at 5 (2007),

which served as evidence of commitment by signatory corporations to a diverse legal profession.⁴²

By 2004, however, Rick Palmore, a “nationally recognized advocate for diversity in the legal industry,”⁴³ then serving as an executive and counsel at Sara Lee Corporation, observed that efforts for law firm diversity had reached a “disappointing plateau.”⁴⁴ Mr. Palmore authored *A Call to Action: Diversity in the Legal Profession*, (“Call to Action”), which built upon the Statement of Principle.⁴⁵ The Call to Action focused on three major elements: (1) the general principle of having a principal’s interest in diversity; (2) diversity performance by law firms, especially in hiring and retention; and (3) commitment to no longer hiring law firms that do not promote diversity initiatives.⁴⁶

Mr. Palmore pledged to “make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms.” To that end, he called upon corporate legal departments and law firms to increase the numbers of women and minority attorneys hired and retained.⁴⁷ Mr. Palmore stated that he intended to terminate relationships with firms whose performances “consistently evidence[] a lack of meaningful interest in being diverse.”⁴⁸ By December 4, 2004, the Call to Action received signatory responses from seventy-two companies, including corporate giants such as American Airlines, UPS, and Wal-Mart.⁴⁹ Both the Statement of Principle and *A Call to Action* reflect the belief of many leading corporations that diversity is important and has the potential to profoundly impact business performance.⁵⁰

<https://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf>.

⁴² Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴³ Rick Palmore, Senior Counsel, Dentons US LLP; LCLD Founding Chair Emeritus http://www.lclldnet.org/media/mce_filebrowser/2017/02/22/Palmore.Rick-Fellows-branded-bio.2.13.17.pdf (last visited May 30, 2017).

⁴⁴ Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴⁵ Melanie Lasoff Levs, *Call to Action: Sara Lee's General Counsel: Making Diversity a Priority*, DIVERSITY & THE BAR (Jan./Feb. 2005), <http://archive.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=803>.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, 8 ENGAGE 21, 21 (2004).

⁴⁹ Melanie Lasoff Levs, *Call to Action: Sara Lee's General Counsel: Making Diversity a Priority*, DIVERSITY & THE BAR (Jan./Feb. 2005), <http://archive.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=803>.

⁵⁰ Donald O. Johnson, *The Business Case for Diversity at the CPCU Society* at 7 (2007),

B. Women in ADR

Turning to the ADR context, the governing principle should be that panels of “[n]eutrals should reflect the diverse communities of attorneys and parties whom they serve.”⁵¹ This statement strikes us as the best way to begin our survey of the literature concerning the status of women in the world of ADR.

It should come as no surprise that much has been written about the lack of diversity among ADR neutrals, especially those selected for high-value cases. As a 2017 article examining gender differences in dispute resolution practice put it, “the more high-stakes the case, the lower the odds that a woman would be involved.”⁵² Data from a 2014 ABA Dispute Resolution Section survey indicated that for cases with between one and ten million dollars at issue, 82% of neutrals and 89% of arbitrators were men.⁵³ Another survey estimated that women arbitrators were involved in just 4% of cases involving one billion dollars or more.⁵⁴

One part of the problem may be that relatively few women and minorities are present within the field. For example, one ADR provider estimated that in 2016 only 25% of its neutrals were women, 7% were minorities, and 95% were over fifty.⁵⁵ Similarly, in 2016, the International Centre for Settlement of Investment Disputes (an arm of the World Bank) reported that only 12% of those selected as arbitrators in ICSID cases were women.⁵⁶ Similarly, the International Institute for Conflict Prevention and Resolution (CPR)

<https://www.cpcusociety.org/sites/dev.aicpcu.org/files/imported/BusinessDiversity.pdf>.

⁵¹ Theodore K. Cheng, *A Celebration of Diversity in Alternative Dispute Resolution*, Diversity and the Bar Spring 2017 MCCA.com at 14.

⁵² Noah Hanft, *Making Diversity Happen in ADR: No More Lip Service*, 257 N.Y.L.J. S6 (Mar. 20, 2017).

⁵³ See *id.* (citing *Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey* (Jan. 2014)).

⁵⁴ See Christine Simmons, *Where Are the Women and Minorities in Global Dispute Resolution?*, The American Lawyer (Oct. 10, 2016) <http://www.americanlawyer.com/id=1202769481566/Where-Are-the-Women-and-Minorities-in-Global-Dispute-Resolution?mcode=0&curindex=0&curpage=ALL>.

⁵⁵ See Noah Hanft, *Making Diversity Happen in ADR: No More Lip Service*, 257 N.Y.L.J. S6 (Mar. 20, 2017) (citing Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, <http://www.law.com/sites/almstaff/2016/10/05/adr-business-wakes-up-to-glaring-deficit-of-diversity/> (Oct. 5, 2016)).

⁵⁶ See Christine Simmons, *Where Are the Women and Minorities in Global Dispute Resolution?*, The American Lawyer (Oct. 10, 2016) <http://www.americanlawyer.com/id=1202769481566/Where-Are-the-Women-and-Minorities-in-Global-Dispute-Resolution?mcode=0&curindex=0&curpage=ALL>.

reported that of more than 550 neutrals who serve on its worldwide panels, about 15% are women and 14% are minorities.⁵⁷

One of the concerns raised by this lack of diversity among neutrals is that it diminishes the legitimacy of the process.⁵⁸ But as one recent article in the New York Law Journal suggests, it may be even harder to take steps to improve diversity within ADR than it is to do so in law firms given the incentives of key stakeholders in the ADR context.⁵⁹ In particular, the article argues that law firms may be more inclined to recommend familiar, well-established (likely male) neutrals with the intent of trying to achieve a favorable outcome, and their clients may be more willing to accept their lawyers' recommendations for that same reason.⁶⁰

Comparing ADR statistics with those of the judiciary is revealing. Approximately 33% of federal judges are women and 20% are minorities—which is far ahead of the numbers in the world of ADR.⁶¹ Despite ADR's "quasi-public" nature, it remains a private and confidential enterprise for which gender and racial statistics for ADR providers are not fully available.⁶² Nonetheless, the information that is available reveals a stark underrepresentation of women and minority arbitrators and mediators.⁶³ In short, the overwhelming percentage of neutrals are white men and the lowest represented group is minority women. It is no wonder that one attorney reported that, in her twenty-three years of practice, she had just three cases with non-white male neutrals.⁶⁴

⁵⁷ Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

⁵⁸ See Christine Simmons, *Where Are the Women and Minorities in Global Dispute Resolution?*, The American Lawyer (Oct. 10, 2016) <http://www.americanlawyer.com/id=1202769481566/Where-Are-the-Women-and-Minorities-in-Global-Dispute-Resolution?mcode=0&curindex=0&curpage=ALL>.

⁵⁹ See Noah Hanft, *Making Diversity Happen in ADR: No More Lip Service*, 257 N.Y.L.J. S6 (Mar. 20, 2017) (citing Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, <http://www.law.com/sites/almstaff/2016/10/05/adr-business-wakes-up-to-glaring-deficit-of-diversity/> (Oct. 5, 2016)).

⁶⁰ See *id.*

⁶¹ Laura A. Kaster, et al., *The Lack of Diversity in ADR—and the Current Beneath*, American Inns of Court (Mar./Apr. 2017) at 14.

⁶² Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016); see also Laura A. Kaster, *Choose Diverse Neutral to Resolve Disputes—A Diverse Panel Will Improve Decision Making* ("Because alternative dispute resolution is a privatization of otherwise public court systems, it is . . . valid to compare the public judiciary to private neutrals in commercial arbitration.").

⁶³ ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession, *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* (2013).

⁶⁴ Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

The homogeneity within the ADR field is even worse at the case-specific level. A 2014 survey published by the American Bar Association indicated a clear disparity in the types of cases for which women neutrals were selected: whereas 57% of neutrals in family, elder, and probate cases were women, this figure was just 37% for labor and employment actions, 18% for corporate and commercial cases, and 7% for intellectual property cases.⁶⁵

Some have theorized that the reason for the lack of diversity within ADR—both in the neutrals available for selection and the types of cases for which diverse neutrals are selected—is a “chronological lag”: most neutrals who are actually selected are retired judges or lawyers with long careers behind them, who comprise a pool of predominantly white males.⁶⁶ But, women have been attending law school at equal rates as men for more than ten years and there is no dearth of qualified female practitioners.⁶⁷ Accordingly, other important but difficult to overcome factors may include implicit bias by lawyers or their related fear of engaging neutrals who may not share their same background (and therefore, who they believe may arrive at an unfavorable decision).⁶⁸ This cannot be an excuse: “the privatization of dispute resolution through ADR . . . cannot alter the legitimacy of requiring that society’s dispute resolution professionals, who perform a quasi-public function, reflect the population at large.”⁶⁹

This disparity continues to exist despite the well-documented benefits for all stakeholders of diversity in decision-making processes. Indeed, studies indicate that “when arbitration involves a panel of three, the parties are likely to have harder working panelists and a more focused judgment from the neutrals if the panel is diverse.”⁷⁰ This is because “when members of a group notice that they are socially different from one another, . . . they assume they will need to work harder to come to a consensus. . . . [T]he hard work can lead to better outcomes.”⁷¹ In order to move the needle on diversity in the ADR field, especially with respect to lawyers’ selection of neutrals which is arguably the

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ David H. Burt, *et al.*, *Why Bringing Diversity to ADR Is a Necessity*, ACC Docket at 44 (Oct. 2013).

⁶⁸ *Id.*; see also Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

⁶⁹ Laura A. Kaster, *Why and How Corporations Must Act Now to Improve ADR Diversity*, Corporate Disputes (Jan.-Mar. 2015).

⁷⁰ Laura A. Kaster, *Choose Diverse Neutral to Resolve Disputes—A Diverse Panel Will Improve Decision Making*.

⁷¹ *Id.*

largest driver of the composition of ADR panels, “[w]hat may be missing is the firm belief that diversity matters not just for basic fairness and social equity but also for better judgment.”⁷²

In a recent article, Theodore Cheng, an ADR specialist, described what he sees as the failure of the legal community to accept the fact that diversity in the selection of neutrals is both necessary and beneficial. He begins by noting that “the decision-making process is generally improved, resulting in normatively better and more correct outcomes, when there exist different points of view.”⁷³ Cheng then notes the gap between the commitment to diversity by companies in their own legal departments versus their commitment to diversity in the ADR process.

The efforts on the part of corporate legal departments to ensure diverse legal teams does not appear to extend to the selection of neutrals – a task routinely delegated to outside counsel. Mr. Cheng’s article explains that outside counsel may be afraid of taking a chance on an unknown quantity for fear that they might be held responsible for an unsatisfactory result. Accordingly, they tend to select known quantities, relying on recommendations from within their firms or from friends, which tends to produce the usual suspects – overwhelmingly lawyers like themselves – i.e., older white males. There is also “a failure to acknowledge and address unconscious, implicit biases that permeate any decision-making process.”⁷⁴ The author concludes that there are many qualified women and minorities available to be selected as neutrals but those doing the selections have somehow failed to recognize that this service – like any other service provided to corporate entities – must consider the need for diversity.

Mr. Cheng also stresses why diversity in ADR is important. His article notes that ADR is the privatization of a public function and it is therefore important that the neutrals be diverse and reflect the communities of attorneys and litigants they serve. Secondly, the author notes (as have many others) that better decisions are made when different points of view are considered. The addition of new perspectives is always a benefit. Some ADR providers are taking steps to document and address the problem. For example, the International Institute for Conflict Prevention and Resolution has developed the following Diversity Commitment which any company can sign: “We ask that our outside law firms and counterparties include qualified diverse neutrals among any list of neutrals or arbitrators they propose. We will do the same with the lists we provide.”⁷⁵ Similarly, the American Arbitration Association has committed to ensuring that 20% of the arbitrators on the lists it provides to the parties are

⁷² *Id.*

⁷³ *Id.* (citing Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton Univ. Press 2017) and James Surowiecki, *The Wisdom of Crowds* (Anchor Books 2004)).

⁷⁴ *Id.* at 19.

⁷⁵ Laura A. Kaster, *Why and How Corporations Must Act Now to Improve ADR Diversity*, Corporate Disputes (Jan.-Mar. 2015).

diverse candidates.⁷⁶ Although such initiatives are promising, the role of the parties is just as important: it is incumbent upon law firms, lawyers, and clients to select diverse neutrals.

III. Survey: Methodology and Findings

The task force's survey began with the creation of two questionnaires both drafted by the task force.⁷⁷ The first questionnaire was directed to federal and state judges sitting throughout New York. This questionnaire was designed to be an observational study that asked judges to record the presence of speaking counsel by gender in all matters in their courtrooms occurring between approximately September 1, 2016 and December 31, 2016. The second questionnaire was directed to various ADR providers asking them to record by gender both the appearance of counsel in each proceeding and the gender of the neutral conducting the proceeding.

The focus of the first survey was to track the participation of women as lead counsel and trial attorneys in civil and criminal litigation. While there have been many anecdotal studies about women attorneys' presence in the courtroom, the task force believes its survey to be the first study based on actual courtroom observations by the bench. The study surveyed proceedings in New York State at each level of court—trial, intermediate, and court of last resort—in both state and federal courts. Approximately 2,800 questionnaires were completed and returned. The cooperation of the judges and courthouse staff was unprecedented and remarkable: New York's Court of Appeals, all four Appellate Divisions, and Commercial Divisions in Supreme Courts in counties from Suffolk to Onondaga to Erie participated. The United States Court of Appeals for the Second Circuit provided assistance compiling publicly available statistics and survey responses were provided by nine Southern District of New York Judges (including the Chief Judge) and Magistrate Judges and District and Magistrate Judges from the Western District of New York.

The results of the survey are striking:⁷⁸

- Female attorneys represented just 25.2% of the attorneys appearing in commercial and criminal cases in courtrooms across New York.
- Female attorneys accounted for 24.9% of lead counsel roles and 27.6% of additional counsel roles.
- The most striking disparity in women's participation appeared in

⁷⁶ Ben Hancock, *ADR Business Wakes Up to Glaring Deficit of Diversity*, Law.com (Oct. 5, 2016).

⁷⁷ Each questionnaire is attached hereto as [Appendix A](#).

⁷⁸ Survey results in chart format broken down by Court are attached hereto as [Appendix B](#).

complex commercial cases: women's representation as lead counsel shrank from 31.6% in one-party cases to 26.4% in two-party cases to 24.8% in three-to-four-party cases and to 19.5% in cases involving five or more parties. In short, the more complex the case, the less likely that a woman appeared as lead counsel.

The percentage of female attorneys appearing in court was nearly identical at the trial level (24.7%) to at the appellate level (25.2%). The problem is slightly worse downstate (24.8%) than upstate (26.2%).⁷⁹

In New York federal courts, female attorneys made up 24.4% of all attorneys who appeared in court, with 23.1% holding the position of lead counsel. In New York State courts, women made up 26.9% of attorneys appearing in court and 26.8% of attorneys in the position of lead counsel.

One bright spot is public interest law (mainly criminal matters), where female lawyers accounted for 38.2% of lead counsel and 30.9% of attorneys overall. However, in private practice (including both civil and criminal matters), female lawyers only accounted for 19.4% of lead counsel. In sum, the low percentage of women attorneys appearing in a speaking role in courts was found at every level and in every type of court: upstate and downstate, federal and state, trial and appellate, criminal and civil, ex parte applications and multi-party matters. Set forth below is the breakout in all courtrooms—state, federal, regional, and civil/criminal.

A. Women Litigators in New York State Courts

The view from the New York Court of Appeals is particularly interesting. The statistics collected from that Court showed real progress—perhaps as a result of female leadership of that court, now headed by Chief Judge Janet DiFiore and past Chief Judge Judith S. Kaye, as well as the fact that the Court has had a majority of women judges for more than ten years. Of a total of 137 attorneys appearing in that Court, female attorneys made up 39.4%. This percentage held whether the females were lead or second chair counsels. In cases in which at least one party was represented by a public sector office, women attorneys were in the majority at 51.3%. Of the appearances in civil cases, 30% were by female attorneys. The figure in criminal cases was even higher—female attorneys made up 46.8% of all attorneys appearing in those cases.

Similarly, female attorneys in the public sector were well represented in the Appellate Divisions, approaching the 50% mark in the Second Department. The picture

⁷⁹ The task force recognizes that the statistics reported herein may have been affected by which Judges agreed to participate in the survey and other selection bias inherent in any such type of survey. It thus is possible that there is a wider gap between the numbers of women versus men who have speaking roles in courtrooms throughout New York State than the gap demonstrated by the task force's study.

was not as strong in the upstate Appellate Divisions, where, even in cases involving a public entity, women were less well represented (32.6% in the Third Department and 35.3% in the Fourth Department). Women in the private sector in Third Department cases fared worst of all, where they represented 18% of attorneys in the lead and only 12.5% of attorneys in any capacity versus 36.18% of private sector attorneys in the First Department (for civil cases).

Set forth below are some standout figures by county:

- Female public sector attorneys in Erie County represented a whopping 88.9% of all appearances, although the number (n=9) was small.
- Female attorneys in Suffolk County were in the lead position just 13.5% of the time.
- Although the one public sector attorney in Onondaga County during the study period was female, in private sector cases, women represented just 22.2% of all attorneys appearing in state court in that county.

While not studied in every court, the First Department further broke down its statistics for commercial cases and the results are not encouraging. Of the 148 civil cases heard by the First Department during the survey period for which a woman argued or was lead counsel, only 22 of those cases were commercial disputes, which means that women attorneys argued or were lead counsel in only 5.37% of commercial appeals compared to 36.18% for all civil appeals. Such disparity suggests that women are not appearing as lead counsel for commercial cases, which often involve high stakes business-related issues and large dollar amounts.

B. Women Litigators in Federal Courts

Women are not as well represented in the United States Court of Appeals for the Second Circuit as they are in the New York Court of Appeals. Of the 568 attorneys appearing before the Second Circuit during the survey period, 20.6% were female—again, this number held regardless of whether the women were in the lead or in supporting roles. Women made up 35.8% of public sector attorneys but just 13.8% of the private attorneys in that court. Women represented a higher percentage of the attorneys in criminal cases (28.1%) than in civil cases (17.5%).

The Southern District of New York's percentages largely mirrored the sample overall, with women representing 26.1% of the 1627 attorneys appearing in the courtrooms of judges who participated in the survey—24.7% in the role of lead counsel. One anomaly in the Southern District of New York was in the courtroom of the Honorable Deborah A. Batts, where women represented 46.2% of the attorneys and 45.8% of the lead attorneys.

The figures from the Western District of New York fell somewhat below those from the Southern District of New York, again mirroring the slightly lower percentages of female attorneys' participation upstate in state courts as well: 22.9% of the attorneys appearing in the participating Western District of New York cases were women, and 20.8% of the lead attorneys were women.

Overall, women did slightly better in state courts (26.9% of appearances and 25.3% of lead appearances), than in federal courts (24.4% of appearances and 23.1% in the lead).

C. Women Litigators: Criminal & Civil; Private & Public

As has been noted in other areas, female attorneys are better represented among lawyers in criminal cases (30.9%) than in civil cases (23.2%), regardless of trial or appellate court or state or federal court. The difference is explained almost entirely by the difference between female attorneys in the private sector (22.5%) compared to female attorneys in the public sector, particularly with respect to prosecutors and state or federal legal aid offices, which provide services to indigent defendants (totaling 37.0%).

Similarly, women made up 39.6% of the attorneys representing public entities—such as the state or federal government but just 18.5% of lawyers representing private parties in civil litigation.

Overall, female attorneys were almost twice as likely to represent parties in the public sector (38.2% of the attorneys in the sample) than private litigants (19.4%).

Across the full sample, women made up 24.9% of lead counsel and 27.6% of additional counsel.

All these survey findings point to the same conclusion: female attorneys in speaking roles in court account for just about a quarter of counsel who appear in state and federal courts in New York. The lack of women attorneys with speaking roles in court is widespread across different types of cases, varying locations, and at all levels of courts.⁸⁰

⁸⁰ The survey did not include family or housing courts. Accordingly, the percentage of women in speaking roles who appear in those courts may be higher, especially in family court as that area of the law tends to have a greater percentage of women practitioners. See Vivian Chen, *Do Women Really Choose the Pink Ghetto?; Are women opting for those lower-paying practices or is there an invisible hand that steers them there?*, The American Lawyer (Apr. 26, 2017), <http://www.americanlawyer.com/id=1202784558726>.

D. Women in Alternative Dispute Resolution

The view from the world of ADR is slightly more positive for women, although more progress is needed. Two leading ADR providers gathered statistics on the proceedings conducted by their neutrals. In a sample size of 589 cases, women were selected as arbitrators 26.8% of the time and selected as mediators about half the time (50.2%). In a small sample size of two cases, women provided 50% of the neutral analyses but they were not chosen as court referees in either of those two cases.

Data from another major ADR provider revealed that women arbitrators comprised between 15-25% of all appointments for both domestic and foreign arbitrations.

IV. Going Forward: Suggested Solutions

The first step in correcting a problem is to identify it. To do so, as noted by this report and the ALM Intelligence study referenced above in its “Gender Diversity Best Practices Checklist”—the metrics component—firms need data.⁸¹ Regular collection and review of data keeps the “problem” front and center and ideally acts as a reminder of what needs to be done. Suggesting solutions, such as insisting within law firms that women have significant roles on trial teams or empowering female attorneys to seek out advancement opportunities for themselves, is easy to do. Implementing these solutions is more challenging.⁸²

Litigation Context

A. Women’s Initiatives

Many law firms have started Women’s Initiatives designed to provide female attorneys with the tools they need to cultivate and obtain opportunities for themselves and to place themselves in a position within their firms to gain trial and courtroom experience. The success of these initiatives depends on “buy in” not only from all female attorneys, but also from all partners. Data supports the fact that the most successful

⁸¹ Daniella Isaacson, ALM Intelligence, *Where Do We Go From Here?: Big Law’s Struggle With Recruiting and Retaining Female Talent* (Apr. 2017) at 12; see also Meghan Tribe, *Study Shows Gender Diversity Varies Widely Across Practice Areas*, The Am Law Daily (Apr. 17, 2017) <http://www.americanlawyer.com/id=1202783889472/Study-Shows-Gender-Diversity-Varies-Widely-Across-Practice-Areas>.

⁸² A summary of the suggestions contained in the report are attached hereto as [Appendix C](#). Many of the suggestions for law firms contained in this report may be more applicable to large firms than small or mid-size firms but hopefully are sufficiently broad based to provide guidance for all law firms.

Women's Initiative programs depend on the support from all partners and associates.⁸³

One suggestion is that leaders in law firms—whether male or female—take on two different roles. The first is to mentor female attorneys with an emphasis on the mentor discussing various ways in which the female attorney can gain courtroom experience and eventually become a leader in the firm. The second is to provide “hands on” experience to the female attorneys at the firm by assigning them to work with a partner who will not only see that they go to court, but that they also participate in the courtroom proceedings. It is not enough simply to bring an associate to court and have her sit at counsel table while the partner argues the matter. Female associates need opportunities to argue the motion under the supervision of the partner.⁸⁴

Similarly, instead of only preparing an outline for a direct examination of a witness or preparing exhibits to be used during a direct examination, the associate also should conduct the direct examination under the supervision of the partner. While motions and examinations of witnesses at hearings and trials take place in the courtroom, the same technique also can be applied to preparing the case for trial.

Female attorneys should have the opportunity early in their careers to conduct a deposition—not just prepare the outline for a partner. The same is true of defending a deposition. In public sector offices—such as the Corporation Counsel of the City of New York, the Attorney General of the State of New York, District Attorney's Offices and U.S. Attorney's Offices—junior female attorneys have such opportunities early in their careers and on a regular basis. They thus are able to learn hands-on courtroom skills, which they then can take into the private sector after government service.

Firm management, and in particular litigation department heads, also should be educated on how to mentor and guide female attorneys. They should also be encouraged to proactively ensure that women are part of the litigation team and that women on the litigation team are given responsibilities that allow them to appear and speak in court. Formal training and education in courtroom skills should be encouraged and made a part of the law firm initiative. Educational sessions should include mock depositions, oral arguments, and trial skills. These sessions should be available to all junior attorneys, but the firm's Women's Initiative should make a special effort to encourage female attorneys to participate in these sessions.

⁸³ See Victoria Pyncheon, *5 Ways to Ensure Your Women's Initiative Succeeds*, <http://www.forbes.com/sites/shenegotiates/2012/05/14/5-ways-to-ensure-your-womens-initiative-succeeds/#20a31614ff92> (May 14, 2012) (citing Lauren Stiller Rikleen, *Ending the Gauntlet, Removing Barriers to Women's Success in the Law* (2006)).

⁸⁴ Understandably, all partners, especially women partners, are under tremendous pressures themselves on any given matter. As a result, delegating substantive work to junior attorneys may not always be feasible.

Data also has shown that female attorneys in the private sector may not be effective in seeking out or obtaining courtroom opportunities for themselves within their firm culture. It is important that more experienced attorneys help female attorneys learn how to put themselves in a position to obtain courtroom opportunities. This can be accomplished, at least in part, in two ways. First, female attorneys from within and outside the firm should be recruited to speak to female attorneys and explain how the female attorney should put herself in a position to obtain opportunities to appear in court. Second, women from the business world should also be invited to speak at Women's Initiative meetings and explain how they have achieved success in their worlds and how they obtained opportunities. These are skills that cross various professions and should not be ignored.

Partners in the firms need to understand that increasing the number of women in leadership roles in their firms is a benefit, not only to the younger women in the firm but to them as well. Education and training of all firm partners is the key to the success of any Women's Initiative.

A firm's Women's Initiative also should provide a forum to address other concerns of the firm's female attorneys. This should not be considered a forum for "carping," but for making and taking concrete and constructive steps to show and assist female attorneys in learning how to do what is needed to obtain opportunities in the courtroom and take a leadership role in the litigation of their cases.

B. Formal Programs Focused on Lead Roles in Court and Discovery

Another suggestion is that law firms establish a formal program through which management or heads of litigation departments seek out junior female associates on a quarterly or semi-annual basis and provide them with the opportunity to participate in a program that enables them to obtain the courtroom and pre-trial experiences outlined above. The establishment of a formal program sends an important signal within a firm that management is committed to providing women with substantive courtroom experience early in their careers.

Firm and department management, of course, would need to monitor the success of such a program to determine whether it is achieving the goals of training women and retaining them at the firm. One possible monitoring mechanism would be to track on a monthly or quarterly basis the gender of those attorneys who have taken or defended a deposition, argued a motion, conducted a hearing or a trial during that period. The resulting numbers then would be helpful to the firm in assessing whether its program was effective. The firm also should consider ways in which the program could be improved and expanded. Management and firm leaders should be encouraged to identify, hire, and retain female attorneys within their firms. Needless to say, promoting women to department heads and firm management is one way to achieve these goals. Women are

now significantly underrepresented in both capacities.⁸⁵

C. Efforts to Provide Other Speaking Opportunities for Women

In addition to law firms assigning female litigators to internal and external speaking opportunities, such as educational programs in the litigation department or speaking at a client continuing legal education program, firms should encourage involvement with bar associations and other civic or industry groups that regularly provide speaking opportunities.⁸⁶ These opportunities allow junior lawyers to practice their public speaking when a client's fate and money are not at risk. Such speaking opportunities also help junior attorneys gain confidence, credentials, and contacts. In addition, bar associations at all levels present the prospect for leadership roles from tasks as basic as running a committee meeting to becoming a section or overall bar association leader. These opportunities can be instrumental to the lawyer's growth, development, and reputation.

D. Sponsorship

In addition to having an internal or external mentor, an ABA publication has noted that, although law firms talk a lot about the importance of mentoring and how to make busy partners better at it, they spend very little time discussing the importance of, and need for, sponsors:

Mentors are counselors who give career advice and provide suggestions on how to navigate certain situations. Sponsors can do everything that mentors do but also have the stature and gravitas to affect whether associates make partner. They wield their influence to further junior lawyers' careers by calling in favors, bring attention to the associates' successes and help them cultivate important relationships with other influential lawyers and clients—all of which are absolutely essential in law firms. **Every sponsor can be a mentor, but not every mentor can be a sponsor.**

Sponsorship is inherent in the legal profession's origins as a craft learned by apprenticeship. For generations, junior lawyers learned the practice of law from senior attorneys who, over time, gave them

⁸⁵ Lauren Stiller Rikleen, *Women Lawyers Continue to Lag Behind Male Colleagues*, Report of the Ninth Annual National Association of Women Lawyers National Survey on Retention and Promotion of Women in Law Firms (2015).

⁸⁶ It is noteworthy that, as of January 1, 2017, women comprise nearly 36% of the New York State Bar Association's membership but comprise only 24% of the Commercial and Federal Litigation Section's membership.

more responsibility and eventually direct access and exposure to clients. These senior lawyers also sponsored their protégés during the partnership election process. Certain aspects of traditional legal practice are no longer feasible today, so firms have created formal training and mentoring programs to fill the void. While these programs may be effective, there is no substitute for learning at the heels of an experienced, influential lawyer. This was true during the apprenticeship days and remains so today.

Because the partnership election process is opaque and potentially highly political, having a sponsor is essential. Viable candidates need someone to vouch for their legal acumen while simultaneously articulating the business case for promotion . . .⁸⁷

As Sylvia Ann Hewlett, founding president of the Center for Talent Innovation (formerly Center for Work-Life Policy), explained in a 2011 Harvard Business Review article “sponsors may advise or steer [their sponsorees] but their chief role is to develop [them] as leader[s]”⁸⁸ and “‘use[] chips on behalf of protégés’ and ‘advocates for promotions.’”⁸⁹ “Sponsors advocate on their protégés’ behalf, connecting them to important players and assignments. In doing so, they make themselves look good. And precisely because sponsors go out on a limb, they expect stellar performance and loyalty.”⁹⁰

Recommendations for successful sponsorship programs include the following activities by a sponsor for his or her sponsoree:

- Expand the sponsoree’s perception of what she can do.
- Connect the sponsoree with the firm’s senior leaders.

⁸⁷ Kenneth O.C. Imo, *Mentors Are Good, Sponsors Are Better*, American Bar Association Law Practice Magazine (Jan./Feb. 2013) (http://www.americanbar.org/publications/law_practice_magazine/2013/january-february/mentors-are-good-sponsors-are-better.html) (emphasis added).

⁸⁸ Sylvia Ann Hewlett, *The Right Way to Find a Career Sponsor*, Harv. Bus. Rev. (Sept. 11, 2013) <https://hbr.org/2013/09/the-right-way-to-find-a-career-sponsor>.

⁸⁹ Kenneth O.C. Imo, *Mentors Are Good, Sponsors Are Better*, American Bar Association Law Practice Magazine (Jan./Feb. 2013), (http://www.americanbar.org/publications/law_practice_magazine/2013/january-february/mentors-are-good-sponsors-are-better.html).

⁹⁰ Sylvia Ann Hewlett, *Mentors are Good. Sponsors Are Better*, N.Y. Times, Apr. 13, 2013, <http://www.nytimes.com/2013/04/14/jobs/sponsors-seen-as-crucial-for-womens-career-advancement.html>.

- Promote the sponsoree's visibility within the firm.
- Connect the sponsoree to career advancement opportunities.
- Advise the sponsoree on how to look and act the part.
- Facilitate external contacts.
- Provide career advice.⁹¹

Of course, given attorneys' and firms' varying sizes and limited time and resources, firms should consider what works best for that firm and that one size does not fit all.

E. Efforts by the Judiciary

Members of the judiciary also must be committed to ensuring that female attorneys have equal opportunities to participate in the courtroom. When a judge notices that a female associate who has prepared the papers and is most familiar with the case is not arguing the motion, that judge should consider addressing questions to the associate. If this type of exchange were to happen repeatedly—i.e., that the judge expects the person who is most familiar with the issue take a lead or, at least, some speaking role—then partners might be encouraged to provide this opportunity to the female associate before the judge does it for them.

All judges, regardless of gender, also should be encouraged to appoint more women as lead counsel in class actions, and as special masters, referees, receivers, or mediators. Some judges have insisted that they will not appoint a firm to a plaintiffs' management committee unless there is at least one woman on the team. Other judges have issued orders, referred to earlier in this report, that if a female, minority, or junior associate is likely to argue a motion, the court may be more likely to grant a request for oral argument of that motion. Many judges are willing to permit two lawyers to argue for one party – perhaps splitting the issues to be argued. In that way, a senior attorney might argue one aspect of the motion, and a more junior attorney another aspect. Judges have suggested that it might be wise to alert the court in advance if two attorneys plan to argue the motion to ensure that this practice is acceptable to the judge. Judges should be encouraged to amend their individual rules to encourage attorneys to take advantage of these courtroom opportunities. All judges should be encouraged to promote and support women in obtaining speaking and leadership roles in the courtroom. All judges and lawyers should consider participating in panels and roundtable discussions to address these issues and both male and female attorneys should be invited and encouraged to attend such events.

⁹¹ Kenneth O.C. Imo, *Mentors Are Good, Sponsors Are Better*, American Bar Association Law Practice Magazine, (Jan./Feb. 2013), (http://www.americanbar.org/publications/law_practice_magazine/2013/january-february/mentors-are-good-sponsors-are-better.html) (emphasis added).

F. Efforts by Clients

Clients also can combat the gender disparity in courtrooms. Insistence on diverse litigation teams is a growing trend across corporate America. Why should corporate clients push for diverse trial teams? Because it is to their advantage to do so. According to Michael Dillon, general counsel for Adobe Systems, Inc., “it makes sense to have a diverse organization that can meet the needs of diverse customers and business partners in several countries” and diversity makes an organization “resilient.”⁹²

A diverse litigation team also can favorably impact the outcome of a trial. A team rich in various life experiences and perspectives may be more likely to produce a comprehensive and balanced assessment of information and strategy.⁹³ A diverse team is also better equipped to collectively pick up verbal and nonverbal cues at trial as well as “read” witnesses, jurors and judges with greater insight and precision.⁹⁴

Additionally, the context surrounding a trial—including the venue, case type, and courtroom environment—can affect how jurors perceive attorneys and ultimately influence the jury’s verdict.⁹⁵ Consciously or not, jurors assess attorney “[p]ersonality, attractiveness, emotionality, and presentation style” when deciding whether they like the attorney, will take him or her seriously, or can relate to his or her persona and arguments.⁹⁶ Because women stereotypically convey different attributes than men, a female attorney actively involved in a trial may win over a juror who was unable to connect with male attorneys on the same litigation team.⁹⁷ Accordingly, a team with diverse voices may be more capable of communicating in terms that resonate with a broader spectrum of courtroom decision-makers.⁹⁸

⁹² David Ruiz, *HP, Legal Depts. Ask Firms for Diversity, Make Efforts In-House*, Corporate Counsel (Apr. 5, 2017) <http://www.corpcounsel.com/id=1202783051167/Legal-Depts-Ask-Firms-for-Diversity-Make-Efforts-InHouse>.

⁹³ Craig C. Martin & David J. Bradford, *Litigation: Why You Want a Diverse Trial Team*, INSIDE COUNSEL, Oct. 14, 2010, <http://www.insidecounsel.com/2010/10/14/litigation-why-you-want-a-diverse-trial-team?slreturn=1495741834>.

⁹⁴ *Id.*

⁹⁵ Ann T. Greeley & Karen L. Hirschman, “*Trial Teams and the Power of Diversity*,” at 3 (2012).

⁹⁶ *Id.* at 5.

⁹⁷ *Id.*

⁹⁸ Craig C. Martin & David J. Bradford, *Litigation: Why You Want a Diverse Trial Team*, Inside Counsel (Oct. 14, 2010) <http://www.insidecounsel.com/2010/10/14/litigation-why-you-want-a-diverse-trial-team?slreturn=1495741834>.

Further, a diverse trial team can increase the power of the team's message. A diverse composition indirectly suggests that the truth of the facts and the principles on which the case is based have been "fairly presented and are universal in their message."⁹⁹ This creates a cohesive account of events and theory of the case, which would be difficult for an opposing party to dismiss as representing only a narrow slice of society.¹⁰⁰

The clear advantages of diverse trial teams are leading corporate clients to take direct and specific measures to ensure that their legal matters are handled by diverse teams of attorneys. General Counsels are beginning to press their outside firms to diversify litigation teams in terms of gender at all levels of seniority.¹⁰¹ Many corporate clients often directly state that they expect their matters will be handled by both men and women.¹⁰²

For example, in 2017, General Counsel for HP, Inc. implemented a policy requiring "at least one diverse firm relationship partner, regularly engaged with HP on billing and staffing issues" or "at least one woman and one racially/ethnically diverse attorney, each performing or managing at least 10% of the billable hours worked on HP matters."¹⁰³ The policy reserves for HP the right to withhold up to ten percent of all amounts invoiced to firms failing to meet these diverse staffing requirements.¹⁰⁴ Oracle Corporation has also implemented an outside retention policy "designed to eliminate law firm excuses for not assigning women and minority attorneys to legal matters."¹⁰⁵ Oracle asks its outside firms to actively promote and recruit women; ensure that the first person with appropriate experience considered for assignment to a case is a woman or a minority; and annually report to Oracle the number and percentage of women and

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Ellen Rosen, *Facebook Pushes Outside Law Firms to Become More Diverse*, New York Times (Apr. 2, 2017) https://www.nytimes.com/2017/04/02/business/dealbook/facebook-pushes-outside-law-firms-to-become-more-diverse.html?_r=1.

¹⁰² Ann T. Greeley & Karen L. Hirschman, "Trial Teams and the Power of Diversity," at 2 (2012).

¹⁰³ Jennifer Williams-Alvarez, *HP, Mandating Diversity, Will Withhold Fees From Some Firm*, Corporate Counsel (Feb. 13, 2017), <http://www.corpcounsel.com/id=1202779113475/HP-Mandating-Diversity-Will-Withhold-Fees-From-Some-Firms>.

¹⁰⁴ *Id.*

¹⁰⁵ *Hiring Women and Minority Attorneys – One General Counsel's Perspective*, <http://corporate.findlaw.com/human-resources/hiring-women-and-minority-attorneys-a-general-counsel-s-perspec.html#sthash.HNE30g5o.dpuf> (last visited June 1, 2017).

minority partners in the firm.¹⁰⁶ Similarly, Facebook, Inc. now requires that women and ethnic minorities account for at least thirty-three percent of law firm teams working on its matters.¹⁰⁷ Under Facebook’s policy, the firms also must show that they “actively identify and create clear and measurable leadership opportunities for women and minorities” when they represent Facebook in legal matters.¹⁰⁸

Corporate clients can follow the examples set by their peers to aid the effort to ensure that female attorneys have equal opportunities to participate in all aspects of litigation, including speaking roles in the courtroom.

G. ADR Context

The first step in addressing any issue is to recognize the issue and start a dialogue.

Accordingly, the dialogue that has begun amongst ADR providers and professionals involved in the ADR process is encouraging. One important step that has been undertaken is the Equal Representation in Arbitration pledge—agreed to by a broad group of ADR stakeholders, including counsel, arbitrators, corporate representatives, academics, and others—to encourage the development and selection of qualified female arbitrators.¹⁰⁹ This pledge outlines simple measures including having a fair representation of women on lists of potential arbitrators and tribunal chairs.¹¹⁰ Other important steps to encourage diverse neutrals have been taken by leading ADR providers, including such diversity commitments as described above.

Another example of a step is the establishment by the ABA’s Dispute Resolution Section of “Women in Dispute Resolution.” This initiative provides networking opportunities for women neutrals to be exposed to decision makers selecting mediators and arbitrators; develops a list of women neutrals and their areas of expertise; provides professional

¹⁰⁶ *Id.*

¹⁰⁷ Ellen Rosen, *Facebook Pushes Outside Law Firms to Become More Diverse*, New York Times (Apr. 2, 2017) https://www.nytimes.com/2017/04/02/business/dealbook/facebook-pushes-outside-law-firms-to-become-more-diverse.html?_r=1.

¹⁰⁸ *Id.* Some corporations have gone further, even firing law firms because they are run by “old white men.” Laura Colby, *Law Firms Risk Losing Corporate Work Unless they Promote Women*, Bloomberg (Dec. 9, 2016), <https://www.bloomberg.com/news/articles/2016-12-09/corporate-america-pressures-law-firms-to-promote-minorities>.

¹⁰⁹ *See Take the Pledge*, Equal Representation in Arbitration, <http://www.arbitrationpledge.com/pledge> (last visited Mar. 31, 2017).

¹¹⁰ *Id.*

development opportunities for women neutrals; and provides skills education for its members.¹¹¹ Those who select neutrals must make every effort to eliminate unconscious biases that affect such selection. They also must continually remember to recognize the benefit of diversity in the composition of panels neutrals that leads to better and more accurate results. If corporate counsel, together with outside counsel, make the same efforts to diversify the selection of neutrals, as they do when hiring outside counsel, then there may be a real change in the percentage of women selected as neutrals in all types of cases – particularly including complex large commercial disputes.

V. Conclusion

Unfortunately, the gender gap in the courtroom and in ADR has persisted even decades after women have comprised half of all law school graduates. The federal and state courts in New York are not exempt from this phenomenon. There is much more that law firms, corporate counsel, and judges can do to help close the gap. Similarly, the limited number of women serving as neutrals in ADR and appearing as counsel in complex commercial arbitrations is startling. While one size does not fit all, and the solutions will vary within firms and practice areas, the legal profession must take a more proactive role to assure that female attorneys achieve their equal day in court and in ADR.

The active dialogue that continues today is a promising step in the right direction. It is the task force's hope that this dialogue—and the efforts of all stakeholders in the legal process—will help change the quantitative and qualitative role of female lawyers.

¹¹¹ See <http://apps.americanbar.org/dch/committee.cfm?com=DR589300> for more information.

Task Force on Women's Initiatives*

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APPENDIX A

JUDICIAL FORM FOR TRACKING COURT APPEARANCES

Identify your court (e.g. SDNY, 1st Dep't; 2d Cir; Commercial Div. N.Y. Co) _____

I. Type of Case

- A. Trial Court Criminal____(for federal court) Civil ____
(please specify subject matter e.g. contract, negligence, employment, securities)
B. Appeal Criminal____(for federal court) Civil____

II. Type of Proceeding

- A. Arraignment____ B. Bail Hearing____ C. Sentencing____(for federal court)
D. Initial Conference____ E. Status/Compliance Conference
F. Oral Argument on Motion____ (please specify type of motion e.g. discovery, motion to dismiss, summary judgment, TRO/preliminary injunction, class certification, in limine)
G. Evidentiary Hearing____ H. Trial____ I. Post-Trial____ J. Appellate Argument ____

III. Number of Parties (total for all sides)

- A. Two____ B. Two to Five____ C. More than Five____

IV. Lead Counsel for Plaintiff(s) (the lawyer who primarily spoke in court)

Plaintiff No. 1	Plaintiff No. 2	Plaintiff No. 3
Male____	Male____	Male____
Female____	Female____	Female____
Public____	Public____	Public____
Private ____	Private ____	Private ____

V. Lead Counsel for Defendant(s) (the lawyer who primarily spoke in court)

Defendant No. 1	Defendant No. 2	Defendant No. 3
Male	Male	Male
Female	Female	Female
Public	Public	Public
Private ____	Private ____	Private ____

VI. Additional Counsel for Plaintiff(s) (other lawyers at counsel table who did not speak)

Plaintiff No. 1	Plaintiff No. 2	Plaintiff No. 3
Male	Male	Male
Female	Female	Female
Public	Public	Public
Private ____	Private ____	Private ____

VII. Additional Counsel for Defendant(s) (other lawyers at counsel table who did not speak)

Defendant No. 1	Defendant No. 2	Defendant No. 3
Male	Male	Male
Female	Female	Female
Public	Public	Public
Private ____	Private ____	Private ____

ADR FORM FOR TRACKING APPEARANCES IN ADR PROCEEDINGS

- I. Is this an arbitration or mediation? _____ If it is a mediation, is it court ordered? _____
- II. Type of Case (please specify) (e.g., commercial, personal injury, real estate, family law)

- III. If there is one neutral, is that person a female? _____
- IV. If there is a panel, (a) how many are party arbitrators and, if so, how many are females? _____
(b) how many are neutrals and, if so, how many are females? _____
(c) is the Chair a female? _____
- V. Assuming the panel members are neutrals, how was the neutral(s) chosen?
1. From a list provided by a neutral organization? _____
2. By the court? _____
3. Agreed upon by parties? _____
4. Two arbitrators selected the third? _____
- VI. Number of Parties (total for all sides) _____
- VII. Amount at issue (apx.) on affirmative case \$ _____ Counterclaims, if any \$ _____
- VIII. Lead Counsel for Plaintiff(s):
(lawyer who primarily spoke) (other lawyers who did not speak, including local counsel)
Male _____ Male _____
Female _____ Female _____
Government _____ Government _____
Non-Government _____ Non-Government _____
- IX. Lead Counsel for Defendant(s):
(lawyer who primarily spoke) (other lawyers who did not speak, including local counsel)
Male _____ Male _____
Female _____ Female _____
Government _____ Government _____
Non-Government _____ Non-Government _____
- X. Was the Plaintiff a female or, if a corporation, was the GC/CEO/CFO a female? _____
- XI. Was the Defendant a female or, if a corporation, was the GC/CEO/CFO female? _____
- XII. Was this your first or a repeat ADR matter for these parties or their counsel? If repeat, please describe the prior proceeding(s) in which you served and at whose behest and whether the proceeding involved the same or a different area of the law.

APPENDIX B

TABLE 1
SUMMARY OF FINDINGS

Category	# Men	# Women	% Women
Total - Sample-wide	3886	1309	25.2%
Trial level -all	1805	592	24.7%
Appeal level - all	1007	340	25.2%
Upstate Courts - all	1154	409	26.2%
Downstate Courts - all	2103	694	24.8%
Federal Courts - all	1890	611	24.4%
State Courts - all	1725	635	26.9%
All Courts - Parties of 1	561	259	31.6%
Parties of 2	2532	910	26.4%
Parties of 3-4	681	224	24.8%
Parties of 5+	587	142	19.5%
All Courts - Lead Counsel	3430	1 135	24.9%
All Courts - Additional Counsel	456	174	27.6%
All Courts - Private Civil Lawyers	1688	384	18.5%

TABLE 2
DETAIL DATA CITED IN REPORT

Category	# Men	# Women	0/o Women
Total -Sample-wide	3886	1309	25.2%
New York Court of Appeals	83	54	39.4%
Court of Appeals - Public Attorneys	39	41	51.3%
Court of Appeals - Civil Cases	42	18	30.0%
Court of Appeals - Criminal Cases	41	36	46.8%
New York Appellate Divisions			
First Department - Civil Cases		148	5.37% (commercial cases)
Second Department - Public Attorneys	64	63	49.6%
Third Department - Lead Counsel	200	44	18.0%
Third Department - Public Attorneys	31	15	32.6%
Third Department - Private Attorneys	168	24	12.5%
Fourth Department - Public Attorneys	209	114	35.3%
Erie County	190	70	26.9%
Erie County - Public Attorneys	1	8	88.9%
Suffolk County	176	28	13.7%
OnondagaCounty	95	35	26.9%
Onondaga County - Private Attorneys	14	4	22.2%
United States Court of Appeals for the Second Circuit	451	117	20.6%
Second Circuit - Public Attorneys	102	57	35.8%
Second Circuit - Private Attorneys	338	54	13.8%
Second Circuit - Civil Cases	331	70	17.5%
Second Circuit - Criminal Cases	120	47	28.1%
Southern District of New York	1203	424	26.1%
SDNY -Lead Counsel	931	306	24.7%
Western District of New York	236	70	22.9%
WDNY - Lead Counsel	221	58	20.8%
Trial level- all	1805	592	24.7%
Appeal level - all	1007	340	25.2%
Upstate Courts - all	1154	409	26.2%
Downstate Courts - all	2103	694	24.8%

Category	# Men	# Women	% Women
Federal Courts -all	1 890	611	24.4%
Lead Counsel	1595	478	23.1%
State Courts - all	1725	635	26.9%
State Courts - Lead Counsel	1672	613	26.8%
State Courts - Civil Cases	2896	874	23.2%
State Courts - Criminal Cases	628	281	30.9%
State Courts - Public Cases	692	428	38.2%
State Courts - Private Cases	2172	524	19.4%
All Courts - Parties of 1	561	259	31.6%
Parties of 2	2532	910	26.4%
Parties of 3-4	681	224	24.8%
Parties of 5+	587	142	19.5%
All Courts - Lead Counsel	3430	1135	24.9%
All Courts - Additional Counsel	456	174	27.6%
All Courts - Private Civil Lawyers	1688	384	18.5%

APPENDIX C

SUMMARY OF RECOMMENDATIONS

1. The Law Firms

- Women's Initiatives
 - Establish and support strong institutionalized Women's Initiatives with emphasis on the following:
 - Convincing partners to provide speaking opportunities in court and at depositions for junior attorneys
 - Training and education on courtroom skills
 - Leadership training
 - Guest speakers
 - Mentorship programs
- Formal Programs to Ensure Lead Roles in Court and Discovery
 - Establish a formal program through which management or heads of litigation departments ensure that junior associates are provided with speaking opportunities in court and at depositions.
 - Track speaking opportunities in court and at depositions on a quarterly basis
- Promote Outside Speaking Opportunities
 - Provide junior attorneys with internal and external speaking opportunities.
- Sponsorship
 - Establish and support an institutionalized Sponsorship Program.

2. The Judiciary

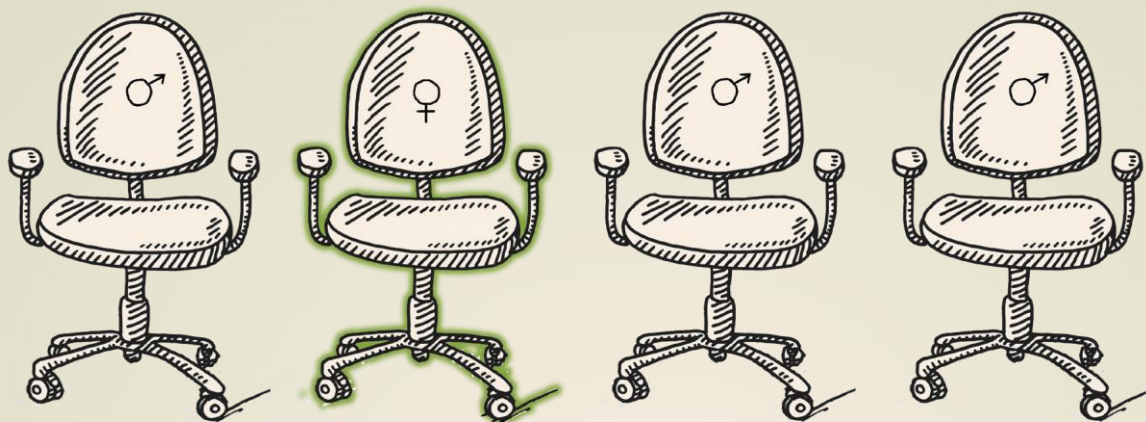
- Ask junior attorneys to address particular issues before the Court.
- Favor granting oral argument when a junior attorney is scheduled to argue the matter.
- Encourage attorneys who primarily authored the briefs to argue the motions or certain parts of the motions in court.
- Appoint qualified women as lead counsel in class actions and as members of steering committees as well as special masters, referees, receivers, and mediators.
- Include as a court rule that more than one attorney can argue a motion.

3. The Client

- Insist on diverse litigation teams.
- Monitor actual work of diverse team members.
- Impose penalties for failure to have diverse teams or teams where diverse members do not perform significant work on the matter.

4. ADR Context

- **Fair representation of women on lists of potential arbitrators and mediators.**
- Corporate counsel should demand diverse neutrals on matters.
- Stress the benefits of having a diverse panel of decisionmakers for arbitrations.
- Instruct outside counsel to consider diversity when selecting neutrals and monitor such selections.



First Chairs at Trial

More Women Need Seats at the Table

*A Research Report on the Participation of Women
Lawyers as Lead Counsel and Trial Counsel in Litigation*

First Chairs at Trial More Women Need Seats at the Table

*A Research Report on the Participation of Women
Lawyers as Lead Counsel and Trial Counsel in Litigation*

Cover design by Jill Tedhams /ABA Publishing.

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A Note from the Authors

Achieving greater gender diversity in the legal profession in general, and in lead trial roles in particular, has been an incremental, evolutionary process that we have witnessed firsthand ever since we graduated from law school. Bobbi became a lawyer in 1975, when women comprised only 20% of law students. Just ten years later, when Stephanie finished law school, that figure had doubled to 40%, and women were moving into the associate ranks of law firms at almost the same rate as men.

As young lawyers, we anticipated that many women would achieve successful legal careers, becoming partners, practice group leaders, and lead counsel on major matters in litigation and in corporate deals. We thought—along with many others—that the well-stocked pipeline of women lawyers beginning their careers would surely result in a substantial pool of women at the top of their profession.

We now know that relying on an entry-level pipeline to drive gender diversity is not enough. While women lawyers have been entering the profession in large numbers for three decades, they have not advanced at nearly the same rate as men. And the gender gap is larger with each step up the ladder, as shown by such studies as the NAWL Annual Surveys of law firms, the annual survey of *Fortune* 1000 chief legal officers conducted by the Minority Corporate Counsel Association, and NALP annual data about law firm associates and partners.

Our own experiences and observations as we progressed in our litigation careers have driven home the

day-to-day meaning of these statistics. We have each practiced in national firms as associates and partners and also in boutique firms with a mixture of women and men at senior levels. We have appeared in hundreds of cases and in dozens of courtrooms across the country. In all of those matters and jurisdictions, we have too often found ourselves to be the only woman (or one of very few) to appear as trial counsel or lead counsel.

Some may ask, why does it matter if relatively few women are in lead roles? We believe that one could just as well ask, why does it matter if there is a small or large pool of talent in the legal profession? Women lawyers make up at least 36% of the legal profession. To the extent that women are hampered in obtaining lead roles, not only do their own careers suffer, so too does the profession, as there is less diversity of thinking, less effectiveness in front of a broad range of judges and jurors, and less creative energy brought to bear on client matters.

No one seriously contends that women have less ability than men. Instead, commentators point to myriad social and structural factors to explain the slow progress of women lawyers. These include, among others, the impact of children and other family responsibilities on women's careers; bias, whether implicit or explicit; male-centered social norms and expectations about how to progress; outdated law firm cultures, policies, and structures that hinder the development of talent from diverse lawyers; the short-term busi-

ness focus of many firms; and social norms among men versus women with respect to rainmaking and client development. It is hard to know the relative impact of these factors in everyday practice, in part because the legal profession has virtually no systematic data about who receives first-line responsibility in major litigation and major deals—and how men and women come to play those roles.

First Chairs at Trial: More Women Need Seats at the Table is a first-of-its-kind empirical study of the participation of women and men as lead counsel and trial attorneys in civil and criminal litigation. Our goal was to understand the parameters of the gender gap in the ranks of lead trial lawyers, so that we in the legal profession will know how and where to seek changes. Using a random sample of all cases filed in 2013 in the United States District Court for the Northern District of Illinois, this report provides data concerning the level of participation by men and women in civil and criminal litigation and identifies characteristics of cases, law firms, and clients that impact the extent to which men and women serve in lead counsel roles.

As revealed in this study, women are consistently underrepresented in lead counsel positions and in the role of trial attorney for all but a few types of cases. In civil cases, men are three times more likely than

women to appear as lead counsel and to appear as trial attorneys. That substantial gender gap is a marked departure from what we expected based on the distribution of men and women appearing generally in the federal cases we examined (a roughly 2 to 1 ratio) and the distribution of men and women in the legal profession generally (again, a roughly 2 to 1 ratio). We found that type of case, nature of the parties, and type of legal employer affect gender disparities. Criminal cases also showed a pattern based on gender. Men are nearly four times more likely than women to appear as trial attorneys. Type of client makes a difference, as the majority of male lead counsel (66%) in criminal cases appeared for defendants, while the majority of women lead counsel (69%) appeared for the government.

In making recommendations for closing the gap, we set forth a number of best practices and strategies that can be implemented by law schools, law firms, courts, clients, and women lawyers themselves to increase the ranks of women lead counsel. We encourage others to use this study as a research template for examining the representation of women in leadership roles in litigation in other jurisdictions. It is time for more women to find their seats at the table as first chairs at trial—and this report is our contribution toward achieving that goal.



Stephanie A. Scharf



Roberta D. Liebenberg

Thank You

for decades, women and men have graduated from law school in roughly equal numbers. Yet, women have not maintained parity with their male counterparts as they progress in their careers. Stephanie Scharf and Roberta (“Bobbi”) Liebenberg have witnessed this phenomenon firsthand as trial lawyers. On far too many occasions, they often found themselves “the only woman in the room” when they appeared in court as lead counsel. Indeed, their experiences served as the impetus to determine if what they were seeing was the exception or the rule . . . and why.

We were excited when they approached us with their idea for this study because we recognized immediately the importance of such empirical research and

the broader application of the data collection process to other courts throughout the country. The result is *First Chairs at Trial: More Women Need Seats at the Table*, a joint project of the American Bar Foundation and the American Bar Association Commission on Women in the Profession.

Our thanks to Stephanie and Bobbi for their tireless efforts in spearheading the research and crafting a compelling final report. In *First Chairs at Trial*, they have made the case and offered strategies for increasing the number of women as lead trial counsel. They have given clients, law firms, courts, law schools, and women litigators the additional steps needed to close this gender gap.



Robert L. Nelson
Director and MacCrate
Research Chair,
American Bar
Foundation



Michele Coleman Mayes
Chair,
American Bar Association
Commission on Women
in the Profession

First ChAIRs AT TriAL

More Women Need seats at the Table

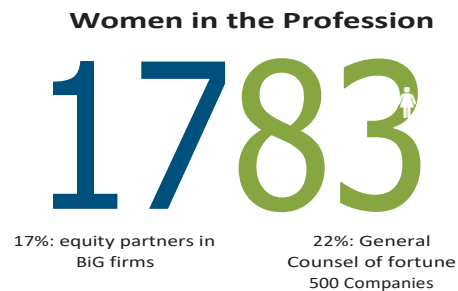
*A Research Report on the Participation of Women Lawyers
as Lead Counsel and Trial Counsel in Litigation*

Stephanie a. Scharf and roberta d. Liebenberg¹

This report and the research underlying it were inspired by our everyday experiences as trial lawyers. We have represented clients in lead roles in many different matters and in many federal and state court jurisdictions. Yet, far too often, when we enter a courtroom filled with lawyers on a range of cases, each of us is either the only woman lead counsel or, at best, one of only a few women taking the lead in court or in major parts of litigation.

Women have been attending law school and entering the legal profession in substantial numbers for the past 30 years.² When we began practicing law, we assumed, along with many others, that as the number of women lawyers increased, so too would the number of women in leadership roles. But women have not advanced into the highest levels of private practice or of corporate law departments at anywhere near the same rate as men. Today, for example, only 17% of equity partners in big firms and 22% of general counsel in the *Fortune* 500 are women.³

Beyond some basic data about job categories at senior levels, the legal profession has almost no systematic data about men and women in their everyday practice, including whether and how they obtain the necessary skills and experience to advance into lead roles. The NAWL Annual Surveys have filled some



data gaps by providing a longitudinal view of the retention and advancement of women lawyers in big firm practice.⁴ But we are not aware of any study that has systematically examined, based on representative data, the specific roles that women and men play on client matters, such as whether women are equally likely as men to be lead trial lawyer or lead deal lawyer.

This study is the first of its kind to provide an empirical snapshot of the participation of women and men as lead counsel and trial attorneys in civil and criminal litigation. In addition, the study examines various objective factors that may help explain why women occupy leadership positions in certain types of cases for certain types of clients. It is our hope that this study will lead to the development and implementation of specific policies and best practices to enhance the opportunities for women to take the lead

in the courtroom and be involved in the critical phases of cases.

Bearing those goals in mind, and with a focus on using readily available empirical data with the expectation that the research can be replicated in various jurisdictions and over time, we aimed to:

- a. obtain benchmark statistics about the role of women in litigation;
- b. identify characteristics of cases, law firms, and clients that may affect the roles played by women and men in litigation;
- c. provide insights into what firms, law schools, clients, judges, and individual lawyers can do to enhance the prospects for women to serve as lead counsel; and
- d. provide a research template for use in multiple jurisdictions in order to understand on a more comprehensive basis the factors for advancing women into lead counsel roles.

Several organizations and individuals were seminal to the research. The American Bar Association's Commission on Women in the Profession and the American Bar Foundation provided financial support and a welcome intellectual context for conducting the research. The Honorable Ruben Castillo, chief judge of the United States District Court for the Northern District of Illinois, encouraged the research and provided thoughtful views about addressing the results. Robert Nelson, director of the American Bar Foundation and professor of sociology, Northwestern University, was an early advocate for the research and provided thorough and valuable comments about the results. Jennifer Woodward conducted the random sample and much of the data coding. Jill May conducted additional data coding and patiently completed the many detailed data analyses. Jill was generous with her time and with her intellectual enthusiasm. Michele Coleman Mayes, current chair of the Commission on Women, has championed the study with gusto. Barbara Leff, communications and publications manager of the Commission on Women, reviewed multiple drafts without complaint and with a thoroughly professional eye to editing. Melissa Wood, director of the Commission on

Women, provided just the right administrative advice. We are grateful for all of their support.

study design and methodology

Federal courts require a relatively detailed intake form for all filed cases as well as individual attorney appearance forms. All of that information is available through Public Access to Court Electronic Records (PACER), the public access service that allows users to obtain case and docket information online from federal courts. The required information provides the basis here for analyzing the level of participation of women as lead counsel and as trial attorney.

To perform the research, we took a random sample of all of the cases filed in 2013 in the United States District Court for the Northern District of Illinois. We chose the Northern District of Illinois for four principal reasons:

1. The Northern District of Illinois is a large and diverse locale. No single type of case dominates the docket.
2. As a group, the firms located in the geographic locale of the Northern District of Illinois are diverse with respect to size, employment of men and women, and types of cases and clients.
3. As with other federal courts, there is robust information about each filed case as reflected in the required Civil Cover Sheet for each newly filed lawsuit.
4. There is information in the lawyer appearance form showing by self-designation whether a lawyer is "lead counsel" and/or "trial attorney" or not. The Northern District classifies lawyers as members of its Trial Bar based on certain experience in the courtroom.⁵ Only members of the Trial Bar can appear as trial attorney in a given case.

Using the PACER system, we randomly selected 558 civil cases filed in 2013.⁶ There were 2,076 lawyers appearing in those 558 cases. In addition, we sampled 50 criminal cases, in which 135 lawyers appeared.⁷ We then created a database that coded characteristics

of cases as well as characteristics of lawyers in those cases. The coded case characteristics were:

- a. Whether the case is civil or criminal.
- b. The subject matter of the suit (for civil suits). The categories listed on the Civil Cover Sheet include contract, real property, torts, civil rights, prisoner rights, forfeiture/penalty, labor, immigration, bankruptcy, intellectual property, Social Security, federal tax suits, and other statutes.⁸
- c. Whether the suit is a class action.

The coded characteristics of lawyers appearing in those cases were:

- a. The nature of the party the lawyer represents: individual, business, United States, state or local government, or nonprofit.
- b. The side for which the attorney appeared, plaintiff or defendant.
- c. The attorney's practice setting: solo practice, small private firm, AmLaw 200 firm, AmLaw 100 firm, government (United States, Illinois, municipal), and some other categories.⁹
- d. Whether the lawyer appeared as "lead counsel" and/or as "trial attorney."
- e. Gender of the lawyer. If there was any confusion from the attorney's name as to gender, the attorney's name and photo were checked on his/her firm's public website.
- f. Whether the lawyer was retained by his/her client or appointed by the court.¹⁰

We would also have liked to study minority status and minority status interacting with gender. However, neither the Civil Cover Sheet nor the appearance form contains information that allowed us to determine the minority status of lawyers, and, therefore, we could not perform those analyses.

In conducting our data analyses, we sometimes used the lawyer as the unit of analysis and sometimes used the case as the unit of analysis, depending on the perspective and nature of the research question at hand. We analyzed criminal and civil cases separately.

The types of questions we sought to answer included these:

1. Do women and men occupy lead roles in litigation matters in equal numbers, as shown by their self-designated individual appearance as "lead counsel" or "trial attorney"?
2. Are there certain types of cases more likely to have men or women appear as lead counsel?
3. Are there certain types of clients (individuals, corporations, government entities, client opposing *pro se* parties) or sides (plaintiff versus defendant) that are more likely to retain men or women as lead counsel?
4. Are there certain types of practice settings in which men or women lead counsel are more likely to practice?

By answering such questions, we expect to have a better understanding of the roles played by men and women in the courtroom, whether there is a gender gap, and areas of focus for change.

I. In Civil Cases, Women appear less often than men and are far less likely to designate their role as lead counsel or trial attorney

Roughly two-thirds of all attorneys appearing in civil cases—whether as lead counsel or trial attorney—are men. Thus, 68% of all lawyers who appeared in civil cases were men and 32% were women.¹¹ Of those attorneys appearing, a little more than half (54%) appeared as "lead counsel."¹²

all laWyers aPPearing in Civil Cases



However, just as women and men did not appear generally at the same rate, men and women do not appear in lead roles in civil cases at the same rate

laWyers aPPearing as lead Counsel

76

76% men
24% Women

either. Among lawyers appearing as lead counsel, only 24% were women and 76% were men. In essence, a man is three times more likely to play the role of lead counsel on a civil case than a woman.

A similar pattern exists for men and women who entered their appearances as “trial attorney,” with 63% of all lawyers identifying themselves as a trial attorney on the case. The percentage of women serving as trial attorneys in civil cases was slightly higher than the percentage of women serving as lead counsel. But of those lawyers identifying themselves as trial attorneys, nearly three-quarters are men (73%) and slightly more than a quarter are women (27%).

laWyers entering aPPearanCe as trial attorney

3

73% men
27% Women

What these numbers show is that the steps to the role of lead counsel and trial attorney are much steeper for women than men. Women are significantly less likely to appear in courtrooms—although it could be argued that the gender difference roughly mirrors the difference between the proportion of men and women generally in the legal profession. On top of that gap, however, and more troubling, is the fact that when women do appear, they are significantly less likely than men to occupy the lead roles.

We also observed a marked gender gap when the unit of analysis is cases. Some 59% of civil cases had only men appearing as lead counsel; similarly, 58% of civil cases had only men appearing as trial attorney. In contrast, just 13% of civil cases had only women

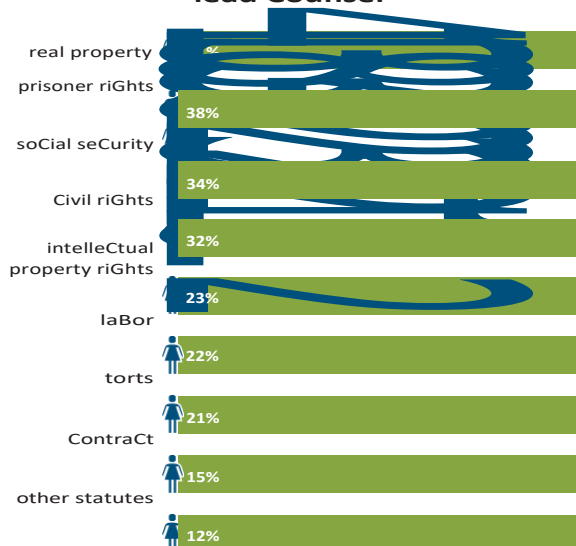
appearing as lead counsel, and 21% had only women appearing in the role of trial attorney.¹³

II. does the type of Case, type of praCtiCe setting, and type of Client affeCt the partiCipation of Women In lead Counsel or trial attorney roles?

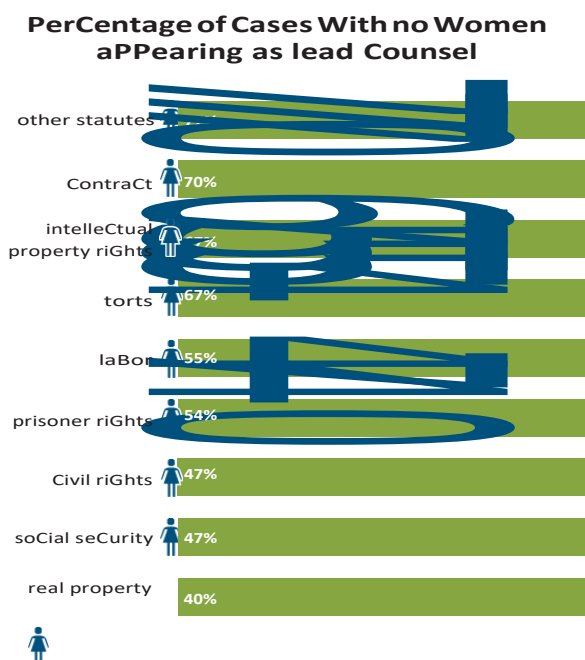
We performed a number of analyses looking at factors that could affect whether a man or woman appears as lead counsel or as trial attorney in civil cases.

First, type of case shows a gender effect. For certain types of civil cases, lead counsel are predominantly male, including in “other statutory” cases (88% of lead counsel are male), contract cases (85% of lead counsel are male), torts (79% of lead counsel are male), labor (78% of lead counsel are male), and intellectual property rights (77% of lead counsel are male). On the other hand, there is no type of case in which women are more likely than men to be lead counsel—i.e., where the majority of persons who appeared as lead counsel were women. A similar pattern exists in the data for trial attorney.

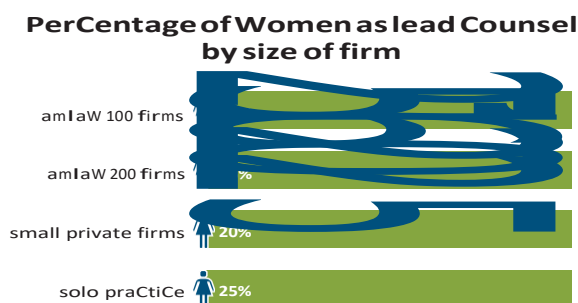
PerCentage of Women aPPearing as lead Counsel



In the same vein, certain types of civil cases exhibited a greater gender gap than others, as shown by whether there were any women appearing at all as lead counsel. The following shows the results when we measured cases as a whole:



With respect to practice setting, gender differences among lead counsel from private firms follow a 1 to 3 female/male gender ratio—or worse. In terms of the size of firms from which lawyers appear (AmLaw 100 firms, AmLaw 200 firms, small private firms, and solo practice), the percentage of women appearing as lead counsel is 25%, 16%, 20%, and 25%, respectively.¹⁴



It is noteworthy that there is a greater likelihood of women being lead counsel in civil cases involving the U.S. government, the state of Illinois, and

municipalities. Lead lawyers for the U.S. government, state of Illinois, and municipalities are, respectively, 31%, 32%, and 40% female.

PerCentage of Women as lead Counsel in Civil Cases involving the government



By contrast, individual litigants and businesses are overwhelmingly represented by male lead counsel. Close to 80% of all lead counsel who represent businesses are male (79% male vs. 21% female), and the same percentage breakdown is found with respect to lead counsel who represent individuals.

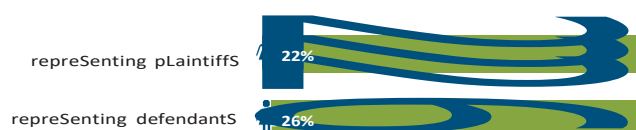
lead Counsel rePresenting businesses and individuals



Whether a party is plaintiff or defendant also affects whether their lead counsel is male or female. Among all women who are lead counsel in civil cases, 40% represent plaintiffs and 60% represent defendants. A more equal distribution between representation of plaintiffs and defendants is found for men appearing as lead counsel. Among all men appearing as lead counsel, 45% represent plaintiffs and 55% represent defendants.

That said, and consistent with the data in Section I, the majority of all attorneys appearing as lead counsel for plaintiffs or defendants are men (for plaintiffs, 78% of lead counsel are men; for defendants, 74% of lead counsel are men). For those appearing as trial attorneys, among plaintiffs' counsel 75% are men and among defense counsel 70% are men.

laWyers aPPearing as lead Counsel by Party



We also examined the subset of cases that were filed as putative class actions. There were 48 such cases in our sample, and 246 attorneys appeared in them. Looking at all attorneys who appeared in class actions, 68% are male and 32% are female—a 2/3 versus 1/3 ratio, which is not unlike the data for women appearing in civil cases. However, there is a marked gender gap when it comes to appearing as lead counsel. Among men appearing in class actions, 55% appeared as lead counsel. In contrast, only 18% of women who appeared in class actions filed their appearances as lead counsel.¹⁵ Looking at these data another way, of all of the lawyers who designated themselves as lead counsel in class actions, 87% were male.

laWyers aPPearing in



laWyers aPPearing as lead Counsel in Class Actions



Looking at all cases filed as class actions, we observed a similar gender gap in lead counsel roles. Of the 48 class action cases, 71% (34 cases) had only men appearing as lead counsel. Just one case (2.1% of cases) had only women appearing as lead counsel. In other words, 98% of class actions had at least one man as lead counsel but only 29% of class actions had any women as lead counsel.

We also reviewed data concerning civil cases in which the plaintiffs appeared *pro se*. We note that cases with *pro se* plaintiffs are often viewed as less complex, unlikely to go to trial, or have less at stake than cases where the plaintiff is represented by counsel. In this sample, there were 81 cases with *pro se* plaintiffs, in which 111 lawyers appeared for defendants. Of those 111 lawyers, 64% were men and 36% were women. The gender breakdown of lead counsel opposing a *pro se* plaintiff was similar: 65% men and 35% women. Thus, women appeared as lead counsel at the same rate they appeared generally in cases against *pro se* plaintiffs, a noticeable difference compared to other civil cases (except civil cases in which the client is a governmental party). Even so, in cases with *pro se* plaintiffs, women did not approach the number of men who appeared and were designated as lead counsel.

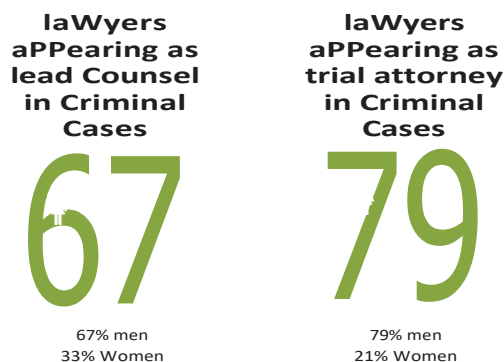
defense laWyers aPPearing as lead Counsel in



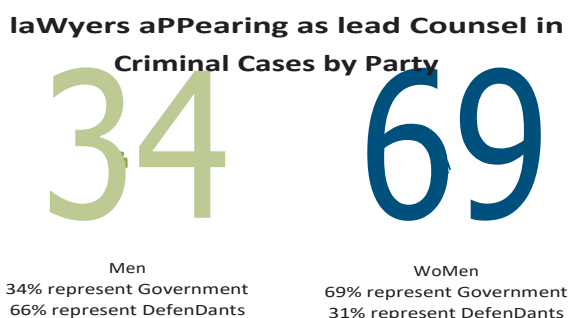
III. Criminal Cases show a mixed pattern for Women

We looked separately at the sample of 50 criminal cases under the theory that criminal cases and clients could well show a different gender dynamic. Among men and women attorneys who appeared in criminal cases, the vast majority filed their appearances as lead counsel (88% of all men appearing and 89% of all women appearing).¹⁶ The result is not surprising, as criminal cases tend not to be layered with different levels of associates and partners. However, there

is a gender gap when it comes to appearances generally in criminal cases and therefore in the percentage of women versus men who play lead roles. Among all attorneys appearing in criminal cases, 67% are men. Among attorneys appearing as lead counsel, 67% are men (33% are women), and among attorneys appearing as trial attorney, 79% are men (21% are women).



For criminal cases, there is also a gender impact by type of client. Of men appearing as lead counsel in criminal cases, 34% appear for the government and 66% appear for defendants. Of women appearing as lead counsel in criminal cases, the ratio is reversed: 69% appear for the government and 31% appear for defendants. In other words, women who are government prosecutors—compared to women in all other practice settings and client representations—have the greatest chance of appearing in a case as lead counsel.



Federal criminal prosecutions are important and powerful roles for any trial lawyer. The lower percentage of women lead counsel representing parties in civil litigation or representing criminal defendants suggests

to us that a number of social factors are impeding the retention of women as lead counsel, as explained below.

iv. summary of the findings

It is evident that women are consistently underrepresented in lead counsel roles in all but a few settings and for all but a few types of cases. In civil cases, men are three times more likely to appear in lead roles than women, which is a marked departure from what we expected based on the distribution of men and women appearing generally in federal litigation (a roughly 2 to 1 ratio) and the distribution of men and women in the legal profession (again, a roughly 2 to 1 ratio). In private practice settings, the gender gap is greatest in AmLaw 200 firms, compared to AmLaw 100 firms and other smaller firms not on the AmLaw lists. In addition, women are more likely to be lead counsel representing civil defendants rather than civil plaintiffs. On the other hand, men appearing as lead counsel in civil cases are somewhat more evenly distributed between representing plaintiffs and defendants.

Moreover, in the majority of civil cases (59%), lead counsel are all men, even though it is typical for more than one lawyer to enter an appearance in a civil case. A much smaller proportion of civil cases (13%) have all women as lead counsel. The findings show more gender segregation in civil cases than we would have predicted. In essence, more than 70% of cases are defined by lead counsel of one gender or the other, not a mix of male and female lead counsel.

If we were to extrapolate these statistics to the almost 11,000 civil cases filed in the Northern District

in 2013,¹⁷ we would see that approximately 6,490 cases had no women appearing as lead counsel, and about 1,400 cases had no men appearing as lead counsel.

Women representing the government had better odds of appearing as lead counsel, at roughly the same rate as women generally appeared (a 2 to 1 male-to-female ratio) and at roughly the same rate as their distribution in the legal profession. Without putting too fine a point on the results, we certainly observed a private vs. public sector gender gap for women in lead roles.

The results in criminal cases—where one side is the government and the other a private party, albeit a

criminal defendant—show a pattern consistent with the private vs. public sector gender gap we observed in civil cases. Women lead counsel in criminal cases represent the government more than twice as often as they represent criminal defendants. For men, the ratio is reversed: men appear as lead counsel for private defendants twice as often as they appear for the government.

Even so, only a minority of attorneys appearing in criminal cases are women. Those women who appear, however, almost always file their appearances as lead counsel and in about the same ratio as men. Overall, and looking across all practice settings, women in the public sector and women in criminal matters have a substantially greater chance of playing lead counsel roles than those in the private sector working on civil cases.

We also note that class actions—considered by many to be both high-stakes and complex litigation—are dominated by male lead counsel. Indeed, the grouping of lead counsel in class actions is about as close to gender segregation as we can imagine. Although we did not look at the role of men versus women as lead counsel in multidistrict litigation—another type of litigation considered complex and high-stakes—our personal experience has been that it is rare for women to be appointed by judges as lead or liaison counsel.¹⁸ On the opposite side of the spectrum are cases with *pro se* plaintiffs, which are more likely to have women as lead counsel than the typical civil case (except for cases where counsel represent government entities).

v. Best praCtiCes for laW sChools, laW firms, ClieNts, Judges, and Women laWyers

Men and women have been graduating from law school and entering private firms at about the same rate for many years,¹⁹ and on a clean slate we would expect men and women to progress at about the same rate into lead counsel roles. But as our research shows, the trial bar continues to have a substantial gender gap.

The gender disparity we observed may reflect the overall career arc for women in private practice. As shown by the NAWL Surveys, men are less likely than

women to leave private practice, men are more likely than women to advance beyond the associate ranks and become partners, and men earn more than women. Such disparities in advancement and compensation can stem from factors outside the control of women (such as implicit bias), affecting the types of assignments women receive, performance evaluations, and even an ability to meet billable-hour requirements.²⁰ The result will be a cumulative negative impact on the ability of women litigators to receive increasingly better assignments and greater opportunities to serve in lead roles in the courtroom.

Other social factors may impinge, as well, on opportunities for women lawyers. As one example, lawyers who have taken time out of the labor force to attend to family responsibilities are less likely to become partners and earn less if they do become partners, and that phenomenon disproportionately affects women.²¹ Additional reasons are more closely linked to the dynamics of becoming lead counsel. There may be bias (sometimes implicit, sometimes not) by senior partners or clients who choose their first-chair lawyers; the impact from judges or opposing counsel who make inappropriate or stereotypical comments and act accordingly; and the increased scrutiny and double standards that women experience in the courtroom.

Research by the ABA Commission on Women in the Profession and other organizations has shown that implicit bias hinders the progress of women lawyers, and this also can apply to women litigators.²² Senior lawyers who choose their co-counsel in courtrooms are overwhelmingly male, and they may automatically choose someone like themselves—i.e., another male. Certainly, implicit biases play a role, such as the belief that a woman lawyer will express too much emotion. Ironically, male litigators who display the same level of emotion are considered “deeply passionate” about the case. When a woman litigator raises her voice to make a point or argues forcefully, she may be viewed as being overly aggressive. A male litigator acting in the same way is typically viewed favorably for zealously representing his client. Thus, women lawyers often have to demonstrate greater levels of competence and proficiency and are held to higher standards than their male colleagues.

Women trial lawyers must also occasionally deal with opposing counsel and judges who make inappropriate or stereotypical comments. Many women have reported being patronized and called “honey” or “dear” or referred to by their first name in the courtroom. Indeed, a Defense Research Institute survey found that 70% of women attorneys experienced gender bias in the courtroom.²³

The underrepresentation of women among lead lawyers may also stem from certain client preferences, as some clients prefer a male lawyer to represent them in court.²⁴ In addition, women may too often be relegated by their law firms to second-chair positions, even though they have the talent and experience to serve as first chairs. The denial of these significant opportunities adversely affects the ability of women to advance in their firms.²⁵

All of these issues apply with even greater force to women trial attorneys of color, who face the double bind of gender and race. We have no doubt that had we been able to measure the impact of gender and minority status, the results would show an even more difficult road for women lawyers of color—as has been shown repeatedly in other studies on gender and race.²⁶

The lack of women as lead counsel is not explained by a disparity in talent or ability between male and female trial lawyers. To the contrary, women can be highly effective courtroom advocates.²⁷ Jurors are receptive to women attorneys,²⁸ and many commentators have observed the potential benefits of representation by women lawyers in litigation and at trial.²⁹

The overwhelming view today is that being an effective trial lawyer is not a matter of gender. As well-known litigator Elizabeth Cabraser put it, “There are as many ways to be a good, effective lawyer as there are people who want to be a good, effective lawyer.”³⁰ And while not giving wholesale credit to gender stereotypes, Cabraser also recognized that gender stereotypes have play in courtroom effectiveness: “If you go by stereotyping, women have a great advantage because women have had to learn to listen—listening to judges is more important than talking to judges; listening to what the witnesses are saying is more important than saying what you’ve already decided you want to say. . . . Women have had to learn to do that.”

We believe it is imperative that actions be taken to address and remedy the continuing gender imbalance in the courtroom. The result will be a much deeper pool of skilled attorneys available to represent clients in the courtroom and a cadre of trial lawyers who more closely reflect the diversity of our society, litigants, judges, and jurors.

The ABA Commission on Women in the Profession is planning to work with law schools, law firms, corporations, judges, and individual women lawyers around the country to identify the steps that can be taken so that women receive the training and courtroom experience needed to become skilled trial lawyers. We hope that state and local bar associations, trial lawyer groups, and women’s bar organizations will shine a spotlight on the need to increase the number of women serving in lead counsel positions and hold programs focusing on best practices, such as those suggested here, to accomplish that goal.

A. LAW SCHOOLS

Law schools can play a major role in training women to serve as effective trial lawyers. Women law students should be encouraged to become trial lawyers and receive training and mentoring by trial attorneys to perfect their skills in moot court, legal aid clinics, and trial competitions. Teaching tools should be specifically designed to help women law students navigate the implicit biases they may face in the courtroom. Also, in light of the results of our study, law schools should advise women law students who want to become trial lawyers that, at the current time, government litigation positions will enhance their opportunity to play a lead role and gain first-chair experience.

B. LAW FIRMS

Law firms should focus on specific training for women litigators, recognizing that traditional means of obtaining trial experience may no longer suffice. Since certain large law firms or clients prefer that important depositions be taken only by partners or senior associates, and first-chair trial lawyers are overwhelmingly men, firms must be even more resourceful to ensure that all of their litigators, and particularly

their women litigators, are getting the experience that will allow them to be successful and confident in the courtroom.

Law firms should also encourage women lawyers to take *pro bono* cases or secondments in district attorney or public defender offices so that they will have the opportunity to get into court and hone their trial skills. Depositions of less important witnesses and custodians of records can also provide needed experience. Similarly, oral argument experience can be obtained in discovery disputes and less central motions in state and federal matters.

In addition, women lawyers should be strongly encouraged to participate in trial training and advocacy programs, those conducted both in-house or by outside organizations, such as the National Institute of Trial Advocacy (NITA) and bar association groups.

It is also important that law firms use metrics to track the professional development of their associates, so they receive the appropriate amount and level of trial experience, and take action to remedy any deficiencies.

Finally, we recommend that law firms avail themselves of the ABA Commission on Women's Grit Project Toolkit,³¹ which provides training concerning "grit" and "growth mindset." These important traits, which can be learned, entail perseverance and resiliency and can be enhanced through deliberate practice. As one experienced trial judge has sagely observed, these traits are essential to becoming a great trial lawyer and enable litigators to learn and develop even from setbacks and defeats that they experience in the courtroom.³²

c. cLiEntS

Clients can also play an important role in increasing the gender diversity of the trial bar. First, clients can be proactive in retaining women litigators to be their lead trial lawyer in their cases. In addition, clients can use their considerable economic clout with their law firms to insist that women be given prominent positions and significant responsibility in trial teams assembled by the firm for the client's matters.³³

Clients can also keep track of the names of women attorneys in trial court opinions issued in the subject areas of importance to the client. This data can then

serve as the basis for compiling names of experienced, successful women litigators, thus expanding the pool of "go-to" lawyers used by the company. Likewise, general counsel or senior in-house counsel can recommend women litigators they have retained to other in-house colleagues. In addition, companies can provide women litigators with specific training concerning the particular subject areas in which the company has most of its litigation.

Finally, clients can require firms to maintain metrics on how their company's cases are being staffed and the roles women lawyers are playing in their cases, with an eye toward ensuring an increase in the ranks of women trial lawyers.³⁴

D. JuDgeS

Judges are also integral to the efforts to increase the number of female first-chair trial lawyers. Judges can be mindful of appointing experienced, qualified women lawyers as lead counsel, liaison counsel, or members of the steering committee in MDL class action cases.³⁵ Judicial appointments of women litigators as special discovery or bankruptcy masters, trustees, or guardians ad litem can help increase the visibility and credibility of women lawyers, which will help them advance to equity partnership and develop as rainmakers.³⁶

In addition, a number of judges have sought to incentivize law firms to provide greater opportunities for courtroom experience to their women and minority associates. For example, certain judges around the country have made it a practice of allowing argument on motions that would otherwise not be heard, as long as the advocate will be the associate working on the case, rather than the partner.

e. inDiViDuAL women LAWyerS

Individual women lawyers need to take the initiative to develop the skills, tools, and expertise necessary to be an effective trial lawyer. Women lawyers can and should affirmatively reach out to seek assignment to cases where they will get to play an active role in the litigation and obtain trial experience. It is a given, of course, to learn the substantive law involved in the case

and master the rules of evidence and the rules of civil procedure. But there is more.

It is also important to be aware of gender dynamics in the courtroom and take steps to deal with or overcome them. Body language is critical, including maintaining an outward appearance of calm, even in moments of stress and pressure. Women need to “own” the courtroom with their presence and also with their voices. Soft voices of either gender can be distracting or ineffective at trial, but some women naturally have softer voices. Thus, they will need to adjust their volume so as to take full command of the courtroom. Moreover, women trial lawyers need to be mindful that their appearance is often carefully scrutinized by others in the courtroom. Like it or not, one’s hairdo, shoes, and even the decision to wear slacks instead of a skirt can often engender comments.³⁷

Women should seek opportunities to be courtroom-ready by taking trial advocacy classes and taking on *pro bono* matters where they are in the lead. Small cases are good for learning all of the key aspects of litigation and can give women the courtroom confidence that is so much a part of being an effective advocate. And we advise women never to turn down the opportunity to be part of a trial team. There are so many upsides to saying “yes” and enough downsides to saying “no” that, to our minds, the only right answer is “yes.”

As discussed above, women lawyers have many advantages in the courtroom—they connect well with

jurors, particularly with women jurors, who often comprise half or more of the jury pool; are viewed as more credible and trustworthy; and are in many instances overprepared rather than underprepared. Women litigators have ample reason to be confident in their effectiveness as trial counsel.

ConClusion

Fostering the success of women litigators redounds to the benefit of clients, who obtain top-notch representation in their cases; to law firms, which have made a substantial investment in hiring and training their women litigators; and to women lawyers themselves, who are able to realize their full potential and advance in their careers. We believe it is imperative for all concerned that women are encouraged and supported in their pursuit of a career in the courtroom and the role of lead counsel at trial.

We hope that this study will heighten awareness about the existence of significant gender disparities in the ranks of lead trial lawyers. We want to spur a dialogue that will result in concrete and effective actions to increase the numbers of women lead trial counsel. These recommended best practices will help women litigators develop their skills and obtain the same opportunities for leadership roles and success in the courtroom as their male colleagues.

Endnotes

1. Stephanie Scharf heads the Litigation Practice at Scharf Banks Marmor LLC, a nationally prominent women-owned law firm. She represents corporations in business litigation, class actions, product liability, and complex tort defense. Currently a commissioner of the ABA Commission on Women in the Profession, she is a former president of the National Association of Women Lawyers. Stephanie founded, designed, and directed from 2006 through 2013 the *NAWL Annual Survey of Retention and Promotion of Women in Law Firms*. She also designed and conducted the only national survey of women's initiatives in law firms, under the auspices of the NAWL Foundation. Stephanie received a JD and PhD in Behavioral Sciences from the University of Chicago and was Senior Study Director, NORC, before practicing law. Her email contact is SScharf@scharfbanks.com.

Roberta ("Bobbi") Liebenberg is a senior partner at Fine, Kaplan and Black in Philadelphia, where she focuses her practice on class actions, antitrust, and complex commercial litigation. She served as past chair of the American Bar Association Commission on Women in the Profession from 2008 to 2011 and 2013 to 2014. She also served as chair of the ABA Task Force on Gender Equity. She is a founder and now chair of DirectWomen, the only organization whose mission is to increase the representation of women attorneys on corporate boards. She has been named by the *National Law Journal* as one of its "50 Most Influential Women Lawyers in America" (2007) and as one of the country's 75 most "Outstanding Women Lawyers" (2015). Her email is rliebenberg@finekaplan.com.
2. See American Bar Association statistics, showing that in 1985 women accounted for about 40% of first-year law students and that percentage increased in subsequent years, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.
3. See data from Minority Corporate Counsel Association about the percentage of women general counsel in the *Fortune* 500 and data reported by the NAWL Foundation and the National Association of Women Lawyers about the percentage of women equity partners, http://www.diversityandthedigital.com/datb/november_december_2014#pg20; NAWL Annual Surveys from 2006 to 2013, posted at www.nawl.org (<http://www.nawl.org/p/cm/ld/fid=82>). In contrast, women have fared substantially better in the judiciary than in private settings. For example, women comprise 35% of federal appellate judges and 32% of federal district court judges, as well as 34% of state appeals judges and 29% of all state judges, http://www.nawj.org/us_state_court_statistics_2014.asp; <http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1>.
4. The first eight NAWL surveys were designed, implemented, and largely reported by Stephanie A. Scharf. The eighth survey report was largely co-authored by Ms. Scharf and Ms. Liebenberg.
5. See criteria for Trial Bar Membership at https://www.ilnd.uscourts.gov/home/_assets/_documents/Trial%20Bar%20Instructions.pdf.
6. Before finalizing the sample, we eliminated (1) any case that was filed but then transferred out of the Northern District; (2) cases that were part of the 17 MDL cases filed in the Northern District in 2013; (3) cases where attorney appearance forms were not filed for both sides or were missing a Civil Cover Sheet, unless that information was available from other documents filed with the court; (4) cases that were *pro se* on both sides; (5) cases where all attorneys on one side withdrew; (6) cases involving foreign nations; and (7) any attorney who withdrew from the case.
7. Before finalizing the sample of criminal cases, we eliminated cases without attorneys appearing on both sides, prisoner transfers, and "suppressed" cases.
8. "Other statutes" are a wide-ranging collection of 17 types of actions not covered by other substantive legal categories on the federal Cover Sheet. The "other statutes" category includes such areas as false claims, antitrust, banks and banking, deportation, racketeer influenced and corrupt organizations (RICO), consumer credit, agriculture, and freedom of information, among others.
9. For other categories, such as nonprofit and corporate in-house attorney, the number of lawyers appearing was too small to analyze.

10. While we coded this variable, there were too few cases for a reliable analysis.
11. At first blush, this male/female ratio appears to be roughly consistent with the distribution of men and women in the legal profession; the American Bar Association reports that 36% of the legal profession are women. *See* American Bar Association Market Research Department, February, 2015. In the same vein, as of October, 2014, it is reported that 38% of Illinois attorneys were women. *See* http://www.iardc.org/2014_Annual_Report_Highlights.pdf. However, it is unclear how much weight to give these estimates because of several unknown factors. First, the ABA had data on lawyers in 43 states, representing only 59% of the lawyer population. We do not know how the unreported population differs—with more or less women—than the reported population. Second, we suspect that the statistics about total lawyers include those who have been practicing for more than 40 years, which could lead to two countervailing trends: on the one hand, the older segment of the bar is overwhelmingly male (because of the demographics of law school graduates 40-plus years ago), while on the other hand, the older segment may be less actively engaged in litigation because they are either working part-time or are fully retired. *See, e.g.,* “Lawyer Retirement Policy and Opinion Explored in New Survey,” http://www.altmanweil.com/index.cfm/fa/r.resource_detail/oid/51df5c74-cd4f-404a-b24e-5729df0c7092/resource/Lawyer_Retirement_Policy_and_Opinion_Explored_in_New_Survey.cfm. Third, current surveys show that women lawyers leave the private practice of law in greater numbers than men. *See* note 3, above. As a result of these and other factors, we do not believe there are fully reliable data about how many men and women nationally or in Illinois are active in a litigation practice. Short of better data, however, for purposes of this report we extrapolate from the reported data and assume that a little more than one-third of practicing litigation lawyers are women.
12. This analysis includes all cases where there were lawyers appearing on both sides and excludes the relatively few cases where one side appeared *pro se*. We note that in any given case, more than one attorney can designate himself or herself as lead counsel for the same client on the matter. Also, more than one attorney can designate himself or herself as trial attorney for the same client.
13. By inference, 28% of civil cases had both men and women appearing as lead counsel, and 21% of civil cases had both men and women appearing as trial attorneys.
14. We note that the majority of lawyers appearing as lead counsel come from small private firms (60%)—those not in the AmLaw 200 and also not solo practitioners. AmLaw 100 and 200 firms—the nation’s top 200 firms by gross revenue—account for 15% of lawyers appearing as lead counsel; solo practitioners account for 9% of lead counsel; government lawyers account for 14% of lead counsel; and there is a sprinkling of lead lawyers from other settings.
15. The trial attorney designation shows a similar pattern for class actions.
16. Of the 135 lawyers who entered appearances in criminal cases, 119 appeared as lead counsel.
17. *See* Federal Judicial Caseload Statistics 2014 at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2014/tables/C00Mar14.pdf>.
18. Elizabeth Chamblee Burch, *Judging Multidistrict Litigation*, 90 N.Y.U.L. Rev 71, 93 n. 102, 120 n. 251, Table 1 at 139-40 (April 2015) (presenting empirical study of repeat players in MDLs and noting gender gap within repeat players); Jaime Dodge, *Facilitative Judging: Organizational Design in Mass Tort Multidistrict Litigation*, 64 Emory L.J. 329, 363-67 (2014) (presenting empirical data on the significant gender gap in plaintiffs’ executive and steering committee and defense side appointments).
19. EEOC, Diversity in Law Firms, <http://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf>. More recently, in 2009 through 2014, for example, approximately 45% of associates in law firms were women. *See* NALP publication, “Diversity Numbers at Law Firms Eke Out Small Gains: Numbers for Women Associates Edge Up After Four Years of Decline” at Table 1, http://www.nalp.org/lawfirmdiversity_feb2015#table1.
20. *See, e.g.,* Roberta Liebenberg, “Plugging the ‘Leaky Pipeline’ of Women Attorney Attrition,” ABA The Young Lawyer Vol. 15 No. 9 (July/Aug. 2011); Roberta Liebenberg, “Has Women Lawyers Progress Stalled?,” Legal Intelligencer, May 28, 2013.

21. See, e.g., M. C. Noonan and M. E. Corcoran, "The Mommy Track and Partnership: Temporary Delay or Dead End?" *Annals of the American Academy of Political and Social Science*, Nov. 2004, vol. 596, no. 1, 130–150.
22. Implicit biases are unconscious biases that everyone has, both men and women, and that affect what we notice about people, what we remember about them, how we interpret their behavior, and the actions we take in relation to them.
23. "A Career in the Courtroom: A Different Model for the Success of Women Who Try Cases," *DRI—The Voice of the Defense Bar*, 2004, at pp. 11, 58.
24. *Id.* at p.11; "Women in the Courtroom: Best Practices Guide," *DRI*, 2007, at p.6, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.dri.org%2Fdr%2Fwebdocs%2Fwomen_in_the_courtroom_best_practices_guide.pdf&ei=i2tqVMrHAtCkyASv0ILYBA&usg=AFQjCNGKG2u8yW5-cU0IRf5d_63bXIKUkQ&sig2=rPrkNLznu_-qyj-Edj2JUQ&bvm=bv.79908130,d.aWw.
25. *Id.*
26. See, e.g., National Association of Women Lawyers Annual Survey of Retention and Promotion of Women Lawyers, for the years 2008 and 2013, <http://www.nawl.org/p/cm/ld/fid=82#surveys>; "Visible Invisibility: Women of Color in Fortune 500 Legal Departments," American Bar Association Commission on Women in the Profession, 2012; "Visible Invisibility: Women of Color in Law Firms," American Bar Association Commission on Women, 2006.
27. Lynne Bratcher, "Women Trial Lawyers—As Good or Better Than Men," Nov. 2009, <http://uncommoncourage.blogspot.com/2009/11/women-trial-lawyers-as-good-or-better.html>.
28. See, e.g., Victoria Pynchon, "Juror Attitudes to Women in the Courtroom," Feb. 2012, <http://www.forbes.com/sites/shene goti at es/2012/02/15/juror-attitudes-to-women-in-the-courtroom>; Bratcher, "Women Trial Lawyers—As Good or Better Than Men," *id.* at note 27; Jan Nielsen Little, "Ten Reasons Why Women Make Great Trial Lawyers," June 2006, http://www.kvn.com/templates/media/files/pdfs/Jan_Column_June2006.pdf.
29. *Id.* at notes 27 and 28; see also L. Spano and J. L. Meihls, "You Go Girl! How Women Can Gain an Advantage in the Courtroom," Trial Partners, Inc., <http://www.trial-partners.com/images/yougogirl.pdf>.
30. Founder of Lief, Cabraser, Heimann & Bernstein LLP, quoted in H. Hayes, "Women Winners of the Plaintiffs' Bar," http://www.americanbar.org/content/dam/aba/publishing/perspectives_magazine/women_perspectives_womenwinners.authcheckdam.pdf.
31. See ABA Commission on Women, www.ambar.org/grit.
32. See Judge Mark Bennett, "Eight Traits of Great Trial Lawyers: A Federal Judge's View on How to Shed the Moniker, 'I Am a Litigator,'" *The Review of Litigation*, Winter 2013, Vol. 33, No. 1; "Grit, Growth Mindset, and Being a Great Trial Lawyer," *Woman Advocate*, Section of Litigation, March 9, 2015; <http://apps.americanbar.org/litigation/committees/womanadvocate/articles/winter2015-0315-grit-growth-mindset.html>.
33. See "Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers," ABA Task Force on Gender Equity, www.americanbar.org/GenderEquity.
34. *Id.*
35. See "Standards and Best Practices for Large and Mass-Tort MDLs," at *Best Practice* 4E, pp. 58–60 ("The transferee judge should take into account whether the leadership team adequately reflects the diversity of legal talent available and the requirements for the case."), Dec. 2014, <http://law.duke.edu/judicialstudies/research>.
36. See Roberta Liebenberg, "The Importance of Diversity in a Court's Exercise of Its Appointment Powers," *Counterbalance*, Fall 2011, at 36, http://www.nawj.org/files/counterbalance/cb31_2.pdf.
37. Karen L. Hirschman and Dr. Ann T. Greeley, "Trial Teams and the Power of Diversity," *DecisionQuest* ("Jurors more often make comments about the dress and physical appearance of women lawyers.") See <http://www.decisionquest.com/utility/showArticle/?objectID=1678>.

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About the Commission on Women in the Profession



As the national voice for women lawyers, the ABA Commission on Women in the Profession forges a new and better profession that ensures that women have equal opportunities for professional growth and advancement commensurate with their male counterparts. It was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the Commission, issued a groundbreaking report in 1988 showing that women lawyers were not advancing at a satisfactory rate.

Now in its third decade, the Commission not only reports the challenges that women lawyers face, it also brings about positive change in the legal workplace

through such efforts as its Women of Color Research Initiative, Grit Project, Margaret Brent Women Lawyers of Achievement Awards, and educational programs addressing issues of importance to women lawyers (such as leadership, pay equity, and negotiation). Drawing upon the expertise and diverse backgrounds of its 12 members, who are appointed by the ABA president, the Commission develops programs, policies, and publications to advance and assist women in public and private practice, the judiciary, and academia.

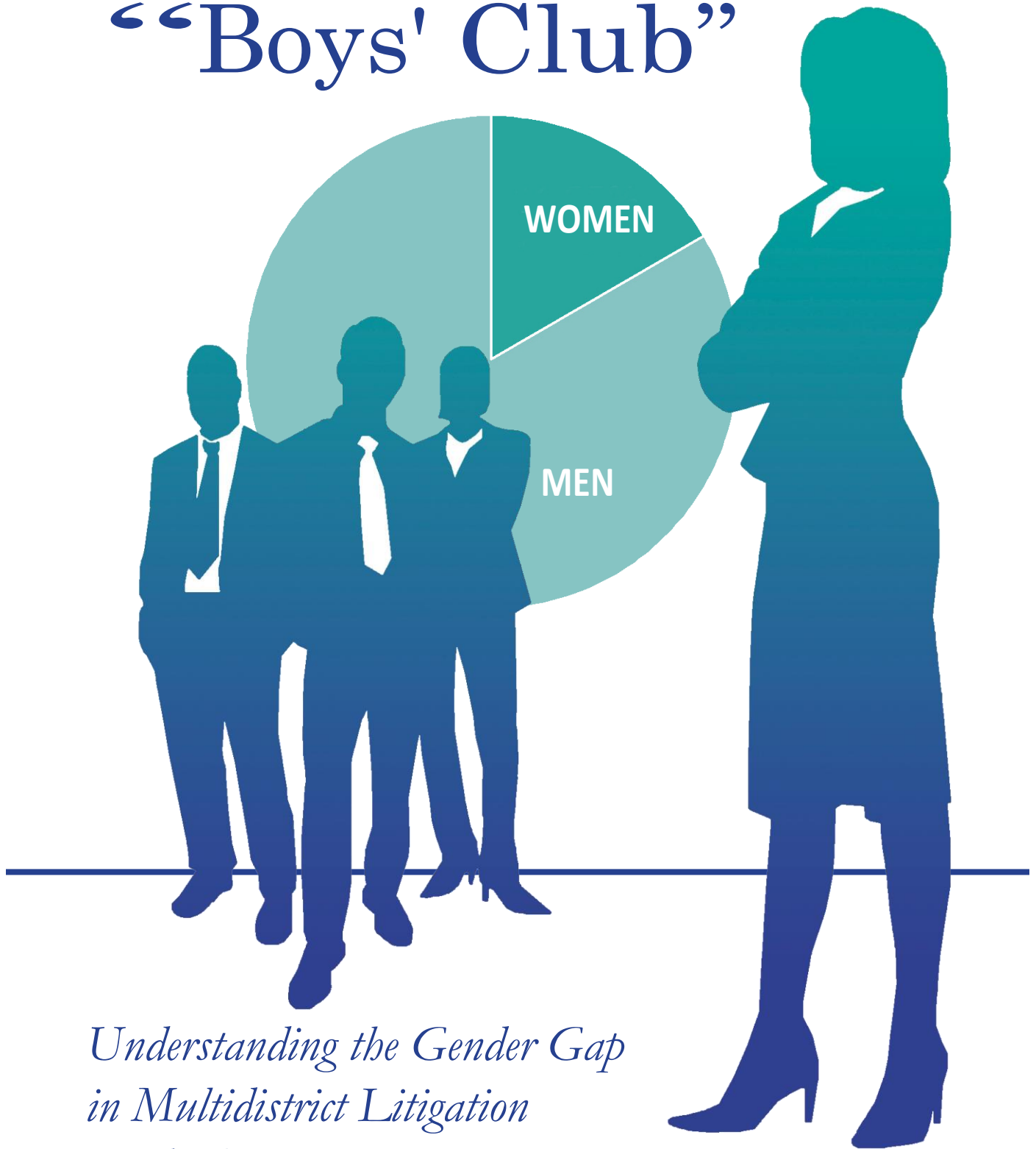
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Vying for Lead in the “Boys' Club”



*Understanding the Gender Gap
in Multidistrict Litigation
Leadership Appointments*

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Vying for Lead in the “Boys’ Club”

Understanding the Gender Gap in Multidistrict Litigation Leadership Appointments

Introduction

Prior research has established that, despite nearly equal graduation rates from law school and entry into the profession for the last thirty years, a substantial and enduring gender gap in the legal profession remains. When compared to their male counterparts, female lawyers experience disparities in numerous areas including: earnings; receipt of necessary mentorship and sponsorship; promotion to partner and leadership positions within their firms; representation on the judicial bench; and serving as “first chair” or lead counsel in litigation. However, research has not yet specifically identified the extent of the gender gap in court-appointed leadership in multidistrict litigation. Multidistrict litigation (MDL) is a federal statutory mechanism that consolidates complex civil litigation cases and transfers the consolidated matter to one federal district judge for pretrial proceedings, accounting for 36 percent of all federal litigation. The transferee judge then appoints leadership counsel for the consolidated cases in a myriad of ways. Appointment to leadership of such large civil proceedings can be very lucrative and is considered very prestigious. While it is widely acknowledged by practitioners that a serious gender gap exists in MDL leadership appointment, research has not yet quantified the discrepancy across all types of MDLs, or the ways in which the varied procedural and cultural factors contribute to this discrepancy. This study examines the most recent five years of MDL dockets to establish the current rate of gender disparity in leadership appointments and identifies which, if any, case factors may have a correlation with these rates. These findings will serve as the basis for further exploration of the institutional, cultural, and interpersonal factors that contribute to this discrepancy through depth interviews with practitioners. It is intended that these findings will inform future initiatives for women’s advancement in court-appointed leadership and the legal profession as a whole. ■

Women in Law

In 2001, Professor Deborah Rhode aptly described the issue of gender inequality in the legal profession as the “‘no-problem’ problem”¹ referring to the assumption that the long-standing gender gap in the legal profession would eventually work itself out as time passed. Rhode noted that the increasing entry of women into law schools and the legal profession, while certainly progress to be acknowledged, created the widespread assumption that it would only be a “matter of time” before women moved up in the ranks of the profession and achieved parity with their male counterparts.² Predicated on the false notion that gender discrimination in the profession was eliminated by gender-neutral policies for hiring and advancement, this assumption fails to acknowledge the ways in which everyday personal interaction in firms and in court, as well as other institutional norms and routines, actually reinforce the established gender hierarchy in the legal profession. Though mostly unconscious, gendered standards for hiring, promotion, and job assignments, as well as gendered meanings and assumptions of masculinity and femininity routinely contribute to gendered differences, expectations, and disparities within work organizations.³

In light of the failure of this anticipated self-correction of the “women’s problem” in the legal profession, a great deal of research has attempted to measure and identify the causes of this enduring gender gap. The American Bar Association’s Commission on Women in the Profession notes that women currently make up 36 percent of the legal profession,



with women graduating law school and entering the profession at near equal rates to men for the last 30 years.⁴ In fact, at the outset of their careers, it appears that women have made parity with men. According to data released in December of 2016, women represent a slight majority of law students for the first time in history, comprising 50.3 percent of overall enrolled law students.⁵ In private law firms, 45 percent of all associates and 48 percent of summer associates are women.⁶ However, research indicates that women are not advancing at the same rate as men throughout their careers. Women make up only 21.5 percent of firm partners, 18 percent of both equity and managing partners in law firms, 31 percent of law school deans, and 27 percent of all federal and state judges.⁷ Given that the legal profession is one of the least diverse professions in America, it is not surprising that the gender disparity compounds when race is considered, with women of color making up less than 2 percent of equity partners.^{8, 9} Further, a recent study calculated a severe salary gap among law firm partners -- well beyond the national general salary gap -- with male partners earning 44 percent more on average than female partners.¹⁰

Given the difference between profession-entry rates and women’s advancement at higher levels of their career, it is necessary to look beyond the official gender-neutral policies for

admittance to the profession, hiring, and advancement to determine the cause of these significant disparities. While largely unconscious, enduring cultural, interpersonal, and institutional norms influence this inequality. For example, while certainly not exhaustive, some of these detrimental conventions include: negative perceptions of those utilizing leave and flexible work schedule options for care work; gendered beliefs about the “appearance” of male-female working relationships, potentially limiting women’s opportunities for the adequate sponsorship and networking opportunities so vital to advancement; and unconscious reference to gender in the assignment of tasks.¹¹ For example, a gender gap in billable hours exists even when women work longer hours than men, suggesting that women are tasked with more non-billable (administrative) duties within their firm, leading to potentially less time devoted to billing and business development, which are key factors for promotion.¹²

Culturally, the “hypercompetitive professional ideology”¹³ of the legal profession also tends to value “traditionally male” behaviors to the detriment of women. In the practice of law, women experience a double bind in which they must carefully balance performing aggressively and assertively enough to be considered competent to handle demanding legal scenarios while maintaining an acceptable level of the softness and agreeability required of hegemonic femininity.¹⁴ These largely unconscious cultural narratives about femininity affect many aspects of practicing law – both in firms and in the courtroom. For example, it has been shown that in hiring procedures, although hiring metrics are officially gender-neutral, those in charge of hiring and promotion still tend to do so through a gendered lens which can color people’s perceptions of women’s work.¹⁵ As one can imagine, this double bind requiring

balance of “male” and “female” characteristics can be especially problematic for female litigators.¹⁶ Research on the participation of women lawyers as lead and “first chair” counsel in all types of litigation found that women appeared as lead counsel in only 24 percent of the cases they examined.¹⁷ The same study found that in class-action litigation specifically, women appeared as lead counsel only 13 percent of the time.¹⁸ ■

Multidistrict Litigation

The United States Judicial Panel on Multidistrict Litigation (commonly referred to as the JPML), is a special body of the federal court system that manages multidistrict litigation in the United States. The JPML was created in 1968 and since then has presided over 600,000 cases and 2750 dockets.¹⁹ The panel, consisting of seven appointed sitting federal judges, decides motions for the centralization of civil cases. The JPML considers whether civil actions in two or more federal judicial districts should be transferred to a single federal district for consolidated pretrial proceedings. The purpose of this consolidation is to conserve resources as well as avoid duplication and inconsistency between cases involving the same matter.²⁰ It is estimated that multidistrict litigation comprises 36 percent of the entire federal caseload.²¹

Once the litigation is assigned and transferred to the district court and a specific federal judge, the judge presides over all pretrial matters, including appointing leadership counsel to create a more efficient process in most MDL cases. Leadership positions in MDL cases are highly coveted and prestigious as they include the potential for large fees as well as the opportunity to play a prominent role in large, high-profile cases, both conferring great benefit to a practitioner's career.

The leadership appointment process is quite varied between judges and cases. In each case, the assigned judge has discretion to decide the process of appointment, the number of leadership roles appointed, the types of leadership roles, and the duties of each role. The Manual for Complex Litigation offers

general guidance for judges making appointments, indicating that it is important for judges to consider numerous factors including but not limited to: the physical and financial resources of counsel; counsel's ability to commit to a long term project; the ability of counsel to work with others; and counsel's experience in the subject type of litigation.²² Common wording in judicial orders in a majority of MDL cases regarding criteria for appointments is as follows:

Criteria for Appointments. The Court will consider only attorneys who have filed an action in this litigation. The main criteria for these appointments are:

- (1) knowledge and experience in prosecuting complex litigation, including class actions and other MDL actions,
- (2) willingness and ability to immediately commit to time-consuming litigation,
- (3) ability to work cooperatively with others, and
- (4) access to sufficient resources to prosecute the litigation in a timely manner.^{23, 24}

Beyond these general guidelines, the exercise of judicial discretion has led to a wide variety of appointed leadership structures. Common leadership roles include variable combinations of lead counsel, liaison counsel, executive committees, steering committees, and special counsel positions assigned to specific duties necessary in certain matters. Additionally, judges' methods of appointment vary. Traditionally, judges appoint leadership through "private ordering" or what is sometimes referred to as the "consensus model." In private ordering, judges request that the usually large group of attorneys

representing all plaintiffs come to an agreement on leadership amongst themselves and present a leadership slate to the judge for approval. While judges will sometimes make alterations to the proposed slate, most are entered as an official leadership order as presented. It is argued that this traditional method of private ordering consistently yields appointments of a very small group of MDL “repeat players” into key leadership positions.²⁵ Research regarding repeat players in MDLs shows that this tight network of attorneys is mostly male and referred to by some as the “good ol’ boys club.”²⁶ Accordingly, a recent accounting of the fifty most-appointed repeat players revealed that only 11 are female.²⁷ Further, research has identified a key group of attorneys that routinely maintain elite positions in this network as well as their connection to each other throughout numerous prestigious cases, asserting that they have significant influence on the “practices and norms that govern multidistrict proceedings,” frequently to their benefit.²⁸

In lieu of private ordering, judges have recently increased their use of an individual application process for appointment, inviting all attorneys to file individual applications for appointment. These applications are customarily filed with the court along with a memorandum making the case for their appointment, detailing: attorneys’ experience in similar MDL cases; their ability to work well with others; their ability to commit to the case; and assertions of adequate firm resources including the ability to financially front such extensive litigation. Some judges will then allow each attorney a few minutes in court to make a verbal presentation to the judge regarding why they should be included in the leadership. It is asserted that such “application” methods of appointment help to circumvent the repeat player issue by giving newcomers a fighting chance at obtaining leadership

positions, thus potentially leading to a more diverse leadership group.²⁹

While a substantial gender discrepancy in leadership still exists even with the increase in appointment by application process, notable efforts and progress have been made to address this “no-problem problem.” Recent years have seen increased awareness and discussion of the lack of diversity in court appointments. In 2014, the Duke Center for Judicial Studies developed “Standards and Best Practices for Large and Mass-Tort MDLs” that included a provision to encourage diversity as a consideration in leadership appointments in MDLs.³⁰ In late 2015, the first majority-female leadership structure was appointed in the Power Morcellator MDL;³¹ in early 2016, a single female lead was appointed in the sought-after Volkswagen “Clean Diesel” case;³² and in late 2016, two women were appointed as co-leads in an antitrust MDL.³³ Further, some notable judges have begun including language in their leadership orders providing opportunities for “less-senior” attorneys outside of the repeat-player network to participate in the steering committees and presentation of arguments in an effort to offer a more diverse group the experience necessary for future leadership appointment.³⁴ While these positive efforts have yielded substantial awareness and commendable progress in increasing leadership diversity, there remains much work to be done. Discovering the actual rates of appointment by gender in MDLs is a necessary starting point for further exploration of the underlying factors contributing to this disparity, which will inform future initiatives for women’s advancement in court-appointed leadership. ■

Research Methodology

In order to determine the current gender gap in MDL leadership appointment, the most recent 500 MDL dockets filed with the JPML as of July 1, 2016 were coded and analyzed. Data were collected from individual court dockets for each case using Bloomberg Law. Cases that were not transferred as MDLs or where formal leadership appointments were not made were excluded from the set. This yielded 145 cases, both pending and resolved, that were transferred to District Courts where formal leadership was subsequently ordered on or before July 1, 2016. The 145 cases analyzed span years 2011 through 2016 and include all types of MDL cases. In cases where the judge appointed firms rather than individuals to leadership positions, memoranda submitted in support of the firms were examined to determine which attorneys were listed as lead for the firm in the case. In the event that it was not clear who was the lead attorney, those cases were excluded.³⁵

As suspected, the method of appointment and structure of the appointed leadership varied greatly between cases. This variability required individual assessment of each case's docket to establish if, when, and how, leadership was appointed, as well as the variety of leadership positions created for each specific case. Each case in which leadership was formally ordered was coded for the type of claim, which district court the case was transferred to, the date of case filing at the JPML, the gender of the appointing judge, the size and structure of appointed case leadership, the gender of the attorneys appointed, and the rate of female appointment to case leadership.³⁶

In order to accurately determine each attorney's self-identified gender, genders were determined by individually examining the pronouns used in their firm website biographies.³⁷ Additionally, due to the wide variety of case types or case subject matter, cases were classified by type. Using the case type categories/labels assigned by the JPML in their dockets, cases were broken down into four subject matter groups. These groups included

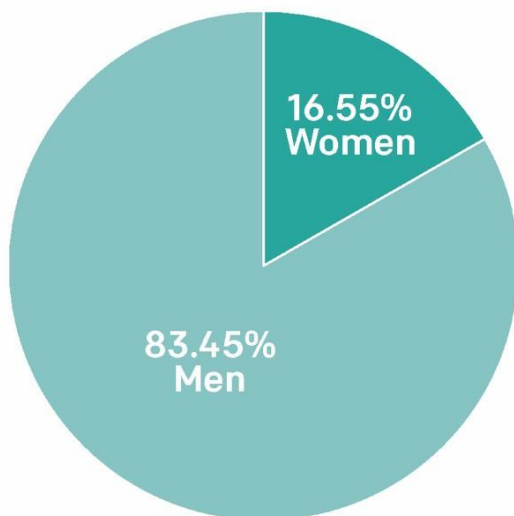
1. antitrust and securities, commodities exchanges;
2. personal injury product liability and health cases;
3. marketing and sales practices and non-personal injury product liability; and
4. "other" which includes air disasters, common disasters, contract, employment practices, intellectual property, miscellaneous statutory actions, and other fraud.

Due to the variation in structure and type of each appointed leadership group, it became necessary to parse out a tiered coding of leadership position hierarchy. Although the leadership positions in each case may differ in names, it is clear from the orders that there are not only general leadership positions (usually a steering committee), but leadership positions within the leadership (usually lead and/or liaison counsel, sometimes an executive committee). Thus, each leadership group was coded for "Tier One" positions which included leadership within the leadership and "Tier Two" positions comprised of lower tier leadership positions.³⁸ The rate of female appointment³⁹ was then quantified in each case for total leadership, as well as Tier One and Tier Two leadership individually for comparison. ■

Results

Coding and analysis of the available data revealed that cases spanned years 2011 through 2016 in 44 federal district courts. In the 145 cases analyzed, 102 appointments were made by male judges and 43 of the appointments were made by female judges. Case types were almost evenly distributed between the four case type categories, with the largest being the sought-after “personal injury product liability health cases” at 30 percent.

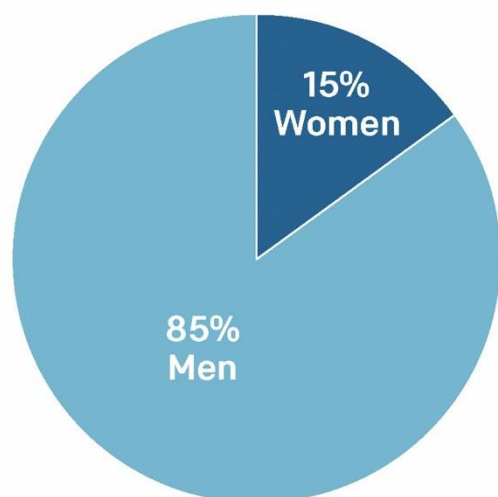
Total Leadership Rates



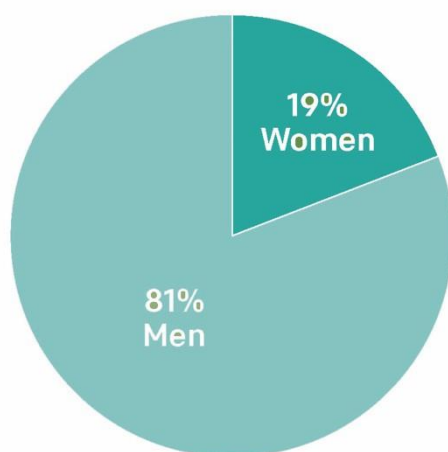
Analysis of the rate of total female appointment (including both Tier One and Tier Two) throughout the data time period revealed an overall average rate of female appointment of 16.55 percent, with a corresponding male appointment rate of 83.45. In other words, men were five times more likely to be appointed to leadership than women in MDL cases, with 37 percent of all cases having no women at all in leadership positions.

When broken down into tiered leadership, results show that women were less often appointed to top tier, or “Tier One” leadership positions. Specifically, the female appointment rate for Tier One leadership positions was 15 percent (less than the total leadership rate) whereas the average male appointment rate for Tier One leadership positions was 85 percent. Further, 49.7 percent of all cases had no women at all in Tier One leadership positions, and 98 percent of all cases had at least one male in the highest leadership positions, usually lead counsel. Only three of the cases examined had female-only lead counsel -- the notable Volkswagen “clean diesel” case that included a substantial steering committee beneath the single female lead (see above), and two other small cases in which the single female leads were the entirety of the leadership roster in their respective cases. Conversely, the average female appointment rate for Tier Two leadership positions was 19 percent (a higher rate than total leadership), and the average male appointment rate for Tier Two positions was 81 percent. Although still a sizable minority, women were slightly more likely to be included in Tier Two leadership than in Tier One leadership.

Tier One Leadership Rates



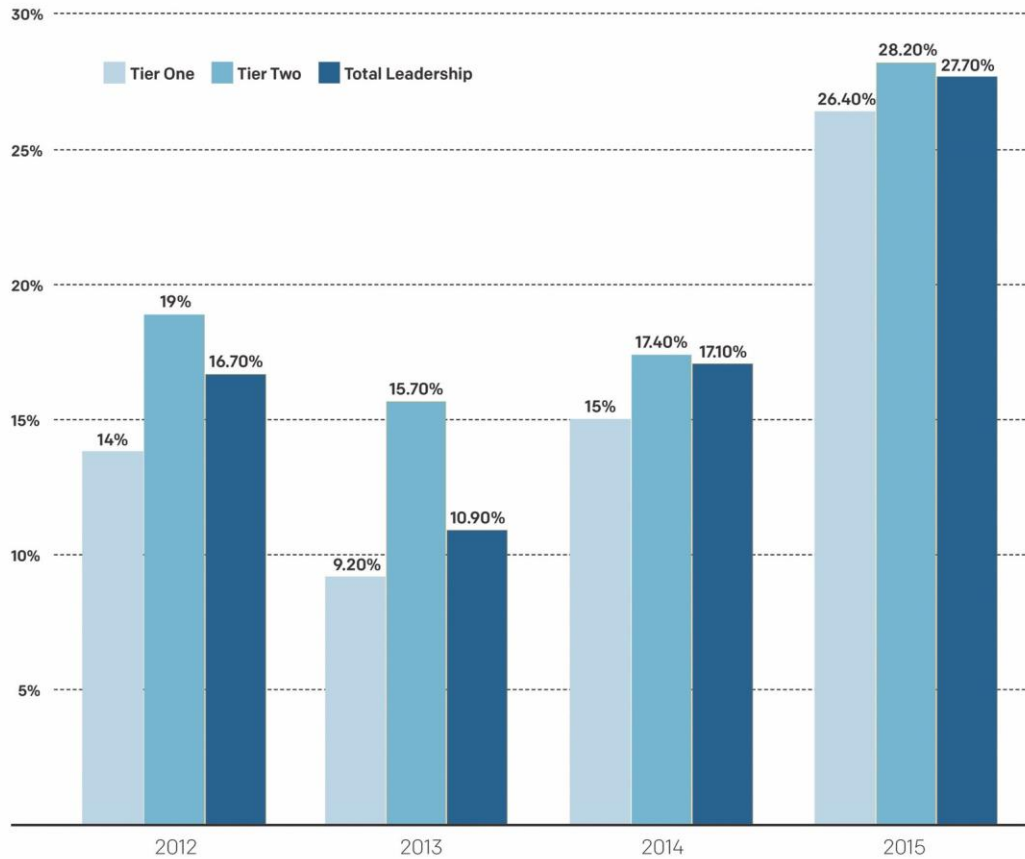
Tier Two Leadership Rates



Turning to potential correlative factors, an independent-samples t-test was conducted to compare the rates of female appointment for male and female judges, revealing that there is no relationship between the gender of the judge making the appointment and the rate of female appointment to leadership positions in MDL cases.⁴⁰ One-way analysis of variance (ANOVA) was calculated on both the type of case and district court location of cases to determine if their variation produced any significant difference in female appointment. Like the gender of the judge, these analyses were not significant, indicating that there is no relationship between type of case or district court location and female appointment in MDLs.⁴¹

Regression analysis of the year of case filing with the JPML showed a statistically significant increase in total female leadership appointment rates throughout the years examined ($b=.025$, $p=.019$) as well as a significant increase in the rate of Tier One appointments since 2011 ($b=.027$, $p=.023$). The most significant increase took place between the years 2013 and 2015 due to a dip in female leadership in 2013.⁴² Notably, there was a substantial increase in 2015 for women in both total leadership positions and Tier One Leadership positions. In 2015, the average rate of total female appointment increased to 27.65 percent, and the average rate of female appointment in Tier One positions increased to 26.44 percent, both of which are considerably higher than the average rates of previous years. There was not, however, any significant increase in the Tier Two appointment rate throughout the years sampled, indicating that women's involvement in Tier Two positions has remained relatively constant. This difference indicates that the significant increase in total leadership rates is

Average Rate of Female Leadership Appointment in Years 2012-2015



largely due to women being appointed to Tier One increasingly throughout the data time period.

Due to patterns noticed during data collection, a regression analysis was also run to determine whether the size of the total leadership group (or positions available) had any effect on the rate of female appointment. Interestingly, a significant and positive correlation was found ($b=.002$, $p=.040$). As the number of possible leadership positions increased, the average rate of female appointment increased as well. In other words, women were afforded a higher percentage of the leadership opportunities in cases in which larger numbers of attorneys were appointed to leadership. Further, when

regressions were run to examine the effect of larger leadership rosters on appointment rates for Tier One and Tier Two individually, there was no correlation for Tier One appointment, and a more significant correlation for Tier Two appointments ($b=.003$, $p=.004$). In other words, a larger total roster of leadership significantly increased women's appointment to leadership, specifically to Tier Two positions, but it did not translate into increased Tier One positions. ■

*** years 2011 and 2016 were excluded from the chart because the total caseload from each year was not included in the data*

Discussion and Conclusion

Overall, there is a quantifiable and substantial gender gap in MDL leadership appointments. This gap remains consistent regardless of the location of the court, the gender of the appointing judge, and the subject matter of the case. The lack of difference between case types was surprising given prior research indicating that women are represented more often and as lead counsel in certain types of litigation.⁴³ This finding indicates that MDL (and perhaps class action) cases may be consistent with regard to gendered appointment, as one “type” of case regardless of subject matter of the MDL.

Although the average rate of female appointment did not steadily increase each year, greater numbers of women were appointed over time. The appointment rates of 2015 are especially encouraging. Further research will be conducted on the rates of female appointment for the year 2016 and beyond in order to determine whether 2015 was a positive anomaly or a real indicator of progress for female practitioners.

When appointed, women were consistently more likely to be appointed to the less-prestigious and less-lucrative Tier Two leadership positions rather than Tier One positions. The substantial increase in not only Total Leadership, but in Tier One leadership specifically throughout the time period assessed is particularly promising. Future research will explore this study’s finding that



the gender gap narrows as the size of total leadership increases. Why are women appointed at a higher rate the larger a case grows? Is there a greater sense of inclusiveness or openness to a larger pool of potential leads as a case gets larger?

The results of this phase of the study, while necessary, inform only as to the existence of a gender gap in leadership appointment and its consistency by eliminating certain potential contributors like location, case type, and gender of the appointing judge. Given the limits of the information available in the court dockets, the answers to the questions about how and why this discrepancy occurs can be answered only through further qualitative study. As with all gender issues, many factors including interpersonal, cultural, and institutional factors both in individual law firms and the courts likely contribute to the gender gap in appointments.

Based on preliminary interviews, further research is currently being conducted through depth interviews with individuals involved in the leadership appointment process to assess the following:

- Whether certain processes of appointment give newcomers a better shot at appointment and therefore yield more diverse leadership rosters;
- the specific barriers that women face in vying for lead counsel;
- the work load differential and division of labor on appointed steering committees;
- the relationship, if any, between female appointment and women's issue litigation; and

- barriers to court time, partnership, and meaningful sponsorship for women within their law firms.

While this research identifies a substantial gender gap in MDL leadership appointment, results hopefully also indicate positive progress. These findings will serve as the basis for future monitoring of appointment rates in years to come, as well as further exploration of the institutional, cultural, and interpersonal factors that contribute to this discrepancy. These findings aim to inform future efforts and initiatives for women's advancement in court-appointed leadership and the legal profession as a whole. ■

Endnotes

¹ Deborah L. Rhode, “The Unfinished Agenda: Women in the Legal Profession,” Chicago: American Bar Association Committee on Women in the Profession (2001); *See also* Deborah L. Rhode, “Gender and the Profession: The No-Problem Problem,” *Hofstra Law Review*: Vol. 30: Issue 3, Article 16 (2002).

² *Id.* at 1001.

³ Barbara J. Risman, “Gender as social structure: Theory wrestling with activism,” *Gender & Society*, 18(4) 429-450 (2004).

⁴ American Bar Association, “A Current Glance at Women in the Law May 2016,” http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_may_2016.authcheckdam.pdf. (2016).

⁵ Timothy Pratt, “More Women than Men in Law School for the First Time Ever,” *Bloomberg Law*, <https://bol.bna.com/more-women-than-men-in-law-school-for-first-time-ever/> (2016).

⁶ ABA, *supra* note 4.

⁷ *Id.*

⁸ Lauren Stiller Rikleen, “Women Lawyers Continue to Lag Behind Male Colleagues: Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms,” http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2015_wotsol/written_materials/2_nawl_2015%20survey.authcheckdam.pdf (October 2015).

⁹ The American legal profession is one of the least racially diverse in the country, with over 85 percent of its attorneys reporting as Caucasian. *See* Bureau of Labor Statistics, “Household Data Annual Averages: Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity,” <https://www.bls.gov/cps/cpsaat11.pdf> (2015).

¹⁰ Jeffrey A. Lowe, “Partner Compensation Survey,” Major, Lindsey & Africa, <https://www.mlglobal.com/publications/research/compensation-survey-2016> (October 13, 2016).

¹¹ Deborah R. Rhode, “The Trouble with Lawyers,” Oxford University Press (2015).

¹² Rikleen, *supra* note 8.

¹³ Eli Wald, “The Changing Professional Landscape of Large Law Firms, Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms,” 78 *Fordham Law Review* 2245 (2010).

¹⁴ Rhode *supra* note 1; Jennifer Pierce, “Gender Trials: Emotional Lives in Contemporary Law Firms,” Berkeley: University of California Press (1995); Elizabeth H. Gorman, “Gender stereotypes, same-gender preferences, and organizational variation in the hiring of women: Evidence from law firms.” *American Sociological Review*, 70(4), 702-728 (2005).

¹⁵ Gorman, *supra* note 14.

¹⁶ Pierce, *supra* note 14.

¹⁷ Stephanie A. Scharf and Roberta D. Liebenberg, “First Chairs at Trial: More Women Need a Seat at the Table,” American Bar Association (2015).

¹⁸ *Id.*

¹⁹ *See* United States Judicial Panel on Multidistrict Litigation, <http://www.jpml.uscourts.gov/>.

²⁰ “The objectives of an MDL proceeding should usually include: (1) the elimination of duplicative discovery; (2) avoiding conflicting rulings and schedules among courts; (3) reducing litigation costs; (4) saving the time and effort of the parties, attorneys, witnesses, and courts; (5) streamlining key

issues, and (6) moving cases toward resolution (by trial, motion practice, or settlement).” Duke Law Center for Judicial Studies, “Standards and Best Practices for Large and Mass-Tort MDLs,” at 1, https://law.duke.edu/sites/default/files/centers/judicialstudies/standards-best_practices-exec_summary-final.pdf. see Federal Judicial Center, Manual for Complex Litigation (Fourth)(2004).

²¹ Elizabeth Chamblee Burch and Margaret S. Williams, “Repeat Players in Multidistrict Litigation: The Social Network,” *Cornell Law Review*, Forthcoming; UGA Legal Studies Research Paper No. 2016-04 (August 10, 2016).

²² Federal Judicial Center, Manual for Complex Litigation (Fourth) § 10.224 (2004).

²³ See *Vizio, Inc., Consumer Privacy Litigation*, No. 8:16-ml-02693 (C.D. Cal.).

²⁴ Attorneys appointed to leadership have to put up trial costs which can entail large sums of money.

²⁵ Margaret S. Williams, Emery G. Lee III, Catherine R. Borden, “Repeat Players in Federal Multidistrict Litigation,” *Journal of Tort Law*, Volume 5, Issue 1-2, pp. 141-172 (Apr. 2014); Elizabeth Chamblee Burch, “Judging Multidistrict Litigation,” 90 *N.Y.U. L. REV.* 71, 95–101 (2015); Burch and Williams, *supra* note 21.

²⁶ Amanda Bronstad, “‘Good Ol’ Boys Club’ in MDL,” *National Law Journal*, Sep. 28, 2015.

²⁷ Burch 2015, *supra* note 25.

²⁸ Burch and Williams, *supra* note 21.

²⁹ Jaime Dodge, “Facilitative Judging: Organizational Design in Mass-Multidistrict Litigation,” 64 *Emory Law Journal* 329 (2014).

³⁰ Duke Law Center for Judicial Studies, “Standards and Best Practices for Large and Mass-Tort MDLs,” https://law.duke.edu/sites/default/files/centers/judicialstudies/standards-best_practices-exec_summary-final.pdf.

(2014). See Best Practice 4E: “The transferee judge should take into account whether the leadership team adequately reflects the diversity of legal talent available and the requirements of the case.”

³¹ See Order of Judge Kathryn H. Vrtil, dated Nov. 19, 2015, in *In Re: Ethicon, Inc., Power Morcellator Products Liability Litigation*, No. 15-md-2652 (D. Kan.) (Dkt No. 10).

³² See Judge Breyer’s order appointing lead counsel, “Pretrial Order No.7: Order Appointing Plaintiff’s Lead Counsel, Plaintiff’s Steering Committee, and Government Coordinating Counsel,” *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation MDL*, No. 2672 (N.D.Cal. August 17, 2016).

³³ Appointment by Judge Cynthia Rufe of the Eastern District of Pennsylvania in *In re Generic Digoxin and Doxycycline Antitrust Litigation*, see Max Mitchell, “In ‘Extremely Rare’ Move, Two Women Appointed to Lead Antitrust MDL,” *The Legal Intelligencer*, <http://www.thelegalintelligencer.com/id=1202773459170/In-Extremely-Rare-Move-Two-Women-Appointed-to-Lead-Antitrust-MDL?mcode=0&curindex=0&curpage=ALL> (November 30, 2016).

³⁴ See Judge Cynthia Rufe of the Eastern District of Pennsylvania in *In re Generic Digoxin and Doxycycline Antitrust Litigation*, No. 2-md-02724 (E.D. Pa. August 5, 2016): “The court expects that the leadership will provide opportunities for attorneys not named to the plaintiff’s steering committee, particularly less-senior attorneys, to participate meaningfully and efficiently in the MDL, including through participation in any committees within the plaintiff’s steering committee and in determining which counsel will argue any motions before the court.”

³⁵ One case was removed from the data set for only appointing firms where no lead attorney names were identifiable from supporting memoranda. There were three additional cases that designated leadership by firms only where the lead (or Tier One) attorneys’ names were discernable from supporting memoranda but supporting (or Tier Two) leadership was listed as firms-only with no discernable individual attorney names. In such cases, the Tier One leadership was coded for gender, and the Tier Two leadership was excluded from analysis.

³⁶ This research examined appointments made for Plaintiffs’ counsel only. Although it is important to examine both sides of the aisle, formal court appointments are rarely made for the defense. Due

to the large number of plaintiffs/claims in each matter, appointment of Plaintiff leadership becomes necessary and thus has specific ordered appointments that are ripe for quantitative study.

³⁷ In an effort to avoid assumptions made on typically-gendered first names, this method was utilized to most accurately identify how each attorney self-identifies. It is assumed that each attorney is most likely aware of and has approved their website biographies.

³⁸ For example, if a case included lead counsel positions, an “executive committee” and “steering committee”, the lead and executive committee positions were coded as Tier One positions, while the steering committee positions were coded as Tier Two positions for analysis. When a case included only lead counsel positions and an executive committee, the lead counsel positions were coded as Tier One and the executive committee positions were coded as Tier Two positions for analysis.

³⁹ The rate of female appointment = number of females appointed / total leadership positions appointed in each case. The rate of female appointment was coded for each tier and overall leadership in each case to determine the average rate of female appointment in each time period, case type, and all other variables examined. The average rate of appointment was utilized rather than a straight percentage of leadership positions acquired by female attorneys in order to limit the potential skewing of results due to the extremely variable number of possible leadership positions in each case.

⁴⁰ There was no significant difference in female appointment rates for male and female judges when analyzed for total leadership positions [$t(142)=-.852$, $p=.396$], Tier One positions [$t(143)=-.209$, $p=.835$], or Tier Two positions [$t(78)=.608$, $p=.545$].

⁴¹ ANOVA results for case type were not significant; $F(3, 141) = 2.12$, $p=.100$. ANOVA results for district court were also not significant $F(43, 101) = 1.198$, $p=.229$.

⁴² Year 2016 had only two cases in which leadership appointments were made by July 1, 2016, so it is premature to make assessments about the year 2016. Future research will update the analysis to include appointments made in 2016.

⁴³ See “First Chairs at Trial” study (Scharf and Liebenberg *supra* note 17) where gender participation as lead counsel varied between different types of cases and parties. See also Rebecca L. Sandefur, “Work and Honor in the Law: Prestige and the Division of Lawyers’ Labor,” *American Sociological Review* 66(3), 382-403 (2001).

Judicial Orders
Providing/Encouraging Opportunities for Junior Lawyers

02.10.17

Compiled by the Chi P's Next Gen Committee:

Kathi Vidal (Lutton), Fish & Richardson (Lead)
Judge William Alsup, Northern District of California
Natalie A. Bennett, McDermott Will & Emery
Judge Christopher J. Burke, District of Delaware
Isabella Fu, Microsoft
Judge Paul Grewal, Northern District of California
Jessica Hannah, Apple
Karen Keller, Shaw Keller
Noreen Krall, Apple
Rachel Krevans, Morrison Foerster
Judge Barbara M. G. Lynn, Northern District of Texas
Julie Mar-Spinola, Finjan Holdings, Inc.
Sonal Mehta, Durie Tangri
Judge K. Nicole Mitchell, Eastern District of Texas
Judge Jimmy Reyna, Court of Appeals for the Federal Circuit
Gabby Ziccarelli, Blank Rome LLP

If you are aware of additional orders or initiatives, please email
JBP@chipsnetwork.org.

All orders posted at: www.NextGenLawyers.com

Judge William Alsup, Northern District of California

SUPPLEMENTAL ORDER TO ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE IN CIVIL CASES BEFORE JUDGE WILLIAM
ALSUP (January 11, 2016)

<http://www.cand.uscourts.gov/whaorders>

SETTING MOTIONS FOR HEARING

6. Counsel need not request a motion hearing date and may notice non-discovery motions for any Thursday (excepting holidays) at 8:00 a.m. The Court sometimes rules on the papers, issuing a written order and vacating the hearing. If a written request for oral argument is filed before a

ruling, stating that a lawyer of four or fewer years out of law school will conduct the oral argument or at least the lion's share, then the Court will hear oral argument, believing that young lawyers need more opportunities for appearances than they usually receive.

GUIDELINES FOR TRIAL AND FINAL PRETRIAL CONFERENCE IN CIVIL JURY CASES BEFORE THE HONORABLE WILLIAM ALSUP (January 11, 2016)

www.cand.uscourts.gov/filelibrary/192/JuryTrials1.pdf

29. Counsel shall stand when making objections and shall not make speaking objections. The one-lawyer-per-witness rule is usually followed but will be relaxed to allow young lawyers a chance to perform. Side bar conferences are discouraged.

39. The Court strongly encourages lead counsel to permit young lawyers to examine witnesses at trial and to have an important role. It is the way one generation will teach the next to try cases and to maintain our district's reputation for excellence in trial practice.

JUDGE WILLIAM ALSUP'S NOTICE RE OPPORTUNITIES FOR YOUNG ATTORNEYS (sent out to parties one week prior to every civil motion hearing)

Counsel will please keep in mind the need to provide arguments and courtroom experience to the next generation of practitioners. The Court will particularly welcome any lawyer with four or fewer years of experience to argue the upcoming motion.

Judge Christopher Burke, District of Delaware

STANDING ORDER REGARDING COURTROOM OPPORTUNITIES FOR NEWER ATTORNEYS (January 23, 2016)

<http://www.ded.uscourts.gov/sites/default/files/forms/StandingOrder2017.pdf>

The Court is cognizant of a growing trend in which fewer cases go to trial, and in which there are generally fewer opportunities in court for speaking or "stand-up" engagements. This is especially true for newer attorneys, that is, attorneys practicing for less than seven years ("newer attorney(s)").

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities.... The Court adopts the following procedures regarding oral argument as to pending motions:

- (1) After a motion is fully briefed, either as a part of a Request for Oral

Arguments, or in a separate Notice filed thereafter, a party may alert the Court that, if argument is granted, it intends to have a newer attorney argue the motion (or a portion of the motion).

(2) If such notice is provided, the Court will:

- A. Grant the request for oral argument on the motion, if it is at all practicable to do so.
- B. Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated, were a newer attorney not arguing the motion.
- C. Permit other more experienced counsel of record the ability to provide some assistance to the newer attorney who is arguing the motion, where appropriate during oral argument.

All attorneys, including newer attorneys, will be held to the highest professional standards. Relatedly, all attorneys appearing in court are expected *to* be adequately prepared and thoroughly familiar with the factual record and the applicable law, and to have a degree of authority commensurate with the proceeding.

The Court also recognizes that there may be many different circumstances in which it is not appropriate for a newer attorney *to* argue a motion. Thus, the Court emphasizes that it draws no inference from a party's decision not to have a newer attorney argue any particular motion before the Court.

Additionally, the Court will draw no inference about the importance of a particular motion, or the merits of a party's argument regarding the motion, from the party's decision to have (or not to have) a newer attorney argue the motion.

Judge Denise Casper, District of Massachusetts

STANDING ORDER REGARDING COURTROOM OPPORTUNITIES FOR RELATIVELY INEXPERIENCED ATTORNEYS (May 16, 2011)

http://www.mad.uscourts.gov/boston/pdf/casper/Casper_StandingOrderReCourtroomOpportunities.pdf

In May 2005, Judge F. Dennis Saylor (and then Magistrate Judge Charles B. Swartwood), sitting in the Central Division (Worcester) of this Court, adopted a standing order "strongly encourag[ing] the participation of

relatively inexperienced attorneys in all court proceedings." As the Court explained at the time, the standing order was prompted by the recognition that the "[c]ourtroom opportunities for relatively inexperienced attorneys, particularly those who practice at larger firms, have declined precipitously across the nation in recent years." This standing order remains in place in the Central Division for appearances before Judge Saylor and Magistrate Judge Timothy S. Hillman and anecdotal information indicates that the order has had the desired effect of having more well prepared junior attorneys attend status conferences, argue motions to the Court, and, under appropriate supervision, examine witnesses at trial.

The decline in courtroom opportunities for newer lawyers is widely recognized and is one of concern to both the bench and bar. A Task Force of the Boston Bar Association acknowledged as much in its report, "Jury Trial Trends in Massachusetts: The Need to Ensure Jury Trial Competency Among Practicing Attorneys as a Result of the Vanishing Jury Trial Phenomenon," issued in 2006. As a result of its year-long work exploring the statistical and anecdotal evidence regarding the rate of jury trials over time, the Task Force concluded that "the 'vanishing jury trial' is actually affecting the jury trial experience of current and future generations of practitioners" and 2 made recommendations to courts, lawyers and clients to remedy this issue. Among its recommendations to the judiciary, the Task Force called upon "judges presiding over pre-trial conferences and related matters to identify and encourage opportunities for a junior attorney to participate in the examination of witnesses or other significant trial work."

To take up this call and attempt, in some small measure, to remedy the dearth of courtroom opportunities for newer attorneys, the undersigned judge issues this standing order, substantially similar in purpose and intent to the order previously adopted by the Central Division. **Accordingly, the undersigned judge, as a matter of policy, strongly encourages the participation of relatively inexperienced attorneys in all court proceedings including but not limited to initial scheduling conferences, status conferences, hearings on discovery motions and dispositive motions, and examination of witnesses at trial. That said, a number of important caveats regarding professional standards, authority and supervision apply to this policy.**

1. First and foremost, all attorneys who appear in this session will be held to the highest professional standards. This includes relatively inexperienced attorneys with regard to knowledge of the case, overall preparedness, candor to the court and any other matter as to which experience is largely irrelevant. All attorneys who appear in court are expected to be thoroughly versed in the factual record of the case and the

applicable law that governs.

2. All attorneys appearing in court should have a degree of authority commensurate with the proceeding. For example, an attorney appearing at an initial scheduling conference or status conference should have the authority to commit his/her party to a discovery and motion schedule and address any other matters likely to arise including but not limited the client's willingness to be referred to mediation.

3. Relatively inexperienced attorneys who seek to participate in evidentiary hearings of substantial complexity (e.g., examining a witness at trial), should be accompanied and supervised by a more experienced attorney unless counsel seeks and receives leave of Court to do otherwise.

Judge Gregg J. Costa, Southern District of Texas

COURT PRACTICES AND PROCEDURES (updated January, 2017)

http://www.txs.uscourts.gov/sites/txs/files/costa_procedures.pdf

4. Young Lawyers. The Court is aware of a trend today in which fewer cases go to trial, and in which there are generally fewer speaking or "stand-up" opportunities in court, particularly for young lawyers (i.e., lawyers practicing for less than seven years). The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response. In those instances where the Court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing. The Court understands that there may be circumstances where having a young lawyer handle a hearing might not be appropriate-such as where no young lawyers were involved in drafting the motion, or where the motion might be dispositive in a "bet-the-company" type case. Even so, the Court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to young lawyers, to clients, and to the profession generally. Thus, the Court encourages all lawyers practicing before it to keep this goal in mind.

Judge Edward J. Davila, Northern District of California

STANDING ORDER FOR CIVIL CASES (February 12, 2015)

<http://www.cand.uscourts.gov/ejdorders>

III(H). Opportunities for Junior Lawyers

The Court strongly encourages parties to permit less experienced lawyers to actively participate in the proceedings by presenting argument at motion hearings or examining witnesses at trial

Judge James Donato, Northern District of California

STANDING ORDER FOR CIVIL CASES BEFORE JUDGE JAMES DONATO
(January 05, 2017)

<http://www.cand.uscourts.gov/jdorders>

13. The Court has a strong commitment to supporting the development of our next generation of trial lawyers. The Court encourages parties and senior attorneys to allow younger practitioners the opportunity to argue in court. The Court will extend motion argument time for those lawyers. The parties should advise the Court prior to the hearing if a lawyer of 5 or fewer years of experience will be arguing the cause.

Judge Yvonne Gonzales Rogers, Northern District of California

STANDING ORDER IN CIVIL CASES (Updated October 26, 2016)

<http://www.cand.uscourts.gov/filelibrary/867/ygrStanding%20Order%20In%20Civil%20Cases%20updated%20August%2019%202013.pdf>

2d. Before appearing for a matter before this Court, all parties shall check the Court's calendar at www.cand.uscourts.gov or the posting in the Clerk's Office to confirm that their matter is still on calendar. Frequently, the Court will issue a written order and vacate the hearing unless oral argument appears to be necessary. Where argument is allowed, the Court will attempt to advise counsel in advance of the issues to be addressed. In addition, if a written request for oral argument is filed, before issuance of a ruling, stating that a lawyer four or fewer years out of law school will conduct all or most of the oral argument, the Court will entertain oral argument on the principle that young lawyers need more opportunities for appearances than they typically receive.

Judge Paul S. Grewal, Northern District of California

Case Specific Order, GSI Technology Inc. v. United Memories, Inc., Case No. 5:13-cv-01081-PSG, ORDER RE: ORAL ARGUMENT (March 9, 2016)

In a technology community like ours that prizes youth-at times

unfairly-there is one place where youth and inexperience seemingly comes with a cost: the courtroom. In intellectual property case after intellectual property case in this courthouse, legions of senior lawyers with decades of trial experience regularly appear. Nothing surprises about this. When trade secret or patent claims call for millions in damages and substantial injunctive relief, who else should a company call but a seasoned trial hand? But in even the brief tenure of the undersigned, a curious trend has emerged: the seasoned trial hand appears for far more than trial itself. What once might have been left to a less experienced associate is now also claimed by senior counsel. Motion to compel discovery? Can't risk losing that. Motion to exclude expert testimony? Can't risk losing that, either. Motion to exclude Exhibit 20356 as prejudicial under Fed. R. Evid. 403? Same thing.

All of this raises a question: who will try the technology cases of the future, when so few opportunities to develop courtroom skills appear? It is difficult to imagine handing entire intellectual property trials to a generation that never had the chance to develop those skills in more limited settings. Senior lawyer and their clients may shoulder some of the blame, but surely courts and judges like this one must accept a large part of the responsibility. Perhaps this explains the growing and commendable effort by leaders on the bench to promote courtroom opportunities for less experienced lawyers, especially in intellectual property disputes.¹

This case offers this member of the bench a chance to start doing his small part. In a jury trial lasting several weeks, the court was privileged to witness some of the finest senior trial counsel anywhere present each opening statement, each direct and cross-examination and each closing argument. The court intends no criticism of any party's staffing decisions. But with no fewer than six post-trial motions set for argument next week, surely an opportunity can be made to give those associates that contributed mightily to this difficult case a chance to step out of the shadows and into the light. To that end, the court expects that each party will allow associates to present its arguments on at least two of the six motions to be heard. If any party elects not to do this, the court will take its positions on all six motions on the papers and without oral argument.

¹ See, e.g., ChIP's Next Gen Committee, *Judicial Orders Providing/Encouraging Opportunities for Junior Lawyers*, available at <http://chipsnetwork.org/wp-content/uploads/2016/02/Judicial-Orders-re-Next-Gen-2.4.16.pdf>.

The day before last, I expressed my concerns about the lack of courtroom opportunities for law firm associates in intellectual property cases like this one. Recognizing the court's own important role in encouraging clients and partners to give up the podium once in a while, I asked that each party give associates the chance to argue just two of six motions set for hearing on Monday.

This morning, the parties and their counsel responded. But rather than confirm their commitment to this exercise, the parties jointly stipulated simply to take all motions off calendar and submit them without any hearing. No explanation was given; perhaps associate preparation and travel costs were the issue. In any event, once again, another big intellectual property case will come and go, and the associates who toil on it will largely do so without ever being heard.

I appreciate that my order acknowledged the possibility that the parties would decline this opportunity and simply submit their motions on the papers. But I would be remiss if I did not observe the irony of another missed opportunity to invest in our profession's future when two of the motions originally noticed for hearing seek massive fees and costs. To be clear, GSI asks for \$6,810,686.69 in attorney's fees, \$1,828,553.07 in non-taxable costs and \$337,300.86 in taxable costs, while UMI asks for \$6,694,562 in attorney's fees, \$648,166 in expenses and \$302,579.70 in taxable costs. That a few more dollars could not be spent is disappointing to me. My disappointment, however, is unlikely to compare to the disappointment of the associates, who were deprived yet again of an opportunity to argue in court.

Judge Andrew J. Guilford, Central District of California

Scheduling Order Specifying Procedures

<http://www.cacd.uscourts.gov/sites/default/files/documents/AG/AD/Scheduling%20Order%20Specifying%20Procedures.pdf>

6.12 Other Possible Trial Procedures. The Court is open to creative trial procedures, such as imposing time limits, allowing short statements introducing each witness's testimony before examination, allowing questions from the jury, and giving the jury a full set of instructions before the presentation of evidence. The Court reminds parties that trial estimates affect juries. The Court strongly encourages the parties to give young associate lawyers the chance to examine witnesses and fully participate in trial (and throughout the litigation!).

Judge Timothy Hillman, District of Massachusetts

STANDING ORDER RE: COURTROOM OPPORTUNITIES FOR RELATIVELY INEXPERIENCED ATTORNEYS (November 2, 2006)

http://www.mad.uscourts.gov/worcester/pdf/StandOrd_CrtrmOpps.pdf

Courtroom opportunities for relatively inexperienced attorneys, particularly those who practice at larger firms, have declined precipitously across the nation in recent years. That decline is due to a variety of factors, but has been exacerbated by the proliferation of rules and orders requiring the appearance of "lead" counsel in many court proceedings.

In an effort to counter that trend, the undersigned District Judge and Magistrate Judge, as a matter of policy, strongly encourage the participation of relatively inexperienced attorneys in all court proceedings. Such attorneys may handle not only relatively routine matters (such as scheduling conferences or discovery motions), but may also handle, where appropriate, more complex matters (such as motions for summary judgment or the examination of witnesses at trial). The following cautions, however, shall apply.

First, even relatively inexperienced attorneys will be held to the highest professional standards with regard to any matter as to which experience is largely irrelevant. In particular, all attorneys appearing in court are expected to be appropriately prepared, regardless of experience. For example, any attorney who is arguing a motion for summary judgment is expected to be thoroughly familiar with the factual record and the applicable law.

Second, all attorneys appearing in court should have a degree of authority commensurate with the proceeding that they are assigned to handle. For example, an attorney appearing at a scheduling conference ordinarily should have the authority to propose and agree to a discovery schedule and any other matters reasonably likely to arise at the conference.

Third, relatively inexperienced attorneys who seek to participate in evidentiary hearings of substantial complexity, such as examining a witness at trial, should be accompanied and supervised by a more experienced attorney, unless leave of Court is granted otherwise.

Judge Lucy H. Koh, Northern District of California

ORDER RE: ASSOCIATES ARGUING DISPOSITIVE MOTIONS (Feb. 10, 2017)

<http://nextgenlawyers.com/wp-content/uploads/2017/02/X-One-Inc.-v.-Uber-Tech-nologies-Inc.-Order-Re-Associates-Arguing-Disposi....pdf>

At the January 18, 2017 initial case management conference, the Court and parties had difficulty setting a date for the hearing on dispositive motions because of the schedules of the Court and lead Plaintiffs counsel. The Court thus asked whether lead Plaintiffs counsel's colleague who was also present at the case management conference could argue at the hearing instead. Lead Plaintiffs counsel agreed. Her colleague is an associate who graduated from law school in 2009.

he Court thus encourages Defendant to also allow an associate who graduated from law school in 2009 or later to argue at the dispositive motions hearing in this case. Pursuant to Civil Local Rule 7-1(b), the Court often finds matters appropriate for resolution without oral argument. However, to encourage the parties to give associates opportunities to argue substantive motions, the Court will guarantee a hearing on the dispositive motions if both parties allow associates who graduated from law school in 2009 or later to argue such motions. Defendant shall inform the Court of its position in the next Joint Case Management Statement.

Judge Lucy H. Koh, Northern District of California

**GUIDELINES FOR FINAL PRETRIAL CONFERENCE IN JURY TRIALS
BEFORE DISTRICT JUDGE LUCY H. KOH (January 04, 2011)**

<http://www.cand.uscourts.gov/lhkorders>

G. Opportunities for Junior Lawyers

The Court strongly encourages parties to permit less experienced lawyers to examine witnesses at trial and to have an important role at trial. Counsel should be prepared to discuss such opportunities at the Pretrial Conference.

**GUIDELINES FOR FINAL PRETRIAL CONFERENCE IN BENCH TRIALS
BEFORE DISTRICT JUDGE LUCY H. KOH (January 04, 2011)**

<http://www.cand.uscourts.gov/lhkorders>

G. Opportunities for Junior Lawyers

The Court strongly encourages parties to permit less experienced lawyers

to examine witnesses at trial and to have an important role at trial. Counsel should be prepared to discuss such opportunities at the Pretrial Conference.

Case Specific Order: *Apple Inc. v. Samsung Electronics Co. Ltd.*, Case No. 11-CV-01846-LHK, ORDER RE: ORAL ARGUMENT AT PRETRIAL CONFERENCE (February 25, 2016)

At the Pretrial Conference on March 3, 2016, the Court will hear oral argument on the following issues:

Samsung's Motion In Limine #1 to Exclude Evidence Or Argument Regarding Samsung's Revenue Or Profit From All Infringing Sales. This issue shall be argued by an attorney 9 or fewer years out of law school.

Samsung's Motion In Limine #2 to Exclude Evidence Of Market Share Based On Products Not At Issue In This Trial. This issue shall be argued by an attorney 5 or fewer years out of law school.

Samsung's Motion In Limine #3 to Exclude Testimony Of Julie Davis As To A Purely Legal Issue. This issue shall be argued by an attorney 7 or fewer years out of law school.

Case Specific Order: *Huynh v. Karasz*, Case No. 14-CV-02367-LHK, ORDER REGARDING QUESTIONS FOR SUMMARY JUDGMENT HEARING (May 10, 2016)

Plaintiffs' counsel has stated that two junior attorneys a first year and second year associate will argue at the May 12, 2016 motions hearing. In the interest of providing junior attorneys from both sides an opportunity for argument, the Court encourages Defendants to identify junior attorneys to argue at the motions hearing. However, after reviewing Defendants' counsel website, the Court acknowledges that finding a first or second year associate to argue may not be feasible and that it may be necessary for Defendants' counsel to be represented by a more experienced associate.

Issued in response to: *Huynh v. Karasz*, Case No. 14-CV-02367-LHK, PLAINTIFFS' NOTICE OF ARGUMENT BY JUNIOR ATTORNEYS (April 13, 2016)

On May 12, 2016 at 1:30 p.m., this court has scheduled argument on the parties' cross motions for summary judgment. As a number of courts have recognized "in today's practice of law, fewer cases go to trial and there are generally fewer speaking opportunities in court, particularly for young

lawyers (i.e., lawyers practicing for less than seven years)." See, e.g., *Secured Structures, LLC v. Alarm Security Group, LLC*, Order, Civ. Act. No. 6:14-CV-930 (E.D. Tex., Mitchell, J., Jan. 22, 2016); <http://chipsnetwork.org/wp-content/uploads/2016/02/Judicial-Orders-re-Next-Gen-3-9-16.pdf>; www.nextgenlawyers.com (Judicial orders).

A number of courts "strongly encourage[] the parties to be mindful of opportunities for young lawyers to argue in front of the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response." See, e.g., *id.*

This Court has likewise encouraged parties to "permit less experienced lawyers" to have stand-up opportunities. See, e.g., *Guidelines for Final Pretrial Conference in Bench Trials Before District Judge Lucy H. Koh* 1f G (Jan. 3, 2011); *Guidelines for Final Pretrial Conference in Jury Trials Before District Judge Lucy H. Koh* 1f G (Jan. 3, 2011).

Plaintiffs respectfully notify the Court that they intend to have first year associate Holly K. Victorson and second year associate Emily Petersen Garff argue the upcoming summary judgment motions. Ms. Victorson and Ms. Garff were the primary drafters of Plaintiffs' briefing, and were involved in taking much of the discovery Plaintiffs relied upon in their motion. Given the gravity of the issue before this Court, Plaintiffs respectfully request that more experienced counsel be able to assist in the argument should the need arise.

Judge Barbara M. G. Lynn, Northern District of Texas

Judge Lynn makes the following part of her standard patent scheduling order:

11. The Court is aware of a trend today in which fewer cases go to trial, and in which there are generally fewer speaking or "stand-up" opportunities in court, particularly for young lawyers (i.e., lawyers practicing for less than seven years). The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response. In those instances where the Court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing. The Court understands that there may be circumstances where having a young lawyer handle a hearing might not be appropriate - such as where no young lawyers were involved in drafting the motion, or where the motion might be dispositive in a "bet-the-company" type case. Even so, the Court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to young

lawyers, to clients, and to the profession generally. Thus, the Court encourages all lawyers practicing before it to keep this goal in mind.

Judge Leigh Martin May, Northern District of Georgia

<http://www.gand.uscourts.gov/sites/default/files/CVStandingOrderLMM.pdf>

STANDING ORDER REGARDING CIVIL LITIGATION

III(m). Requests for Oral Argument on Motions

In accordance with Local Rule 7.1(E), motions are usually decided without oral argument, but the Court will consider any request for hearing. If oral argument is requested, the party or parties should specify the particular reasons argument may be helpful to the Court and what issues will be the focus of the proposed argument. Moreover, the Court shall grant a request for oral argument on a contested substantive motion if the request states that a lawyer of less than five years out of law school will conduct the oral argument (or at least a large majority), it being the Court's belief that new lawyers need more opportunities for Court appearances than they usually receive.

Judge Gary H. Miller, Southern District of Texas

COURT PROCEDURES (Updated September 16, 2015)

<http://www.txs.uscourts.gov/page/iudge-millers-procedures>

4. Young Lawyers: The court is aware of a trend today in which fewer cases go to trial, and in which there are generally fewer speaking or "stand-up" opportunities in court, particularly for young lawyers (i.e. lawyers practicing for less than seven years). The court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response. In those instances where the court is inclined to rule on the papers, a representation that the argument would be handled by a young lawyer will weigh in favor of holding a hearing. The court understands that there may be circumstances where having a young lawyer handle a hearing might not be appropriate-such as where no young lawyers were involved in drafting the motion, or where the motion might be dispositive in a "bet-the-company" type case. Even so, the court believes it is crucial to provide substantive speaking opportunities to young lawyers, and that the benefits of doing so will accrue to young lawyers, to clients, and to the profession generally. Thus, the court encourages all lawyers practicing

before it to keep this goal in mind.

Judge K. Nicole Mitchell, Eastern District of Texas

(Recent Order - January 12, 2016)

The Court is aware that in today's practice of law, fewer cases go to trial and there are generally fewer speaking opportunities in court, particularly for young lawyers (i.e., lawyers practicing for less than seven years). The Court strongly encourages the parties to be mindful of opportunities for young lawyers to argue in front of the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response.

With that in mind, the Court has currently set the *Markman* hearing in this case for the morning of January 12, 2016. To the extent that any party planned to submit any of the disputed terms on the papers alone, the Court will grant additional time to argue those terms, if they are argued by an attorney with seven or fewer years of experience.

Judge Kimberly J. Mueller, Eastern District of California

STANDING ORDERS

<http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/5020/standing-orders/>

CIVIL LAW AND MOTION

Young Attorneys: The court values the importance of training young attorneys. If a written request for oral argument is filed before a hearing, stating an attorney of four or fewer years out of law school will argue the oral argument, then the court will hold the hearing. Otherwise, the court may find it appropriate in some actions to submit a motion without oral argument.

TRIALS

Given the value the court places on training young attorneys, the court encourages lead counsel to permit a young attorney to examine witnesses at trial and to have a role in the trial.

Judge Robert Pitman, Western District of Texas

STANDING ORDER (January 30, 2017)

<http://www.fr.com/wp-content/uploads/2017/01/2017-01-30-D73-Order-Granting-Pltf-Mot-for-Attys-Fees.pdf>

Second, Defendants are critical of the time Mr. Darby spent preparing for the evidentiary hearing as excessive. However, Mr. Darby was the only associate working on the matter and likely the most familiar with the facts of the case and the evidence to be presented at the evidentiary hearing. In addition, he prepared a twenty-page slide presentation for the hearing and delivered an opening statement that was on par with some of the strongest oral advocates that come before the Court. Thus, the Court concludes that the time he expended—approximately forty-three hours—for a hearing that Plaintiff likely understood could be dispositive of their claims was reasonable.

Judge Dennis F. Saylor, District of Massachusetts

STANDING ORDER RE: COURTROOM OPPORTUNITIES FOR RELATIVELY INEXPERIENCED ATTORNEYS (November 2, 2006)

http://www.mad.uscourts.gov/boston/pdf/saylor/StandingOrderReCourtroomOppor_Bostonupdate.pdf

Courtroom opportunities for relatively inexperienced attorneys, particularly those who practice at larger firms, have declined precipitously across the nation in recent years. That decline is due to a variety of factors, but has been exacerbated by the proliferation of rules and orders requiring the appearance of "lead" counsel in many court proceedings.

In an effort to counter that trend, the undersigned District Judge and Magistrate Judge, as a matter of policy, strongly encourage the participation of relatively inexperienced attorneys in all court proceedings. Such attorneys may handle not only relatively routine matters (such as scheduling conferences or discovery motions), but may also handle, where appropriate, more complex matters (such as motions for summary judgment or the examination of witnesses at trial). The following cautions, however, shall apply.

First, even relatively inexperienced attorneys will be held to the highest professional standards with regard to any matter as to which experience is largely irrelevant. In particular, all attorneys appearing in court are expected to be appropriately prepared, regardless of experience. For example, any attorney who is arguing a motion for summary judgment is expected to be thoroughly familiar with the factual record and the

applicable law.

Second, all attorneys appearing in court should have a degree of authority commensurate with the proceeding that they are assigned to handle. For example, an attorney appearing at a scheduling conference ordinarily should have the authority to propose and agree to a discovery schedule and any other matters reasonably likely to arise at the conference.

Third, relatively inexperienced attorneys who seek to participate in evidentiary hearings of substantial complexity, such as examining a witness at trial, should be accompanied and supervised by a more experienced attorney, unless leave of Court is granted otherwise.

Judge Indira Talwani, District of Ma'ssachusetts

STANDING ORDER REGARDING COURTROOM OPPPORTUNITIES FOR RELATIVELY INEXPERIENCED ATTORNEYS (October 9, 2005)

<http://www.mad.uscourts.gov/boston/pdf/talwani/Standing%20order%20Young%20Attorneys.pdf>

Judges F. Dennis Saylor, Denise Casper, and Timothy Hillman have adopted standing orders strongly encouraging the participation of relatively inexperienced and young attorneys in all court proceedings. Judge Casper noted that the "decline in courtroom opportunities for newer lawyers is widely recognized and is one of concern to both the bench and bar."

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned judge, as a matter of policy, strongly encourages the participation of relatively inexperienced attorneys in all court proceedings including but not limited to initial scheduling conferences, status conferences, hearings on discovery motions and dispositive motions, and examination of witnesses at trial.

The following admonitions regarding professionalism, authority, and supervision apply:

First, all attorneys appearing in this court, including those who are relatively experienced, will be held to the highest professional standards. These attorneys must be prepared and knowledgeable about the case and applicable law.

Second, all attorneys appearing in court should have a degree of authority commensurate with the proceeding. For example, an attorney

appearing at a scheduling conference ordinarily should have the authority to propose and agree to a discovery schedule and any other matters reasonably likely to arise at the conference.

Third, relatively inexperienced attorneys who seek to participate in evidentiary hearings of substantial complexity, such as examining a witness at trial, should be accompanied and supervised by a more experienced attorney unless the court gives leave to do otherwise.

The undersigned judge hopes that counsel join the court in effectuating this important policy. Counsel may seek additional guidance, from the court in particular cases concerning the scope and application of this policy.

Judge Jon S. Tigar, Northern District of California

STANDING ORDER FOR CIVIL JURY TRIALS BEFORE DISTRICT JUDGE
JON S. TIGAR (November 11, 2016)

<http://www.cand.uscourts.gov/jstorders>

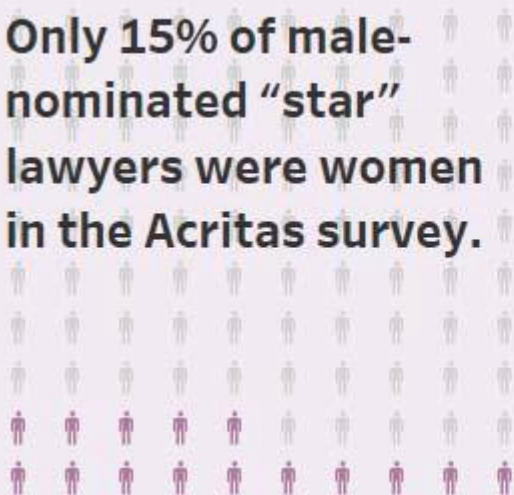
12. Opportunities for Junior Lawyers The Court strongly encourages the parties to permit junior lawyers to examine witnesses at trial and to have an important role at trial.

STANDING ORDER FOR CIVIL BENCH TRIALS BEFORE DISTRICT JUDGE
JONS. TIGAR (November 21, 2016)

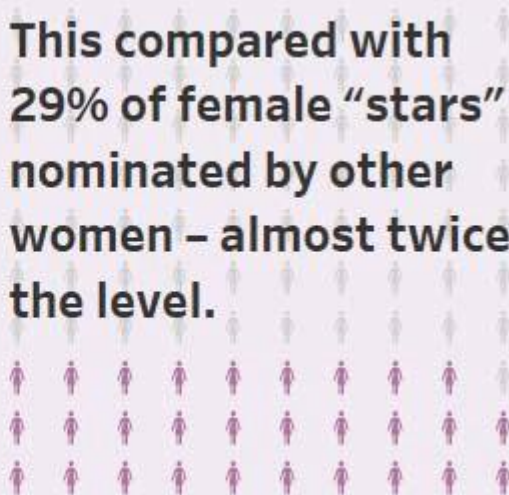
13. Opportunities for Junior Lawyers The Court strongly encourages the parties to permit junior lawyers to examine witnesses at trial and to have an important role at trial.

when they do, they are less likely to have a prominent role.

Only 15% of male-nominated “star” lawyers were women in the Acritas survey.



This compared with 29% of female “stars” nominated by other women – almost twice the level.





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TECHNOLOGY

Legal analytics track gender diversity at law firms

BY DANIELLE BRAFF

FEBRUARY 2018 (/MAGAZINE/ISSUE/2018/02/)

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Law often has been described as an old boys' club. While many firms and companies have committed themselves to achieving gender diversity, it's fair to ask whether the old-boys'-club mentality still exists-especially when it comes to trial lawyers. Do women actually play important roles on cases? Or are they there as window dressing?

Photo courtesy of Michael Sander.

Legal analytics can study the gender of attorney appearances in court to see whether a firm actually has true gender diversity. Even if a firm technically has a large number of women, it might not be giving them significant roles within the firm, says Michael Sander, founder of New York City-based Docket Alarm, which uses technology to help attorneys track and predict court case outcomes. (Docket Alarm was acquired by Fastcase on Jan. 10, and Sander is now managing director of Docket Alarm and director of Fastcase Analytics.)

"Traditionally, diversity is measured via head count-how many partners and associates are male or female," Sander says. "But that's a basic measure, and it doesn't measure the substance of what they're doing. We look at the appearances they made in court."

So far, the technology has revealed dire numbers, according to Sander.

LACK OF REPRESENTATION

According to a 2017 report by the National Association for Law Placement, 22 percent of partners at major law firms are women. But they aren't well-represented in court, according to Docket Alarm. Fifty-five of the top 100 law firms had less than 10 percent of their attorney appearances made by women. Eight of the top 100 firms never had a single woman on any of their cases. In patent court, 12 percent of court appearances were made by women.

"It was really, really awful," Sander says.

But more law firms are requesting this data, says Doug Ventola, Boston-based managing director at Consilio, a technology company that provides analytics on legal spending as well as gender with its Sky Analytics tool.

Ventola says about 40 percent of his company's clients are collecting or beginning to collect gender and other diversity data from law firms, which is a sharp increase since they first began providing this service in 2011.

"With ABA Resolution 113, which urges clients to assist in facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase to diverse attorneys, companies are more interested in understanding and measuring gender information as it relates to the work being performed by their outside law firms," Ventola says.

Now that we have the data, it's time to look at the root of the problem, says Daniella Isaacson, senior analyst at ALM Intelligence.

"Who is actually contributing to the work?" she says. "We're really struggling in litigation to get women really to be more in the practice areas."

But what comes first-getting women interested in taking a deeper role in certain male-dominated practice areas such as high-tech or pension law, or convincing the firms that women should be promoted in those areas?

If they knew they'd have a chance of being promoted, then maybe they'd be more interested, Isaacson says. The only legal fields in which women outshine men are immigration and family law. "It's hard to say if the firms are pushing people into some practice areas and then it trickles down into the culture," she adds.

VISIBLE DIFFERENCE

Some firms, however, are bucking the trend. In 47 percent of patent cases, a female attorney was present for Mccarter & English, according to Docket Alarm.

"We don't go out to look specifically for women, but we probably attract women to the firm because they see that we have women in positions of leadership and authority," says Betty Hanley, head of Mccarter & English's intellectual property practice group and a member of its executive and compensation committees. "Women apply because they know this about us."

Crowell & Moring was another firm represented by women in 47 percent of the patent cases. Unlike Mccarter & English, it specifically targeted women in the recruitment efforts.

"We hire with an eye toward recruiting diverse talent because our experience has taught us that diverse perspectives provide us and our clients broader insight to solve the most complex legal issues our clients confront," says Philip Inglima, chair of Crowell & Moring.

While those firms already are contributing to gender equality, Sander of Docket Alarm says he hopes his technology will spur other firms to do the same.

"If you have poor gender diversity, you can use this and have a goal and try to get to a different mark," Sander says. "Hire new attorneys, and get different ones involved."

Once firms achieve their goals, they also can use legal analytics as a marketing tool to advertise their gender-diverse firm, Sander says.

It's a technology that could change the future of the courtroom, one woman at a time.

This article was published in the February 2018 issue of the ABA Journal with the title "Trial by Data: Legal analytics are being used to determine gender diversity of firms."



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First Chairs at Trial

More Women Need Seats at the Table

*A Research Report on the Participation of Women
Lawyers as Lead Counsel and Trial Counsel in Litigation*

www.ambar.org/FirstChairs

ABF American Bar Foundation
EXPANDING KNOWLEDGE • ADVANCING JUSTICE

 Commission on Women
in the Profession
American Bar Association

First-ever Empirical Study

- ▶ Lead counsel
- ▶ In civil and criminal cases
- ▶ Parties
- ▶ Clients
- ▶ Practice settings



Women In The Judiciary

- ▶ 36% of Federal Appellate Judges
(only 12 of whom are women of color)
- ▶ 33% of Federal District Court Judges
- ▶ 35% of State Appeals Judges
- ▶ 31% of All State Judges

First Chair at Trial In Civil Cases: Gender Effect

- ◆ 76% of lead counsel were men
- ◆ 59% of civil cases had men as lead counsel for **both** plaintiff and defendant
- ◆ 87% of lead counsel in class actions were men (71% of class actions had men as lead counsel for **both** plaintiff and defendant).



Under-representation of Women in Lead Counsel Roles in Important Civil Practice Areas

- Women lag behind as lead counsel in areas of practice that are the biggest dollar cases.
- In contrast, women appear more frequently as lead counsel in real property, prisoner rights, social security, civil rights and defense of *pro se* cases.

Percentage of Lead Counsel Who Were Women

Intellectual Property Rights

23%

Labor

22%

Torts

21%

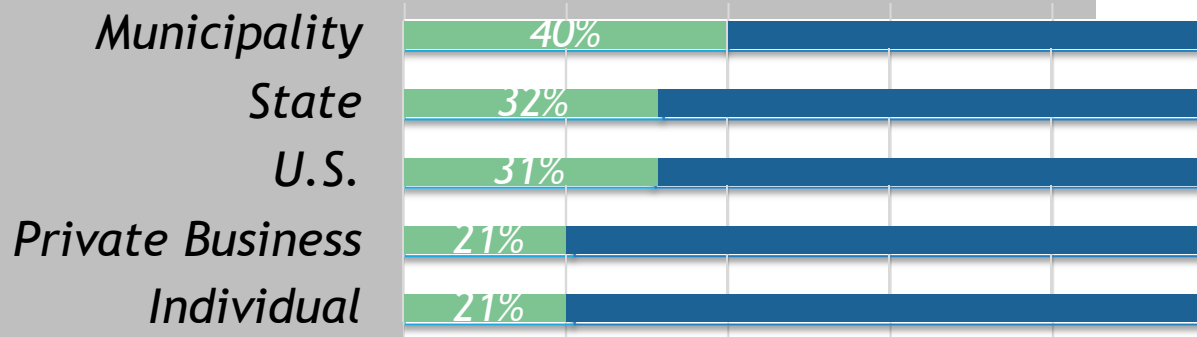
Contracts

15%

Participation of Women as Lead Counsel Varies By Type of Client in Civil Cases

- Significantly, women lawyers representing federal, state or local governments were more likely to serve as lead counsel than women representing businesses or individuals.

Percentage of Lead Counsel Who Were Women



Criminal Cases Also Show Gender Gap

- ▶ 2/3 of all lawyers appearing as lead counsel (including both prosecutors and defense counsel) are men.

Women Lead Counsel in Criminal Cases

69% represent the government

31% represent defendant

Men Lead Counsel in Criminal Cases

34% represent the government

66% represent the defendant





Big Picture

- ▶ In both civil and criminal cases, women are consistently under-represented in lead counsel positions.
- ▶ The best opportunity for women to serve in lead counsel roles in both civil and criminal cases is to represent governmental entities.
- ▶ This study can serve as a research template for similar studies in other jurisdictions.

Subsequent Studies Confirm Findings Of First Chairs Study

- ▶ “Vying for Lead in the ‘Boys Club’ - - Understanding the Gender Gap in Multidistrict Litigation Leadership Appointments” found that from 2011-2016, women comprised just 15% of court-appointed Lead Counsel or Executive Committee positions in MDLs; 37% of MDL cases during that time period had no women at all in leadership positions. (Sheller Center for Social Justice at Temple University Beasley School of Law)
- ▶ “If Not Now, When? Achieving Equality for Women Attorneys in the Courtroom and in ADR” found that women held just 24.9% of lead counsel roles in commercial and criminal cases in state and federal cases in New York during time period studied.

Subsequent Studies Confirm Findings Of First Chairs Study

- ▶ The New York study also found that the most striking disparity in women's participation was in complex commercial cases and "the more complex the case, the less likely that a woman appeared as lead counsel." (New York State Bar Association)
- ▶ ABA Resolution 10A adopted at the February 2018 Mid-Year Meeting:
 - ABA encourages law firms, corporate clients and members of the judiciary to provide equal opportunities for women lawyers to obtain trial and courtroom experience.
 - ABA encourages corporate clients and outside counsel to work with ADR providers to encourage the selection of women as neutrals.

Subsequent Studies Confirm Findings Of First Chairs Study

- ▶ Acritas 2017 Study found that:
 - In only 17% of cases did male clients choose a female attorney to lead their matters; in contrast, female clients picked a female lead in 25% of matters.
 - Mixed gender teams significantly outperform single gender teams.
 - 70% of law firms have 0-1 women in their top 10 earners.
- ▶ A 2017 Docket Alarm Study of Patent Trial and Appeal Board (“PTAB”) cases found that:
 - 55 of the top 100 law firms had less than 10% of their attorney appearances in PTAB cases made by women.
 - 8 of the top 100 law firms never had a single woman on any of their PTAB cases.
 - Only 12% of PTAB court appearances were made by women.

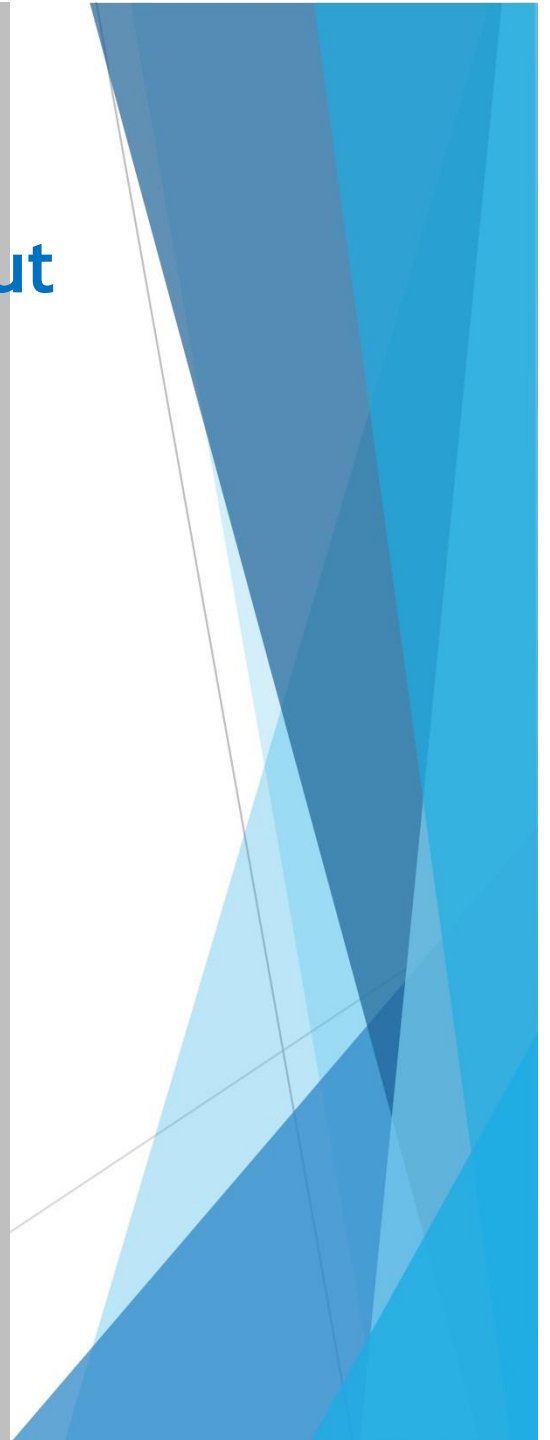
Where Will Change Come From?



More information and questions about
the *First Chairs at Trial* research

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The Legal Intelligencer Blog

Wednesday, November 11, 2009

Judge Diane Welsh Details Qualities That Distinguish Successful Women—Part I

By Gina F. Rubel

I had the privilege and pleasure to be a speaker at the 2009 Pennsylvania Bar Association Commission on Women in the Profession Annual Retreat. The retreat, Survival Strategies in Stressful Times, was hosted at The Hershey Hotel and brought together women lawyers from Pittsburgh to Philadelphia. The event was organized by Nancy Conrad, a partner with White and Williams, and Melinda Ghilardi, first assistant federal defender for the Middle District of Pennsylvania. The CLE programs were presented by Ellen Freedman, PBA practice management coordinator, and me.

On Friday evening, the welcoming remarks were delivered by PBA President Clifford E. Haines. On Saturday, we had the opportunity to hear from Gretchen Mundorff who is the president-elect of the PBA and who will become only the second woman president of the PBA. I find it funny to even think in terms of “seconds” or “thirds” when it comes to women in bar leadership roles however,

Judge Diane Welsh shared some startling statistics and helpful strategies.

To be successful, Welsh said you must:

- Accentuate the positive.
- Keep your private life private.
- Don't act like a victim.
- Balance work and family obligations.
- Stop talking and start communicating.
- Love the one you're with.
- Become an expert in your field.
- Blow your own horn.
- Make up your mind.
- Make an impact – “it's all about the presentation.”
- Fulfill your unique potential.

I asked Welsh if I could share her remarks in full with readers on “The Legal Intelligencer Blog,” and she happily obliged. Here's what she had to say:

“I have been working in the legal profession for 30 years and I could regale you with stories about what it was like ‘back in the day.’ But, in my view, that wouldn't be a good use of your time or mine because it just isn't relevant anymore. That was then – this is *now*. And there has never been a more exciting time to be a woman lawyer than *now*.”

“On Nov. 3, 2009 women were elected to six of the seven open seats on Pennsylvania's state appellate courts. With those results, women now hold 21 of Pennsylvania's 31 appellate court seats – 67 percent. Nationally, women hold about 25 percent of those seats, putting Pennsylvania well above the national average. In my home county of Montgomery County, five of the seven newly

elected judges to the Court of Common Pleas are women. Philadelphia has 45 women on the Court of Common Pleas or 50 percent. A few months ago, the third woman in history was appointed to the Supreme Court of the United States – the first Latina. We have a woman lawyer as secretary of state of our country.

“As we sit here today, there are very few ‘firsts’ yet to be achieved. And yet, the tremendous strides women have made in the public sector have not been matched in the private sector. As reported in this commission’s 2009 Annual Report Card, while women make up 30 percent of the lawyers in private law firms, they comprise 47 percent of the associates but only 17 percent of the equity partners. They hold less than 15 percent of the seats on governance committees. A female managing partner is a rarity. In other words, women are over-represented as associates and under-represented in higher positions.

“Similarly, the National Association of Women Lawyers recently released data on the gender composition of the top rainmakers in large law firms. Forty-six percent of large law firms have no women at all in the top 10 rainmakers. Another 32 percent have only one woman in the top 10 and 72 percent have no women at all among the top five.

“These findings, which the NAWL report described as “astounding,” are particularly significant because the report also found a direct correlation to compensation. Firms with no women in the top ten had the greatest pay differential between men and women -- \$81,000 less. By contrast, in firms with three or four women in the top ten the pay differential disappeared.

“Something is holding women back from achieving our *full* potential as leaders across the full spectrum of our profession. In my view, we can no longer blame men. We have to look at ourselves. We are at a critical impasse in the legal profession. These are historic times. But as Rohm Emanuel said last January when Rome appeared to be burning – ‘Never let a serious crisis go to waste. It’s an opportunity to do things you couldn’t do before.’”

Look for parts two and three of this series next week.

Gina F. Rubel, Esq., is the owner of Furia Rubel Communications, Inc., a public relations and marketing agency with a niche in legal communications. A former Philadelphia trial attorney and public relations expert, Gina is the author of Everyday Public Relations for Lawyers and the co-author of 6 Essentials for Success in Business and Life. Gina and her PR firm have won numerous awards for legal communications, public relations, media relations, strategic planning, corporate philanthropy and leadership. She maintains a blog at www.ThePRLawyer.com and is a regular contributor to The Legal Intelligencer Blog. You can find her on LinkedIn at www.linkedin.com/in/ginafuriarubel or follow her on Twitter at http://twitter.com/ginarubel. For more information, go to www.FuriaRubel.com.

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The Legal Intelligencer Blog

Tuesday, November 17, 2009

Judge Diane Welsh Details Qualities That Distinguish Successful Women—Part II

Judge Diane Welsh shared some strategies for success at 2009 Pennsylvania Bar Association Commission on Women in the Profession Annual Retreat. The following are her remarks continued from [Part I](#).

“To succeed in our new world, we will have to step outside our comfort zones and make crucial changes to our work styles. I’d like to use our brief time together to share with you some observations I’ve made over the course of my career watching and studying powerful women. I offer you my candid advice, for whatever it is worth, about what I believe are the qualities that distinguish the successful women who become our leaders.

Accentuate the positive -The greatest enemy of success is negativity in any form: fear of failure, jealousy, feelings of inferiority and anger. Keep your mind positive, refuse to criticize others, remove yourself from petty squabbles and stay above the fray. For people to have confidence in you as a leader, they must trust and respect you. Successful women do not gossip, backstab, reveal confidences or badmouth people. They don’t overreact or react emotionally. Women leaders are open minded, focused, enthusiastic, energetic, decisive and imaginative problem solvers. They project optimism and display good humor in the face of opposition. Successful women take responsibility for their actions, support their colleagues, handle disagreement and criticism and treat their subordinates with dignity and respect.

Keep your private life private - When you come to work, leave your troubles at the door. There is no room for moodiness in the office. It’s never safe to assume that when you tell someone something in confidence it will remain so. Never discuss potential job interviews, salary issues, client problems, or personal feelings about co-workers or superiors. You are in a competitive environment and people may use the information to gain an advantage over you.

Don’t act like a victim – Eleanor Roosevelt said: “A woman is like a tea bag. You never know how strong she is until she gets into hot water.” If you make a mistake, don’t be defensive, evasive or blame someone else. Admit the error, and make it clear it won’t happen again. But don’t be overly apologetic – it could be viewed as weakness. Management just wants to find a solution to fix the problem and move on. If a supervisor criticizes you, don’t take it personally. As Roosevelt also said “No one can make you feel inferior without your consent.” If you want to be a leader, never, ever think of yourself as a victim.

“Avoid envy of another’s promotion or recognition. Instead, congratulate him or her and offer to provide whatever support and assistance you can. Being gracious is always more attractive than being catty. Negativity can only detract from your enjoyment of your own achievements. Thoroughbreds run their own race. They maintain their focus with blinders, not worrying about what the other horses in the field are doing. They run straight ahead towards the finish line. Be a thoroughbred!

“When dealing with an opposing counsel or party, whether in litigation or on the other side of a negotiation or transaction, strive to understand and respect the other side’s perspective. Don’t try to steamroll over them or act as though you are smarter, tougher or better than they are. Today’s adversary may very well be tomorrow’s judge, or because of a law firm merger, tomorrow’s senior partner.

“Just because you’re the boss doesn’t mean you have to be bossy. You can’t dictate loyalty – you must build it. Recognize the contributions of your subordinates and express appreciation with words and deeds. Mentor, support and encourage junior professionals – both female and male. You can’t be a leader without followers. If you treat people as a critical part of your team they will think of you as their captain. Empower them by delegating meaningful work. When people are invested in a project, their success becomes your success and then you’re on your way to becoming a leader. Be friendly and complimentary to administrative staff you encounter internally and externally. In many organizations the most important person to impress is the chairman’s secretary.

“Look for others to mentor you. But don’t hitch your wagon to one star. It’s highly unflattering to be viewed as someone’s sidekick and can ultimately put you in a vulnerable position. It is a far more effective to learn the culture and politics of your firm and then create a broad base of alliances at upper, middle and lateral levels.

“Where you are heading and where you will end up will first and foremost be determined by what you do or fail to do. To be successful you must have clear and specific goals – both short term and long term – and an intense burning desire to achieve them. In other words, you have to know what you want, determine the price you will have to pay to achieve it and then get busy paying that price. Think of yourself as self-employed regardless of who signs your paychecks. You are your own professional corporation.

“You can’t make it rain unless you are willing to get wet. Knowledge, talent and effort are the building blocks of a successful career, but make no mistake about it; personal relationships are the cement that holds it together. Of course, you must have excellent legal skills. But it is naïve to think that you will be judged solely by the quality of your work. Many women have the misguided belief that if they work hard and do their job well people will notice. It’s the “Good Girl Syndrome” – sit in class, get good grades and success will come knocking at your door. It doesn’t work that way in the real world.

“In the new model for law firms, it is essential for associates to be able to develop business. If you want to advance in the upper echelons in the private practice of law you will need to make business development a priority. As a younger associate you are not expected to bring in a Fortune 500 company as a client. But generating even a small dollar amount of business proves that you have the potential to become a rainmaker. You have to make time to develop important contacts and key relationships.

“Business opportunities result from sustained relationships that are nurtured over time. Men have always known this. Women complain about the “Old Boys’ Network” but many do nothing to infiltrate it. Networking takes time, but if your goal is to be a leader in this profession it has to stay at the top of your “To Do List.” As you gain confidence and skill, you will view it as a dynamic and rewarding process. When done correctly and strategically, networking makes you and the people you encounter feel good. People like to do business with people they like. Perhaps women have avoided networking because the word itself has taken on a pejorative connotation as something phony or manipulative. If instead you think of it as nothing more than making friends, becoming well known in a variety of circles, being popular and well liked – that’s surely not so bad!

“The first place to start networking is within your firm. Be a ‘Worker Bee.’ Volunteer to serve on committees, work on special projects and event planning. Management will notice and will view you as being invested in the success of the

firm and as a team player. Next, strategically decide on the outside organizations you want to participate in. Don't join something because you think it will look good on your resume. Don't join too many groups just to be a member. Be selective and join those that you can enthusiastically support. Attend their events, serve on committees and be visible. Become an ambassador for the organization and work your way up to a leadership position. Don't limit yourself to legal associations; participate in a general business organization, such as the Forum of Executive Women, or the Chamber of Commerce. These groups can be particularly stimulating and refreshing as they expose you to professionals in a wide variety of businesses. You will meet energetic, sociable and interesting people who are the current and upcoming leaders in our business community. And one of your activities should be a public interest, charitable organization or an alumnae society. Very successful people take pride in their philanthropy. It is important to give back to the institutions and the people who have helped you to get where you are."

Look for part three of this series later this week.

Gina F. Rubel, Esq., is the owner of [Furia Rubel Communications, Inc.](#), a public relations and marketing agency with a niche in [legal communications](#). A former Philadelphia trial attorney and public relations expert, Gina is the author of [Everyday Public Relations for Lawyers](#) and the co-author of [6 Essentials for Success in Business and Life](#). Gina and her PR firm have won numerous awards for legal communications, public relations, media relations, strategic planning, corporate philanthropy and leadership. She maintains a blog at [www.ThePRLawyer.com](#) and is a regular contributor to [The Legal Intelligencer Blog](#). You can find her on LinkedIn at [www.linkedin.com/in/ginafuriarubel](#) or follow her on Twitter at [http://twitter.com/ginarubel](#). For more information, go to [www.FuriaRubel.com](#).



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The Legal Intelligencer Blog

Wednesday, November 25, 2009

Judge Diane Welsh Details Qualities That Distinguish Successful Women—Part III

Judge Diane Welsh shared some strategies for success at 2009 Pennsylvania Bar Association Commission on Women in the Profession Annual Retreat. The following are her remarks continued from Parts I and II.

“Balance work and family obligations – Just as you are going to think of yourself as your own professional corporation, you need to be the CEO of your family corporation. Delegate and prioritize. Calculate the highest return on the investment of your time. On some evenings, it will be more important for you to be at the PTA meeting than the Bar Association cocktail party. On other occasions it will be more important that you be at the annual meeting than at the soccer tournament. You can’t leave your schedule to chance. Sit down regularly with your co-parent to coordinate your calendars and determine the order of priority among his professional events, your professional events and the child’s events and make plans in advance for who needs to be where. Rarely is it critical that both parents attend a child’s event. As women, we have so many chapters in our lives. You can have it all, but not necessarily at the same time. There are many different jobs within our profession and they have different requirements. For example, a job that requires substantial travel may not be the best choice for you when your children are very young. One of the most exciting things about being a woman lawyer today is precisely that we have so many choices. Take advantage of them to achieve the best balance and quality of life for your self in each chapter of your career.

“As the great philosopher Woody Allen said, ‘Eighty percent of success is showing up.’ When someone you know receives an award, is sworn into office or hosts an event or fundraiser, show up. The person will remember that you came, appreciate it and will consider you a member of his or her circle. Send congratulatory letters, thank you and sympathy notes. E-mail is not a good substitute. It does not have the impact of a handwritten note with a stamp. I have read that the first President Bush paved his road to the White House one thank-you note at a time.

“Flattery will get you everywhere – I’m not suggesting that you be disingenuous. But if you know a person has been promoted, had a successful verdict or a recent firm move, offer congratulations and ask a few questions about his or her experience. One of the most effective forms of flattery is to ask an influential person for advice. Don’t be intimidated. It’s a sign of respect and the person will often respond by not only giving you her advice but will also offer to help you. And people who help us become invested in our success.

“Stop talking and start communicating – Many women provide too many details about people, setting, drama and the thought process involved. A man’s version of the same story will be the ‘Cliff Notes.’ This detailed reporting style of women is seen as ‘rambling’ and can be annoying to men and even other women. The business world was developed by men and for men – and that’s the culture women now operate in. Remember you are attending the event in your professional capacity. Some women tend to get a little giddy if they have a few cocktails so be very careful about alcohol consumption. Be aware of how your style of communicating might be perceived by others. If you don’t gauge it and make adjustments you’ll have difficulty reaching your full potential

“Love the one you’re with – Have you ever been in a conversation with someone who appears distracted or continuously scans the room as if they’re looking over your shoulder for someone more important than you to talk to? It’s terribly insulting. The most important aspect of communication is not talking; it’s listening. If you really want to engage someone, active listening, not imitation, is one of the best skills you can practice.

“Become an expert in your field – When you have handled a complex matter or one that has an unusual issue and you have gained some advanced knowledge through the experience, write an article for a journal, volunteer to be on a seminar panel. Increase your profile by becoming an expert in something. Even a young lawyer can readily achieve recognition in this way. If you encounter a systemic problem that frustrates you, chances are it frustrates a lot of others too. Don’t be satisfied to accept ‘That’s just the way it is.’ Think of things you can do to change it. Form a committee, apply for a grant, find a way to have a task force impaneled. Be creative and challenge the status quo to make your mark and accomplish something lasting and meaningful beyond the case at hand. Then you’re on your way to becoming a leader. And as the Chinese proverb puts it: ‘Those who say it cannot be done should not interrupt the person doing it.’

“Blow your own horn – Men are more comfortable than women at promoting their strengths and accomplishments to gain prestige. While men freely talk about their achievements, women often reject the concept as bragging. Women need to toot their own horns more. Let people know about your successes. Enthusiasm can take you a long way. People relate to your excitement.

“Make up your mind – Leaders are decisive. This can be a particular challenge for women who agonize over a decision for fear of making a mistake. When I see a decisive woman in a negotiation it’s notable. When it occurs it is a powerful thing to behold because she has tremendous influence over the other people involved. Do your homework. Gather information. Listen to others who have a stake in the outcome and then using your best judgment, confidently make a decision and move on to the next matter needing your attention. Then you’re on your way to becoming a leader.

“Make an impact: it’s all about the presentation – Impact is projecting that powerful blend of femininity, professionalism, self-confidence, and authority in appearance, manner and communication. When you enter a meeting, make an entrance – make eye contact and greet people by name. Don’t wait to be asked for your opinion. Seize on something you’ve heard and speak up. Don’t worry about being wrong. Generally there is no right or wrong answer – it’s not math class. We’re generally discussing opinions, ideas and experiences. If someone disagrees with you, that’s fine. Indeed, you should expect that someone will. In fact, dare to disagree yourself, without being disagreeable. What you said won’t be long remembered. But your confidence and energy will be.

“Study women whom you admire for their presence and impact – whether in the public arena or in your personal sphere. Whether it’s Hillary Clinton, Michelle Obama or a partner in your firm - think about what the qualities they possess that attracts you to them. Emulate those qualities while maintaining your unique style and identity. I once saw a book in a museum store that caught my eye – It was titled ‘What Would Jackie Kennedy Do?’ It was about her style, grace, impeccable manners and the power of her personality. It struck me as a good approach to making the best use of our role models – As you evaluate your conduct or demeanor, consciously ask yourself, ‘What would my role model do?’

“Fulfill your unique potential – Your career is bigger and more important than your job. In order to be successful and to become a leader in our profession, you must first and always have passion for what you are doing. If your job is unfulfilling and keeping you from your career goals, don’t make excuses; make a change. Analyze your options and develop a strategy. Remember that you are in control of your career. It is not your environment, it is you – the quality of your mind, your integrity, and your determination that will decide your future and shape your life.

“My final advice comes from the author James Patterson who urges us to “think of life as a game in which we juggle five balls labeled work, family, health, friends and integrity. Work is a rubber ball. If you drop it, it bounces back. The other four balls are made of glass. Drop one of these, and it will be irreparably marked, scuffed, nicked and maybe even shattered.”

"It is up to you to choose not just what you do, but who you are. And I sincerely wish all of you great success in your careers and in your lives."

Gina F. Rubel, Esq., is the owner of Furia Rubel Communications, Inc., a public relations and marketing agency with a niche in legal communications. A former Philadelphia trial attorney and public relations expert, Gina is the author of Everyday Public Relations for Lawyers and the co-author of 6 Essentials for Success in Business and Life. Gina and her PR firm have won numerous awards for legal communications, public relations, media relations, strategic planning, corporate philanthropy and leadership. She maintains a blog at www.ThePRLawyer.com and is a regular contributor to The Legal Intelligencer Blog. You can find her on LinkedIn at www.linkedin.com/in/ginafuriarubel or follow her on Twitter at http://twitter.com/ginarubel. For more information, go to www.FuriaRubel.com.



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