

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.