



Wanted: Women trial lawyers

While women are well represented in law schools, the disparity in the numbers of men and women trial lawyers continues

By SHAANA A. RAHMAN

Although I generally eschew both reading and writing personal narrative articles in magazines such as this, I am making an exception for what follows as it is intended not as a roadmap or broadly applicable factual account but rather as a personal reflection of the life of a woman trial lawyer. It includes what I have experienced in the last 14 years as a trial lawyer, the insight I have gained from mentoring and employing women law students and lawyers, as well as shared stories from my female colleagues about the challenges and successes that women have had as litigators in our community. It is designed to invite an open dialogue as to how to encourage talented women to become or remain trial lawyers.

As with any narrative, I feel compelled to begin with a conversation with a colleague that is the impetus for this open conversation. While sitting in court with a male colleague, we were both eavesdropping on a conversation between two women attorneys in which they expressed the notion that women lawyers are treated differently than their male colleagues. Upon hearing this, my friend turned to me and said, "You don't get treated any differently than male attorneys, do you?" He then followed up the question with the factual statement that over 50 percent of law students are women. Although my friend was well-intentioned, my first reaction was to laugh at the absurdity of his statements as we were sitting in a courtroom in San Francisco in which 90 percent of the lawyers were men.

The reality is that there is an attrition rate for women lawyers that has no corollary for our male counterparts. Although women are well represented in law schools, women comprise only 35 percent of practicing attorneys and make up only 15 percent of equity partners.¹ Many scholarly articles and studies have been done which conclude that there is still, indeed, a dramatic pay differential between women and men attorneys which, exists, not due to the amount of hours or "sweat equity" women invest in the profession but rather because of inequity in such things as opportunity paths, and networking opportunities.² While most studies have scrutinized "big firm" issues as they relate to women, there are no studies that have examined the reasons why women are not better represented in litigation roles, per se. In speaking with women trial lawyers who have been in the profession 25 years or more, the shared sentiment is that there has certainly been a positive change for women litigators insofar as there are more women lawyers overall and the idea of women in such roles is now commonly accepted.

However, the change is in no way complete, nor does it mean that women are treated like their male counterparts. As an anecdotal aside, in the course of my career, I have been mistaken for the court reporter at depositions; called "honey" (and sweetheart and dear for that matter) by opposing counsel, mediators and judges; have been subjected to a variety of gratuitous sexual innuendo; and more often than not, have been involved in cases where everyone in the room, judge or mediator

included, was a man. When I began to look at my community of trial lawyers, the disparity in the numbers of women and men trial lawyers became apparent.

These experiences caused me to examine whether we, as women lawyers, were continuing to progress forward or whether, as I suspected, true forward progress had been stymied and replaced with a polite handshake that begins and ends with the supposition that because equal numbers of men and women attend law school, the practice of law is gender-blind. As a result, several years ago I decided to try to create a rudimentary, ad hoc plaintiffs' bar pipeline for women law students to encourage them to become trial lawyers and with new women lawyers to encourage them to remain in our ranks. I have done a great deal of one-on-one and group-related mentoring, which has allowed me to ask questions of these women as to what is and is not compelling to them about trial work. By and large the women I speak with have competitive spirits, an eagerness to learn, the capacity to work hard and a desire to be true advocates. As I routinely interact with women who possess all the skills and drive to do this work, I started asking questions to ferret out the potential barriers to success. I began to ask questions about what women were being taught both in law school and as young lawyers about how to be successful. Some of the verbalized suggestions such as "wear skirt suits in court and in front of juries," or try not to act too "aggressive" seem innocuous. Other non-verbalized "take aways" to these women result from working in largely male-dominated firms so what they believe is that in order to be successful,



they must possess the traits of the men from whom they take direction. They also learn that it can be uncomfortable to be “the other” in the room insofar as they have limited exposure to other women lawyers in power positions. Both the verbalized and non-verbalized suggestions attempt to ascribe gendered characteristics to lawyering when no such distinction need be made. It is noteworthy that the predominant questions I field include: 1) “how can I be ‘aggressive’ and a passionate advocate without being perceived as a bitch” and 2) “how do I get people to take me seriously?” These questions are disheartening in many respects as they suggest women must augment their behavior or specific attributes to fit into a pre-conceived notion of a lawyer.

In response, I have developed teaching tools to guide women into trial work in which we discard the old rhetoric and assumptions. The teaching tools were designed to teach women 1) how to be heard and acknowledged and 2) how to effectively persuade and/or advocate. The tools are based on common linguistic and behavioral concepts and are designed to remove the gender dynamic from the equation.

Command the room

The concept here is that you must stand up and be counted. In practical effect that means that when you enter a room, be it an informal conference, a courtroom in front of a jury or a mediation, you must appear to be confident and “in charge.” This is done through body language, proper use of vocal techniques and preparation.

• *Body language*

In any interaction in which you want to convey control over a situation, your body movements should be directed. Stand up straight and enter the room like it’s your living room. Greet everyone in the room, maintaining eye contact. Be relaxed and comfortable. This means, don’t agonize over what chair to sit in or where anyone else will sit, don’t fidget or distract yourself with the latest electronic

gadget, keep an “open” body posture, i.e., hands at your sides, arms not crossed in front of you, and maintain an outward appearance of calm, even if you are nervous. These simple things are perceived as confidence, strength and a lack of fear.

If you are in a situation where you have to stand in front of a group such as to give a presentation, oral argument or voir dire, you will need to “make yourself big” if you are slight of build or height. This can be accomplished simply by standing with your feet shoulder width apart, keeping equal weight on both feet, standing up straight and using your arms to gesture (with purpose). If you stand off balance such as with one foot in front of you or behind you, you are both literally and figuratively on uneven footing which makes you appear apprehensive.

In all situations, your movements should be purposeful, e.g. striding to the clerk’s desk to mark a document – head tall, eyes straight ahead, fluid movements. It can be unnerving to walk across a courtroom with 12 pairs of eyes on you. Jurors make assumptions about you based on whether you appear to belong in the courtroom. If you are as comfortable in the courtroom as you are in your own living room (outwardly, of course – if done right the jurors will never know that inside you are silently screaming), then the perception is you know what you are doing and are an authority...on something.

• *Use your voice*

As lawyers, what we say is important, but how we say it can be equally as important to our overall presentation and ability to persuade. As any voice coach will tell you, many women speak at a pitch or octave which can be less pleasing to the human ear than a lower pitch or octave which is the norm for men.

Thus, in order to be heard if you have a higher voice, consider practicing speaking from the diaphragm and using breathing techniques to adjust the tonal quality of your voice. This does not

necessarily mean “be loud” but rather, learn how to project your voice such that it is pleasing to the human ear and can be heard at distance. If you are naturally quiet, you can use that as a method to encourage others to await what you have to say. If your opponent is very loud, your audience may like the juxtaposition of a calm, quieter presentation but you will need to use a hook to get the audience on board. One way is to be a bit theatrical such as standing up and not saying anything for a moment but making eye contact with your audience – this alerts them that something is about to happen and can be intriguing.

Outside the presence of a jury – say in a deposition, meeting or mediation – don’t wait for someone else to start the dialogue and don’t wait to be asked to speak. Take command of the conversation from the start so that you can control the flow of the presentation. This strategy conveys that you have something to say and are not afraid to say it. In a deposition, if you are confronted with objections, don’t break eye contact with a witness and keep asking your questions. If there are objections designed to throw you off your game – don’t let it happen. Be firm with your voice and your tone to let opposing counsel know the tactic won’t work. Do not ever let anyone speak over you. When you are speaking, you command the room. End of story.

• *Preparation*

The key to being successful in using the techniques above is to always be highly prepared. The most useful piece of advice anyone ever gave me when I was a young lawyer was to “over prepare.” The mere fact of being over prepared will bring you a confidence from which all else will flow. After you go to a few depositions, mediations or meetings in which you alone have command of every fact, argument and legal theory in a case; you will have no trepidation about speaking up and standing tall as you will know that you belong exactly where you are – standing next to your client as an advocate.



Be yourself

Any good trial lawyer will tell you that in order to connect with a jury, you must be genuine. Simply put, you must be yourself because a jury will see through anything else. This applies both in and out of the courtroom. As litigators, we often imitate certain deposition or trial styles, but at the end of the day you must be true to your own personality. Use your strengths – if you are funny, you can inject humor, where appropriate; if you are serious, then let that be your guide. Think about your friends for a moment – what is it about you that makes your friends drawn to you? If you can identify those factors, chances are you can use those attributes to allow jurors, judges, insurance adjusters and opposing counsel to be drawn to you as well. With each of these groups you are forming relationships in some way and this cannot be done if you are trying to jump yourself into someone else’s style or personality. If your boss is 6’4”, 240 lbs, plays golf with half the judges in town and has a voice that can be heard the next county over; what works for him will never, ever work for you.

Long gone are the days when women wore “manly” suits to show that they

belonged. You went to law school, you got your ticket, you belong in the show. Practicing law as a woman does not mean that we should leave our personalities at the door or that we must “act like men.” It does mean that this is our profession now and we must embrace it by setting new boundaries, changing the gender dynamic, creating new rules, and owning it.

What happens now?

My journey in litigation has shown me that what women lack are women mentors and role models – essentially women willing to share their personal stories, challenges and successes and women showing other women how it’s done. I recently had an unprecedented experience wherein I was in trial with women on both sides of the table and a woman judge. Four women trial lawyers. It made me believe that there is more to come. However, it is not enough for there to be past generations of women lawyers who have succeeded, not as “women lawyers” but, simply as lawyers. For there to be continuing generations of great women trial lawyers, those of us who have risen should extend a hand to those women coming up behind us. This does two things – it allows us to provide support

to our colleagues, of course, but in teaching other women what we have learned, we get to continue to participate in this truly amazing dialogue and help re-shape our legal community to make it reflective of who we are and who our clients are.



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Endnotes

¹ Behan, Wendy. “Empowering Female Attorneys: How Mentors and Role Models Can Help Close the Gender Gap.” Daily Journal May 27, 2010.

² Williams, Joan C. and Richardson, Verta T. “New millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women.” The Project for Attorney Retention, July 2010.