

# Where are all the women lawyers?

## *Diversity in the legal profession in California: 2015*

By Deborah Chang and Sonia Chopra, Ph.D.

“Women are the largest untapped reservoir of talent in the world.”

— Hillary Clinton

In 1987, the first Chairwoman of the newly formed American Bar Association (“ABA”) Commission on Women in the Profession, Hillary Rodham Clinton, made a dire prediction. She believed back then that although women were entering and graduating from law schools in growing numbers, those numbers would not ensure that women lawyers would advance, succeed, or assume positions of power in law firms at the same rate as their male counterparts. Nearly thirty years later, recent studies and reports, including one by that same ABA Commission, have established that her prediction was accurate.

What is so startling about Clinton’s prophetic remarks made almost three decades ago is how accurately it describes the status of women lawyers in California today.

Despite all of the progress that has been made since that Commission’s inception in identifying and addressing gender bias in the legal profession, current statistics tell a startling story:

- As of July of 2014, the legal profession nationwide is predominantly (66%) male.
- Only 17% of equity partners in law firms are women.
- Women equity partners make less than their male counterparts.
- As of the latest available statistics published by the California State Bar, only 32% to 39.4% of attorneys in this State are women.
- As of 2012, only 31.3% of all judges in this State are women.
- 88% of Ninth Circuit judicial positions are held by men.

Writers observing this disturbing trend have noted that “[s]omething terrible is happening in the practice of law . . . [and]

making women walk away.”<sup>1</sup> Despite earning more than half of all law degrees in 2012, “women are still leaving the legal profession in droves later on in life.”<sup>2</sup>

The numbers do not improve when considering the percentage of women trial lawyers who appear in front of juries in courtrooms. A recently published study sponsored in part by the ABA Commission on Women in the Profession and entitled “First Chairs at Trial: More Women Need Seats at the Table,” concluded that women are significantly and shockingly underrepresented as lead trial lawyers in court. As of 2015, the study established the following:

- 68% of all lawyers appearing in civil trials are men.
- 76% of all lead counsel at trial are men.
- 78% of all plaintiffs’ cases are tried by men.
- When women are lead counsel, it is for the defense 60% of the time.



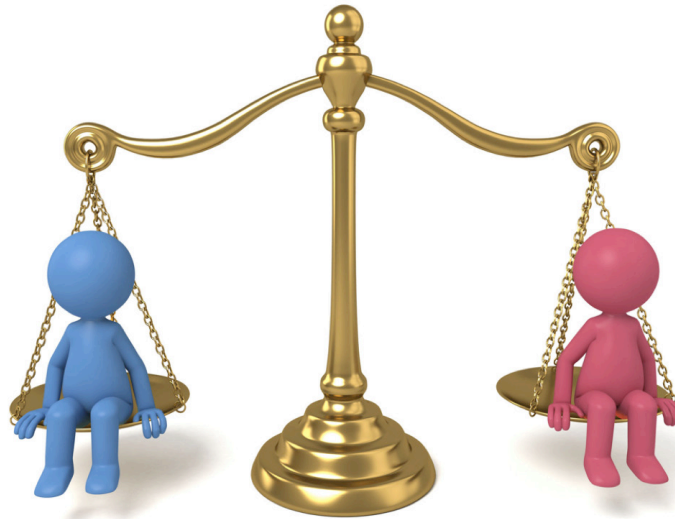
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The report specifically noted that this lack of women as lead counsel was *not* due to the lack of talent or ability in female trial lawyers because other studies have demonstrated that women are highly effective courtroom advocates and that jurors are receptive and attentive to women attorneys.

**So where did all those bright, energetic, creative women trial lawyers go?** Maybe you remember them: they were the ones who so eagerly and confidently breezed through law school and graduated with the goal of becoming a successful trial lawyer. Where are they now? Not many made it to the first chair in any courtroom in California, that's for sure. And with very few exceptions, not many made it to the equity partnership or management of any law firm either.<sup>3</sup>

It is a crying shame – and unacceptable in a state and country in which there are now more women than men in the general population.<sup>4</sup> These statistics demonstrate that the legal profession – comprised of lawyers, law firms, judges, legal organizations, and clients – has failed. It has failed to keep these bright, talented, and motivated women lawyers whose unique perspectives would have undoubtedly helped clients, promoted justice, and advanced the legal profession. **Every study to date has concluded that diversity and the inclusion and promotion of women enhance the performance and productivity of any organization.** As Hillary Clinton noted, “when more women enter the workforce it spurs innovation, increases productivity and grows economies.” Research has also shown that the presence and inclusion

of women raises the standards of ethical behavior and lowers corruption.

Walk into any courtroom or seminar today and see how many women lawyers you find there. Many times, a single woman is seated at a table surrounded by male attorneys.

And that is the story of our lives: women lawyers are perpetually surrounded by men, waiting to be heard.

### **We've come a long way, baby – or have we?**

Not surprisingly, the right of women to practice law in California or any other state did not come easily. The first woman to pass any bar examination in the country was Arabella Babb Mansfield in Iowa in June of 1869. Two months later, Myra Bradwell passed the Illinois bar exam, but was denied admission to the bar because she was a married woman who had family responsibilities. She appealed her case to the Illinois Supreme Court and later, to the United States Supreme Court to no avail. Finally, in 1890, the Supreme Court of Illinois granted her a license to practice law *nunc pro tunc* so that her license dated back to 1869. Unlike Mrs. Mansfield, Mrs. Bradwell did practice law – both before and after obtaining her law license.

In California, Clara Shortridge Foltz wanted to take the bar examination and become a lawyer, but she encountered a law restricting the persons who could become members of the bar to only white males. She authored a state bill that replaced “white male” with “person” and thereafter passed the examination and was

admitted in 1878. She applied to Hastings College of the Law to further her legal education and improve her skills, but she was denied admission because she was a woman. Undaunted, she sued the school and won admission and ultimately became the first woman attorney to practice law in California. The Criminal Courts Building in downtown Los Angeles bears her name and is now known as the Clara Shortridge Foltz Criminal Justice Center.

**Ironically, these pioneer women lawyers would not get the right to vote until 1920, and while practicing, they were still considered to be the property of their husbands.** In California as recently as in the 1970's, archaic language in the California Civil Code contained a chapter that placed women in the same legal category as children and “idiots.” Even in the early 1970's, it was difficult for women lawyers to succeed or negotiate effectively when they had difficulty obtaining a credit card in their own names. Numerous women trial attorneys practicing in that time period recall trial judges who refused to accept settlements proposed by women until a male partner verified the terms and put it on the record.

It was around this time that women lawyers, weary of fighting such overt gender bias in the legal profession, began organizing task forces in various states to study the effects of gender bias in the courts, and state bar organizations and state and federal courts thereafter followed suit and conducted their own studies at various times. Over the years, with the passage of civil rights and other laws preventing discrimination, the overt gender bias

experienced by women gradually became replaced by a much more subtle, yet just as detrimental, version. And inexplicably, this form of subtle gender bias is far more acceptable in society than race or other forms of bias because it is so pervasive. The end result is that despite all the work done by these task forces, bar organizations and courts, women are still leaving the legal profession.

In August of 2006, the State Bar of California published a report on the Results from an Online Poll of California Attorneys that was conducted in 2005. The poll was initiated after it was realized that the demographic profile of California's lawyers did not match that of the state's general population. As a result of this demographic disparity, the State Bar increased its focus on diversity in the legal profession. With respect to gender bias, the Report included the following results:

- 73% of women reported gender bias as a "major" or "moderate" problem;
- 70% of women reported receiving inappropriate comments about their physical appearance or apparel;
- 61% of women reported that they disagreed that they could advance as far as male attorneys in the legal profession;
- 75% of women reported that they are not accepted as equals by their male peers; and
- 50% of women reported sexual harassment.

These results, reported by all women attorneys, reflect part of the reason for the mass exodus of women lawyers from the profession. Many behaviors identified by these women and attributed to other lawyers in their law firms, judges, or opposing counsel were either illegal or prohibited by applicable ethical rules or canons.

### Applicable ethical rules

The California Rules of Professional Conduct prohibit discrimination in the management or operation of a law practice on the basis of sex. Rule 2-400 states:

**Prohibited Discriminatory Conduct in a Law Practice.** In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:

- (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person . . .

California judges are likewise prohibited from engaging in speech, gestures, or conduct that are discriminatory. Canon 3 of the California Code of Judicial Ethics provides:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

The California State Bar has also promulgated the California Attorney Guidelines of Civility and Professionalism, which includes the following pertinent portion:

I shall be courteous and civil, both in oral and in written communication.

Comment: A lawyer shall avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients.

*... Derogatory racial, gender, or ethnic comments are unacceptable.* [Emphasis added.]

Such guidelines for civility in litigation have also been adopted by numerous courts,<sup>5</sup> and courts have sanctioned male attorneys for inappropriate comments made to women attorneys during depositions.

### California women plaintiffs' lawyers in 2015

As reflected by recent studies, women trial lawyers who represent plaintiffs have an even more difficult time getting to the courtroom table. Defense counsel represent insurance companies and manufacturers which have required certain quotas of women and minorities to be involved as trial counsel. No such quotas exist for injured or grieving plaintiffs, who often insist upon male trial attorneys to be lead counsel at their trials. Often, these women attorneys face an army of male and female defense counsel as opponents and

experience condescending treatment, both in and out of the courtroom.

In order to find out how these women were handling these issues in California, we prepared a survey that was distributed by CAOC in September of 2015 to female members and can be found at: <https://www.surveymonkey.com/r/98Q863Q>.

Although we intend to continue collecting data on this survey for further analyses, our preliminary findings were nonetheless fascinating and eye-opening.

The majority (65%) of responders were in small firms (less than 30 attorneys) or solo practitioners (26%). Twenty-six percent were equity partners in a firm, 32% were associates, and 17% were solo practitioners. Level of experience was varied and fairly evenly distributed with the majority having been in practice 11-20 years. While 35% of respondents reported that they were in male dominated workplaces, 32% work in firms where the majority of attorneys are women, and 25% said there were men and women attorneys in equal numbers. Analysis of the comments submitted reveals that these numbers reflect a shift amongst women who were unhappy at their treatment in larger and more male dominated firms and became a sole practitioner or partnered with other female attorneys to open their own firms:

"In truth this is a good old boys' business and it will be a long time before true equality exists, if ever. I had to start my own firm to be treated equally."

"I started my own firm because I wasn't given opportunities at male owned firms."

"Absolutely, women do not get the same opportunities. I had to leave my partnership with men and start my own firm to be treated fairly."

One-third of respondents do not believe that their male peers accept and treat them as equals. This bias plays out in various forms. Women report being treated differently because of their gender and having to work twice as hard to get the same respect as their male peers:

"I always have been underestimated."

"I don't get respect unless I work twice as hard as they do."

"I have to work harder and perform better to be treated as equal."

"They have lower expectations of work quality and criticize me for things they do (e.g. interrupting)."

Male attorneys are reported as being given more credit for ideas, more accolades for accomplishments, and more power in decision-making:

“Sometimes I feel that male attorneys’ opinions are given greater weight and that male attorneys still value other male attorney’s advice, opinions, more than me.”

“When difficult decisions need to be made, the male colleagues tell me what to do for the most part.”

“Women have to work harder to be perceived as successful litigators. As there are more senior male lawyers than women lawyers, when decisions are made by seniority it can effectively cut women out of certain opportunities.”

The male dominance in the judiciary and amongst plaintiffs’ trial lawyers perpetuates problems of gender bias. Women reported feeling that the “old boys’ club” is still alive and well. Women attorneys report that men are more likely to give referrals to other men and that men are given more opportunities for networking and client development:

“While my male peers may tend to treat me as an equal, this is still a VERY male dominated industry and I find that more experienced males tend to have archaic ideas about women and tend to have more respect for and give more opportunities to people ‘like them,’ i.e. male professionals.”

“Male lawyers tend to get the exclusive invites to social events, which can lead to opportunities to work on cases with others and generate leads/referral opportunities.”

“Women can’t ‘pal’ around like the guys – there is overt sexism, dirty jokes and ‘us’ vs. ‘them’ mentality.”

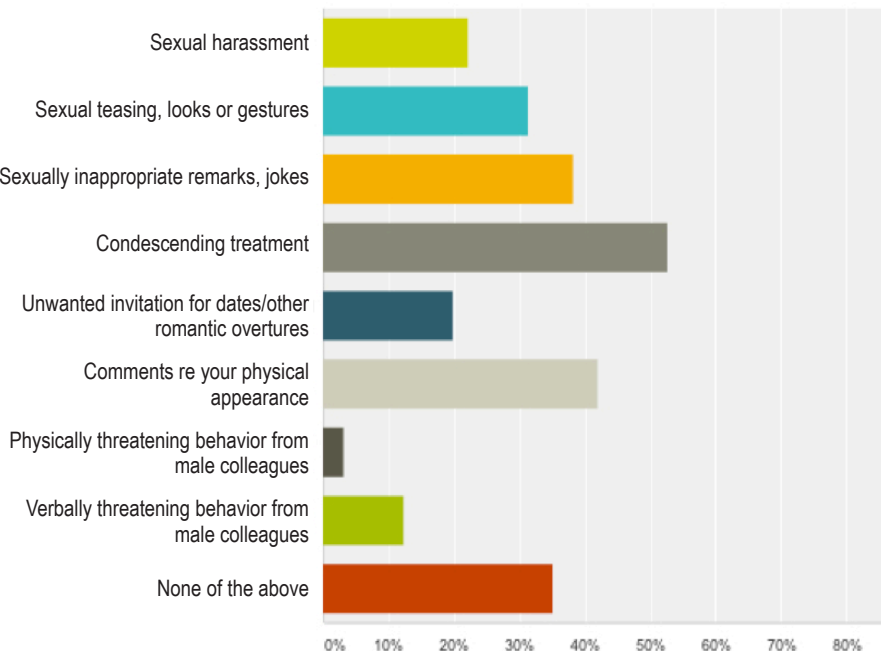
“There are still many ‘old school’ types in PI that may say they support [women] but act differently.”

“I think that the bar associations e.g. CAOC, still overlook women for panelist roles.”

“I have been lucky to have had strong female mentors in this profession outside of my own boss, who recognize my abilities and respect me as an attorney. However, it is extremely disproportionate to the recognition and respect I receive from male professionals. I especially find this to be true in attorney organizations, where the vast

Chart 1

### As a female attorney, have you experienced any of the following in the office?



majority of attorneys in leadership and receiving recognition are males. Further, the female attorneys who receive opportunities for leadership and recognition tend to have male mentors.”

Women attorneys report experiencing workplace discrimination in a variety of forms, the most common of which are being given secretarial or administrative duties that their male counterparts are not expected to do, receiving less recognition for accomplishments compared to male attorneys, getting paid less than their similarly situated male colleagues, being given less important tasks and smaller cases, and being denied promotion because of their gender. (See Chart 1.)

A number of women described disparate treatment compared to their male coworkers in terms of pay and opportunities:

“I was paid \$20,000-\$40,000 less than male attorneys with substantially less experience than me even though the boss acknowledged that my work was better, I was given a much larger caseload, and my cases settled for much higher values.”

“Denied job because agency already hired ‘enough women’; overlooked for firm when male friend with same

qualifications got the job.”

“I do know other incompetent, less experienced male lawyers get great opportunities, but other women don’t, including myself. So why is that?”

“I was not given assignments or work due to gender, and was not considered for partnership at previous firm, while similarly situated male associate was offered partnership.”

“I was told that the reason my offer was a lower salary than the other male attorney they were making an offer to was because he was married and had a wife and child to support, while I was unmarried and didn’t have children, so I could get by with less. Again, this was said by a partner at a highly respected CAOC plaintiff’s firm.”

Women also reported their attitudes and experiences regarding the indisputable fact that the vast majority of lead trial counsel who try plaintiff’s cases are men. Male lawyers are reported to get the bigger cases, and they take the leadership positions at trial that women believe they should have had the opportunity to have:

“I have not been given the opportunity to go to trial on my cases. The cases are reassigned at the time of trial.”

"I have not been asked to try and get leadership roles in class actions because our male partner handles all of that."

"‘Trial attorneys’ are men, and ‘case managers’ are women. Not exclusively, but a woman has to really, really demand a trial position and is given no training or support."

"In earlier cases I have felt I was not given visible assignments (like witnesses or things in front of the jury) because of my gender."

The perception that a female attorney is going to work less or be less dedicated because she wishes to have a family and raise children – whether she actually plans to or not – remains prevalent in the workplace. Assumptions about child rearing impact hiring, promotion, and case assignments for women attorneys:

"I think women generally have a harder time getting promoted, particularly to partner status, where partners are all or predominately male. More so if the woman has or wants to have kids."

"Just look at the Trial Attorneys. Now look at the ones with kids."

"The fact that I may have children without a stay at home parent is discussed and considered regularly."

"It has more to do with being a mother. More hours are expected at larger firms and less deference seems to be given to mothers than fathers."

Several women reported being demoted or denied opportunities after becoming pregnant and having children, despite no changes in their work accomplishments:

"Initially perceived as high achiever and on track for partnership; after having children and going to part time was told I would be kept on as staff attorney, off partnership track, and tied it to performance instead of change in personal status despite fact workload, performance and responsibility had not changed."

"I had a good training firm, so my opportunities were great. Even then, I think it is possible that I was delayed in promotion because I could not participate in an out of state trial because I was pregnant."

"Comments about how I no longer wanted a career job now that I was pregnant from a partner after a decision

had already been made to lay me off, comment from a partner after I was laid off when I saw him at a party that ‘it must be awfully hard to find a job looking like that’ referring to my pregnancy."

Survey respondents with children reported that balancing career and family while striving to overcome assumptions about their loyalties and dedication was one of the most difficult parts of their practice.

The belief that men are better trial lawyers than women because they are “more aggressive” is used to justify gender discrimination in hiring and in assignment of cases and tasks:

"I haven’t had any of these problems but my co-associate, a woman, has. The difference is our litigation style. Mine is more ‘traditional’ and aggressive. Hers is equally effective but our boss (male) doesn’t recognize its value."

"I think it has been harder for me to find jobs [because] male attorneys often assume by looking at me that I’m a pushover and not aggressive enough, which is hard to disprove at an interview."

"I feel like males do not feel that women are ‘ruthless’ enough to litigate as well as males."

**According to the poll results, one of the most common challenges facing women attorneys today is how to be perceived as confident and assertive without being considered “a bitch.”** Moreover, because women lawyers encounter more resistance in having staff or younger attorneys respond immediately to requests when compared to their male counterparts, they often must resort to demanding things in what is perceived to be an unreasonable, “bitchy” manner. The fact that women have to worry about this at all is of course, a result of differential standards used to evaluate men and women litigators.

Many women reported instances of subtle bias from male colleagues, or the appearance of equality “to my face, but not in reality.” Women attorneys today are also experiencing overtly discriminatory remarks and behavior from their male counterparts:

"I’ve been told more than once that I had a ‘cute’ argument. I usually win with my cute arguments. These people would never say that to a man. When

we have an important new case, it takes having a male partner there to sign them up."

"I have experienced sexist remarks in hiring interviews, one by someone who handles discrimination cases."

"They expect me to do support work and ‘female’ work, especially related to office management, office maintenance, etc."

Over 50% of women attorneys described being treated condescendingly while practicing law, and 42% had received comments about their physical appearance. (See Chart 2.)

"In two separate situations when my husband was present, once when moving into my office and another at a firm social event, my husband was presumed to be the attorney (he’s not) and me the little wife."

"The most frequent treatment is related to treating female attorneys in a patronizing way and reducing female attorneys to their looks. I think that there is an especially intense and accepted focus on how female attorneys look."

"I have been called a “pretty little secretary” and been patronized generally by potential clients."

"Comments about my weight that wouldn’t be made to males."

Sizable percentages of respondents had also experienced sexual harassment through sexually inappropriate remarks, comments or jokes at work, sexual teasing, looks or gestures, and unwanted invitations for dates. In 39% of cases, this unwanted behavior came from someone of partner level status.

"I was sexually harassed early in my career, not in my current job. I also have dealt with the situation of saying something in meetings and having it overlooked, then when a male says the same thing, it is lauded."

"Early in my career, I was in a firm where there was a great deal of inappropriate conduct, and very condescending treatment towards women."

"I reported the harassment and it was found to be true and supported. However, the harasser continued to work at the firm and works there to this day, quite a few years later."

By and large, the biggest offenders were opposing counsel. Seventy-four percent

of respondents have encountered gender discrimination or sexually inappropriate behavior from opposing counsel:

“Male attorneys think it is okay to comment on my shoes or outfit and ogle my breasts.”

“Vast majority & unwanted comments/ behavior from much older, white opposing counsel and older male clients. Irate opposing counsel older white male, once called me a cunt during a heated meet and confer call.”

## Overcoming the problem

These results demonstrate that there are negative aspects of practicing law that women attorneys must deal with on a daily basis that their male counterparts do not. But there are also positive aspects that the average white male attorney will never experience.

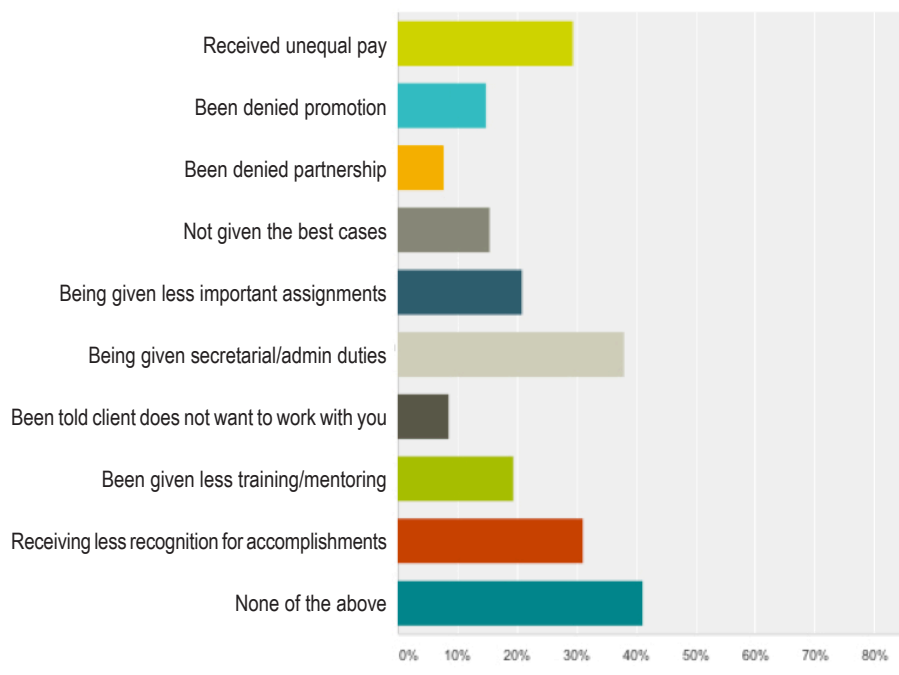
Women attorneys must realize that they do have considerable power – because we are unique. We have a different set of skills, and a unique arsenal combining focus, drive, emotions, and instinct that male attorneys could never have. We have the ability to see cases differently. And our mere presence at the podium in a courtroom instantly captures the jury’s attention because we stand out. What we do with that attention can determine our fates and the outcome of our cases. By defying and exceeding expectations, being confident and reveling in our uniqueness, we can be extraordinarily effective.

No one understands this more than successful women trial attorneys. It is something that Randi McGinn writes about in her book, *Changing Laws, Saving Lives: How to Take on Corporate Giants and Win*. As one of the few women plaintiffs’ lawyers selected for inclusion in the prestigious Inner Circle of Advocates and one of the most successful trial attorneys in the country, she states in her book:

Being a woman trial lawyer is an advantage in the courtroom because we are still rare, unexpected and do not “look like lawyers.” So long as you don’t squander the initial advantage of being different by revealing yourself to be just another lawyer for the jurors’ misconception of what lawyers are – (dishonest, tricky, wordy, and pompous), the jury starts off wanting to believe in you.<sup>6</sup>

Chart 2

**As a female attorney, which of the following do you believe you have experienced in the office because of your gender? (check all that apply)**



Because here is an important, indisputable fact that gives women attorneys power: **Even though the number of women attorneys is disproportionately low, the number of women jurors and clients is not.** Simply put, there are more women than men out there. And women respond to other women. The key to the “power machine” is for women lawyers to learn and perfect the craft of being a great lawyer, while finding and appreciating their own unique voices in order to win – and win big.

Amy Solomon is one such woman who did exactly that. As a well-respected partner at Giradi | Keese, she has risen to the top of her field and served as a Past President of CAALA. She states:

I think the lack of women trial lawyers is due to many factors, one of which is a lack of mentors for these women. Early on in my career, I felt like a fish out of water as the only woman in my firm trying cases. At first, it was truly intimidating and I thought it wasn’t for me. But then, I was encouraged to find MY voice, to feel comfortable trying cases MY way. The result was quite

liberating. We need to pull together, to encourage young women that this is a great thing to be a trial lawyer, that we can have an important voice, a seat at the table.

Obviously, our male counterparts have still not yet fully realized the value of women in the legal profession because they have not changed enough to make women attorneys want to stay. They have not accepted them as full equity partners in their firms, promoted them to leadership positions in organizations, or made room for them at the courtroom table. Until they do, the number of women in their ranks will continue to remain stagnant or diminish over time. So as women lawyers, we must help each other to get a seat at the partnership or courtroom table and to realize that this truly can be the greatest job in the world.

Women are the largest untapped reservoir of talent in the legal profession today. It is time to put it to good use. ■

<sup>1</sup> L. Masneru, “Why Women Are Leaving the Law,” *Working Woman*, April 1993 Vol. 18, No. 4.

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- <sup>2</sup> M. S. Sweeney, "The Female Lawyer Exodus," *The Daily Beast* (7/31/13).
- <sup>3</sup> In fact, the *American Lawyer* has recently reported that based on demographic data over the years, unless extraordinary efforts are undertaken, women equity partners in law firms should reach a mere 30% by 2081, and should reach parity with men by 2181. "A Few Good Women," *American Lawyer* (May 28, 2015).
- <sup>4</sup> Per the latest U.S. Census data, women now comprise 50.3% of the population in California. Women also comprise 50.8% of the population in the United States.
- <sup>5</sup> The Guidelines adopted by the Superior Court of California, County of Los Angeles, for example, states: "Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally."
- <sup>6</sup> McGinn, *Changing Laws, Saving Lives: How to Take on the Corporate Giants & Win* (2014) p. 153.