Session 203: The A Team! Courtroom Strategies of Top Asian Pacific American Women Trial Lawyer

The Asian Pacific American (APA) trial lawyer is no longer an oxymoron. Over the past several decades, APA attorneys have found increasing success in the courtroom. But APA women trial lawyers may face particular challenges – and have unusual opportunities. This panel of accomplished female APA trial attorneys from government, private practice, corporate legal departments, and the bench will discuss the strategies that they used in and out of the courtroom to build their careers. Topics will include: the path to lead trial lawyer; barriers and stigmas in the courtroom; shared successes and pitfalls to avoid; and mentoring other APA women lawyers.

Program Co-Chairs:
Ching-Lee Fukuda, Partner, Ropes & Gray LLP
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Moderator:
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Speakers:
Isabella Fu, Associate General Counsel, Microsoft Corp.
Jeannie S. Rhee, Partner, WilmerHale
Hon. Gloria Tan, Associate Justice, Massachusetts Juvenile Court, Middlesex County
Christina Wu Covault, Assistant U.S. Attorney, U.S. Attorney’s Office, District of Arizona
Women Trial Lawyers - As Good or Better Than Men

I have been a civil trial lawyer for 26 years and there are not many more women trying plaintiffs' case than there were 26 years ago. Why is this? I have a friend, a highly skilled and accomplished female trial lawyer who was beat out for a prestigious position to a man even though she was better qualified. Why? Gerry Spence opined in his presence that it would be hard for women to be trial lawyers because we are not natural fighters or warriors. I told him that he was wrong because we women fight all the time - we fight for our children, we fight for ourselves, we fight for justice. It's just that we aren't as loud. I don't think we need to be.

Is it true that women are ill-equipped to fight in the rough and tumble world of trial work? I say NO!!! Resoundingly NO!!!! What I am going to write about are my own opinions and observations only. I believe that women have the capacity to far outshine their male trial lawyer counterparts. But, women have not excelled in traditionally recognized ways. I think there are a couple of reasons for that.

First of all, women, by and large, have much smaller egos than their male counterparts. For instance, I second chaired a case with my partner and we won. We belong to a local lawyers group that meets monthly. Although our all female firm tries many cases as good as the male firms, I cannot remember one time when a meeting was devoted to stories about one of our cases. There is another woman in the organization and I know that the same thing has happened to her. However, with the male trial lawyers, not only do they have meetings devoted to them when they win, I remember attending a meeting where one of the male lawyers spent the whole time talking about what great strategies he had and things he had done in trial in a case that he LOST. The long and short of it is that male trial lawyers brag more than women trial lawyers. I will explain how this lack of ego and bragging in women can make them better trial lawyers than the men.

Second, women are less likely to take risks that men are. I mean less likely to risk going to trial, to risk acting as first chair, to risk making a mistake in front of others, to risk losing money, and to risk asking for money from a jury. Women need to take more risks.

Third, because there are fewer women trying plaintiffs' civil cases, we look to males as models for what a trial lawyer is. Yes, they fight. Yes, they talk a lot. Yes, they brag. Out of those three traits, the only male trait that is really effective is that they fight. The other two traits are detrimental to representing clients. However, since we have male role models, people, espouse that he LOST. The long and short of it is that male trial lawyers brag more than women trial lawyers. I will explain how this lack of ego and bragging in women can make them better trial lawyers than the men.

Men are more ego-centric and are more likely to make the trial about themselves. "I won this trial." "The jury gave ME...." While female lawyers are more willing to focus on the client. Women are more likely to be nurturers. Nurturers protect and nourish their clients. And by "protect," I mean fight for their client. Women don't have to be the focus, and sometimes men, who want to be the focus step all over their female counterparts to get attention. Mind you, these are stereotypes and generalizations and not all male trial lawyers are like this. In fact, I have tried several cases with men, most notably with Rafe Foreman, who did not demonstrate the male egocentric traits I have ascribed to male trial lawyers. When a trial lawyer makes the case really about himself, he has lost sight of his job.

These are the typical female traits which allow women the potential to be superior trial lawyers:

1. Ability to LISTEN instead of talking all the time. In my opinion, many trials have been lost because the lawyer failed to listen and was hell-bent on being the star of the show. Women are better listeners. Better listeners are better story-tellers.

2. Women have more EMPATHY. Empathy, or the ability to place oneself in the shoes of another and understand them is a critical trait for people, not just trial lawyers. Kindness, caring and understanding all come from empathy.

3. LACK OF OVER-ACTIVE EGO allows women to be in the moment, be real and spontaneous. All traits helpful in life as well as in trial.
4. Because of women’s EMPATHY, LACK OF EGO, AND LISTENING ABILITIES, women are more trustworthy. Sincerity, honesty and trustworthiness (along with preparedness, etc.) are the keys to persuasion. Women have the innate ability, that some women suppress, to be sincere and trustworthy and focus on their clients. Those are building blocks for great trial lawyers.

The only beneficial trait I see less in women than men is the desire to take risks. Women are simply going to have to jump off the cliff and try cases. Once this happens, I predict that society’s view of effective trial lawyers will change and women will be venerated. Women are as smart as men. Women prepare as hard as men. Women are oftentimes more believed than men. The lawyer who is believed and has the jury’s trust is the one the jury will want to win.

So, I think women lawyers need to try cases, but not just copy the styles of men. Women need to be confident enough to be themselves and not to adopt the annoying egoistic qualities of some of the male trial lawyers. I hope that we are starting a movement where women take their rightful role as trial lawyers. Women are well suited for the job.

14 comments:

Mary Anne  November 12, 2009 at 5:14 AM
Lynne, I haven't thought about all this in a long time. You are absolutely right on every point you make. I laughed out loud about the meeting about a case the guy lost - I think I've heard the same presentation. I see all these young women lawyers and am so happy to see them in the practice that I have failed to notice that they are not trying cases. Your idea that we need to teach each other - and perhaps be systematic about encouraging young women to be trial lawyers - is right on. Thanks so much for being an inspiration - sometimes a quiet one - to so many.

Anonymous  November 16, 2009 at 9:57 AM
You are right no. Gerry Spence will never understand the power, talent or skill of female trial lawyers.

Anonymous  November 16, 2009 at 2:25 PM
Why do so many male trial lawyers devalue and underestimate women trial lawyers. That is why I will no longer be involved in the Trial Lawyers College. It is run by mysogonistic men who do not appreciate or value women. The men at TLC get all the atta boys and accolades and the women are pretty much ignored or treated poorly. Thank you for writing such a great, empowering blog piece!

Anonymous  November 25, 2009 at 2:18 PM
Young women are happy and eager to try cases. The men who hire (or in many instances fail to hire them) need to let go of their egos and old fashioned notions that women are too fragile for the "rough and tumble or litigation" and allow and encourage young women to try cases. Early on I had a boss who encouraged me to try cases. I was 95 pounds and very soft spoken. No one would ever call me aggressive. My boss did not regret his decision. I won consistently. As long as an attorney knows her/his case and is comfortable with her/his style, the attorney will be a good trial lawyer. Whether you are a man or women simply does not and should not matter.

Anonymous  December 2, 2009 at 1:06 PM
I agree with the last comment. Women should be encouraged to try cases and the men who hire them or for whom they work should promote them and encourage them. Sadly, far too often men put down women, take advantage of them and take credit for the work women do. Or worse, don't even give women and recognition or credit for their accomplishments. We women need to stand up for ourselves and take control of our own careers! I got an email a while ago about a trial seminar for women being held in Palm Springs in May. Seems like a great chance for us women trial lawyers to come together, learn, grow and build mentor relationships with other women. I certainly plan on going and can't wait!

Anonymous  May 8, 2010 at 1:13 AM
Sorry but in saying this are you not contradicting your own point by stereotyping all women into a cliché passive facade? Isn’t it important to emphasize the lack of difference between male and female lawyers not just relabel false historic stereotypes used for oppression in positive terms?

Reply

Anonymous August 6, 2010 at 3:14 PM
I just finished a trial where the other attorney badgered and belittled me every step of the way. He tried to bully my client and I and in the end it backfired and I think he came across as an abusive jerk more than a convincing advocate. Anyway, the "tougher" he got the better it was for my case.

Reply

Anonymous May 3, 2011 at 6:08 PM
I believe there need to be more female trial lawyers in criminal defense. I am so alone here as the only female trial lawyer in this county that I wonder sometimes about staying here. TLC made me realize that I have something different to offer. Not better, not worse, but different. I don’t case how far science goes, no man will ever give birth and no female will have a truly working penis. Doesn’t make either one better, in fact, it take both to procreate so why worry about it. Females may not all be suited to be trial lawyers... so what. We should all do what we are capable and comfortable with and we should all step outside that comfort zone!

Reply

James32 October 3, 2012 at 2:49 AM
Each on its own. You can have both in other places too.

Car Accident Lawyer Macon

Reply

James Anthony October 22, 2012 at 3:45 AM
I truly like reading your post. Thanks for giving such a nice informations.

Attorney Macon

Reply

Globerlaw Jacksonville December 4, 2012 at 11:45 PM
Hi,I read this Blog it's really nice, thanks for Sharing with us and find one Of the best deal here:-
Civil Trial Lawyer, Civil Trial Lawyer Jacksonville trial lawyer jacksonville attorney.

Reply

Choudhury roy March 23, 2013 at 5:00 AM
Brave, risk-taker - more and more women have thrown off meek and deferential attitudes. Women trial lawyers are as tough as men. In fact, women trial lawyers may be a little braver than men because not only do they have to fight for their clients, they must fight in an area that was a traditionally male battleground.

more information

Reply

David AuCoin April 26, 2013 at 9:05 PM
Just some more male bashing. This quote shows this is just another female supremicist venting some more BS.Of course the author might be a male because there is no shortage these days of males triping all over themselves to announce to the world their own gender's inferiority. Take Dan Abrams book "Man Down" for example in which he tries to prove women excel over men in everything. You would think he shouldn’t be so proud of his gender being so inferior.

But Dan isn’t the only one whose proud of his inferiority. Male bashing is very much in vogue these days. Just google Do women make better plumber,better auto repair mechanics,better welders, better writers, better truck drivers, better heavy equipment operators, better taxi cab drivers better salesman, better leaders, better euintrapuners etc etc etc and the results will be that yes indeed women are much better than their male counter parts at practicaly everything. I’ll bet there are even some studies out there proving women make better men than men do!!! I’ll bet there are studies showing women get bigger firmer and longer lasting erections than men do.

I even read one blogger who claimed that behind every successful man their stands a woman. So even when a man pulls off a miracle and does succeede at something women want to get the credit for it. What I could never understand is that since women want to take the credit for every man that does something good why then don’t they take the blame for every man who does something bad? Women are like God. Ever notice how it is with God? God gets the credit for every good thing mankind does while not taking any of the blame when His creation screwup. Well with women it the same way.
It must be women that Jesus Christ was a man and not a woman. Didn’t God know how superior women are than men? Why then didn’t He send His daughter. Maybe if He had sent His daughter she could have figured out how to save the human race without getting herself nailed to a cross. Maybe if Jesus had been a little better at multitasking he wouldn’t have ended up in some garden bleeding from every pore. Men are so inferior why did God appoint man to be the head of the house? No wonder the world is in such a mess! If God had had the good sense to put women in charge He wouldn’t have had to be crucified!

Notice in the blog above much is made of the male ego but it seems to me the way the author writes she has a fairly big ego herself. The major problem the author displays is her piling on. She has not said anything redeeming or good about male trial lawyers. She should realize that pride as the good book says Goeth befor a fall. Maybe if women stopped proclaiming their alleged superiority and gave a little credit to men, men would be more inclined to listen to her but quite frankly most men would be justifiably turned off by her condenсing approach. She is not going to prove her case to the ones she trying to persuade by heaping condemnation on them. She just lost this case with this reader.

Javier June 21, 2013 at 10:08 PM

In many civil law countries, prosecutors are trained and employed as part of the judiciary; they are law-trained jurists, but may not necessarily be lawyers in the sense that the word is used in the common law world.[63] In common law countries, prosecutors are usually lawyers holding regular licenses who simply happen to work for the government office that files criminal charges against suspects. Criminal defense lawyers specialize in the defense of those charged with any crimes.

[64]compmanwc.com
Your case is going to trial, and your future depends on its outcome. The other side is represented by guys in gray pinstripes. Your side’s champion is a top woman trial lawyer. How do you feel about that?

Despite The Da Vinci Code’s awakening us to the power of the Sacred Feminine, we are still conditioned to associate strength and power with men, and we want our trial team to be strong, powerful warriors. But isn’t it time to consider how certain stereotypically “womanly” traits are precisely the traits we value in good trial lawyers?

Women’s long struggle for equality has hampered women’s (and men’s) willingness to acknowledge, appreciate and capitalize on what we know is true: women and men are different. Women trial lawyers are different, too, in how they relate to judges, juries and opposing counsel, how they see and use evidence and how they define and chart a path to success.

Here are 10 reasons why women are special and why our female traits make us great trial lawyers.

1) Women are strong.

It takes strength — physical, mental and emotional — to be a good trial lawyer. And despite conventional imagery of men as the stronger sex, women are really strong. Ask your mother.

Women are physically strong, living an average of five years longer than men, due partly to men’s violence or bad habits and partly to the genetic advantages of those extra X chromosomes. Women have chemicals on their side, too: While men get testosterone, women have estrogen and produce oxytocin, which calms and centers them. (More on that later.)

Yes, women are emotional. But who can deny the importance of strong emotions fueling great trial lawyers? Also, it is said that “women bend, men break.” Women’s flexibility is resilient strength, crucial to weathering the storms of trial.
2) Women are effective authority figures.

Of course men are the traditional authority figures: priests, generals, capitalists. But these are “Do what I tell you” authority figures, dangerous in a jury trial because that is the role the judge has (and wants). Women use their authority to say, “Here is what to do because it is the right thing to do and best for you.” Think Mom and teachers. And this type of authority — showing the way rather than pushing or pulling — can be instrumental in connecting with jurors who want to make a responsible and right decision.

3) Women are resourceful.

I loved last year’s story of Ashley Smith, the Georgia woman taken hostage by an escaped killer, who freed herself and convinced her captor to surrender by reading to him and making him pancakes. Pancakes! What man would have cooked the guy pancakes? (She also apparently gave him crystal meth, but we won’t let that interfere with a good story.)

Women often have, or may be more willing to employ, a wider range of tools in dealing with unexpected situations. Whether it’s cooking pancakes for killers, using an earring to push the BlackBerry reset button (yes, it works), or using a weird exception to the hearsay rule to get evidence in, women in difficult jams often find an unorthodox solution. (Every woman trial lawyer reading this just thought of something weird she once did in court that worked.)

4) Women read people.

Cambridge psychologist Simon Baron-Cohen’s fascinating 2003 book, “The Essential Difference,” posits the existence of numerous provable — if politically incorrect — gender differences. Among his research-based conclusions is that females read faces better than males. In one study, girl babies preferred looking at faces, and boy babies preferred cars. And women performed better than men at a test requiring identification of people’s emotions by looking only at their eyes. (Try it: http://questionwriter.com/samples/eyesquiz/)

The ability to read people’s faces is obviously valuable to trial lawyers. As word-driven as our profession is, much of what happens in court is nonverbal. Witnesses emote or lie, judges approve or doubt, jurors believe or are bored — all in silence but revealed in faces. A lawyer aware and attuned to this other language is advantages.

5) Women empathize.

Baron-Cohen also generalizes that men are “systemizers” and women are “empathizers.” He posits a continuum of these tendencies and proves scientifically what is obvious: Women are more willing to don another’s emotional shoes and walk a mile in them. Two if you need it.

Do we want our trial warriors to be touchy-feely empathizers? We should. To imagine and even vicariously feel what a client is going through, or a witness, or a juror, while evidence is being presented, enhances the ability to deal effectively with that evidence.

6) Women “tend and befriend.”

A 2000 UCLA study concluded that, when facing stress, men have a “fight or flight” reaction, and women “tend and befriend.” Evolution may have charged cave women with protecting children while the cave men fought enemies. Or the explanation may be chemical: Women under stress (or giving birth or lactating) produce and more efficiently process higher levels of oxytocin, which promotes relaxation, lowers blood pressure and triggers an “affiliation” response. Testosterone, by contrast, enhances the effectiveness of stress-related hormones (adrenaline, cortisol and epinephrine), which increases blood pressure and aggression.

Given this chemistry, can women be tough and aggressive in court? Sure, women’s adrenal glands work, too. But women trial lawyers may find additional advantage in their reserves of calm in times of stress and may profit from their willingness to seek the assistance and perspective of others to provide guidance through difficult challenges. The “tend and befriend” trait also makes women effective “peaceweavers,” who can satisfy the competing demands of different constituencies simultaneously, a potentially critical skill when simultaneously managing the needs of client, judge, jury and counsel.

7) Women prefer collaboration to coercion.

In their 2003 book “Women Don’t Ask,” Linda Babcock and Sara Laschever observe that women’s focus on cooperation and relationship building can advantage them in negotiations. An example given is two male chefs fighting over the last lemon while two women chefs talk about it and discover one needs only the juice and the other only the rind.
Most trials are binary, of course: Either you win or you don’t. So collaborative skills may seem less important. But the most effective trial lawyers are those who collaborate with the jury and guide jurors to adopt the advocate’s position as they puzzle through the problem together. Like any conversation, communication with jurors is a sort of negotiation, and a collaborative style can ally the advocate with the jurors, making jurors want to maximize benefits to the “team.”

8) Women make up half the audience.

Long gone are the days of all male judges, lawyers and juries. Half of today’s law-school graduates are women, 40 percent of practicing lawyers are women, 23 percent of federal judges and 28 percent of state judges are women, and 51 percent of the population — potential jurors — are women.

Still, with stunning frequency, especially in federal court, counsel tables are overwhelmingly male. At a high-profile trial this year, I counted 16 lawyers milling around the defense table, two of whom were women, neither with a speaking role. Yet the power in that courtroom was wielded by a jury of eight women and four men.

Do women jurors and judges prefer women lawyers? No, it’s not that simple. But looking across a courtroom at a legal team of monochromatic males is at least boring and perhaps offensive to many women, and men, whether they are jurors, judge or counsel. I am not suggesting tokenism, which just makes the obvious worse. But a trial team with at least one talented woman in an important role has an advantage, especially when addressing an audience that will include a significant number of women.

9) Women worry.

I’ve always been struck by how we use these two verbs: “to father” a child, meaning to conceive it, and “to mother” a child, meaning to nurture and protect it. Of course there are many nurturing, caring fathers. But the undeniably greater involvement of a woman in childbirth brings with it a built-in responsibility and a greater built-in capacity for worry.

For trial lawyers, capacity for worry is a good thing. More trials are lost than are won. And worrying about losing, or making a mistake, or even looking foolish, is a powerful performance enhancer. Worriers also mind the details, which can be critical to a trial lawyer’s success. Don’t you want your lawyer worrying about your case? And, when the worrying is for a client, jurors sense that the client is someone worth caring about. A lawyer’s look of concern or comforting touch of a client, if sincere, conveys more to a jury than the fanciest PowerPoint presentation.

10) Women don’t get caught up in the game.

In a recent Stanford study, men and women given arithmetic problems could choose to be paid per-problem or compete for tournament winnings. The study showed no gender difference in performance success. However, men dramatically overestimated their prowess, with 75 percent of the men believing they’d won their tournament versus 43 percent of the women, and men also greatly preferred the tournament mode — 73 percent versus 35 percent.

Even the highest-performing women were more likely than the poorest-performing men to choose piece-rate pay over a chance for tournament winnings. I have read of other similar studies where, given the option to quit or keep playing, women chose to end a competition after winning a certain amount, while the men continued playing.

If women don’t like competition, how can they be effective courtroom gladiators? Because these studies reveal that, for women, the results matter more than the game. Remember that the women, although not preferring the tournament, performed equally well in it. Getting too caught up in the game can be a real danger in a trial. The ability to focus on the substance of what is happening and pursuing the result, rather than fixating on winning an immediate skirmish, can be hugely important in the courtroom.

Women aren’t better trial lawyers than men, and men aren’t better than women. We’re just different. It is time for those differences to be acknowledged, celebrated and encouraged, especially in young women lawyers learning their trade.
Looking at my pending retirement after ten years in front of the jury and twenty five years instructing and managing them, discussions about women in trial courts remains of interest, back then and maybe more so today. I confess that on the rare occasion when counsel table is “manned” by women on both sides, I notice….. and enjoy the noticeably altered dynamics. The Los Angeles Daily Journal had a timely article recently on October 17, 2011 by Sally Phillips and Bradley Boyer, called “Forget the Glass Ceiling, Take the Elevator Up.” This article triggered a troubled response from a woman who wrote back in a letter to the editor that the article was no more than a thinly veiled piece of advice that women would be more successful if they just acted like men. The tips for women provided in the article were, among other things, to stop apologizing, know yourself, promote yourself, radiate confidence, set boundaries, be fearless, work from strengths, and find/be a mentor.

The interesting aspect of the tips in the article is that they apply to both men and women trial lawyers (except for one additional part I did not include discussed in the article, regarding emotions.)

Are men and women different? Despite what various intellectuals dating back to the 60s proposed, our differences are palpable and we disregard them at our peril. Typical traits on both sides of the aisle can be plumbed for their advantages or ignored to their disadvantage. Starting with the tired concession that yes, everyone is different, there clearly are characteristics that apply across the gender lines whether we embrace them or deny them. If you have any doubts, have a child. Case closed.

I have seen successes and failures by men and women who fail to use their strengths and who adopt strategies they learned from a trial course or “master” that simply did not and could not work for them. I have seen attorneys, men and women, step all over their opponents (and themselves), to their own detriment, believing that their show of power and strength was effective. Sometimes, rarely, it can be. Usually the attorney becomes his or her own worst enemy.

Litigators and trial lawyers are not the same. Trial lawyers are the justice system’s gladiators. They are the fighters in the ring. “Litigators” are more commonly seen as the people doing the paperwork, motion work and preparation before the jurors enter the arena. These are two completely different animals. The observations I offer relate to trial lawyers, where the ability to relate to people and to tell a story, show up most clearly.

Some men and women are suited to and relish the challenge of working on their feet, of taking on the task of creating a world that can change question by question, witness by witness and to weave the whole into an appealing and compelling package. Not all do and not all should. Many are not equipped with the nimbleness required to be a really good trial lawyer. Some cannot manage the need for flexibility and
ability to shift on a dime, and the need to be able to read jurors. I have seen some oblivious to these needs, and I marvel that they have chosen a field for which they are so ill-suited.

One example comes to mind. Since starting on the bench, I have invited jurors to submit written questions to the lawyers during the trial. Though this was new back when I started, this is fairly common now and in fact has been incorporated into Rule of Court 2.1033 (effective January 2007.) Every once in a while, a trial lawyer would object that this would destroy his strategy. (In twenty five years, I have never seen a woman make this objection, so the gender is used deliberately.) I am always astonished at such an objection as I have always considered juror questions as priceless gifts to trial lawyers, giving them a golden opportunity to correct a misapprehension, reshape a bias, respond to a concern by the ultimate decision maker, or get a glimpse of what the production looks like from the other side… before it is too late. Not hearing the question, which happens when jurors are not permitted to articulate their confusion, concern or problem, does not make the issue go away. Rather, if the attorneys don’t get to answer the question, the juror will readily do so without input from the advocates. Having a chance to know where jurors are perhaps going off track or finding out what might be distracting them and being able to weigh in, is a valuable advantage. The objection to juror questions suggests an approach to trial that is imminently short sighted. It reflects a fixed plan that will be rolled out come hell or high water, regardless of its effectiveness or persuasiveness. There are many trial lawyers with this trait, and if they win, it is too often in spite of themselves.

I have seen both masculinity and femininity played to great success as well as miserable failure. The best trial attorneys, in my view, are not the pitbulls but are, invariably, gentlemen and gentlewomen. It is clear to me that the best trial lawyers project integrity. They are liked, by jurors, judges, court staff and their opponents.

In talking to a number of women about their experience as trial lawyers, there were the expected tough stories about being treated with disrespect and dismissiveness. They came most often from the private sector and the stories tended not to be very recent.

Not seeing what happens outside of the courtroom, I cannot speak to comments about women not being treated equally by clients, colleagues, or bosses. Once in the courtroom, male and female attorneys make or break themselves. There are as many advantages as there are disadvantages to either gender, and the smartest trial lawyers minimize the downside while riding high on the upside.

Certainly there are far smaller numbers of women represented in the unique world of trial lawyers. This is not startling due to the very tough and exacting demands of this profession. When in trial, the commitment is 110% and the work is all-consuming. A trial lawyer is not in trial just during court hours. It is a 24-7 operation, if not in body, certainly in spirit. With traditional responsibilities of children, family and home undertaken by women, the demands of such an unrelenting schedule are virtually impossible to manage. To the extent that no woman or man can “have it all,” the balancing of costs makes it completely predictable that there would be fewer women in this arena. This is neither bad nor good, but perhaps reflects a healthy perspective on what one deliberately chooses in life.

It may also be that women are more traditionally averse to frontal confrontations and are more skilled and
comfortable taking a case to successful resolution short of trial. Jury trials usually result in a winner-take-all ending. The losers (and often the winners as well) turn out not always happy with “justice” as defined for them by twelve strangers who did not quite see the picture as either party saw it. In “real life,” outside of the kabuki staging of the trial, there are generally some good points offered by both sides. Jurors are usually permitted to pick only one.

Also, the difference between the civil bar and the criminal bar reflects an immense divide between the approach and attitudes of trial lawyers. The criminal bar is comparatively small. A criminal attorney on either side destroys his or her own effectiveness if s/he gets a reputation for shading or evading the truth. “Jackets” last forever and getting a “jacket” or bad reputation means that everywhere you go, you are bucking up against a system that will no longer give you the benefit of the doubt. As a client, it may be great to have your attorney burn bridges for you and hold nothing back. Such a strategy, however, destroys an attorney’s effectiveness for future clients when the same lawyer has to go back over the charred and shaky bridge they torched. It is also not worthy of an attorney’s status as an officer of the court or as a counselor. A counselor gives the best professional advice possible, and that includes bad news and saying no. The civil bar is so vast, compared to the criminal bar, that the likelihood of seeing the same lawyers is far smaller. Though the bridge being burned may not have to be crossed in the future, reputations are still made or lost, and this carries a price.

The size of the criminal bar has therefore kept criminal lawyers more forthright and civil than the civil bar. Civil lawyers far too often brutally denigrate each other, send blazing diatribes in various forms, fight over innocuous calendaring issues or discovery items or otherwise expend energy on small blazes, while unknowingly sacrificing themselves in the war. No judge likes to see the inflammatory exchanges that invariably get attached as exhibits in warring motions. It is far more common to see this with male lawyers than with female lawyers but the dynamic is something that is uncomfortably too common.

I recall in my first month in civil, I drew the trial lawyers aside during a recess when the jury was deliberating, and I asked them their views on whether the best trial lawyers started out with integrity and grace, or whether these lawyers had the luxury of integrity and grace once they had achieved professional success. I believe the former is true. The most effective lawyers do appear to start out with integrity and rise to the top because of it, not in spite of it. I was surprisingly impressed, I recall, with one particular incident in my court that spoke volumes. As all attorneys should know, their antics in the courtroom when the judge is not on the bench are relayed back to the judge. I had one such instance when one side was obnoxiously demanding and unreasonable about something. The opposing attorney, a female trial lawyer, refused to rise to the bait and calmly and firmly repeated her position regarding whatever the issue was. Only after the matter was called and completed did my staff tell me about the obnoxious behavior. Of great surprise to me, after the fact, was that the female attorney could have said something. She could have complained or advised me of the “problems communication with opposing counsel” or some other standard euphemism for offensive behavior. To her great credit, she never said a word. She never criticized him or his positions and the issue was simply never raised. To this day I remain impressed and remember her as a real professional. This did not relate to her gender, but did relate to the grace and integrity that show up in the best of the best.

So, in finding that I am rambling a bit about good trial lawyers, I can start out with the best qualities of
trial lawyers, then comment on how typical feminine traits either work for or against these qualities.

The best trial lawyers are always themselves. They appear genuine. They behave the same in front of the judge as they do in front of jurors, opposing counsel and court staff. They don’t put on a different persona or attitude. They are the same at a social function as they are in a courtroom.

The best trial lawyers are unfailingly courteous and well prepared.

The best trial lawyers successfully convey their absolute belief in their client, while at the same time are the first to acknowledge their clients’ human failings.

The best trial lawyers never stop paying attention to their jurors.

The best trial lawyers are the best story tellers.

The best trial lawyers own the courtroom with their voice and presence.

The best trial lawyers have mastered the evidence code.

The best trial lawyers get their hardcore fighting done in advance of trial, through in limine rulings, stipulations or other strategies that resolve the sticky problem areas in advance. Jurors see nothing but courtesy and calm.

The best trial lawyers know that every item of evidence presents both an opportunity as well as a problem. There is virtually nothing that, in skilled hands, cannot be turned into either a weapon or a shield.

What are the characteristics that jurors don’t like?

The worst trial lawyers pay no attention to them.

The worst trial lawyers give away their credibility with unreasonable positions and stretches of common sense.

Jurors are cynical and suspicious. It is clear from dealing with thousands of jurors that they do not believe that the attorneys will give them the whole story. As a result, they constantly search for cues and clues between the lines to find the “truth.” If anything confirms that a witness is lying, or an attorney is trying to sell something that is false, the fight is virtually over. Unfortunately, jurors tend to assume the worst and act accordingly.

How does this play out with women trial lawyers?

Genuineness and feeling comfortable in one’s own skin comes more with maturity than with any gender. It is not as common to see younger trial lawyers able to project the kind of sincerity that compels jurors. This generally applies to both men and women.
Courteousness and politeness appear to be more common with women trial lawyers. It is rare to see the kind of discourteous behavior that flares up between counsel initiated by a woman, but though rare, it does happen. This may well be part of characteristics of women as traditional caregivers and nurturers, of good listeners tuned into the emotional dynamics of relationships. Women’s traditional aversion to conflict may also account for the greater appearance of courtesy and attention to smoothing interactions between themselves and their opponents as well as with jurors, witnesses, and the judge. Women also tend to pay a little more attention to court staff than male attorneys, which is always a plus that reaps benefits.

Being well prepared is even across the lines. There is nothing more painful than to watch an unprepared attorney flounder with missing exhibits, lost deposition transcripts or last minute objections to devastating opposition evidence. Jurors forgive such lapses once, but rarely thereafter.

Conveying belief in the client’s cause is also even across the gender lines. This is reflected more as an attitude than a strategy, but you know it when you see it. When it is not there, it shows up as well. I have seen more men caught up in the operations of the trial than women, as in situations where they are seen being somewhat rude to their own clients who might be inadvertently interrupting them to ask a question or offer a suggestion at counsel table. Jurors notice.

Paying attention to the jurors is a common failing of both sides. In my experience, trial lawyers who are best at this invariably tend to have been trained in the criminal sector. While paying attention during voir dire is obvious, too many trial lawyers forget all about their finders of fact until they present their arguments. This is often fatal, as jurors provide information throughout the trial. It does not take great sophistication to discern whether jurors are tired of the repetition, caught up at the edge of their seats, taking notes (or abandoning all note taking), taking leadership roles or tuning out. If a lawyer has lost his audience, it matters not how brilliant s/he thinks s/he is.

The best story tellers seem to be the most prepared. They have their client’s case pared down to a theme, a story. This crosses both gender lines.

Owning the courtroom with voice and presence tends to be a weakness of many women trial attorneys. The quality of voice makes a surprising difference in keeping jurors engaged. Tired jurors pick up with the energy of a vibrant voice. Soft voices of either gender can be a disadvantage, and this tends to be something more common with women because of naturally softer voices. Women should be able to use this as an advantage if the softer voice is always calm and in control. I have heard experts in the field of psychology and psychiatry refer to the resistance felt by people when women’s voices get loud and shrill, reminding them of their mothers “yelling” at them. The shift from being too quiet to being loud and firm enough has to skirt the potential for sounding shrill.

The impression of a commanding presence deals with the projection of one’s confidence. Everyone can recall the experience of watching an actor or speaker on a stage or on the screen where one cannot take their eyes away. That “something” is in large part the skillful projection of confidence.
Both of these qualities, presence and voice, can be achieved and/or improved with thought and practice. However, if the quality is one that is not quite “real,” the danger is that there may be moments when the mask is dropped and jurors will see the real lawyer behind the image.

Vulnerability can be extremely appealing to jurors, when it is owned. Trial lawyers who drop something or get caught midword or midstrategy with an obvious miscalculation or mistake, can win jurors’ sympathy and support by acknowledging the error or miscalculation with some humor and moving on. This ability not to get stricken with embarrassment or to be thrown off stride comes with maturity and genuineness, qualities available to both genders.

Mastering the evidence code unfortunately tends to be rare, and is seen most often with trial lawyers of either gender who were trained, too often, in the criminal sector. Experience with the rules of evidence includes knowing when not to make an objection, or at the very least, making them infrequently and only when it serves a real purpose, such as protecting your witness. Peppering the other side with objections that may be valid but achieve no real purpose other than to rattle the opponent is not well received by jurors. If anything, they often engender sympathy for the lawyer they see as trying to get information to them while the other side is trying to hide the information from them. This is not a good place to be and I see this form of aggressiveness more often with men. Anyone watching a trial between real masters of the art will see very very few objections. That is, in large part, because they have done the rough-and-tumble work behind the scenes through in limine motions and advance rulings when the issues can be addressed cleanly with no jurors waiting.

Appearance is one that creates a unique problem for women, since there is no standard trial “uniform” that works. Men can wear a good suit and with good grooming, appearance is a nonissue. Women? Unfortunately because of the freedom women have to wear different types of clothing, focus on dress and appearance comes to the forefront more often. The bottom line is that a trial lawyer’s appearance must always be professional. In addition to simple grooming, this means nothing tight, no bare arms or legs, no dangling jewelry, and nothing higher than a medium heel. Can women do well with more flamboyant clothing? Of course, just as men might. The danger of offending a juror who might or might not appreciate panache should be enough to curb looser standards. Clothing should never hit the jurors’ radar screen other than to create the impression of confidence, competence and experience. It should be a nonissue and flash rarely works.

Ultimately, if one were to examine the top 25 trial lawyers in Los Angeles, there is a strong feminine presence. Do women need to be “more like men” to do well with juries? Absolutely not. Can feminine characteristics be an advantage? Absolutely. Can we be our own worst enemy? Aren’t we always?

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Women in the Courtroom
Best Practices Guide
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Three years ago, the DRI Task Force on Women Who Try Cases was formed to address the question of why female litigators are leaving outside litigation. The result was the white paper: *A Career in the Courtroom: A Different Model for the Success of Women Who Try Cases*. This paper was so well received that it became the cornerstone for seminars across the country. DRI demonstrated its commitment to diversity in the legal profession by turning the Task Force into a standing committee, Women in the Courtroom. For the last three years, this committee has provided programs on women in the law to state and local defense organizations, national seminars and individual law firms.

However, now that DRI had addressed why women were leaving, could DRI assist firms in retaining their top female litigators? The white paper established the financial need to do so because firms were losing hundreds of thousands of dollars in training new associates just to see them leave, and clients were increasingly demanding a female presence on matters from the simplest of tasks to the ultimate task, trial. In addition, there was the morale issue. Firms were seeing some of their best and brightest leaving for firms with dedicated programs for women, for in-house counsel positions, for public sector jobs and, sometimes, leaving the law altogether.

The committee endeavored to answer this question by providing a *Best Practices Guide*. Over the past year, committee members researched hundreds of articles on the subject and gathered information on dozens of firms attempting to address the issue. Members then interviewed managing partners and leaders of women’s forums in firms ranging in scope from local to international. The interview results were kept anonymous so that firms could detail both their successes and failures in this endeavor. The committee also interviewed heads of corporations to obtain their perspectives on the importance of women in litigation firms. From this research the Committee determined that there were four key areas firms needed to address in order to keep their top female litigators: Professional Development, Mentoring, Marketing and Work/Life Assistance.

Although women have made up almost half of law school graduates for decades, only 8 percent hold leadership positions in firms. Women attorneys will continue to leave in record numbers unless there is a conscious effort by firms to send female associates and junior level partners to trial (whether that be on *pro bono* cases, trial training programs with the public sector or paid matters within the firm); guide female attorneys through the marketing process (including introduction to contacts, turning over business and holding female specific marketing seminars and programs); actively mentor female attorneys on issues important to women and ensure that mentors are the correct mentors for each mentee; and establish and fol-
low through with specific policies to address work/life balance issues faced predominantly by women.

Research has demonstrated that many firms merely paid lip service to these issues only to discover that despite their “best efforts” women were still leaving. Those firms that developed a method for measuring the success, or lack thereof, of their efforts were far more successful in ultimately retaining their top female litigators.

Law school enrollment for women is dropping; more women attorneys are choosing roles as general counsel, faculty or judges over a partner position in law firms and women are now earning even less compared to men than they did in the past. The message appears to be clear—if law firms don’t take action soon, they will lose the few top female litigators they have.
In 2004, DRI was pleased to publish the results of work of the DRI Task Force on Women Who Try Cases. That work, “A Career in the Courtroom: A Different Model for the Success of Women Who Try Cases,” identified a number of challenges women face who have chosen careers as trial lawyers. Among the challenges identified were a lack of fair treatment in the courtroom by judges, clients and other attorneys; gender stereotyping of women who undertake aggressive advocacy on behalf of their clients; a failure of effective mentoring for females at all levels in law firms; and a lack of experience and opportunity for client development, which in turn creates an impediment to law firm career advancement. Of course, the greatest challenge to women trial lawyers continues to be work/life balance as women continue to bear primary responsibility for family obligations and maintenance of the home. However, women who want to become equity partners will generally be required to have a solid book of business that will contribute to the profits of the law firm.

In examining these challenges, the Task Force identified a number of recommended practices ranging from finding opportunities for actual courtroom experience to taking advantage of opportunities that demonstrate competence and expertise, which will clearly show clients and potential clients that a woman is worthy of being their lawyer of choice. The Task Force also recommended that law firms adopt more flexible and user-friendly

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2. Id. at 20.
rules to assist women who wish to ascend to partner, firm governance and leadership. Law firms were urged to incorporate internal programs that focused on inclusion of women if for no other reason than the substantial investments made by law firms in recruiting and retaining women lawyers.

Despite identifying challenges and making recommendations, the Task Force recognized that its work was not and perhaps never would be complete. Accordingly, the Task Force embarked on the second phase of evaluation. The focus of this phase was practical. Once again, Task Force members conducted interviews with both in-house and outside counsel. These interviews addressed specific practices that positively contribute to the successful recruitment, development, and retention of female lawyers. These practices were often as simple as a mentor taking a female clerk, associate, and equity partner to lunch on a regular basis to explore not only the legal issues of a specific case, but also other aspects of the practice of law that lead to professional success. Additional concrete suggestions included ensuring that females participate in client development, actually perform client work, and receive appropriate remuneration and credit for that work. Each participant in the process agreed that accountability with respect to issues of recruitment and retention was necessary because relying on people to “do the right thing” may not be a sufficient motivator.

What follows is a guide that serves to help all concerned achieve the utmost success for both the women who join law firms and the law firms themselves.
A common concern raised throughout the interviews conducted was the professional development of female attorneys in law firms and, specifically, the fact that women are not adequately represented at the management level of law firms.

In addition to the need for young female attorneys to receive guidance through mentoring and female-dedicated marketing initiatives, our committee learned that female attorneys face other unique professional development issues that firms have been working to address through a variety of efforts.

One issue is the promotion of female attorneys to law firm leadership positions. Although many firms hire approximately equal numbers of female and male associates, women are not represented in leadership roles to the same extent. Of the firms interviewed, the number of female attorneys in leadership positions ranged from one percent to fifty percent. Although a number of firms have female managing partners or co-chairs, numerous interviewees acknowledged that the percentage of female attorneys in leadership positions has not reached optimal levels. They also collectively expressed a desire for firms to focus efforts on increasing female participation in firm management.

A second issue facing female attorneys is an increasing lack of “courtroom experience” and the limited opportunities for women to act as lead trial counsel. A number of factors account for the decrease in courtroom experience for all attorneys including the advancement of alternative dispute resolution programs and the cost of litigation. However, some factors also appear to be unique to women. Namely, interviewees acknowledged that many clients still specifically request that senior male partners try cases even where a female partner has performed substantial work on the file. To address this concern, some firms have begun tracking professional development for attorneys to ensure that trial experience is provided at the appropriate level of an attorney’s career.

Finally, a concern regarding the professional development of women in private practice arises in the context of the decrease in the number of female senior associ-
Women in the Courtroom: Best Practices Guide

Initiatives utilized by different firms to promote and foster the professional development of female attorneys include:

- Encouraging and sponsoring senior female associates to attend various “Women in Leadership” conferences that are held by any number of organizations.
- Conducting breakout sessions for female partners at annual firm partnership meetings that discuss women’s issues which are later presented to firm management.
- Creating leadership programs for female attorneys designed for senior associates and non-equity partners that meet one to two weekends per year with assignments focused on marketing, client development and participation in management issues.
- Promoting active firm involvement in women’s bar associations and research and advisory organizations dedicated to advancing women in business.
- Incorporating active female participation on every key firm management committee—Management, Compensation, Hiring, Professional Development.
- Developing women’s partnership groups, which focus on business development opportunities for women.
- Advertising/highlighting women rainmakers within the firm and having them present seminars to female associates on how to succeed in marketing.
- Hosting women’s conferences with clients to address business issues facing both female attorneys and females in business management positions.
- Assigning a partner to review female attorneys participation on client matters and ensuring that trial experience is being provided and encouraged.
- Utilizing women presently in leadership roles to prepare and mentor future female leaders of the firm.
- Developing business plans focused on senior female associates and their internal advancement within the firm.
- Creating a committee to monitor the progress and professional development of female attorneys at different stages of their careers.

Although a number of firms have female managing partners or co-chairs, numerous interviewees acknowledged that the percentage of female attorneys in leadership positions has not reached optimal levels.
Mentors are key ingredients to any successful law firm. They guide those new to the law as well as those new to the firm toward a successful practice. All of the participant law firms in our survey had formalized mentoring programs for associates. A few continued their mentoring programs past the associate level and others were considering that practice. Approximately forty percent had additional mentoring programs tailored specifically for women. Many of those who did not have such specifically tailored programs were considering adding mentoring programs for women.

Why should a firm modify its mentoring programs specifically to target female attorneys? Surveys relied upon by firms in addressing retention issues indicate that female attorneys are leaving the litigation practice in far greater numbers than men. More than fifty percent of those who leave go to corporate offices, government positions or nonprofit organizations primarily as a result of flexibility in scheduling. Interestingly, there is no difference in the demographics, i.e., level of experience, law school ranking (often top five percent) when compared to men who stay.

Women also are changing firms for different reasons than men. Of female associates who have children, only one-third work more than fifty hours a week compared to three quarters of male associates who have children. Approximately one-third of female attorneys take advantage of flexible work schedules compared to less than five percent of men. Consequently, those who leave are looking for firms that offer such schedules without “stigma.” In exit interviews with female litigators who leave law firms, the oft-cited reason is that although firms claim to provide flexible schedules, the stigma, both spoken and unspoken, is too great to bear. The perception is that those women who leave have difficulty assimilating themselves back into the law firm’s culture or the law practice in general and their salaries are approximately twenty percent lower than those who do not take a leave to bear/raise a child or

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3 Sacha Pfeiffer, Many Female Lawyers Dropping Off Path to Partnership, Boston Globe, May 2, 2007.
4 Mona Harrington and Helen Hsi, Women Lawyers and Obstacles to Leadership, MIT Workplace Center, Spring 2007, at 7.
other family-related reasons. Additionally, nearly sixty percent of younger employees indicated they would change jobs if they were allowed to telecommute. More importantly, they reported that had they felt they had someone to speak with about the firm’s culture on these types of issues, they may not have left.

Because mentoring is really about recruitment, development, and retention, those firms interviewed discovered that a firm can never begin too early. The mentoring program should be part of the recruiting process for law clerks as well as first-year associates. Female law students are being encouraged by their law school programs to ask questions of prospective employers regarding mentoring and how the firm aids new female attorneys in achieving a work/life balance while learning the ropes as an attorney. By choosing interviewers from your firm who possess demonstrated mentoring skills and assigning mentors to summer and first-year associates, a firm can demonstrate an interest in the ultimate success of the woman lawyer, which can guide the woman’s development as a lawyer and litigator. This practice can also foster the allegiance of the person who is mentored to the mentor and to the firm.

- In a large firm, a suggested beginning is to match everyone from senior associates to senior partners with summer and first-year associates who graduated from the same law school. In this way, the new associate sees that someone who chose the same education as she has succeeded and can assist her in achieving similar success.
- Work with local women’s lawyer organizations to obtain mentors from outside the firm.
- Partner with clients. Clients who mentored firm associates indicated those associates developed a stronger bond to the firm.

Understanding these steps will help a firm achieve the ultimate goal and objective that the associates hired will become excellent lawyers, outstanding litigators and equity partners.

The selection of mentors is a fundamental issue that participating firms find they must address. Excellent mentors need not be women, nor do they always have to be lawyers. In selecting potential mentors firms should consider the whole individual and evaluate all the skills in each individual’s repertoire.

- Firms should evaluate not only the technical skills such as how well the person writes a motion, takes a deposition, or cross-examines a trial witness, but also determine whether the potential mentor communicates well, is a good teacher, and has the time and willingness necessary to mentor a younger lawyer.
- Consideration should be given to assigning more than one mentor.
- When establishing mentor/mentee relationships, mentors can and should come from all experience levels within the firm and come from a variety of practice groups.
How Often to Meet

There was no consensus as to the optimum frequency of these meetings. However, there was agreement that there could not be too many.

- Most of the responding firms had formal meetings between mentors and mentees at least monthly. Some had formal meetings more frequently; but all encouraged frequent, informal meetings.
- One common factor among all of the mentoring programs was the existence of social activities at least twice a year.
- Topics discussed during these meetings ranged from the technical aspects of the job to work-life balance. Other topics included:
  — Opportunities for growth
  — Exposure to practice areas and clients
  — Marketing
  — Types of legal assignments
  — Access to upper management
  — Availability of part-time employment
  — Ramping back or opting in after a leave of absence following childbirth or care for a family member
  — Partner track status.

Participating firms also suggested other avenues for collegiality such as teleconference book clubs that discuss professional issues, skill building workshops with mock trials where mentors serve as advisors, and business development coaching.

Follow-up

No program will succeed without follow-up. Mentors should meet to discuss common issues arising with mentees to make sure that they are offering consistent advice, creating new programs, and ensuring equity in assignments.

Excellent mentors need not be women, nor do they always have to be lawyers
The success of any program to develop female attorneys as rainmakers requires a long-term commitment from the firm management committee so that all members of the firm endorse the commitment and ensure that firm resources are committed. This point is true regardless of the size of the firm. Two common elements found in all firms, from small to large, which have successful women’s initiative programs are a formal committee responsible for overseeing the implementation of the program and accountability for the success of the program to the firm management committee.

A firm’s investment in developing female attorneys into rainmakers translates into higher retention rates for senior women and women partners. A lack of senior women and women partners can harm a firm’s recruiting efforts and even result in the loss of prospective and existing clients. Today many clients require diversity in gender and ethnicity in their outside counsel. Some clients have even ended relationships with firms that do not show a commitment to diversity or meet the diversity requirements of the client.

Some of the initiatives and programs for developing female rainmakers that have been successful include

- Having a formal training program supervised by a women’s initiative committee or diversity committee
- Tracking the success of formal training programs through firm management, a women’s advisory committee, or a diversity committee
- Holding monthly women’s breakfasts or luncheons where female attorneys can share business opportunity leads, ideas or concerns and talk about career paths
- Inviting business development trainers such as consultants, authors, professors, and others to talk to women attorneys—both associates and partners—about how to market, develop opportunities for business, and adapt to different client styles
- Forming or joining executive women’s networking groups where each female attorney brings a client whom she can introduce to other female attorney attendees
- Having female attorneys submit business plans with benchmarks, a list of the resources and guidance to accomplish the plan, metrics to measure success against benchmarks and an outline for assisting or retooling if necessary
- Hosting alumni events where current female attorneys can network with attorneys (both male and female) who now practice with other firms or who have gone in-house, become judges, or assumed governmental positions
• Holding luncheons where successful rainmakers (male and female) within the firm share proven skills and ideas in obtaining, developing and retaining business

• Having break out meetings at firm partnership retreats where female partners can discuss women’s issues and business development

• Requiring female attorney participation in client presentations

• Including female attorneys in client events such panel counsel meetings, annual reviews, client visits and client dinners

• Enrolling first-year female associates and new lateral hires in a one-time intensive leadership program (lasting six months to one year) that includes personal coaching, mentoring, reading assignments and marketing skill development to compliment existing and ongoing firm programs

• Ensuring client contact by female attorneys for each file on which the female associate is handling client communications and is responsible for development of the client relationship
Many lawyers today assume full-time family responsibilities in addition to the significant obligations inherent in their careers. In addition to parental responsibilities, many attorneys have obligations to elderly or infirm parents as the average life span continues to increase. Added to this dynamic is a growing demand from younger lawyers for work/life balance and a desire to opt out of law firms’ escalating billable hour requirements that are often related to increasing associate salaries due to the law firm economic model based on billable hours. Parallel with these life balance issues is the need of law firms to attract and retain the best and the brightest, to have legal talent that is reflective of clients, and to address the impending worker shortage with the imminent retirement of the baby boomers. Firms that successfully address these issues have a common attribute: flexibility—both in stated policy and in reality. This flexibility takes on many shapes and sizes, but the end result is the same: loyalty, job satisfaction, and the ability to meet client needs with a high caliber and seasoned work force. Some practices that demonstrate flexibility by successful firms include the following:

- Being receptive to flexible work schedules, reduced hours, telecommuting and job sharing
- Having a written policy that is openly communicated and adhering to it while periodically examining the policy to evaluate its effectiveness
- Making the program available to all attorneys, regardless of gender, religious belief or tenure with the firm (e.g., childcare, eldercare, wanting reduced hours for lifestyle reasons)
- Involve practice leaders/management in evaluating individual requests for alternate arrangements to determine feasibility and how to accommodate the request while maintaining client demands
- Entering into an agreement with the participating attorney that sets forth both parties’ expectations; the agreement should cover hours, compensation, benefits, eligibility for bonus, compensation in the event the attorney exceeds the agreed upon hours, and status on returning to full-time
- Keeping the participants on a partnership track—to the extent desired—commensurate with the hours worked by the attorney and to the extent that participants meet other criteria for partnership
- Monitoring those attorneys on reduced hour arrangements to discuss scheduling, whether “schedule creep” is occurring, and whether the attorney is still
receiving appropriate assignments and having appropriate opportunities in the courtroom and with clients

- Offering alternative tracks for attorneys with different career goals; i.e., some firms offer reduced hour arrangements to associates and partners and also have an alternate of counsel or staff attorney position. The former programs are structured with the notion that those attorneys will ultimately continue to progress in their career and may eventually choose to return to full-time status; the latter programs are structured for those attorneys who choose to work a certain number of billable hours without making the commitment to other non-billable activities. These flexible arrangements are desirable because the law firms retain top talent without the same level of overhead, and thus can charge a lower billable rate.

- Offering other arrangements that provide flexibility, such as the ability to work at home as appropriate, based on demands, sabbaticals, or the opportunity to take time off without pay with the option to return to the firm at a later date. Law firms are starting to follow other industries in the “opt back in” movement by retaining spots for those attorneys who, for whatever reason, have opted out of the private practice of law for a period of time. When these lawyers are ready to re-intensify their legal careers, the opt-in arrangement permits them to either update their skills and/or re-enter the private practice or simply increase their workload.

Firms that are successful in assisting their attorneys with work/life balance issues recognize that the needs surrounding work/family balance shift over the course of one’s career. Taking a long-range approach with flexibility at the centerpiece will lead to the retention of a talented and diverse attorney base, which ultimately will lead to client and firm success.

Firms that successfully address these issues have a common attribute: flexibility—both in stated policy and in reality.
So now that you have invested significant energy and resources into creating a women’s initiative program that offers mentoring, marketing and professional development training, how do you measure its success? How do you know that next year, or five years from now, you will not see the same attrition numbers that you experienced last year? That is the million-dollar question. Indeed, many respondents observed that their firms had no means of measuring the success of their efforts, and others similarly expressed doubt as to whether a satisfactory measurement method exists.

As lawyers we have come to recognize that “success” is subjective. But attrition rates are not. Therefore, firms must find some way to take stock of their efforts to retain valuable attorneys before it is too late.

A firm’s retention program can be measured on both qualitative and quantitative levels. Attendance at events designed for the firm’s women attorneys—along with surveys following the events—can provide some evidence of the level of interest in and support for the firm’s programs and long-term goals. An increase in the number of women attorneys seeking leadership positions and committee appointments also reflects a commitment on behalf of women attorneys to stay and impact the firm’s future. But more and more, the firms that are successful in lowering their attrition rates are those that have established targets and benchmarks directed to female retention and involvement in the firm; those firms have also tracked progress at an executive level rather than simply observing trends after the fact. These firms incorporate set targets into their strategic plans and appoint at least one committee chair who is held accountable for the implementation of these goals; the chair then reports to the executive committee or managing partner on progress. Many firms have signed onto their local or state bar association’s objectives related to women attorneys’ professional development. These can be useful benchmarks, but every firm should undergo a self-evaluation to determine whether their clients or their own attorneys support or demand even higher standards.

Finally, it is important to keep in mind that a firm’s retention efforts need not stop when women attorneys leave the firm. It is commonplace for firms to perform
exit interviews for outgoing attorneys; more recently many firms have taken advantage of this process to learn more about the pros and cons of the firm’s policies affecting women. To prevent history from repeating itself, this valuable feedback must be communicated to the diversity committee or women’s forum committee that is responsible for the firm’s future programming activities, to office managers who can address concerns that might be regional in scope and to the executive or management committee for use in the firm’s annual reviews. Indeed, informal meetings with past attorneys even years after their departure may provide important lessons for the future livelihood of the firm. Perhaps these attorneys would have remained at the firm if it had provided better mentoring, had a part-time policy, or created a contract attorney position—but firms will never know unless they ask.

No firm expects to maintain a zero attrition rate, and it would be foolish to presume that attrition is due solely to the firm’s failure to effectuate its female retention policies properly. However, firms that establish concrete qualitative and quantitative goals and consistently evaluate their performance can expect to retain more women attorneys than those that sit idly by and lament the exodus of women attorneys.

The following are some suggested means of measuring the success of your firm’s female retention policies.

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**Qualitative**

- Informal survey responses following meetings or events
- Comments included in annual associate and partner evaluations
- Feedback from exit interviews
- Interest in the creation of new affinity groups
- Client feedback
- Informal comments from attorneys
- Increased respect and involvement at the management level
- Increase in national/local rank

**Quantitative**

- Increase in attendance at women’s group meetings
- Increase in the number of women on firm committees
- Increase in the number of women in management positions
- Increase in the number of women serving on bar association committees
- Increase in the number of women participating in client development activities
- Increase in the number of women working for the firm’s top billable clients
- Increase in the number of women who have served as first chair at trial
- Increase in the number of women who act as responsible or billing attorneys
- Increase in the number of women in each equity and non-equity partnership class
- Increase in the number of new and lateral female attorneys
- Increase in the budget designated for women’s group meetings and sponsorships
- Decrease in female attrition rates
The bottom line is that despite the ambiguous nature of individual satisfaction, firms can and should measure the success of their retention efforts. While each firm is different, and the amount of time and revenue that each firm can spend will depend among other things on its size and need for improvement, it is noteworthy that firms that have been successful in this area have formed a committee designed to address women’s issues with one or two chairs and a separate budget. Larger firms may find it helpful to have regional vice-chairs in each of the firm’s major offices to identify and address local office concerns. Smaller firms may find it sufficient simply to appoint a single senior woman partner to monitor the firm’s progress. For firms that have established a committee, chairs are encouraged to work with the firm’s management committee to design goals specifically geared towards the retention of women attorneys based on the applicable qualitative and quantitative factors listed above, which in turn should be incorporated into the firm’s strategic plan. Committee chairs may then review statistics on these goals at least annually and present progress reports at annual shareholder meetings and at the firm’s annual all-attorney meetings. Feedback from exit interviews should be shared with the committee chairs to aid in designing future programs and policies, and all attorneys should be encouraged to comment on the program’s progress and success as well. Only after statistics are communicated openly and are taken seriously by firm management can firms expect them to improve.
State Associations

Arizona
Arizona Women Lawyers Association—www.awla-maricopa.org/
  Cochise Chapter
  Maricopa Chapter
  Northern Arizona Chapter
  Southern Arizona Chapter

California
California Women Lawyers—www.cwl.org
Lawyers Club of San Diego—www.lawyersclubsandiego.com
Women Lawyers Association of Los Angeles—www.wlala.org
Queens Bench Bar Association (San Francisco)—www.queensbench.org
Women Lawyers of Sacramento—www.womenlawyers-sacramento.org
Women Lawyers of Santa Cruz Count—www.wlscc.org

Colorado
Colorado Women’s Bar Association—www.cwba.org

District of Columbia
Women’s Bar Association of the District of Columbia—www.wbadc.org

Florida
Florida Association for Women Lawyers—www.fawl.org
Hillsborough Association for Women Lawyers—www.hawl.org

Georgia
Georgia Association for Women Lawyers—www.gawl.org
Georgia Association for Black Women Attorneys—www.gabwa.org

Illinois
Women’s Bar Association of Illinois—www.wbaillinois.org
Black Women’s Bar Association of Greater Chicago—www.bwla.org

Iowa
Iowa Organization of Women Attorneys—www.iowawomenattorneys.org
Kansas
Kansas Women Attorneys Association—www.kswomenattorneys.com

Louisiana
Association for Women Attorneys—New Orleans—www.awanola.org

Maryland
Women's Law Center of Maryland—www.wlcmd.org
Women’s Bar Association of Maryland—www.wba-md.org

Massachusetts
Women’s Bar Association of Massachusetts—www.womensbar.org

Michigan
Women Lawyers Association of Michigan—www.womenlawyers.org

Minnesota
Minnesota Women Lawyers—www.mwlawyers.org

Missouri
Association of Women Lawyers of Greater Kansas City—www.awl-kc.org
Women Lawyers Association of Greater St. Louis—www.wlastl.org

New Hampshire
New Hampshire Women’s Bar Association—www.nhwba.org

New Mexico
New Mexico Women’s Bar Association—http://www.nmbar.org/Content/NavigationMenu/Other_Bars_Legal_Groups/Womens_Bar_Association/Womens_Bar_Association.htm
E-mail: nmwba@msn.com

New York
New York Women’s Bar Association—http://www.nyywba.org/
Brooklyn Women’s Bar Association—www.brooklywnomensbar.org
Women’s Bar Association of the State of New York—www.wbasny.bluestep.net

North Carolina
North Carolina Association of Women Attorneys—www.ncawa.org

Ohio
Ohio Women’s Bar Association—www.owba.org

Oregon
Oregon Women Lawyers—www.oregonwomenlawyers.com
South Carolina
South Carolina Women Lawyers’ Association—www.scwla.org

Tennessee
Lawyers Association for Women—Marion Griffin Chapter (Tennessee)—www.law-nashville.org

Texas
Texas Women Lawyers—www.texaswomenlawyers.org
Association of Women Attorneys—Houston—www.awahouston.com
Dallas Women Lawyers Association—www.dallaswomenlawyers.org

Utah
Women Lawyers of Utah—www.utahwomenlawyers.org

Virginia
Virginia—Metropolitan Richmond Women’s Bar Association—www.mrwba.org

Washington
Washington Women Lawyers—www.wwl.org

Wisconsin
Wisconsin—Association for Women Lawyers—www.wisbar.org/AM/Template.cfm?Section=Association_for_Women_Lawyers

National Bar Associations
National Conference of Women’s Bar Associations—www.ncwba.org
National Association for Women Lawyers [www.abanet.org/nawl/]


Mona Harrington and Helen Hsi, “Women Lawyers and Obstacles to Leadership,” MIT Workplace Center, Spring 2007


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