

# New York Law Journal

A NEW YORK LAW JOURNAL SPECIAL SECTION

## Women in the Law

An ALM Publication

WWW.NYLJ.COM

MONDAY, NOVEMBER 8, 2010



## Courtroom Superstars: The Next Generation

BY ANN SCHOFIELD BAKER

**M**Y FAVORITE MOVIE growing up was called “Adam’s Rib,” a classic Tracy/Hepburn film where Katherine Hepburn plays a cantankerous defense lawyer at the trial of a suspected murderer, and Spencer Tracy, who was also Hepburn’s husband in the film, plays the prosecutor. The fiery courtroom scenes where Hepburn and Tracy duke it out made me think that women trial lawyers were common, even back in 1949.

But in reality, women lawyers who first-chair major commercial trials are a rare species indeed, and all-female trial teams are practically on the endangered species list.

Why is that the case? Roughly half of first year associates at most firms are women, so it would stand to reason that roughly half of the attorneys who actually try cases would be women. Wrong. According to the National Association of Women Lawyers’ (NAWL) most recent national survey on retention and promotion of women in law firms, the fall-off of women lawyers begins early in

their careers and gains momentum at each level of seniority, which ultimately shrinks the equity partnership pool of women lawyers.<sup>1</sup>

This article explores some of the roadblocks that firms unwittingly embrace that can hamper the advancement of their female litigators. It also suggests a plan of action to effectively mentor female trial lawyers to ensure that they get the networking, rainmaking and practical, on-their-feet courtroom skills that they need to stay the course, excel, and become equity partners who will actually try their own cases someday.

### What Law Firms Are Doing Wrong

By way of overview, a recent report published by the White House Project called “Benchmarking Women’s Leadership,” analyzes women’s roles in various careers, from business to sports to politics, to determine the degree to which women have broken into their chosen profession, taken on leadership roles, and achieved pay parity with men.<sup>2</sup>

The report gives the legal community a failing grade. Indeed, it claims that “at the very top of the legal sector, women have made no progress at all in the last 15 years.”<sup>3</sup> Despite making up 48 percent of law school graduates and 45 percent of law firm associates, only 16 percent of women end up becoming equity partners in their firms. To add

insult to injury, women partners typically earn 78 percent of what their male counterparts earn, although the pay gap widens even more the higher up the ranks of leadership women go.<sup>4</sup>

Research shows that the largest barriers to women’s promotion in the legal profession come from systematic and subtle bias rather than overt discrimination.<sup>5</sup>

Double standards, unconscious stereotypes, inadequate access to client development opportunities and inflexible workplace structures are widely cited factors.<sup>6</sup> One study points to a glaring double standard when it comes to self-promotion, and cites research that shows that women may be faulted for self-promotion that is readily accepted in men.<sup>7</sup>

For example, a woman who forwards to her colleagues a news article in which she was quoted as a legal expert is seen as conceited and self-promoting, while a man who does exactly the same thing is merely informing his colleagues of his latest success at raising the profile of the



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firm. The same thing often happens with billing credit for bringing in a client. When a woman participates in a client pitch and asks for some billing credit for the matter, she is seen as pushy and domineering when such behavior is typical and accepted among men.

This kind of bias often hits female litigators hardest since they are typically more confident and self-assured by nature, and are more likely to share their successes with others, as men do.

Some firms also stack the deck against women litigators in terms of their rainmaking ability by the way firms handle expanding relationships with current clients. It is well known that about 80 percent of new business comes from growing relationships with existing clients of the firm.<sup>8</sup> However, a recent study of top women rainmakers by Harry Keshet, an organizational consultant and marketing trainer, coach and researcher, finds that women are routinely excluded from participating in the pitches that would help build their books of business.<sup>9</sup>

Young female trial lawyers have an additional hurdle to clear: in order to convince a client that you are the right trial lawyer for the job, you have to have actually tried some cases. Many law firms are not doing enough to ensure that their young female associates spend quality time on their feet in the courtroom, which gives them the credibility they need to bring in litigation clients.

Finally, senior women attorneys can often be the worst enemy of junior litigators. Report after report confirms that many women still do not help each other at work, and worse, sometimes actively thwart the advancement of other women to protect their own turf.<sup>10</sup> Former Secretary of State, Madeleine Albright, famously once said: "There is a special place in Hell for women who don't help other women."<sup>11</sup>

That might be a little harsh, but the good news is that the problems can be fixed with a well thought-out and implemented mentoring program, and reinforcement from firm management that congeniality, team spirit and commitment to diversity are important to the success of the organization.

### And the Practical Steps They Can Take

Firms can address the gender bias, client access, courtroom experience and mentoring problems mentioned above with some relatively easy-to-execute plans.

For example, to combat the gender bias that is associated with tooting one's own horn, NAWL advocates that firms train women lawyers to be effective self-promoters.<sup>12</sup> (Usually, the more common problem is that women accomplish great things but never tell anybody about them, so they go unrewarded). Self-promotion training should be firm-wide so as to sensitize male partners to the unfair ways in which women have historically been penalized when they speak up.

NAWL also encourages firms to establish mandatory and ongoing "inclusive and respectful workplace" training to identify and correct biases, and to ensure that the teams firms assemble to pitch new work are diverse.<sup>13</sup> Firms should also routinely monitor and record the makeup of their pitch teams and trial teams to ensure that they are providing equal opportunities for their female litigators.<sup>14</sup>

As for ensuring that young, female litigators get systematic, practical courtroom training, the best method requires that firms staff them on trial-bound cases, and give them a substantive role whenever possible. Including females on the trial team is not just good for their professional development, it's also good for results.

I just tried a six-day jury trial in the Southern District of New York, and I had an all-female trial team versus my opposing counsel's all-male trial team. The makeup of our jury was predominantly women (there were only two men), and we had a female judge. We won the case.

Of course, we did not win the case because our team was all female, but I think that the female jurors were better able to connect with us and our story. I made a point of giving my lead associate a trial witness and substantive motions to argue, and I supervised her preparation at every stage. Not every case can support an associate taking a witness at trial, but seasoned trial lawyers must find creative ways to get young litigators on their feet, if only to read in deposition designations or enter stipulations.

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When trial experience for paying clients is not a viable option, pro bono cases can provide excellent trial experience for litigators.

For example, many firms in the city have political asylum programs with organizations like Human Rights First (HRF), which pairs up asylum candidates with litigators who are ready to try cases. Most of the cases where the asylum seeker is in government detention proceed to trial very quickly, and provide excellent substantive trial experience while offering an added bonus: the cases are personally and spiritually fulfilling. I tried an asylum case through HRF and have supervised many others with great success.

Other programs can be set up with local public defenders' offices to take on cases where defendants do not qualify for public defenders yet cannot afford a lawyer. Our Dallas office has had much success with its program with the local defenders' office. The program has

provided several of our female trial attorneys the opportunity to actually try a case very early on in their careers.

Finally, the National Institute of Trial Advocacy (NITA) has a stellar week-long trial training program that puts the participants through the rigors of a real trial, replete with a local jury and a real trial judge. Many programs, including NITA, offer one or two day courses on various aspects of trial advocacy, but nothing compares to NITA's week-long program. I did the program early in my career and can say with confidence that it is time and money well spent.

As for mentoring, the best such relationships are those that evolve in the associate's own firm, pursuant to a mentoring program that is heavily encouraged by firm management. However, if your firm does not have a program, NAWL has an excellent program that matches junior mentees with seasoned mentors.

No matter how the relationship starts, senior female litigators need to invest the time to both challenge and nurture the next generation to ensure that they have the skills they will need to bring in future clients, and command respect in the courtroom. Perhaps by doing so, we will ensure that the next 15 years will not pass us by while the percentage of female equity partners stays stagnant at 16 percent.



1. The NAWL Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms, October 2009, at 7.

2. White House Project Report: Benchmarking Women's Leadership 2009, <http://benchmarks.thewhitehouseproject.org/>.

3. *Id.* at 61.

4. *Id.* at 60, 63.

5. *Id.* at 64.

6. *Id.*

7. National Association of Women Lawyers, National Leadership Summit, "Actions for Advancing Women Into Law Firm Leadership," July 2008, at 27.

8. *Id.* at 19.

9. Harry Keshet, Women Attorneys' Business Development Study (2007), available at [www.counseltocounsel.com/keshetreport\\_4.pdf](http://www.counseltocounsel.com/keshetreport_4.pdf).

10. Brittany Shoot, "Study Finds Women Don't Promote Other Women," Aug. 19, 2010, [www.womensrights.change.org/blog/view/study\\_finds\\_women\\_dont\\_promote\\_other\\_women](http://www.womensrights.change.org/blog/view/study_finds_women_dont_promote_other_women); Sarah Banda Purvis, Ph.D., "Why Women Don't Help Other Working Women," <http://www.bluesuitmom.com/career/management/womenhelp.html>; Eve Tahmincioğlu, "Women Still Reluctant to Help Each Other: Jealousy, Busy Lives Keep Many From Assisting Others in Career," MSNBC, 7-6-2010, <http://www.msnbc.msn.com/id/38060072/>.

11. Huffington Post, 10-05-08, "Palin Misquotes Albright: 'Place in Hell Reserved for Women Who Don't Support Other Women.'" [http://www.huffingtonpost.com/2008/10/05/palin-misquotes-albright\\_n\\_131967.html](http://www.huffingtonpost.com/2008/10/05/palin-misquotes-albright_n_131967.html).

12. *Supra* note 7 at 27.

13. *Id.* at 7-9; 17-20; 26-27.

14. *Id.* at 20.

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