

# The Catalyst

The newsletter of the Illinois State Bar Association's Standing Committee on Women and the Law

## Recent studies confirm much still needs to be done for women to gain parity in the profession

BY MICHELE M. JOCHNER

For the past three decades, men and women have been graduating from law school and entering private practice at roughly the same rates. Therefore, it would be reasonable to assume that men and women with similar levels of experience would also similarly progress at the same time into lead counsel roles in litigation, and into leadership roles in their firms. However, two recent studies of women in the legal profession have highlighted some troubling red flags: we continue to lag behind our male colleagues not only in the type of work we are given, but also in promotion and compensation within private law firms. These results reinforce the importance of our working together to take concrete steps to counter this trend and make positive changes to not only better the status of women but to also benefit our profession as a whole.

*First Chairs at Trial: More Women Need Seats at the Table* was published in 2015 by the ABA's Commission on Women in the Profession ("Commission"), and co-authored by Chicago's own Stephanie Scharf and Roberta Liebenberg. It is a first-of-its-kind empirical study tracking the frequency of women and men as lead

counsel and trial attorneys in civil and criminal litigation, based on a random sample of all cases filed in the U.S. District Court for the Northern District of Illinois in 2013.

Unfortunately, the data revealed that, in most settings, women are consistently underrepresented in lead counsel roles. Although the distribution of men and women in our profession is at roughly a 2 to 1 ratio, men are three times more likely than women to appear in lead roles in civil cases—especially in those matters which are financially lucrative and high-profile. Further, when women do appear as lead counsel in civil matters, they are more likely to represent defendants rather than plaintiffs. Moreover, a private vs. public sector gender gap for women in lead roles was discovered, as women representing the government had the greatest chances of appearing as lead counsel.

The results in criminal cases - where the government is one party and the other is a private-party defendant - revealed a pattern similar to the private vs. public sector gender gap found in civil cases. In criminal matters, female lead counsel represent the government more than

twice as often as they represent criminal defendants. The exact opposite is true for men: they appear as lead counsel for private defendants twice as often as they appear for the government.

The report also found that class-action matters—which are viewed as both complex and high-stakes—are dominated by male lead counsel. Compare this with the role of women litigators in cases with *pro se* plaintiffs: women are far more likely to act as lead counsel in these matters.

The study concluded that many factors work against women becoming lead counsel, including the prevalence of both overt and implicit biases which have hampered the advancement of women in the profession, especially litigators. For example, senior courtroom lawyers are overwhelmingly male, and they may automatically choose someone like themselves - *i.e.*, another male - to serve as their co-counsel. Implicit biases are also at play in the belief that a female litigator may express unnecessary emotion during a trial, although a male litigator who displays the identical level of emotion is viewed as a "deeply passionate" advocate. Similarly, a female litigator who advances

forceful arguments or who raises her voice to highlight a point, may be negatively tagged as “overly aggressive,” while a male lawyer engaging in the exact same behavior may be lauded as “zealously representing his client.” As the report observes, this results in “women lawyers often hav[ing] to demonstrate greater levels of competence and proficiency and [they] are held to higher standards than their male colleagues.”

Further, women litigators are often faced with opposing counsel and judges who make inappropriate or stereotypical comments. In addition, they may also encounter clients who prefer being represented by a man in the courtroom, based upon the same stereotypes discussed above.

In response to the issues discovered upon examining this data, the ABA’s Commission is planning to work with law schools, law firms, judges and individual female lawyers across the country to identify ways women can receive the training and courtroom experience needed to become skilled trial lawyers. To this end, plans are in the works for law schools to encourage female law students to effectively pursue litigation and receive training and mentoring by trial attorneys to hone their skills and deal with the biases they may face in the courtroom. Further, law firms will be asked to focus on specific training for women litigators, and to ensure that they are getting the experience that will allow them to be successful and confident in the courtroom. Clients will also be reminded to be proactive in requesting that women litigators serve as lead trial lawyers in their cases and that they can use their fee dollars as leverage to insist that women be given prominent positions and significant

responsibility in trial teams assembled by the firm for the client’s matters. In addition, clients can require firms to provide them with information on how their cases are being staffed and the roles women lawyers are playing. Judges will similarly be reminded of the benefit of appointing experienced, qualified women lawyers as lead counsel where possible. Finally, the Commission will encourage individual women lawyers to proactively develop the skills, tools, and expertise necessary to be an effective trial lawyer, including seeking assignment to cases where they will get to play an active role in the litigation and obtain trial experience.

On several occasions, the *First Chair* report references another survey conducted by the National Association of Women Lawyers (NAWL). NAWL’s *Ninth Annual National Survey of Retention and Promotion of Women in Law Firms* was also recently issued and confirmed that although many strides have been made, a very long journey remains until women attain parity in their promotion to equity partnership and senior leadership roles in law firms, as well as in the amount of compensation they are paid. This survey reveals a troubling level of stagnation with respect to the advancement of women in all areas of private practice leadership, recognition and compensation.

For example, the survey confirmed that the historic gap in compensation between men and women remains wide. The results revealed that the typical female equity partner earns 80 percent of the compensation earned by a typical male equity partner, and that women continue to be under-represented on law firm compensation committees. Further, with respect to the all-important origination credit - which is a key factor in attaining

higher compensation - men continue to outpace women in obtaining this credit largely as a result of traditional firm culture. The survey showed that rainmaking client relationships are frequently handed down from men to other men within a firm, often with little client input in the decision. This procedure has resulted in a widening gap between men and women, with 88% of the reporting firms’ top 10 revenue-generating lawyers being men. Further, approximately one-fourth of the firms that responded to the survey reported that the current relationship partner selects his or her successor, meaning that valuable client credit is an “inheritance” that can be passed from one individual to another – usually, from an older man to a younger man.

Moreover, even as women report working more hours overall, there also is a gender gap in revenues generated from these client billings. The survey data raises questions about whether inequities in committee assignments, hourly billing rates and the distribution of *pro bono* hours account for these disparities. In addition, women often lack a voice to air their concerns, because they continue to be severely under-represented on the highest governance committees of their firms. Although every firm which participated in the survey reported having a Women’s Initiative, the often-skeletal budgets allocated to these efforts reinforce that these groups lack sufficient resources to accomplish strategic goals.

In sum, the news in these reports – although extremely disappointing – is also very useful, in that it reveals those areas in which we must target our efforts to encourage and support women in the pursuit of leadership roles both within the courtroom and within their firms. ■

**THIS ARTICLE ORIGINALLY APPEARED IN  
THE ILLINOIS STATE BAR ASSOCIATION’S  
THE CATALYST NEWSLETTER, VOL. 21 #3, FEBRUARY 2016.  
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