

THE WOMAN UP PROJECT

Gender Diversity in Trials

By Mary Rose Alexander

Gender diversity in trials – state of play

Our society and our courtrooms are diverse. We no longer have men in white wigs and black robes, surrounded by an exclusively white male cast. Our diversity is rich and varied — gender, ethnicity, race, sexual orientation, and socioeconomic background. The trial lawyers trying cases for clients in those courtrooms and to those audiences should mirror the diversity found there. The legal profession has made great strides toward diversity, specifically gender diversity. More than half of law school graduates are women. The trial bar has made progress as well. Talented women are trying cases in courtrooms across this country every day. We all should be proud of that progress. We all should recognize that more needs to be done. The legal profession, the trial bar, and the clients it serves have taken positive actions to increase the number of talented women advocates in state and federal court litigation.

Increasing access and advancement

All trial attorneys — both women and men — hone their skills through practical experience, both structured and unstructured. Getting the opportunity to stand up before a court as early and as often as possible remains, perhaps, the best experience. My firm, Latham & Watkins, is deeply committed to fostering inclusion and diversity through innovative policies and signature programs. To develop successful women litigators, we focus on: mentoring, training, and culture. Training and mentoring opportunities feature experienced attorneys helping junior attorneys (women and men) find opportunities to get into the courtroom, master first impressions during trials, and find their authentic voices as trial advocates. Our trial advocacy program does exactly this through multi-day skills training taught two to three times each year by our experienced trial partners. We are also working with the American College of Trial Lawyers to develop a new Diversity in the Courtroom Program. In addition to training women and other traditionally underrepresented counsel on trial advocacy skills, the program will help in-house litigation attorneys keep diversity top of mind when selecting outside counsel and managing the litigation and trial of company lawsuits.

Client demand for diversity

Corporate clients increasingly expect law firms to field gender diverse trial teams that mirror the diversity of their employees, customers, and industries. This goes beyond ticking off a box



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to meet a requirement. Through the proposal and pitch process, general counsel often insist women (and people of color) play a significant role in their trial teams. Teams composed of diverse attorneys bring different perspectives and approaches to a trial and challenge one another to craft compelling, effective case strategies.

My courtroom experiences and impressions

My experiences and impressions as a woman trial lawyer are varied. I am proud of the demonstrated talent of women I have tried cases with as partners, as co-counsel, and as adversaries. In a courtroom I remind myself I am not a social advocate but rather an advocate trying to best represent my client and its cause.

As a woman, I recognize that courtroom diversity is complicated and nuanced. The crosscurrents of courtroom diversity involve people of differing gender identities, ethnicities, sexual orientations, and other backgrounds. This diversity covers every role and encounter — attorney to witness; attorney to judge; attorney to opposing counsel; attorney to juror. Rather than focus on how I am treated, I focus on how I behave toward others in the courtroom because I believe that is how my audience will judge me. My cases have taken me to courtrooms across the country. My experiences have differed — by judge, by witness, by opposing counsel. Some of the conventional wisdom I believe, and some I don't. For instance, will women judges favor women trial lawyers? Some women judges may actually hold women trial lawyers to a different and higher standard. Indeed, I remember being treated harshly by some women judges (of course, that could have been for many reasons, but it happened). Treatment by men? I thought some men (lawyers, judges, and witnesses) did not take me seriously. Many, however, did. I hope I demonstrated they were right. Some of my favorite male trial lawyers have told me I have some advantages, that is, I can do some things they can't do, and they have to be extra careful in how the audience sees them interact with me. I do ask, what should I wear to court today? Some men ask themselves the same questions; others should.

While much ground remains to be covered in achieving gender balance among trial attorneys, the progress is real and encouraging. I do not think of myself as a woman visiting a courtroom. I am a trial lawyer. I expect to be engaged and measured to exactly that standard. Diverse trial teams resonate with clients and jurors alike, and ultimately provide winning outcomes that advance diversity in the profession and in the larger culture.