



## PEGGY ZWISLER

BY ALISON PREECE

### LEVELING THE FIELD: THE ENDURING LEGACY OF PEGGY ZWISLER

*“WE DON’T HAVE GIRLS IN OUR LITIGATION DEPARTMENT.”*

Sounds like something out of an old cartoon, with a freckle-faced boy pouting in front of a tree house. Alas, this was the actual response that legendary antitrust attorney Margaret “Peggy” Zwisler received as a young lawyer interviewing at law firms, hungry for courtroom experience. Zwisler had started law school in 1973 after working as a paralegal at a major Chicago law firm where she recalls there were 115 men and just one woman in the litigation department. (The solo female litigator would go on to be a U.S. District Court judge.)

After graduating near the top of her class from George Washington University Law School – where she won the Moot Court competition alongside one of the few other female law students, worked as a law clerk to the chief litigation counsel at the Nuclear Regulatory Commission, and received high honors and the

Order of the Coif – Zwisler knew she wanted to be a trial lawyer. She didn’t yet know what antitrust law was, and had never taken an economics course (her college, the all-female Saint Mary’s College in Notre Dame, only offered Home Economics). She just knew she belonged in a courtroom.

After interviewing at the biggest and best law firms and being told, “Well, you’re going to be working for two men and one of them does some litigation, so if he thinks you’re up to it, maybe he’ll give you a little litigation project,” Zwisler knew she needed something different. She interviewed at Howrey LLP, which had 58 lawyers and was almost exclusively focused on antitrust claims, which at the time was a trial-heavy practice.

It turned out to be an excellent fit.

“I quickly realized that antitrust work, combined with my courtroom life, was the perfect substantive area of the law for me,” says Zwisler. “I love it because you

get to dive into a company and how it works, how it distributes its products, how it made strategic decisions, and how to defend them. You need to read the case law but you also have to understand the business, the economics, how firms relate to each other, and what that means in a practical sense."

Clients from Ocean Spray Cranberries, Time Warner, Ford Motor Company, and Guitar Center, to makers of contact lenses and artificial teeth, have all been grateful for Zwislser's 360-degree view of their business and industry from a competition perspective. In a closely watched international case, she won dismissal of a suit against The London Metal Exchange that alleged collusion with major banks over the price of aluminum, using a novel assertion that LME was an instrument of the UK government and therefore immune to U.S. courts. In a trial for Calvin Klein, she handily achieved an injunction and an asset freeze of Taiwanese companies who had been importing counterfeit perfume. For Hoover, the vacuum maker, she defeated a patent claim brought by Black & Decker with a counterclaim of monopolization involving the Patent and Trademark Office, in the first (of many to come) trials in which she was first chair.

The Hart-Scott Rodino Act, which was passed the same year Zwislser graduated law school, began the era of diminishing trials in the antitrust arena. Still, she has led several dozen trials over her storied career, earning a reputation as a trusted guide in the courtroom, with an encyclopedic knowledge of the law and an impressive ability to tell a clear and compelling story to juries and judges.

Naturally, she's a member of the esteemed Lawdragon 500 Hall of Fame.

Zwislser has story after story of gender-based discrimination from throughout her career, some cringe-worthy, some funny (at least in hindsight), and some downright sickening. Strategy meetings set in men's clubs, where they snuck her in through the freight elevator. A name tag that said "Mr. Zwislser" because the (female) office manager declared there wasn't room for an "s." A co-defendant warning her before jury selection, "We don't like Hillary Clinton down here." Okay...? Or this one: "How did a nice little girl like you get involved in this tough antitrust litigation?" (She was 50 years old when she got that last gem.)

But for every story of discrimination (well, perhaps for every five or 10 or 20 stories - but who's counting), she has a story of a male ally, someone who stood up for her against the prejudices of the time.

The strategy meeting in the men's club, for example, was salvaged by an attorney by the name of Robert

Norris, who was, at the time, litigation counsel for an international oil and gas company. When the waiter at the club told her, "You can't go back there, little lady," Norris spoke up. "What? Why?" "Well, it's men only, sir. I can bring her a club sandwich out here." Norris planted himself in the waiting room, stared down the waiter and said, "Bring me a club sandwich." The rest of the group, seven white men in their 40s accustomed to lunches of bourbon and beef, followed suit, eating sandwiches in the lobby so the strategizing with Zwislser could continue.



Amanda Reeves. Photo provided by the Firm.

Zwislser's extraordinary professional achievements are only part of the legend: She did it all while raising four children, three of whom were adopted from Paraguay as infants.

Her hard work paid off, as she made partner at Howrey in 1980 - news she received while she was on maternity leave with her first (and, it turned out, only) biological child, Rebecca. She and her husband would go on to adopt John Carl, Kevin Joseph, and Margarita. Building a robust courtroom career while simultaneously being an active mother to four children is enough to earn Zwislser the golden seal of the modern Wonder Woman. The extra mile, and a large part of her enduring legacy, is her mentorship of female lawyers.

After 29 years at Howrey, Zwislser was headhunted by Latham & Watkins, which at the time had sparse antitrust litigation capabilities, particularly in Washington. Daniel Wall, who led the San Francisco antitrust practice, was aware of Zwislser's incredible track record and championed her joining the firm. Zwislser has since spearheaded the growth of the firm's antitrust shop into the international powerhouse it is today, in part by training some of the firm's smartest, generalist associates into the practice.

Shattering the glass ceiling is a powerful and necessary step in the fight towards gender parity in the





Jennifer Giordano. Photo provided by the Firm.

law. Every time a woman makes partner, she makes progress for all of us. Even more ground-breaking? Sweeping away the shards and reaching down your hand to the next generation of brilliant and capable women, which is exactly how Zwisler has operated. Her mentees include a powerhouse group of women who are now in leadership roles in Latham's antitrust shop - women who learned directly from Zwisler, not just about the nuances of the Sherman and Clayton Acts, but also how to balance a career with raising children and how to effectively operate in an industry that remains stubbornly male-dominated.

"Antitrust was new to me," recalls Amanda Reeves, who is now Global Chair of the firm's Antitrust & Competition practice. She was a young associate at Latham in 2004 when she was assigned to assist the new antitrust



Allyson Maltas. Photo provided by the Firm.

partner, Zwisler, in writing a motion to dismiss. She was hooked. "I just thought it was the most fascinating area of law that one could ever work in.

"What excited me about it, and what still excites me about it, is you have statutes that are over 100 years old that are literally a sentence or two, and are supposed to govern how corporations and individuals

behave from a competition standpoint a century later. Industries like high tech, biotech, pharmaceutical, all in a global environment, none of which you could've ever contemplated in 1890."

Reeves' fascination with the practice is infectious, which is rather natural given her mentor: "If I sound excited about it, it's times ten with Peggy," says Reeves. "What I still remember about my first year or two of working with her is how much she loved antitrust and competition laws."

Jennifer Giordano, now a litigation and antitrust partner, and Allyson Maltas, counsel in the D.C. office, were also assigned to Zwisler as associates in her first couple years at Latham. They would go on to absorb her dedicated work ethic and team-building efforts, which include team meetings after each trial day with all attorneys and staff to discuss the day's events and the plan for the remainder of trial.

Giordano was a senior associate with a good amount of trial experience when Zwisler pulled her into a case that remains oft-discussed in antitrust circles: *Feesers v. Michael Foods*, which set a higher standard for plaintiffs bringing price discrimination claims under the Robinson-Patman Act. They won the case on appeal in the Third Circuit.

"Going to trial with Peggy was an awesome learning experience, not only because she is an incredible trial lawyer, but also because she was the only woman lead lawyer in the courtroom," says Giordano. "Seeing her in action, giving the opening and commanding that room, was a sight to behold. I knew instantly that I wanted her to be my mentor."

Zwisler also led a trial team that included Giordano and Maltas for Cox Communications, in a closely watched cable case that Latham took over from another firm. The dispute centered around the allegation that a consumer had to rent a set-top box in order to get the video on demand, which they called an antitrust violation. The case had not been going well for Cox, as their prior counsel had lost a motion to dismiss and summary judgment, a class had been certified, and a trial had been set, all before Latham was brought in.

The group had an uphill battle, but Zwisler's signature deep-dive into the facts, calm and reasonable demeanor in the courtroom, and encyclopedic antitrust knowledge proved successful: They turned the ship around and won a direct verdict for the client, upheld on appeal.

Giordano had become a partner by then, and was seven and a half months pregnant at the time. But there was something else that made that trial with Peggy notable: "This particular trial stands out to me because it is the first time that I remember feeling like Peggy and I were

truly peers in the courtroom,” says Giordano. “I know she felt it too, and considered it a point of pride. All those things she had taught me paid off – diving into complicated antitrust law and theory, loving the law, and pulling out all the stops for the big win.”

For Maltas, it was her first trial, and while she was as hungry for a win as any good litigator, she was also nervous about being away from her kids so much. Zwisler understood, and made sure Maltas carved out time each day to connect with them.

“Every night while the rest of the team was having dinner and debriefing, I stepped into my office, called my older son and read Harry Potter to him in bed,” says Maltas. “I had the confidence to believe that this balance was something I could pull off because I was with Peggy.”

The work/life balance is sometimes still a punch line. Zwisler is widely admired for her exacting standards and command of the courtroom, but her mentees also appreciate the way she protects her personal time without apology. It’s something all law firms must learn to value if they want to retain their female talent for the long run.

“Peggy works extremely hard, but she has a rule: No cell phones at her dinner table,” says Reeves. “She also goes on vacations. Actual, real vacations when she says ‘I’ll be back in two weeks.’ I admire that. She knows how to have some boundaries and separation between her work and her personal life. And she takes her obligations as a mother and wife very seriously, in all the right ways that you want out of a role model.”

Another key mentee of Zwisler’s is Sarah Ray, Co-Chair of Latham’s Bay Area Litigation & Trial department. Ray was tapped by Oracle to take over a case going to federal court, where the plaintiff alleged he had been misled by Oracle’s sales team and that its software caused his business to fail.

“When I approach any case,” says Ray, “the first thing I think of is ‘WWPD?’ – What Would Peggy Do? – and then follow her mandate: Don’t just play defense, but wrest the narrative from plaintiff and tell an affirmative story to the jury that humanizes your client.”

They dug into the facts, re-deposed the plaintiff and worked with the Oracle witnesses to tell a very different story about the plaintiff’s failing business and financial mismanagement, as well as about an Oracle team that worked mightily to satisfy a difficult and mercurial customer.

“Peggy served as a sounding board for me as I crafted opening statement and closing argument, and cheered us on as each of the associates conducted superb witness examinations and arguments at trial,” says

Ray. The jury returned a complete defense verdict in less than two hours.

Zwisler’s mentorship of these brilliant lawyers was perhaps a natural move for her, given her own experience back in the ’70s as a mentee: Ralph Savarese, who would go on to become the Chairman of Howrey, hired Zwisler to the firm and took her under his wing. “He was a very balanced individual and he took talent where he found it,” says Zwisler.



Sarah Ray. Photo provided by the Firm.

“He gave me exactly the same chances that he gave the men,” she recalls. “That was saying something in those days. A lot of my friends who were women from George Washington went to firms but couldn’t get an anchor with a mentor, and that impeded their success. You have to have a mentor.”

Zwisler considers mentoring the key to closing the gap between the number of female law students (about half) and that of female equity partners (lingering around 20 percent). While it’s certainly beneficial for female associates to have women partners to look up to and learn from, the gender of the mentors, Zwisler asserts, is not critical.

“I was mentored very successfully by a man,” says Zwisler. “And I do like to think that I’ve mentored men as successfully as women.” The key is an active fostering of talent, making oneself available to discuss legal strategy as well as career moves, business development, and – regardless of gender – more personal issues such as a sustainable work/life balance.

As our vice president-elect Kamala Harris said so poignantly recently: “While I may be the first woman in this office, I will not be the last.” Zwisler paved a pathway through the wilderness, blasting through prejudices to pursue the life she was meant to live – all the while making sure the path was clear for the next generation of brilliant female lawyers to do the same.