

Women Winners of the Plaintiffs' Bar

By Hannah Hayes

In 1994, a jury awarded \$5 billion in damages to thousands of Alaska fishermen, landowners, and others whose livelihoods were affected by the 1989 Exxon Valdez oil spill. In 1997, Mitsubishi Motors settled with 350 female plaintiffs for \$34 million in what became the largest sexual harassment settlement ever obtained by the Equal Employment Opportunity Commission. In 2001, a wrongful death settlement found the city of Seattle responsible for riots at a Mardi Gras celebration when it became known the police were ordered not to intervene.

What do all these cases have in common? They were litigated or led by women who have stood out nationally in an area of law typically dominated by men. Although statistics may show the numbers of female lawyers lagging behind men in the plaintiffs' bar, these women are nonetheless changing the face of the courtroom trial lawyer.

Breaking into the Boys' Club

Roxanne Conlin recalls when a judge blocked her from filing a claim because he refused to believe a woman could be a lawyer. Twenty-six years later, the civil rights attorney became the first female president of the Association of Trial Lawyers of America (ATLA), where she insisted on participation by women and minorities on all of ATLA's boards.

"My stated goal was to change the face of ATLA," says Conlin, whose Des Moines, Iowa, firm Conlin and Associates specializes in employment discrimination, sexual harassment, and personal injury. "I told them, 'I'm a civil rights attorney—I can't be president of an all-white organization.' That would be wrong."

While acknowledging that the numbers are "not nearly where we ought to be," Conlin says women have made great strides since she graduated from law school in 1966. "The downside is litigation trainers are still discouraging women from pursuing litigation as a career—sometimes overtly, sometimes covertly. I talk a lot to our young women law students, and it's still bad out there. That's disappointing."

Despite the obstacles, Conlin contends many women have advantages in the courtroom. "Juries often hold adverse stereotypes of trial lawyers, and, because women do not meet that stereotype, they often are more credible."

"I think women are wonderful at trial work," says Patricia Benassi of Benassi & Benassi, a Peoria, Illinois, firm that first brought the sexual harassment suit against Mitsubishi Motors. Benassi, the first female attorney to work for the National Labor Relations Board in Peoria, remembers being called "Goldilocks" and "Blondie" by the judge at her first trial. "I encountered discrimination and attitudes from judges, but I also worked with some wonderful people. In a small town, too many people were conservative, but once you proved you were able to do the job, you were accepted."

Bucking the Stereotype

Many women plaintiffs' lawyers say it is important to change the image of the shark-in-the-water litigator who usually is a white male. "If you look at cartoons of lawyers, they all look the same—they're strident, aggressive, loud, and obnoxious," says Karen Koehler, a personal injury lawyer for Stritmatter Kessler Whelan Withey Coluccio.

Her highly publicized suit against the city of Seattle for enhancing danger at the city's Mardi Gras celebrations resulted in significant changes in police policy. "I see that stereotype changing—a lot of the trial colleges are trying to get lawyers not to be loud and strident and aggressive in court, and that's what female lawyers do all the time. We use the other skills of persuasion."

Despite the proliferation of stereotyping trial lawyers, most women agree that being an effective litigator has nothing to do with gender. "There are as many ways to be a good, effective lawyer as there are people who want to be a good, effective lawyer," says Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein LLP.

Cabraser played a leadership role in high-profile cases such as the suit against Dow's silicone gel breast implants and the Exxon Valdez oil spill. "But if you go by stereotyping, women have a great advantage because women have had to learn to listen—listening to judges is more important than talking to judges; listening to what the witnesses are saying is more important than saying what you've already decided you want to say," Cabraser says. "Women have had to learn to do that."

"It's really important to tear down those stereotypes," agrees Rhonda Hill Wilson, whose Philadelphia firm specializes in personal injury and wrongful death. "As an African-American trial lawyer and the victim of stereotypical thinking myself, I think it's harmful and takes away from the real picture, which is whether or not someone was harmed by a deficient or wrongful act."

Wilson stressed that it is "critically important" to have women and minority representation at the plaintiffs' bar because women often are the victims in many wrongful death cases. "We're the ones who end up being harmed more because in the American family, we are the caretakers, and oftentimes our contributions are overlooked or devalued."

Cabraser agrees, pointing out that because they have experienced discrimination, women are better able to recognize changes that need to be made. "Plaintiffs' advocacy would benefit from having more women involved because we have had to make adjustments ourselves to play the game. It's easier for people who have not been successful at operating under stereotypes to change the stereotypical aspects of a system."

Balancing the Load

Despite advances during the last two decades, women still make up only 13 percent of ATLA's membership. "We need to make the female plaintiffs' lawyer more visible," says Koehler, who points out the numbers of minorities are lower than the numbers of women. ATLA's Minority Caucus reports a membership of 2,500, or just over 4 percent of the total membership of 60,000. "It's not a good profession if it's not representative—it's like living in an all-white suburb, and that's really bad."

Maintaining a work/life balance often is cited as a possible reason for the low numbers. "It takes a huge commitment of your time and energy, and it's difficult to do that and everything else that is still expected and demanded and most importantly desired by women," says Judith Livingston, a partner at the New York firm of Kramer, Dillof, Livingston & Moore. The mother of three children, Livingston was the first woman admitted to the Inner Circle of Advocates, a prestigious national organization formed in 1972 to create a forum for the 100 best plaintiffs' lawyers in the United States.

However, achieving this balance is another area where women are changing procedures and perceptions in what previously was a predominantly male culture. Julie Braman Kane, a partner with the Miami firm of Colson Hicks Eidson, is chairman of ATLA's Product Liability Section and the mother of four-month-old twins and a five-year-old. When she was ordered on bed rest for two months prior to the birth of her twins, her partners "stepped right up to the plate and took care of everything that needed to be done. A lot of what we do is taking care of people who have had tragedies in their own families, and we all respect the need to put our families first."

"One of my missions in life is to figure out how to make a litigation practice family friendly," says Kay Bridger-Riley, whose Tulsa, Oklahoma, firm Bridger-Riley and Associates has an in-house day care center, a backup emergency family care service, and even teenage assistants hired to run personal errands. "It's so much more economical than having a lawyer out [of the office], and, whether you're a man or a woman, these things need to be done."

Many other practical factors contribute to the lack of diversity at the plaintiffs' bar. Students coming out of law school with high loans may not be prepared to work on a contingency basis. Furthermore, most plaintiff firms tend to be small with low turnover. And, even with the high number of women graduating from law school, it may be several years before the numbers increase because of the high-risk, high-cost nature of a plaintiffs' law practice.

"Women historically haven't had the capital to open a practice or business," Wilson says. "I would be hopeful that more women would look into it because it's very liberating to speak for people who have no voice. I think women do that well, but, if it's not financially possible, they won't be able to do it."

In addition to the inherent risk involved in plaintiff work, new measures such as tort reform and arbitration agreements make it difficult for women to get the courtroom experience necessary to succeed at the plaintiffs' bar. "For women to have the same opportunity that I did—I don't see that on the horizon," says Lisa Blue, a psychologist and trial lawyer for Baron and Budd, a Texas firm specializing in toxic tort cases. Nonetheless, she points to the numbers of women in law school as reason for optimism. "I think if you were to look at this 10 years from now, it would be quite a different story."

"The death of jury trials generally is a huge factor," agrees Conlin, who encourages new lawyers to get as much courtroom experience as possible if they want to go into criminal law.

Blazing the Trail

As the numbers slowly increase, mentoring has become an important component for women in the plaintiffs' bar. "It's important to have women on the front line and involved in professional organizations so they develop the confidence to be involved and become mentors for other women," says Kathleen Flynn Peterson, a Minneapolis, Minnesota, nurse and medical malpractice attorney for Robins Kaplan Miller and Ciresi.

According to Laura Rose, chair of ATLA's Women Trial Lawyers Caucus, the association's mentoring program is a vital part of its services. "Women look to others who have persevered and are recognized," she says.

Peterson agrees. "Having a mentor made it easier for me to work hard, keep my chin up, and have someone to look up to—it gave me hope that I could be successful in a law

firm. All of these pressures make it difficult for women to stay in [the profession], but at the same time the fact that there are more women now hopefully will encourage more women.”

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