

How Unappealing

An Empirical Analysis of
the Gender Gap among
Appellate Attorneys



How Unappealing

An Empirical Analysis of
the Gender Gap among
Appellate Attorneys

By Amy J. St. Eve and Jamie B. Luguri



The views expressed herein represent the opinions of the authors. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities.

Cover design by Jill Tedhams/ABA Creative Group.
Interior design by Betsy Kulak/ABA Creative Group.

The views expressed herein represent the opinions of the authors. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities.

Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication is intended for educational and informational purposes only.

© 2021 American Bar Association. All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher. For permission contact the ABA Copyrights & Contracts Department, copyright@americanbar.org, or complete the online form at <http://www.americanbar.org/utility/reprint.html>.

www.shopABA.org

A Note from the Authors

Women attorneys are underrepresented in courtrooms across the United States. Though men and women enter the legal profession in equal numbers, recent research has documented a gender gap among attorneys who appear in trial courts and at the Supreme Court. Yet relatively little work has examined whether, and to what extent, there is a gender disparity among those who argue before federal appellate courts. And even less is known about how this gender disparity has changed over time. The research reported here aims to address both of these questions.

We analyzed the number of men and women who argued before the U.S. Court of Appeals for the Seventh Circuit in two years a decade apart. In doing so, we sought to gain a deeper understanding of not only how many women argued before the court, but also who those women were—what kinds of cases they worked on, who they represented, and where they worked.

Mirroring the research on trial and supreme courts, we found evidence of a persistent gender gap among appellate attorneys arguing before the Seventh Circuit. Men arguing before the court outnumbered women nearly three to one—a ratio that has remained largely unchanged in the last decade. While slightly more women argued before the court in 2019 compared to 2009, this change was largely attributable to the public sector. Women were more likely to represent and work for the government. In comparison, the gender gap was the largest among private-sector attorneys—particularly those working on complex civil cases. If the rate of change remains constant, it will be another four *decades* before half of all attorneys arguing before the court are women.

We end the report by making recommendations for closing the gender gap among appellate attorneys. We call on law schools, law firms, corporate clients, and the courts to seriously consider how their practices and culture may be sidelining women. It is our hope that in documenting the gender gap and proposing these targeted changes, this report contributes to the next decade bringing more progress than the last.



Amy J. St. Eve
Circuit Judge of the
United States Court of Appeals for
the Seventh Circuit



Jamie B. Luguri
Associate at Munger,
Tolles & Olson

Foreword on Behalf of the Commission on Women in the Profession

For more than three decades, the ABA Commission on Women in the Profession has been conducting research to evaluate and advocate for the advancement of women in the legal profession. In 2015, we issued our landmark study *First Chairs at Trial: More Women Need Seats at the Table*, authored by Stephanie Scharf and Roberta Liebenberg, both former Commission Chairs. Using data from the United States District Court, Northern District of Illinois, *First Chairs at Trial* found that men outnumbered women as lead counsel in court proceedings by a factor of three to one, and made suggestions for narrowing that gap.

Considering the many changes in our profession since 2015, however, we believed strongly that the findings in *First Chairs at Trial* needed to be updated, and recommendations adjusted to reflect any changes in the data. We were thrilled when Judge Amy St. Eve and her colleague Attorney Jamie Luguri approached us with their study *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys* and requested our collaboration in publishing the report. Although St. Eve and Luguri are looking at data from cases in the 7th Circuit Court of Appeals, not a trial court, we expected the data to show improvement in the number of women attorneys taking on lead roles since the *First Chairs* study was issued in 2015. Unfortunately that is not the case.

The type of data driven research conducted by Judge St. Eve and Attorney Luguri, is crucial to understanding gender disparity in the legal profession. Without data, it is impossible to measure and create change. The results in *How Unappealing* show that despite a strong pipeline of talented women attorneys, men outnumber women arguing before the Seventh Circuit nearly three to one. St. Eve and Luguri compared data from 2009 with data from 2019 and sadly the results showed a gender gap that has barely

improved over the last decade. There are pockets of positive change identified in certain practice areas and in connection with certain workplace settings. *How Unappealing* breaks the data down by the type of client, legal employer and area of the law highlighting the areas where the change is most needed and providing strategies to bring about that change. The Commission on Women in the Profession looks forward to being part of the solution and we hope that this enlightening report will be read by the decision-makers at public and private legal employers across the country. Thank you Judge St. Eve and Attorney Luguri for providing the tools to keep the conversation for change moving forward.



Maureen Mulligan
Associate Justice,
Massachusetts
Superior Court;
Chair,
ABA Commission on
Women in the Profession,
2020-present

How Unappealing

An Empirical Analysis of the Gender Gap among Appellate Attorneys

By Amy J. St. Eve and Jamie B. Luguri¹

In 2015, the American Bar Foundation and the ABA's Commission on Women in the Profession published *First Chairs at Trial: More Women Need Seats at the Table*, a groundbreaking report that empirically demonstrated the lack of women as lead counsel in the Northern District of Illinois.² The report confirmed what Judge St. Eve, as a judge in the district at the time, saw every day in the courtroom. She routinely looked out from the bench and saw a sea of navy and dark gray male suits. A few years later, her bench changed, but what she saw did not. Now an appellate judge, Judge St. Eve looks out from the bench and sees the same gender imbalance among those arguing before the Seventh Circuit as she did among those trying cases in the district court.

That experience inspired this report. We aim to add to a growing body of research over the last two decades that has demonstrated a consistent and persistent pattern of gender disparity in the legal profession.³ It has been over 40 years since women began entering the legal profession in large numbers.⁴ And in recent years, women have begun to slightly outnumber men in law school⁵ and make up almost half of all associates entering law firms.⁶ There is a pipeline of talented and dedicated women entering the legal profession—but that pipeline is leaking. While there is gender parity among those entering the profession, a disparity emerges among those who stay. Companies and the law firms they hire, for example, can fail to provide junior women attorneys with the opportunities and building blocks for success, and so women become more likely to leave

the profession.⁷ Some studies show that if they stay, women may be paid less⁸ and face hurdles in advancing to leadership positions.⁹ In 2019, women made up only 21% of all law firm equity partners and 19% of all managing partners.¹⁰

The policies, practices, and culture that lead to this leaky pipeline damage women, clients, and the legal profession generally.¹¹ Women attorneys are much more likely to report negative work experiences due to their gender—for example, recent research shows that women working at law firms are four to eight times more likely to report being overlooked for promotions, lacking access to business development opportunities, and being denied salary increases or bonuses (compared to men).¹² This lack of advancement contributes to a high rate of attrition, which in turn decreases the number of experienced women attorneys. The negative impact of this attrition reaches beyond the women themselves and their law firms—it reduces the talented pool of women that clients can draw from to try their cases, argue their appeals, and close their deals.¹³ And more generally, not only does a lack of diversity in the legal profession narrow the pool of expertise and background brought to bear on client issues, it also undermines perceptions that the legal system is fair and equitable.¹⁴

Recently, attention and research have begun to focus on gender diversity in the courtroom. This research has shown that, across a variety of courts and jurisdictions, attorneys are disproportionately men.¹⁵ For example, at both state and federal trial courts in New York, and at a federal district court in Illinois, women attorneys made up about one-quarter of all lead counsel.¹⁶ Additional research has underscored that the gender imbalance extends beyond trial courts to the highest courts in the country. Women made up only 27% of all lawyers arguing at the New York Court of Appeals according to a study conducted in 2020.¹⁷ Women are similarly less likely than men to argue before the highest courts in California (35%),¹⁸ Minnesota (30%),¹⁹ and Missouri (22%).²⁰ The U.S. Supreme Court, the highest court in the country, has the starkest gender imbalance—only 18% of all attorneys arguing at the Court were women for the 2020–2021 term.²¹ This gender gap has not narrowed appreciably in the last decade.²²

This research on the gender imbalance in courtrooms offers insights into both the causes and consequences of the leaky pipeline of women attorneys. At various levels in both state and federal courts, for example, studies have shown that there is a greater gender imbalance among attorneys representing private parties compared to attorneys representing or working for the government.²³ This disparity suggests that interventions need to be targeted at and tailored to the private sector, including corporate clients and the law firms they hire.

Measuring and tracking gender imbalances in courtrooms across the country can therefore offer insights into both the scope of the disparity and potential solutions. While other work has focused specifically on trial courts and supreme courts, relatively little is known about the magnitude of the problem in federal appellate courts. This study seeks to fill this hole by offering an in-depth and longitudinal analysis of the gender of attor-

neys arguing before a federal appellate court—the Seventh Circuit Court of Appeals.²⁴ It adds to a small but growing body of research illustrating that gender disparities exist and persist at the appellate level. In the first six months of 2020, for example, only about 20% of attorneys arguing before the U.S. Court of Appeals for the Federal Circuit were women.²⁵ The gender disparity at the Federal Circuit was particularly pronounced for women working in the private sector—in the last decade, women have argued less than 10% of companies’ patent appeals.²⁶ Similarly, during the last several months of 2019, about 25% of the attorneys arguing before the Second Circuit were women.²⁷ These numbers suggest that federal appellate courts are not immune to the gender disparities that plague the other levels of federal courts. The current study aims to build on this prior work by both examining gender representation in a federal appellate court over time and investigating how different objective factors might relate to that representation.

In undertaking this study, we sought to go beyond merely measuring the number of women who argued before the Seventh Circuit and gain a deeper insight into who those women are—whom they represent, whom they work for, and what kinds of cases they work on. By understanding how gender relates to these factors, we hope to gain insight into what leaks need to be fixed in the pipeline. In *First Chairs at Trial: More Women Need Seats at the Table*, the authors focused on similar factors because they were “readily available,” with the hope that their research of the gender dynamics in a federal district court would “be replicated in various jurisdictions and over time.”²⁸ Here, we have taken up that call to action on both fronts. We conducted an in-depth analysis of the women and men who argued before the Seventh Circuit in two separate years a decade apart. This method allowed us to measure the magnitude of the gender disparity that exists today, as well as the factors that may affect the rates of women arguing at the federal appellate level. It further allowed us to gain a deeper understanding of how things have (or have not) changed in the last ten years. To gain further insight into this question, we went beyond the data and spoke with several appellate judges and practitioners—in both the private and public sector—about their experiences. It is our hope that understanding the trajectory of the gender disparity among attorneys arguing before the Seventh Circuit in the last decade will not only show where we are today but also illuminate a path forward.

Study Design and Methodology

We sought to examine how often women argue before the Seventh Circuit, with a focus on whom those women represent, where they work, and the kinds of cases they work on. To contextualize where things stand today, we also looked to the past. We focused on two years a decade apart—2009 and 2019—so that we could gain a fuller picture of

how things have changed and how they have stayed the same when it comes to women attorneys arguing at the appellate level.

We began by compiling all the cases argued in front of the Seventh Circuit in 2009 and 2019. We then created a database that included coded characteristics of both the cases and the lawyers who argued them. We relied on public information in the CM/ECF case management system²⁹ used by federal courts to gain a fuller picture of the cases and attorneys.

Our data set included every attorney who argued before the Seventh Circuit in both 2009 and 2019—a total of 2,767 attorney appearances across both years.³⁰ Like other researchers in this area, we were interested in gender disparities in the courtroom. At the appellate level, this is limited to the lawyer or lawyers who argue the case—unlike at the district court, where attorneys who are on the docket but are not listed as lead counsel may nonetheless argue motions or examine witnesses. Thus, we focused specifically on attorneys who argued before the court; attorneys who merely appeared on the docket but did not argue the case were not included in our sample. We coded for various characteristics of these attorneys, including:

- a) **Gender.** We began by coding attorneys as either men or women based on their first (and, if available, middle) names. If the name was ambiguous, we conducted an internet search for the attorney. In the relatively rare cases where an internet search was unsuccessful, we listened to the recorded oral argument to ascertain the attorney's gender. We relied on both how the court addressed the attorney and the attorney's voice. Two different people coded each attorney independently to ensure accuracy. All disagreements—of which there were few—were resolved by listening to the oral argument. This methodology meant that we had to treat gender as binary and were not able to assess attorneys' self-reported gender identity. We recognize that relying on name, photographs, or how the court addresses an attorney at oral argument is an imperfect measure that lacks nuance.³¹
- b) **Practice setting.** We coded whether the attorneys worked for the government or in private practice.³² If they worked for the government, we coded for whether it was at the federal, state, or local level. If they worked in private practice, we coded whether they worked at an AmLaw 100 firm,³³ an AmLaw 200 firm, or a smaller firm, or as a solo practitioner.³⁴
- c) **Party.** We coded the nature of the party the attorney represented, including whether the client was an individual, a business, or the government. If the lawyer was representing the government, we coded whether it was the federal, state, or local government.³⁵
- d) **Side.** We coded for whether the lawyer was representing the appellant or the appellee.³⁶
- e) **Appointment.** We coded whether the court appointed the attorney.

- f) **Repeat player.** We coded whether the attorney argued multiple times or only once before the Seventh Circuit in 2019. If the attorney argued multiple times, we coded how many times the attorney argued.

We also focused on various case characteristics, including:

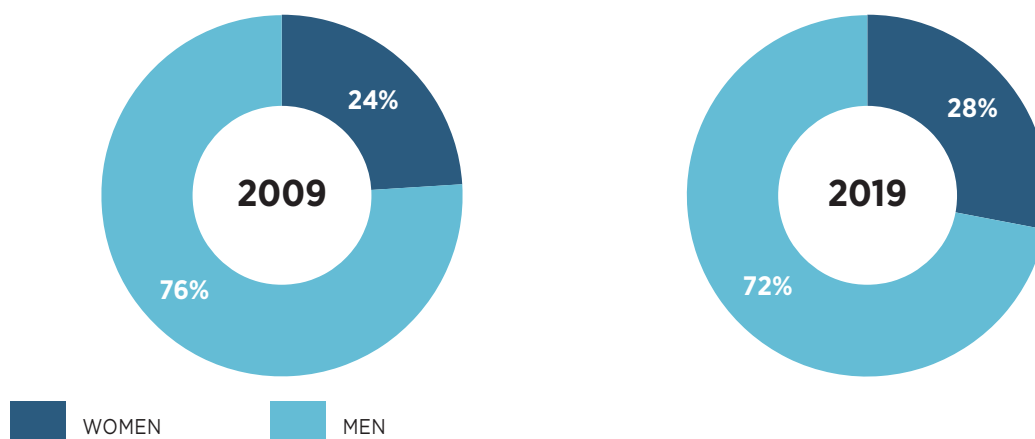
- a) **Case type.** Most cases were coded as either civil or criminal. Other case types included appeals from federal administrative agency decisions, as well as bankruptcy, Social Security, prisoner petition, and habeas cases.³⁷
- b) **Civil case category.** If the case was civil, we coded for subject matter based on the CM/ECF-generated codes for the nature of the suit. In total, there were over 56 unique types of civil cases. We grouped related cases together and created the following categories: civil rights, contracts, prisoner cases, intellectual property (copyright/trademark) cases, personal injury, antitrust/securities, and jobs.³⁸ We grouped related cases together so that there was an adequate number of each category in order to reliably test for gender effects. We analyzed case categories only if there were more than 20 of that kind of case.
- c) **High-dollar cases.** If a non-prisoner case had an AmLaw 100 or 200 firm on at least one side, we coded it as being a high-dollar case. Though an imperfect measure, we considered the involvement of a Big Law firm to indicate that the case was complicated enough to justify the expense of the firm, and therefore a firm's involvement could serve as a proxy for complexity of the legal issue(s). We acknowledge that this measure is both over- and underinclusive—just as not all cases involving AmLaw 100 or 200 firms are complex, many cases argued by the government and small firms are very complex.
- d) **Class action.** We coded whether the case was a class action.³⁹
- e) **Attorney gender composition.** For all cases in 2019, we coded whether the case had only attorneys of the same gender arguing the case or whether it had both men and women attorneys. This allowed us to compare the number of cases that were argued by attorneys of the same gender to the number of cases that had attorneys of both genders.

This methodology allowed us to create a data set that was able to not only capture the gender breakdown of appellate attorneys arguing at the Seventh Circuit, but also reflect more specifics about where these attorneys work, whom they represent, and the kinds of cases they undertake.

Results

Men and women have not argued at the same rate before the Seventh Circuit over the past decade. In 2009, about one-quarter of all attorneys who argued before the Seventh Circuit were women—specifically, 24%. This means that for every three men who argued before the court, only one woman argued. Ten years later, this number only marginally increased to 28%. We examined the gender composition of each case in 2019 and found that only 8% of the cases had women attorneys arguing solely against other women attorneys. That means that 92% of the cases the Seventh Circuit heard by oral argument in 2019 had at least one man. Further, fully half (50%) of all the cases heard by the Seventh Circuit had no women at all and were argued only by men.

Overall Representation



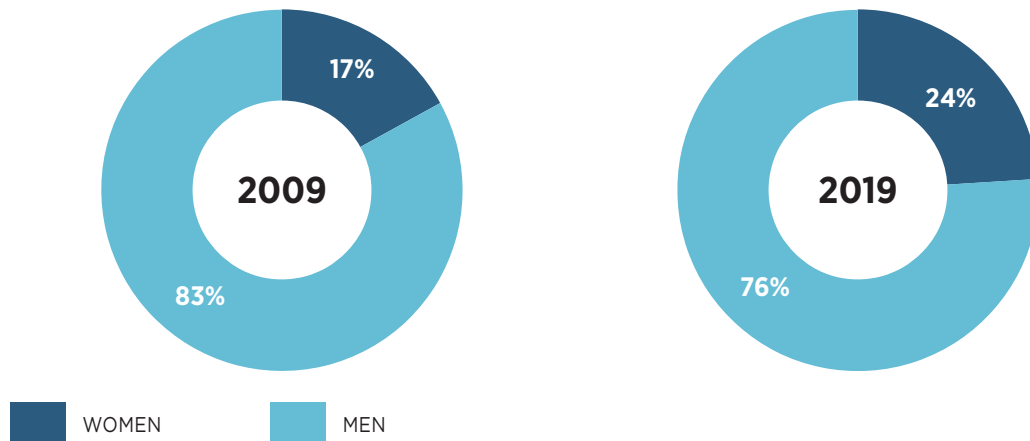
The next three sections seek to further understand what is driving this gender disparity and what can be done to improve it. First, we break down the results by type of case to examine whether women were more or less likely to argue certain kinds of cases. Next, we move to examining the relationship between an attorney's gender and the kind of client he or she is likely to have represented. Finally, we look at the relationship between gender and different practice settings.

1. The Type of Case Matters

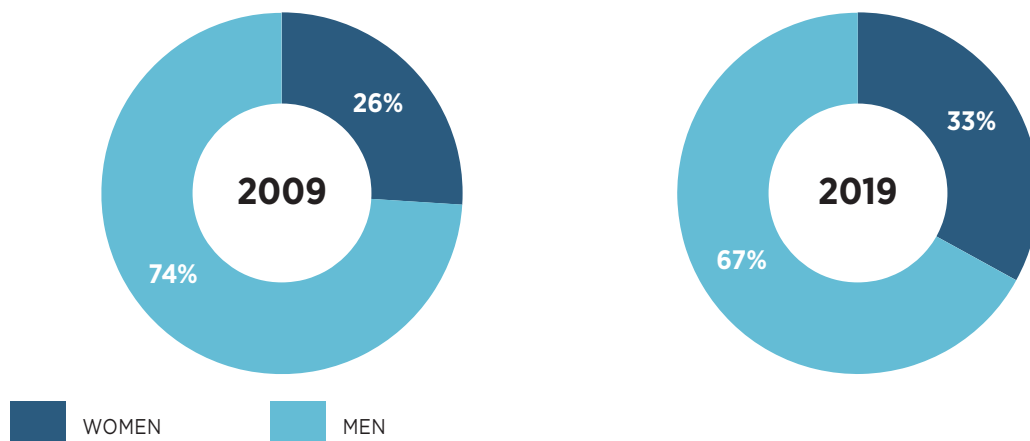
The gender disparity among men and women lawyers who argued in front of the Seventh Circuit was notably larger in civil cases than criminal cases.⁴⁰ In civil cases, only 17% (in 2009) and 24% (in 2019) of all attorneys who argued before the court were women. In criminal cases, women comprised over one-quarter of all attorneys who argued in 2009

(26%) and fully one-third of all attorneys who argued in 2019 (33%). Put another way, in both 2009 and 2019, the gender disparity was 9% greater in civil as compared to criminal cases. In 2009, 26% of all attorneys arguing criminal cases were women, compared to only 17% in civil cases. In 2019, the overall percentage of women was higher, but the difference between criminal and civil remained constant: 33% vs. 24%.

Civil Cases

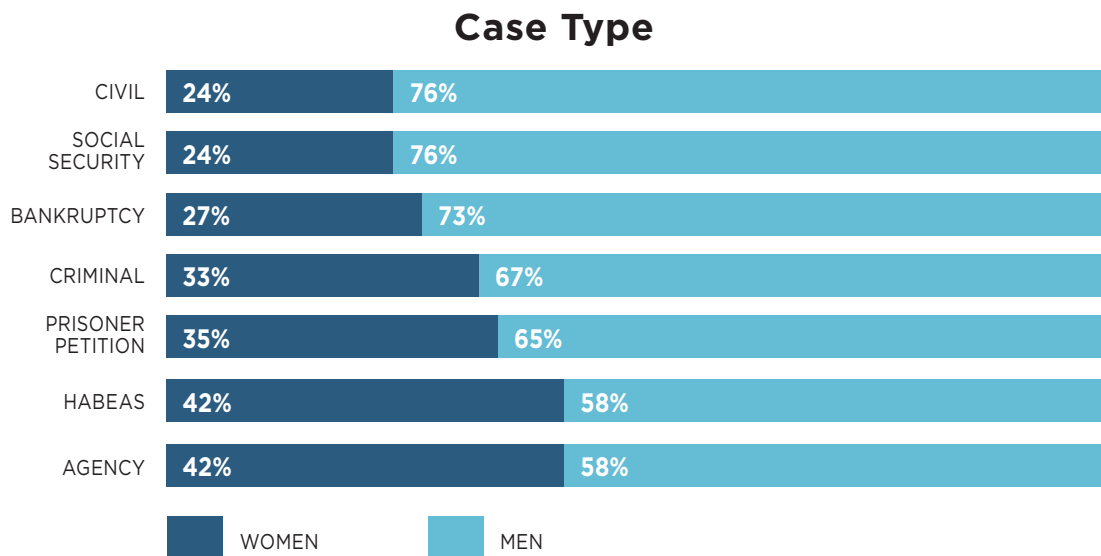


Criminal Cases



Looking beyond civil and criminal cases, we also analyzed the number of women attorneys in other kinds of cases—including agency cases (which were largely immigration cases), as well as bankruptcy, Social Security, prisoner petition, and habeas cases. In 2019, for example,

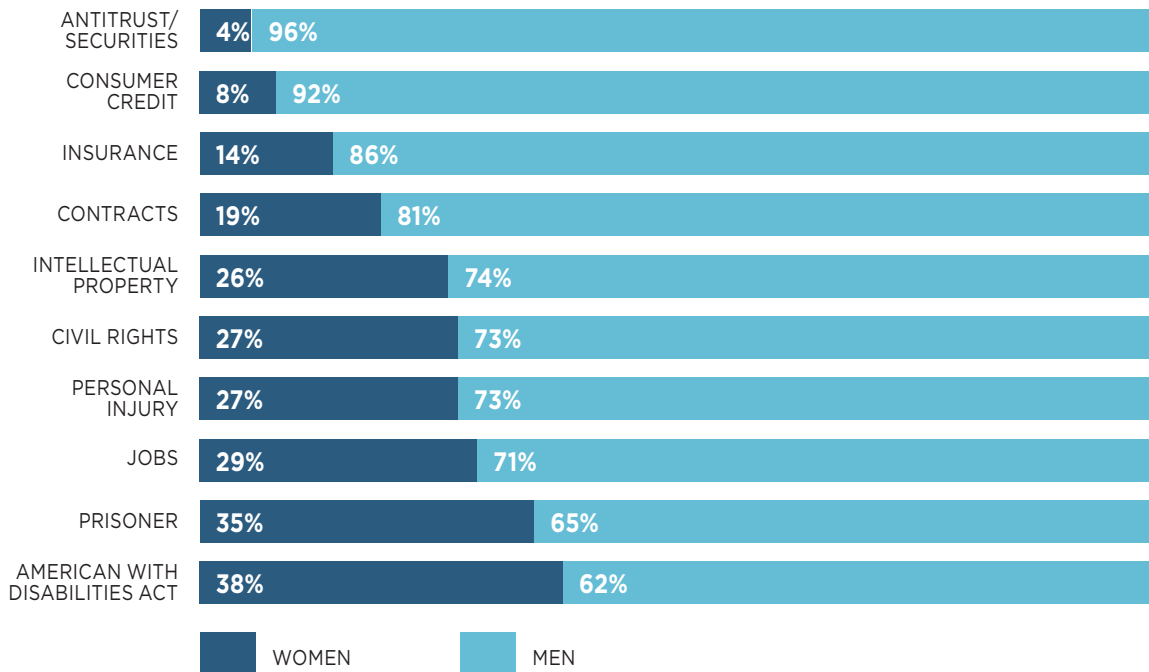
as the following chart shows, the percentage of women varied significantly across case type. While women comprised only about one-quarter (24%) of attorneys arguing in civil and Social Security cases, they made up one-third or more of attorneys arguing in criminal, prisoner petition, habeas, and agency cases.⁴¹



Next, we analyzed the number of men and women who argued different types of civil cases in 2019. We found a substantial gender effect depending on the subject matter of the case. While women did not comprise the majority of attorneys in any one type of case, women comprised barely more than one-quarter of all attorneys arguing intellectual property (26%), personal injury (27%), and jobs (29%) cases. Women comprised slightly more than one-third of all attorneys arguing prisoner (35%) and Americans with Disabilities Act (38%) cases. Conversely, women made up less than one-fifth of all attorneys arguing contracts (19%) and insurance (14%) cases and less than one-tenth of all attorneys arguing consumer credit (8%) and antitrust/securities (4%) cases.

This data shows that while women are less likely to argue civil cases compared to criminal cases generally, the type of civil case matters—the gender disparity was starker in some areas than others.⁴² Notably, women were considerably less likely to argue the types of cases that normally involve businesses—such as antitrust/securities, contracts, insurance, and consumer credit cases. In contrast, women were relatively more likely to argue the kinds of cases that involve individuals, such as personal injury, jobs, prisoner, and Americans with Disabilities Act cases. The one exception to this general trend is women’s relatively high representation in intellectual property cases.

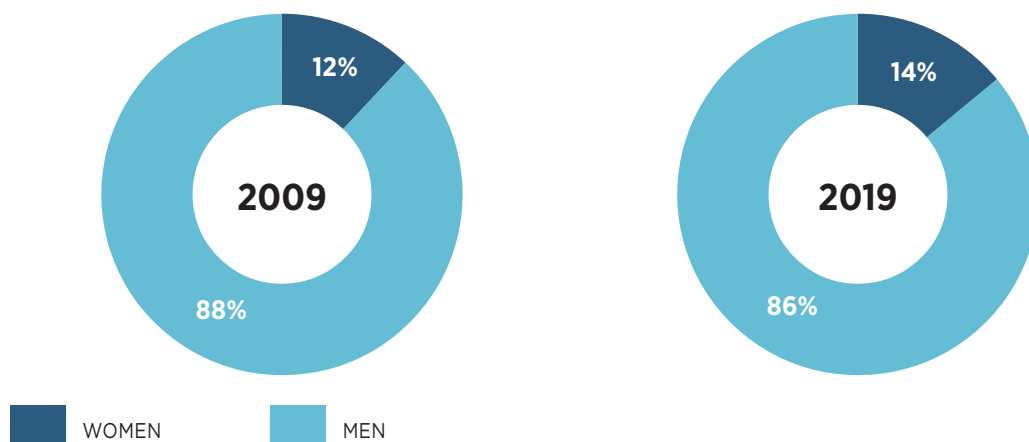
Civil Case Type



The types of cases that are often perceived to be more complex—such as antitrust and insurance cases—had a lower percentage of women taking the lead at oral argument. Women argued appeals for only 4% of antitrust/securities cases and 14% of insurance cases.

We also examined the gender breakdown for another type of case that is generally thought to be legally complicated: class actions. We found that women comprised only 12% (in 2009) and 14% (in 2019) of all attorneys arguing class-action cases.

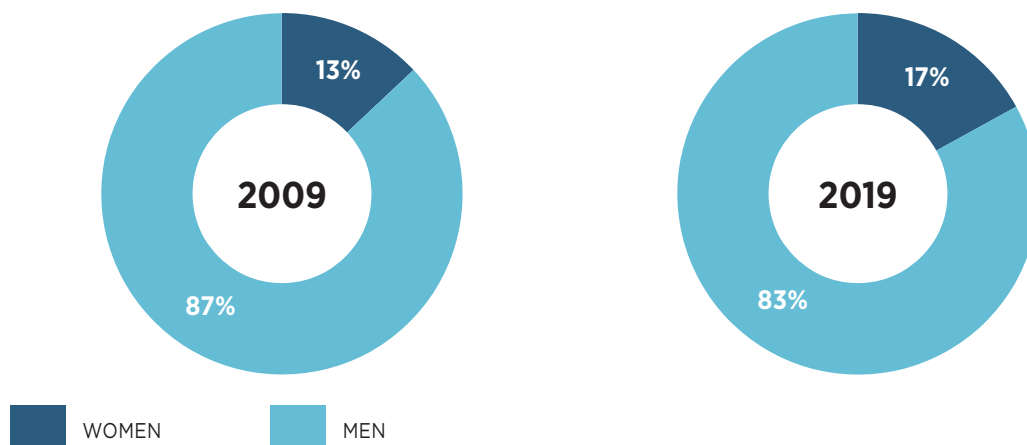
Class Actions



Similarly, we see a marked gender disparity for the cases we coded as high-dollar, which were non-prisoner cases that had an AmLaw 100 or AmLaw 200 lawyer on at least one side. In 2009, only 13% of all attorneys who argued these cases were women. In 2019, 17% were women.

Thus, using three different proxies for case complexity—type of case (e.g., antitrust cases), structure of case (class actions), and involvement of a large law firm—we find an especially marked gender gap in civil cases typically viewed as complex.

High-Dollar Cases



In sum, about one-quarter of all attorneys who argued before the Seventh Circuit were women. Over the last decade, while marginal progress has been made, the gains are small. Putting these numbers in a broader context, if the rate of change remains constant, it will take nearly *four* more decades—until 2059—until women comprise 50% of all attorneys arguing before the Seventh Circuit. And for the more complex civil matters, gender parity will take even longer.

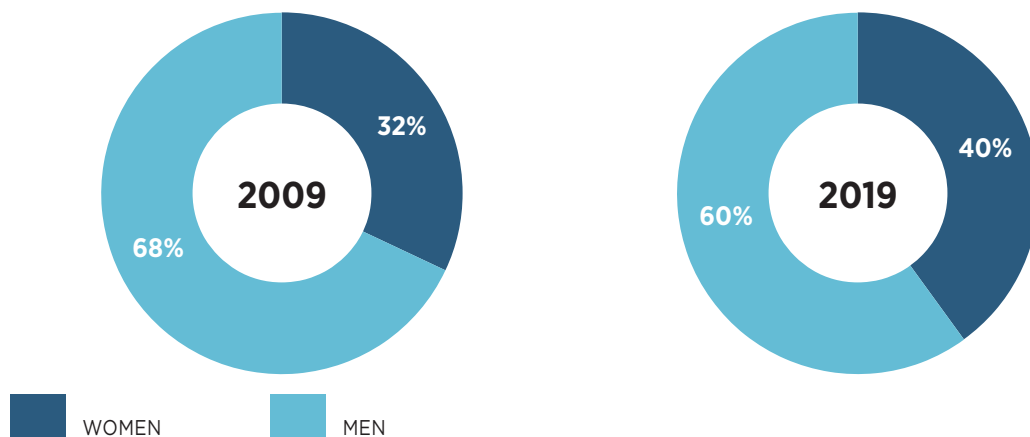
2. The Type of Client Matters

Given the variation across types of cases, we wanted to dig deeper and understand whether some of that variation can be explained by the type of client the attorneys represented. Put another way, did the men and women who argued before the Seventh Circuit represent the same kinds of clients? In short, the answer is no.

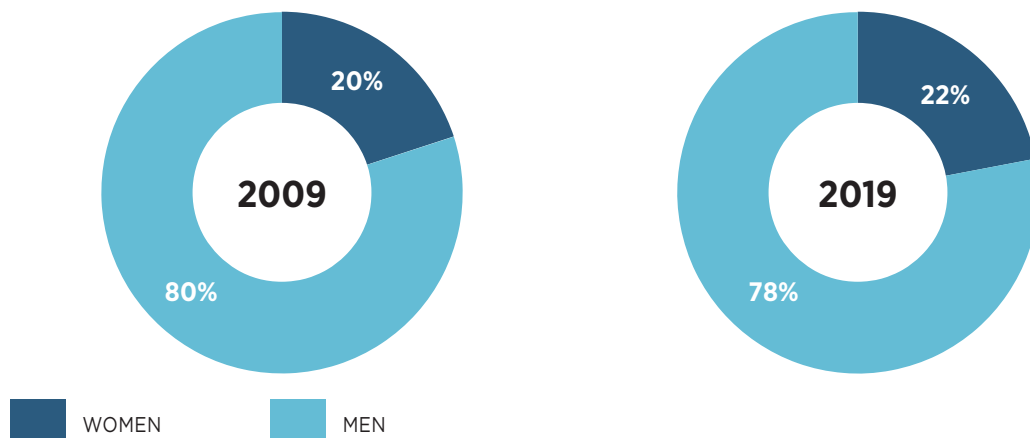
Women who argued before the Seventh Circuit were much more likely to represent the government at the federal, state, and local levels. This was true in both 2009 and 2019. In 2009, only 20% of all attorneys who represented non-governmental clients

were women. In contrast, nearly one-third (32%) of all attorneys who represented a governmental entity were women. In 2019, the difference was even greater—while women comprised only 22% of all attorneys who represented non-governmental clients, they comprised 40% of all attorneys who represented a federal, state, or local government. In other words, an attorney representing a government at oral argument in 2019 was nearly twice as likely to be a woman than an attorney representing a non-governmental entity.⁴³

Client Type: Government



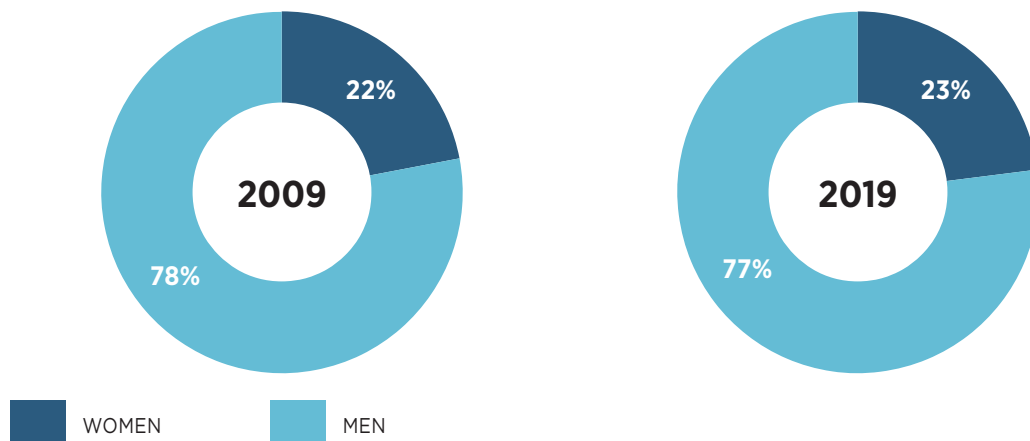
Client Type: Non-Government



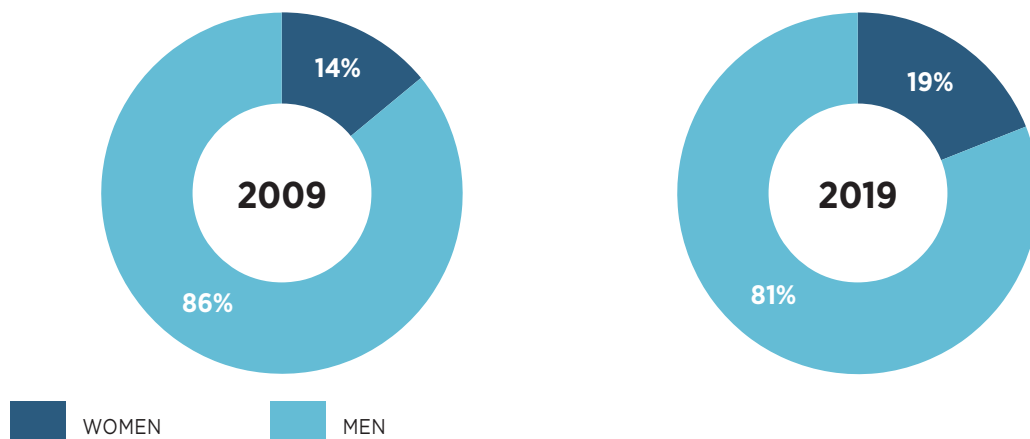
To get a better sense of who these governmental and non-governmental clients were and how that related to attorney gender, we broke each category down further. For non-governmental clients, we coded whether the client was an individual or a business.⁴⁴ For individual clients, the percentage of women attorneys stayed relatively constant in the

last decade—in 2009, 22% of all attorneys who argued on behalf of individual clients were women, and in 2019, 23% were women. For businesses, in 2009 only 14% of all attorneys who represented businesses were women, and the percentage increased to 19% in 2019.

Individuals

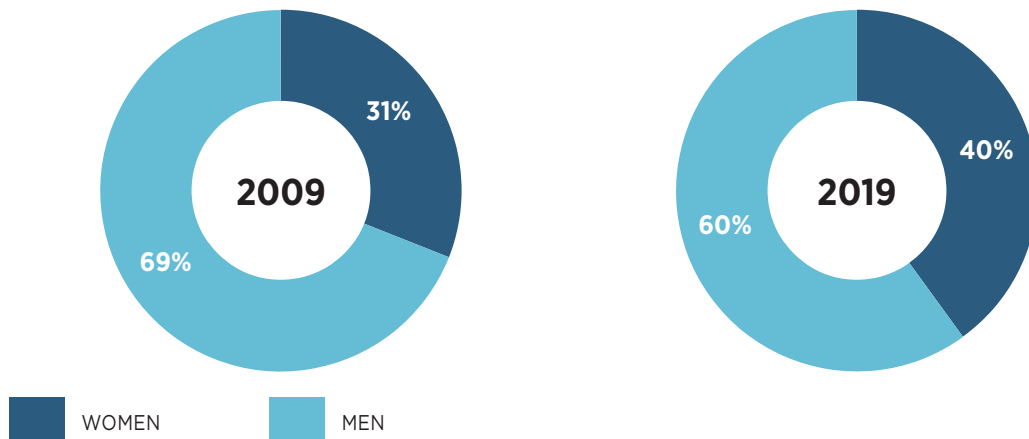


Businesses

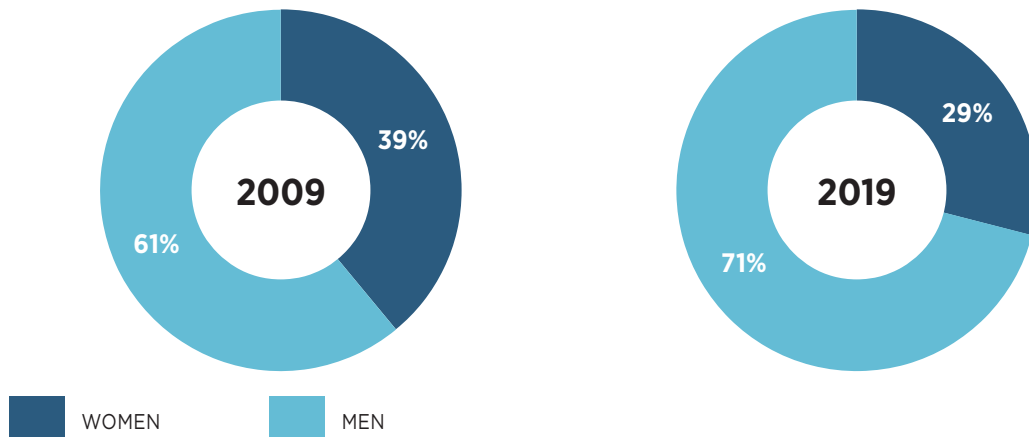


For government clients, we coded whether the client was the federal, state, or local government. The federal government comprised about two-thirds of all governmental clients. In 2009, 31% of all attorneys who represented the federal government were women. In 2019, this number increased to 40%. For state governments, the percentage of women actually decreased over time: from 39% to 29%. Local government clients showed the opposite trend—30% of all attorneys who represented a local government at oral argument were women in 2009, and this increased to 44% in 2019.

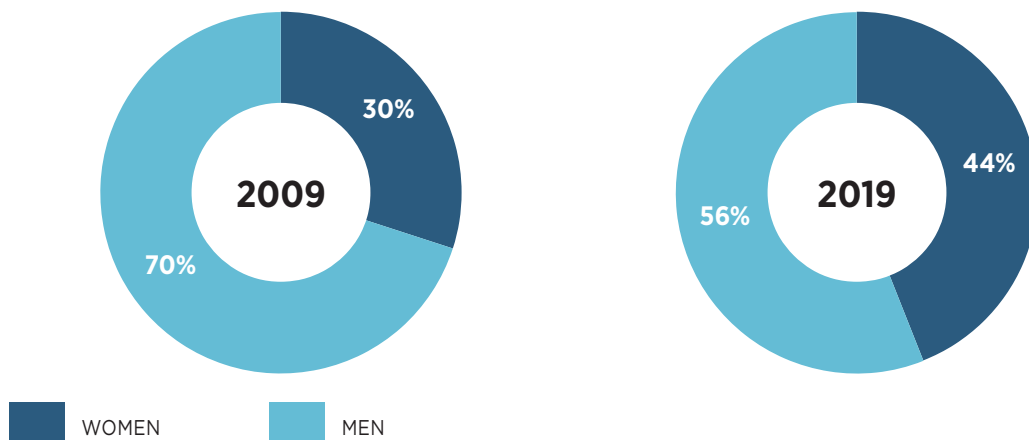
Federal Government



State Governments



Local Governments



Another way to examine the relationship between attorney gender and the type of clients represented is to look across all men and women in our sample and break down the chances that they represented a government. In other words, instead of separating cases by whether the client was a government or not and examining the percentages of women and men who represented each type of client (as described previously), we can look at all of the women and men in the sample and examine what percentage of them represented a government. In 2019, about one-third (29%) of all men who argued in front of the Seventh Circuit represented a federal, state, or local government. In contrast, one-half of all the women (50%) represented a federal, state, or local government when they argued before the court.

Overall, the data shows that women were much more likely to represent a government at oral argument than to represent individuals or businesses. This was true both in 2009 and in 2019. The contrast, however, was even more pronounced in 2019. While the number of women who argued appellate cases on behalf of federal and local governments increased significantly in the last decade, the number of women who had that role for non-government clients remained relatively stagnant. These results help shed light on the gender differences we observed in case types in the previous section. When the government was necessarily a party to an action—such as criminal, habeas, and agency cases—there generally were a higher percentage of women attorneys arguing those cases because women were more likely to represent the government than individuals or businesses.

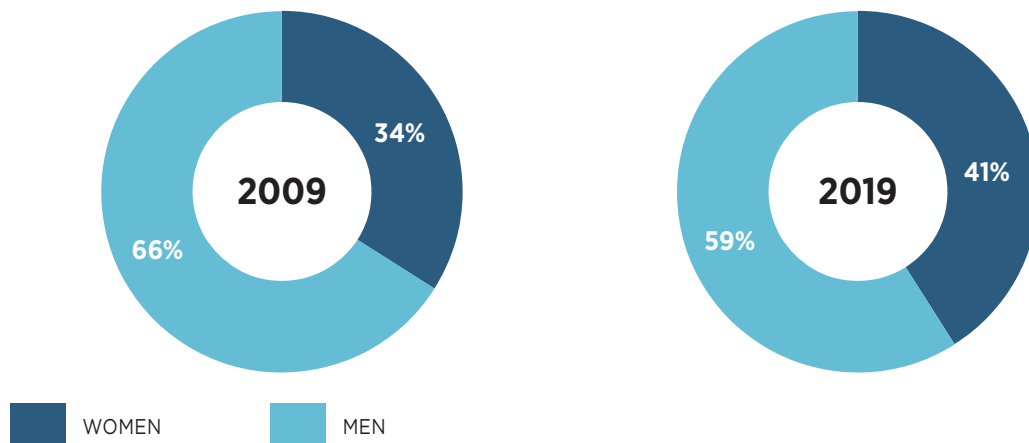
3. The Practice Setting Matters

In this section, we move from looking at who the attorneys represented to where they worked. While many lawyers who represented the government at oral argument also worked for the government, this was not necessarily the case (especially on the local level, where counties and municipalities often hire private firms). Further, some attorneys represented an individual at oral argument but nonetheless worked for the government—like public defenders. Analyzing the relationship between practice setting and gender gives us a deeper and more nuanced understanding of the factors at play in both government and private practice.

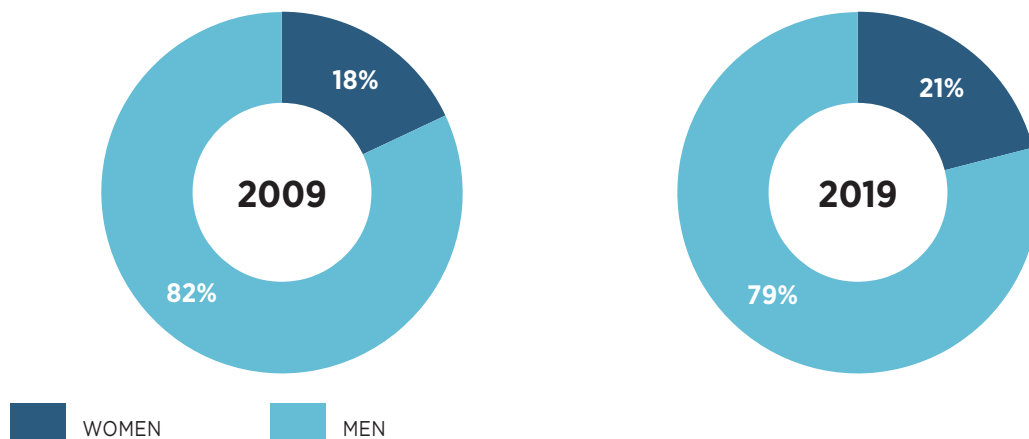
When we examine whether an attorney who argued before the circuit worked for a governmental or non-governmental entity, the pattern of results for practice setting mirrors those for client type. In both 2009 and 2019, the percentage of women was higher among attorneys who worked for the government. Specifically, women made up 34% (in 2009) and 41% (in 2019) of all attorneys who worked for the government. Conversely, they comprised only 18% (in 2009) and 21% (in 2019) of all attorneys who worked for non-governmental entities. Another way to explore the relationship between attorney gender and workplace is to break down the data by gender and examine where the men and women in our sample worked. If an attorney who argued before the court was a man,

there was a 30% chance he worked for the government. If an attorney was a woman, however, there was a 48% chance that she was a government employee.

Governmental Workplace

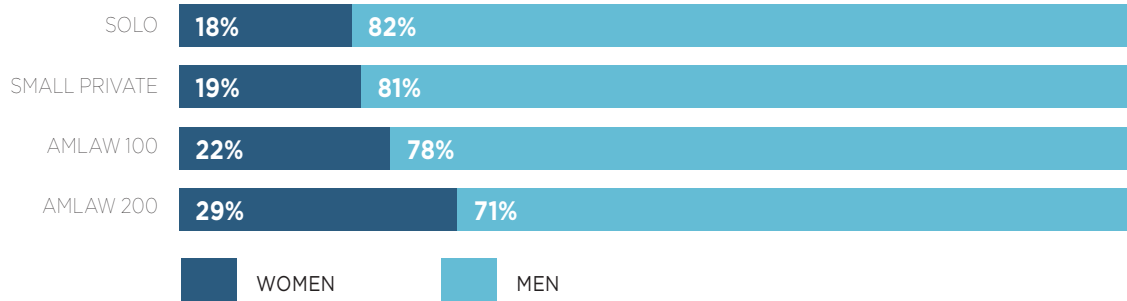


Non-Governmental Workplace



Digging into the non-governmental practice settings, women comprised a slightly higher percentage of lawyers from AmLaw 100 and 200 firms compared to smaller firms or solo practitioners. Focusing on 2019, 22% of all AmLaw 100 and 29% of all AmLaw 200 attorneys who argued before the Seventh Circuit were women. In comparison, 19% of all attorneys who worked at smaller private firms and 18% of solo practitioners were women.⁴⁵

Private Practice Setting



The fact that an attorney who worked for the government was more likely to be a woman helps explain why repeat players were also slightly more likely to be women compared to single-argument attorneys. Of the 895 unique attorneys who argued before the Seventh Circuit in 2019, 115 (or 11%) argued more than once. Women comprised 30% of these repeat players but only 26% of the single-argument attorneys. Given that many of the attorneys who argued frequently before the court were federal employees (assistant U.S. attorneys or federal public defenders), it makes sense that the slightly higher percentage of women among repeat players reflected the higher percentage of women among the government employees who argued before the Seventh Circuit.

In sum, the percentage of women arguing appeals was much higher among attorneys who worked for the government. In private practice, the number of women was lower across the board, though the gender disparity was greater among solo practitioners and smaller law firms compared to AmLaw 100 and 200 firms. Like the pattern of results for client type, this difference among practice settings has increased over time—while the percentage of women from private-practice settings has minimally increased in the last decade, the percentage of women among government attorneys has shown greater improvement.

Summary of Findings

Over the past decade, men were nearly three times more likely to argue before the Seventh Circuit than women. No matter how we sliced the data, women never outnumbered men. But the size of the gender gap varied significantly depending on the nature of the case, the client represented, and the practice setting of the attorney.

Women argued more often in criminal cases and other cases that involved the government—like immigration and habeas cases—and at lower rates in civil cases. And among civil cases, the gender gap was particularly pronounced in cases that may be perceived as complex due to the structure of the case (class actions), its content (e.g., antitrust), or money at stake (as indicated through the involvement of a major law firm).

Women were more likely to argue cases that involved the government, especially federal and local governments. An attorney representing the government was twice as likely to be a woman (compared to attorneys who represented non-governmental entities). Similarly, if an attorney worked for the government, this nearly doubled the chance that the attorney was a woman than if the attorney worked elsewhere. Among all the women attorneys who argued in front of the Seventh Circuit in 2019, nearly half were government lawyers.

The pattern of results holds true for both 2009 and 2019. Though we examined two years that were a decade apart, we found a disappointing degree of change. The gender gap that existed in 2009 largely persists today. While there have been marginal gains, change has been slow. Generally, the slightly higher rate of women who argued in 2019 seems to be largely due to an increase in women working for or representing the federal and local governments in court. There is little evidence that the gender gap among attorneys working in the private sector has narrowed in the last decade.

If the rate of change remains constant, it will be another four decades before 50% of attorneys arguing cases before the court are women. Even though men and women have been graduating from law school and entering private firms at similar rates for years, the gender disparity among appellate attorneys persists. That this gender gap shows little sign of improvement over the last decade compels action. It is our hope that this work builds on and adds to a growing body of research aimed at identifying and addressing the gender imbalance in the legal profession. In the next section, we create a roadmap for law schools, law firms, clients, and courts by recommending suggestions for change aimed at increasing the number of women arguing at the appellate level.

A Roadmap for Change

“Despite the encouraging and wonderful gains and the changes for women which have occurred in my lifetime, there is still room to advance and to promote correction of the remaining deficiencies and imbalances.”

—Justice Sandra Day O’Connor

In the last 40 years, a strong pipeline of talented women entering the legal profession has developed. Despite these advances, women continue to be underrepresented in leadership positions and in the courtroom. This gender disparity has proved to be a pernicious and persistent problem. Significant time, energy, and research have been devoted to documenting the lack of gender diversity and proposing innovative, empirically informed solutions.⁴⁶ Despite these efforts, there is little evidence of meaningful improvement—the leaks in the pipeline have not been fixed. According to Judge Diane Wood, who has been on the Seventh Circuit for over 25 years and was its first female chief judge, change has definitely occurred—“but it has been a slow dribble” rather than a stream. Similarly, Judge Ilana Rovner, who was the first woman appointed to the Seventh Circuit almost 30 years ago, has noticed a change over the years, but it has been slow.

This study bears out Judge Wood’s and Judge Rovner’s observations. Mirroring the gender representation in trial and supreme courts, we found a gender disparity among appellate attorneys arguing before the Seventh Circuit—men were almost three times more likely to argue before the court than women. The gender imbalance was particularly pronounced among attorneys from the private sector, especially those working on cases perceived as complex. And while women argue at slightly higher rates today than a decade ago, the improvement has been small and largely attributable to the public sector. This finding is consistent with a recent study on gender representation at the Federal Circuit, which found that in the last decade the percentage of women arguing before the court and working for the government has grown at a rate that far outpaces women in the private sector.⁴⁷ According to Annie Kastanek, the chief of appeals for the Criminal Division of the U.S. Attorney’s Office for the Northern District of Illinois, women are well represented in her office in both its junior ranks and leadership roles. This study demonstrates that while the federal government’s pipeline of women attorneys has grown over the last decade, unfortunately the private sector has not kept up.

The low rate of women attorneys arguing before the Seventh Circuit is particularly notable given the composition of the judges in front of whom they were arguing. Like the legal profession generally, there is a gender imbalance among federal judges. Men outnumber women on the federal bench, but over time this gap has narrowed; today, about one-third of all active federal judges are women.⁴⁸ While more progress is needed to close

this “gavel gap,”⁴⁹ the number of women judges on the Seventh Circuit in 2019—45%—stands in stark contrast to the number of women attorneys who argued before it (28%). Put another way, in 2019, women comprised nearly one-half of all judges on the circuit but only slightly more than one-quarter of the attorneys who argued before it.

It is also important to note that the low rate of women arguing before the Seventh Circuit likely *underestimates* the gender gap across all federal appellate courts. In other words, even though the data revealed that men are about three times more likely than women to argue in front of the Seventh Circuit, it is possible that they outnumber women at even higher rates at many other circuits. Federal Rule of Appellate Procedure 34 gives courts reasonably broad discretion in hearing oral argument. Along with the Second and D.C. Circuits, the Seventh Circuit routinely grants oral argument at higher rates than other courts.⁵⁰ While the Seventh Circuit’s practice is to grant oral argument more often than most other circuits in both civil and criminal cases, it specifically grants oral argument for criminal appeals at a much higher rate. The Seventh Circuit grants oral argument in 62% of criminal appeals—a rate two to five times the First (25%), Third (18%), Fourth (11%), Fifth (14%), Sixth (16%), Eighth (17%), and Eleventh (13%) Circuits.⁵¹ This means that oral argument in many other circuit courts is potentially predominated by civil cases in general and possibly complex civil cases in particular—the exact kinds of cases in which we observed the least number of women.

Even if the gender gap in other federal appellate courts is no worse than what we observed, however, the magnitude of the gap revealed here compels action. As Chief Judge Diane Sykes, the Seventh Circuit’s second female chief judge, observed, “whatever the cause—and it’s probably a combination of complex factors—the disparity is persistent.” Next, we provide several suggestions for change with the aim of creating a roadmap for various actors—including law schools, law firms, clients, and courts—to increase the number of women arguing before appellate courts. In doing so, we join a chorus of prior calls to action and ideas for change.⁵² Our aim is to build on this prior work with a specific focus on increasing the number of women arguing in front of federal appellate courts. Each of these different actors has a role to play to ensure that the next decade shows more improvement than the last. As Justice Ruth Bader Ginsburg once said: “Real change, enduring change, happens one step at a time.”⁵³

1. Law Schools

Law schools serve as students’ entryway into the legal profession. And though women and men are now attending law schools at comparable rates, recent work has highlighted that men’s and women’s experiences begin to diverge even before they officially enter the legal profession.⁵⁴ A recent study on students at the University of Chicago Law School, for example, found that women students reported less satisfaction with their experience in law school and fewer positive interactions with their fellow students.⁵⁵ In another study, done

at Yale Law School, women reported being more dissatisfied with the mentoring opportunities available to them.⁵⁶ These studies suggest that law schools need to focus on providing women students with the building blocks needed to succeed in their legal careers. To this end, law schools should endeavor to both identify and work toward correcting gender gaps in their students' experiences and achievements. The leadership at the law schools should also be as transparent as possible in supporting student efforts at identifying and documenting women's experiences.⁵⁷

Focusing specifically on how law schools can promote the number of women appellate attorneys, we encourage schools to provide students opportunities to get hands-on appellate experience through clinical education. Participating in clinics focused on appellate advocacy allows students to gain experience, test whether they like appellate work, and have access to mentors who can help them navigate careers in appellate work in either the public or private sector.

Law schools and their faculty should also help women obtain federal appellate clerkships. These clerkships provide junior attorneys with both experience and mentorship, thus giving them the building blocks needed to pursue appellate work going forward. Historically, women have been underrepresented among the ranks of law clerks on the Supreme Court—for example, between 2008 and 2017, women comprised between 35% and 42% of all clerks.⁵⁸ While less is known about the gender gap among clerks at circuit courts, a recent study at the University of Chicago Law School demonstrates that women are statistically less likely to clerk at federal appellate courts compared to men.⁵⁹ Law school faculty play an important role in advocating for their students to receive clerkships, through both direct contact with judges and letters of recommendation. But simply encouraging women to apply for federal appellate clerkships is not enough—law schools also need to ensure that women have equal access to experiences that make their applications more likely to succeed, such as membership on law review and faculty mentoring.

2. Law Firms

Relatively few women from law firms argued before the Seventh Circuit in 2009—and the last decade has shown little improvement. Despite men and women entering firms at comparable levels, the policies, practices, and culture of law firms can create barriers to advancement for women that may lead to attrition.⁶⁰ We recognize that the reasons women leave law firms are multifaceted, complicated, personal, and not solely within the firms' power to fix. Nonetheless, we believe firms can play a significant role in closing the gender gap among appellate attorneys. Prior work has rigorously studied the barriers that exist and proposed thoughtful and empirically based solutions.⁶¹ We will not retread those ideas here, other than to highlight that while many law firms are committed to diversity, this commitment has not fully translated into the adoption of bias-interrupting changes to the structures of their decision making.⁶² Instead, we focus specifically on

ways in which law firms can increase the number of women arguing in federal appellate courts.

We recognize that, given the high-stakes nature of some cases, clients often want experienced attorneys to argue their cases on appeal. In other words, having experience arguing appeals leads to arguing more appeals. Given that senior law-firm attorneys are disproportionately men, this may provide some explanation of the gender imbalance of law-firm attorneys arguing before the Seventh Circuit. So it is crucial to ensure that junior attorneys—among whom there is a higher number of women—are able to gain appellate experience. Law firms must focus on training women to argue appeals so that they can step in when the opportunity arises. One way for law firms to allow junior associates to gain experience is by allowing them to take the lead and argue cases where the firm was appointed by the court. The data shows that women comprised about one-quarter (26%) of all attorneys arguing appointed cases in 2009, but this unfortunately decreased slightly in 2019 (24%). Given that the court appointed a law firm rather than a specific attorney in many of these cases, these numbers suggest that law firms should place greater emphasis on allowing women to take the lead on these cases.

Similarly, law firms should encourage women to work on pro bono cases in order to gain experience arguing appeals. This encouragement could include setting up incentive structures such that junior attorneys do not feel that pro bono cases divert time and attention from the paying cases that dictate their salaries and opportunities for advancement. For example, firms should consider pro bono hours when determining bonuses and should not cap pro bono hours.

Law firms should also strive to have women take on leadership roles. According to Linda Coberly, Chicago managing partner and chair of the Appellate & Critical Motions Practice at Winston & Strawn, having a leadership position and title can be crucial to gaining further experience. Titles “matter for credibility to clients,” according to Ms. Coberly, and can help convince clients that an attorney is best suited to argue their case. Ms. Coberly’s career trajectory serves as an example of the importance of placing women in leadership positions. When she joined Winston & Strawn, she negotiated the title of vice chair of its appellate practice. Because of this position, she was able to argue more appellate cases. Now, she has advanced to both managing the firm’s largest office and serving as the chair of its appellate practice—and is one of the few women who argue complex civil cases regularly before the Seventh Circuit.

Senior attorneys should also share their opportunities with more junior attorneys. One potential option is to request that the court allow a senior attorney and a junior attorney to split the allotted argument time. Especially in cases with multiple discrete issues, splitting oral argument time allows a junior attorney to get needed experience while still allowing senior attorneys to remain involved. And in the right circumstances, senior attorneys should consider stepping aside and allowing junior attorneys to fully argue cases. Indeed, during this past term, an experienced attorney

who had argued before the Supreme Court numerous times—Lisa Blatt—stepped aside to allow two more junior women attorneys to argue for the first time in front of the Court.⁶³ Of course, law firms and their senior attorneys do not operate in a vacuum—their ability to create these opportunities for junior women attorneys to gain experience often may be constrained by their clients. As discussed next, it is crucial that corporate clients recognize the importance of gender diversity at law firms and affirmatively act to increase it.

3. Clients

Corporate clients wield significant economic power and can use this power to leverage real change for women in the legal profession.⁶⁴ Companies have increasingly begun to recognize that having a diverse workforce in general, and diverse leadership in particular, strengthens their bottom line and increases profitability.⁶⁵ In other words, corporations should care about diversity and inclusion not just for the sake of it, but also for the sake of their companies. A recent report, for example, found that across hundreds of companies, those with more women executives significantly outperformed those with fewer.⁶⁶ While there is still a lot of room to grow, gender diversity in corporate leadership has grown at a rate that exceeds the rate of change observed in this article. The number of women on the boards of Fortune 500 companies increased by ten percentage points between 2009 (15%)⁶⁷ and 2019 (25%).⁶⁸ And the percentage of Fortune 500 companies that have women general counsel nearly doubled in the last decade—from 17% in 2009⁶⁹ to 33% in 2019.⁷⁰

In addition to the benefits that come from diversity within their own ranks, corporate clients also have a vested interest in ensuring that the law firms they hire to represent them have a strong pipeline of women associates and partners. The high rate of attrition among women at law firms decreases the talented pool of women attorneys clients have to try their cases and argue their appeals. Additionally, when women leave, they take with them valuable institutional knowledge and productive working relationships that have been built over time.⁷¹ Having to add new team members can also be costly to clients, because it takes time (and therefore money) to bring them up to speed.⁷² According to Doug Lankler, Pfizer's general counsel and executive vice president, "encouraging diversity within the legal profession is of critical importance" to companies, and "we all need to do our part to ensure that all lawyers—regardless of who they are or where they come from—have equal access to opportunities for growth, development and leadership." Mr. Lankler believes that "making diversity a priority is simply the right thing to do" and also that it gives companies "an important business advantage" because "the research shows that diverse teams perform better, improve our decision-making and drive better outcomes."

Corporate clients not only have the motivation to bring about change, but they also have the means to do so. They can leverage their economic power to require gender equity in their selection of outside counsel. When choosing a law firm, clients can ask for gender metrics of the firm in general and the team assigned to it in particular and take into account a firm's success in retaining and advancing its women attorneys.⁷³ Once a law firm has been retained, clients should ask for these metrics at regular intervals to ensure gender equity continues on the cases.⁷⁴

Beyond simply tracking the amount of time women work on their cases, clients should pay particular attention to whether women are being given leadership roles. If not, clients should insist on women having such roles. Some companies participate in the Mansfield Rule to increase diversity in their legal matters.⁷⁵ In addition to actions aimed at improving diversity within legal departments, this rule encourages clients to require their outside counsel to consider 50% historically underrepresented lawyers for certain leadership roles in their matters.⁷⁶ Mr. Lankler reports that Pfizer participates in the Mansfield Rule, including for its appellate litigation matters, so that it “can be intentional about driving positive change” and that he believes “it is incumbent on us to leverage our role as clients to help improve diversity within the legal profession.”

Clients have an active role to play in improving the gender gap among attorneys arguing before circuit courts. Both Judge Rovner and Judge Wood noted that clients are the key to change. Not only should clients encourage firms to have women attorneys work on their appeals, but they should also try to ensure that these women have the chance to argue the appeal when they are best positioned to do so. In 2020, Google and its law firm, Perkins Coie, provided a great example of this. They convinced the Federal Circuit to reinstate oral argument in a case so that a woman associate could argue her first case in front of it.⁷⁷ The Federal Circuit had canceled oral argument due to the coronavirus pandemic, but Google moved to have it reinstated—arguing that it was collaborating with Perkins Coie “to increase participation by and provide opportunities to promising junior and diverse lawyers in their appellate matters.”⁷⁸ Convincing the Federal Circuit to reinstate oral argument was a win for both the associate and her client. She gained valuable experience, and Google was represented by the “most knowledgeable attorney on the matter.”⁷⁹ Clients should not overlook that while experience is helpful in a complex oral argument, it does not replace argument by a lawyer who has a deep command of the facts and the law.

The preceding example highlights the crucial role that clients can play in decreasing the appellate attorney gender gap. Google's efforts allowed the associate a chance to gain more experience arguing appeals—experience that she can leverage to argue future cases. Many corporations have made strides in recent years in providing diverse and inclusive workplaces where women can advance to leadership positions. The best practices of corporate clients should serve as guideposts to their law-firm partners. But the role of clients is not limited to setting an example—their commitment to diversity and the price

they pay for the leaky pipeline of women attorneys mean they must take an active role in decreasing the gender gap in appellate attorneys and the legal profession more generally.

4. Courts

Finally, courts also have an important role to play in decreasing the gender imbalance among the appellate attorneys who argue before them. Circuit courts should consider requests from parties for oral argument on cases in which a junior attorney is set to argue the case. As illustrated by the preceding example in the Federal Circuit, allowing more junior attorneys the opportunity to argue appeals is crucial to fixing the gender gap. Recognizing the importance of providing junior attorneys with experience, some district court judges have adopted the practice of allowing junior attorneys to argue motions that would otherwise not be heard.⁸⁰ Appellate courts could consider a similar practice and allow parties to move for oral argument based on the fact that a junior attorney would argue before the court for the first time. In a similar vein, circuit courts should allow flexibility in how arguments are structured and consider allowing more senior attorneys to split argument time with junior attorneys in cases where that structure makes sense.

Courts also directly influence the attorneys arguing before them by appointing counsel to represent indigent parties. Appellate courts should strive to ensure that both women and men have the chance to be appointed. The data here revealed that in 2019, the gender gap was even wider for appointed counsel (24% women) than attorneys overall (28% women). Admittedly, courts do not always have control over who argues appointed cases, because courts often appoint law firms rather than individual lawyers, which then internally assign the case. Nonetheless, in situations where courts are appointing individual attorneys, they should strive to provide opportunities to both men and women and strongly encourage the firms they appoint to do the same.

Appellate courts should also be cognizant of how they treat the attorneys who argue before them and take special care to treat all attorneys the same, regardless of their gender. Research on the Supreme Court has revealed that women attorneys are interrupted earlier and more often during oral argument.⁸¹ Indeed, even Supreme Court justices are not immune from society's general tendency to interrupt women—female justices are interrupted at higher rates by both their male colleagues and male advocates.⁸² It is unknown whether these gender disparities exist to the same magnitude during oral argument at lower appellate courts. Nonetheless, courts should aim to treat all attorneys equally. Disparate treatment based on gender can both discourage women attorneys from pursuing careers as appellate attorneys and send the wrong message to clients and law firms about the wisdom of advancing women advocates.

Conclusion

Despite a strong pipeline of talented women attorneys, men outnumber women arguing before the Seventh Circuit nearly three to one—a gender gap that has barely improved over the last decade. This finding adds to a growing body of literature documenting the persistent underrepresentation of women in the legal profession, including as lead counsel, supreme court litigants, law firm partners, judges, and general counsel. Across all these domains, a clear picture has emerged: the pipeline is leaking. Law schools, firms, corporate clients, and courts all have a role to play in fixing those leaks, and we have outlined concrete steps that each can take to increase the number of women arguing in front of appellate courts. It is our hope that these suggestions for change mean that the next decade will bring more progress than the last.

Endnotes

1. Judge Amy J. St. Eve is a federal judge on the U.S. Court of Appeals for the Seventh Circuit and an adjunct professor at the Northwestern Pritzker School of Law. Prior to her appointment to the Seventh Circuit, she served as a district judge in the U.S. District Court for the Northern District of Illinois for 16 years. Before taking the bench, Judge St. Eve served as senior counsel for litigation at Abbott Laboratories and as an assistant U.S. attorney for the Northern District of Illinois. She also served as an associate independent counsel for the Whitewater Independent Counsel in Little Rock, Arkansas, and as a litigation associate at Davis, Polk & Wardwell. She received her J.D., magna cum laude, from Cornell Law School.

Jamie Luguri is a litigation associate at Munger, Tolles & Olson in Los Angeles. She served as a law clerk to Judge St. Eve, as well as to the Honorable Brenda Sannes in the U.S. District Court for the Northern District of New York.

2. Stephanie A. Scharf & Roberta D. Liebenberg, *First Chairs at Trial: More Women Need Seats at the Table*, ABA COMM'N ON WOMEN IN THE PRO. (2015), https://www.americanbar.org/content/dam/aba/administrative/women/first_chairs_final.pdf.

3. See, e.g., Joyce Sterling & Linda Chanow, *In Their Own Words: Experienced Women Lawyers Explain Why They Are Leaving Their Law Firms and the Profession*, ABA COMM'N ON WOMEN IN THE PRO. (2021), <https://www.americanbar.org/content/dam/aba/administrative/women/intheirownwords-f-4-19-21-final.pdf>; Destiny Peery, Paulette Brown & Eileen Letts, *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color*, ABA COMM'N ON WOMEN IN THE PRO. (2020), <https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf>; *National Association of Women Lawyers 2020 Survey Report on the Promotion and Retention of Women in Law Firms* (2020), <https://www.nawl.org/p/cm/ld/fid=2019> [hereinafter NAWL 2020 Report]; Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, ABA COMM'N ON WOMEN IN THE PRO. (2019), <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf>; *Women and Minorities at Law Firms: What Has Changed and What Has Not in the Past 25 Years?*, NALP BULLETIN (Feb. 2018), <https://www.nalp.org/0218research>; Scharf & Liebenberg, *supra* note 2.

4. Liebenberg & Scharf, *supra* note 3, at 1.

5. See Abigail Rowe, *The Parity Paradox*, BEST LAWYERS (June 25, 2018), <https://www.bestlawyers.com/article/women-now-outnumber-men-in-law-school/2029>.

6. NAWL 2020 Report, *supra* note 3, at 6.

7. Liebenberg & Scharf, *supra* note 3, at 17–18.

8. Jeffrey A. Lowe, *Major, Lindsey & Africa's Partner Compensation Surveys: A Decade of Perspective*, MAJOR, LINDSEY & AFRICA LLC 17–22 (2020), https://f.hubspotusercontent20.net/hubfs/209075/MLA_PCS_ADcadeOfPerspective_090920.pdf.
9. *Id.* at 17.
10. NAWL 2020 Report, *supra* note 3, at 8–9.
11. Liebenberg & Scharf, *supra* note 3.
12. *Id.* at 8.
13. *Id.* at i; see also Lauren Stiller Rikleen, Roberta D. Liebenberg & Stephanie A. Scharf, *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers*, ABA PRESIDENTIAL TASK FORCE ON GENDER EQUITY & COMM'N ON WOMEN IN THE PRO. (2013), https://www.americanbar.org/content/dam/aba/administrative/women/power_of_purse.pdf.
14. Brooke D. Coleman, *A Legal Fempire? Women in Complex Civil Litigation*, 93 IND. L.J. 617, 641–42 (2018); *Diversity in Law: Who Cares?* (Apr. 30, 2016), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/>.
15. See, e.g., Scharf & Liebenberg, *supra* note 2; *If Not Now, When? Achieving Equality for Women Attorneys in the Courtroom and in ADR*, COM. & FED. LITIG. SECTION OF THE N.Y. STATE BAR ASS'N (Nov. 2017), <https://nysba.org/app/uploads/2020/02/Com-Fed-Women-Initiatives-Report-Amended.pdf>; *The Time Is Now: Achieving Equality for Women Attorneys in the Courtroom and in ADR*, COM. & FED. LITIG. SECTION OF THE N.Y. STATE BAR ASS'N (2020), https://nysba.org/app/uploads/2020/05/ComFed_WomensInitiatives_Report-Cover_5.28-merged.pdf.
16. Scharf & Liebenberg, *supra* note 2, at 10; *The Time Is Now*, *supra* note 15, at 4–6.
17. *The Time Is Now*, *supra* note 15, at 23.
18. Max Carter-Oberstone, *By the Numbers: Gender Diversity at the California Supreme Court*, LINKEDIN (Apr. 28, 2020), <https://www.linkedin.com/pulse/numbers-gender-diversity-california-supreme-court-carter-oberstone/>.
19. Liz Kramer, Cicely Militich, Hillary Taylor & Cat Rios-Keating, *A Gender Reveal: Who's Arguing at Minnesota Supreme Court*, MINN. LAW.: BRIEFLY (Sept. 11, 2020), <https://minnlawyer.com/2020/09/11/briefly-a-gender-reveal-whos-arguing-at-minnesota-supreme-court/>.
20. James R. Layton & Margaret A. Hesse, *Missouri Supreme Court Report: Women Argue Infrequently in the Missouri Supreme Court—Though More Often Than in the U.S. Supreme Court*, TUETH KEENEY COOPER MOHAN JACKSTADT P.C. (Aug. 19, 2020), https://tuethkeeney.com/insights/missouri-supreme-court-report-women-argue-infrequently-in-the-missouri-supreme-court-though-more-often-than-in-the-u-s-supreme-court/#_ftn5.
21. Kimberly Strawbridge Robinson, *Men Repeat at Lectern—Firms, U.S. Drive Supreme Court Gender Gap*, BLOOMBERG L. (May 10, 2021), <https://news.bloomberglaw.com/us-law-week/men-repeat-at-lectern-firms-u-s-drive-supreme-court-gender-gap>.
22. *Id.*
23. See Dani Kass, *Women Arguing Far Fewer Patent Appeals for Cos. Than Men*, LAW360 (June 23, 2021), https://www.law360.com/appellate/articles/1396529/women-arguing-far-fewer-patent-appeals-for-cos-than-men?nl_pk=71d7da93-65de-436e-8cca-953e16fdb61d&utm_source=newsletter&utm_medium=email&utm_campaign=appellate; Kimberly Strawbridge Robinson, *Big Law Emerging as Pipeline for Female Supreme Court Advocates*, BLOOMBERG L. (Oct. 5, 2020), <https://news.bloomberglaw.com/us-law-week/big-law-emerging-as-pipeline-for-female-supreme-court-advocates>; Layton & Hesse, *supra* note 20; Scharf & Liebenberg, *supra* note 2, at 11.
24. The Seventh Circuit is one of 13 federal appellate courts, and it hears challenges to district court decisions from all federal district courts in Illinois, Indiana, and Wisconsin. Appeals are generally decided by a panel of three judges.

25. Perry Cooper, *Women Lawyers Find Arguing Patent Appeals “Strange and Lonely”*, BLOOMBERG L. (May 27, 2020), <https://news.bloomberglaw.com/ip-law/women-lawyers-find-arguing-patent-appeals-strange-and-lonely>.

26. Kass, *supra* note 23.

27. *The Time Is Now*, *supra* note 15, at 25.

28. Scharf & Liebenberg, *supra* note 2, at 8.

29. CM/ECF stands for Case Management/Electronic Case Files. It is “the federal Judiciary’s system that allows case documents, such as pleadings, motions, and petitions, to be filed with the court online.” See *Electronic Filing (CM/ECF)*, U.S. COURTS, <https://www.uscourts.gov/court-records/electronic-filing-cmecf> (last visited Aug. 10, 2021). Among other information, CM/ECF includes the name, employment, and address for every attorney involved in each case. It also includes information about the case type, the date of oral argument, and which attorneys argued the case.

30. Our data set included all attorney *appearances* during oral argument. The number of appearances should not be confused with the number of individual attorneys. Some attorneys appeared more than once in a given year, sometimes representing the same client and sometimes representing a different client.

31. This methodology also meant that we were unable to study the representation of other under-represented groups in the legal profession, such as people of color. Women of color continue to face unique and additional obstacles in the legal profession that white women do not. We recognize that this intersectionality is so often overlooked in research focused on gender. Unfortunately, we did not have a way to accurately assess the race or ethnicity of the attorneys in our sample.

32. In 2009, CM/ECF would update the employer of an attorney if the attorney reported a change of employment. For example, if the attorney worked for the U.S. Attorney’s Office in 2009 and represented the government on cases, then went to work at a law firm, the CM/ECF system would show the employee as working for the private firm even though they worked for the government at the time of the case. We were able to overcome this issue by relying on separate codes that indicated if an attorney worked for the government even if that attorney’s employer was listed differently. Thus, we are confident in our ability to accurately code attorneys as working either for the government or in the private sector in 2009. However, we are less confident in the accuracy of the distinctions among private firms. If a lawyer worked for an AmLaw 100 firm in 2009, for example, but then moved to an AmLaw 200 firm, the CM/ECF system would show them as working at an AmLaw 200 firm in 2009. We coded the private firms as they were represented in the CM/ECF system, but these numbers may not be as precise.

33. *The American Lawyer* issues a yearly report that ranks America’s largest firms by revenue. AmLaw 100 refers to the top 100 firms, and AmLaw 200 refers to firms in the top 200.

34. Other categories included public interest/nonprofits, in-house counsel, and unions. The number of lawyers in our sample who worked in these settings was too small to analyze.

35. If the lawyer represented both individuals and a business or a government, it was coded as a business or government case. Other client codes included nonprofits, unions, tribes, pro se, and a category for “other.” The number of lawyers representing these categories was too small to analyze.

36. Though most lawyers represented either the appellant or appellee, we also coded for cross-appellants, petitioners, respondents, intervenors, amici, and “other.”

37. Case type and civil case category were both coded using the codes generated by the CM/ECF system under “Nature of Suit” and “Case Type Information.”

38. Civil rights cases include cases CM/ECF identified as civil rights, other civil rights, constitutionality of state statutes, civil rights voting, and civil rights accommodations. Contracts cases include cases categorized as contracts or other contract actions. Prisoner cases include the categories of prison condition, prisoner civil rights, and prisoner petition vacate sentence. Intellectual property cases include cases categorized as copyright or trademark cases. Personal injury cases include the categories of personal injury product liability and other personal injury. Antitrust/securities cases include those cases categorized as antitrust or securities commodities exchange cases. Jobs cases include the categories of jobs, other labor litigation, and employee retirement.

39. Class actions were identified by using the case caption. Given that not all cases that are class actions contain a caption indicating such, we likely undercounted the number of class actions.

40. Generally, across both years, the Seventh Circuit heard oral argument in more civil appeals than criminal appeals. In 2009, 42% of attorneys were arguing civil appeals, 36% of attorneys were arguing criminal appeals, and 22% of attorneys were arguing other kinds of appeals (like agency appeals). In 2019, 55% of all attorneys argued civil appeals, 28% argued criminal appeals, and 17% argued appeals for other kinds of cases.

41. In 2009, the percentage of women—in order from least to most—who argued each kind of case was as follows: bankruptcy (12%), civil (17%), criminal (26%), prisoner petition (36%), agency (36%), Social Security (38%), and habeas (39%) cases.

42. The percentage of women who argued each kind of civil case in 2009 was as follows: antitrust/securities (5%), insurance (5%), personal injury (8%), contracts (15%), civil rights (21%), jobs (22%), and prisoner (33%). We did not analyze consumer credit, intellectual property, or Americans with Disabilities Act cases because there were fewer than 20 of each in 2009. Notably, the order of civil case type by percentage of women was the same in 2009 as in 2019, except for personal injury cases. Women made up a much higher percentage of attorneys arguing personal injury cases in 2019 (27%) compared to 2009 (8%).

43. Unsurprisingly, the fact that women were more likely to argue on behalf of the government compared to non-government clients meant that women were also more likely to be on the side on which the government more often finds itself. In 2019, 34% of all appellees were women, whereas only 21% of appellants were women. Similarly, women comprised 55% of respondents compared to 30% of petitioners.

44. In 2009, individual clients comprised 70% and businesses comprised 26% of all non-governmental clients (the remaining 4% were other types of clients, such as unions). In 2019, individuals comprised 65% of all non-governmental clients, businesses comprised 31%, and other types of clients comprised 4%.

45. In 2009, the breakdown was as follows: AmLaw 100 (22%), AmLaw 200 (24%), small private (16%), and solo practice (16%). However, as discussed in footnote 32, the private-practice coding for 2009 is not as reliable as the coding for 2019 because the CM/ECF system updated an attorney's firm if he or she subsequently moved.

46. See, e.g., Scharf & Liebenberg, *supra* note 2; Joan C. Williams, Marina Multhaup, Su Li & Rachel Korn, *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession*, ABA COMM'N ON WOMEN IN THE PRO. & MINORITY CORP. COUNSEL ASS'N (2018), <https://www.americanbar.org/content/dam/aba/administrative/women/youcantchangewhatyoucantsee-online-06292018.pdf>.

47. Kass, *supra* note 23.

48. *Women's History Month*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/education-al-resources/annual-observances/womens-history-month> (last visited Aug. 10, 2021).

49. Tracey E. George & Albert H. Yoon, *Gavel Gap: The Difference Between the Race & Gender Composition of the Courts & the Communities They Serve*, AM. CONSTITUTION SOC'Y FOR L. & POL'Y, <https://www.acslaw.org/analysis/reports/gavel-gap/> (last visited Aug. 10, 2021).

50. Bryan Gividen, *Oral Argument Grant Rate in the Federal Court of Appeals (2019 Data)*, THE JURIS LAB (Feb. 17, 2021), <https://thejurislab.com/oa-grant-rate-2019/>.

51. *Id.*

52. See, e.g., Scharf & Liebenberg, *supra* note 2; *The Time Is Now*, *supra* note 15; Rikleen et al., *supra* note 13; Williams et al., *supra* note 46; Sterling & Chanow, *supra* note 3.

53. Li Cohen, *Ruth Bader Ginsburg's Iconic Quotes on Law, Love and the Fight for Equality*, CBS NEWS (Sept. 19, 2020), <https://www.cbsnews.com/news/ruth-bader-ginsburgs-iconic-quotes-on-law-love-and-the-fight-for-equality/>.

54. Mallika Balachandran, Roisin Duffy-Gideon & Hannah Gelbort, *Speak Now: Results of a One-Year Study of Women's Experiences at the University of Chicago Law School*, 19 U. CHI. LEGAL FORUM 647, 647–84 (2019), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1655&context=uclf>.

55. *Id.*

56. *Speak Up: Now What?*, YALE L. WOMEN 5–6 (2015), <https://ylw.yale.edu/wp-content/uploads/2015/02/Speak-Up-Now-What.pdf>.
57. See Balachandran et al., *supra* note 54, at 650.
58. Erin Coe & Jacqueline Bell, *A High Court Milestone Stirs Hope of Gender Parity*, LAW360 (Oct. 17, 2018), <https://www.law360.com/articles/1093264/a-high-court-milestone-stirs-hope-of-gender-parity>.
59. Balachandran et al., *supra* note 54, at 655–56.
60. See Liebenberg & Scharf, *supra* note 3; NAWL 2020 Report, *supra* note 3, at 3–10.
61. See, e.g., Scharf & Liebenberg, *supra* note 2; *The Time Is Now*, *supra* note 15; Rikleen et al., *supra* note 13; Williams et al., *supra* note 46.
62. Peery et al., *supra* note 3, at 21; *National Association of Women Lawyers 2019 Survey Report on the Promotion and Retention of Women in Law Firms* 10–13 (2019), <https://www.nawl.org/p/cm/ld/fid=2019>.
63. Robinson, *supra* note 21.
64. Rikleen et al., *supra* note 13.
65. Sundiatu Dixon-Fyle et al., *Diversity Wins: How Inclusion Matters*, MCKINSEY & CO. (May 19, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>.
66. *Id.*
67. Rachel Soares & Jan Combopiano, *Report: 2009 Catalyst Census: Fortune 500 Women Board Directors*, CATALYST (Dec. 9, 2009), <https://www.catalyst.org/research/2009-catalyst-census-fortune-500-women-board-directors/>.
68. Courtney Connley, *The Number of Women Running Fortune 500 Companies Is at a Record High*, CNBC: CLOSING THE GAP (May 16, 2019), <https://www.cnbc.com/2019/05/16/the-number-of-women-running-fortune-500-companies-is-at-a-record-high.html>.
69. *MCCA 2009 Survey of Fortune 500 Women General Counsel*, MINORITY CORP. COUNSEL ASS'N (2009), <https://www.mcca.com/resources/surveys/2009-fortune-500-women-general-counsel-survey/>.
70. Bennett Loudon, *Hiring Trends Favor Women, Minorities as General Counsel*, THE DAILY RECORD (Jan. 26, 2021), <https://thedailyrecord.com/2021/01/26/hiring-trends-favor-women-minorities-as-general-counsel/#:~:text=The%20overall%20percentage%20of%20women,2018%20and%2026%25%20in%202017>.
71. Rikleen et al., *supra* note 13, at 4–5.
72. *Id.*
73. *Id.* at 10.
74. *Id.* at 11–12.
75. *Mansfield Rule for Legal Departments Launches 2.0 Cohort to Continue Boosting Diversity in Leadership and Outside Counsel Ranks*, DIVERSITY LAB, <https://www.diversitylab.com/pilot-projects/mansfield-rule-legal-department-2-0-edition/> (last visited Aug. 10, 2021).
76. *Id.*
77. Perry Cooper, *Google, Perkins Coie Get Federal Circuit Argument Reinstated*, BLOOMBERG L. (Apr. 22, 2020), <https://news.bloomberglaw.com/ip-law/google-perkins-coie-get-federal-circuit-argument-reinstated>.
78. *Id.*
79. *Id.*
80. Scharf & Liebenberg, *supra* note 2, at 16.
81. Dana Patton & Joseph L. Smith, *Lawyer, Interrupted: Gender Bias in Oral Arguments at the US Supreme Court*, 5 J.L. & CTS. 337 (2017).
82. Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology, and Seniority at Supreme Court Oral Arguments*, 103 VA. L. REV. 1379 (2017).

Acknowledgments

We could not have done this work without the support of many individuals and organizations. The American Bar Association's Commission on Women in the Profession has spearheaded and funded numerous research projects seeking to understand the issues women face in the legal profession. Without that prior work to build on and the Commission's support, this article would not have been possible. In particular, we owe the inspiration for this project to the insightful work done by Stephanie Scharf and Roberta Liebenberg in *First Chairs at Trial: More Women Need Seats at the Table*. Not only did that study provide a great deal of guidance for this project, but Stephanie Scharf also encouraged this research by providing her invaluable advice and insight. We also are thankful for the many women in the profession who talked to us about their experiences. We also owe thanks to Jennifer Doerr, who provided us with the information needed to code all attorneys arguing before the Seventh Circuit in 2009 and 2019. We thank Claire Dow for her help with coding the data and the American Bar Foundation for their help locating a reviewer for the article. We are deeply grateful for all this support.