

# Women progress, but few queens of torts

Lifestyle, personality cited as key reasons.

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STAFF REPORTER

WOMEN HAVE made great strides in the legal profession. Nearly half of last year's law

school students were women, and nearly a third of their teachers were too, according to statistics compiled by the American Bar Association's Commission on Women in the Profession.

But there is one area in which this rising tide is still at low ebb: Women have been slow to enter the plaintiffs' bar.

Women make up nearly 30% of the lawyers in the United States, but only 13% of the membership of the Association of Trial Lawyers of America, a national bar group for plaintiffs' lawyers. In fact, a greater percentage of women (15%) have risen to the rarified rank of general counsel at *Fortune* 500 companies than

have joined ATLA.

In interviews, prominent plaintiffs' lawyers, men and women, offered several explanations. They ranged from the obvious—the competing pull of work and family, for instance—to the more subtle, such as the reluctance of many women to

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# Women's advocacy is slow to reach plaintiffs' bar

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engage in self-promotion. And while some asserted there are no longer gender-based obstacles, most agreed that women still face challenges that men do not.

Judith Livingston, one of the nation's most successful trial lawyers and the first woman invited to join the exclusive Inner Circle of Advocates, said she too wonders what has happened to women in the plaintiffs' bar.

"I've been asking the same question for 15 years now," said Livingston, a name partner at New York's Kramer, Dillof, Livingston & Moore. When she began trying cases in 1981, she was in good company because more women were going to law school. "It seemed at the time that even though there weren't a lot of women, that would all change in short order," she said. "But there are very few—can I say 'stars'? It saddens me. I think women in the courtroom have tremendous talent."

But women also "have to be better prepared than men do," she added, "because I believe jurors hold women to higher standards." Nearly every woman interviewed echoed this perception.

The big challenge for many women, of course, is the lifestyle. The life of a trial lawyer can't easily accommodate the demands of motherhood, and vice versa.

"I just think something's got to suffer," said Lisa Blue, a partner at Dallas' Baron & Budd who is also married to firm founder Fred Baron. Blue credits her success in part to the support and understanding of her husband, as does Livingston, who is married to name partner Thomas Moore.

Karen Koehler had a different approach to becoming a plaintiffs' lawyer. She took a job with a large defense firm, watched her three children grow, and learned how to try cases. But she always preferred fighting for the underdog, she said. When her children were in school, she made the leap, which involves more risk because expenses may be high and contingency fees are always uncertain.

Now a partner at Seattle's Stritmatter Kessler Whelan Withey Coluccio, Koehler admitted that the plaintiffs' bar is not for everyone. It requires toughness and faith that things will work out. And

## HOW THEY SEE IT



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by the time she switched sides, Koehler was divorced, which ratcheted up the risk. "And you can't settle cases just to pay rent," she said, "because that would be a conflict of interest."

Elizabeth Cabraser believes what's hardest about the lifestyle for many women is that it forces them to make demands on others. "I think that's the one that gives women the most trouble," said Cabraser, name partner at San Francisco's Liefie Cabraser Heimann & Bernstein.

Cabraser said further that many women struggle to find a personal style of advocacy. "I think we're living in the tag end of the macho era," featuring the "larger-than-life, lone-wolf" plaintiffs' lawyer, she said.

"For those of us who are smaller than life, simply aspiring to be life-size, it's hard to match up," said Cabraser, who pronounced herself 5 feet tall "on a good day." They have to recognize, she said, that advocacy comes in different shapes and sizes.

Koehler recalled instances when she was mistaken for a court reporter. Virtually every woman interviewed had similar stories, which also involved secretaries, paralegals, clients and clerks. Koehler has been called "sweetie" and "Xena, the warrior princess."

The trick for many women is to establish a style some place between the two. The judge, opposing counsel and, most important, the jury must find them firm and assertive, but not overly aggressive.

It's an issue that rarely concerns men, whose behavior is given wide latitude. But it's a problem for women making their way in a field that is "heavily masculine, heavily male and family-hostile," said

Joan Williams, a professor at American University College of Law. "How can you do that and be an effective lawyer, rather than a bitch with a personality problem?"

### Better than 'bad old days'

Yet the progress is unmistakable. Julie Braman Kane, a partner at Colson Hicks Eidson in Coral Gables, Fla., remembers going to a women's caucus brunch at an ATLA convention seven or eight years ago where 15 women showed up. Last February, there were 150, she said. And they support each other. When she has a problem—professional or personal—she calls or e-mails, she said, and always gets a quick response.

Roxanne Barton Conlin, who was ATLA's first female president (1992-3) and endowed its women's caucus, recalls that in the 1980s, when she had two male partners, one client said: "I don't want to have a woman." This occurred, she added, after she'd served as the U.S. attorney for the Southern District of Iowa—one of the first two women ever to serve as a U.S. attorney.

The days of overt discrimination seem past, said Conlin, who back in 1966 was not allowed to represent her client in her first court appearance because the judge was convinced she was a secretary. She now has her own firm, Roxanne Conlin & Associates, in Des Moines, Iowa, and in 1995 she joined Livingston as only the second woman ushered into the Inner Circle of Advocates, which brings together 100 of the country's top plaintiffs' lawyers. They are still the only women.

Though ATLA's women's caucus was an attempt, in part, to create an "old girls' network," Conlin acknowledged, she and the other lawyers interviewed agreed that men will refer cases to a woman, once she's established her reputation. But for many young lawyers, that's the rub.

It isn't easy for beginners—male or female—to get into court these days. Fewer cases are being tried. Arbitration

clauses are one reason. The ever-escalating costs of litigation pressure more litigants to settle. And often the cases that are tried are high-stakes propositions that few clients or firms want to entrust to young lawyers.

Some firms, like Conlin's, take on small cases simply to give their young lawyers experience. Blue learned to try cases as a prosecutor, and several lawyers suggested criminal work on both sides of the docket is a good way to learn. Others, like Koehler, got their start defending civil suits.

Many women mentioned the importance of mentors. Several credited their male law partners for playing that role. Christine Spagnoli began her career clerking for Bruce Broillet of Santa Monica, Calif.'s, Greene, Broillet, Panish & Wheeler. She's now the only female partner at the firm. She said that women can learn a lot sitting second and third chair, but they can hurt a case if they're only "window dressing." She's seen opposing counsel use women this way, and she thinks it worked to her advantage.

"Women jurors want to see women lawyers doing something." She tried a case with six women on the jury. They expressed no emotion during the trial, but afterward two came up and hugged her. "We're so proud of you," they told her.

Spagnoli and others said women have several advantages when they represent plaintiffs. They are often underestimated, which they can turn to their benefit. And a bullying male defense lawyer or judge can swing a jury's sympathies in their favor.

More important, several lawyers spoke of the emotion and sincerity they bring to their work. "We have a lot of empathy for our clients in a way that is different than a lot of male lawyers," Spagnoli said. "Sometimes I think for the men it's more about winning than doing good for our clients."

"It's a tremendous advantage to be a

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woman," said Kathleen Flynn Peterson, a partner at Minneapolis' Robins, Kaplan, Miller & Ciresi, "because the advocacy that I can bring is different." A registered nurse who specializes in medical negligence cases, Peterson said she has been particularly effective representing parents whose children were injured or killed by medical errors.

"I was able to communicate that loss to a jury in a way that a parent can do differently—and especially a mother."

One problem that can snag women, even when they win in court, is the reluctance to blow their own horns. "I find it embarrassing," acknowledged Cabraser.

"Women do not self-promote well," said Koehler. They want recognition, but "they're worried that if they self-promote they will be seen as overreaching, overeager, egotistical." She has written books, joined organizations and spoken at conferences to share what she's learned, and also to help build a reputation, she said.

The bottom line is that plaintiffs' lawyers are also entrepreneurs who must market to build books of business. "In law, as in other areas," Cabraser concluded, "we have to get better at marketing." NLJ

## BY THE NUMBERS

- 49** Percentage of **law school students** who are women
- 35** Percentage of **full-time law school faculty** who are women
- 29** Percentage of **lawyers** who are women
- 25** Percentage of **tenured law school faculty** who are women
- 16** Percentage of **law school deans** who are women
- 15** Percentage of **general counsel** of Fortune 500 companies who are women
- 13** Percentage of **ATLA members** who are women

Source: American Bar Association's Commission on Women in the Profession