



**2016 CLM Annual Conference
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“Getting Women Into the First Chair”

I. Where are we now?

A snapshot of women in the profession

The National Association of Women Lawyers (NAWL) has been tracking and reporting survey statistics on women and law firms since 2006. In 2006, NAWL issued a call to action to double the percentage of women in equity partnerships and lead general counsel by 2015. In 2008, the American Bar Association (ABA) and NAWL issued a joint white paper entitled *Actions for Advancing Women into Law Firm Leadership*, calling for a broad array of actions such as correcting for hidden bias, ensuring broad selection of firm leaders, and increasing workplace flexibility.

However, as the NAWL Ninth Annual Survey demonstrated, these goals are far from completed as of 2015. In 2006, NAWL reported that women comprised 16% of equity partnerships. As of 2015, that percentage had crept up to 18%, with only 8% of equity partnerships being comprised of women of color. And despite the now longstanding increase in women attorneys in the pipeline, only 38% of nonequity partners are women.

Strides have been made in areas other than private law firms. Approximately 30% of ABA accredited law school deans are women. Eight women became deans in 2015, and four of those are women of color. Women comprise one-third of the United States Supreme Court and 35% of the 13 federal courts of appeal. A record number of female judges have been appointed under the current administration so that we can expect this number to grow.

Recently, the ABA issued a report on a study of women as lead counsel, a factor that plays into increasing representation of women in partnership and the bench.

Data source for the ABA report on women at trial

The ABA issued its report *First Chairs at Trial: More Women Need Seats at the Table* in July 2015. The study sample came from the case sheets for civil cases filed in the Us District Court Northern District of Illinois for 2013. The authors selected this jurisdiction for its large and diverse case assignments, as well as the robust information available on the face sheets. Information required on the face sheet include not just the type of case filed, but a list of the “lead” and “trial” counsel. “Trial counsel” has a specific meaning in the jurisdiction, as one must be part of the “trial counsel” bar to be so denominated. Up to four lawyers may be listed on the case sheet.

The review examined 558 civil cases that listed 2076 lawyers. While it is fair to point out that this is a limited sample size rather than a nationwide study, it is also important to examine if or how this varies from what is seen and experienced in other jurisdictions.

What the report tells us about women at trial

The study found that of all lawyers appearing in civil cases, 68% were men and 32% were women. This does not seem far from the percentages of male and female practitioners in general (66% male/34% female, *A Current Glance at Women in the Law*, ABA Commission on Women in the Profession, July 2014).

However, statistics begin to lose that track when examining leadership position. Identified lead counsel in civil cases are 76% male and 24% female. This is even more pronounced for tort cases, where 79% of lead counsel are male and 21% lead counsel are female. The identification of trial counsel is slightly better: 73% of trial counsel are male and 27% female. Cases involving governmental entities are also closer to the overall statistics with males appear as 69% of the lead counsel and females at 31%.

	<u>Male</u>	<u>Female</u>
Lead counsel in civil cases	76%	24%
Tort cases	79%	21%
Trial counsel	73%	27%

How does this break down in practice settings?

<u>Practice Setting</u>	<u>Male Lead Counsel</u>	<u>Female Lead Counsel</u>
AmLaw 100 Firms	75%	25%
AmLaw 200 Firms	84%	16%

Small Firms	80%	20%
Solo Practice	75%	25%

Distribution by Party

<u>Lead Counsel</u>	<u>Male</u>	<u>Female</u>
Plaintiff	78%	22%
Defendant	74%	26%

II. Factors that may be underlying the statistics

Diminishing Opportunity. With an increased focus on early resolution and metrics, are there fewer opportunities for trial experience?

Safety. Is fear of a high verdict preventing clients from going outside their comfort level? Is this fear valid?

Implicit bias. Is implicit bias preventing clients and firms from assigning cases to females as lead counsel? Check your bias at Project Implicit (<https://implicit.harvard.edu/implicit/>). Are you biased? Is it showing through hiring practices?

Other. Roundtable discussion. What have we encountered?

III. Overcoming the statistics

Consider the problem.

What do clients want to see and know in order to feel comfortable appointing a trial counsel?

Knowledge as a tool.

Both female counsel who want to sit in the first chair and the clients who want to hire them should be aware of information and factors that support such a decision. This includes being aware of successful female litigators such as Jennifer Keller and others in order to be able to relate their successes to your own story.

Also be prepared to discuss demographics in your geographic area. Who is your jury pool? The millennials are becoming part of the jury pool. This is reality. They have been raised to expect females at trial.

Steps to take as a lawyer:

- **Knowledge.** Being knowledgeable in the area of law. Being knowledgeable regarding statistics on how you, as lead counsel, may help improve the outcome for your client.
- **Preparation.** Get trial experience any way you can. Pro bono work through your local jurisdiction may afford you the opportunity to hone these skills.
- **Presentation.** Get consultation on your presentation skills, even at your own cost.
- **Marketing.** Do not be afraid if it.
- **Brag.** Do not be afraid to discuss your successes.
- **Support / Mentor Young Women Attorneys.**

Steps to take as a Client:

- **Question** firms on why case assigned to specific attorney. Why not a female attorney.
- **Ask** that younger female attorney be assigned as second chairs.
- **Watch** firms' statistics for hiring and retaining female and minority attorneys. Who is on the top? Are they just playing a numbers game?
- **Provide** opportunities for female attorneys to present and meet with your company.
- **Go beyond** marking that panel counsel include female attorneys to actually assigning them the work.