

“YOU GO GIRL!”

How Women Can Gain an Advantage in the Courtroom

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Is There a Level Playing Field for Female Attorneys?

“She was very charming and very polite to the witnesses. My impression was that her skill is in assessing people. As a woman, I was very proud to see a young lady, maybe not that young, but younger than me certainly, to be standing there in a courtroom with all guy lawyers. I thought: You go girl!”

This quote comes from a female juror during a post-trial interview.

“She definitely held her own among all the male attorneys, and she added a human, personal touch for the defense, which was good.”

This quote comes from a male juror during a post-trial interview.



While juror sentiments like these are encouraging to female trial attorneys, it is nonetheless disappointing that gender bias against female lawyers still exists in today's courtroom. The 1995 ABA Commission on Women in the Profession reported that men and women alike viewed female attorneys as “insufficiently aggressive, uncomfortably forthright, too emotional, and not as serious as men about their careers.” A follow-up report in 2003 revealed that negative perceptions about female attorneys have not dissipated (*Charting Our Progress: The Status of Women in the Profession Today*, 2003 ABA Commission on Women in the Profession). Not only have negative perceptions about female attorneys persisted, but many practicing female trial attorneys strongly believe they are at a disadvantage in today's courtrooms. The following quotes from accomplished female attorneys at major law firms confirm this point:

“Women certainly have credibility hurdles to get over, especially when you are up against a male attorney.”

“Culturally, women are raised to be less direct and confident and that can come across in the courtroom.”

Where do negative perceptions about successful female attorneys stem from? For years, social scientists have investigated public perceptions about successful women in high-powered, traditionally male-dominated professions (Parks-Stamm, E., Heilman, M. E., & Hearn, K. A., *Motivated to Penalize: Women's Strategic Rejection of Successful Women*, *Personality and Social Psychology Bulletin*, 34, (2), 237–47 (2008)). It is disheartening to learn that males and females often perceive successful women as unlikable and interpersonally hostile—as if success in a traditional male-dominated career doesn't suit women. Psychologists commonly believe that negative evaluations of successful women, particularly by other women, serve as a self-protective strategy against threatening, upward social comparisons. In other words, women tend to scrutinize other women as a means of protecting their own self images when they feel less successful or less competent by comparison. The same reasoning holds true when men feel threatened by a powerful woman.

It is no big surprise that gender stereotypes can work against female attorneys in the courtroom. Some of the stereotypical negative comments we've heard from jurors include: “*She was too stern.*” “*She was too emotional.*” “*She was dressed too sexy.*” “*She had annoying mannerisms and it made her look weak next to the men.*” But take heart! We have collected data from tens of thousands of real and surrogate jurors over the years. These data reveal that the conventional wisdom about what jurors think about male and female attorneys is not necessarily true. The truth is that jurors have *more favorable* perceptions of female attorneys as compared to men overall. It gets even more interesting when you look at the differences between male and female jurors. How many times have you heard that women are much tougher on other women than they are on men? While psychological research indicates that females are often harsher on other females in male-dominated careers as compared to



males, our research suggests the opposite—that male jurors are more critical of female attorneys. We have asked jurors to rate male and female attorneys on various attributes in post-trial interviews and in jury research exercises for over twenty years. Our research consistently reveals that female jurors perceive female attorneys as more likeable, honest, organized and competent when compared to male attorneys. Female jurors also believe that female attorneys generally have a stronger belief in their client’s case when compared to male attorneys. While male jurors generally perceive female attorneys as more likeable and more honest when compared to male attorneys, they find male attorneys to be more organized, more competent and to have a stronger belief in their client’s case when compared to female attorneys.

Note the differences in what some jurors had to say about the same female attorney:

“She was vigorous but not nasty.” (Post-trial comment made by female juror.)

“She’s very good, but for my taste she was overly aggressive.” (Post-trial comment made by male juror.)

“I thought she was fantastic. She was strong. She presented herself well, and her stuff was just together. She blew holes in everybody that got up on the stand. You don’t want to be on the opposite side of her, ever! She was very professional, and I really enjoyed watching her. I was actually looking forward to her putting on her case because I thought she would be interesting to listen to and several of the other jurors said that, too.” (Post-trial comment made by female juror.)

Use Your Emotional Intelligence to Your Advantage

There are several things that female attorneys can do to overcome traditional gender stereotypes that might work against them in the courtroom. Women have an innate ability to read people, to decode the emotions of others, and to regulate one’s own emotional expressions. This talent is generally referred to as “emotional intelligence” in the psychological field, and it is a valuable skill for trial attorneys to use as a technique for understanding the nonverbal cues of witnesses, jurors, opposing counsel and trial judges. If you have been assigned to a trial judge you believe holds traditional negative stereotyped views about female attorneys and you also believe those negative views will be evident in open court in front of jurors, counsel, and your clients, then consider striking the judge. Similarly, if you have a strong gut feeling that a potential juror will be judgmental of your ability to successfully try a case, use a peremptory strike on the juror.



Dress and Act the Part

Research shows that people unconsciously judge competence within one-tenth of a second. Women can increase their chances of being well-liked and highly regarded by both female and male jurors and judges. Twenty or thirty years ago, many female lawyers felt they had to be aggressive and ‘masculine’ to survive and succeed in the male-dominated courtroom. This is not true today. As one prominent female federal judge advises:

“Women need to be careful. They can’t be overly aggressive or perceived as non-feminine. Male attorney’s often bait female attorneys for the jury so they appear not as feminine or too feminine. Don’t come across too strident, belligerent or masculine. [As a woman you need to be] well prepared, knowing the case back and forth. Know your material so well your personality comes through and you can connect with the jury in a professional way.”

Given that first impressions on jurors do matter, female attorneys have to pay special attention to appearance. Sara E. Moss (partner at Howard, Darby & Levin) says, *“I like to look attractive but not have what I wear distract from what I’m saying.”* Vivian Berger, general counsel to the American Civil Liberties Union, says, *“In the courtroom, you always want to put your best foot forward, and your best foot should have the same color sock as your other foot.”* When jurors judge male attorneys, they comment on their ties and shoes. When jurors judge female attorneys, they comment on everything visible! Hair, shoes, jewelry, clothing, facial expressions, and more are all scrutinized. Think about developing your own signature item of clothing. It could be colorful shoes, an unusual brooch, or a patterned scarf that jurors associate with you and start to anticipate and look forward to seeing on you.

Based on jurors’ comments, it is advisable to leave the designer duds and doodads at home since jurors can be quick to criticize women for wearing their success. More than one very accomplished and highly skilled female attorney we know has been criticized (by the female jurors) for having a Chanel handbag or expensive looking jewelry. At the same time, we hear kudos paid to female attorneys for showing their “personality” through their attire. One juror told us, *“Of course, you heard about her wardrobe of shoes. She dressed very nice, and the whole fashion thing came into play. We would watch her every day to see what shoes she would wear. She only wore one suit that was wrong for her body type. The skirt was too long, but the color was great for her.”*

Nonverbal cues have the potential to have a tremendous effect on attorney persuasiveness in the courtroom. Although women are often stereotyped as overly emotional, sometimes emotional reactions work in your favor. For example, in a recent post-trial interview we conducted with a male juror, he was asked his impressions of the female trial attorney. He said, *“She was more believable because she was a little emotional.”* However, when jurors see men emotionally distraught they are judged in a negative manner. Here’s what one juror said about a male attorney who showed his emotions, *“We thought – and this was pretty much*



the consensus of the jury – that he was pretty hostile. He would make faces, he would grimace, and he would smirk. When the other attorneys were presenting, he would smile and shake his head. We didn't like his (nonverbal) actions, and they didn't do him any good.” To make a positive impression on jurors during trial, women should avoid antagonistic cues such as sarcasm and intimidating gestures, rolling of the eyes, playing with hair, tapping, and looking bored or disinterested in your case.

Finally, it is our experience that oral communication skills are among the strongest influences on case outcomes. When asked about a female attorney following a trial one juror commented:

“I was really taking note at how she handled herself, and felt like I want to try to adopt some of what she does and how she talks in what I do in business. She was nice but firm. She was very professional and businesslike, a very good attorney. She always made a point that the other side couldn't refute. She didn't play around, she went straight to the point and she knew how to direct the witnesses to the responses she wanted to elicit. I really liked her personality and the way she came across. She knew her information; she was very calm and did what she had to do. She made an impact on us.”

With the right qualities and more positive attention paid to women in the media, women will be on an equal playing field with men in the courtroom, and even have an advantage with some jurors. You go girl!



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