



IF NOT NOW, WHEN?

Achieving Equality for Women Attorneys
in the Courtroom and in ADR

Report of the New York State Bar Association

Prepared by the Commercial and Federal Litigation
Section's Task Force on Women's Initiatives

Panel Members

- Stephanie J. Ball, JD – Director of Continuing Legal Education – NAM (National Arbitration and Mediation)
- Elizabeth A. Edmondson, Esq. – Partner – Jenner & Block
- Carrie B. Freed, Esq. – PMI – Associate General Counsel – Global Services Inc.
- Sharon M. Porcellio, Esq. – Member – Bond, Schoeneck & King





IMPETUS FOR REPORT – PIPELINE CLOGGED

- Women have represented > 50% law students for at least 10 years
- Women prepare briefs
- Women sit at counsel table

Yet

- Women do not speak in court
- Women do not get roles as neutrals

Our Question: Is that reality or just anecdotal?

Task Force Decided to **FIND OUT** – collect actual data

The Task Force Survey Methodology and Findings

The task force's survey began with the creation of two questionnaires both drafted by the task force (See Appendix A of the report).

First Questionnaire:

- Was directed to federal and state judges sitting throughout New York.
- Was designed to be an observational study that asked judges to record the presence of speaking counsel by gender in all matters in their courtrooms occurring between 9/1/16 – 12/31/16.
- 2,800 responses received

Second Questionnaire:

- Was directed to various ADR providers to record by gender both the appearance of counsel in each proceeding and the gender of the neutral conducting the proceeding.
- 600 responses received

TABLE 1
SUMMARY OF FINDINGS

Category	# Men	# Women	% Women
Total - Sample-wide	3886	1309	25.2%
Trial level -all	1805	592	24.7%
Appeal level - all	1007	340	25.2%
Upstate Courts - all	1154	409	26.2%
Downstate Courts - all	2103	694	24.8%
Federal Courts - all	1890	611	24.4%
State Courts - all	1725	635	26.9%
All Courts - Parties of 1	561	259	31.6%
Parties of 2	2532	910	26.4%
Parties of 3-4	681	224	24.8%
Parties of 5+	587	142	19.5%
All Courts - Lead Counsel	3430	1 135	24.9%
All Courts - Additional Counsel	456	174	27.6%
All Courts - Private Civil Lawyers	1688	384	18.5%

The Results of the Survey Are Striking

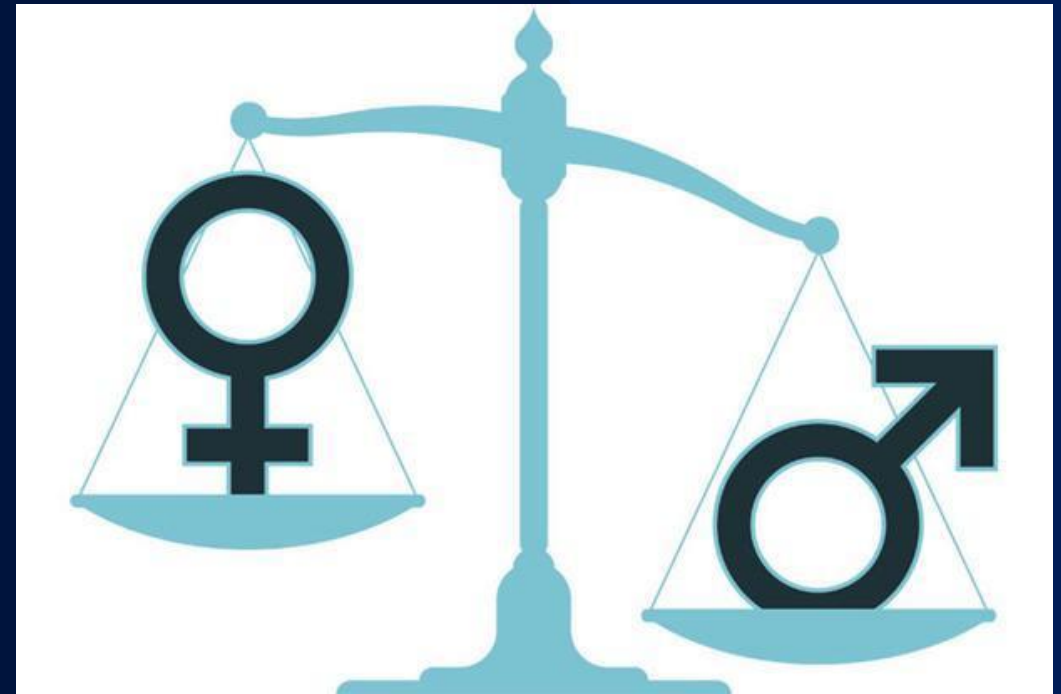
- Female attorneys represented just 25.2% of the attorneys appearing in commercial and criminal cases in courtrooms across New York
- Female attorneys accounted for 24.9% of lead counsel roles and 27.6% of additional counsel roles
- In complex commercial cases: women's representation as lead counsel shrank from 31.6% in one-party cases to 26.4% in two-party cases to 24.8% in three-to-four party cases and to 19.5% in cases involving five or more parties.

Confirmed Anecdotal “Evidence” Judges Surprised by Results

Clear Differential in the Number of Women and Men Who Have Speaking Roles in Court Exists – Cause & Effect Not Part of the Report

Possibilities???

- Clients mandating attorney selection?
- Male attorneys hoarding opportunities?
- Female and male attorneys pursuing opportunities differently?
- All of the above?
- Chronological lag?



Women In-House Counsel Perspective

Recent Initiatives from Corporate Clients to Increase Diverse Representation

- What does insisting on diversity mean in practice?
- Corporations that have moved from “insisting” to “demanding”
- Comparison of hard vs. soft approach

What Can We Do as In-House Counsel?

- “The first step in correcting a problem is to identify it.”
 - U.S vs. International Experience
- Learning to Redefine How We Perceive “Risk”
- Little Things Make A Difference
- More Formal Programs

Women Litigators In Law Firms Perspective

- Welcoming the leadership of clients
- Ensuring women are in key roles on a matter of from pitch all the way through conclusion of the matter
- Leading by example
 - Cross-firm initiatives
 - Re-imagining women's forums within law firms
 - On Track pilot programs
- Litigation-specific issues
 - "Mansfield Rule" for trial speaking opportunities
 - Attention to gender breakdown of roles within a litigation
 - What does lead counsel look like?

Women in Alternative Dispute Resolution

In recognition of the under-representation of women on international and commercial arbitral tribunals, in 2015 members of the arbitration community drew up a pledge to take action (the Pledge). The Pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon practically possible, with the ultimate goal of full parity.

Take The Pledge, Equal Representation in Arbitration

- The final version of the text of the Pledge is the result of a collaborative effort between global representatives of corporate entities, states, arbitral institutions, arbitration practitioners – both counsel and arbitrators – and academics, drawn together by a Steering Committee.
- The introductory paragraph of the Pledge sets out two general objectives:
 - to improve the profile and representation of women in arbitration; and
 - to appoint women as arbitrators on an equal opportunity basis.

Where Do We Go From Here?

Successes

- Approved by NYSBA House of Delegates – November 2017
- ABA Resolution based on the report – February 2018
- Judicial rule changes across the state – both federal and state courts

❖ KNOWLEDGE

❖ AWARENESS

You must be the change
you wish to see
in the world.

~Mahatma Gandhi

Questions and Answers

Thank You!

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