

Ten Reasons Why Women Make Great Trial Lawyers

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Your case is going to trial, and your future depends on its outcome. The other side is represented by guys in gray pinstripes. Your side's champion is a top woman trial lawyer. How do you feel about that?

Despite *The Da Vinci Code's* awakening us to the power of the Sacred Feminine, we are still conditioned to associate strength and power with men, and we want our trial team to be strong, powerful warriors. But isn't it time to consider how certain stereotypically "womanly" traits are precisely the traits we value in good trial lawyers?

Women's long struggle for equality has hampered women's (and men's) willingness to acknowledge, appreciate and capitalize on what we know is true: women and men are different. Women trial lawyers are different, too, in how they relate to judges, juries and opposing counsel, how they see and use evidence and how they define and chart a path to success.

Here are 10 reasons why women are special and why our female traits make us great trial lawyers.

1) Women are strong.

It takes strength — physical, mental and emotional — to be a good trial lawyer. And despite conventional imagery of men as the stronger sex, women are really strong. Ask your mother.

Women are physically strong, living an average of five years longer than men, due partly to men's violence or bad habits and partly to the genetic advantages of those extra X chromosomes. Women have chemicals on their side, too: While men get testosterone, women have estrogen and produce oxytocin, which calms and centers them. (More on that later.)

Yes, women are emotional. But who can deny the importance of strong emotions fueling great trial lawyers? Also, it is said that "women bend, men break." Women's flexibility is resilient strength, crucial to weathering the storms of trial.

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2) Women are effective authority figures.

Of course men are the traditional authority figures: priests, generals, capitalists. But these are “Do what I tell you” authority figures, dangerous in a jury trial because that is the role the judge has (and wants). Women use their authority to say, “Here is what to do because it is the right thing to do and best for you.” Think Mom and teachers. And this type of authority — showing the way rather than pushing or pulling — can be instrumental in connecting with jurors who want to make a responsible and right decision.

3) Women are resourceful.

I loved last year’s story of Ashley Smith, the Georgia woman taken hostage by an escaped killer, who freed herself and convinced her captor to surrender by reading to him and making him pancakes. Pancakes! What man would have cooked the guy pancakes? (She also apparently gave him crystal meth, but we won’t let that interfere with a good story.)

Women often have, or may be more willing to employ, a wider range of tools in dealing with unexpected situations. Whether it’s cooking pancakes for killers, using an earring to push the BlackBerry reset button (yes, it works), or using a weird exception to the hearsay rule to get evidence in, women in difficult jams often find an unorthodox solution. (Every woman trial lawyer reading this just thought of something weird she once did in court that worked.)

4) Women read people.

Cambridge psychologist Simon Baron-Cohen’s fascinating 2003 book, “The Essential Difference,” posits the existence of numerous provable — if politically incorrect — gender differences. Among his research-based conclusions is that females read faces better than males. In one study, girl babies preferred looking at faces, and boy babies preferred cars. And women performed better than men at a test requiring identification of people’s emotions by looking only at their eyes. (Try it: <http://questionwriter.com/samples/eyesquiz/>)

The ability to read people’s faces is obviously valuable to trial lawyers. As word-driven as our profession is, much of what happens in court is nonverbal. Witnesses emote or lie, judges approve or doubt, jurors believe or are bored — all in silence but revealed in faces. A lawyer aware and attuned to this other language is advantaged.

5) Women empathize.

Baron-Cohen also generalizes that men are “systemizers” and women are “empathizers.” He posits a continuum of these tendencies and proves scientifically what is obvious: Women are more willing to don another’s emotional shoes and walk a mile in them. Two if you need it.

Do we want our trial warriors to be touchy-feely empathizers? We should. To imagine and even vicariously feel what a client is going through, or a witness, or a juror, while evidence is being presented, enhances the ability to deal effectively with that evidence.

6) Women “tend and befriend.”

A 2000 UCLA study concluded that, when facing stress, men have a “fight or flight” reaction, and women “tend and befriend.” Evolution may have charged cave women with protecting children while the cave men fought enemies. Or the explanation may be chemical: Women under stress (or giving birth or lactating) produce and more efficiently process higher levels of oxytocin, which promotes relaxation, lowers blood pressure and triggers an “affiliation” response. Testosterone, by contrast, enhances the effectiveness of stress-related hormones (adrenaline, cortisol and epinephrine), which increases blood pressure and aggression.

Given this chemistry, can women be tough and aggressive in court? Sure, women’s adrenal glands work, too. But women trial lawyers may find additional advantage in their reserves of calm in times of stress and may profit from their willingness to seek the assistance and perspective of others to provide guidance through difficult challenges. The “tend and befriend” trait also makes women effective “peaceweavers,” who can satisfy the competing demands of different constituencies simultaneously, a potentially critical skill when simultaneously managing the needs of client, judge, jury and counsel.

7) Women prefer collaboration to coercion.

In their 2003 book “Women Don’t Ask,” Linda Babcock and Sara Laschever observe that women’s focus on cooperation and relationship building can advantage them in negotiations. An example given is two male chefs fighting over the last lemon while two women chefs talk about it and discover one needs only the juice and the other only the rind.

Most trials are binary, of course: Either you win or you don't. So collaborative skills may seem less important. But the most effective trial lawyers are those who collaborate with the jury and guide jurors to adopt the advocate's position as they puzzle through the problem together. Like any conversation, communication with jurors is a sort of negotiation, and a collaborative style can ally the advocate with the jurors, making jurors want to maximize benefits to the "team."

8) Women make up half the audience.

Long gone are the days of all male judges, lawyers and juries. Half of today's law-school graduates are women, 40 percent of practicing lawyers are women, 23 percent of federal judges and 28 percent of state judges are women, and 51 percent of the population — potential jurors — are women.

Still, with stunning frequency, especially in federal court, counsel tables are overwhelmingly male. At a high-profile trial this year, I counted 16 lawyers milling around the defense table, two of whom were women, neither with a speaking role. Yet the power in that courtroom was wielded by a jury of eight women and four men.

Do women jurors and judges prefer women lawyers? No, it's not that simple. But looking across a courtroom at a legal team of monochromatic males is at least boring and perhaps offensive to many women, and men, whether they are jurors, judge or counsel. I am not suggesting tokenism, which just makes the obvious worse. But a trial team with at least one talented woman in an important role has an advantage, especially when addressing an audience that will include a significant number of women.

9) Women worry.

I've always been struck by how we use these two verbs: "to father" a child, meaning to conceive it, and "to mother" a child, meaning to nurture and protect it. Of course there are many nurturing, caring fathers. But the undeniably greater involvement of a woman in childbirth brings with it a built-in responsibility and a greater built-in capacity for worry.

For trial lawyers, capacity for worry is a good thing. More trials are lost than are won. And worrying about losing, or making a mistake, or even looking foolish, is a powerful performance enhancer. Worriers also mind the

details, which can be critical to a trial lawyer's success. Don't you want your lawyer worrying about your case? And, when the worrying is for a client, jurors sense that the client is someone worth caring about. A lawyer's look of concern or comforting touch of a client, if sincere, conveys more to a jury than the fanciest Powerpoint presentation.

10) Women don't get caught up in the game.

In a recent Stanford study, men and women given arithmetic problems could choose to be paid per-problem or compete for tournament winnings. The study showed no gender difference in performance success. However, men dramatically overestimated their prowess, with 75 percent of the men believing they'd won their tournament versus 43 percent of the women, and men also greatly preferred the tournament mode — 73 percent versus 35 percent.

Even the highest-performing women were more likely than the poorest-performing men to choose piece-rate pay over a chance for tournament winnings. I have read of other similar studies where, given the option to quit or keep playing, women chose to end a competition after winning a certain amount, while the men continued playing.

If women don't like competition, how can they be effective courtroom gladiators? Because these studies reveal that, for women, the results matter more than the game. Remember that the women, although not preferring the tournament, performed equally well in it. Getting too caught up in the game can be a real danger in a trial. The ability to focus on the substance of what is happening and pursuing the result, rather than fixating on winning an immediate skirmish, can be hugely important in the courtroom.

Women aren't better trial lawyers than men, and men aren't better than women. We're just different. It is time for those differences to be acknowledged, celebrated and encouraged, especially in young women lawyers learning their trade.

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