



## WHEN BUSINESSES HIRE LAWYERS, GENDER MATTERS

by DAWN ESTES and MELANIE OKON

**D**oes sex matter? Now that we have your attention, perhaps we should ask the question in a more appropriate fashion. Does gender matter — or should it matter — in choosing the right lawyer to represent a business?

The answer, as far as we've been able to determine, is yes, it does matter. In our view, the better man for the job often is a woman — not always, but often.

Before we get too far down this path, some background on our potential bias is appropriate. Ours is one of the few certified women-owned business law firms in Texas. Two brave and brilliant male lawyers work with us, but the women's restroom on our floor of the building gets used a heck of a lot more than the men's.

When assembling a team to handle a legal matter or take a case to trial, a client obviously should begin with the expectation that all the lawyers under consideration — men and women — are

excellent at what they do. Beyond that basic requirement, we believe some traits typically associated with women provide attorneys an advantage in some circumstances.

• *"I have an idea that the phrase 'weaker sex' was coined by some woman to disarm some man she was preparing to overwhelm."* — Ogden Nash

Sometimes it is important not to look like The Man. Everyone loves a David and Goliath story. That is why people commonly refer to large oil and gas companies as Big Oil. Other large corporations face similar labels. Many defendants come into court at a disadvantage merely because of their name recognition, size and net worth.

Arming themselves with women lawyers can help big companies disarm juries and remove some of the automatic bias. Think about it. When a man walks into the courtroom to defend a big company jurors perceive as The Man, it only strengthens that perception. But when a woman walks into the courtroom to defend the same business, the perception dissipates, and the company's image is softened and humanized.

Moreover, juries often view women lawyers as

underdogs when they are pitted against male lawyers, thus turning the parable on its head. The company somehow becomes David while the plaintiff becomes Goliath.

But the softness should be a perception only, not a reality. Like Muhammad Ali, a great woman lawyer may float like a butterfly, but she also must sting like a bee.

Hiring women lawyers to defend against sexual harassment claims lodged by female plaintiffs is a widely recognized strategy. Likewise, the particular defendant (as opposed to the particular plaintiff) can dictate who a company should hire.

• *“Women are in league with each other, a secret conspiracy of hearts and pheromones.” — Camille Paglia*

A 2009 survey by the Minority Corporate Counsel Association showed that roughly one in five *Fortune* 500 general counsel was a woman. Likewise, women comprise a significant portion of in-house lawyers below the GC level. With those numbers, it’s just common sense to consider women for the legal team.

## ***Arming themselves with women lawyers can help big companies disarm juries and remove some of the automatic bias.***

Collaboration is critical for large corporate clients. Outside and inside counsel work together to merge their skill sets to create the best legal outcomes for the client. Due to women lawyers’ collaborative nature, they are ideally suited to work with in-house counsel as an integral team. (Remember, we are the ones who are not afraid to ask for directions. We can even accept directional input from someone other than the sexy-voiced GPS lady in the car.)

Unfortunately, we continue to hear stories about outside counsel who fail to consult younger inside counsel (often women) about critical strategic litigation decisions before forging ahead in the name of the client. Often, the outside lawyer does not even realize he has done this.


Litigation decisions usually have broader implications in the business world, and inside counsel possess critical information that outside counsel do not. When outside counsel fail to collaborate with inside counsel, critical information is left on the cutting-room floor.

• *“Women like silent men. They think they’re listening.” — Marcel Achard*

Women are great listeners. They are able to listen without feeling obligated to know every answer to every question immediately, and they do not feel obligated to fix everything instantaneously. (This might come from being constantly asked mom questions such as, “What happens if I put the cat in the bathtub?” or “Why do you have so much extra skin on your elbows?”) Especially in emotionally charged cases, that sort of attitude creates advantages. Sometimes being heard and respected is as important to opposing parties as the ultimate deal terms or settlement payment.

Women also have the ability to take in lots of information regarding options quickly and move the analysis forward to a decision. Thoughtful and swift consideration of possible outcomes ultimately drives a better result than a less-informed, snap decision.

What we suggest — acknowledging and respecting differences — is not radical but more often the norm. Many businesses today emphasize diversity, recognizing that consumers, taxpayers and juries include women and minorities, and diverse legal representation makes good business sense. Others organizations are required, by law or contract, to make sure a certain number of women or minorities get to do some of the work.

Fortunately, most of us with opposable thumbs have moved past the tired stereotypes of woman versus man. But, in a legal battle where the fate of the company itself may be on the line, lawyers owe it to their clients to find and exploit every possible advantage. Sometimes, that may mean a man isn’t the best man for the job. 



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