

REFLECTIONS OF A LADY LAWYER

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Kudos to law schools for focusing on women in the legal profession. It's not always easy being a woman in this profession or, what someone from my home state of Texas once called me, "a Lady Lawyer." That was more than ten years ago, when I was a little-known alumnus of the Solicitor General's Office embarking on my appellate career in private practice. The lawyer asked me to speak at the Fifth Circuit Judicial Conference. When I asked why, he candidly responded: "We wanted a Lady Lawyer." The truth is, I was not the least bit offended. I *am* a Lady Lawyer. For better or worse, that is how the profession defines us. And I for one prefer to own it because my success as a lawyer has come in no small part from incorporating my identity as a woman, wife, and mother into my professional status.

I arrived at law school at the University of Texas in 1986 as an insecure, anxious, and very unhappy twenty-one-year-old whose main dietary staple consisted of lettuce that I allowed to marinate in my hot locker until lunchtime. It's a small miracle that I not only survived law school but managed to avoid being felled by food poisoning. I had no money, and I had failed miserably with men. Perhaps that is why I entered law school obsessed with two goals: first, I wanted to do well enough to land a job to keep me out of poverty; and second, I wanted to get married and have kids. Those desires never wavered and happily dovetailed when I started in 1990 at the Washington, D.C. law firm of Williams & Connolly where, within the first few months, I simultaneously made enough money to pay off my credit card debt and met my future husband.

Although now I think of myself as a lawyer who is at the same time a woman, wife, and mother, I started my career thinking that I had to separate my lawyer self from my feminine side. That was a disaster. I tried to look and act like the successful men (and, back then, the few successful women) I saw in law firms. It was the early 1990s, so that involved dressing in ill-fitting, drab suits while trying to be polite, polished, and diplomatic—in other words, I tried my best not to be myself. Once I had children, I tried to look and act like the perfect mother outside working hours: I volunteered at my kids' school and was so desperate to fit stereotypes of motherhood that I attempted baking (the results were not remotely edible). But none of this

worked. I remained full of self-doubt, second-guessing my decisions, not knowing whose advice to take, and feeling like a failure on all fronts. It became clear that being an ideal lawyer, and an ideal wife, and an ideal mother was beyond my limited repertoire. I realized that I needed to embrace who I was—full stop—and stop trying to fake my way through a compartmentalized life.

Fast forward to today. I am back home at Williams & Connolly, some thirty years after I started there, and at a time when I have the distinction of having argued more cases in the Supreme Court than any other woman. I wear a lot of bright colors, and friends' children know that they are not supposed to imitate my colorful language. So how did I get here? For starters, doing well at this law school allowed me to clerk for the incomparable Ruth Bader Ginsburg, then a judge on the D.C. Circuit. Judge Ginsburg showed me what it meant to be a woman not just steeped in the law, but unapologetically chic and equally unapologetic about devoting time to family. She inspired me for decades to work harder so I could feel worthy of having clerked for her. I am positive that I fell short during that year; my two co-clerks were from Harvard and were more mature, better writers, and more sophisticated than me. For many years after, I had anxiety nightmares about appearing before Justice Ginsburg in the Supreme Court without knowing what the case was about or without practicing my answers.

I later gained some level of sophistication, writing skills, and maturity while working for thirteen years as an Assistant to the Solicitor General in the Department of Justice. I there argued twenty-seven cases before the Supreme Court and served under seven incredible Solicitors General and acting Solicitors General—Walter Dellinger, Seth Waxman, Ted Olson, Paul Clement, Greg Garre, Neal Katyal, and Elena Kagan. The Office was honest about why they hired me: it was 1996, they were looking for women, and as I said, I happen to be a Lady Lawyer. When I left that office in 2009, I predicted that female advocates would soon achieve parity with men because half the Office had been female and these women presumably would enter private practice just like me. And for the last ten years, the Office, under both Democratic and Republican administrations, consistently has hired exceptionally talented women.

I was wrong. Parity is still nowhere to be seen. There is an appalling dearth of female Supreme Court advocates. Women argue typically between 15%–18% of the cases before the Supreme Court in any year;¹ women

1. Adam Feldman, *A Dearth of Female Attorneys at Supreme Court Oral Arguments*, EMPIRICAL SCOTUS (Oct. 22, 2017), <https://empiricalscotus.com/2017/10/22/dearth-female-args/> [<https://perma.cc/SDW6-BLX8>].

argued a paltry 11% of the cases in 2017.² Most of these women are government lawyers, public interest lawyers, and public defenders. Last year, of all the lawyers in private practice who appeared before the Court, only 8% were women.³ Corporations overwhelmingly hire men. This should either alarm you, depress you, or both.

I do not have an easy fix, but I can offer some observations. First, Supreme Court advocacy, especially oral advocacy, is not focused on problem-solving, consensus-building, or mentorship—attributes people associate with female stereotypes. An “argument” is just that: it involves combative communication and intense verbal jousting. You either win or lose. Or, as I like to frame every case I argue, someone is going to die, and I don’t want it to be me. For better or worse, I think women come across as less combative than men. My empirical research on this is rock-solid: throughout elementary school, I only saw boys get in fights on the playground.

Second, Supreme Court advocacy requires supreme fearlessness and confidence. Again, for better or worse, female lawyers either are less confident, or project less confidence to clients, than male lawyers. In my experience, it is not so much that women sell themselves too short, but that many men sell themselves too long. This is so even when some men who argue have no business standing up in the Supreme Court. My research here again is unassailable: only women have told me they could never see themselves arguing in front of the Supreme Court.

At the same time, I know there is rank discrimination in the profession, even if most of it is unintentional. I have had to ask myself on many occasions: were I man, would these associates be complaining about the way I like binders prepared or cases highlighted or denigrate my judgment on how to strategically frame a case? I have had associates I have never met from other law firms send me cookie-cutter, form e-mails asking me to write briefs for free. I always respond the same: “I typically like to get paid for work, and can you please let me know all of the men you sent this email to?” Maybe these associates were just doing what a partner told them to do. But I have never received a response back after sending these e-mails. I’ve seen many instances where men think only of other men when it comes to oral argument assignments or which associate should give a firm-wide or client presentation. I cannot know whether any of these instances resulted from

2. *Id.*

3. Jimmy Hoover et al., *Making Her Case: Will the Future of the Supreme Court Bar Be Female?*, LAW360 (Oct. 2, 2018), <https://www.law360.com/articles/1087277> [<https://perma.cc/W7L8-V444>].

intentional discrimination, implicit biases, or whether I am just paranoid, or whether all three are in play. No one will admit even to having implicit biases. Would you?

Here is how I try to help. I try to be a role model for women. I lead my practice group at my law firm, Williams & Connolly, with not one, but two other women. I encourage women to project strength and confidence, and I give young women the following advice: Stop looking for your passion. Sex and horseback riding are passions; work should not be. I do not want a passionate surgeon or a passionate airplane pilot. I want someone who is excellent and can produce good results. The same is true of a lawyer. I want someone who can answer my questions, win my case, or get me out of a jam.

I also tell women to be themselves. Just do what you are good at; chances are, you will generally enjoy doing something you are good at. Telling women to follow their passion also sets way too high of a bar for them, and it is a recipe for defeat and disappointment. Work is stressful and exhausting. I see women leave the workforce or quit their jobs because they weren't successful, not because they lacked passion. You are better off going to work at a place that wants and needs you for a skill you have. You will have more control over your work and schedule. It is much easier to set boundaries when your colleagues need you more than you need them. It may have taken me a while, but I have no problem telling my colleagues to leave me alone because my kids are more important to me than reviewing their briefs, and not to schedule work meetings before 10:00, after 5:00, or on the weekends.

So learn your strengths and know your weaknesses. I accepted early on that I would be a terrible trial lawyer, even though I dreamt of being the next Brendan Sullivan. I do not live only for my work. I love doing something I am good at that helps other people, and the pay is a real plus. And while I hate to lose, winning is not what gives my life meaning. It does not even fill me with joy. In fact, I usually am still mad that the client was sued in the first place or had to sue to obtain relief. I save my passion for my home and my hobbies, like coaching high school debate and shopping.

I like to tell law students that picking a job is a lot like picking a spouse: it's hard to know what you are getting into until it's too late to get out. For instance, when I was looking for a husband, humor, brains, and love of children was all that mattered to me. I never thought to ask about parenting philosophy, religion, finances, and who would control the thermostat or TV remote. In terms of a profession, it also is virtually impossible to know exactly what you want out of a job, or whether you will get it even assuming you know what you want. When starting out, I cared about salary and whether working at a firm would keep doors open for me in case I hated my job. It never occurred to me to think about some basic questions, such as:

would someone teach me how to actually practice law; how hard would I work; how would I be reviewed; what if I needed help; could I succeed at work and have enough time to exercise, shop, go to the doctor, go on dates, and have children; and would I be happy?

Looking back, I don't know who I could have asked, how I could have asked them, or what I even wanted the answers to be. Instead, I chose to work at Williams & Connolly because some primordial instinct told me it was a place that would go to the ends of the earth and back for its clients. I lasted three years there. Although I loved the people, my reviews were only so-so. In retrospect, I had little clue what I was doing, and I was not cut-out for trial work. I discovered that appellate law allows me to use my strengths in empathy, storytelling, and persistence without the need to be good at multi-tasking, organization, and face-to-face adversity with opposing counsel.

I also don't run away from my double X chromosomes. I do not dress like a man, I do not talk like a man, and I do not think like a man. I empathize with my clients. I put myself in their shoes and learn their business. I do not judge them. I do not think about what the law is or should be. I focus only on how to win. How do I do that? Again, I imagine someone is going to die, and I don't want it to be me. And that is where my maternal instincts kick in on steroids. I assume my clients are being bullied (they inevitably are), and my job is to protect and defend them at all costs.

Failure and humiliation are part of life. And work is no different. Disappointment and rejection are inevitable. I can count more jobs and more clients and more cases that I didn't get than those I did. At some point, you can throw in the towel if you just aren't good enough at something. But if you do have a skill, never let other people's perception of you define you. Let me share some priceless advice that has loosely been attributed to Eleanor Roosevelt: you wouldn't worry so much about what other people think of you if you knew how seldom they think of you.

Here are some practical job tips. First impressions mean everything. If you do a great job off the bat, chances are your boss will look past your inevitable mistakes. It's much harder to make up lost ground. Accept criticism when it's deserved. Being too defensive encourages others to start battles and attack you.

As to my approach to oral advocacy, truth is the best form of advocacy. A court is more likely to trust what you have to say if you acknowledge any shortcomings in the record or in your arguments. I have always been extremely direct and blunt. I also have learned to trust my judgment and instincts more as I age. Many colleagues have advised me not to go bold, but to play it safe in briefs or arguments. Thankfully, at key points in my career,

I ignored them, and I do not regret it. To the extent I have regrets, I only wish I had stood my ground more often and told more people that they were idiots.

Find mentors who will care about you and who you can turn to for advice. Justice Ginsburg was key to the Solicitor General's Office hiring me, and I also was fortunate to have had the backing of colleagues I had worked with at Williams & Connolly and the Department of Energy. But you need more than good references. Justice Ginsburg gave me great advice when I went to her about seven years into my career in the Solicitor General's Office, at a time when I thought my career was a standstill. I told her I had been in the job years longer than most people hold that job, and I asked her whether it was time to do something else to advance my career. She asked what the Office was like, and I recounted to her in detail what my daily job entailed. She then said the last thing I wanted or expected to hear: "I think you should stay. You are good at what you are doing. And you seem very happy with your ability to control your schedule and spend time with your kids." I remember leaving very disappointed with what I thought was a milquetoast response. I wanted her to recommend some sexy, new, and thrilling opportunity for me, but thank goodness she knew what she was doing. I stayed in that office for many more years, time that I needed to grow personally and professionally. Staying there was the best thing that could have happened to my career.

I also like to say that behind every successful woman are the many men in her life who just got out of her way. I could not have done my job without a husband who supported my job and at times limited his own work so he could help with parenting when I was crashing in preparation for an oral argument. And I would have quit practicing law a long time ago were it not for one particular boss: Paul Clement. He was my boss for seven years at the Solicitor General's Office, first as Principal Deputy Solicitor General and later as Solicitor General. When Paul was Solicitor General, and shortly after the birth of my second child in 2001, I asked Paul what previously had been anathema in that office—could I go part-time? Paul immediately said "yes" without consulting anyone else, and quickly followed it up by saying, "just let me know at some point what I just agreed to."

Several years later, still in the Solicitor General's Office, I was ready to quit practicing law entirely to spend more time at home. I also was mentally exhausted. Paul suggested that, instead of quitting, I take a leave of absence. And he said something I will never forget: he told me I was good at my job. I took Paul up on his offer, took a half-year off, and returned to the Office six months later, still on a part-time basis. Paul's flexibility and understanding of the challenges facing working mothers saved my career. For the last eighteen years, I have remained part-time. To this day, I often refer to Paul as the greatest feminist of his generation. Every woman should

find a boss like Paul Clement.

I end with a word to any Justices, Judges, clients, and lawyers in management who read this: please do more to hire, support, and encourage talented women who want to work. Women don't look or talk like Perry Mason, and you don't want us to. We often are more creative, smarter, more persistent, and harder-working than men, and we actually win cases. So call me a Lady Lawyer. Just don't underestimate me in Court.