



More musings on the extinction of a species: *Trial* lawyers

We try far fewer jury trials today than ten years ago. Is the growing number of women in trial practice a factor in this conundrum?



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We're not trying anywhere near as many jury trials as we used to. The reasons and ramifications are many, including the pressure to mediate, the increasing expense of trials, lawyer advertising, politics and changes in the law adverse to plaintiffs at trial. But there is potentially another factor: Significantly more women are coming into trial law practice.

Don't misunderstand — I applaud this change. I have long advocated that we needed more women in our trial lawyers' associations, and I am most happy to see a better balance between men and women in the law as a whole.

When I was in law school in the early '60s, there were only three women in our class of about 150 at Boalt Hall Law School. When I was trying cases in the '60s, '70s and into the '80s, there were very few women trial lawyers. Fortunately, that began to change, but it was slow at first. By the '90s and moving into this new century, there were as many women in law school as men. In fact, I read recently that women law students actually outnumber men.

While I embrace women in the law, I do believe the influx of women trial lawyers may be one factor leading to a decline in the number of cases that we try to juries.

Why do I say this? It has to do with our different attitudes towards settlement. Settlement is now largely perceived as the best way to resolve our cases. When a case fails at mediation and heads for trial, mediators and most lawyers consider themselves as having failed. "What's wrong with your case?" they ask. "Why didn't it settle?"

Men, women and conflict resolution

I think that men and women view conflict resolution in fundamentally different ways. This comes from our upbringing. Lit-

tle boys are taught that if they have a conflict with another boy they should be strong and willing to fight. Boys are not encouraged to talk things out. They have to prove, with fists or on a playing field, who is the better man. This attitude permeates our sports activities, especially in football, boxing, wrestling and other contact sports.

Women, however, are often raised differently. As little girls they are taught that they should not fight. If they have a conflict, they are supposed to talk it out. They talk and talk until they finally resolve their conflict. But generally, they don't hit each other. They don't "take it outside" to settle an argument. Sometimes they talk for days. This drives us boys crazy. "Why don't you just get it over with?" we ask. But the girls continue to talk it out.

I believe this carries over into our adversary system. It is historically very male dominated, going back to the roots of adversary law and trial by battle at the beginnings of the common law. Men fought to prove who was right and just. The winner was deemed by God to be truthful and just. This male-dominated model has continued in large part to present-day trial law practice, but I now see it becoming outdated. "Talking it out" through mediation is becoming the new standard in trial law practice.

Let me hasten to add that I am not demeaning the ability of women trial lawyers or suggesting that they are not as "tough" and effective as their male counterparts. There are many terrifically talented women trial lawyers. My dear friends Mary Alexander, Roxanne Conlin (past president of American Association for Justice), Barbara and Therese Lawless, and Nancy Hersh come immediately to mind. Women's ability to be tough and effective in the courtroom isn't the issue. The issue is that there are significantly fewer cases being tried, and I believe part of the reason is that women prefer to resolve conflict differently than men.

The real question we must ask ourselves is if this trend towards fewer trials is good for our injured clients, for the civil justice system and for society as a whole. As I stated in my last column, I be-



lieve that jury trials are still critical to the system, but as I've also said before, I consider myself a dinosaur: Dinosaurs are extinct, *trial* lawyers are not – yet!

I urge you to contact me at Plaintiff Magazine with any thoughts you have

about this intriguing and very important issue. ggwilliam@plaintiffmagazine.com.

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