

A ROCKET MATTER INVESTIGATION: SEXISM IN THE COURTROOM



Introduction

Even though I've been working with the legal profession for more than 12 years, some things still surprise me about this industry. The stories I've heard from female lawyers about their experiences in the courtroom is certainly one of them.

Throughout the past few years, I've been hearing a lot about rampant sexism in the courtroom. Women are called "sweetie" and "honey." They are told to "calm down" and not "get emotional" when arguing a case. They are ignored by judges and opposing counsel who instead defer to their male counterparts. One judge even asked a female litigator if she was stripping in his courtroom when she took her blazer off on a particularly warm day.

These stories are apparently just the tip of the iceberg.

So we at Rocket Matter decided to launch an investigative series to explore what's really going on in courtrooms today.

In this eBook, we share many stories of how women are being treated. We talk to experts about why this is happening. We want to raise awareness about this serious issue.

If you're like us, you appreciate people fighting the good fight. In this eBook, you will hear from amazing people like Judge Ashleigh Parker Dunston and trial attorney Theresa Hatch who are making a difference. Women like them are not only inspirations, but they are pointing the way toward a better, fairer future.

Larry Port Rocket Matter Founder and CEO



Sexism in the Courtroom: A Serious Problem Lawyers Need to Discuss

It's been more than 20 years since Marcia Clark squared off against the very high profile and very male "Dream Team" in the O.J. Simpson trial. As FX's *The People v. O.J. Simpson* reminded us last year, during the trial Clark's hair, behavior, and appearance were under constant scrutiny by the media. She was mocked for her perm, labeled "a bitch," and shamed for dowdy suits.

Sadly, not much has changed for female litigators in the courtroom.

Inappropriate and stereotypical comments from opposing counsel, judges, and other court personnel seem to be just a day in the life for women trial lawyers. Approximately 70% of female attorneys surveyed by the Defense Research Institute reported experiencing gender bias in the courtroom, according to an American Bar Association (ABA) research report.

Jacqueline Harounian, a partner in a family law firm in New York can relate. At the start of her career, male lawyers didn't hold back on weighing in on her appearance or whether she

was fit for the job. "I often heard, 'You look cute,' 'Are you married?' 'You're too nice to be a trial lawyer,' and 'This is a job for the boys,'" she recalls.

Harounian's experience is, sadly, not unique. In fact, a petition by female lawyers who complained of being regularly undermined during trials by the use of condescending terms such as "honey" or "darling" compelled the American Bar Association to amend its professional code of conduct in 2016. The amendment specifically bars lawyers from addressing women with sexist comments in the courtroom.

Melissa Breyer, founder of a law firm in Atlanta, notes that while there is a sad pattern of women being sabotaged in the profession, it begins even before they're even practicing attorneys. Breyer was in law school and trying out for the mock trial team. She proudly notes that she brought her "A game," and spent a lot of time preparing her case because she wanted as much experience in the courtroom setting as possible.

"Despite all my preparation and excitement, though, it felt like the bulk of my comments were about my outfit," Breyer recalls. "I wore a pantsuit as opposed to a skirt, jacket, and hosiery combo. Some of the male students said the outfit was inappropriate for a woman; it was 'too masculine' and 'distracting.'"

Lara Bazelon, professor at the University of San Francisco School of Law, recalls a similar incident during her career as a trial lawyer. As she wrote in a recent article in *The Atlantic*, "At one trial, I took off my suit jacket at the counsel table as I reviewed my notes before the jury was seated. It was a sweltering day in Los Angeles, and the air-conditioning had yet to kick in. The judge, an older man with a mane of white hair, jabbed a finger in my direction and bellowed, 'Are you stripping in my courtroom, Ms. Bazelon?' Heads swiveled, and I looked down at my sleeveless blouse, turning scarlet."

Female lawyers in the courtroom aren't just scrutinized for what they wear. They are also unfairly judged for assertive behavior and expressing anger.

Deborah Rhode, a Stanford Law School professor, wrote in the groundbreaking 2001 report, "The Unfinished Agenda: Women and the Legal Profession," that "a longstanding obstacle to equal opportunity involves the mismatch between characteristics associated with women and those associated with professional success, such as assertiveness and competitiveness." What is considered "assertive" in a man is often criticized as "abrasiveness" in a woman.

Seventeen years later, the Arizona State University study, "Closing with Emotion: The Differential Impact of Male Versus Female Attorneys Expressing Anger in Court," aligns with Rhode's theory, highlighting how gender bias distorts the perception of an attorney's effectiveness when expressing anger. Certain behaviors that may help male attorneys attain their goals in court actually tend to be detrimental for female attorneys.

Study participants—male and female test viewers—watched videos of both male and female attorneys using anger to emphasize their closing arguments in identical re-enactments of a murder case. Angry male attorneys were described as "commanding, powerful, competent, and hirable," while angry female attorneys were considered "shrill, hysterical, grating, and ineffective."

Jessica Salerno, an Arizona State University psychology professor and lead researcher of the study told *U.S. News and World Report*, "A good attorney is expected to show traditionally male characteristics in court—anger, aggression, power. But what's happening is that men benefit from this, while we are penalizing women for showing these same characteristics." She added, "We watch so many courtroom dramas where lawyers are expressing emotion, and there are fireworks in the courtroom. People expect attorneys to express themselves this way. This expectation sets men up well for success, but for women it backfires."

So, what needs to happen to drive change in the treatment of female lawyers? According to Lara Bazelon, it's a numbers game. "We need to see more women in positions of power," she explains. "There's an imbalance of women making partner, running for lead prosecutor, or sitting as judges."

Data collected from the annual National Association of Women Lawyers (NAWL) survey supports Bazelon's stance. According to NAWL, which has been tracking the position and advancement of women among the top 200 U.S. law firms for 12 years, there is a "consistent and relatively undisturbed pattern showing the absence of women in the upper echelon of law firm and legal profession leadership." The survey found that although women are recruited and enter the legal profession at rates similar to men, as female lawyers rise in seniority, their numbers drop substantially. In fact, NAWL reports, "the data regarding the stalled career trajectories of many women in the legal profession, especially in the law firm, is indisputable."

Another issue is the fact that—as a breakout panel at the 2018 Appellate Judges Education Institute (AJEI) Summit entitled, "#MeToo/Best Practices for Appellate Courts to Address Past and Avoid Future Sexual Harassment Claims" revealed— sexual harassment is rampant in the courts themselves. While that panel seemed to primarily focus on how law clerks and other court staff are treated, it did highlight the point that such behaviors in the legal industry as a whole are a problem that need to be addressed.

Despite the sobering statistics and stories shared, Bazelon for one, finds reason to be hopeful. After her article appeared in *The Atlantic*, a number of male law students emailed her and thanked her for shining a much-needed spotlight on what she describes as the "stubborn cultural biases female attorneys must navigate to simply do their jobs." In addition, these men expressed a strong desire to serve as allies and work towards solutions.

A commitment to improving the current landscape of how female litigators are treated in the courtroom is without a doubt overdue and desperately needed today. Cultivating a legal profession that is based on equality and mutual support will benefit all of society.



Sexism in the Courtroom: Female Litigators Share Their Personal Experiences

Female lawyers shared with Rocket Matter their experiences in the courtroom today. Here's just a snapshot:

"While it is very common to see female judges and lawyers in the courtroom, harassment and sexism persists. I was recently in a conference with a male court attorney, and while I was arguing my point, I was reprimanded and told I should 'calm down.' He also added, 'I have to hear my wife yelling at home, I don't want to hear it at work.' I was no more argumentative or loud than opposing counsel (who was also male)." —Jacqueline Harounian, partner in a family law firm in Great Neck, New York

"During one trial, the male judge called me into chambers, telling my male associate and male opposing counsel to wait outside. The first words from the judge were, 'I don't have a problem with women, but they have a problem with me.' He then went on a long rant against women lawyers, saying we weren't respectful to him, we were too aggressive, and our skirts were too high. He ended by shouting, 'Don't you understand? We need you at home with Manhattan in hand waiting for us because we earn the income!' When my partners heard the story, they were very supportive, and one of them cut out a Manhattan glass and pinned it to my bulletin board, where it remained for years.

Another time, I was lead counsel in a complex commercial case. During trial, my male opposing counsel ran into a staff attorney for another judge on the same court (a female). He told her he was 'worried' about me, that I was 'very emotional' and seemed to be under 'a lot of stress.' He asked if I was 'ok.' I was lead counsel in a multi-million dollar complex commercial trial. The staff attorney, who was watching the trial, was appalled at his comments and told him, 'She's fine. And she's kicking your ass.'" —Cathleen Bolek, a partner at an employment law firm in Cleveland, Ohio

"Once during oral argument on a motion where I was assigned to do the argument but had my older male partner sitting next to me, the male judge looked at me and said, 'You're annoying me, I'd like to hear from him,' and pointed at the male partner who had not prepared to do the argument. Recently, male opposing counsel repeatedly called me "darling" in court. I am a 43 year old woman with almost 20 years of experience including serving as a Federal Prosecutor (Not that I should have to explain that). Also, I often represent survivors of clergy sexual abuse. The first time I met defense counsel, he pulled me out of the courtroom and gave me a laundry list of clerical tasks that he said I needed to do for the case. I scolded him about this, and for the next seven years of repeatedly opposing each other, he tried to exclude me from case negotiations in favor of my male partner, failed to include me in communications, and in meetings, asked my male partner if he could 'shut me up.'" —Nicole Gorovsky, whose firm handles cases ranging from sexual assault and school bullying to cybercrime and identity theft in Clayton, Missouri

"I was leading a deposition of a plaintiff, and the plaintiff's attorney (an older gentleman) kept interjecting and rephrasing my questions to his client, changing what I was actually asking. I reprimanded him on the record, and he didn't like it. Once the deposition was over and we were off the record, he berated me at length, saying everything from 'Women shouldn't be attorneys,' and 'Female attorneys want to be treated with kid gloves,' to 'We can dish it out but can't take it.' The icing on the cake was when he told me that I shouldn't be a lawyer, and that I should be in the kitchen cooking. He did this in the presence of a co-defendant's attorney and the court reporter, but he had no shame. It was so bad that co-defendant's counsel called the managing partner of my office and said, whatever she tells you is 100% true. After that, I filed a formal complaint with the First Department's ethics committee." — Patricia Carbone, a personal injury lawyer in New York City

"I have been called 'honey' and 'sweetheart' so many times that not one incident sticks out more than the other. I usually just shake my head at them and move on with my day. And, of course, there are judges that make silly rules for women. There is one judge who requires any woman who is wearing a skirt or dress in his courtroom to also wear hose. Like real old-timey pantyhose that a grandmother would wear. But I think the worst is being treated like you aren't there on a case in which you are lead counsel. I was lead on a murder case a few years ago. I wrote all the motions and conducted all pre-trial motion hearings. All communications to opposing counsel came from me. But *any* time the opposing male attorney wanted to talk about an issue with the case, he would walk right by me and go talk to my second chair who was also male. Then to make matters worse, my second chair would agree to things and then come tell me what the men had decided." —Angela Singleton, a criminal defense attorney in Oklahoma City

"Since day one of my entering the legal profession, I have been treated as a glorified secretary. The insinuation has been, 'I know you're associate counsel, but can you get me coffee?' Since I am a woman of color, there are two battles to be won when I step into the courtroom, as demonstrated by the court mistaking me for the defendant. I have been told several times, 'This area is reserved for attorneys, you need to go back and wait for counsel.'" – Faith Fox, a family law and personal injury lawyer in Charlotte, North Carolina

"In one of my cases, I filed a motion to dismiss. At the hearing, the older attorney made a show of serving me with his motion to strike my motion before the court staff, while referring to me as 'young lady.' That behavior, along with the fact that his motion was bogus, made it clear that his behavior was intended to intimidate me. Undaunted, I brushed it off and laid his motion face down on the table without bothering to read it in order to convey some clear body language about having been disrespected. He didn't get the message. After he blustered on the record over irrelevancies, I stated a warranted objection on the record, to which he responded, 'Sit down young lady!'

Now, I am not one to go hunting for sexism under every rock. I have grace and understanding that some things are said and done unwittingly, in ignorance, often by people of an older generation without sexist intentions. But this one is clear because no right-minded attorney would treat an objection of record as though it's an unwarranted interruption by a disrespectful 'young lady.' To my surprise, the judge gave a slightly displeased look but did not say anything. Oh, but this 'young lady' won the motion to dismiss right there." —Cassaundra Edwards, a litigator in Ohio and Kentucky

"I'm a female attorney practicing litigation for the past six years in New Orleans. What has struck me is how men defer to female judges in the courtroom. Almost 80% of men in the courtroom will call a female judge 'Mam' instead of 'Your Honor.' I think this is the biggest mistake a man can make in the courtroom. A man would never defer to a male judge as 'Sir,' so why would you defer to a female judge as 'Mam.'" —Hannah Beth Salter, a personal injury attorney in New Orleans

"I am a practicing attorney with 23 years of experience and can attest to numerous times when, as a young (and petite) trial attorney I had male colleagues try to intimidate me with aggressive behaviors like yelling and physically getting in my space. I have encountered similar behaviors from male witnesses as well. Thankfully, I am fearless and known not to back down," —Sonia Frontera, an immigration and divorce lawyer in Lambertville, New Jersey



Legal Freedom Fighter: Judge Ashleigh Parker Dunston

We've seen it repeatedly throughout our history: When people's rights are threatened, it's the lawyers who step up to the plate. Some are true **Freedom Fighters**, and they deserve special recognition. That's why we regularly feature lawyers who are really making a difference.

As part of our investigation into sexism in the courtroom, we are proud to feature Judge Ashleigh Parker Dunston.

Judge Ashleigh Parker Dunston is a district court judge for the 10th Judicial District, serving Wake County of North Carolina. She has dedicated her life to public service through both her employment and community commitments.

Less than a year after being appointed District Court Judge in the Tenth Judicial District, Judge Dunston penned the insightful and thought-provoking blog post, *Sexism: The Elephant in the Courtroom.* Since then, she's had the opportunity to speak on panels and podcasts discussing sexism in the courtroom. She has committed herself to sharing her experiences and the experiences of others in the hopes that this will drive greater conversation and, more importantly, change regarding the issue. Judge Dunston is both a former prosecutor and Assistant Attorney General and has practiced in courtrooms all across the State of North Carolina, which brings a unique perspective to the bench. She was sworn in and became the third and youngest African American female District Court Judge in Wake County history since the courts were established more than 50 years ago.

Here's the interview:

Shortly after being sworn in as District Court Judge, you wrote the blog post, Sexism: The *Elephant in the Courtroom*. What moved you to take a stand and publicly address this issue?

"I experienced sexism almost immediately when I entered the courtroom as a young prosecutor and have continued to experience it throughout my career. My friends and I would always share our experiences but once I became a judge, I felt like I finally had the platform to be able to share them publicly without fear of retaliation.

Once, when I was a lawyer, I was asked by a judge if I was my colleague's secretary. I quickly informed him that I was not and that I was the attorney assigned to handle the case. Another time, as an Assistant Attorney General, I was standing for calendar call in Superior Court waiting to express the length of time that I expected the case to take. Opposing counsel stood up, said who he was, and then said that the Attorney General's Office didn't send anyone, while I was standing right there. I then loudly, assertively, and with conviction stated my name, title, and position, won the case, and drove back to Raleigh. Other women have been completely ignored when trying cases with a male colleague by the judge.

Men have attempted to intimidate women by standing during their arguments or yelling at us in open court. While bending over, I had a male colleague take a picture of my butt in court. Black women specifically have been asked for their bar card (including myself) when entering the courthouse or approaching the bar area. They've also been asked where their attorney is —making the assumption that they're the defendant. The list of such examples is endless. I personally believe that it's imperative for judges to call out this demeaning behavior and be vocal that it will not be tolerated in their courtrooms from them or from anyone else. And now that I am a judge, I believe I have a responsibility to speak up for these women who feel like their voices have been silenced. My philosophy is that I should try to make the biggest difference I can in whatever time I'm given."

What kind of response did you receive?

"Several male colleagues sent me messages and complimented the article. My hope is that they become allies in the fight to end sexism by speaking up when they hear or see something inappropriate. I believe that change will be forthcoming if we continue to keep the discussion alive. I remain hopeful that things can and will change."

What has been your biggest challenge as a woman in this career?

"My biggest challenge in this career has been defying the odds. I've had people tell me I'm too young, too unqualified, and too inexperienced to be in this position. I always get, "You're a judge? How old are you?" or the worst compliment, "You're too pretty to be a judge." I do feel as though I have to overcompensate at times to demonstrate to attorneys or litigants that I am qualified to be in this role and should be taken seriously. I actually experienced the same things as a prosecutor and Assistant Attorney General, but now it's magnified. However, I refuse to give up. I believe that if you are called to do something or to make a difference, then you push forward and accomplish your dream despite the naysayers."

What can people do to help improve how female lawyers are treated in the courtroom?

"People need to say something if they see something. In other words, if you see a woman experiencing sexism or sexual harassment in court then you should address the conduct. Furthermore, inappropriate comments often happen when the female lawyer isn't even present, but those comments should be addressed then, too. We also need to inform our young female attorneys about these situations and let them know that it is not permissible and should not be tolerated."



Driving Change: How You Can Help End Sexism in the Courtroom

While there is an unfortunate and very long-standing history of female litigators and other female legal professionals facing discrimination in the courtroom, there is a possibility for change. Here's what you can do to help facilitate that:

Know How to Submit a Complaint

Here are some suggestions for what female attorneys can specifically do when they are faced with a sexist situation in the courtroom:

• **Go on the record.** "It's very important that a lawyer offended by ongoing behavior goes on the record (someone is always in the courtroom transcribing notes from the day) and states that the behavior she is experiencing is negatively impacting the client's representation, unduly influencing the jury (if jury is present), and that the judicial process is being impeded by this offensive behavior by the judge or counsel," suggests Wendi S. Lazar, a partner at an employment law firm in New York City who has served as commissioner of the American Bar Association Commission on Women in the Profession

- Ask for a meeting. "If the attorney is not ready to go on the record, she can ask for a meeting with the judge and say something like the following to either the judge or opposing counsel: 'Maybe you don't mean to be offensive, but it's been very difficult to be belittled and marginalized in front of my client. I don't believe that's your intention, but I need to bring it to your attention, because if it doesn't stop, I will bring an ethics complaint against you.'" suggest Lazar.
- **Get smart.** "Find out what the ethics rules are in the state in which the lawyer is practicing," says Lazar. "Attorneys can and should call their appellate division to get connected with experts who can explain what constitutes an ethics violation."

Learn the New Rules

The American Bar Association (ABA) is certainly committed to keeping the conversation front and center. Zero Tolerance: Best Practices for Combating Sex-Based Harassment in the Legal Profession is a comprehensive update to the ABA Commission on Women in the Profession's previous sexual harassment material.

According to the ABA, the primary objective of this updated manual is to provide tools to legal organizations and victims of harassment and bullying. The new edition was already in the works before the #MeToo movement and, according to Lazar, its editor-in-chief, it can be considered a bookend to the ABA's professional conduct rule for lawyers that prohibits attorneys from engaging in "harmful," "derogatory," or "demeaning" speech in any activity "related to the practice of law."

"Many constituencies had been pushing the ABA to rewrite the model rule to include *all* forms of discrimination in conduct related to the practice of law," says Lazar. "We knew if we didn't get this passed across the board and at least establish a disciplinary rule for lawyers engaging in conduct that is harassment or discriminatory, we knew we wouldn't have an impact on sexism in the courtroom."

The current guidebook, with a preface by Anita Hill, provides "much more specific" policy advice this time around. For example, the guide advises firms to develop policies with very clear definitions of sexual harassment that really define certain behaviors, which could include making comments about a woman's appearance.

"No one ever said the way Anita Hill was treated was unacceptable," adds Lazar. "Instead, it was agreed that 'it happens' and 'it's too bad.' Now we're holding lawyers accountable for misconduct. They are beginning to recognize the implications of bad behavior. It's no longer something to laugh off. There's an actual penalty."

Seek Out Other Resources

Through ongoing educational efforts, podcasts, and online toolkits, the ABA is focused on helping people not only understand that sexual harassment in the legal industry is a significant issue, but what needs to be done to stop it from happening. Lazar encourages attorneys to leverage the National Organization of Bar Counsel (NOBC), a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States and other countries around the world.

Lawyers Theresa Hatch and Courtney Rowley also launched the online community, Trial by Woman and wrote a book by the same name. Both are excellent resources for both men and women looking to make a change in the industry. "Most of the purchases and feedback on our book have been from men, which for us, means there is a whole lot of hope out there for real, lasting change," they say.

Keep Talking About It

After her article on sexism in the courtroom appeared in *The Atlantic*, a number of male law students emailed Lara Bazelon, author and professor at the University of San Francisco School of Law, to thank her for her candor about what it's like to be a female trial attorney. They pledged to serve as allies and help work towards solutions.

Judge Ashleigh Parker Dunston had a similar experience following the publication of her blog post, *Sexism: The Elephant in the Courtroom*. As we mentioned earlier in this eBook, several of Dunston's male colleagues reached out and thanked her for raising awareness around a critical issue.

ABA President Hilarie Bass, who has "made it a priority in her tenure to address the gender imbalances that still plague the legal industry" agrees and thinks such a shift in thinking is already taking place. As she told *Bloomberg Law*, "For many years, the focus was on, 'Is this really a problem?" Bass believes that thinking among lawyers has evolved to not only recognizing that sex-based harassment is an issue in the profession, but also to focusing on "What can I do to make sure everyone knows this is really unacceptable?"

Focus on What's Most Important

For women currently in the trenches, Bazelon offers hope as a way of staying the course. "As a woman, it's very important to instill resilience in yourself," she says. "And, it's what I tell my female students—keep your eye on the prize and be the best advocate for your client. But I also tell them that in doing so, that shouldn't detract from their professional goals. As women, we need to first believe we are good lawyers and second recognize, that there is a lot of noise and pollution in our midst. It's critical that we do not let that diminish our belief in ourselves and/or distract us from the primary objective of serving as the best advocate for our clients."



Hope on the Horizon

While sexism in the courtroom is a rampant problem that far too many female litigators face, there is a light at the end of the tunnel. It does seem that, when it comes to this critical issue, change is slowly coming.

For starters, major organizations such as the American Bar Association are taking steps to end sexual harassment and sexism through the entire legal profession. There are also ramifications for inappropriate behavior. For instance, male lawyers can now be fined for calling female lawyers "honey" or "sweetie" in court. 9th Circuit Judge Alex Kozinski saw his career come to an end after being accused of sexual misconduct by at least a dozen women in the legal professional. And Veteran U.S. District Judge Lynn Hughes was also rebuked for making demeaning remarks to a female federal prosecutor during a trial.

Also, many people in power (including male and female judges) are taking a stand, such as Judge Ashleigh Parker Dunston, who we featured earlier in this book.

She's not the only judge making a difference.

Danylle M. Carson is an associate attorney at a firm in Maine. Here's what she had to say about our series on sexism in the courtroom: "I practice primarily in the district court in Androscoggin, Franklin, Oxford, and Kennebec counties. These counties represent two separate judicial districts. I practice before well over a dozen male and female judges. I've practiced law for nearly four years.

Our bench contains a fair mix of male and female judges, ranging from those nearing retirement to those recently appointed. In every experience I have encountered, I have been treated with dignity and respect by my bench. The judges are neither pejorative nor condescending. The male judges are not sexist or inappropriate. In contrast, I would suggest the judges in my district tow a tight line with all counsel before them, consistently, while at the same time doling out grace when justice permits it.

The camaraderie had within the Maine state bar—between counsel and across the bench—is unparalleled. I have learned a great deal from the members of my bench, from their guidance and patience as I was young female litigator who found her way into the practice of law. I am honored to be a part of this community and to practice before these judges."

Carson's words are encouraging. With an increasing number of judges and other legal professionals such as Judge Dunston and those Carson refers to—and with more awareness and legislation regarding this issue—female litigators and other female law professionals might finally start seeing a change in the courtroom that has taken far too long to come.

Contributing Author

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About Rocket Matter

Rocket Matter helps law firms offer better client service and also increase revenues by more than 20%. The company was the first cloud-based legal practice management software on the market, landing its first client in 2007. It has been a leader ever since.

Rocket Matter has the most powerful, easy-to-use time and billing software in the industry. Also, when law firms want to make more money, go paperless, or increase confidence in their trust accounting, Rocket Matter helps them achieve those goals. With award-winning customer service based in the United States, it's no wonder thousands of law firms swear by Rocket Matter.



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