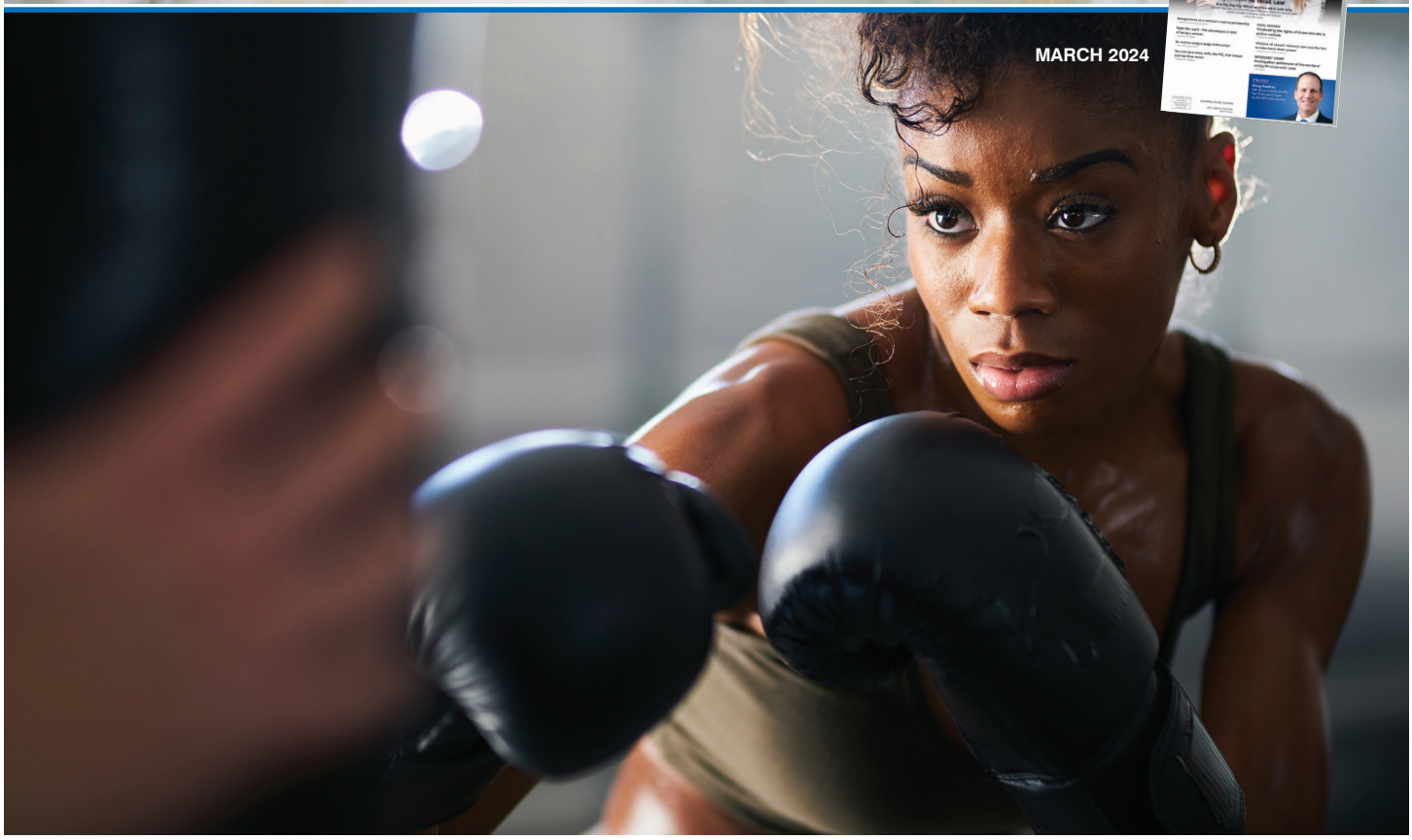


Fight like a girl

The advantages in trial of being a woman

By Shannon H.P. Ward

When I think of women and warfare, I often reflect on the two Greek gods of war out of the twelve Olympians. Ares was the god of war and courage – the bloody, brutal, and hands-on aspects of battle that are often associated with manly might, while Athena was the goddess of war, but also wisdom. Hers was the warfare of strategy, tactical maneuvering, and subtlety. The war of chess. Often, people default to the Ares model of warfare when evaluating a woman's fitness for conflict. However, when I reflect on the stereotypes of women and their fitness for battle, I think of Athena, her wise owl, and how uniquely skilled women can be at engaging in the subtler arts of war.

Being a woman [whether born or presenting as] in trial has distinct advantages. Many of these advantages go hand in hand with the disadvantages and hurdles women face in the practice of law, due to stereotypes and biased expectations. Progress has been made for women in the law, but there is still much room for growth. Leaning into some of those stereotypes can be useful, while being aware of and guarding against them is also necessary and useful at other times. The focus of this article is on the advantages of being a woman while also being a trial lawyer.

You start with an advantage

One advantage of being a woman in trial is not "looking like a lawyer." There is an overall negative public opinion about lawyers. Everyone has heard at least two lawyer jokes in their time, and most of us have heard the full spectrum: from cherry- picking Shakespeare to "Dewey, Cheatum, and Howe." The archetype of a lawyer is a middle-aged to early-older-aged man in a dark suit and tie with a similarly dark briefcase and dour expression. It is not a woman in a dress with a calm demeanor. As a woman, this means your starting point of credibility and trustworthiness may be higher with the average juror as compared to your male counterparts. The talent that follows is not losing that trust.

Relatedly, being a woman in trial work makes one more aware of implicit biases that pervade society. Because there are still fewer women who practice plaintiff-side litigation in California, most women in this area are confronted with comments and behaviors from other lawyers (and even, at times, the Court) that are biased.

Whether it's being confused with the client or the court reporter, having gendered/sexist epithets used, or being asked by opposing counsel to speak with a male attorney in your office (who isn't even handling the case), there are numerous examples that most women in litigation have personally experienced or are aware of their colleagues experiencing

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firsthand. This exposure leads to an awareness of both implicit and explicit biases that may be less accessible to our colleagues. It also results in the women who stay in this area of law (and others who experience similar biases) being more resilient.

When these qualities are combined – awareness, resilience, and not "looking like a lawyer" – they can result in a trial attorney who has an advantage in selecting a jury. If one is aware of implicit biases and studies them and how they express themselves, they can root them out more effectively in potential jurors. If one is resilient to hurtful comments, it is easier to welcome the anger and vitriol that many jurors express about our cases and our clients in jury selection, so that we can show those biases to the Court. If one comes across as more trustworthy, open, and inviting of dialogue, jurors will feel welcome to express their views and opinions. These qualities make the attorneys who possess them more skilled at de-selecting biased jurors.

A frustration of being a woman in litigation is being underestimated. Most women who practice law feel a greater burden of proving their competence, confidence, and that they won't be steamrolled by opposing counsel. The flipside of that "underestimated" coin – the fourth advantage for the trial lawyer – is Defendant's blind spot to strategy. If you are being underestimated, they aren't fully prepared. So, there may be more opportunities to utilize unexpected strategies if you are well-prepared and ready to act when the opportunities present themselves.

Being well-prepared is a necessity for any trial lawyer. I have, however, seen some attorneys in trial who appeared less than well-prepared. In each and every one of those cases, the attorney was male. My hypothesis is that being underestimated and given fewer opportunities to try cases, female trial lawyers, on average, feel a need to be more well-prepared than their adversaries and counterparts. In the end, this preparation is key to success at trial for many reasons, including jurors' perceptions of competence, the viability of the case, and using their time efficiently. (See e.g., Wood, et al. "*The Influence of Jurors' Perceptions of Attorneys and Their Performance on Verdict*" (January 1, 2011).)

Another advantage to women who practice trial work is emotional intelligence. Men in our society are culturally discouraged from identifying, understanding, and expressing their emotions. They are also discouraged from deeply discussing emotions with other men. This, unfortunately, can make it harder for many men in our society to gain emotional intelligence because they get less practice at it.

This means that more trial lawyers who are women will have more experience with connecting to their client's emotional damages, discuss them openly with the client, and make further assessments and ask probing questions based on what is being shared about those damages. Being able to understand a client's damages and talk about them with empathy and kindness, makes communicating them to others (i.e., jurors) easier. If jurors can understand the emotional damages, they are more likely to find that the plaintiff is owed compensation for those harms.

Connecting with clients

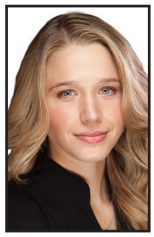
In the vein of emotional damages and plumbing the depths of human pain and loss, there are many clients who find it difficult to fully express themselves. Many clients may find it difficult to be vulnerable with their attorney, especially if that attorney comes across as tough and strong and without their own vulnerability.

That can make it easier for female attorneys to connect with many clients and develop the trust necessary to build that relationship, especially in more sensitive cases (e.g., sexual assault, abuse, harassment, or cases that result in sexual dysfunction). In such cases, trust and connection can be essential in learning how the events that led to the case have deeply affected them and sharing that vulnerability. If we don't trust that our emotions and damage won't be judged, it's hard to share that part of ourselves.

Lastly, having a team of skilled trial lawyers that is diverse (whether that's gender, ethnicity, ancestry, or otherwise) is a huge advantage. Different people connect with different people. Different people will have different perspectives on a case. Different people will connect with different parts of a case's story. Bringing these approaches to the trial of any case will make the case more well-rounded, easier to communicate to jurors (who are from all different backgrounds), and, ultimately, more successful at connecting with jurors tasked with understanding your case, finding the truth, and administering justice. Because most plaintiff's attorneys in California are men, being a woman trial lawyer is an immediate advantage because it is so much easier to put together that diverse trial team.

Conclusion

While there are numerous hurdles, struggles, and even disadvantages to being a trial lawyer who happens to be a woman, there are a number of benefits as well. Hopefully, focusing on those benefits can make more women want to channel Athena to try cases and more attorneys want to incorporate women into their trial teams. That way, all our clients can see the benefits of female power in legal warfare.



Ward

Shannon H.P. Ward is a Partner and Trial Lawyer at Aarons | Ward, *where she focuses her practice on sexual harassment and assault cases, as well as handling the firm's wrongful termination, discrimination, and retaliation cases. Shannon was named CAALA's Rising Star for 2022 and is currently a Chair of CAALA's Las Vegas Committee. She is always happy to help and can be reached at: shannon@aaronsward.com.*

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