

Women in Big Law: Progress, Challenges and the Road Ahead

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In this article, Sophia Cahill and Danielle Vrabie compare the modern-day state of affairs for women litigators in big law and what remains true based upon former Chief Judge Judith Ann Kaye's 1988 lecture on the same topic.

Long before the days of videoconferences and virtual hearings, attorneys were filling courthouses across the state daily, catching up with colleagues, making last-minute preparations for oral argument or brokering eleventh-hour settlements with opposing counsel. Less visible were the women litigators quietly counting to themselves on one hand the number of women assembled and not bothering to count the men who outnumbered them.

While many things have changed since the days of crowded courthouses, this disparity persists. Of the more than 50 attendees present at a recent mediation, only 13 were women—less than 25%—emblematic of the gender gap that persists in the legal industry even as everything else changes.

On Oct. 6, 1988, former Chief Judge of the New York Court of Appeals Judith Ann Kaye spoke on “Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality”. The lecture focused on the growing number of women in Big Law, the impact of the then-changing workforce on the practice of law and the necessary actions to equalize the playing field. In the 35 years since Kaye’s observations, many of her main points remain works in progress in 2024, despite the steps that have been made.

During her 1988 lecture, Kaye observed that between the 1960s and the 1980s, the number of women lawyers had more than quadrupled. By the mid-1980s, women accounted for nearly 20% of the legal profession and more than 40% of law school enrollments. Despite those growing numbers at the time, the American Bar Association (ABA) reported only 6% of all Big Law partners were female.

Today, women account for 49.4% of all associates at law firms, and over 50% of law school graduates are women, as cited in the ABA’s 2023 study “Legal Careers of Parents and Child Caregivers: Results and Best Practices from a National Study of the Legal Profession”, marking significant progress since Kaye’s 1988 remarks.

There has been improvement among partnership ranks too, but at a significantly slower rate. Today, 32.7% of non-equity partners are women and women comprise 22.6 percent of the equity partnership ranks. This is certainly slow but steady progress, which is precisely what Kaye anticipated: “this process of gentle evolution over time is like erosion of the planet Earth. It’s a long process—very, very long.” But she did not doubt it would happen.

Kaye posed the same questions we have asked ourselves as women litigators: *Will the profession do more to assist working mothers?* (It's trying!) *Will larger numbers of women make partner?* (They are!) *Will women lawyers develop into successful rainmakers?* (Yes, when given the tools!) The questions now become: *What is driving this gentle evolution?* and *What next?*

For Kaye, progress for women lawyers was due to “the work largely, but by no means exclusively, of women. Hardly a day passes without news of interest—a childcare bill or court decision, seminars and law reviews devoted to gender issues; and prominent newspaper articles dealing with women’s status in the legal profession and currents in feminist thinking.” It is this dialogue that fosters change.

Today, the ABA’s extensive study also highlights parents in the legal profession and the uneven impacts on women. Gender issues remain in the news cycle, including the impact of COVID on working mothers, the benefits of working from home and how it impacts the advancement of women in the workforce. These subjects are discussed extensively within Big Law and many firms are responsive to these challenges that now make it possible for women to perform in a way that did not exist when Kaye made her remarks.

More women—and, perhaps equally important, their male colleagues—are taking advantage of flex-work and remote arrangements. What Kaye referred to as the “Mommy Track” does not have the same stigma in 2024 as it did in 1988. Today, women and men alike seek to practice at the top of their profession without sacrificing non-work responsibilities. Male attorneys are part of normalizing these arrangements, including by taking full parental leave, which was not the norm in 1988.

Kaye asked “[w]hether the arrival of women lawyers in increasingly large numbers will, for the future, effect any change in the big firm climate to accommodate their differences, or whether women will have to continue conforming to prevailing, escalating expectations or do something else.”

Kaye might be heartened with the past three decades. Big Law firms have certainly experienced a culture shift and *are* trying to accommodate women’s differences. In addition to generous gender-neutral parental leave policies, Big Law firms offer emergency childcare and milk storage services for nursing mothers with travel needs. Along with such programs, nearly all Big Law firms now offer internal women affinity groups, provide opportunities for career coaching focused on women’s specific strengths and access to mental health professionals at reduced costs.

Partnership is also a real possibility if you are part-time, fully remote, or a mix of the two—previously unheard of if on “Mommy Track.” Taking the two authors of this article as examples: between our collective experience as litigators, we’ve argued before the First Department from our living rooms, taken depositions from our dining rooms and held court-ordered status conferences from hotel rooms across the country. It is important for the retention of women that Big Law continue to offer such flexibility to help foster the “gentle evolution” Kaye envisioned.

The strength in the numbers since 1988 may also in part be attributable to the increase of women making efforts to support and amplify their peers. There are growing numbers of professional networks for women that allow women to help each other in developing business by offering support, mentorship and referral sources, as they grow their practices. This support system was certainly lacking in 1988.

While we cannot pretend that, at times, we have not had to change our behaviors to conform to those of our male colleagues, we have been increasingly charting new paths to define success on our own terms in our own way.

This concept of embracing differences as women is one Kaye captured so eloquently. She observed we had witnessed “the emergence of women visibly *as women*, with open recognition of difference not as disabilities in need of special protection but as positive values women have to contribute.” There are traits commonly associated with women that make them excellent litigators, including thoughtfulness and empathy, which help not only with clients and in the courtroom, and also in managing internal teams and fostering cohesion. Women also tend to be detail-oriented, organized and effective time managers—all of which are significant assets in running and contributing to litigation teams.

Kaye did not doubt whether there would be change, but predicted that “the visible presence of women lawyers, conscious of their number, will help to motivate it.” She was on to something. Recently, during a weekly meeting for one of our internal litigation teams, conscious of our own numbers, we counted. One hundred percent were women. Maybe the counting is good for something, right?

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