

## Praise for *Trial by Woman*

“It is rare for a book about practicing law to be so enthralling that you can’t put it down. This is a such a rare book. It is inspirational, empowering, and blunt. It is not judgmental or preachy. Courtney and Theresa have been there and done that—and they are willing to share their experiences, both good and bad. The stories have a familiar ring to them, but they use them to illustrate important things about being a woman, being a trial lawyer, being a mom, being a wife, sister, friend, and all at the same time. Sometimes, these courageous women write poignantly about making almost impossible choices, feeling lonely and wrestling with guilt. They also offer valuable tips about trying cases. They offer us their whole lives with grace and with dignity. All women lawyers should read it and so should most male lawyers.”

—Roxanne Barton Conlin, past president of the AAJ and member of the Inner Circle of Advocates

“This is the book women lawyers have long awaited. A *Lean In* for women attorneys, it teaches you how to speak up for yourself and the people you represent; quiet the fears that keep you from being your best; connect with the jurors, the judge and, most importantly, your true self; and start and run your own law practice. With great insight and gentle humor, Courtney and Theresa show why a woman’s unique talents make her the best advocate in the courtroom. Sprinkled through with stories of their own adventures (and a few mistakes), these two young powerhouse trial lawyers will have you eagerly packing your shoulder bag for your next trial.”

—Randi McGinn, past president of the Inner Circle of Advocates and author of *Changing Laws, Saving Lives: How to Take on Corporate Giants and Win*

“A thoughtful, lively, and much needed book on how to be a female trial lawyer. Filled with practical advice and inspiration for women—but also for men. An important addition to any trial lawyer’s library.”

—Rick Friedman, past president of the Inner Circle of Advocates and coauthor of *Rules of the Road: A Plaintiff Lawyer’s Guide to Proving Liability*

“It’s about time! This book will be the splendid mother of a necessary progeny of great seminars, articles, workshops, and more good books from more voices we all need. I’d wanted to say that Courtney Rowley and Theresa Bowen Hatch have done a masterful job, but the lack of a feminine form of the word ‘mastery’ is precisely the kind of thing that makes this book so essential. And yeah, I have to admit that men better read it, too.”

—David Ball, trial consultant and author of *David Ball on Damages*

“*Trial by Woman* has insightful and valuable advice for all trial lawyers. This is a book for all new lawyers and those who mentor with guidance and commonsense advice. Women who are trial lawyers need this book and men who are trial lawyers need it just as much or more.”

—Paul Luvera, past president of the Inner Circle of Advocates and the Washington State Bar

“*Trial by Woman* is not lawyer with an asterisk. It is lawyer with an exclamation point. For those skeptics, check out Theresa and Courtney’s trial results, take a good look at the current landscape, then get to reading this book. As zealous advocates who are deep in the trenches, trying their cases, Courtney and Theresa generously share experiences, the lessons they’ve learned from others and on their own, along with techniques to utilize in the practice of law and their wisdom moving forward. *Trial by Woman* is not meant to be ‘read by woman’ only. It’s too valuable a resource for that, especially during these times. This is not about separation—it is all about empowerment.”

—Artemis Malekpour, litigation partner at Malekpour & Ball Consulting and co-presenter in *Focus Groups: How to do Your Own Jury Research*

“Only when truth is openly discussed can progress be made. Theresa and Courtney candidly explore the truth of being a woman in the legal profession. As you read their story, you’ll find yourself saying ‘me too’ as you enjoy vignettes about their journey, and through their perseverance and shared wisdom you’ll be inspired.”

—Jayme Simpson, member of the Consumer Attorneys of San Diego, committee chair of the New Lawyers Division of Consumer Attorneys of California, and former director of the New Lawyers Division of San Diego County Bar Association

“Rowley and Bowen Hatch remind us that we, modern women, are uniquely equipped to shape the hearts and minds of jurors through genuine connection. They challenge us to elevate our practice and ourselves. Nurturing and empowering, *Trial by Woman* is more than a book. It’s a mantra.”

—Ibiere N. Seck, member of the board of governors of the Consumer Attorneys Association of Los Angeles and Consumer Attorneys of California, and president of the National Black Lawyers 40-under-40

“*Trial by Woman* is a must-read book for female trial lawyers at all stages of their career and the men who mentor and support them. Together, Courtney Rowley and Theresa Bowen Hatch have called upon their years of experience as top trial lawyers to develop an innovative approach to trying cases called Trial Perspective. Using it, women can learn the skills and strategies needed to work smarter instead of harder, allowing them to use their unique talents to successfully represent their clients while also finding that always elusive work/life balance. Rowley and Bowen Hatch finally address in print what women in the trial world have been struggling with privately for decades, and they do so with grace, humor, and common sense. I intend to recommend it to all my female law students who are planning to try cases for a living.”

—Susan Poehls, director of trial advocacy at Loyola Law School in Los Angeles and recipient of Stetson Law School’s Lifetime Achievement Award for Excellence in Advocacy

“Are you lucky enough to have a female best friend to turn to who also happens to be a trial lawyer in a predominantly male profession going through the same experiences or hurdles that you are facing? If so, consider yourself truly fortunate. If not, this is the book for you. Crammed full of helpful insights, war stories, and advice, it is a book that reminds you that you must be good to yourself in order to be good in the courtroom for others. And most importantly, it reminds us that we are all part of a precious sisterhood that needs to be cherished. Enjoy it over a warm cup of tea or cocoa and remember: you are not alone. There is nothing we cannot accomplish together.”

—Deborah Chang, selected by the *Daily Journal* as one of the Top 100 Lawyers in California, named as one of the “Elite Women of the Plaintiffs Bar” by the *National Law Journal* and ALM, recipient of the 2014 Consumer Attorney of the Year Award and 2017 Women’s Caucus Women Consumer Advocate of the Year Award, and has consistently obtained some of the largest verdicts and settlements in California and Las Vegas

“As a trial lawyer and the proud father of one daughter who just became a new lawyer and another daughter who just started law school, I appreciate that Courtney Rowley and Theresa Bowen Hatch have written a book that can advise my daughters on being strong women in a demanding profession from a female perspective.”

—Brian Panish, member of the Inner Circle of Advocates

“*Trial by Woman* is a brutally honest trial practice book that deals with issues confronting women in the courtroom today. It is a must read for anyone who wants to learn how to balance the demands of real-life with real law. This book should be read by every women who wants to become a better trial lawyer and any man who wants to come into the twenty-first century.”

—Gary Dordick, emeritus member of the Consumer Attorneys Association of Los Angeles Board of Governors and obtained the highest jury verdict in Ventura County (\$125 million) in 2016

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# TRIAL BY WOMAN

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COURTNEY ROWLEY  
AND  
THERESA BOWEN HATCH



TRIAL GUIDES, LLC

Trial Guides, LLC, Portland, Oregon 97210

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2350 NW York Street  
Portland, OR 97210  
(800) 309-6845  
[www.trialguides.com](http://www.trialguides.com)

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Production Editor: Travis Kremer

Copyeditor: Patricia Esposito

Proofreader: Tara Lehmann

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*To Our Children*

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# Publisher's Note

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This book is intended for practicing attorneys. It does not offer legal advice or take the place of consultation with an attorney who has appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment. Readers should also consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book), and make independent decisions about whether and how to apply such information, ideas, and opinions for particular cases.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

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# Introduction

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Both of us have worked for some of the top law firms in the country, and we have worked with the best trial lawyers in the country. We did what many of you are doing: paid our dues, put in long hours, struggled to manage an ever-increasing caseload with clients we barely knew, and lost any glimmer of hope for time for ourselves in the process. We hung in there because we were promised more money and more trials. Those promises fell short. And while we grew tremendously in those roles, we both had the nagging feeling that there was a better way to do things—that we could practice law, connect with our clients, but also be more plugged in to ourselves, our interests, our lives, and the people who matter most to us. So, we started our own practices. We found very few resources on starting law firms, and even fewer resources on doing it as a woman and with the balance we both yearned for.

As trial lawyers and as women, we have been each other's mentors—professionally and personally—for the better part of a decade. During the time that we came up in the profession, there weren't a lot of women trial lawyers, and there still aren't. Statistically, we're in the minority. That meant that while there were legends out there—the Randi McGinns and Roxanne Barton Conlins of the world—they were legends, and we didn't feel like they were accessible to us. When we showed up at the trial lawyer events, we were among the few women. Even the elder stateswomen—the vintage ahead of us in our own towns—the Cindy Chihaks and Ginny Nelsons in San Diego and the Debbie Changs and the Christine Spagnolis in Los Angeles—didn't seem like accessible mentors because they weren't of our generation and experiencing what we were experiencing—at least not right now. They had already fought the good fight, fought hard for their places at the trial table, and many had their own firms. But even they seemed too far removed from the everyday experiences of our lives as young, female trial lawyers working for men in an increasingly modern time.

So, we fumbled through and figured a lot of things out the hard way over the past ten years. One of us would have an experience with a male coworker getting more trial opportunities, and the other was able to empathize and relate and bring some perspective and insight to the situation. Or one of us would find out that a male colleague was making more money for doing the same job, and the other would pull out a bottle of wine, sob in the wine, and then figure out a way to ask for, and get, more money.

And, time and again, we find ourselves having the same, tired discussion about what to wear to court: *Are these heels too high? Can I wear flats? Is a dress OK? How about a skirt? Is this skirt too short when I sit down? Pantyhose or no pantyhose? Hair up or hair down? Suits are for men; why do I have to wear a man-suit costume? Isn't it my work that's important? And, please, God, can you give someone in this world the creative juices to come up with a court costume for women that makes us feel comfortable so that we don't have to think about what we're wearing? Or, in the alternative, God, could you please have the United States of America spontaneously and immediately adopt the custom of all lawyers wearing robes like the barristers of England? Please and thank you, Amen.*

Over the past ten years, we've married, had children, and looked for resources that spoke to both our roles as women raising families and women running our own businesses. And we didn't find what we needed. So, as we have done in many areas of our lives, we made it ourselves. We had to become the mentors, role models, and gurus we were searching for. We hope we can help you do the same. We offer this book as an act of service and mentorship and paying it forward to you, our trial lawyer sisters, in the hopes that it will make your journey easier, happier, and more fulfilling, and keep you in this beautiful, meaningful practice we all do called the law.

Over the years, we've had the unique opportunity to learn from, and practice with, some of the best and most successful trial lawyers in our profession, but what works for men doesn't always work for women. And so, through trial-and-error, we've taken the best approaches we learned from our male colleagues and modified them to work for us,

as women. And we've developed our own methods for trial work that capitalize on the unique superpowers of women in the courtroom. You were made for this, and we'll show you how to make changes to your practice today that highlight and honor your unique feminine gifts.

By working your cases from an approach we've developed called Trial Perspective, you can advance yourself and your cases faster—and increase your value as a lawyer, along with the value of your cases. We do not believe in “paying your dues” or “waiting your turn.” That model is outdated and rarely in service to our highest and best use of time. By investing in yourself through learning the trial techniques in this book and using the outside resources we suggest, you will immediately start producing better work and doing better for yourself and your clients, no matter how low or high you are on the totem pole.

This book is a compilation of research, tried and tested systems for working cases from a Trial Perspective approach, advanced trial skills, as well as encouragement and advice that we have accumulated in a decade of trying cases and growing businesses, getting married, getting unmarried, huge wins, a lot of losses, having babies, watching our babies grow into toddlers, our toddlers grow into teens, moving our kids off to college while sobbing quietly on the ride home, learning to love and take care of ourselves, and supporting one another the whole way through. The tools and advice you will find in this book are invaluable resources and insights that we have developed, use, and wish we had when we started our careers, our businesses, and our families. Take them, modify them to fit you, and use them in good health!

Whether you are just getting started and want to learn about the practice of law or you have been doing this a long time and are looking to reinvigorate your practice, we'll share with you our experiences, advice, and insights that will enhance your practice and enrich your life.

This is also a fantastic resource for any man who wants to mentor, work with, encourage, and better use the skills of the women lawyers in their lives. We have met a lot of great men who are striving to break free of the traditional law firm mold and are looking for resources and insights on how to create dynamic, diverse, supportive, and creative

environments for women. Right now, at this time on the planet, we are experiencing a significant and welcome shift in the legal culture. The most successful law firms are ones with women in leadership positions. Women all over the country are starting successful, vibrant, and rapidly growing law firms that are raising the bar in the legal and business communities. Men and women are working together to reclaim and redefine what it means to be a lawyer in the twenty-first century.

Bottom line: this is a must-have resource for the modern law firm and practitioner.

In writing this book, we have three main groups in mind:

1. New lawyers, male and female, just starting out or with limited experience in litigation or running a law firm. If you are looking for a playbook that will give you the edge you need to achieve the results you are capable of—this might be the book for you. We will lay out the basics of litigating and trying cases, teach you how to work your cases from our Trial Perspective method, and show you how to do all of this while also making meaningful space for your dreams, your life, and your self-care.
2. Women of any experience level, maybe even where they think they want to be, who don't feel fulfilled. Maybe you aren't getting the results you want. Maybe you are dissatisfied with the opportunities you are being given. Maybe you are working for a great firm and have your name on the door, but you aren't getting the opportunities you want to try cases. Or you feel like you are working too much and neglecting yourself, your family, or your dreams. This book is for you.
3. Managers and owners of law firms—men and women—who have female partners and female employees and who are looking to improve the experience and maximize the value of the people in their firms.

We'll teach you the basics of how we try cases. But we'll go deeper than that; we'll have real conversations. We'll show you why women are uniquely and wonderfully suited to be trial lawyers. We'll talk about what women trial lawyers are really experiencing in the trenches and the struggles of balancing a demanding career and a full family or personal life. We'll share the strategies we both have used to build our own businesses, propel ourselves into the realm of the most successful trial lawyers in the country, and nourish thriving family and personal lives at the same time.

Above all, our goal in writing this book is to share what we've learned to help other lawyers, male and female, accomplish whatever goals they set for themselves, personally and professionally. This is a book for all women and men, from law school to the bench, that provides guidance, education, and tools to embrace the new female future: Trial by Woman.

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# PART ONE

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*Our Time Is Now*



# Our Time Is Now

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## *The Matriarchal Society*

In this part, we'll talk about the rapid rise of women as leaders in the law, why the old model of legal practice and paying your dues is antiquated and useless, why women are uniquely suited for trial work, and how the quality of your life tomorrow is inextricably bound to the thoughts you have and the actions you take today.

America is seeing an unprecedented shift away from the patriarchal hierarchy that has dominated our culture for millennia. The shift comes in the form of a movement which is gaining momentum at a rapid pace, driven by strong, powerful, modern women, who are redefining what it means to be women, mothers, professionals, and citizens. We are at the precipice, an opening of possibility, and we have to be vigilant, prepared, and willing to seize this opportunity for change. As professionals in law and leaders in our society, we are in a unique position to make that change and set an example for the evolution of our civilization, for the future of our world. As women, mothers, professionals, and leaders, we will succeed only if we work together, supporting one another in our work to teach and foster equality in our profession, in our workplaces, in our homes. The image and role of women in the law must dissolve and can no longer be defined by the past.

Women are becoming leaders in their careers at an unprecedented pace. The shift is happening all around us, across the country, across all major industries, without regard to race, education, or income. Each of us can choose to be part of the shift, to ride this historic wave of change and improvement. To participate and engage will take effort. It will require that we open space within our minds and our hearts to allow for

change. But, more importantly, it will require us each to equip, grow, and better ourselves so that we move with the momentum.

This book is a wake-up call of sorts. It's a call to action. It's a grabbing you by the shoulders and giving you a good shake kind of delivery. And the message is this: now is the time; you have the power and the ability to raise yourself up, to make yourself more valuable and more powerful and more satisfied with your life in and out of the courtroom.

We'll walk you through specific techniques you can start using today to shift your thinking and your approach on cases. We'll show you how to use Trial Perspective methods in every part of your work, from discovery to client meetings to depositions to your interactions with opposing counsel. If you are not bringing a Trial Perspective approach to your case from the moment you begin, you are already losing.

The days of working your way up the ladder are gone. The days of waiting your turn for the position you want are gone. Access to technology, and thus to people and to information, can advance your experience and increase your value quickly and effectively, if you take advantage of it. Opening your eyes to look at what's around you in a different way, identifying where you want to be and what skills you need once you get there, and getting those skills today is what makes women leaders.

Standing in line leads you to be the next person in line. Stepping out of line and making your own way leads you to your highest and best greatness.

Look what happens when women step out of line and don't take the traditional path and wait their turn:

- Hillary Rodham Clinton (lawyer, First Lady, senator, secretary of state, 2016 Democratic Party presidential nominee)
- Mary Barra (joined General Motors when she was eighteen and has become the first woman to be CEO of a major car manufacturer)
- Danica Patrick (began Indy racing at age twenty-three, became the first woman to win the pole position at the Daytona 500)

- Oprah Winfrey (was demoted from her anchor job to be a local talk show host and later went on to have her own talk show for twenty-five years, which was the highest rated in television history, now has her own television network)
- Savannah Guthrie (lawyer who went on to become cohost of The Today Show)
- Megyn Kelly (lawyer who went on to host her own shows for Fox News and NBC News)

Your star can shine as bright as you'd like. It's 100 percent up to you and 100 percent within your control to make your life and your career whatever you want it to be. If it's your dream to work for a big-name firm, do it. If it's your dream to have your name on the door, do it. If it's your dream to work part-time and try only a case or two a year, do it. Our point is, decide where you want to be, and then figure out your own pathway to get there.

# 1

## Together, Women Run the World

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**W**omen outnumber men in the world. Read that again, and really take it in. There are more women on this planet than there are men. Now, consider the adage that there is power in numbers. If you put those concepts together, we know for a fact that when women band together and work toward a common goal, they have insurmountable power.

Think about all of the examples in our world right now. Let's start with the #MeToo movement. When one woman makes an allegation of sexual harassment, misconduct, or abuse against a man, and the man denies the allegation, it's one voice against another voice. But when one woman stands up and says she was sexually harassed or abused by a specific man, and dozens of other women stand up and say, "Me too, I was sexually harassed or abused by that same man," now it is many voices against one. The energy shifts. Our collective psyche goes with the group. We believe them because there are more of them. If all of these women are saying a particular man did this, it's more likely true

than not true. This is a prime example of the power of women united in a cause.

In the United States, there are roughly five million more women than men. Women voters outnumber male voters in America, casting between four to seven million more votes than men in recent elections. Women outnumber men in college enrollment by nearly two million as of 2015, the last year for which data is available. That enrollment gap is projected to grow to nearly three million by 2025.

Over the past twenty years, the number of women-owned businesses has grown 2.5 times faster than the national average. As of 2014, women were the primary breadwinners in 40 percent of households with children under eighteen.

The same growth exists in the law, but the momentum is not as great as it is in other parts of society. As of January 2017, 36 percent of attorneys in America were women. That's up nearly 7 percent from 2000. Yet, women were awarded 47.3 percent of JDs in 2017.

What's happening? The traditional practice of law is not working for women. The old way isn't working. Working your way up the "ladder," sitting in a room churning out law and motion documents and oppositions, waiting years to take your first deposition, having to sit second—or even third—chair in your first half-dozen trials, waiting your turn to become a "partner" and then finding out that "partner" doesn't mean the same thing as "equity partner" and, therefore, not getting the money that should come with the title, taking six to twelve weeks of maternity leave and then rushing back into the office leaking milk and looking at a picture of your baby so your milk will let down and you can pump enough to be at the office again tomorrow . . . none of it works for women anymore. Not in this modern age. Not with the state of technology and the information available to us with a few keystrokes and an internet connection. This old way is why women were leaving our profession. Those traditional ways of practicing law are coming to an end. This is a new day with a new direction and new focus that allows women to not only remain in law, but thrive and become leaders.

Women are using all of the resources available to them outside the office to skip the line, forego this ladder-climbing nonsense, and become leaders of their own firms and leaders in the law. They are trying cases, they are running their own firms, and they are having families and taking care of themselves and their families. They're doing all this while developing their physical health, emotional health, and spiritual health. Later in this book, we'll show you what these successful women are doing, how they are doing it, and how you can start doing the same thing today. You'll see that one of the big things women are doing is working with other women personally and professionally and, in doing so, magnifying their spheres of influence in and out of the courtroom. The most successful female trial lawyers have figured out that their health, wellness, mindfulness, and presence outside the courtroom directly correlate with their success inside the courtroom.

We can all increase the momentum of women as professionals and leaders in the law, which is what binds our country together and sets it apart from others. It's through working together and lifting one another up that we all work better, feel better, and are better. Confidence, courage, support, and motivation are key ingredients for all of our success. Later in this book, we'll show you how to unlock those qualities within yourself and within others. Or you can go back to the Table of Contents right now, pick a section that your heart draws you to, and dig right in.

Success is not a fixed commodity. There's not a limited amount of success to be divvied up among us all, or even an amount that has to be divvied up among women. Your personal success is limitless, and so is the personal success of each of your trial lawyer sisters. As we use the power in our numbers as women, as we come together to lift one another up, encourage one another, and help one another find fulfillment, happiness, and wellness in and out of the courtroom, a multiplier effect occurs. Two female trial lawyers working together are no longer  $1+1 = 2$ . They are 2 squared. That's the power of women.

The best part: there are concrete actions you can start doing today to put yourself, and other women, on the path to a more fulfilling

professional and personal life. Whether it's amplifying other women where you work or putting out your own shingle, we provide advice, techniques, and ideas to inspire and push you to start now. Skip to the part of the book that calls to you. When we put ourselves and other women on the path to a better life, that's when, together, women have the power to run the world.

## Chapter Takeaways

- The old way of practicing law forced women out of the profession in huge numbers.
- The new way of practicing law makes it easy for women to open their own firms, work fewer hours, and make more money.
- There is enough room at the top for all of us.

# 2

## The New Model for Practicing Law

*Lessons from the #MeToo Movement*

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The patriarchal paradigm historically held women back, but when women learned how to merge their power and voices with the power and voices of other women, the patriarchal paradigm began to crumble. There are many lessons from the ongoing #MeToo movement that we can apply to our practices today to make them stronger, better, and more successful.



## Women's Rights in Our Not-So-Distant Past

Historically, men have been the dominant gender, and women were the subordinate gender. This is the patriarchal paradigm. It started when our country was founded and is clearly illustrated in the early—and not-so-early—laws of our land.

By 1777, no woman in any state had the right to vote; every state had passed laws taking away that right. Nearly one hundred years later, in 1890, Wyoming became the first state to grant women the right to vote in all elections.

In 1848, hundreds of women, and some progressive men, signed the Declaration of Sentiments, in an effort to end discrimination against women. While this marked the first wave of the feminist movement, we know from our experiences today that the feminist movement as a whole was not 100 percent successful. Women still aren't 100 percent equal to men in all aspects of our society. Early on in our history as a nation, women were systematically subverted and discriminated against in all spheres of life, and women are still being subverted to men in some areas, including how much we make for doing the same job. Later in the book, we give you specific ways to ask for and get more money.

Did you know that in 1873, the United States Supreme Court ruled that states had the right to prevent married women from practicing law? It's all in black and white in *Bradwell v. Illinois*.<sup>1</sup> And it wasn't until 1938 that a minimum wage was established for men *and* women under the Fair Labor Standards Act. The minimum wage applied only to men before that.

Let's not forget, women's rights have been slow coming when it pertains to the bedroom. Shoot, up until 1964 it was still legal for men to rape their wives. In 1965 the U.S. Supreme Court finally overturned one

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<sup>1</sup> *Bradwell v. Illinois* 83 U.S. 130 (1872).

of the last state laws that banned the prescription or use of contraceptives by married couples. Think about that. Adults you know—maybe you, maybe your parents—lived at a time when the government took away their choice to decide whether or not to conceive a child. And, it was in 1973—again during our lifetime or our parents’ lifetimes for some of us—that a woman’s right to terminate an early pregnancy was recognized in *Roe v. Wade*. But, at that time, it was still *legal* for employers to discriminate against *pregnant* women. For example, someone could choose not to hire you because you were pregnant, and that was actually legal. It wasn’t until 1987 that the Pregnancy Discrimination Act banned discrimination against pregnant women.

Oh, and it’s worth mentioning that it wasn’t until 1981 that the Supreme Court overturned state laws designating the husband as the “head and master” of his wife and his property. Until then, the husband was basically a sovereign who had 100 percent control of property that he *jointly* owned with his wife. Even if the wife owned the property with her husband, it wasn’t really hers. It wasn’t until *Kirchberg v. Feenstra* that the law changed in women’s favor.<sup>2</sup>

## Women at Work

As recently as the 1980s, it was still acceptable for law firms to discriminate against women when deciding who to promote to partner. In other words, it was *legal* for a firm to promote a man who was less qualified than a woman. That funny business was finally shut down in 1984 in *Hishon v. King and Spalding*.<sup>3</sup> It’s exhausting, right?

The patriarchal paradigm is *why* there is a history of abuse and subjugation of women. Being in a patriarchal society is why we have the numbers as women but, until now, we didn’t have the power. It’s why

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<sup>2</sup> *Kirchberg v. Feenstra* 450 U.S. 455, 459–60 (1981).

<sup>3</sup> *Hishon v. King and Spalding* 467 U.S. 69 (1984).

we were and continue to be paid less than men for equal work in a shocking number of industries. Across 120 occupations, women's median earnings are lower than men's median earnings in nearly every job.<sup>4</sup> Women earn on average 82 percent of what men earn in identical positions for identical work.<sup>5</sup> Mind you: that's the *average*. When we break those numbers down by ethnicity, the gaps in pay are significantly more grim when it comes to female minorities.

This patriarchal paradigm that governed our society for so long is why women hold fewer of the top power positions in the work world. Only thirty-two CEOs of Fortune 500 companies are women. That's less than 6.5 percent.<sup>6</sup> It's also why we are underrepresented in politics. Only 19.8 percent of our U.S. Congress are women.<sup>7</sup> And, globally, the picture is the same. Only 38 percent of the 146 nations studied by the World Economic Forum had female government leaders for at least one year in the past half-century.<sup>8</sup>

But here's the good news: all of this is changing. And it's changing fast. In the law, for example, more and more women are opening their own firms, advocating for and getting higher pay, and establishing

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<sup>4</sup> Ariane Hegewisch and Emma Williams-Baron, *The Gender Wage Gap by Occupation 2016 and by Race and Ethnicity* (Washington, DC: Institute for Women's Policy Research, April 4, 2017), <https://iwpr.org/wp-content/uploads/2017/04/C456.pdf>.

<sup>5</sup> Nikki Graf, Anna Brown, and Eileen Patten, *The Narrowing, but Persistent, Gender Gap in Pay* (Washington, DC: Pew Research Center, April 9, 2018), <http://www.pewresearch.org/fact-tank/2018/04/09/gender-pay-gap-facts/>.

<sup>6</sup> Fortune Editors, "These Are the Women CEOs Leading Fortune 500 Companies," *Fortune*, June 7, 2017, <http://fortune.com/2017/06/07/fortune-500-women-ceos/>.

<sup>7</sup> Center for American Women and Politics, *Women in the U.S. Congress 2018* (New Brunswick, NJ: Eagleton Institute of Politics, Rutgers University, 2018), <http://www.cawp.rutgers.edu/women-us-congress-2018>.

<sup>8</sup> Abigail Geiger and Lauren Kent, *Number of Women Leaders around the World Has Grown, but They're Still a Small Group* (Washington, DC: Pew Research Institute, March 8, 2017), <http://www.pewresearch.org/fact-tank/2017/03/08/women-leaders-around-the-world/>.

professional boundaries that allow their personal lives to flourish. And the most successful of these women have figured out that the way to get on the fast track to these achievements is to work with like-minded women. They have figured out that there is strength in numbers. Much of this momentum is being fueled by the energy leading up to the ongoing #MeToo movement.

## The #MeToo Movement

There is a tremendous rise in women putting men on trial, and unlike previous times, women are being heard, listened to, believed, and vindicated. And men are facing real consequences.

On October 5, 2017, the *New York Times* published an article by female journalists Jodi Kantor and Megan Twohey, blowing the lid off nearly thirty years of sexual misconduct allegations against movie mogul and Miramax films head Harvey Weinstein, supported by evidence of financial settlements tied to strict confidentiality requirements.<sup>9</sup> Brave women—some actresses, some models, and some otherwise unknown employees—spoke to these trailblazing journalists on the record and off the record. According to the article, dozens of Mr. Weinstein’s current and former employees said they knew of Mr. Weinstein’s inappropriate conduct, but few had spoken out. Employment contracts apparently prohibited criticism of Weinstein or the Weinstein Company.

According to the article, civil rights attorney Lisa Bloom, known for representing victims of sexual harassment, had been advising Mr. Weinstein on “gender and power dynamics.” She was quoted in the article as calling her client “an old dinosaur learning new ways.”

Shortly after the New York Times article was published, #MeToo became a movement on social media for victims of sexual harassment

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<sup>9</sup> Jodi Kantor and Megan Twohey, “Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades,” *New York Times*, October 5, 2017, <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>.

and assault to show solidarity and support. By April 2018, there were more than one million #MeToo posts on Instagram alone and counting.

Weinstein was fired from the film company he founded and is currently facing criminal charges. Around the same time, numerous other powerful men were accused by women of inappropriate sexual behavior and misconduct:

- American's dad and star of *The Cosby Show* Bill Cosby
- Fox News anchor Bill O'Reilly
- Forty-five-year journalist Charlie Rose
- *New York Times* reporter Glenn Thrush
- Senator Al Franken
- Longtime *Today Show* anchor Matt Lauer
- USA Gymnastics physician Larry Nassar, who is now a convicted serial child molester sentenced to forty to one hundred seventy-five years in prison

## Anita Hill and the Clarence Thomas Hearings

This wasn't the first time in recent history that women have accused powerful men of sexual harassment.

We look back at Anita Hill, a young black woman who in 1991 testified in detail before the Senate Judiciary Committee where she publicly accused United States Supreme Court justice nominee Clarence Thomas of sexually harassing her. Ms. Hill had been a personal assistant to Clarence Thomas for two years and accused him of trying to date her and engage her in conversation about sex and pornography. She testified about specific sexual remarks she said Thomas had made to her and references to specific pornographic actors she said he made to her, including Long Dong Silver.

The confirmation hearings were televised, and the public was enraptured with Hill's testimony, as well as Thomas's denial. Thomas supporters were furiously attacking Hill and the hearing process as a whole, calling it, in essence, a modern-day lynching. And they weren't alone. Public opinion polls at the time showed that a plurality of Americans *did not believe* Hill's allegations. Thomas's nomination was confirmed, by a vote of 52 to 48.

He may have been confirmed, but the ordeal woke us up. At the time this was going on, we didn't even have a word for what happened to her. That's right; because of Anita Hill, we now have the words *sexual harassment*. What does that matter? We are language based—we need to name something in order to act on it. And that's what happened: only a month after Anita Hill testified, Congress passed the Civil Rights Act of 1991, giving sexual harassment victims the right to sue their employers for damages and back pay—giving women a vehicle for protection and recourse in the workplace, and giving us, attorneys, the power to represent those victims and demand justice on their behalf. An onslaught of sexual harassment at the workplace lawsuits were filed. And guess what? In the years that followed, sexual harassment in the workplace decreased—significantly.

Hill is now a lawyer and law professor and has spoken about the lack of public support she received. Despite the fact that Thomas was confirmed and most Americans largely disbelieved Hill, this was a defining moment in our society, when people began talking about sexual harassment and gave it a name.

Anita Hill had the courage to speak even when it brought her before our government and our nation to be asked difficult questions of a sexual nature in a very public forum. Anita Hill's journey and her fortitude shed light on sexual harassment in the workplace in an unprecedented way. Government agencies and businesses almost without exception in our country now have policies against sexual harassment in the workplace, and some have training in place to prevent sexual harassment in the workplace. It's no longer commonplace or acceptable for men to grope anyone at work, thanks primarily to Anita Hill, in our

view. As modern women, we would be shocked to be groped at work. But there was a time that many women still remember when that was not abnormal. (Heck, in well-known law firms in Los Angeles, secretaries were asked to jump out of birthday cakes up until the nineties.) And if a modern woman is groped or otherwise sexually harassed at work in this day and age, there are laws on the books in every state to protect her. Thank you, Ms. Anita Hill, we say, for having the courage to speak and to stay the course. Your bravery changed history.

In stark contrast to Anita Hill's experience, in 2017, when women came forward and told their stories and accused very powerful men of sexual harassment, for the first time, the walls came tumbling down. Other women had the drive and the fortitude to come forward and tell their own stories. They came forward in droves. And they were believed. Whereas our culture historically disbelieved women who made sexual harassment claims against powerful men, that culture is gone. Instead, we seem to have shifted to a default position of believing accusers, rather than disbelieving them.

## Female Lawyers, Female Jurors

As trial lawyers, we're interested in the beliefs jurors bring to the courtroom. What we're seeing and hearing, anecdotally, is that the collective community has also shifted to a place of believing, rather than disbelieving. We're now seeing cases won and lost based on whether there are women trial lawyers connecting with jurors. In other words, we're seeing female jurors connect with female lawyers in an unprecedented way. If the female juror and the female lawyer connect in *voir dire*, a bond is formed between the women that appears to impact how the female juror decides the case.

## The Aquarian Age

Why is this happening? Because the time is ripe for the forging of women bonds on a much larger scale. We're moving from the religious- and patriarchy-based Piscean age into the egalitarian- and matriarchy-based Aquarian age, which is about reclaiming power.

Whether or not astrology is your thing, it's one way of putting words to concepts, in this case, our collective consciousness and the shifts therein. We are always looking for ways to articulate ideas—to help us verbalize and conceptualize our role in change and momentum. Whichever lens you choose, there are beautiful things happening at this time on the planet, things which deserve to be recognized, celebrated, and catalyzed for good.

The best description we've seen of the Aquarian age is by Guru Jagat, founder of Ra Ma Kundalini yoga:

*The Aquarian Age*, or Golden Age, is about the ascension of thought, action, experience, and the reclaiming of human goodness, compassion, creativity, and kindness. The Tibetan Buddhists call it Shambala or the creation of Enlightened Society, where the heavy veil of competition, lack, violence, and human suffering becomes transparent and we as humans walk into a much more Human Beingness through our continued discovery of our own spiritual depth (who we truly are) and our desire to see that depth and beauty in others.<sup>10</sup>

The Aquarian age represents a rise of feminine leadership. Feminine. Not female. Just being female doesn't get you there.

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<sup>10</sup> Guru Jagat, "No, Really: It IS the Dawning of the Age of Aquarius: There's a New Sheriff in Town, Planet Earth, and It's Called the Aquarian Age," Wanderlust.com, June 17, 2015, <https://wanderlust.com/journal/no-really-dawning-age-aquarius>.



## Tap into Your Feminine

Feminine means graceful, in tune, soft, sensitive, tender, aware, and engaged. Want to tap into power? Choose to be a woman and embrace what that means to you. To the extent we have any rough, nonfeminine edges, any harshness or bitterness, any male qualities, now is the time to release those. They take away from all that you really are. They reduce the incredible power inherent in your femininity. You are a lawyer. You are not an mixed martial arts fighter. You are not a boxer or football player. You are not trying to physically keep up with men. Every step you take to defeminize yourself robs you of power in the courtroom and in life. You are a woman. You are graceful. You are aware of the energy in a room. You are aware of what people need. You are a caretaker. You are strong beyond your wildest dreams.

It is you, mama, who tends the sick child all night. It is you, mama, who tends the sick parent. It is you, mama, who sows the seeds of the family, creating Christmas, Easter, Ramadan, Passover, and whatever other celebrations are meaningful in your family. But for you and your femininity, your intuition, your deep knowing of what people need and how to provide comfort and how to turn four walls into a home and how to create memories, but for you and all of these things you innately do, there is a house, but no home. There is food but no meal. There are hugs but no tenderness. It is your feminine energy that allows you to communicate without words and to know what people really need most. Imagine what you could do in the courtroom by embracing, rather than hiding, this beautiful gift of femininity. This is what the Aquarian Age is about.

We're not saying you should suppress competitiveness if that's part of your personality. That's not what embracing your femininity is about.

The wolf mother is fierce and unyielding when it comes to the protection of her pack. Your loyalty and generosity is not in conflict with your lust for competition. There is a reason that justice, morality, and ethos have been represented by the feminine from ancient Egyptians

to Romans to the lady we see in courthouses today: women are able to combine intensity with humanity. This benefits our clients, our families, our societies. When we deny pieces of ourselves, we diminish this power and we find ourselves dissatisfied, incomplete.

Here's the other thing: not all of us are competitive. Some of us are equalizers, seekers of fairness and justice on principle. We're not looking for the hunt or the kill. We're not keeping a tally of our performance or trying to meet quotas. We're standing in our role as officers of the court and using the channels of justice to right a wrong—one client at a time. And there's space for that personality type too. We are fighting for the just outcome and for accountability. Those of us who identify this way view this process less through the lens of wins and losses and more through the lens of balance and achieving equality where equality won't come on its own. It's similar to the way we as women intervene in conflicts between our children, between our siblings, between our own mother and sister, between two friends. Some of us are ever searching for stasis in humanity.

Whatever your gifts are, there is space for them. It's about sharing your gifts with others. It's why we've written this book, as an act of service to women who haven't found their way or haven't found their true voice, who still feel they are struggling in a man's world. The secret, dear sister, is that this isn't a man's world unless you believe it is. It's a woman's world. You are a woman practicing law in a woman's world. All of the discomfort you feel, all of the uneasiness and feeling out of place and playing second fiddle is because you still think it's a man's world. When your mindset shifts, the world around you will shift too. Become a woman practicing law in a woman's world, and you will find fulfillment and joy in what you do. You won't be contemplating giving it all up to teach yoga or tend bar or work at Pottery Barn. You'll be happier, healthier, and whole.

So, why is it *now* that women have the courage to come forward and make public allegations of sexual misconduct? The energy has shifted, and, as a society, we've created a container within which these conversations can happen without fear of retribution. The container is an

energetic space. It was created by Ashley Judd, Gwyneth Paltrow, Reese Witherspoon, Mira Sorvino, Christy Turlington, and other famous and widely respected celebrities. Their willingness to stand up and say, “This happened to me, and it was wrong,” created an energetic container for sharing. In other words, they created a safe space. They may not have intended it, and they probably didn’t realize they did it. But the combination of who they are and what they have accomplished and the grace with which they shared their experiences made it safe and acceptable for others to share. These women, these celebrities, have been around for decades. We’ve seen them in movies. We feel like we know them. That’s why they are able to create this energetic container within which others feel safe to share.

So, what we’ve learned from the #MeToo movement is that we, as women, have the power to create energetic containers that make people feel safe. How does that translate to your practice? You, with your beautiful, God-given feminine energy, can create a space within which people feel safe to share—potential jurors, clients, witnesses, even judges. You can create a space where people can connect. Where people *want* to connect. And if you know how and are willing to open yourself up to that feminine energy within you, you can create the space they need. We’ll talk more about exactly how to do that in part 4, “Trial Perspective and Trial Techniques,” later in this book.

## Chapter Takeaways

- Learning from our past as women helps us see where we want to go in the future.
- There is power in our collective voices.
- Female jurors are connecting with female trial lawyers in an unprecedented way.
- Women have the power to create energetic containers that make people feel safe.