Gender Bias in the Courtroom:
Challenges Confronting Women Litigators and Trial Attorneys

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Gender in the Legal Profession Seminar Paper
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INTRODUCTION

Over the last several decades, women have made significant strides in the legal profession. Today, women account for nearly half of law student enrollment and occupy more leadership roles than in years past. While increasing numbers of women are attending law school, however, the statistics do not transfer to the practice of law. Specifically, women account for only one-third of attorneys in private practice, and an even smaller percentage of litigators and trial attorneys. Moreover, gender biases continue to pervade the courtroom and the legal profession generally, creating obstacles for women who wish to advance in their legal careers. In the field of litigation, the differences between men and women may be amplified because of the adversarial nature of the practice and the pressures of the workplace. This research paper explores the various gender biases that women attorneys confront that help explain the dearth of women trial attorneys and litigators in the legal profession.

Part I of this research paper will examine the history and trajectory of women in the legal profession, tracing accounts of the first women litigators until recent trends in the legal profession. Part II will discuss the empirical data that demonstrates the lack of fair treatment of women trial attorneys in the courtroom by judges and jurors. It concludes that both explicit but mostly implicit biases against women trial attorneys continue to pervade the courtroom despite the significant progress women attorneys have made. Part III will address the perils of implicit bias in the legal profession. It explains that gender bias undermines our legal system by attacking principles of fairness and equity. In other words, if female attorneys are treated discriminatorily, so are the other parties in our courtrooms, including the attorneys’ clients. Consequently,
judgments about a female attorney based on her gender not only undermine the attorney’s credibility, but also affect her client’s opportunity to be heard and access fair court proceedings.

This section recommends ways to counter gender biases from the moment students start law school and throughout their legal careers. It concludes that with more awareness about the unconscious gender biases that pervade the legal profession, active recruitment of women attorneys in traditionally male positions, and better mentoring and opportunities in the workplace, women litigators and trial attorneys can achieve greater gender equality in the legal profession inside and outside of the courtroom.