

**Gay C. Grunfeld**

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**From:** Gay C. Grunfeld  
**Sent:** Friday, August 17, 2018 6:28 AM  
**To:** Gay C. Grunfeld  
**Subject:** 'What It Takes' article gives false picture of female trial lawyers

[http://www.abajournal.com/voice/article/what-it-takes-article-gives-false-picture-of-female-trial-lawyers/?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/voice/article/what-it-takes-article-gives-false-picture-of-female-trial-lawyers/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email)

## 'What It Takes' article gives false picture of female trial lawyers

By Cris Arguedas

Posted August 16, 2018, 6:10 am CDT

*On Aug. 6, [ABAJournal.com](http://www.abajournal.com) posted an article, "[Showing anger can backfire for female lawyers, studies say; law prof suggests 'gender judo' response](#)," which quotes from an article in *The Atlantic*. The following is a response to assertions in that *Atlantic* magazine article.*

Lara Bazelon's recent article, "[What It Takes to Be a Trial Lawyer If You're Not a Man](#)," relies on false premises to reach mistaken conclusions that, if accepted, might lead a reader to believe that women cannot be as effective courtroom lawyers as men. Ms. Bazelon states as a fact that juries "will be more willing to listen to and be convinced by a traditionally feminine woman." This is an astonishingly broad statement that has no evidentiary support and is belied by my own experience and that of many other women trial lawyers.

I became a criminal defense lawyer in 1979. Since then, I have been lead counsel in many high-profile cases all over the United States, taught trial practice at Berkeley Law, and lectured nationally on the subject of cross examination. I have taught, mentored, counseled, tried cases with, and watched many women trial lawyers. In 2010, I was inducted into the California Trial Lawyers Hall of Fame, and in 2017 I received the White Collar Criminal Defense Award from the National Association of Criminal Lawyers. I know what I'm talking about when it comes to litigating in a courtroom and conducting a trial.

Of course, I have encountered plenty of sexist attitudes during my career. I have heard many aggravating comments about what I should wear and how I should act. Depending on the situation, I have either directly confronted the people expressing those ideas or I have

shrugged them off and moved on. There is no doubt that it is unfair that I and other women have the extra burden of confronting those sexist attitudes, but one thing I have never done is capitulate to them. Yet that is what Ms. Bazelon's article advocates.

Ms. Bazelon's main argument is that a woman trial lawyer cannot be aggressive and powerful during a cross examination because her manner will run afoul of some juror's ideas of how a woman should behave. And she assumes that the woman trial lawyer will therefore lose that juror's vote. More generally, Ms. Bazelon asserts that women lawyers must walk a "devilishly narrow path." I could not disagree more.

An excellent cross-examiner has to have many speeds and styles of interrogation and the ability to control them. Some examinations require a quiet subtlety while others require tremendous force. Sometimes a relaxed or even affable approach may be effective, and other times open hostility. On occasion, it may be appropriate to utilize such differing tactics over the course of a single cross. A skilled examiner must be able to use all the tools. Ms. Bazelon describes feeling exhilarated on the one occasion she allowed herself to use "the full range of tactics available to men," which for her included raising her voice and slamming her fist into an open palm during argument. She became a "trial beast." I'm here to tell her that she and her students can employ those tactics any time they need to do so, and those are the tactics she should be teaching to her women students.

No doubt there are jurors and judges who don't like seeing a woman being aggressive. But qualities and tactics that irk some jurors may win others over. More importantly, even the jurors who don't like the aggression will get over it. My career has demonstrated that you can be aggressive to the point of causing discomfort for a juror if you are also effective. (I suspect the same is true for men.)

Put simply, it is not the end of the world if a juror doesn't like you. If, as a juror once said to me: "I thought you were a bitch, but that witness was a liar," I have won. Plenty of jurors who didn't like me also asked me for my card at the end of the trial.

People are drawn to strength, power, and authority even when it makes them uncomfortable. Ms. Bazelon should be teaching her women students to use those qualities and tactics—not how to conform to the most conservative and stereotyped expectations of how a woman should behave.

Ms. Bazelon writes that when in a courtroom she "took on the persona of a woman who dressed, spoke, and behaved in a traditionally feminine and unthreatening manner." Obviously, there is a wide spectrum of female behavior. Some behaviors meet the expectations of "traditionally feminine" and some don't. (Just like jurors will have a variety

of viewpoints on what they expect from a woman lawyer in terms of their style.) There is room for all kinds in a courtroom. The most important thing is that an attorney maximize her power and authority in the ways that are most natural and authentic to her.

Ms. Bazelon spends an inordinate amount of time talking about women's clothes in court, so let me give another point of view. I have never appeared in court wearing anything other than pants—including the United States Supreme Court. Pants, flat shoes, socks. The author should wear what she wants and shouldn't be teaching her students to win their cases with their clothing. They should be winning their cases with their preparation and skills—and not worry about their attire.

There are times when a good cross-examiner must, to use the author's words, "march up to the witness box, incriminating document in hand, and shove it in the witness's face." Ms. Bazelon says she was forced to "approach witnesses gingerly—because [she] was balancing on heels." I would suggest that on those days when Ms. Bazelon needs to conduct an aggressive cross, she should wear different shoes and do the job properly.

Indeed, Ms. Bazelon's premises and conclusions suggest that neither public defender's offices nor private clients should ever hire a women lawyer. Why would you hire a woman to try your case if she can only use some of the tools that are available to a man—and can't approach a witness aggressively when exposing a lie?

Ms. Bazelon concludes that "women lawyers don't have access to the same 'means and expedients' that men do." She worries that she is "holding [her] students back" by teaching the "same unfair rules that were passed on" to her. I agree with the latter proposition and disagree with the first. Ms. Bazelon should teach her students to look to successful women trial lawyers who have not conformed to so-called "traditional feminine woman" expectations. She and her students should learn from them and follow their example.

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*Cris Arguedas is a partner in the law firm of Arguedas, Cassman, and Headley in Berkeley, California. She was co-counsel in the successful defense of Major League Baseball star Barry Bonds in his perjury case in San Francisco. Her practice includes the defense of every kind of crime, from white collar to no collar, but she has a particular emphasis defending individuals caught up in white collar investigations or indictments: environmental violations, FCPA, antitrust, tax, and major fraud.*

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