

HALL OF FAME: JENNIFER KELLER

By [Alison Preece](#) | September 19, 2023 | [Lawyer Limelights](#), [Keller Anderle News](#)



Jennifer Keller, a name partner at Keller/Anderle, is one of the most successful trial lawyers of her generation. While some attorneys build a career by focusing on one or two areas, Keller has always been drawn to cases where she's covering new ground, learning new subject matter – and often setting precedent along the way.

She began her career as a deputy public defender in California, where she was among the first to successfully use the intimate partner defense in a murder trial, at a time when much less was understood about the psychology of domestic violence victims.

When she moved into private practice, Keller wielded her dexterity in cross-examination and jury rapport in the defense of a wide variety of professionals, corporations and state entities in both civil and criminal cases, frequently in the public eye. She won a not-guilty verdict for Kevin Spacey in a sexual abuse trial; defended the city of Costa Mesa against the proliferation of unlicensed sober living homes; and secured an acquittal for a developer, Jeffrey Burum, in one of the largest corruption prosecutions in California.

Keller famously stepped in at the eleventh hour in the retrial of *Mattel v. MGA*, nicknamed in the media as “Barbie versus Bratz,” in which Mattel was claiming copyright over the wildly popular new Bratz line of dolls. Keller wasn't familiar with copyright law and had to catch up at light speed on the facts of the case. She managed a stunning turn-around result for MGA: The jury returned a verdict of \$85M against Mattel, with the judge adding another \$85M, plus \$139M in attorneys' fees. And MGA retained full ownership of the Bratz dolls.

Keller was inducted this year into the Lawdragon Hall of Fame.

Lawdragon: Tell us about swooping in at the last minute in *Mattel v. MGA*. To what do you attribute your success in that case?

Jennifer Keller: It was a real fire drill, but it all comes down to storytelling. It was fairly easy to identify who the bad guy was, and it wasn't my client.

It was, in some respects, an advantage for me to learn copyright law just ahead of the jurors, because that allowed me to explain it a little better to them. In fact, I told the jurors to not feel bad because when we started the trial, I thought that having a copyright meant you had a little C with a circle around it that the government gave you. But, I said, it's something we can all learn.

I also spent many years as a criminal defense lawyer, so I was used to cross-examining government witnesses where I had very little discovery. You'd have discovery consisting of a paragraph or two in a police report, and this person would be on the stand testifying for half the day before you got to cross. So I was used to doing things on the fly.

It also ended up being advantageous to come in at the last minute because the witnesses were being prepped very thoroughly by Quinn Emanuel based on their depositions and written discovery. I hadn't even had a chance to read most of that. So my questions, as far as they were concerned, came out of left field, and they weren't ready for that.

I remember the CEO of Mattel being very, very angry. I could hear him yelling at his lawyers that they hadn't prepared him for some of the questions I was asking. The universe of information they had didn't include me.

LD: You were able to use the element of surprise.

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JK: Yes. Some of the turning points were their witnesses' answers to questions, very human questions that I asked, but they weren't prepared to act human. They were prepared to spit out the answers that they'd rehearsed.

LD: You mentioned your criminal defense days. The intimate partner violence defense in murder trials was fairly new, wasn't it?

JK: In those days, it was referred to as the battered women's defense, but it was fairly new. My case was a murder trial in Orange County, a gut-wrenching case. I managed to prevail, but that was an agonizing case because I liked my client and it had taken me forever to draw out of her what had really happened. I had to earn her trust. At the end, she sent me a wonderful letter and some flowers telling me that she had not believed that, as she wrote, "A rich white woman like you would care about a poor Black woman like me."

Well, I wasn't rich, I was a starving young lawyer in the Public Defender's Office. But to her, I was. She had been a clerk at a grocery, and her husband had physically abused her throughout their marriage and would come to the market, take her paychecks, and blow them on toys and other women. She was just a wonderful person, salt of the earth. She absorbed a lot of abuse. But when he first physically assaulted one of her girls, that was it.

At the time, the dynamics of intimate partner violence were not that well-known. It had not been previously possible to argue for manslaughter based on "imperfect self-defense," in that you had an honest belief – even if unreasonable – that you were about to be subjected to abuse again. The law had been that if you had other options, if you could have left, called the police, etc., you had to use them. Now, we know that people can develop PTSD from repeated intimate partner violence, not believe they have those options, and that you can react much more quickly and forcefully to potential violence than one without that background, because you're expecting another violent onslaught at any moment.

She was looking at life without parole, and that would've just killed me. We actually didn't have to go to verdict because the DA was taking such a drubbing, and the judge was moved by her story. Even the court reporter, who was always on the side of the DA, one day stood up and walked over to the DA, put her hands down on the desk in front of him and said, "You're on the wrong side of this one, Pat." He ended up allowing her to plead to voluntary manslaughter, and then the judge sentenced her to essentially time served. So she was able to go back to her teenage girls.

LD: You've done a lot of cases that have been covered closely by the media, including the defense of Kevin Spacey in the sexual battery civil case brought by Anthony Rapp here in New York. How does your approach to litigation change when the whole world is watching?

JK: Well, it doesn't change very much, other than you must bear in mind that your client is being tried in the court of public opinion, too, when it comes to his career. As to the courtroom part, lawyers who haven't handled high-profile cases often mistakenly believe that those cases are won or lost in the media, and they're really not. The only ones who matter are those 12 good people in the jury box. The pundits can say whatever they want. In *Spacey*, the pundits were saying that Kevin was going to be found liable and everybody knew "it was an uphill battle." My trial strategy was being criticized. This one lawyer who probably doesn't even try jury trials was saying, "Keller's taking a risk here going after Anthony Rapp and aggressively cross-examining him because she's taking an all-or-nothing approach."

What does that even mean, an all-or-nothing approach? My client said it didn't happen. And from the physical evidence and everything we've reconstructed, it's clear it didn't happen. So what am I supposed to say, that maybe a little bit happened, or it happened, maybe, but the damages weren't as bad? That's absurd. It didn't happen. So of course, you're going to aggressively cross-examine and go for a complete victory. You just have to tune out that kind of criticism.

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Tom Mesereau is a good friend of mine, and when he was trying the Michael Jackson case, I saw the same thing. We were talking throughout that trial, and it sounded to me like the trial was going really well. Meanwhile, the pundits were all saying that it was going to be a terrible loss. They were measuring Michael Jackson for the prison cell. And of course, he was acquitted. You have to just focus on the jurors, as Tom did. They're the ones who matter, not the armchair quarterbacks.

LD: You've had such a successful career in the courtroom. What would you say are the qualities that make an effective trial lawyer?

JK: The biggest thing is just being a human being. Trying to make sure there are as few barriers between you and the jury as possible. So don't use stiff language like, "Sir, did you have occasion to observe...?" Stay away from technical jargon and speaking in acronyms. You would never talk like that to your next-door neighbor. It sends the message that you consider yourself a very important person using specialized lingo. That's the last thing you want to do.

Be a nice person. Also, let them know you're not perfect either. If you screw up a question, don't say "Strike that." Because court reporters don't even strike it anymore, they just type out "Strike that," and it all lives on in the transcript. It's distancing language that jurors don't ever use in their own lives. It's not a smart move. Just say, "Oh, that was a bad question, let me ask a better one." And don't talk down to jurors. Remember that you had to learn everything for the first time at some point, too.

Show your humanity, every chance you get. One trial, I was going through a particularly unpleasant perimenopause. All of a sudden, I could feel myself turning beet red, sweat just pouring down my face. The jurors looked scared, and probably thought I was having a heart attack. I walked over to counsel table, grabbed a bunch of Kleenexes, patted my face dry and looked up and said, "Ladies and gentlemen, what can I say? I am a woman of a certain age." They all laughed with relief, and completely loosened up. It really broke the ice, and they were in my corner after that.

The best compliment I ever got was from some jurors after trial, who said, "We all agreed that you remind us of our favorite high school teachers." Interestingly, my male colleague thought it was sexist. But I thought it was great. The person that you look back on with a lot of affection and who taught you, who you learned things from, who you still remember today as a positive force – that's a great thing for a jury to say about you.

LD: What inspired you to become a lawyer?

JK: I wanted to be a trial lawyer since I was around 12 years old. Perry Mason had a lot to do with it, and Nancy Drew: Girl Detective. She wasn't a lawyer, but she could have been. She was the one who figured out all the mysteries and put the bad guys away. But there were very few women trial lawyers in those days. My parents supported me, but it wasn't commonly seen as doable. Women weren't supposed to aspire to such things. People would say to me, "Oh honey, you can marry a lawyer and maybe be a legal secretary for a while."

But then, when I was 16, I became my high school's representative to something called the District Attorney's Youth Council. And the only woman in the DA's office was put in charge of it. Her name was Alicemarie Huber, later to become Alicemarie Huber Stotler. She was young, maybe 12 years old than I. That was a revelation to me, like aha, this *is* possible. I always looked up to her. She was a terrific lawyer and was also fun to be around. She wasn't stuffy, either. She ended up first becoming a state court judge, then a federal district court judge, and finally the Chief Judge of the Central District of California.

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LD: Did you find other female mentors once you started your career?

JK: Most of my mentors were male, because there just weren't that many women trial lawyers. My first bosses were very encouraging. The Public Defender's Office was a real meritocracy – all they cared about was that you get out there, try cases, and win. They wouldn't care if you were a giraffe, they just wanted you to win. One time, I was complaining bitterly about some horribly sexist thing a judge had said to me, and my boss was like, "Oh yeah, that's terrible. What an asshole. Well, get back in the ring, kid." That was all I needed.

LD: Do you remember what the judge said?

JK: Oh yes. It was my first homicide trial. The judge was a real jerk. He called me into chambers with the DA and said, "Let me tell you something. I don't believe in lady lawyers."

LD: Oh god. Like you're a leprechaun.

JK: Right. What an idiot. I tried to be lighthearted and said, "Well, we exist. Here I am, a living proof." He said, "You know darn well what I mean." And then, "If you ever try to use your feminine wiles during this trial or bat your eyelashes or anything, I'm going to put a stop to it." So again, I tried a little humor and said, "Well, thanks, your Honor. That's the first time anybody's even accused me of *having* feminine wiles." That just made him more infuriated.

But that's what it could be like in those days. When I was interviewing for jobs, people would ask what kind of birth control I used. They wanted me to guarantee that I wouldn't have children for X period of time. I was told by one firm that they would love to hire me, but their secretaries would never take orders from a woman. Another one said that their wives wouldn't put up with it. Like they were a bunch of dreamboats and I would be trying to rip their clothes off.

LD: Wow. Did all that factor into your decision to open your own firm with Kay Anderle?

JK: Not really. Much of that atmosphere had dissipated by the time we opened our office. Sexism now is far more subtle. A judge pulling that today would end up in front of the Commission on Judicial Performance. I just always wanted to be my own boss, and so did Kay. We're way too independent to thrive in hierarchy where we have to take orders.

Kay had been my opponent in the DA's office. She's a top-notch trial attorney with a lot of common sense, and we became close friends. No woman is an island, and I haven't been able to do the things I've done without great support all around me. And the number one source of that support is Kay. She handles the management side of the firm and she's just incredible at it. She also pitches in on trials every time we need her. She can do it all.

My partner Chase Scolnick is also fantastic. I tried the *Spacey* case with him. He has tremendous energy and enthusiasm, and is one of the few young trial lawyers who's tried over 50 jury trials to verdict as lead counsel. All of them have been in federal court, and his win/loss ration is astounding, especially given that he was a federal public defender.

You don't tend to achieve success all by yourself. We've built the firm to have a mix of outstanding people, from the criminal justice system and from Big Law, and we try to nurture everyone's various talents. A lot of the lawyers in our firm are absolutely brilliant, so I've achieved my goal of being surrounded by people smarter than I am.

Civil litigation is a team effort. I'm always delighted when people learn how good the rest of our lawyers are. There's nothing I like better than hearing a client is no longer calling me, but is now calling one of my colleagues instead. They deserve to have that kind of trust reposed in them. And it gives me a break, too!