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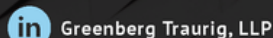
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Empowering Women in the Legal Profession Since 1899

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The mission of the National Association of Women Lawyers is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success.

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- Opportunities to build a national network via programs that bring women together, from across the U.S., opening doors to an array of business development opportunities.
- Leadership development through NAWL committees, affinity groups, and strategic partnerships. There are ample opportunities for members to develop and exercise leadership skills.
- Advocacy via NAWL's Advocacy Committee and NAWL's Amicus Committee, which reviews requests for participation as amicus curiae in cases of interest to NAWL members. A sampling of recent issues includes enforcement of Title IX, employment discrimination, women's health, and domestic violence issues.
- Community outreach through Nights of Giving. Throughout each year NAWL hosts a series of philanthropic networking events across the country to support organizations whose mission is to empower women and children.
- Continued learning with the Women Lawyers Journal®. This national publication provides a forum for the exchange of information and presentation of articles about women in the law and society.

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EDITORS' LETTER

Dear Readers,

As we bid farewell to the hecticness of Summer, Courtney and I invite you all to observe the beauty that comes with shifting into the Winter season. Similar to the leaves changing colors and trees gathering snow take a moment to notice any changes that you have embarked on in your personal and professional lives. Changes that you have made to increase life-work balance, pursue bold endeavors with the intention of creating a lasting impact or perhaps leap outside of your comfort zone to learn more about yourselves or discover your true purpose.

This issue of the *Women Lawyers Journal* highlights lawyers who are pursuing bold endeavors to carve new paths for themselves, their organizations or firms, or the law and tapping into their innate wisdom. In pursuit of changing oneself, Dr. Milana Hogan shared with us insights on how women lawyers can bring a grit and growth mindset into the workplace so they can change their perspectives, learn how to elevate themselves and other women lawyers, create more cohesive and collaborative teams, and develop the grit to sustain long-term success. Coinciding with sustaining long-term success in the legal profession, Judith Droz Keyes emphasized the importance of creating an affinity group for senior lawyers at her firm, which had tangible results including encouraging open and honest conversations about succession planning, breaking down stereotypes about age-related issues, and improving the community and culture at her law firm. Wendy Tamis Robbins then shares with us practical tips for recognizing and dealing with the myriad of conflicting emotions these last few years have wrought upon us.



Courtney Worcester

Co-Executive Editor

Kirtana Kalavapudi

Co-Executive Editor

In pursuit of bold endeavors with the intention of creating a lasting impact for women across the country, we examine the current legal landscape of pregnancy law and highlight how the law falls short of offering pregnant women adequate protections in the workplace. In line with looking at what changes need to be made to eliminate pregnancy discrimination moving forward, Joanna Wright explains how she is paving the way for women through high-stakes litigation involving the abortion bans in Louisiana in the post-Roe world and challenging the misconceptions of women and women lawyers by changing, rather than fitting in, the box. Finally, we hear from an incredible panel of women lawyers who are dedicated to preserving democracy by increasing voter access through grassroots advocacy at the local and state levels and protecting the vote for women and individuals from underserved communities through litigation.

Whatever changes you have pursued in your personal and professional lives, we hope that this issue of the *Women Lawyers Journal* reminds you that changes are opportunities to pursue bold endeavors, carve new paths for yourselves and others, and ultimately, develop the confidence to tap into your innate wisdom.

Warm regards,

Courtney & Kirtana

2022

MEMBERSHIP DRIVE

Now more than ever, it is critical to protect the rights of all under the law. Per a 2018 U.S. Census report, there are over 400,000 women lawyers in the United States. As the country's first women's bar association, NAWL wants to grow its numbers in an effort to unite those with the power to elicit change.

Over six weeks this fall, we conducted our inaugural Membership Drive. We encouraged our members to recruit their colleagues, classmates, mentors, students, and friends in the legal profession to join NAWL. Congratulations to the three individuals who recruited the most new members! Our winners were recognized at the 18th General Counsel Institute and celebrated on social media.

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THANKS TO THE MEMBERSHIP DRIVE,
THIS YEAR WE GREW BY **30%**

THANK YOU to NAWL's Membership Growth & Engagement Committee and Membership Drive Subcommittee for their efforts planning and executing NAWL's first Membership Drive. Thank you to everyone who sent new members our way.

Women Under Fire

Releasing Emotion & Reclaiming Your Peace in Turbulent Times

Written By Wendy Tamis Robbins

We are living in turbulent times and women's mental health is suffering as a result.

Fear of a looming recession, social unrest, an extreme political divide, dehumanizing directives and legislation in Texas and Florida, and the recent Supreme Court decision overturning *Roe v. Wade* (*Dobbs v. Jackson Women's Health Organization* (June 24, 2022)). And that is just in the US. We can't help but also be affected by the conflict and humanitarian crisis in Ukraine and women struggling under Taliban rule in Afghanistan. These events have all contributed to a global mental health crisis that continues to disproportionately affect women.

Even prior to the pandemic, women attorneys suffered from anxiety at higher rates than their male counterparts.¹ By 2022, female lawyers maintained their lead in anxiety and took over the lead from their male colleagues in depression and high-risk alcohol use. Not a competition you want to win. According to the 2022 ALM Mental Health Survey, "on aggregate, 35% of lawyers surveyed said they felt depressed while 67% reported feeling anxious...[y]et women reported higher instances of depression and anxiety at 37% and 72%, respectively."²

What to Do with "Negative" Emotions?

If the world feels chaotic, volatile, and unsafe, you are not alone. The events over the past two years have jarred and dysregulated our nervous systems. As a result, we feel frustration, fear, anxiety, loneliness, anger, even rage, and a profound sense of loss on many levels.

While experiencing these difficult emotions is a normal human reaction to the events unfolding around us, there are barriers rooted in implicit bias against women manifesting them. We are taught that expressing and processing emotion is not acceptable or appropriate for women in the workplace. While we see men express anger, frustration, and rage from the Oval Office to Wall Street and beyond, women who do so are labeled "too emotional" and unfit to lead.

This stereotype is more than flawed and unfair – it's dangerous to our health. It ignores the science that shows "negative" emotion – if not examined, processed, and released, but rather internalized and ignored – leads to mental health and addiction issues and even chronic physical pain.

1.P.R. Krill, R. Johnson, & L. Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION MED. 46-52 (2016).

2.D. Roe, Mental Health Improves for Women and Minority Lawyers, But Disparities Persist, US Research Finds, Law.com, June 21, 2022.

What Not to Do

We tend to utilize coping mechanisms to hide from these difficult emotions. I call them the “overs” – we over-work, over-eat, over-drink, over-exercise, overspend, and over-Netflix – all of which perpetuate the cycle of negative emotion. We numb ourselves and mislabel it as “self-care” to avoid what we really need to do – process and release these emotions.

Identifying Emotions Through Awareness

When we recognize and release difficult emotions, we are able to reflect and reveal our true self, which is calm and balanced, compassionate and empathetic. Picture your body as an empty vessel. Your true self resides somewhere just below your naval (your gut). This self gets buried under layers of fear, anxiety, sadness, shame, anger, exhaustion, and/or complete burn-out. Being aware of these emotions as they fill you and drown your peace and power is the first step. How do you do this?

I. Listen to Your Thoughts

When you wake in the morning, listen to the narrative in your head. Identify the story you are telling yourself about your personal and professional life, national and world events and how they affect you. Maybe you feel a lack of control, victimized, and powerless. Get curious about the emotions these thoughts are creating for you and replace any self-criticism with compassion as you explore.

II. Watch your Behavior

Watch your behaviors as you move through your day. Maybe your “shower thoughts” are there for a minute, then they slip into your subconscious by the time you grab your towel. You think, “I’m fine,” and push them down deeper into some far-off place inside of you.

Bringing awareness to your behaviors is how you know if these emotions are still lurking below the surface. Notice if you get triggered more often at home or work. Pay attention to your energy levels. Maybe you’re having a hard time sleeping or finding the motivation to work out. Maybe you are eating, smoking, or drinking more than you want to, and sometimes completely unconsciously.

Watch for behaviors that are compulsive, impulsive, controlling, or indulging. These are red flags that you are avoiding negative emotions that need to be processed.

Releasing Difficult Emotions

Now that you’re aware of these emotions, it’s important to prioritize time to process and release them in healthy ways. As women, we often serve everyone else – our families, our clients, and our communities – before we serve ourselves.

This reality is reflected in the latest research. According to Bloomberg Law’s Workload & Hours surveys, in the first half of 2022, female lawyers spent only 5.9 hours per week on self-care compared to 7.2 by their male counterparts. The outlet noted that “[w]ith declines in well-being, and burnout on the rise, it’s more critical now than ever for lawyers to take time for themselves, despite the ever-growing demands of their profession. The fact that many lawyers are not even averaging one hour per day each week on self-care is quite alarming...”³

Making time to incorporate the techniques below as part of your self-care routine will help you bring your best self to every aspect of your life.

I. Name the Feeling

While we are practicing and expanding our awareness, it is important to also expand our vocabulary in order to help us understand and express the true spectrum of our emotions.

³ J.R. Blaemire, ANALYSIS: Lawyer Self-Care Is Getting Its Moment in the Sun, Bloomberglaw.com, October 12, 2022.

Dr. Brené Brown's research showed that after asking over 7,000 people to list emotions they could recognize while feeling it and then name it, they came up with three on average – happy, mad, and sad.⁴

This led her to conclude that, “We like to think we are rational beings who occasionally have an emotion and flick it away,” and carry on being rational. But rather, she says: “We are emotional, feeling beings; who, on rare occasions, think.”⁵ If this is true, we need more words, period. Google “list of emotions” to help you identify and name what you are feeling and keep it close by for daily reference.

II. Give Your Emotion a Voice

There is a practice called “Rage on the Page” that is based on the work of Dr. John Sarno who wrote about how our physical conditions are caused by our unresolved trauma and unprocessed emotions. You write for about 20–30 minutes, focused solely on releasing your pain, frustration, and anger. Plan on burning or shredding the paper when done so you don’t filter yourself because you are worried someone will read what you wrote. Eliminating this fear of judgment will give you the freedom to spill whatever vitriol may come up and out of your pen.

If you don’t feel particularly enraged, but bothered by something you can’t quite put your finger on, journaling can help to access the thoughts and emotions buried deep inside. Here’s another visual to illustrate why I think picking up the pen is so crucial. Picture a thickly wooded area so dense you can’t walk in. The thoughts you are trying to access are buried deep in the center of the woods. You need a machete to clear a path. This machete is your pen. It’s the instrument that will lead you to your deepest thoughts. Just thinking through them is disrupted by other distracting thoughts. But when you pick up a pen and focus, you give these emotions a voice that leads you to the thought behind it. Through this process you become aware of the source of the emotion and are able to release it. This is where the truth can set you free.

III. Cultivate a Peaceful Center

There have been hundreds of studies on the benefits of meditation. Not just the mental and spiritual benefits, but physical ones too. A Harvard University study showed that after just 8 weeks, daily meditation increased the “gray-matter density in the hippocampus, known to be important for learning and memory, and in structures associated with self-awareness, compassion, and introspection [and] decreased gray matter density in the amygdala, which is known to play an important role in anxiety and stress.”⁶

Let me dispel the myth that meditation requires you to sit in silence and have no thoughts. This seems quite impossible these days and would turn away even the most enthusiastic new meditator. Instead, meditation invites you to bring awareness to your thoughts and observe them, rather than identify with them.

If this already feels overwhelming and you doubt your ability to meditate, I suggest starting with guided meditations. This will allow you to let go and be led on a journey inward, which can be less intimidating. You can find them on Insight Timer (App) specific to processing anxiety, pain (mental and physical), and a host of other topics.

If you are ready to go it alone and identify your thoughts and process the emotions surrounding them, I suggest sitting in silence (or maybe with soft music playing) and working through the following progression. Recognize your first thought – “I should have sent that email before I sat down. They are going to think I’m lazy if it goes out after 8 am.” Name the emotion you feel (stress, fear, shame) and then forget about the email and sit with the emotion. Face it as something outside of you and ask it questions. What are you really afraid of? What is this thought bringing up for you? Where do you feel it in your body? How can you honor it and let it go?

4. See B. Brown, *Atlas of the Heart* (Random House, 1st Ed., 2021).

5. T. Shapshak, Internet Heroine Brené Brown Wows SXSW, *Forbes.com*, March 12, 2016.

6. S. McGreevey, Eight Weeks to a Better Brain, *The Harvard Gazette*, January 21, 2011, Harvard.edu.

IV. Find Someone to Talk to

Whether you connect with a psychiatrist, counselor, or coach, finding someone to help you excavate and navigate this terrain is important. I can't tell you how many times a client said to me or I said to my own coach or counselor "I have nothing to talk about today." And without fail, within 10-15 minutes we are knee-deep in identifying and processing difficult emotions. Sometimes the tools in our bag just aren't enough or we can't find the time for self-care and need to be held accountable by a third party. When you find the right person, the perspective they provide and the pressure having this outlet relieves is priceless.

V. Exercise, Exercise, Exercise

We now know that persistently elevated stress hormones like cortisol have a detrimental effect on the body. It can lead to anxiety, depression, weight gain, heart problems, sleep disorders, digestive issues, headaches, memory impairment, and even chronic pain.

An ABA study noted that exercise is especially effective recovery for people performing mentally demanding work like lawyers.⁷ Research shows that the best exercises for releasing this stress and anxiety are walking, running, hiking, cycling and yoga.

Start small if you are not currently moving on a regular basis. Getting sore or injured will derail your motivation and momentum. If you are moving, adding a mindfulness practice like yoga and getting outside will bring added benefits.

VI. Peer Support

Said plainly, there is not enough peer support in our industry. From my personal experience as a provider and consumer of such support, I feel strongly about the invaluable benefits of peer support among women. Talking openly about the unique challenges we face and the common traumas we endure normalizes sharing our stories and melts the shame we carry when we believe we are alone in our struggles. Find or form a peer support group to create a safe space to be vulnerable and feel seen, heard and valued through shared experiences.



Wendy Tamis Robbins
Holland & Knight LLP

7. The Path to Lawyer Well-Being Report: Practical Recommendations for Positive Change, the Report of the National Task Force of Lawyer Well-Being, August 2017.



Continuing a Long History of Women Lawyers Preserving Democracy by Protecting the Vote

Written by Siobhan Barco, JD

From Inez Millholland's procession for women's suffrage over a hundred years ago to Sadie Alexander's 1965 march from Selma to Montgomery to the present, women lawyers have been a powerful force advancing voting rights.¹ This legacy continued at the 2022 NAWL Annual Meeting in July featuring a panel of voting rights leaders titled *Preserving Democracy by Protecting the Vote: Election Laws & Voting Rights*.

The discussion was moderated by Kristen Johnson (pictured top left), pro bono counsel at Cooley and former assistant counsel at the NAACP Legal Defense Fund (LDF). The panel featured Ami Gandhi (pictured second to the top left), senior counsel at the Chicago Lawyers' Committee for Civil Rights, and Melina M. Meneguín (pictured third from the top left), an associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP. Johnson also read remarks contributed by Anne V. Houghtaling (pictured top right), deputy director of the Thurgood Marshall Institute of the NAACP LDF.

Houghtaling's opening remarks emphasized how changes to the federal legal landscape affect the reality of the voting experience. While many know about the LDF's pivotal role in landmark civil rights cases like *Smith v. Allwright*,² which banned limiting primary participation to white voters, the LDF's work goes well beyond litigation.

While efforts of non-governmental groups like Souls to the Polls helped drive record turnout of Black voters in the 2020 election, the LDF's monitoring of state electoral laws has revealed efforts to contravene the protective legal regime civil rights leaders have built to ensure voting rights.³ There has been a backlash to the 2020 election's robust voter participation, and as a result, some state governments have passed laws that have reduced or eliminated early voting, Sunday voting, and mail-in voting.

1. The Woman Suffrage Parades of 1910–1913: Possibilities and Limitations of an Early Feminist Rhetorical Strategy Jennifer L. Borda, *Western Journal of Communication* 66, no. 1, Mar. 2002. Kenneth Walter Mack, A Social History of Everyday Practice: Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925–1960, 87 *Cornell L. Rev.* 1405, 1406 (2002).

2. *Smith v. Allwright*, 321 U.S. 649 (1944).

3. See David D. Daniels III, *The Black Church Has Been Getting 'Souls to the Polls' for More than 60 Years*, *The Conversation* (Oct. 30, 2020), <https://theconversation.com/the-black-church-has-been-getting-souls-to-the-polls-for-more-than-60-years-145996>.

Johnson, building on Houghtaling's remarks, pointed out that these new laws are reminiscent of the efforts prior to the passage of the Voting Rights Act of 1965⁴ to limit Black Americans' access to the polls.

**They are essentially,
"1964 problems in 2022."**

Many of these laws, Johnson contended, would not have been enacted if the Supreme Court had not struck down part of the Voting Rights Act in *Shelby County v. Holder*.⁵ Accordingly, pressuring federal legislators to enact a fully enforced voting rights act is key to maintaining a legal regime that protects access to the vote.

Pivoting to state and local laws, Gandhi discussed voter access in Illinois and Indiana. She noted that while Indiana has a highly restrictive electoral regime and Illinois has a good reputation for voter accessibility, persistent racial disparities in voter registration and access plague both states.

Gandhi also emphasized that while litigation is an important tool for lawyers, she has found on-the-ground advocacy to be more effective in promoting actual access to the polls. Some of the successful efforts she recounted included working with community members to write and pass new laws, talking with election officials about how to run their systems more effectively, providing informal election-related dispute resolution, and disseminating legal information to voters through the 866-OUR-VOTE hotline.

Meneguín shared several ways attorneys in Big Law can advocate for voting rights. Meneguín has served as legal counsel in litigation, in appellate amicus brief campaigns, and in long-term advisory roles.

Through this work, she has noticed some key trends pointing to future issues lawyers should be monitoring and addressing — particularly technology's role in exacerbating partisan advantages.

First, Meneguín noted that the 2018 Georgia elections underscored a need for clear procedures to address security concerns with electronic voting machines, especially in cases where a partisan representative oversees the election process. Second, she addressed the rise of "big data" and how it has intensified partisan gerrymandering.

Indeed, she noted that before his recent death the same strategist who orchestrated several state redistricting efforts for partisan advantage worked to redefine how seats in the U.S. House of Representatives are apportioned. The strategist advocated changing from apportionment based on total population to apportionment based on citizens of voting age. This change would reduce the political clout of states that have large numbers of young and non-citizen residents.

Meneguín also emphasized the importance of tracking court decisions related to citizenship and the US Census, which may indicate the beginnings of changes to apportionment, presaging an opening for limiting the political representation of a large segment of the US population and for reifying partisan advantage.

Throughout the panel proceedings, the audience's enthusiasm to protect voting rights was palpable, and many attendees stayed after the panel's conclusion to fill out postcards encouraging individuals in swing states to vote. These postcards were made available by the NAWL Advocacy Committee and can be found at turnoutpac.org.

4. Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

5. *Shelby County v. Holder*, 570 U.S. 529 (2013).

The panelists offered a few ways for WLJ's readers to contribute to protecting the vote:

- *Sign up to become a poll worker.⁶*
- *Send a postcard or letter to a swing state.⁷*
- *Volunteer for the 866-OUR-VOTE hotline.⁸*
- *Monitor voter suppression through the NAACP LDF.⁹*
- *Seek out pro bono opportunities with organizations that are working on voting rights litigation.*
- *Put pressure on your representatives in Congress to restore the Voting Rights Act.*
- *Run for office.*
- *Donate to organizations in your community working to promote the right to vote.*
- *Join the NAWL Advocacy Committee.*
- *Include friends and family in your voting plan.*
- *Lastly, vote!*

These action items are just some ways lawyers can leverage their education and social networks to protect the vote. The stakes are high. At the time of this writing, the fulcrum of American democracy stands at a delicate balance with candidates in the midterm elections battling over many of our democracy's most basic components. Bodily autonomy, reproductive justice, freedom of expression, and the very validity of the electoral system are on the ballot. Today's women lawyers, like the generations before them, must march on to preserve democracy by protecting the vote.



Written by Siobhan Barco, JD
Ph.D. Candidate, Princeton University

6 Power the Polls: Help Staff Your Local Polling Place, <https://www.powerthepolls.org/signup#form>.

7 Postcards to Swing States: A Progressive Turnout Project Initiative, <https://www.turnoutpac.org/postcards/>.

8 Election Protection 866OURVOTE: Election Protection Volunteers, <https://866ourvote.org/volunteer/>.

9 Voting Rights Defender: Defending the Right to Vote, <https://voting.naacpldf.org/voting-rights/voting-rights-defender/>.

“Our own Constitution is prevented from making equal rights for all Americans effective by the crippling and mangling it has suffered at the hands of the Supreme Court. Some serious thought should be given to these numerous oaths so glibly taken to preserve, protect and defend the Constitution of the United States.

Today’s most urgent need is to save the Constitution . . . heal it, restore it, put it back on its feet and see that it does what it was intended to do for every American.”

What is the Constitution Worth to American Women?, Helen Elizabeth Brown, *Women Lawyers Journal*, Vol. 36 No. 1, 1950.



Are You a "SAGE" Attorney?

Q&A with Judith Droz Keyes

Written by Jennifer Thibodaux

Judith Droz Keyes is an equity partner at Davis Wright Tremaine LLP in San Francisco and Los Angeles. She specializes in navigating the complex system of laws and regulations that govern the California workplace. Judy has practiced law for over 45 years and is the Chair of the firm's Senior Attorneys Group with Experience/Enthusiasm/Energy/Excellence (SAGE).

Tell us about yourself and your practice.

JDK: I am an equity partner at Davis Wright Tremaine LLP in San Francisco and Los Angeles. I specialize in employment law. I have practiced law for over 45 years.

You proposed an affinity group for senior lawyers at your firm five years ago. Why?

JDK: I knew this group would be valuable and would make a meaningful contribution to my firm and its senior lawyers. Also, I wanted to address two realities that are not discussed (at least openly) at most law firms: ageism and age discrimination.

As to ageism, mocking older people is tolerated although it would never be tolerated if another group was the target. Think about the all-too-common "senior moment" comments and the ubiquitous "Okay Boomer" meme.

Not to mention, stereotypes of older people, especially women, abound and are seldom flattering. Let's not forget all those "funny" birthday cards, either.

As to age discrimination, it is overt at law firms that mandate retirement, or de-equitizing, for partners at a designated age. Succession planning, which is intended to be a neutral and healthy concept, is often thoughtlessly and callously invoked only, or primarily, for senior attorneys.

I also recognized that talking publicly about age-related issues and future retirement sometimes forces attorneys to involuntarily accelerate their plans. For example, senior attorneys may risk colleagues pigeonholing, marginalizing, or writing them off when they talk about these issues publicly.

What was the reaction to your proposal?

JDK: To its credit, the firm immediately accepted it. We already had successful affinity groups for lawyers of color, female lawyers, LGBTQ+ lawyers, veterans, lawyers working flexible hours, and first-generation professionals. Our managing partner, Jeff Gray, agreed that adding an affinity group for senior lawyers made sense and filled an important role.

How did you develop the acronym, particularly the flexible "E"?

JDK: Senior Attorneys Group would have been "SAG," and that would not have worked. So it quickly became clear that all we had to do was add an "E" and it perfectly suited who we are. There was a debate about what the E would be – Energy, Experience, Enthusiasm, Excellence. Ultimately, we decided it was all of the above so the "E" is intentionally flexible.

What is SAGE's purpose?

JDK: SAGE provides a collegial, respectful, empathetic, informative, supportive, and safe setting for senior lawyers to explore their unique concerns, needs, questions, and interests.

How does SAGE provide value to its members?

JDK: SAGE provides information, advocacy, mentorship, a safe space, and the opportunity for camaraderie. Let's look at each in turn.

- **We are an information source.** It was remarkable to discover how much information our senior lawyers craved but did not have. We recognized that some of us were quite knowledgeable about some issues, while others had given little thought to them; many others were unsure about what questions to ask and where to find answers. SAGE sponsors meetings and expert webinars about Medicare, Social Security retirement benefits, Required Minimum Distributions for retirement accounts, and long-term disability policies. We created a "cheat sheet" on these topics for attorneys of all ages to use.

- **We advocate for succession planning.** SAGE members understand the importance of succession planning because we are doing it or have been a beneficiary of it during our careers. We recognize, however, that senior lawyers desire and need support, structure, and recognition for their succession planning efforts. SAGE helped develop a protocol to clarify roles and expectations. The protocol is not perfect, but it has provided useful guidance to our members and started a healthy conversation at the firm.
- **We mentor each other.** We help each other navigate Social Security and Medicare issues. We also lend a helping hand when members are ready to rebrand, embrace different roles at the firm, or embark on new paths, including partial or full retirement. We recognize that retirees have a wealth of information and lessons to share. SAGE also helps fill the gaps between smaller offices or attorneys who do not have personal relationships with similarly-situated colleagues.
- **We are a safe space.** Members talk openly with one another over lunch, dinner, happy hours, and in-person and virtual programming. We know each other well and have our seniority in common, so there is no risk that speaking about retirement translates to an assumption that we have one foot out the door – or fear that we will be marginalized or pushed out. We talk about our experience, including our feelings about work and whether we are thinking about scaling back or retiring. We also discuss what to say and how to describe ourselves on LinkedIn or our firm profiles.
- **We have fun!** We simply enjoy each other's company. SAGE stretches across offices and practice groups. No one puts up a false front or is worried that revealing their age causes a negative connotation. This allows us to be ourselves and have fun when we meet.

How does SAGE add value to the firm?

JDK: SAGE is a value-add for the firm in numerous ways, including:

- **Building community.** All firm attorneys may join SAGE, but we specifically invite lawyers in practice for at least 35 years. I was pleasantly surprised to discover that our invitation to the newly eligible is a welcome "rite of passage." For example, one invitee recently responded: "How wonderful! You SAGEs are the backbone of the firm, and I'm thrilled to join you."
- **Celebrating senior lawyers.** We host webinar chats highlighting our exceptional and prominent elders. For example, a newer SAGE member interviewed a senior SAGE member who is an active lion in his field. They have a mentor-mentee relationship that the more than 200 attorneys and staff who attended witnessed and learned from firsthand.
- **Enhancing culture.** Senior attorneys are loyal to the firm and important to its culture. We are repositories of firm institutional history and founts of knowledge and perspective for junior lawyers. We are (proudly!) living examples of what a long-term successful career looks like. We are readily available to serve as role models and mentors for those who aspire to that achievement.
- **Contributing to financial success.** An oft-stated but ill-informed concern is that senior lawyers are roadblocks to junior lawyers' advancement. Quite the contrary! SAGE encourages its members to mentor and train junior attorneys, as well as to introduce them to clients, referral sources, and industry contacts. Although this all can certainly occur without SAGE, SAGE motivates, sustains, and celebrates these efforts.
- **Supporting retirement.** SAGE has identified ways for the firm to help with the retirement process including drafting the succession planning protocol, creating an off-boarding checklist, providing IT support, and designating staff support. SAGE is working with firm leadership to develop and implement these ideas.

How does SAGE further the firm's diversity, equity, and inclusion goals?

JDK: SAGE fits well into the DEI construct. As to diversity, we have five generations of lawyers in active practice. We all know that each generation has much to teach and learn from other generations. As to equity, SAGE is a natural ally to further fairness and impartiality while countering negative stereotypes and revealing implicit bias. As to inclusion, our focus is on ensuring that senior lawyers' experience and wisdom are not overlooked or dismissed.

In addition, many SAGE members are affiliated with other firm DEI groups and they look for intersectional opportunities. For example, in my case, I am sensitive to issues of particular importance to aging women and first-generation professionals of retirement age. This intersectionality is both unavoidable and important.

Does SAGE counter any negative stereotypes or implicit biases based on race, ethnicity, and cultural backgrounds given that there are five generations of lawyers in active practice?

JDK: The reality is that SAGE members currently are of the Silent and Boomer generations and are predominantly white men. With each new tranche of attorneys hitting the 35-year benchmark, more women join our ranks. The current six-person SAGE leadership team includes two women and a gay man. Over time, SAGE will naturally become more diverse. In the meantime, SAGE members mentor an amazing group of racially, ethnically, and culturally diverse junior lawyers, and by invitation from other affinity groups, we share our stories of working on Free Speech cases in the 1950s, voting rights cases in the 1960s, and farmworkers' cases in the 1970s. These connections counter not only stereotypes and biases about race, ethnicity, and cultural backgrounds, but also about the generations.

What does the future hold for SAGE?

JDK: I hope it is neither immodest to observe that SAGE has accomplished a great deal nor impolitic to observe that SAGE has growth opportunities. The SAGE population and demographic at the firm are growing and diversifying. We have already successfully transitioned leadership in five of our offices to more junior SAGEs and before long, we will be welcoming and learning from Gen Xers as they join our ranks. I look forward to SAGE evolving and developing an even broader perspective to share with the firm -- and even more value to contribute.

For an example of a SAGE presentation at Davis Wright Tremaine LLP, visit <https://www.dwt.com/insights/2022/06/the-wisdom-of-the-sages>.

For more resources for senior women attorneys, see the NAWL Women Revolutionizing Retirement Affinity group and the American Bar Association's Senior Lawyer Division Women of Excellence.



WRITTEN BY

JENNIFER THIBODAUX

THOMSON REUTERS PRACTICAL LAW

JMT SPEAKS, LLC

Outgoing NAWL President Remarks

Delivered at the 2022 NAWL Annual Meeting

My name is Jenny Champlin.

I am a 20+ year attorney, a wife, a mom, a director of Edward Jones, and a Peloton devotee (which will become important later), and it is an absolute joy and privilege to be here today as I close out my term as the 94th President of NAWL. This time last year, I Zoomed with you to kick off the association year and challenged all of us to find silver linings, celebrate successes and find inspiration during tumultuous times.

We jointly committed last summer -- inspired by the words of one of my favorite Peloton instructors -- that we would not merely aim to "bounce back" and restore the status quo after a pandemic and social justice issues conspired to bring us down -- but to return to our post-pandemic environment by rising higher. To seek higher heights in our careers and we supported one another. And we certainly did just that. Together.

Together, we ventured back into our workplaces amid an unsettled landscape of remote, hybrid, and in-person work policies. The long-term effect of these policies on the careers of women lawyers remains to be seen. But we challenged our organizations to rise higher by delivering NAWL's Annual Survey which contained impactful recommendations for any organization seeking to make real change for women in the workplace.

Together, we experienced feelings of uncertainty, isolation, and weariness with each successive COVID surge. But we rose higher by finding community and connectedness through NAWL's packed portfolio of virtual offerings including affinity group programs, headliner programs like the General Counsel Institute, and even through our #NAWLWomeninLaw hashtag on Peloton.



Pictured Left to Right: 2019-20 NAWL President, Kristin Sostowski; 2022-23 NAWL President, DeAnna Allen; 2021-22 NAWL President, Jennifer Champlin; 2020-21 NAWL President, Karen Morris; 2013-14 NAWL President, Deborah Froling.

Together, we wondered whether and how to engage with the confluence and swirl of current events. NAWL rose higher by honing in on critical priorities, resolved in its commitment to reproductive rights and justice, pay equity, voting rights, and combatting gender-based violence. Passing resolutions on these issues empowered us to move swiftly and steadfastly to jointly author an amicus brief in the *Dobbs v. Jackson Women's Health Organization* case before the U.S. Supreme Court.

Together, we catapulted higher with the historic nomination of Justice Ketanji Brown Jackson to the Supreme Court. And NAWL was honored to have had the opportunity to convene our Supreme Court Committee to evaluate and ultimately recommend Justice Jackson's confirmation.

To digress for just a moment, I was recently asked to share a favorite memory of the past year. There have been many moments, some splashy and significant and others quiet but impactful, that I will remember.

But if I had to choose just one, it will be that moment in April, while representing NAWL at another event, when the programming was interrupted to announce that Justice Jackson had been confirmed as the first black woman in history to be appointed to the U.S. Supreme Court. One of NAWL's past presidents and I had our heads together watching the votes being cast live on our phones and knew the announcement was coming, but to officially hear it and to be able to raise a glass TOGETHER with other inspiring women and know that NAWL played a part in making history is a moment that I will always remember.

As I wrap up my remarks, I want to acknowledge that together, we are still processing the profound impact of the Supreme Court's overturning of *Roe v. Wade*. But we will rise higher.

By supporting one another and continuing to seek community and connectedness through NAWL. By strategically aligning our internal efforts and partnering with others for maximum positive impact as we continue to advocate for women's equality under the law. We will rise higher because we can do hard things. And have done them before.

And we will rise higher with and through the leadership of the 95th President of the National Association of Women Lawyers, my dear friend, DeAnna Allen. DeAnna's infinite wisdom, devotion to NAWL, and tremendous professional achievements make her THE PERFECT PERSON to lead NAWL into its 124th year. I now join an esteemed group of past NAWL presidents who stand WITH you, DeAnna, and are here to support you as you lead us to continue to rise higher. Together.

Thank you to NAWL's staff, our board, our members, sponsors, and friends for all that you did to propel us forward this year. It has been my sincere honor to have served as President. I feel deeply the importance of women empowering and supporting other women. And this year has brought into even sharper focus for me Hillary Clinton's observation from several years ago that women's equality is the "great unfinished business of the 21st century."

And I will end as I began, with another Peloton instructor quote, as I consider my own individual and our collective readiness to tackle this great unfinished business. "Are you ready? Yes or yes."

NAWL LEGACY

20 YEARS AGO

Ruth Bader Ginsburg accepted the Mansfield Award at NAWL's Annual Meeting



NAWL award winners gather before the award ceremony, including Angelo Arcadipane, Managing Partner of Dickstein, Shapiro, Morin & Oshinsky, Katherine Henry, partner at Dickstein, Shapiro, Morin & Oshinsky, Justice Ginsburg and Stephanie Scharf and Deanne Maynard, both partners from Jenner & Block.

August 2002 | Washington, D.C.



NAWL Executive Officers greet Justice Ginsburg. From L-R, Lorraine Koc, Stephanie Scharf, Katherine Henry, Gail Sasnett, Ellen Pansky, Justice Ruth Bader Ginsburg, Liz Bransdorfer, Zoe Sanders Nettles, Sally Lee Foley, Hon. Susan Fox Gillis, Margaret Foster, Nancy J. Nicol and Leslie Lewis.



ORGANIZATIONAL SPOTLIGHT

NAWL is grateful for its Sustaining Sponsors who provide critical support in advancing NAWL's mission to empower women in the legal profession and be the voice of women in the law.

We are pleased to introduce a new recurring section of the WLJ, the "Organizational Spotlight." This section provides NAWL Sustaining Sponsors the opportunity to highlight an attorney from their organization, share an innovative practice or initiative at their organization, or educate our members about important developments in the law. We hope you enjoy hearing from these organizations that have demonstrated their commitment to NAWL's mission to advance women in the law and equity under the law.

Interested in Becoming a NAWL Sustaining Sponsor?

Email Stefanie Skaggs at sskaggs@nawl.org.

Are you a NAWL Sustaining Sponsor and would like to be featured in an Organizational Spotlight?

Email Kirtana Kalavapudi at kkirtana@gmail.com and Courtney Worcester at courtney.worcester@hklaw.com.



MEMBER SPOTLIGHT

Dear Me:

Learning From Our Younger Selves

Written by Jamie Elise Zuieback

No matter how much progress you've achieved in your career, taking some time to reflect on your journey often produces valuable realizations (after all, hindsight is 20/20). Although we can't go back in time to give ourselves a needed confidence boost, undergoing this thought exercise still provides useful advice for women entering the legal profession. We may not be able to change the past, but we can empower the next generation of leaders in the law.

Some of Latham's standout lawyers, from global department chairs and other leaders to those who have more recently ascended into the partnership, reveal the best lessons they've learned during their careers — and how to implement them early on.

Find Your Voice

The internal dialogue for women lawyers beginning their careers often follows a familiar pattern. Concerns of appearing too ambitious or too aggressive abound. But keeping a low profile rarely helps you progress your practice. "There were times as a young associate when I didn't offer my input because I felt uncertain, but I now realize when I did speak up, it raised my profile. Making myself heard has far outweighed the risk of being wrong,"



Jamie Elise Zuieback

Latham & Watkins LLP

Helena Tseregounis, a Latham partner in the Finance Department and a former Co-Leader of the Los Angeles Women Lawyers Group, says.

Marissa Boynton, a Litigation & Trial Department partner named a Rising Star in Cyber Law by the *Legal 500* faced similar obstacles at the start of her career: "I fell into the trap many women fall into, where I thought keeping my head down and doing good work would be enough to be recognized. Then I saw my male counterparts advance faster because they were more vocal. I took a long time to reorient my thinking, but I learned to advocate for myself and move my practice to the next level." To find your voice, and figure out your goals, advises Nicole Fanjul, Co-Deputy New York Office Managing Partner: "Understand that 'success' means different things to different people. Think critically about what it is you really want, and come up with your own definition of success — you'll become a better advocate for yourself."

Figuring out who she is, and what she wanted, helped Nadia Sager rise to a variety of leadership roles at Latham, including co-founding the Women's Leadership Academy and stints as Global Co-Chair of the Investment Funds Practice, Local Corporate Department Chair, and Global Chair of the firm's Training & Career Enhancement, Mentoring, and Diversity Leadership Committees. "There's a fear early on in admitting you have ambition. Don't be afraid," she says. "Decide what you want to do and go after it — you can make partner, you can become a senior lawyer. Lofty goals are really just a culmination of little steps you take along the way."

Embrace Who You Are

Speaking out and letting your partners know your goals almost invariably pays off, but often requires venturing into unfamiliar territory. "The path to partnership can seem daunting at times, so the biggest obstacles come in those moments when you have doubts about your own ability to stay the course," says Monica White, a partner in the Corporate Department and one of Super Lawyers' Texas Rising Stars. Everyone experiences moments of self-doubt, so even though talking about goals may feel uncomfortable or unfamiliar, recognize that the feeling is common.

Michele Johnson, Global Chair of Latham's Litigation & Trial Department and both a former Office Managing Partner and member of our Executive Committee, homeschooled herself through high school, with little access to the world beyond the walls of her home or church. Today, she's a highly regarded litigator with more than 20 years of trial experience. "One thing that happens when you grow up cut off from everyone else's culture is that you learn to be calm in unfamiliar circumstances," Johnson says.

"This instinct has been helpful both in navigating cutting-edge corporate crises and in empathizing with diverse perspectives, whether of jurors, judges, clients or colleagues."

Jiyeon Lee-Lim, Global Chair of Latham's Tax Department, says the key to overcoming self-doubt is to embrace what makes you, you: "Be proud of who you are and the unique value you bring to the table."

"Don't view unknown or uncomfortable terrain as an obstacle — see it as a challenge to rise up to and overcome," Sager advises.

Each of these successful women points to other women — predecessors, peers, and successors — who inspire them. While each role model is different and successful in unique ways, they all serve as a testament to the idea that embracing who you are is both a path to success and a pathway for others.

Take the Long Way

Odds are you've encountered burgeoning lawyers who join a firm knowing exactly what they want to practice. Enjoy the journey instead.

Many of the most successful lawyers took their time to discover their passion. "I never had a path mapped out for myself. I attribute my career trajectory to being flexible and taking on new opportunities as they come," says Tseregounis.

Johnson echoed the sentiment, saying "I confess: I didn't have a strategic plan. No one in my family had a professional degree. I ended up in law school because a good friend was walking across our college campus to sign up for the LSAT and wanted me to walk with him.

I did and decided to sign up for the LSAT myself. I did well and ended up going to Georgetown because it was one of the few law schools I'd heard of."

White knew she wanted to be a lawyer, but never expected to focus on capital markets work: "In the Texas legal market, it is more common to be a corporate generalist and practice both capital markets and M&A. However, I really 'clicked' with capital markets, and was fortunate enough to fully devote my practice to an area of the law that I enjoy so much." Her advice to up-and-coming lawyers? "There's no rush! Enjoy the process of working towards your goals – once your goals are met, you'll have plenty of time to enjoy your accomplishments."

"Take your time — more people should embrace the long runway a firm gives you," advises Boynton. "Trying different things made me a better lawyer. My whole career has been full of unexpected turns; privacy and cybersecurity were nascent practices when I graduated from law school, and I found them by participating in Latham's Unassigned Program. I would've never discovered how much I enjoy this work had I not participated in various litigation practices beforehand."

Get Support, Give Support

Above all, our lawyers recommend seeking out mentors and paying it forward with your colleagues.

"Early in my career, when I would travel for work, I would get in, get out, and get home," Sager says. "Then I realized I was wasting my most valuable resource — our firm's network. Everyone you encounter can help shape your career, and we're all here to help build each other's practices."

For Tseregounis, "Developing relationships within my firm and my practice area proved invaluable, especially given that restructuring can be a small world and reputation is a premium consideration."

Lee-Lim cherishes her colleagues in the Tax Department, "with whom I can discuss any question or idea I have, no matter how big or small."

So does Fanjul, who relies on her team since "my colleagues and partners always make themselves available to offer advice and support." It's one of several reasons she's stayed in 'Big Law' as long as she has. As she says, "From the outside looking in, Big Law just didn't seem like a world I could thrive in. But this environment has continued to provide me with unexpected opportunities to develop as an attorney and take on leadership positions that make me feel more connected to this community. My professional aspirations have been fulfilled beyond what I ever could have anticipated when I started out."

Boynton turned to those blazing the trail in privacy and cybersecurity, "since it was a growing practice area and those who had worked in this space had the knowledge to help me make the biggest impact."

White's mentors "encouraged me to reach my utmost potential, and advocated on my behalf when I wasn't 'in the room.' They provided so much helpful advice while I shaped my associate career, and I still seek their guidance now as a partner."

Ultimately, our lawyers shared optimism that younger generations of women lawyers feel more supported in their careers, and will continue to break down barriers. "Every professional woman has stories about being treated a certain way, or thinking about ourselves a certain way," Johnson says. "All of us had support in overcoming our obstacles to achieve the leadership positions that incoming women lawyers see us in now. Our mission is to encourage the next generation."



MEMBER SPOTLIGHT

Written by Kirtana Kalavapudi

In June 2022, **Sabria McElroy** was named to *NAWL's Rising List*. Given her recent award, we reached out to Sabria to learn more about her, her love of learning and the pursuit of joy in the practice of law, and her involvement with NAWL.

Please Introduce Yourself

SM: My name is Sabria McElroy and I am Partner at the firm Boies Schiller Flexner in our Ft. Lauderdale, Florida office. My practice focuses on complex litigation disputes across a range of subject areas, including antitrust, education, financial services, and legal malpractice. I also serve as a co-chair of the firm's diversity and hiring committees. I have been with Boies Schiller since 2012 when I joined as a Junior Associate. I am also a mother to three wonderful and energetic children.

What inspired you to pursue a career in law?

SM: Sometimes, I wish I had a more interesting story about why I became a lawyer. The reality is that I thought it would be a good fit for me. I never considered being a lawyer until after I graduated from college. At the time, I was teaching seventh-grade English and Social Studies in Philadelphia through Teach for America and I had several friends who had gone to law school straight after college.



Whenever I spoke to them about their law school experience, I was intrigued and thought it sounded fun. And, while I was teaching, I started to realize just how much I enjoyed problem-solving and learning about new areas and I figured the law would be a good career fit. So, I started the process of applying to law school. I remember visiting law schools and sitting in on a Constitutional Law class at the University of Michigan. I was absolutely fascinated, and it was at that moment, I was hooked and felt confident that I would enjoy learning about the law. Also, I had been accepted to Yale Law School and couldn't pass up that opportunity. It turns out I was right — working as a litigator has been a great fit for me and it's something that I truly enjoy.

What is one of the most memorable cases you have worked on?

SM: The case that stands out the most in my mind is an antitrust class action lawsuit that we brought on behalf of a class of au-pairs. The suit alleged that the au-pair sponsorship agencies colluded to suppress au pair wages. Early in the case, I had a particularly memorable experience when I defended the deposition of one of our named plaintiffs, a young woman from Columbia. At that time, I was an associate and it was probably the most significant deposition that I had handled.

My client was very nervous about discussing her experience as an au pair, which had not been positive, and I was the only lawyer for plaintiffs in the room with about 15 lawyers for the defendants on the other side of the table. On top of that, there were translation issues since the official translator did not speak Colombian Spanish. Overall, it was a very challenging deposition. Some of the defense lawyers were extremely aggressive and seemed intent on making the experience difficult for my client. However, at the end of the day, my client held her own by giving testimony that was authentic and impactful and I was proud that I was able to help her feel comfortable enough to tell her story. That case went on to settle for one of the largest wage and hour class action settlements in years. It was a meaningful case that provided me with great learning opportunities and ended with a good result.

What first brought you to NAWL?

SM: It was my firm. Once our firm became a Sustaining Member, I became a member of NAWL, along with all of the other women in my firm, and received access to all of NAWL's amazing resources and content.

How are you involved with NAWL (committees, affinity groups, publications, etc.)?

SM: Next month, I will be participating in the 2022 Leadership Program. I am very excited about this program which provides an opportunity to work with other women lawyers in a small group setting to grow our personal and professional skills.

How has NAWL supported you in your profession?

SM: So far, it has been a wonderful source of information and inspiration. One specific example is the most recent issue of the Women Lawyers Journal, which I read either just before or just after I returned from maternity leave in July. For me, the return to work after a baby is always a challenging transition.

This issue of the Women Lawyers Journal was heavily focused on mindfulness and well-being, which was something that I needed at the time. I try to practice mindfulness and have a meditation practice, but I had lapsed in those areas after giving birth to my daughter and it was very helpful to have that reminder on incorporating mindfulness into my practice. There was even an article on returning to work after parental leave that had specific strategies for building a support system and navigating mom guilt. More generally, I enjoy reading stories that highlight other women lawyers and their accomplishments, which renews my energy to pursue my own goals. Also, as I already mentioned, I will be participating in the 2022 Leadership Program which will help me strengthen my leadership skills.

What does being on the NAWL Rising List mean to you?

SM: It is a special honor to be recognized for an award that is focused in part on helping other women advance in their careers. Mentorship and teaching are very important to me. As I mentioned, before law school, I was a teacher and I would not be where I am today without great mentors, so I try to pay it forward by mentoring more junior lawyers.

It is very rewarding to be on a list with other women lawyers who share those values.

What is it that you love about your current role at Boies Schiller Flexner?

SM: There are two things that keep me happy in my work life. The first is interesting work. I decided to attend law school largely because I love to learn and I love to find solutions to challenging problems and I get to do both of those things on a daily basis. We regularly handle complex cases with novel legal issues that often require creative solutions with no easy answers.

The second thing that I love about my job is the people. I have fantastic coworkers, which is a huge part of why I love my work. I work with a diverse group of people who are extremely sharp and driven, but also kind and collaborative. We support one another both professionally and personally, which sometimes takes the form of helping each other navigate complex legal issues and other times might involve advice on housing or schools. This dynamic creates a wonderful work environment and I think our culture of collaboration makes us better lawyers.



Written By

Kirtana Kalavapudi

Co-Executive Editor

SPONSOR SPOTLIGHT

Perkins Coie's vision is that we will be second to none in creating and fostering a diverse workforce that reflects a broader society, ensures opportunities for all attorneys, including lawyers from historically underrepresented groups in law firms, and advances Perkins Coie as the most trusted advisor to our clients. The firm takes an intentional approach to establishing the goals in our D&I Strategic plan and implementing the strategies and initiatives to achieve them.

The strategic initiatives prioritized over the past years reflect the firm's commitment to gender inclusion and the advancement of a DEI culture. Some examples include our policy providing billable-equivalent credit for time invested in D&I-related work and the creation of a diverse attorney hotline where attorneys can comfortably and anonymously seek counsel and support. Our commitment to gender inclusion is also reflected within our firm leadership, practice groups, committee chairs, and our client relationship succession planning. Women of Color and Women's Forum attorney resource groups are just a few of the groups that work to provide leadership, support, and educational opportunities for our attorneys while working to attract, retain, and promote women attorneys.

Women of color serve in a variety of leadership roles at Perkins Coie including two Office Managing Partners, two executive committee members, two executive leadership team members, and numerous committee and subcommittee chairs. Each year several Perkins Coie WOC attend the Corporate Counsel Women of Color's annual Career Strategies Conference, which includes a firm-sponsored dinner for their invited clients—providing an opportunity for networking and business development.

This year, Perkins Coie hosted the first in-person Women Lawyers' Retreat since 2018. The theme was Connecting and Empowering Our Community: Authentic Connections with Exceptional Women. Nearly 400 lawyers, from senior attorneys to first-year associates, attended. Presentations included topics like Inclusive Leadership, Parenting in Unprecedented Times, and Internal Business Development & Relationships and provided numerous opportunities to connect with other attorneys face-to-face. Our keynote—elite athlete and best-selling author, Tunde Oyeyin—was inspiring, and 95% of attendees surveyed said they would recommend the retreat to a friend.

Perkins Coie offers top benefits, robust wellness initiatives, and programs specifically designed for parents/caregivers. In addition to an unusually generous backup dependent care policy, we offer an elder care case management service and fully paid four to eight-week sabbaticals for attorneys and staff who achieve certain tenure milestones. Well-being working groups are currently exploring protocols such as limiting after-hours emails and promoting clear deadlines that adhere to standard business hours.

Perkins Coie's culture of innovation, collegiality, and excellence make it an ideal environment for implementing bold and informed initiatives designed to recruit, retain, and advance diverse lawyers—including women and those from other historically underrepresented groups in law firms.

CHANGING THE BOX:

A CONVERSATION WITH JOANNA WRIGHT

Written By **Emily Mollinedo**

Praxis is the Aristotelian idea of combining theory and action so that high-level ideals can be realized. Simply put: it's a spirit of wanting to do. And for Joanna Wright, praxis meant practicing and, sometimes, changing the law.

After entering a Ph.D. program in Philosophy with a focus on social justice (and, yes, praxis), Joanna left after obtaining her Master's to enroll in Columbia Law School. While she loved the depth of thinking and rigor of logic philosophy called for, it was the desire to do that moved her to change course and pursue law. For Joanna, a law degree symbolized the ability, ***"to advocate for changing legal structures and changing the architecture that everyday people rely on to protect their civil liberties and rights."***

Joanna is a litigation partner at Boies Schiller Flexner LLP. While her practice specializes in high-stakes litigation and crisis management, she maintains a long track record of litigating high-stakes pro bono cases, including constitutional class actions. Joanna also sits on her firm's Executive Committee and Diversity Council and is a board member for the New York Lawyers for Public Interest. She was recently named one of the Young Lawyers of the Year by The American Lawyer, a Future Star by Benchmark Litigation, and one of the 500 Leading Litigators in America by Lawdragon.

It was a privilege to sit down and chat with Joanna on everything from her views of motherhood and lawyering to the litigation she is leading against the abortion bans in Louisiana.



Joanna Wright
Partner
Boies Schiller Flexner LLP

From taking on Louisiana's abortion ban to her mentorship style, Joanna believes in giving her full and committed time to the causes and people she believes in. Although she was on maternity leave with her second child, she graciously agreed to talk with me about these important issues.

What does it mean to you, as a seasoned and successful attorney, to pave the way for women in the law?

JW: I think of this question on both micro and macro levels. On the micro level, I mentor and sponsor a lot of diverse attorneys, but my mentorship style is much different than what people might traditionally think. It's not about box-checking with a superficial lunch or monthly coffee. To me, mentorship is about being accessible and showing up when a crucial decision comes to the surface during someone's career.

My mentees can reach me 24/7 by phone, text, or email. I make myself completely available to them when they need it and, hopefully, they know and experience that. They can get the fluff elsewhere. I see mentorship as a support system, not as something ritualistic.

As for how I think about my role on the macro level, I always try to examine how each decision or policy will affect everyone, from the most junior associate to management and especially diverse members of the firm. As a member of the firm's executive committee, I make sure to stay quite vocal, in a disciplined way, about ensuring the firm adopts policies and protocols that will elevate us all.

What have been some of the biggest challenges as a woman in the law, and in what ways have you had to alter your mindset or fight the expectations of others?

JW: It can perhaps take a bit longer to gain the trust and confidence of certain clients given the historic demographics of the "C-suite" world. But I will say, once you have earned that trust, these clients have become some of my biggest advocates and champions. I think, perhaps, that's because I approach relationship-building with authenticity. It is about getting over initial expectations and partnering to solve problems and, again, showing up to do the work. Once that happens, I've never had any problem being a first-chair trial lawyer in some of the toughest battles.

As women trial lawyers, I think we have to intentionally reject this idea that we have to adopt perceived norms to fit in. You must be exactly who you are and bring to bear your experiences. Diversity comes in all places and can be surprising. We have to create an environment with our clients and colleagues where it can reveal itself. For women, and really anyone, in order to unleash your true unique potential, you need to bring more of yourself and less of your perceived external norms and expectations.

What are your thoughts on being a mother practicing law? How do you "juggle" the demands of motherhood with those of being an executive litigation partner?

JW: I've never come up with a good answer to the "how do you juggle it" question. The truth is every day you wake up and triage the situation and ask, "What needs my attention most now?" The less varnished truth is sometimes you ask this question every hour. This ability to silence the noise and focus on what matters is applicable to balancing life as a working mom but equally applicable to crisis management.

In both spheres, we are always driving action toward achieving the main goal. Some call that crisis management or high-stakes litigation, some call it mothering [laughs]—I think it's all three! If I had a crisis, I would call a working mother. They have already demonstrated an ability to put out multiple, raging fires at once and also to identify immediately what isn't actually a fire, which is an equally important skill in both spheres.

In April of 2021, Joanna was approached by long-time friend Jenny Ma, who is a Senior Staff Attorney at the Center for Reproductive Rights, to draft an amicus brief for the Supreme Court case, *Dobbs v. Jackson Women's Health Organization*.

Over 500 college, professional, elite, and Olympic female athletes signed on as amici, coming out for the first time ever in overwhelming support of *Roe v. Wade*. The amicus brief argued that Title IX could not have been successful absent the legal protections and the right to choose *Roe* provided, and as a result, women's sports would have never become what they are today without *Roe*. Bodily autonomy is crucial to women athletes who build a career on physical prowess. Because a woman's childbearing years overlap with some of the most important athletic years for athletes, abortion healthcare is incredibly important to female athletes.

In April, when Joanna was six weeks into maternity leave with her second child, Jenny Ma reached out to Joanna once more to see if a team of Boies Schiller Flexner attorneys would be interested in fighting one of the toughest and most extreme state abortion bans in the country. When I asked her how she could take that on with a newborn Joanna said: “It’s just not the kind of thing you say no to.”

A team of women, led by Joanna, took on one of the country’s toughest fights. The team includes attorneys Sabina Mariella, Lindsey Ruff, and Erika Nyborg-Burch. Six days before the *Dobbs* decision came down, the Louisiana Legislature passed three new laws which not only demanded they revisit their legal strategy but made the fight even harder and more urgent.

The cluster of laws resulted in a trigger abortion ban which would take effect immediately upon the release of the anticipated *Dobbs* decision. This ban criminalized nearly all abortions, leaving no room for exceptions in the case of rape or incest, included no grace period, and was vague as to what qualified as exceptions to save the life of the mother and who might be excluded from the criminalization of performing abortion care.

The team worked around-the-clock for three days to file a temporary restraining order as soon as possible, knowing that with each passing day women were being turned away from clinics. It was important to re-establish abortion healthcare to this team and preserve it for women with upcoming appointments.

The team represents a reproductive healthcare clinic, an organization of OBGYN residents and doctors, and a medical doctor in *June Medical Servs. v. Landry, et. al.* In support of their preliminary injunction, the team submitted over fifteen affidavits from ER doctors to OBGYNs and even doctors providing care to cancer patients.

The affidavits explained how the vague and draconian laws prevent doctors who treat women can no longer deliver the standard of care required by their licenses.

This is because the laws fail to properly explain which, if any, circumstances create permissible exceptions to the criminalization of abortion, making it impossible for doctors to deliver healthcare properly and promptly.

If they were to provide abortion healthcare, even in lifesaving and emergency situations, as the laws stand currently, they risk fifteen years in prison and \$200,000 in fines. ***“These laws reach so many more spheres than the Legislature properly understood and given that, the Legislature failed to write these laws clearly in order to provide constitutionally guaranteed notice”*** Joanna explains.

As written in the first paragraph of the team’s preliminary injunction brief, Joanna explains that ***“this lawsuit is actually not about abortion, it’s about the rule of law.”***

In times when the fight is hard, or you might feel discouraged—because this is a tough fight—what motivates you and your team to keep fighting?

JW: We’re driven by the horrific stories of women presenting in the emergency room sixteen weeks pregnant whose water had broken rendering their pregnancies non-viable and deeply in need of emergency care, but who were turned away because the doctors couldn’t determine if the situation allowed them to perform an abortion under these laws.

Women who were suffering from sepsis, infections, and so on. The stories of doctors, such as one of the plaintiffs we represent in this case who provides cancer care and cannot practice with respect to pregnant patients for fear of causing miscarriages.

While I believe that it is important as advocates that we don’t become a part of the story, given the audience here and how hard it is for women to publicly speak about these things I do want to share my own experience.

In between the birth of my two children, I experienced multiple pregnancy losses, including in the second trimester, so I am very personally aware of how these laws impact women who need to access reproductive healthcare for a whole host of different reasons and how personal and emotional that decision can be.

I am also personally aware that this healthcare is just that—healthcare—and is crucial to women to preserve health and fertility for all sorts of different reasons that could never be spelled out in a law written by legislators.

Despite the First Circuit Appellate Court of Louisiana's decision which stayed the preliminary injunction pending appeal, the team is still fighting this case, continuing their reputation of taking on the toughest fights and pushing until they obtain what many call "impossible results." The team has asked the trial court for an expedited trial date, working as hard as they can to waste no time in their fight to re-establish care for those who need it.

Joanna's best advice to those female attorneys, especially those just starting out: "Challenge internal expectations and do not contort yourself to fit inside a perceived box—change the box." The more Joanna shared her ideas on full-time working motherhood and being a female in a male-driven corporate world, it became clear that Joanna proudly lives by this ethos of the "change the box" approach.

For those interested in registering for a CLE webinar on this case and in following important developments please visit:

<https://www.bsfilp.com/news-events/bsf-reproductive-rights-team-offers-post-dobbs-cle.html>.



Emily Mollinedo
Illinois Prison Project

“I’m Not Disabled, I’m Pregnant”

Understanding Pregnancy Discrimination

Written by *Chaya Gourarie*

Pregnant women continue to be demoted, terminated, and discriminated against in the workplace, despite laws designed to protect them. Discrimination occurs during pregnancy, while women are on parental leave, and when they try to return to the workforce. It affects women regardless of their length of service, seniority, employment status (casual, part-time, or full-time), or industry.

This article will look at the current legal landscape of pregnancy law and highlights how the law fails to offer pregnant women adequate protections in the workplace. Specifically, no federal law guarantees comprehensive accommodations for pregnant and postpartum workers. Protection for some pregnant women is provided by current state laws, but due to eligibility requirements and differences by state, not all women are protected.

The current federal law is premised on two false and antiquated premises: One, there is no inherent right to accommodations for being pregnant under Title VII; rather Title VII simply protects pregnant employees from being treated differently than other non-pregnant similarly situated employees.

Two, pregnancy must be linked to a disability or impairment to justify accommodations under the Americans with Disabilities (“ADA”).

This article will look at the interplay between the various federal statutes through the fictional case of Becky, a pregnant woman looking for legal advice. It will also briefly touch on relevant New York laws related to pregnancy. It will conclude with a discussion of bipartisan efforts currently being made to pass the Pregnant Workers Fairness Act (“PWFA”), which would require employers to provide reasonable accommodations.

If there is one takeaway from this article, it should be this: Change is needed. And it starts with you. Whether you are an employer, business owner, attorney, human resource professional, or educator, better care for pregnant women in the workplace starts with you.

Dear Lawyer,*

I am six months pregnant with my first child, and I am thirty-seven years old. It is by and large a normal pregnancy, but it is considered “high risk” because of my age. I am suffering from high blood pressure, fatigue, nausea, heartburn, back pain, and migraine headaches. I would like to ask my boss for a reduced work schedule, but I am afraid I will lose my job. Am I protected in the eyes of the law?

I work in a chain retail establishment in upstate New York, Pro-Mart, with 60+ workers., I have been working there for two-and-a-half years. Pro-Mart has a policy that it only grants reduced work scheduled to employees who have serious illnesses and injuries or to employees who have sustained on-the-job injuries.

I am a single mother-to-be, as the baby’s father is not in the picture. Therefore, I must continue working or I will have no income when the baby is born.

I have one last question: I’ve been missing a lot of work due to prenatal check-ups and some of the pregnancy complications listed above. Can my employer fire me for this?

*Please advise,
Becky*

****Disclaimer: Please be advised that this is a hypothetical scenario and the responding analysis does not constitute legal advice. If you have legal questions regarding your rights on this issue, please reach out to an attorney in your state or jurisdiction.***

Is Becky Protected Under the Federal Pregnancy Discrimination Act (PDA)?

No, she is not.

Enacted in 1978, the Pregnancy Discrimination Act (PDA) amended Title VII to specifically prohibit employment discrimination based on pregnancy. The statute consists of two clauses. The first clarifies that pregnancy discrimination is a form of sex discrimination by including “pregnancy, childbirth, [and] related conditions” within the definition of “sex.” The second clause requires that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise.”¹

Importantly, the PDA does not require the accommodation of pregnant women. However, they cannot be provided fewer accommodations relative to other workers. Thus, the key issue in these cases, then, is determining who is similarly situated to the pregnant worker so that the court may then decide whether those other employees have received preferential treatment in violation of the PDA.

The Supreme Court clarified the legal standards governing a pregnancy discrimination claim in *Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338, 191 L. Ed. 2d 279 (2015). In *Young*, the petitioner became pregnant and was restricted from lifting more than 20 pounds during the first 20 weeks of her pregnancy and no more than 10 pounds thereafter. UPS requires drivers like the petitioner to be able to lift up to 70 pounds and forbids forbade her from working while under a lifting restriction. Petitioner, therefore, stayed home without pay during most of her pregnancy.

¹ 42 U.S.C. §2000E(K).

Petitioner brought a disparate-treatment claim of discrimination and alleged that UPS accommodated workers who were injured on the job or had disabilities covered by the ADA. The District Court granted UPS summary judgment on the grounds that the petitioner was not similarly situated with those UPS workers falling within those categories. The Fourth Circuit affirmed.

On appeal, in a 6–3 decision, the Supreme Court vacated the grant of summary judgment and clarified the proper standard in pregnancy discrimination cases. The Supreme Court held that a pregnant employee can establish a prima facie case of disparate treatment by showing, under the familiar McDonnell Douglas burden-shifting framework, that: (1) she belongs to a protected class; (2) she sought accommodation; (3) the employer did not accommodate her; and (4) the employer accommodated others "similar in their ability or inability to work."²

If these elements are established, then an employer has the burden of production to proffer a legitimate, nondiscriminatory reason for denying the accommodation. The Court noted, however, that this reason must be more than an employer's claim that it is more expensive or less convenient to add pregnant women to the categories of those whom the employer accommodates.³ Once the employer proffers a legitimate, nondiscriminatory reason, the employee must establish that the employer's reason is pretextual.⁴ Young provided a framework for evaluating pregnancy discrimination but left many questions unanswered.

Importantly, since Young emphasized that the PDA requires that pregnant employees be treated the same as non-pregnant employees "who are similar in their ability or inability to work," most courts still generally hold that plaintiffs must identify actual nonpregnant individuals who were accommodated as comparators in order to prevail in a case of pregnancy discrimination.⁵

With respect to Becky, under federal law, Pro-Mart does not have an affirmative duty to accommodate Becky based on her being pregnant. It merely cannot treat her differently than it treats others "similar in their ability or inability to work."⁶ Since Pro-Mart has a "pregnancy blind" policy that does not offer reduced work schedules to anyone apart from those who have sustained on-the-job injuries or those with ADA-qualifying injuries, it will not be violating the law if it fails to offer Becky a reasonable accommodation. Thus, she has no protection under the PDA. If Becky's employer terminates her, she will have no remedy at law under the PDA.

Is Becky Protected Under the Americans with Disabilities Act ("ADA")?

No, she is not.

i. Pregnancy and Pregnancy-Related Symptoms are Not Disabilities Under the ADA, In the Absence of Extreme Circumstances.

The ADA provides that employers with 15 or more employees must provide "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an . . . employee, unless . . . the accommodation would impose an undue hardship."⁷

2. *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 228, 135 S. Ct. 1338, 1353, 191 L. Ed. 2d 279 (2015).

3. *Id.* at 1354.

4. *Id.*

5. See *Barton v. Warren Cty.*, No. 1:19–CV–1061 (GTS/DJS), 2020 WL 4569465 (N.D.N.Y. Aug. 7, 2020) (dismissing PDA claim where employer denied reasonable accommodations to the pregnant plaintiff, a corrections officer because she did not plead any facts suggesting that the defendant accommodated other corrections officers similar in their ability or inability to work); *Mestecky v. N.Y.C. Dep't of Educ.*, No. 13–CV–4302, 2018 WL 10509457 (E.D.N.Y. Mar. 20, 2018) (granting defendants summary judgment on PDA claim because the plaintiff, who was denied tenure and terminated after taking leave to address postpartum symptoms, could not demonstrate that defendants had treated anyone who took leave for a reason unrelated to pregnancy more favorably), *aff'd* 791 F. App'x 236 (2d Cir. 2019).

6. *Young*, at *1354.

7. 42 U.S.C. § 12112(b)(5)(A).

The ADA's definition of "disability" includes both "a physical or mental impairment that substantially limits one or more major life activities of such individual; ... or ... being regarded as having such an impairment."⁸ Further, "[a]n impairment need only substantially limit one major life activity to be considered a disability under the ADA."⁹

It is well-settled law that pregnancy and pregnancy-related symptoms are generally not considered ADA-qualifying disabilities.¹⁰ This is because, as one court reasoned, "[p]regnancy is a physiological condition, but it is not a disorder. Being the natural consequence of a properly functioning reproductive system, pregnancy cannot be called an impairment."¹¹ Moreover, pregnancy is temporary, and does not generally "substantially limit one major life activity."¹² Thus, on a very fundamental level, pregnancy is excluded from coverage under the ADA.

ii. The Amended ADA Relaxed the Disability Standard But Most Pregnant Women Are Still Not Covered By This Statute

Importantly, in 2008, amendments to the ADA expanded the law to cover more disabilities. For example, the new law rejected the Supreme Court's interpretation that "substantially" and "major" should be construed narrowly.¹³ The EEOC has interpreted that to mean that the ADA applies even to workers whose disability is temporary and resulted from something that happened outside the workplace.

Regarding pregnancy, in particular, the EEOC provided the following guidance in 2015:

Although pregnancy itself is not an impairment within the meaning of the ADA and thus is never on its own a disability, some pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA, as amended... [I]t is likely that a number of pregnancy-related impairments that impose work-related restrictions will be substantially limiting, even though they are only temporary.

EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (EEOC, June 25, 2015).¹⁴

However, despite this expanded definition, most courts have not been receptive to pregnancy-related claims under the amended ADA. For example, in *Serednyj v. Beverly Healthcare, LLC*, the Seventh Circuit refused to consider most pregnancy-related complications as disabilities under the amended ADA.¹⁵ Instead, the court drew a distinction between a normal and abnormal pregnancy, holding those pregnancy-related complications must be a product of a physiological disorder (an abnormal functioning of the body or an organ) in order to qualify as a physical impairment under the ADA.¹⁶ The *Serednyj* court found that plaintiff's pregnancy-related complications, which included cramping, spotting, and the increased risk of miscarriage supported an inference that she had a physiological disorder of her reproductive system.¹⁷

8. 42 U.S.C. § 12102(1).

9. 29 C.F.R. § Pt. 1630, App. citing 42 U.S.C. § 12102(4)(C).

10. See, e.g., *Minott v. Port Auth.*, 116 F. Supp. 2d 513, 525 (S.D.N.Y. 2000) (noting that courts have found pregnancy-related conditions to qualify as ADA-recognized disabilities "only in extremely rare circumstances"); Accord *Hogan v. Ogden*, No. CV-06-5078-EFS, 2008 WL 2954245, at *5 (E.D. Wash. July 30, 2008) ("Courts have generally held that pregnancy, and pregnancy-related complications, do not qualify as 'disabilities' under the Acts.").

11. *Gudenkauf v. Stauffer Commc'ns, Inc.*, 922 F. Supp. 465, 473 (D. Kan. 1996).

12. 29 C.F.R. § Pt. 1630.

13. 42 U.S.C. § 12102(4)(C).

14. https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#_ftn11 (last viewed 10/8/2022); 42 U.S.C. § 12101(b)(4).

15. 656 F.3d 540 (7th Cir. 2011).

16. *Id.* at 553 (citing *Hernandez v. City of Hartford*, 959 F. Supp. 125, 130 (D. Conn. 1997)).

17. *Id.* at 554.

Nonetheless, the court held that she was not disabled because her impairments did not substantially limit the major life activity of reproduction and lifting because they were of limited duration without any long-term impact. *Id.*

The Second Circuit has acknowledged that the amended ADA “relaxed the temporal requirements for establishing a ‘disability,’” and noted that “a ‘disability’ shorter than six months in duration now can be actionable under the ADA.”¹⁸ However, most district courts in the Second Circuit have been reluctant to bring pregnancy into the ambit of the revised ADA, highlighting the fact that the ADA requires an impairment that “substantially limits” life activities.¹⁹ Interestingly, at least one district court acknowledged that a plaintiff’s pregnancy was potentially covered by the amended ADA, but then still denied her ADA claim on the grounds that she “failed to show that the Defendants refused to afford her a reasonable accommodation for her disability.”²⁰

Beyond the State of New York, even those courts that have been more amenable to recognizing a pregnancy-related claim under the amended ADA have nevertheless established a high threshold for success, typically requiring the plaintiff’s symptoms to be quite severe in nature to qualify as a disability.²¹ Thus, most pregnant women are likely not covered by the Amended ADA.

Here, Becky suffers from high blood pressure, fatigue, nausea, heartburn, back pain, and migraine headaches. These are generally regarded as routine symptoms of a normal pregnancy and therefore likely do not bring her within the ambit of the amended ADA. Her condition is temporary, transitory, and not “substantially limiting”; therefore, it does not render her “disabled” under 42 U.S.C. § 12102(1)(A).²²

Likewise, the PDA, as detailed above does not either offer Becky protection because Pro-Mart has a neutral policy that limits the reduced work schedule accommodations to only those employees who have ADA-qualifying conditions or on-the-job injuries. Since this policy applies equally to all employees who have off-the-job injuries that are not ADA-qualifying, it does not offend Title VII.

iii. A Obstetrician-gynecologist Notes the Disconnect Between the Law and the Medical Needs of Most Pregnant Women

Obstetrician-gynecologists and other obstetric providers are on the front lines of care for pregnant workers and see first-hand the effects of pregnancy discrimination in the workplace.

Olga Kheyson, M.D., from the American College of Obstetricians and Gynecologists’ Committee on Obstetric Practice, lives and works in Staten Island, New York. She addresses employment considerations during pregnancy and the postpartum period from the point of view of a physician.

18. *Hamilton v. Westchester Cnty.*, 3 F.4th 86, 92 (2d Cir. 2021) (citing 28 C.F.R. § 35.108(d)(ix) (noting that an impairment “lasting or expected to last less than six months can be substantially limiting ... for establishing an actual disability or a record of a disability”).

19. See, e.g., *Sam-Sekur v. Whitmore Group, Ltd.*, 2012 WL 2244325, at *8 (2012) (finding “temporary impairments, pregnancies, and complications arising from pregnancy are not typically considered disabilities” and denying plaintiff’s pregnancy-related ADA claim due, in part, to the duration of her illnesses); *Dantuono v. Davis Vision, Inc.*, No. 07-CV-2234 (TCP)(ETB), 2009 WL 5196151, at *3 (E.D.N.Y. Dec. 29, 2009) (holding the inability to lift more than ten pounds as a result of pregnancy was temporary, and therefore not a disability).

20. *McKenna v. Santander Inv. Sec., Inc.*, No. 21CV941 (DLC), 2022 WL 2986588, at *8 (S.D.N.Y. July 28, 2022).

21. See, e.g., *Oliver v. Scranton Materials, Inc.*, No. 3:14-CV-00549, 2015 WL 1003981, at *8 (M.D. Penn. Mar. 5, 2015) (stating pregnancy-related complications can be a disability under the ADAAA but dismissing without prejudice pregnant worker’s ADAAA claim for failure to state a claim as her complaint did not specify her specific complications); *Mayorga v. Alorica, Inc.*, No. 12-21578-CIV, 2012 WL 3043021, at *1, *6 (S.D. Fla. July 25, 2012) (holding that plaintiff’s pregnancy-related complications—which included severe back and abdominal pain, premature uterine contractions, increased heart rate, multiple emergency room admissions, and three weeks of doctor-prescribed bed rest—might qualify as a disability under the ADA, because only “a medical condition aris[ing] out of a pregnancy and [that] causes an impairment separate from the symptoms associated with a healthy pregnancy, or significantly intensifies the symptoms associated with a healthy pregnancy” could qualify as a disability under the ADAAA).

22. *Sam-Sekur v. Whitmore Grp., Ltd.*, No. 11-CV-4938 JFB GRB, 2012 WL 2244325, at *7 (E.D.N.Y. June 15, 2012).

"Pregnant women are not disabled," Dr. Kheyson says. "Many of the forms that I have to fill out for reasonable accommodations include a checkmark for 'disabled' but this is a misnomer. Pregnant women need reasonable accommodations but are not disabled."

Dr. Kheyson notes that working during pregnancy is usually safe, but work accommodations are often needed. The law grants protections for women with severe cases. But for the majority of her patients, who have healthy pregnancies, all they need are minor accommodations, and there is no federal law for that.

Is Becky Protected under the Family Medical Leave Act ("FMLA")?

Potentially, but it does not offer her the remedy that she needs.

As a threshold issue, Becky's employer is covered by the FMLA because it has more than 50 employees in seventy-five miles.²³ Likewise, Becky is an eligible employee under the FMLA, as she has been employed with Pro-Mart for at least 12 months, and worked at least 1,250 hours of service during the previous 12-month period.²⁴ Becky is fortunate in this regard because many employees are not protected by the FMLA.

The FMLA provides eligible workers up to twelve weeks of unpaid leave when their pregnancy, another "serious health condition," or the need to care for a newborn child or ill family member makes them unable to conform to all of their employer's work rules.²⁵

With respect to pregnant workers, the Department of Labor clarified that "a mother can use 12 weeks of FMLA leave for the birth of a child, for prenatal care and incapacity related to pregnancy, and for her own serious health condition following the birth of a child."²⁶

Conceptually, the FMLA is more suited for employees who want to leave, rather than employees who need accommodations.²⁷ Because FMLA leave is unpaid, the primary benefit is job security.²⁸ The law provides that if the worker is able to fully conform to her employer's work expectations at the conclusion of the FMLA leave, then the employer must reinstate the worker in the same or a similar job. However, many workers, including Becky, cannot afford to take unpaid leave unless it is absolutely necessary.

In this context, the FMLA militates against Becky because the FMLA does not require accommodations and, instead, permits employers to entirely exclude workers whose work-pregnancy conflicts cannot be resolved.²⁹ Indeed, under the FMLA, an employer can force a pregnant worker to use FMLA leave whenever she is unable to conform to all of the employer's work expectations.³⁰

Thus, even if Becky's condition satisfies the prong of necessary "prenatal care and incapacity related to pregnancy," she does not want to leave her job at this juncture; she just needs accommodation. Thus, using FMLA leave during pregnancy will penalize her. It will eliminate her income during pregnancy and reduce the leave time available for childbirth, recovery, and to care for her newborn child.

23. 29 U.S.C. § 2611(4) (defining "employer" under FMLA).

24. 29 U.S.C. § 2611(4).

25. 29 U.S.C. § 2601 (b) (4).

26. See <https://www.dol.gov/agencies/whd/fmla/final-rule/faq#:~:text=An%20employee's%20ability%20to%20use,the%20birth%20of%20a%20child>. (last viewed: 10/8/2022).

27. 29 U.S.C. § 2601(b) (2) (2006) (explaining that the FMLA is intended "to entitle employees to take reasonable leave").

28. 29 U.S.C. § 2614(a) (1)

29. See, e.g., *Harvender v. Norton Co.*, No. 96-CV-653 (LEK/RWS), 1997 WL 793085, at *7 (N.D.N.Y. Dec. 15, 1997) (upholding the employer's decision to require the pregnant employee to take FMLA leave even though she requested accommodations).

30. See 29 C.F.R. § 825.123 (2011) (defining when an employee is "unable to perform the functions of the position"); see, e.g., *Harvender*, 1997 WL 793085, at *8.

Is Becky Protected under New York State Human Rights Law (“NYSHRL”)?

Yes. Becky is lucky because she works in New York State which offers the most liberal protection to pregnant workers. Indeed, discrimination on the basis of pregnancy is a form of gender discrimination, which is unlawful under the New York State Human Rights Law (NYSHRL).³¹

Moreover, as of January 19, 2016, employers must provide a reasonable accommodation unless it would create an undue hardship.³² Employers must post information about these rights in a conspicuous, easily accessible, and well-lit location that is customarily frequented by employees.³³ The law applies to employers with four or more employees in the state and protects employees regardless of tenure and number of hours worked.³⁴

In New York, the term “reasonable accommodation” includes but is not limited to, the following: “[P]rovision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, job restructuring and modified work schedules...”³⁵ Thus, Becky’s requested accommodation, “job restructuring and modified work schedules,” is listed in the statute as a potential accommodation option.

Under New York law, a pregnancy-related condition is to be treated as a temporary disability for the purposes of the statute and the Division of Human Rights regulations.³⁶

Here, Becky’s employer is obligated to consider potential reasonable accommodations related to her pregnancy symptoms, including “job restructuring and modified work schedules”, and is required to grant the same unless it can show that doing so will pose an undue hardship on Pro-Mart.

If Becky’s employer were to terminate her after she notified them of her pregnancy and asked for an accommodation relating to the same, it would likely face liability for pregnancy discrimination and retaliation under the NYSHRL.³⁷

Conclusion

It is shocking that there is still a huge gap in federal law related to pregnant workers; namely, there is no federal right to accommodation for symptoms arising from a normal, healthy pregnancy.

In response, many states have enacted legislation to mandate reasonable accommodations for pregnant women. Indeed, as of April 2022, thirty-one states, including the District of Columbia, and four cities have passed laws requiring some employers to provide reasonable accommodations to pregnant workers.³⁸

31. N.Y. Executive Law § 296(1)(a) (“It shall be an unlawful discriminatory practice for an employer... to refuse to provide reasonable accommodations to the known disabilities, or pregnancy-related conditions, of an employee.” See also *Lefort v. Kingsbrook Jewish Medical Center*, 203 A.D.3d 708, 164 N.Y.S.3d 183 (2d Dep’t 2022)).

32. Exec. Law § 296(1)(a).

33. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 466.1(a), (b) (2015).

34. Exec. Law §§ 292(5), (6) (2015).

35. Exec. Law § 292(21-e).

36. Exec. Law § 292(21-f) (“The term ‘pregnancy-related condition’ means a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques... which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held; and provided further, however, that pregnancy-related conditions shall be treated as temporary disabilities for the purposes of this article.” disabilities for the purposes of this article.)

37. See e.g. *Flores v. Buy Buy Baby, Inc.*, 118 F. Supp. 2d 425 (S.D.N.Y. 2000) (fact question as to the pretextual reason for discharge of pregnant employee precluded summary judgment under Title VII as well as NYSHRL).

38. See National Partnership for Women & Families. (2022). Reasonable Accommodations for Pregnant Workers: State and Local Laws: www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf (Last viewed 10/8/2022).

Moreover, there have been bipartisan efforts to pass a pregnant workers fairness act that would fill the gaps in the existing federal law. By way of background, the bipartisan Federal Pregnant Workers Fairness Act ("PWFA"), championed by Rep. Jerrold Nadler (D-NY), Rep. John Katko (R-NY), and Senator Bob Casey (D-PA), would require employers to provide reasonable accommodations to employees for pregnancy, childbirth, and related medical conditions, unless such accommodation would cause undue hardship for the employer.

On May 14, 2021, the U.S. House of Representatives passed the Pregnant Workers Fairness Act by a 315-101 vote, and the bill is now pending before the Senate. That bill, H.R. 1065, is intended to bar discrimination against employees whose ability to work might be limited by "pregnancy, childbirth, or a related medical condition," according to its text. It applies to employers with 15 or more employees.

Allegra L. Fishel, the Founder and Executive Director of the Gender Equality Law Center in New York City believes the time for the Federal Pregnant Workers Fairness ACT -- national pregnancy accommodation law -- is now. "Our country can no longer deny adults of childbearing age protected time off when they become pregnant," Allegra says. "If workers cannot find job protection when they are pregnant they will be prematurely pushed out of the workforce often leading to short or even long-term lost earnings. In turn, this will lead to widening the already existing wage gap between men and women over the course of their work lives."



Chaya Gourarie
Tully Rinckey, PLLC

The Importance of Grit and Growth Mindset in the Workplace



A CONVERSATION WITH DR. MILANA HOGAN—PART TWO

Dr. Milana Hogan, Ed.D.
Author, *Grit, the Secret to Advancement*

WRITTEN BY NICOLE M. SMITHSON

In the 2022 Summer issue of the *Women Lawyers Journal*, grit expert Milana Hogan explained what grit and growth mindset are and how women can develop these key predictors of success. In the second part of the interview, Dr. Hogan talks more about her research on the impact of grit and growth mindset on success in women lawyers and explores how to bring grit and growth mindset into the workplace to create more successful teams.

What was your process for studying how a grit and growth mindset impacts success in women attorneys in *Grit, The Secret of Advancement*?

MH: I did this in two ways. First, I used a quantitative approach that involved the use of an online survey. That survey was sent out to thousands of women lawyers and asked a series of questions designed to measure grit, growth mindset, and success. The survey was valuable because it provided me with a wealth of data to work with which in turn allowed me to form statistically significant conclusions about the relationship between these traits and the various measures of success we considered.

Part two of the research—the qualitative component—involved the use of one-on-one interviews with people who took the survey but also volunteered to have a longer, more in-depth conversation about their experiences. For me, this was the most powerful part of the process because the stories that these women told me were really incredible, moving examples of these traits in action.

I have tremendous respect for all of the women I spoke with—they were all strong, brave, and remarkably resilient.

And you reached out to women attorneys in every kind of practice: solos, law firms of all sizes, in-house, government, and non-profit?

MH: Yes, that's correct. It was really important to everyone involved in this project to hear from as broad an audience as possible, and ultimately, we heard from close to 5,000 women lawyers. We even spoke to some judges, who are not technically practicing law, but they offer an incredibly significant perspective on the profession—they often have a front-row seat to some of the best and worst moments in a lawyer's career.

What general conclusions did you reach from your study?

MH: I will start with one very clear takeaway, which is that women lawyers are pretty gritty. The average grit score was 4 on a scale of 1 to 5, which makes them quite a bit grittier than most of the population.

When it comes to a growth mindset, this is not the case. There are a lot of women lawyers who, understandably in my view, still have fixed mindset ideas. Many women in the study reported that they were quick to doubt themselves and their abilities when things didn't go as planned.

They were far more likely to blame themselves rather than a poorly designed process or factors outside of their control. Many of them did this in spite of the fact that they were receiving very positive feedback about their performance from their employers.

Besides having an individual take the grit scale test created by Angela Duckworth, how can a leader assess the grittiness of a job candidate or employee?

MH: Aside from the grit test, employers can look at the person's resumé for evidence of grit. For example, if you're a concert-level piano player that could very well be an indicator of grit because we all know how much time, effort, and persistence it takes to get to that level. Certain athletic endeavors could also signal grit, or really any activity that the candidate has engaged in and committed to over many years.

A growth mindset, I think, is best assessed in an interview context. You can do that using behavioral interviewing techniques. You can ask people to describe how they approach challenges, or you can ask them directly about their views on the relationship between effort and success.

All of that said, these traits are not meant to be standalone predictors of success on the job. Rather, they are powerful indicators of how you approach a challenge and how you will react when things become difficult. Are you the kind of person who is going to panic or the kind of person who is going to double down on effort and is willing to bet on themselves to find a creative solution? At my firm, Sullivan & Cromwell ("S&C"), we are regularly brought in to solve seemingly impossible challenges for our clients. We are often advising them in times of crisis. In order to do this work at a high level, we need people who will be relentlessly focused on finding the single best solution and who believe that they are capable of doing so. We need people who will not only embrace a challenge but will be motivated by it.

It's also important to note that these traits can be taught and as such, employers should make sure that they are giving their employees the training and tools they need to amp them up. The importance of grit and growth mindset are on full display at S&C, both in the formal programming we offer but also—and perhaps more importantly—in the behaviors modeled by our leadership.

Can you say what your firm is doing?

MH: We offer formal training programs that emphasize the importance of a grit and growth mindset and resilience. The website for the American Bar Association Commission on Women in the Profession has modules that are easy to deliver and available to everyone. We generally offer these programs early on to introduce the concepts and then we reinforce them along the way both in our leadership academy and the day-to-day work that we do at the firm.

Often, for newish lawyers who have had tremendous success academically, encountering a setback or tackling a particularly complex issue for which there is no clear template can be overwhelming. When this inevitably happens, they can look to more senior lawyers who can help guide them by sharing their own stories about how they overcame such moments and are now better lawyers as a result. S&C is a firm where the apprenticeship model is alive and well—we believe that the very best way to learn, whether it be a technical skill or a leadership or management skill, is by working alongside more experienced lawyers who are deeply invested in your career and genuinely want to see you develop into a world-class lawyer.

What are you working on now?

MH: I've just completed another round of research for the American Bar Association Commission on Women in the Profession that explores the importance of a grit and growth mindset in the team context. We wanted to know more about whether these traits, which are wildly important at an individual level, can be leveraged to improve the performance of an entire team.

We were able to establish that when team leaders bring these traits to their teams, the teams not only perform extremely well, but the team members enjoy the experience far more than they do when a team operates without these traits. Because it is not as simple as hiring a bunch of gritty, growth mindset-oriented people and putting them on the same team, we then explored how best to get the team into this mindset. Ultimately, the research provides a practical model for leaders who want to lead in this way.

Can you tell us what a gritty team looks like?

MH: Gritty teams are teams that persevere in the face of challenges. They process setbacks quickly and make the necessary adjustments so that those same mistakes can be avoided in the future. A gritty team works deliberately and passionately and is constantly focused on developing new skills and making improvements. No team experience is going to be perfect, but when bad things happen, a gritty team is a resilient team.

A growth mindset-oriented team is constantly learning—and in fact, team members and team leaders will view learning as one of the main objectives of their work. Adopting a learning mindset is critically important in an apprenticeship profession. To borrow another example from my experience at S&C, even our most experienced team leaders report that they are constantly learning new things, and this is precisely what keeps them so engaged in their work. S&C lawyers know that if you are not learning, you are not improving, and if you are not improving, you cannot deliver the kind of service our clients expect and need.

Do you have any other suggestions for a leader who wants to develop her team's grit?

MH: Yes—I have plenty! First, make sure that you're carving out time to celebrate small wins. When something goes well, pause to acknowledge it. Celebrating milestones—especially on cases or matters that may go on for years—is important for morale because it keeps people engaged along the way.

The idea is that you need to sustain performance over time, and you can't do that without little bursts of positive feedback along the way.

The other thing that all leaders should be doing is providing regular feedback. It's so important to give feedback in real time. That does not mean you need to sit down with someone for an hour and give them a formal review, but a couple of quick comments delivered at the right time can have a tremendous impact on performance. Whatever the feedback is, whether positive or constructive, deliver it fairly and consistently. A healthy feedback loop is critical to development.

I would also recommend that team leaders look for shared learning opportunities for the team. For example, attending an industry conference. That's a good way to have a shared learning opportunity, but it does not need to be as formal as that. Sometimes it's as simple as having a weekly team meeting where you are talking about what happened that week and having everybody engage in a case strategy discussion. It could be formal or informal but shared learning opportunities are a really good way to encourage both a grit and growth mindset in the team context.

Is there any connection between team grit and employee retention?

MH: Part of what we explored in the research was how important it is to have positive team experiences, and then we looked at how relevant those experiences are to whether or not you stay with your employer. It was very clear that the experiences you have on teams matter tremendously—a great experience will encourage people to stay and a negative experience will drive them away. We are in the midst of the Great Resignation, there's a serious war for talent and everybody wants to keep their best people. Focusing on making team experiences really great is one way to do this.

When and how will people be able to access your work on grit and teams?

The exact date of publication is still to be determined, but I would say that whatever we release will be available on the American Bar Association Commission on Women in the Profession website before the end of the year. This will include everything you need to introduce these concepts at the team level and will be free to anyone who is interested in focusing on this. A team can be successful without these traits, but the experience of the team members will be far less positive. It's possible, but not advisable, to operate as a team without these traits.

Even though a person is not leading the team, is this module something to bring to the attention of other team members?

Absolutely.

Finally, would you mind sharing a last thought or piece of advice for our NAWL members?

One of the most powerful pieces of advice I have received in my career is to keep playing the long game. There are days and brief moments in time when we all feel as if we have reached the breaking point. I can't tell you how many times I've thought "this is it—this is the end" about one thing or another and the truth is I'm still here and I'm stronger than I've ever been.

If the long game, for you, is having a successful career as a lawyer, go into it knowing that there are going to be highs and lows along the way. When you're at a low point, remember that the pendulum will eventually swing. Never quit on a bad day. Do yourself the favor of waiting until you don't feel quite as bad and then assess the next steps from there. See how you feel when the dust settles. Zoom out and give yourself the gift of time and a clear perspective. I know first-hand how rewarding and satisfying this profession can be, and I want everyone to be able to experience that—sometimes the very best and brightest moments follow the most difficult times.

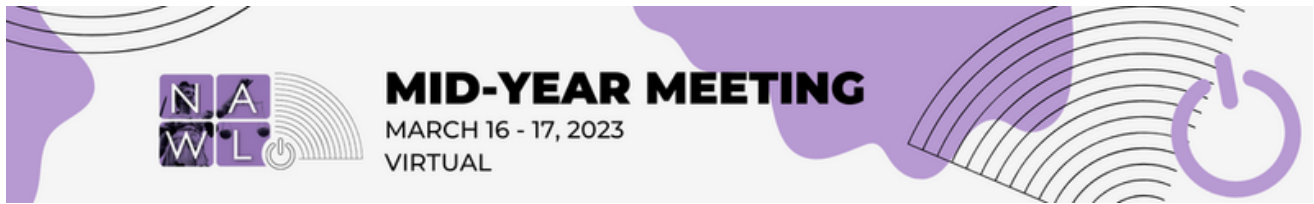
*Dr. Hogan's book, **Grit, The Secret to Advancement**, is available from Amazon and the American Bar Association's website. Her 2013 WLJ article, "Grit and Mindset Implications for Women Lawyers," is featured in the ABA's 21-Day Grit Challenge. The first part of this interview was featured in WLJ—Summer 2022.*



NICOLE M. SMITHSON

MICHIGAN INDIGENT DEFENSE COMMISSION

NAWL Programming in 2023



The National Association of Women Lawyers invites you to the 2023 Mid-Year Meeting! This engaging and innovative program focuses on leading with purpose and intentionality and will offer both professional development opportunities and skills training to help women in all fields of legal practice thrive in their careers.

Understanding that some NAWL members are facing uncertainty around travel budgets and/or aren't yet ready to return in person, NAWL has intentionally designed the Mid-Year Meeting as its only virtual conference this year. With new virtual networking functionality and programming thoughtfully created for a virtual setting, this is your opportunity to connect with the NAWL community around the country from the comfort of your office.



Tune in to listen to the NAWLTalks Podcast wherever you get your podcasts!





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Becoming a Lifetime Member is an investment in NAWL and represents continued commitment to the advancement of NAWL's mission. Lifetime membership is available to attorneys with at least seven years of membership.

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*Thank
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FOR YOUR SUPPORT

NAWL Welcomes New Members

Membership in the National Association of Women Lawyers has many advantages, among them, opportunities for continuing legal education, a subscription to the *Women Lawyers Journal*, leadership development, and professional networking with other members. NAWL welcomes over seven hundred new members as of November 2022 who joined to take advantage of these and many other member benefits.

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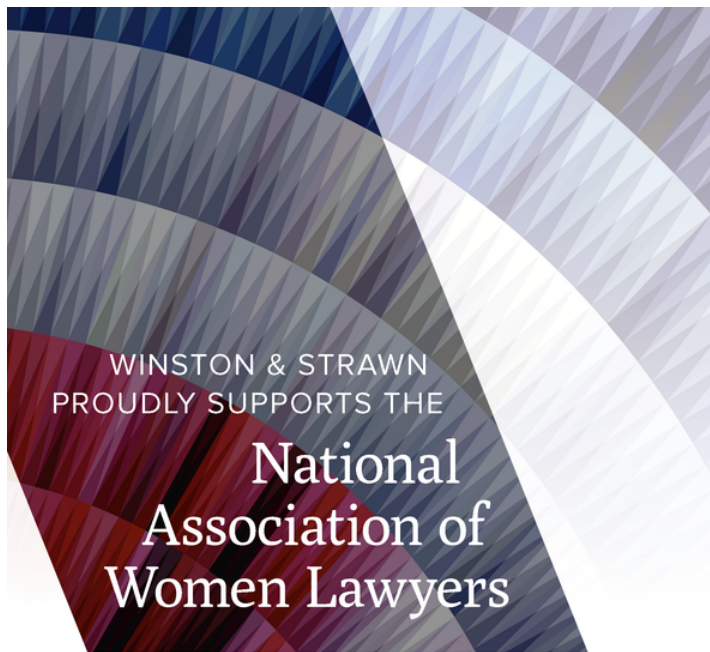
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to use my strength in the
service of my vision, then
it becomes less and less
important whether I am afraid."

— Audre Lorde

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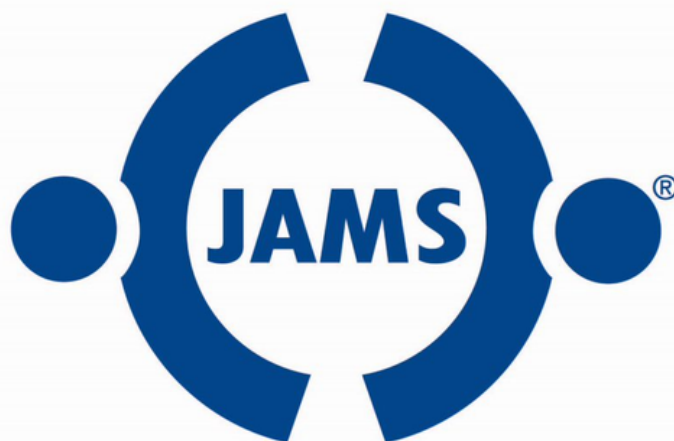
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