



Cathy Fleming, NAWL President 2006-07, addresses NAWL Annual Meeting in New York.

Holly English, NAWL Preswident 2007-08, addresses NAWL Reception in San Francisco.

NAWL Goes Coast to Coast With Meetings in New York and San Francisco

Bragging Rights: Self-Evaluation Dos and Don'ts

The Fine Art of Asking for What You Deserve

**Selma Moidel Smith Law Student Writing Competition:
DeSilva v. DeSilva: Equitable Distribution, Spousal Abuse,
and New York's Debate Over Fault Divorce**

How to Win the War for Talent

My View of Women Lawyers



national association of women lawyers®



The presenters who created Clarence Darrow, William O. Douglas, Sir Thomas More and Thurgood Marshall as CLE Theatre ... now bring you some of the WOMEN who made history in the law!

It was a long and torturous journey to the bar for American women, filled with bigotry, rejection, intrigue, triumphs and

more than a little humor along the way. *The Women Lawyers Club* is a theatrical montage of many characters, including Margaret Brent, who arrived in the colony of Maryland in 1638 as the first woman to serve as a lawyer in America, Clara Shortridge Foltz, who created the public defender system, Susan B. Anthony, who fought her entire life for the rights of women to vote, Myra Bradwell, the founder and publisher of *The Chicago Legal News*, and Lyda Conley, a Wyandot Indian, who fought for 40 years to save the Huron Place Cemetery. In spite of discrimination and hardship, the women lawyers of the United States have left their marks in virtually every area of the law. Others, who were not lawyers, fought for civil rights, the vote and "justice for all," and nevertheless made an everlasting impact on the social and legal fabric of the country.

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- *A subscription to the quarterly Women Lawyers Journal and the ability to be kept up to date on cutting edge national legislation and legal issues affecting women*
- *The opportunity to demonstrate your commitment and the commitment of your firm or company to support diversity in the legal profession.*

About NAWL

Founded in 1899, NAWL is a professional association of attorneys, judges and law students serving the educational, legal and practical interests of the organized bar and women worldwide. Both women and men are welcome to join. Women Lawyers Journal®, National Association of Women Lawyers, NAWL, and the NAWL seal are registered trademarks. ©2003 National Association of Women Lawyers. All rights reserved.

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About Women Lawyers Journal

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ARTICLES Book reviews or articles about current legal issues of general interest to women lawyers are accepted and may be edited based on the judgment of the editor. Editorial decisions are based upon potential interest to readers, timelines, goals, and objectives of the association and the quality of the writing. No material can be returned unless accompanied by a self-addressed, stamped envelope.

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Donald de Brier is Executive Vice President, General Counsel, and Secretary of Occidental Petroleum Corporation. Previously, he had been General Counsel of British Petroleum Exploration Company, Associate General Counsel of Standard Oil Company, and Vice President and General Counsel of Kennecott Corporation. Donald graduated from Princeton in 1962, was commissioned in the US Navy, and then graduated from the University of Pennsylvania Law School. He practiced with two firms, Sullivan & Cromwell and Patterson, Belknap, Webb & Tyler. Donald and his wife, Nancy, reside in Pacific Palisades. She is also an attorney. They have three married daughters residing in California, and six grandchildren. Donald has been a Director of the Los Angeles Philharmonic Association for 12 years, and a former Chairman of the Board of Governors of the Riviera Tennis Club.



Andrea S. Kramer is a partner in the international law firm of McDermott Will & Emery LLP, where she is a member of the Management Committee, a former member of the Compensation Committee, chairs both the Firm's Gender Diversity Committee and Financial Products Group, and co-chairs its Energy Services Group. She is the author of the three-volume treatise, *Financial Products: Taxation, Regulation, and Design*, and is a frequent author and lecturer. Andie was named as one of the 50 Most Influential Women Lawyers in America by the National Law Journal and was featured in Lawdragon in its "Top 500 Leading Dealmakers." She recently co-founded the Women's Leadership and Mentoring Alliance (WLMA) to bring Chicago women professionals together to network, mentor, and support leadership opportunities in the Chicago business community. Andie received McDermott's Star Mentor Award for her work with women throughout the Firm, initiation of the Firm's Women's Leadership Series, and efforts to enhance the working environment for women.

Michael E. Nannes was elected Chairman of Dickstein Shapiro LLP in 2006 after serving as firmwide Managing Partner since 2004, and as Deputy Managing Partner for 10 years. Mr. Nannes provides leadership and strategic direction for the legal and business areas within the Firm. He oversees every aspect of the Firm's operations, working closely with five department officers—Finance, Operations, Marketing, Human Resources, and Information Systems. Under his leadership, the Firm has established its California office (in Los Angeles), has substantially grown its New York office, and has received recognition for its diversity and quality-of-life programs in numerous high-profile business and trade publications. In 2006, Mr. Nannes was named "Star of the Bar" by the Women's Bar Association of the District of Columbia.



Susan Smith is a business owner with practical, ongoing business development experience. Her company is Selloquent LLC, a business that provides coaching, training and expertise to professional service firms seeking to build their practices. When speaking for professional groups, she leads interactive, thought-provoking discussions on real-world issues of business development.

Editor's Note

As the new editor of the Journal, it is both exciting and daunting for me to be writing this message. Exciting, because it is a first for me and I'm extremely proud to be the new editor. Daunting, because the woman who has done such a spectacular job over the past two years is looking at me from the facing page as the new President of NAWL. It's intimidating enough to replace someone who is a professional legal journalist without having her watching over me every issue but I take much comfort from her wise eyes looking at me. If I can achieve anything close to what she has over her tenure, I will consider myself lucky.

The articles we are bringing you in this issue are very informative and extremely timely. We have excerpted the remarks made by Donald de Brier, Executive Vice President, General Counsel and Secretary of Occidental Petroleum Corporation, in accepting the NAWL's President's Award at the NAWL event in San Francisco in August. We also have excerpts from another presentation, this time from Michael Nannes, Managing Partner of Dickstein Shapiro, who participated in the New Jersey Women's Bar Association's Best Practice Series at Rutgers Law School. The excerpts provide a window into what some firms are doing with respect to flexible work arrangements and how the culture of an organization can only be dictated from the top down, not the other way around.

We have a winner published here as well—the winning essay in the second annual Selma Moidel Smith Law Student Writing Competition, which was established to encourage and reward original law student writing on issues concerning women and the law. The winning essay, entitled “DeSilva v. DeSilva: Equitable Distribution, Spousal Abuse, and New York's Debate over Fault Divorce,” was written by Julia Busetti, a third year law student and a Haywood Burns Fellow at the City University of New York School of Law. Congratulations, Julia.

For those of us who are entering into the season of compensation and annual reviews, there is an article written by Andrea Kramer of McDermott, Will & Emery that provides useful advice to help you write a more persuasive “I love me” memo. And for those of you who want help to build your practice, the article entitled “The Fine Art of Asking for What You Deserve” by Susan Smith of Selloquent LLC is a great resource to help you enhance your ability to ask for referrals.

As the new kid on the block, I would like to hear from you—what you think about this issue, its content, articles you would like to see in the future, what you like and don't like and any other thoughts you have on how the Journal can best serve your needs and interests.

Warm wishes,

Deborah S. Froling, Editor
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President's Message

It is with great pleasure that I begin my term as President of the National Association of Women Lawyers. As some of you know, while on the Board of NAWL I have served as Editor of the Journal. That position is now being shifted to the very able Deborah Froling, another Board member, and I know that she will do a wonderful job. Having said that, I enjoyed being Editor very much and will miss it.

But I will have plenty to do to fill my time! My term began in a resplendent way, at our Annual Luncheon, held before 1,100 enthusiastic audience members at the majestic Waldorf=Astoria Hotel in New York. Now that the lunch is over, of course, it's time to roll up our sleeves. Although there are many great events to look forward to this year, I would draw your attention to three.

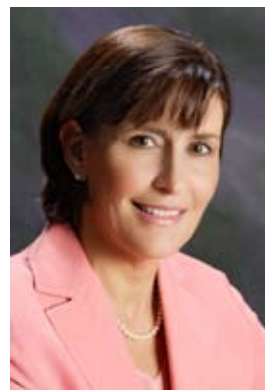
By the time you read this, we will be about to have, or will just have concluded, our Third Annual General Counsel Institute, one of the shining jewels in our crown of programs. I hope that this program will have as much impact, or more, as it has in the past.

We also will release our second Annual NAWL Survey, tracking crucial data like the differences between male and female partnership levels, differences in compensation between men and women, and other key indicators; watch for it and compare how things have changed since last year. Finally, we are looking forward with great anticipation to our Summit, a high-level conference to be held in Washington, D.C., in which managing partners, general counsels, heads of women's initiatives and other leaders in the profession will formulate best practices for the advancement and retention of women.

I am very conscious that my year as President will end as quickly as it began, so we are getting a running start. Please feel free to contact me directly about ideas, suggestions, and any other thoughts you have about NAWL; I love hearing from you and look forward to meeting as many of our members as possible.

Warmest wishes,

Holly English
NAWL President, 2007-08
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Annual Awards

NEW YORK, NEW YORK

On August 2, 2007, the National Association of Women Lawyers® (NAWL) held its Annual Awards Luncheon at the Waldorf-Astoria Hotel in New York. At the luncheon, attended by 1,100 guests, Cathy Fleming, NAWL's 2006-07 President presented this year's awards. NAWL's 2007 President's Award was presented to the Bank of America, N.A., which was accepted by Alice A. Herald, Deputy General Counsel. The President's Award

is given to a company which has demonstrated leadership in promoting women and diversity. Cathy Fleming, saluted Bank of America, noting that: "through its leadership, Bank of America has demonstrated that the Bank means, and diversity means, business." Karen J. Mathis, President of the American Bar Association, was awarded the Arabella Babb Mansfield Award for her contributions to women in the law and in society. The Public Service Award was



Rickie Jacobs, NAWL Executive Director, along with some of NAWL's Award winners: from left, Heather Giordanella, Bobbie Meloro, Laurie Robinson, Karen Mathis and Carol Robles-Román.



Alice A. Herald and Timothy J. Mayopoulos of Bank of America, N.A. proudly display the 2007 President's Award.



Former New Jersey Governor Brendan Byrne administers the oath of office to NAWL's 2007-08 Board. From left, Hon. Brendan Byrne, Cathy Fleming, Holly English, Lisa Horowitz, Deborah Froling, Dorian Denburg, Margaret Foster, Lisa Gilford, Lorraine Koc, Stephanie Scharf, Wendy Schmidt, Beth Kaufman, Heather Giordanella, Zoe Sanders Nettles and Carol Robles-Román.

ards Luncheon

ORK • AUGUST 2, 2007

given to Carol Robles-Román, Deputy Mayor of New York. Outstanding Member of the Year Awards were given to Heather Giordanella and Bobbi Meloro. In addition, the inaugural M. Ashley Dickerson Award was given to Laurie R. Robinson, Assistant General Counsel and Director of CBS Training and Diversity. The award, which is named after NAWL's first African American President, recognizes a lawyer who promotes diversity. Cathy Fleming, NAWL's President, said, "We are



Incoming NAWL President, Holly English.

pleased to honor our awardees—each of whom has made a real difference in the workplace and in the profession as a whole." Former New Jersey Governor Brendan Byrne administered the oath to the new board. Holly English, incoming President, outlined plans for the 2007-08 year, including a focus on "best practices" for the retention and advancement of women as well as an expansion of the website and other internet capabilities of NAWL. •



The inaugural M. Ashley Dickerson Award was presented to Laurie Robinson.

Cocktail Reception

SAN FRANCISCO, CALIFORNIA • AUGUST 10, 2007

In San Francisco, many gathered at the NAWL reception, catered by legendary restaurant Yank Sing, at the Rincon Center, where Cathy Fleming presented a President's Award to Occidental Petroleum Corporation, accepted by Donald P. de Brier, Executive Vice President, General Counsel and Secretary. Spirits were high as many supporters and friends celebrated this and other NAWL achievements this year. Earlier in the day, the seminar the "Seven Habits of Successful Rainmakers" was presented by Sara Holtz, Founder and Principal of ClientFocus, at the offices of Nixon Peabody LLP. •



NAWL President 2006-07, Cathy Fleming, with Donald de Brier of Occidental Petroleum accepting the President's Award in San Francisco.



Attendees at the San Francisco reception included Lisa Gilford, Sally Lee Foley (past NAWL President), Holly English, Gloria Allred and Cathy Fleming.

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"The LL.M. program allowed me to make real three of my most cherished dreams: to work for the UN; to work in Africa; and to work in the field within the area of human rights."

- Mireya Pena Guzman, LL.M. IHR 2003

A Colombian lawyer and Doctor of Law from the University of Paris (Sarbonne), who has served as Human Rights Officer with the United Nations Mission in Ethiopia and Eritrea (UNMEE) in Addis Ababa.

"The LL.M. Program in Intercultural Human Rights has been a great addition to my career. I now understand how international law and the different mechanisms to protect human rights can be used domestically. I also know better how to exercise political pressure to change policy. It has helped me refine my arguments in asylum cases, especially those focusing on gender persecution. Its intercultural dimension was a great segue into my current practice of providing culturally sensitive advocacy for victims of domestic violence, sexual assault, and modern-day human slavery,"

- Ana Vallejo, LL.M. IHR 2002 & J.S.D. Candidate

Bragging Rights: Self-Evaluation Dos and Don'ts

Andrea S. Kramer • McDermott, Will & Emery LLP

Most lawyers are expected to submit self-evaluations as part of annual compensation review processes. Although the process varies from firm to firm and from legal department to legal department, one thing is constant: women lawyers should approach their self-evaluations with the same planning, determination, and effort they put into their client projects. In this article, I offer some observations and provide some suggestions gleaned from my experience as Chair of my law firm's Gender Diversity Committee, Member of our Management and Compensation Committees.

At my firm, our Compensation Committee recommends to our Management Committee compensation for all of our lawyers. Self-evaluations are part of this compensation process. To fulfill my responsibilities during my three-year term on our Compensation Committee, I carefully reviewed more than 1,000 self-evaluation memos submitted by my partners. In reviewing them, I was struck by the differences between those self-evaluations submitted by men and those submitted by women. Indeed, it got to the point where I would know, without looking at the name, whether the memo was submitted by a man or a woman. The self-evaluation memos submitted by men were self-laudatory and carefully recounted their strengths and successes. This was not the case for my women colleagues. Men (as a group) were much more comfortable than women singing their own praises; sharing their achievements; and clearly making their career and compensation expectations known to their supervisors. Men easily wrote sentences that started with phrases such as "I accomplished X" or "I successfully completed Y." On the other hand, women (as a group) not only were generally unwilling to state and explain their successes but actually downplayed their overall contributions.

Women lawyers should approach their self-evaluations with the same planning, determination and effort they put into their client projects.

How could there be such a huge disparity between the self-evaluations of my male and female colleagues at the same stages of their careers and professional development? They all had the same superior educational backgrounds. They all worked on the same types of projects. They were all offered the same sorts of professional development opportunities. So, what could explain these striking differences?

Gender Differences

As I reflected upon this, I read about biological, psychological, and environmental gender differences. What I learned was that some gender differences are rooted in brain development, while others are culturally ingrained from an early age, and still others might be tied to personality differences. From early childhood,

boys are observed to be much more comfortable than girls in tooting their own horns and "talking up" their successes. They are observed to be much more comfortable than girls with bragging about their strengths and totally ignoring or downplaying their weaknesses.

These gender differences—whatever their source—carry over into our professional lives. While men and women have the same intellectual capacity, potential for success, and brain capacity, gender differences do exist in behaviors and instincts. Numerous scientific studies have shown that men are drawn to seeking status and rank, while women are drawn to belonging, building consensus, seeking harmony, and being part of a "team." It is these gender differences and instincts that were being played out in the self-evaluation process.

I was struck by the differences between those self-evaluations submitted by men and those submitted by women.

I shared my observations and concerns with a female managing director friend at a major investment bank, and she raised them with her male boss. He immediately saw the truth in what I had identified. He said that year after year (during their firm's annual promotion cycle), only male promotion candidates would seek him out—some candidates on a daily basis—to tell him why they should be promoted and why "this" was their year for promotion. In most promotion cycles, not one woman candidate would make such a promotion "pitch." I am certain that the women candidates wanted to be promoted just as much as the men. Yet, unlike their male colleagues, they were not discussing their career goals with their supervisors. For whatever reason—biological, psychological or environmental—these women were simply not comfortable telling their supervisors about their professional objectives. I truly did not see any other way at the time. The firm was all that I knew; I had been there for my entire legal career.

Getting to a Level Playing Field

To compete on a level playing field—for plum assignments, fair compensation, and equal promotions—women lawyers must change. We must confidently explain our achievements and advertise our interests in—and qualifications for—promotion. We must recognize that our supervisors and colleagues cannot—and do not—automatically know our thoughts, feelings, desires, and accomplishments. We must force ourselves to step out of our comfort zones and proactively develop and use self-promotion skills—that are second nature to many of our male colleagues—to enumerate our accomplishments and to clearly articulate our career and compensation expectations. Our male colleagues have always been doing this. After observing these shocking gender differences in the

self-evaluations of my partners, I prepared a list of “Dos and Don’ts” for my women colleagues. It is a “how to” guide to prepare self-evaluations. These “Dos and Don’ts” have now been incorporated into our firm-wide professional development program, but my original purpose can be met by sharing them in this article. I very much hope that these “Dos and Don’ts” will provide food for thought before your next round of self-evaluation memos. I also hope that this article will help empower you to cultivate the necessary self-promotion skills critically needed by all of us to survive and thrive in today’s highly competitive legal environment.

The Suggested “Dos”

- Carefully read and follow the instructions before beginning your memo.
- Lead with your strengths: identify them before starting to write your memo.
- Dig out “golden nuggets” about yourself. Keep an organized file of your accomplishments.
- Pull together the information about your client and administrative projects before you start your memo.
- Examine firm and department marketing materials to refresh your understanding of firm and department goals.
- Reconcile your instinct for humility with the need to promote yourself.
- Showcase your accomplishments in a straightforward way, with authenticity, pride and enthusiasm.
- Mention issues (such as health-related, leaves of absence, or family problems) in the back of your memo or as an appendix, unless they account for a significant amount of your time, in which case address them at the beginning of your memo.
- Lead with a discussion of larger clients or more important assignments.
- Provide a context for the projects you discuss in your memo.
- State the dollar value of your transactions/trials or the benefits received by your clients.
- Save e-mails and letters praising your work, turnaround time, or other areas. Quote that praise directly in your memo when you discuss the work you did for that client or project. Consider attaching a copy of the originals at the end of your memo.
- Include any cross-selling you have participated in and mention the type, quantity, and value of the projects you were able to secure from clients and other attorneys at your firm.
- Let other lawyers in the firm know who you are and what you have accomplished throughout the year, not just at compensation time.
- Reference clients you work with.
- Discuss who you work with: partners, peers, junior lawyers, and staff. Your interactions can help showcase your professional development.
- Step into the spotlight. There is nothing worse than credit theft on the job!
- Discuss your management skills, including strengths and areas for improvement.
- Ask a more senior colleague or friend to comment and make suggestions on your memo after you’ve carefully thought out, written, and edited it.
- Ask yourself: If I didn’t know myself and I read this memo, would I know me?

The “Don’ts”

- Don’t turn your memo in late!
- Don’t assume anything! Be explicit! Don’t assume the readers already know your successes and their significance to your practice and clients.
- Don’t use emotional words (such as “disappointed” or “hope”).
- Don’t use vague terms or sweeping generalities that leave no impact on the readers.
- Don’t be afraid to take full credit for your accomplishments.
- Don’t attribute your accomplishments to others.
- Don’t allow your memo to exceed four pages. If it does, edit and tighten it up.
- Don’t exaggerate—but be sure to cover the key points without modesty.
- Don’t spend a lot of time focusing on activities you’re involved in outside of the firm.
- Don’t let your numbers do the talking. Highlight your responsibilities and accomplishments, while tying them to your numbers and explaining where your numbers don’t show important contributions.
- Don’t spend time discussing peripheral activities. Stay on track, discussing your core responsibilities or “mission critical” accomplishments.
- Don’t wait until the last minute to start writing your memo! If you do, you will not be able to put your best foot forward. •

Words and phrases to consider using in preparing your self-evaluation:

- “This has been a year of phenomenal growth for my practice because of X.”**
- “The projects I’ve taken on have greatly increased my ability to do the following: ____.”**
- “I have expanded my practice in the following ways: X, Y, and Z.”**
- “I have supplemented my experience by doing the following: ____.”**
- “I took on a lead role in this trial/transaction by handling the following: ____.”**
- “I have worked with a large number of associates, partners, and staff to ____.”**
- “My assignments are completed in a timely and efficient manner.”**
- “I work independently.”**
- “I seek out assignments from other offices and departments.”**
- “I have immersed myself in ____.”**
- “On this transaction/case, I have effectively handled ____.”**
- “I took on a key role when I did ____.”**
- “I have successfully completed a ____.”**
- “I have been very active in ____.”**

The Fine Art of Asking for What You Deserve

Susan Smith • Selloquent LLC

American essayist, poet, and popular philosopher, Ralph Waldo Emerson said, “Whatever you put out into the universe will come back to you ten-fold.” As mothers, friends, partners and providers, we are accustomed to giving. We have become accustomed to getting something in return, however, only when the time is right, when it’s our turn, or when the stars align. And we expect these results without asking for them. That is why it is important to remember that Emerson also said that “those who cannot tell what they desire or expect, still sigh and struggle with indefinite thoughts and vast wishes.” Our task then, is to get comfortable asking for what we want in return for our efforts.

Historically, the job of an attorney was to practice law. There was not an expectation that each individual practitioner would grow business. Today, however, whether starting your own firm, working your way toward partner or filling a leadership role, business development is a prized and expected skill. Enhancing your ability to ask for referrals is one easy way to meet these expectations while distinguishing yourself as a prized attorney.

You will be surprised how little people expect when they genuinely want to help.

So why aren’t all of us asking for referrals? There are a handful of common beliefs that prevent attorneys from making such a request. Identifying the reasons why you are uncomfortable asking for a referral will help you rid yourself of some common misconceptions that may be preventing you from growing your practice.

1. If I do a good job, people will refer me. In the back of our minds, most of us think, “If I work hard and I do a good job, people will eventually refer me to others.” Now think about the pace of your day. How much time do you spend thinking about who you can refer to whom? If you are like most people, you are far too busy to devote much time to such exercises unless specifically asked. Therefore, if you want people to refer you, you must take the time to ask them to do so, and then you must schedule time to gracefully stay top of mind.

2. If I ask for business, people will think I’m desperate. Most people, attorneys included, think of asking for business as a sales-y activity that makes them seem desperate or pushy. Some may think it is incompatible with the practice of law. That belief is limiting. Think about how you get things done in other areas of life: you ask others around you for input and they are happy to assist. Requests make the world go round. The same holds true in your career: you’ve done a good job and there are many people who will help you, but only if you tell them how.

3. I can’t talk to my clients about other business. Some attorneys believe their clients don’t want to know they have other clients to tend to. Think of the businesses your clients are in. No one will be in business long if they only have one client. People understand that; do not let it stop you from asking, “Do you know anyone else who could benefit from my services?”

There are many people who will help you, but only if you tell them how.

4. Getting means I have to give. Exchange of favors and referrals is rarely a one-for-one occurrence, i.e., “You give me a green marble and I’ll give you a red marble.” We give in one place in life and we get back in another. You will be surprised how little people expect when they genuinely want to help.

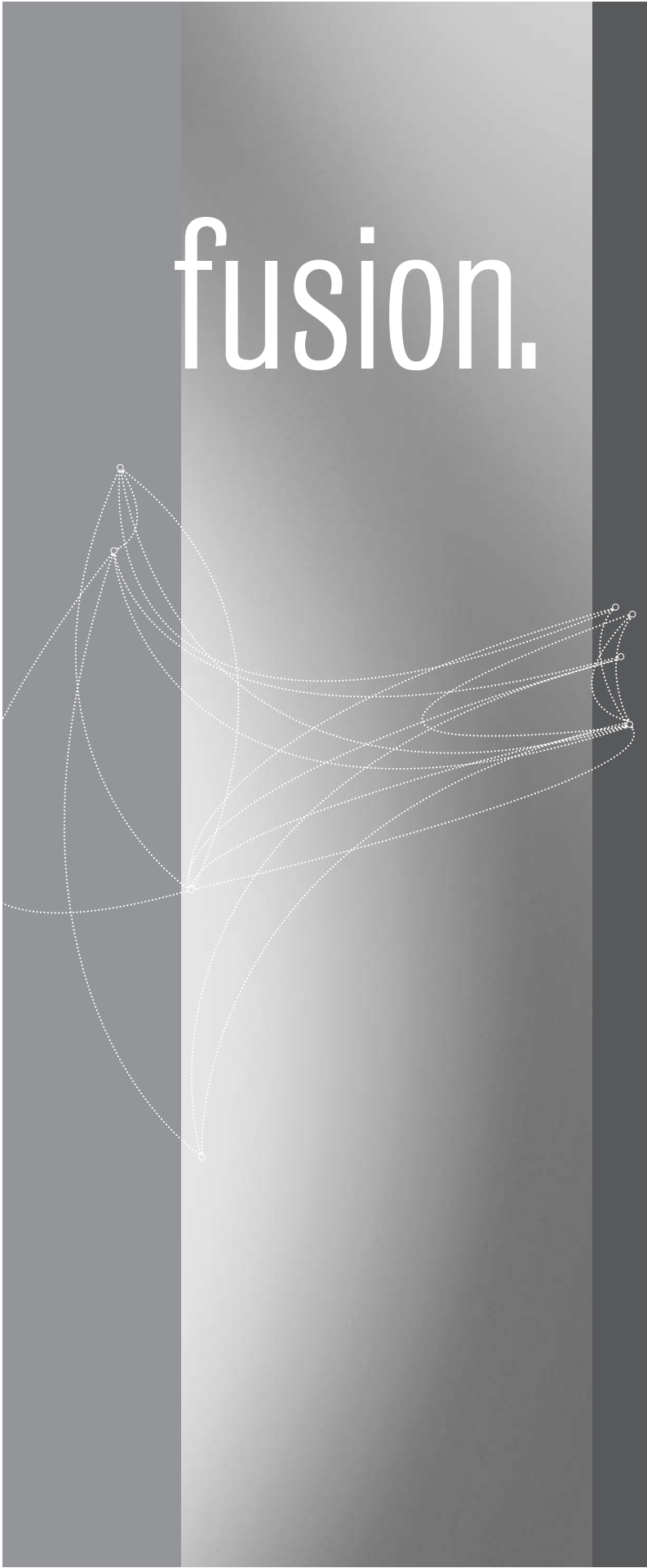
Remember that change does not happen over night. The beliefs we’ve discussed may have been with you for twenty, thirty years or more. Don’t expect to wake up tomorrow with your old patterns of thinking magically transformed. Take the time to set realistic goals that show progress over a specific period of time, and schedule checkpoints to review your results. For example, “Each month I will ask for four referrals.” “Next Tuesday, at 3 PM, I will write down what a good referral is for me.” Find a likeminded person who knows your goal and will hold you accountable for its completion. Like developing referral relationships, changing behaviors and learning new skills take time and planning. Start today. Go out and ask for what you deserve. •

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How to Win the War for Talent

Implementing a Flexible Work Program That Works

Michael E. Nannes • Dickstein Shapiro, LLP

Editor's Note: On November 3, 2006, the New Jersey Women Lawyers Association held a program in its "Best Practice Series" at Rutgers Law School in Newark. At that conference, Michael E. Nannes, chairman of Dickstein Shapiro, LLP, delivered remarks on the topic of dealing with obstacles that occur in the administration of balanced hours programs. Excerpts follow.

Our firm has a reputation in Washington for being family-friendly and valuing family matters, and headhunters know it. One of the reasons for this is because we have allowed the firm to consider alternative strategies that support the retention of our attorneys. One of our more esteemed and very important lateral partner candidates came to us because her firm was not tolerant of such a policy. She felt she could work less than full-time, perhaps, but she was going to have to be an apologist for working less than full-time. The headhunter said if you want to go to a place that's accommodating, you ought to go talk to Dickstein. She came in part-time, was admitted to partner, and has been with us for a number of years.

You have to have a flexible work schedule policy. You might want two days off or a day off when your children are young, given your childcare arrangements. You might want a very different situation when your kids are teenagers. My wife and I are firmly of the belief that you want to be home between three and five o'clock in the afternoon, when your middle school and high school kids get home, because they'll open up to you if they were slighted on the school bus or something went wrong on the playground. They shut down by six o'clock. You have to have a flexible policy that understands those kinds of things.

Another fallacy is the notion that part-time people are not committed. That's hogwash. You may be paying 80 percent of their time for 80 percent of their schedule, but you're getting a hundred percent of their mental commitment.

If you have flexibility in a law firm, it helps. I once received a message from one of our associates by e-mail. She had a child who was very premature, and was on bed rest for a while; the child weighed less than three pounds. Everything turned out well. She sent me a message about how her practice leader had been supportive, how others had taken her cases and said, "Get out of here; we will take care of it for you." Human Resources people helped her on her medical requirements and conditions. I was very pleased with the thank-you note, but as I told her, I could not take the credit because I had no involvement in her particular case; what I found most gratifying was, that our organization knew the right thing to do.

I try to go once or twice a year into law school campuses to conduct interviews myself, to get the pulse of the law schools. When I mention our policies to men in a conversation, a lot of men are not necessarily thinking that they want to take advantage of the policies, but it tells them a lot about where the firm's head is at and what kind of a place it is, and they want to be in a place that has a sense of its values. Typically, when we bring people back to the office, folks have reviewed our website and know our policies, and I believe a lot of people are there in the first place because they've learned about our policies.

*There will be resentment in some places.
Be prepared to deal with it.*

Part-time Advisor

As to our alternative work schedule policy, one of the key features is to establish a part-time advisor in the organization. Someone contemplating a part-time arrangement, managed care, alternative schedule, however you want to name it, doesn't want to come to the Managing Partner first thing and say, "I am thinking about doing this," because there is the stigma that people are worried about. We can try to disabuse them of that notion all we want, but it's going to be in their consciousness. So let them talk to somebody experienced to understand the implications and the complications of such a policy. That advisor will talk to them at the beginning.

Additionally, that advisor is responsible for managing schedule creep. Interestingly, we have found in our firm that a lot of people like to declare a schedule that is less than the amount of time that they actually want to work, because they want to feel good when they're exceeding. If they pick a 60 percent schedule and want to work a 70 percent schedule, we do two things. First, we bonus them, so we true up their salary at the end of the year. They feel good about it. Second, our advisor also talks to that person during the course of the year. They track time, not because you're too low, but because you're too high. The advisor asks, "Is this okay for you?" and the vast majority of time they say, "This is fine, that's what I wanted," but at least they can have that discussion, not with the management person breathing down their neck, but with a person who is their advisor. That advisor sometimes interfaces with me, but the associates know that their dialogue with this advisor is entirely confidential.

Our part-time advisor also interfaces with partners. Sometimes the associates think they're getting assignments layered on them too heavily, and it's hard for that first- or second-year to go to the partner and say, "I don't want to work so much." We send our advisor into the lion's den to negotiate that and get it sorted out, and to find out whether it's a temporary or long-term situation that requires another adjustment. Often, we find out that the case will be over shortly, and when the advisor goes back to the person, they're okay with this arrangement as long as it's not intended to be a fundamental change in how they're working.

Stay Connected

We really encourage people to participate in a law firm, not to just come in and do their billable hours. I think there is the guilt factor associated with a part-time schedule, that causes folks to want to work very hard all the time on client matters and then get out. We tell people, please back off a little bit, be part of the fabric of the law firm, be on hiring committees, be on other committees. I think the key factor for a law firm retaining people, and it's not just from the associate's perspective, but from management's perspective, is for people to stay connected to the law firm. If they just see it as a place to punch a clock and get paid, then when a little more money comes along, they'll go elsewhere. I want them to like our place, to be heard, and to help, frankly, introduce other people to the firm.

Combating the Fallacies

Two other points about some of the fallacies, and some of the difficulties, candidly, about the alternative work schedule process. Among the fallacies is the "floodgates" argument that was thrown about as we started our alternative work schedule arrangements in the late nineties—that everybody was going to go do this.

But the floodgates don't open. You will have a few people who opt for alternative schedules, and it's good, and then some people will come back full-time. It's an incredible opportunity to attract talented attorneys.

Another fallacy is the notion that part-time people are not committed. That's hogwash. You may be paying 80 percent of their time for 80 percent of their schedule, but you're getting one hundred percent of their mental commitment. My view is that people who are on a full-time schedule pivot off of a five-day workweek. Someone who is on an 80-percent schedule pivots off of a four-day workweek, but as an economic matter for our law firm, on that fifth day of the week, the lawyer—in my experience more often than not a mother—is getting all the dental appointments taken care of, getting all of the other social overhead taken care of, and we get an incredibly efficient worker the other four days.

The Business Case

As to how to make some of this work, we just had a presentation the other day from two of our partners. We have offices in Los Angeles and New York, and we have women who are managing partners in both of these branch offices. One of their important

theories is that it is the bottom line that matters in business; make the business case for why the policies makes sense. The absenteeism of people on part-time schedules is far less than people who are on full-time schedules, because they can adjust their schedules. Maybe Thursday is supposed to be their day off, and sometimes they have to shift days, but they're there. You do need flexibility if you're in one of those arrangements. You have to recognize that.

But to make the economic case, I think a lot of points can be made. Clients do not mind. A lot of people on the inside, more and more of the buying power of the legal services, are women. They would much rather have you with your child, where they can likely BlackBerry you, than in a deposition for another client. You are more accessible part-time, not less. Where is the attorney who spends 100 percent of his or her time on one client, where that client does not have other people working on that matter? If you are doing 40 percent of your time for the client, they don't care where you are otherwise. I think that fallacy deserves some debunking as well.

One of the problems in breaking through the barriers was a generation of people older than 55 where the men worked and the women did not.

It Takes a Village

Difficulties: First, I think any part-time arrangement requires a village. It requires collaboration, and if you are looking for such an arrangement, make sure that your support systems are in place, that you can be flexible, and that you are realistic about what you can accomplish. There are very good ways to do it all or most of it all.

Don't always look for the negative side of things. Case in point: we had a situation where someone thought the arrangement wasn't working well, whereas I thought we were doing everything possible to make it work—uninformed, I believed -- others thought the firm was not sufficiently supportive. When we drilled down, we learned it was a woman who was involved in a transaction, and she was going through a busy time in her work cycle. The year was going to come out okay. It turned out her husband was very unsupportive of the situation. He was from a culture, she said, that did not quite appreciate that perhaps the woman could make more money than the husband, or could work harder than the husband, and he was putting incredible stresses on her. I wanted to go out and blast that out for people who were saying, "Why isn't it working for so-and-so." But I did not. We took the shrapnel. We respected her dignity. My advice to the part-timer: Make sure you have your systems and your structures in place so you can do a very good job. You'll make some choices. You have to be flexible.

There will be resentment in some places. Be prepared to deal with it. Our policies are gender neutral in terms of alternative

(continued on page 25)

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My View of Women Lawyers

Donald de Brier • Occidental Petroleum Corporation

Editor's Note: On Friday, August 10, 2007, NAWL held a cocktail reception at the Rincon Center in San Francisco where Donald P. de Brier, Executive Vice President, General Counsel and Secretary of Occidental Petroleum Corporation, was presented with NAWL's President's Award. Following is an excerpt from the remarks Mr. de Brier made in accepting the award.

This is a wonderful award, from an awesome organization. I cannot thank you enough for the great honor. I will continue to endeavor to live up to your high expectations.

Let me say a few words about my view of women lawyers. By their very nature, women have many talents which make them terrific lawyers. They are smart, quick, articulate, tough minded, creative, good listeners, courageous, witty, very independent, with high ethical standards. They have all the "right stuff." And, they are coming on like gangbusters.

In the 1960's, 3% of U.S. attorneys were women;
They now represent 30%.

In the 1960's, 4% of U.S. law students were women;
Today, almost 50%.

But, here is the sticking point. The American economy is still a huge military-industrial complex, of which the legal profession is just a small cog. Most business organizations, including most law firms, have a management structure designed on a military model. A Boy's Club, in a way.

- Command and control
- An appointed head person (Head Man)
- Quick decisions—right or wrong
- Everyone follows orders
- Shoot first, ask questions later
- First and foremost, loyalty and dedication to the organization
- No questions asked
- "Get on the next plane to wherever, whenever"
- "I don't care if you have to stay here all night—get it done!"
- "Everyone has to work all weekend"

Does that sound familiar? Think...

- The US Army?
- The USC Football team?
- Every ship in the fleet?
- The Marine Corps?
- Your company?
- Your firm?!!

Most guys love this style. Either it's in their genes, or they learned it in elementary school. It's a "guy" mystique. It's a "guy" thing. As the Brits say, "It should be learned on the playing fields of Eton and Harrow."

I am a retired Navy Officer, so it is a tradition that was drilled into my soul. At British Petroleum, where I worked for 13 years, everything was run like the British Navy.

The legal profession itself has long and strong masculine roots. Our system evolved from two deep traditions – Canon Law, which we now call "equity," and the Common Law court system of England, which we now call "law." All Canon lawyers were men, of course, and even the English Courts were an exclusive domain of men. Both traditions are over 1,000 years old!

But, this model can be a hard sell to women. Women are often collaborative. They like to discuss decisions, and would often prefer to make the right decision, rather than the fast decision. They often prefer different leaders for different problems. And they typically always feel that family needs and considerations must be first and foremost. I also subscribe to these values.

As I see it, we have an irresistible force (the influx of outstanding women lawyers) slamming into an immovable object (the military industrial complex – the consummate Boys' Club).

There are lots of historical models to show us how that will probably turn out...

- The action of ocean waves on the beach
- The early Christian Movement in Ancient Rome

The irresistible force takes a whipping, but eventually the immovable object does move.

And so we are seeing this movement. Law firms and companies are becoming more family friendly. As armies of women pour into the workplace, the boys are moving aside – and many of them are even starting to enjoy it!

This is a very exciting time to be a woman lawyer. The legal profession is opening up to you. You are having a tremendous impact on all areas of the practice. You have made enormous improvements in the profession.

It is also evident that the irresistible force has paid a high price. Many outstanding women lawyers have burned out and abandoned the profession. It has been a great misfortune to lose this pool of talent. But it is also gratifying that so many of you have hung in there, and succeeded so brilliantly.

So, congratulations to all of you, for all that you have accomplished over the years, and thank you! •

DeSilva v. DeSilva: Equitable Distribution, Spousal Abuse, and New York's Debate Over Fault Divorce

Julia Busetti

NAWL has established the annual Selma Moidel Smith Law Student Writing Competition to encourage and reward original law student writing on issues concerning women and the law. This is the second year of the competition and we were gratified to receive many superb entries. The winning essay is by Julia Busetti, a third year law student and a Haywood Burns Fellow at the City University of New York School of Law.

Selma Moidel Smith, in whose honor the Competition is named, has been an active member of NAWL since 1944. Smith is the author of NAWL's Centennial History (1999), and recently received NAWL's Lifetime of Service Award. She is a past Western Region Director, State Delegate from California, and chair of numerous NAWL committees. Selma served two terms as president of the Women Lawyers Association of Los Angeles, and was recently named their first and only Honorary Life Member. She was also president of the Los Angeles Business Women's Council. In the ABA Senior Lawyers Division, Selma was appointed the chair of the Editorial Board of Experience magazine (the first woman to hold that position) and was elected to the governing Council for four years, also serving as chair of several committees and as NAWL's Liaison to the Division. Selma is a member of the Board of Directors of the California Supreme Court Historical Society. She was president, and also a Charter Member, of the National Board of the Medical College of Pennsylvania, which recently honored her at the Board's 50th anniversary.

Selma's career as a general civil practitioner and litigator are recognized in the first and subsequent editions of Who's Who in American Law and Who's Who of American Women, and also in Who's Who in America, among others. Her articles on the history of women lawyers have been published in the Women Lawyers Journal and Experience magazine, and have been posted online by the Stanford Women's Legal History Biography Project (together with her own biography). Her original research includes the discovery of the first two women members of the ABA (Mary Grossman and Mary Lathrop), both of whom were vice presidents of NAWL.

Selma is also a composer. Many of her 100 piano and instrumental works have been performed by orchestras and at the National Museum of Women in the Arts. She is listed in the International Encyclopedia of Women Composers.

Introduction

In the stunning 2006 decision *DeSilva v. DeSilva*, New York Supreme Court Justice Jacqueline Silbermann awarded 100% of a divorcing couple's marital assets to a battered wife.¹ That decision came six years after Justice Silbermann—the Deputy Chief Administrative Judge for Matrimonial Matters and a member of the Statewide Family Violence Task Force²—similarly awarded over 95% of another couple's assets to an abused spouse in *Havell v. Islam*.³ Advocates for battered women have hailed the precedent created by these decisions as a groundbreaking development.⁴

The legal community's reaction to *DeSilva* focused on the expansion of the circumstances in which the court may consider domestic violence in equitable distribution proceedings.⁵ Although the general rule in New York is that marital fault is not factored into the distribution of marital property, Justice Silbermann boosted awards to abused spouses in *Havell* and *DeSilva* through an exception that allows consideration of "egregious conduct."⁶ In *DeSilva*, Justice Silbermann faithfully followed the rule that she had announced in *Havell*, but effectively expanded the precedent by applying it to a comparatively less egregious set of facts.

This expansion powerfully and appropriately sent the message that any level of spousal abuse is intolerable. However, excitement about the decision should be tempered with caution. The expansion and the broad judicial discretion implicit in the new standard may make the decision vulnerable on appeal.

Additionally, the decision may have unintended, unfavorable consequences for battered women or other women in New York. Despite these dangers, the *DeSilva* decision is a step in the right direction and an opportunity for advocates to consider the role that spousal abuse—and fault generally—should play in the distribution of marital property.

"Marital property" is a relatively new concept, born out of the equitable distribution laws of the 1970s and 1980s.⁷ Traditionally, the only factor considered when distributing property was who held legal title, rendering contributions by the other spouse irrelevant.⁸ The common law title system tended to favor the husband as the primary provider and wage earner, particularly in the era when married women could not hold property.⁹ Equitable distribution systems, on the other hand, recognize the reality that "bare legal title to property acquired...by the spouses during marriage often does not correspond to their real rights in such property."¹⁰ Therefore, a court can consider a number of factors relating to both spouses' economic contributions and needs,¹¹ with the goal of effecting "a fair sharing of the benefits and burdens of the marriage measurable in dollars."¹² The courts in many states, however, may not consider traditional fault factors because this is seen as a punitive measure at odds with the goals of no-fault divorce.¹³ Many states do, though, consider economic fault because it is relevant to the parties' contributions to the marital property.¹⁴

The equitable distribution cases discussed below are set in the unique context of New York's fault-based divorce laws. New York is the only state that requires fault grounds for divorce,¹⁵ requiring the spouse seeking the divorce to prove one of the following: (1) cruel and inhuman treatment, (2) abandonment, (3) confinement in prison, or (4) adultery.¹⁶ It is also possible to obtain a divorce if both parties enter into a separation agreement followed by a year-long separation period.¹⁷ In other (no-fault) states, spouses can obtain unilateral divorces for reasons like "incompatibility."¹⁸ In February 2006, a commission appointed by New York's Chief Judge Judith Kaye released a report calling for a move to no-fault divorce.¹⁹ Among the criticisms Chief Judge Kaye raised against fault-based divorce is the lack of efficiency, saying, "Divorce takes much too long and costs much too much—too much money, too much agony, too hard on the children."²⁰ Others, however, criticize no-fault systems for weakening social sanctions against divorce.²¹ Not surprisingly, the New York State Catholic Conference is among those opposing the change.²²

Advocates for women's rights in New York, meanwhile, have come down on both sides of the issue. Proponents of a switch to no-fault divorce, such as the Women's Bar Association of the State of New York, argue that the fault system is too onerous for battered women and keeps them in abusive marriages.²³ Opponents of no-fault divorce, like the New York State chapter of the National Organization of Women, argue that the fault system gives an innocent spouse a bargaining chip in negotiating a settlement agreement and places greater value on the non-economic contributions of homemakers.²⁴ Although a separate statute regulates the equitable distribution system, the debate over fault divorce in New York underpins this discussion about property distribution.

DeSilva v. DeSilva

Kenrick and Kristin DeSilva were married for 10 years and had two children.²⁵ At trial, Mrs. DeSilva testified to a history of domestic abuse by her husband, particularly in the last two years of the marriage.²⁶ The abuse, fueled by alcohol, was both verbal and physical in nature: Mr. DeSilva called Mrs. DeSilva obscene names in front of their children, threw a packed duffle bag at her pregnant stomach, spit in her face, and threw her to the ground.²⁷ The court noted that Mr. DeSilva's in-court behavior was consistent with Mrs. DeSilva's testimony.²⁸ Additionally, he had been arrested on several occasions, including once for an altercation he had with Mrs. DeSilva's family at her father's birthday party.²⁹

In her consideration of the factors required by the New York Domestic Relations Law,³⁰ Justice Silberman found that Mrs. DeSilva earned over twice as much as Mr. DeSilva and that her future financial circumstances were likely to be comparatively better, in light of Mr. DeSilva's difficulty holding down a job.³¹ These factors normally would tend to favor Mr. DeSilva in the distribution of property.³² However, Justice Silberman also took note of "a pattern of conduct involving both physical and verbal abuse which rises to the level of egregious fault."³³ Although abuse is not one of the statutory factors, Justice Silberman cited the catchall provision in the statute allowing for consideration of

"any other factor which the court shall expressly find to be just and proper."³⁴ For the proposition that a pattern of abuse is a just and proper factor, Justice Silberman cited *Havell v. Islam*—the 2001 case in which she awarded 95% of a couple's marital assets to an abused spouse.³⁵ After quoting at length the reasoning from *Havell*, Justice Silberman concluded that the abuse in *DeSilva* "warrant[ed] an unequal distribution of marital assets" and awarded Mrs. DeSilva all of the marital assets and less than a tenth of the debt.³⁶

Legal Background and Precedent

Havell v. Islam, the landmark decision that *DeSilva* expanded, also made headlines, largely due to the gruesome facts of the case and the large sum of money involved. Upon dissolution of that twenty-one year marriage, the marital assets totaled \$13 million and included a Manhattan brownstone and two country houses.³⁷ Theresa Havell alleged that her husband, Aftab Islam, had inflicted verbal and physical abuse throughout their marriage, including vulgar and obscene language, threats and insults, violence, grabbing and twisting Ms. Havell's arm, and beating their children.³⁸ The abuse finally culminated in a horrific assault occurring several days after Ms. Havell announced her intent to seek a divorce.³⁹ At 5 a.m., Mr. Islam entered his wife's bedroom and used a barbell to beat her on the head, face, neck, and hands.⁴⁰ When three of their children came into the room, Mr. Islam told his daughter that he had killed her mother.⁴¹ Ms. Havell survived the attack but suffered extensive injuries, including broken teeth and a broken nose and jaw, which required many hours of surgery and left her disfigured.⁴² Other lasting effects included pain, dizziness, headaches, nightmares, sleeplessness, and post-traumatic stress disorder.⁴³ Mr. Islam was indicted for attempted murder but pled guilty to first-degree assault and was sentenced to eight years and three months in prison.⁴⁴

Shortly after New York implemented equitable distribution in 1980, the Court of Appeals held that consideration of marital misconduct was inconsistent with the premise of the new statute—that "a marriage is in part an economic partnership and upon its dissolution the parties are entitled to a fair share of the marital estate."⁴⁵ However, the Appellate Division indicated in *Blickstein v. Blickstein* that an exception could be made in extraordinary cases where the "misconduct is so egregious or uncivilized as to bespeak of a blatant disregard of the marital relationship—misconduct that 'shocks the conscience' of the court."⁴⁶ In subsequent cases, a man's attempt to hire a hit man to kill his wife satisfied this egregious conduct standard.⁴⁷ However, another man's physical and verbal abuse, including threats to kill his wife and to commit arson, did not.⁴⁸ Likewise, "verbal harassment, threats, and several acts of minor domestic violence" did not shock the conscience of the court.⁴⁹

Based on this precedent, Mr. Islam moved to exclude evidence of any abusive behavior prior to the final assault, arguing that it did not meet the egregious conduct standard.⁵⁰ Justice Silberman conceded that the case law had previously reserved the determination of egregious conduct for serious violent felonies, such as attempted murder or repeated physical abuse resulting in

broken bones and permanent injury, rather than verbal harassment and threats.⁵¹ Nevertheless, Justice Silbermann denied Mr. Islam's motion to exclude the evidence and instead expanded the egregious conduct standard to include a pattern of physical and emotional abuse during a lengthy marriage.⁵² She based this decision on two grounds: (1) the practice in other states (of which fifteen consider marital fault in property distribution), and (2) the evidence of lasting physical and psychological harm suffered by battered women and their children, including Battered Women's Syndrome.⁵³ Furthermore, Justice Silbermann invoked the court's "obligation...to implement the purpose of law, which is to do justice, and not to mechanically apply established principles of law, even when they compel an absurd result."⁵⁴

Ultimately, Justice Silbermann awarded 95% of the substantial marital assets to Ms. Havell.⁵⁵ She primarily considered two statutory factors in distributing the property: (1) Ms. Havell's poor health because of the assault and (2) Ms. Havell's superior financial contributions to the marriage along with Mr. Islam's comparative lack of contribution to managing the household.⁵⁶ Justice Silbermann also described Mr. Islam's marital fault at length—both the assault and the prior abuse.⁵⁷ However, in the end, Justice Silbermann based the decision to reduce Mr. Islam's award solely on his attempted murder of Ms. Havell, which itself was sufficient to constitute egregious conduct.⁵⁸

The Appellate Division affirmed *Havell*, holding that Justice Silbermann's consideration of the statutory factors and of the attempted murder fell within the proper scope of the court's "broad discretion in determining equitable distribution."⁵⁹ The Appellate Division agreed with the trial court's rejection of precedent suggesting that egregious conduct must have an economic impact, instead characterizing egregious conduct as that which offends an important social value, such as life or bodily integrity.⁶⁰ The court likened Mr. Islam's conduct to other cases in which a spouse who attempted murder was denied a share of the marital property.⁶¹ The Appellate Division made no mention of the earlier pattern of abuse or Justice Silbermann's admission of that evidence.

Expanding the Havell Standard

If *DeSilva* indeed expands the standard set out in *Havell*, it is not in the articulation of the standard but in its application. Justice Silbermann's reasoning in *DeSilva* was necessarily consistent with precedent, since she simply repeated her justifications from *Havell* for admitting evidence of a pattern of physical and emotional abuse.⁶² However, in its application, *DeSilva* is significant in several ways.

First, the outcome in *DeSilva*, unlike that in *Havell*, actually depended on the expanded egregious conduct standard. Perhaps strategically, Justice Silbermann made the groundbreaking announcement that a pattern of physical and emotional abuse can be egregious in a case where a horrific assault already supported unequal distribution.⁶³ By contrast, in *DeSilva*, where there was no comparable assault, the reduction in assets distributed to Mr. DeSilva depended upon *Havell's* expansion of the standard to include "verbal harassment, threats and...acts of minor domestic violence."⁶⁴

Second, the pattern of abuse in *Havell*, even absent the final assault, was more severe than that in *DeSilva*. The marriage in *DeSilva* lasted for ten years, with the judicial focus on abuse occurring in the last two years of the marriage, whereas in *Havell*, the marriage lasted for twenty-one years with abusive behavior throughout. Additionally, in *DeSilva* the abuse (at least as detailed in the opinion) was of a less physical nature than in *Havell*. Justice Silbermann's application of the *Havell* standard to these facts without laying out the criteria for when a pattern of abuse becomes egregious—or what made this one so—might be read as a zero tolerance approach to spousal abuse. *DeSilva* is open to the interpretation that any repeated abuse within a marriage, whether verbal or physical, amounts to egregious conduct.

Finally, and consistent with the previous point, Justice Silbermann sent a bold message with the award of 100% of assets to Mrs. DeSilva. She did not discuss the calculation of the award, suggesting that any egregious conduct could result in a complete forfeiture of interest in marital assets. This total denial of assets, particularly when tied to less shocking facts than *Havell*, suggests that *DeSilva* is a significant expansion of the egregious conduct standard.

Due to the factual distinctions between the two cases, it is not a foregone conclusion that *DeSilva* would be upheld if appealed. In *Havell*, the Appellate Division only ruled on whether the trial court erred in considering the attempted murder and in its weighing of the other factors. The appeals court compared *Havell* to other cases where attempted murder resulted in unequal distribution.⁶⁵ However, the court made no mention of the admissibility of the pattern of abuse. Had the Appellate Division been eager to reinforce Justice Silbermann's decision, it might have taken that opportunity even though the issue was not directly before the court.

In addition, although the Appellate Division exhibited deference to the trial court's wide discretion in *Havell*, it is possible that *DeSilva* would not fare as well. The extraordinary circumstances in *Havell* may have distracted from the fact that Justice Silbermann's reasoning for expanding the standard was cursory. Although she considered the practices in other states—fifteen consider fault in property distribution and there is precedent in Missouri and New Hampshire for considering physical abuse—Justice Silbermann did not explicitly draw any conclusions about how this distribution of state practices supported her decision.⁶⁶ She also briefly noted the ill effects on women and children of domestic abuse, but she made no explicit connection to marital property.⁶⁷ Justice Silbermann could have sought to buttress her decision with findings about the economic impact of domestic violence and its role in keeping women in abusive relationships. Perhaps her intention was to say that these harms are so entrenched in our common experiences that there is no need to document them. Whatever her motives, Justice Silbermann expanded the standard without giving a sense of its limits or proper application, thus carving out a wide area of discretion in *Havell*. If the Appellate Division viewed that discretion as a necessary instrument to deal with *Havell's* extraordinary facts, then *DeSilva* may receive more scrutiny.



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The Impact of Havell and DeSilva

Havell and *DeSilva* each represent the victory of a battered woman in court—receiving financial compensation for her suffering and the social condemnation of her batterer. Furthermore, the decisions set New York apart from other states in asserting that domestic abuse is not a normal or acceptable aspect of marriage.⁶⁸ However, the decisions should also raise some concerns for women, as well as questions regarding goals for the future of divorce and equitable distribution laws in New York.

There is a potential danger in infusing the determination of egregious conduct with so much judicial discretion. Justice Silberman seems to be using this discretion to advance an agenda of punishing and hopefully deterring spousal abuse. However, because she has not delineated the limits of the standard, the exception is available to other judges with different or even conflicting agendas who might use the egregious conduct standard to punish other types of fault. The problem with the standard being applied to considerations of fault that fall outside the scope of domestic abuse is that “[t]he introduction of misconduct or marital fault in divorce proceedings has traditionally appealed to those individuals viewing divorce in moralistic terms. Proponents of the moralistic approach believe that any economic losses resulting from the breakup of a marriage should fall upon those morally responsible.”⁶⁹ The burden of a moralistic approach could fall disproportionately upon women, particularly those who do not fit a traditional notion of what makes a “good wife.” This danger is not wholly speculative. Custody disputes are one example of a way in which women have suffered when judges made moral judgments about their lifestyles.⁷⁰ Where statutes giving presumptive custody to the primary caretaker contain overly vague exceptions for parental unfitness, courts have used their discretion to deem mothers “unfit” based on “their sexual conduct (usually characterized as ‘sexual misconduct’), their survival of domestic abuse, or their paucity of economic resources, without establishing any connection between these factors and their fitness as parents.”⁷¹

In Georgia—whose fault-based alimony laws Justice Silberman looked to for guidance in *Havell*⁷²—such moral considerations are the norm. There, temporary alimony may be denied to a wife who is guilty of abandonment, adultery, pregnancy by another man, or cruelty.⁷³ Likewise, under the *DeSilva* precedent, adultery could potentially be considered “emotional abuse” for purposes of property distribution. Justice Silberman referred to the fact that under the pre-*Havell* standard (and presumably unjustly), “a wife’s open adultery, physical abuse..., verbal abuse, and wounding of her husband with a knife” was not egregious conduct.⁷⁴ Justice Silberman did not clarify whether, under the expanded exception, the adultery might be egregious absent abuse, or in combination with verbal abuse. Ultimately, the danger is that this precedent could have the unintended consequence of introducing fault wholesale into equitable distribution. Although that might not be an immediate danger, advocates should take advantage of the momentum from these decisions to lobby for inclusion of domestic violence as an enumerated factor, thus precluding future judges from deciding a legislative issue.

DeSilva and *Havell* could have an impact on the debate over the fault-based divorce system in New York. These decisions could make it easier to transition to no-fault divorce while retaining some benefits of the fault system. Although studies have shown that no-fault divorce leads to declines in domestic violence and suicide,⁷⁵ some women’s rights advocates continue to see advantages in fault-based divorce. For instance, one purported advantage of fault divorce is that it can equalize gendered power dynamics by providing women, particularly those who are economically dependent, with a bargaining chip.⁷⁶ The president of the New York State chapter of the National Organization of Women explained that fault divorce provides an “incentive for the moneyed spouse (who is usually the husband) to make a settlement.”⁷⁷ Under a unilateral no-fault system, “[i]nstead of negotiating with a dependent spouse—whose only leverage for avoiding an impoverished post-divorce life for herself and her children may be her assent, or lack of it, to divorce—the husband can simply go to court and obtain an uncontested divorce.”⁷⁸ Now, after *Havell* and *DeSilva*, unilateral no-fault divorce could be instituted and abused spouses (although not other dependent spouses) would still have a bargaining chip at the property distribution stage. Additionally, although no-fault systems typically disadvantage women overall in property distribution,⁷⁹ the consideration of abuse could have some mitigating effect for the most vulnerable women.

Alternatively, perhaps there is an argument in these two decisions for maintaining the current fault-based system. Maybe it is no coincidence that New York is a leader in considering spousal abuse in property distribution, as well as an outlier in maintaining fault-based grounds. In no-fault states, where evidence of fault is not presented at the dissolution stage, “domestic abuse (and other grounds) may be treated as tangential and therefore irrelevant to the allocation of marital resources.”⁸⁰ Justice Silberman acknowledged that part of the policy militating against considering fault in equitable distribution is to avoid “involv[ing] the courts in time-consuming procedural maneuvers relating to collateral issues.”⁸¹ If New York switches to no-fault divorce, this efficiency argument could become more compelling, not to mention the argument that consideration of fault in equitable distribution is incompatible with the goals of no-fault divorce.⁸² No-fault divorce, therefore, might give abused spouses a way out of the marriage but make the financial compensation of *Havell* and *DeSilva* impossible. In California—the leader in the no-fault revolution and a community property jurisdiction—a person can commit spousal murder without any effect on property distribution.⁸³ Justice Silberman’s decisions may be proof that fault divorce has led to a more just system in New York, and may be a reason to keep or modify fault divorce rather than abolishing it.

Conclusion

In *DeSilva v. DeSilva*, Justice Silberman expanded the exception that allows fault to be considered in equitable distribution when it rises to the level of “egregious conduct.” Although she did not formally expand the standard, she boldly applied the standard to a new factual scenario. The resulting rule appears to be that,

in New York, a pattern of physical or emotional abuse may constitute egregious marital fault and result in the award of up to 100% of the marital assets to the abused spouse. Spousal abuse no longer needs to cause serious physical injury to shock the conscience of the New York courts.

DeSilva has been rightly greeted with excitement by advocates for battered women, and the decision has the potential to provide ammunition for those on both sides of the hotly contested debate over no-fault divorce. However, the limits of the doctrine need to be ascertained in order to prevent the exercise of judicial discretion in a manner that may be hostile toward women. The breadth of the decision may also lead to problems for *DeSilva* on appeal. If it is upheld, however, New York could become a vanguard in punishing abusive spouses financially. Advocates should protect the importance of the decision by codifying it and should consider how this protection for battered spouses will be affected if New York does eventually make the switch to no-fault divorce.

¹ 2006 N.Y. Misc. LEXIS 2489, at *1 (N.Y. Sup. Ct. Aug. 18, 2006).

² New York State Unified Court System, Judicial Directory, http://207.29.128.48/judge/JudgeDetail?judge_cars_id=7016850 (last visited July 8, 2007).

³ N.Y. L.J., July 30, 2001, at 25, col. 2 (N.Y. Sup. Ct.), *aff'd* 301 A.D.2d 339 (N.Y. App. Div. 2002).

⁴ See, e.g., Dakota Smith, *U.S. Rights: Equitable Distribution Upheld in Wife-Beating Case*, IPS-Inter Press Service, Feb. 3, 2003, available at <http://www.womensenews.org/article.cfm/dyn/aid/1203/context/archive>.

⁵ E.g., Mark Fass, *Judge Awards Most Assets to Abused Wife*, N.Y. L. J., August 31, 2006, at 1.

⁶ *Havell*, N.Y. L.J., July 30, 2001, at 25, col. 2; *DeSilva*, 2006 N.Y. Misc. LEXIS 2489, at *7.

⁷ Sebastian Weiss, Note, *Preventing Inequities in Divorce and Education: The Equitable Distribution of a Career Absent an Advanced Degree or License*, 9 CARDOZO WOMEN'S L.J. 133, 135 (2002).

⁸ *Id.*

⁹ Jeannette C. Griffo, *How Fault Remains a Factor in Property Division Upon Divorce: An Analysis of Equitable Distribution in Michigan After Sparks v. Sparks*, 71 U. DET. MERCY L. REV. 421, 423 (1994).

¹⁰ *Id.* at 424 (quoting HOMER H. CLARK, JR., LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 450 (1968)).

¹¹ E.g., UNIF. MARRIAGE AND DIVORCE ACT § 307 (amended 1973).

¹² Griffo, *supra* note 9, at 424 (quoting Joan M. Krauskopf, *Theories of Property Division/Spousal Support: Searching for Solutions to the Mystery*, 23 FAM. L.Q. 253, 256 (1989)).

¹³ Karen Turnage Boyd, *The Tale of Two Systems: How Integrated Divorce Laws Can Remedy the Unintended Effects of Pure No-Fault Divorce*, 12 CARDOZO J.L. & GENDER 609, 620 (2006).

¹⁴ *Id.*

¹⁵ Emily Jane Goodman, *Divorce, New York-Style*, GOTHAM GAZETTE, Mar. 7, 2006, <http://www.gothamgazette.com/article//20060307/13/1781>.

¹⁶ N.Y. DOM. REL. LAW § 170 (2007).

¹⁷ *Id.*

¹⁸ Goodman, *supra* note 15.

¹⁹ MATRIMONIAL COMMISSION, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 18 (2006), available at <http://www.courts.state.ny.us/reports/matrimonialcommissionreport.pdf>.

²⁰ Danny Hakim, *Panel Asks New York to Join the Era of No-Fault Divorce*, N.Y. TIMES, Feb. 7, 2006, at A1.

²¹ Boyd, *supra* note 13, at 612.

²² Andy Humm, *No-Fault Divorce: Feminists Clash*, GOTHAM GAZETTE, Oct. 6, 2006, <http://www.gothamgazette.com/article//20061006/3/1992>.

²³ Elaine N. Avery, *No-Fault Divorce Editorial*, July 13, 2006, http://www.wbasny.bluestep.net/shared/content/story.jsp?_event=view&_id=445502_U127802_200779.

²⁴ *Morning Edition: New York Reconsiders No-Fault Divorce* (NPR radio broadcast Apr. 28, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=5368225>. The discourse, both from secular feminist and from religious perspectives, typically relies on assumptions of traditional gender roles where men are the adulterers and the more powerful spouses, while women are the

“innocent spouses” and the homemakers.

²⁵ Fass, *supra* note 5, at 1.

²⁶ *DeSilva*, 2006 N.Y. Misc. LEXIS 2489, at *1.

²⁷ *Id.* at *1-3.

²⁸ *Id.* at *3.

²⁹ *Id.* at *4.

³⁰ These factors are: (1) the income and property of each party at the time of marriage, and at the time of the commencement of the action; (2) the duration of the marriage and the age and health of both parties; (3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects; (4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution; (5) any award of maintenance under § 236B(6); (6) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party; (7) the liquid or non-liquid character of all marital property; (8) the probable future financial circumstances of each party; (9) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party; (10) the tax consequences to each party; (11) the wasteful dissipation of assets by either spouse; (12) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; (13) any other factor which the court shall expressly find to be just and proper. N.Y. DOM. REL. LAW § 236B(5)(D) (2007).

³¹ *DeSilva*, 2006 N.Y. Misc. LEXIS 2489, at *6-7.

³² Joanna Grossman, *The Financial Penalty for Spousal Abuse: A New York Judge Ups the Ante, by Awarding All Marital Property to the Abuse Victim*, Sept. 5, 2006, <http://writ.news.findlaw.com/grossman/20060905.html>.

³³ *DeSilva*, 2006 N.Y. Misc. LEXIS 2489, at *7.

³⁴ N.Y. DOM. REL. LAW § 236B(5)(d)(13) (2007).

³⁵ *Havell*, 186 Misc. 2d 726 (N.Y. Sup. Ct. December 18, 2000) (denying husband's motion to exclude evidence of a pattern of domestic violence).

³⁶ *DeSilva*, 2006 N.Y. Misc. LEXIS 2489, at *10.

³⁷ *Havell*, 301 A.D.2d at 342.

³⁸ *Havell*, 186 Misc.2d at 728-729.

³⁹ *Id.* at 727.

⁴⁰ *Havell*, 301 A.D.2d at 341.

⁴¹ *Id.*

⁴² *Id.* at 341-342.

⁴³ *Id.* at 341.

⁴⁴ *Id.* at 342.

⁴⁵ *O'Brien v. O'Brien*, 66 N.Y.2d 576, 590 (N.Y. 1985).

⁴⁶ 99 A.D.2d 287, 292 (N.Y. App. Div. 1984).

⁴⁷ *Brancoveanu v. Brancoveanu*, 145 A.D.2d 395, 398 (N.Y. App. Div. 1988).

⁴⁸ *Orofino v. Orofino*, 215 A.D.2d 997, 998 (N.Y. App. Div. 1995).

⁴⁹ *Kellerman v. Kellerman*, 187 A.D.2d 906, 907-908 (N.Y. App. Div. 1992).

⁵⁰ *Havell*, 186 Misc.2d at 726-727.

⁵¹ *Id.* at 730.

⁵² *Id.* at 731-732.

⁵³ *Id.* at 730-731.

⁵⁴ *Id.* at 732 (quoting *D'Arc v. D'Arc*, 164 N.J. Super. 226, 242 (Ch. Div. 1978)).

⁵⁵ *Havell*, N.Y. L.J., July 30, 2001, at 25, col. 2.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Havell*, 301 A.D.2d at 346.

⁶⁰ *Id.* at 345 (citing *McCann v. McCann*, 156 Misc.2d 540, 547 (N.Y. Sup. Ct. 1993)).

⁶¹ *Id.* at 346.

⁶² *DeSilva*, 2006 N.Y. Misc. LEXIS 2489, at *7-10.

⁶³ *Havell*, 301 A.D.2d at 346.

⁶⁴ *Havell*, 186 Misc.2d at 730.

⁶⁵ *Havell*, 301 A.D.2d at 346.

⁶⁶ *Havell*, 186 Misc.2d at 730-731.

⁶⁷ *Id.* at 731.

⁶⁸ See Grossman, *supra* note 32.

⁶⁹ Boyd, *supra* note 13, at 622 (quoting Larry R. Spain, *The Elimination of Marital Fault in Awarding Spousal Support: The Minnesota Experience*, 28 WM. MITCHELL L. REV. 861, 865 (2001)).

⁷⁰ See, e.g., *J.A.D. v. F.J.D.*, 978 S.W.2d 336 (Mo. 1998) (holding that the trial court did not err in considering a mother's homosexual conduct in custody determination).

- ⁷¹ Laura Sack, *Women and Children First: A Feminist Analysis of the Primary Caretaker Standard in Child Custody Cases*, 4 YALE J.L. & FEMINISM 291, 292-293 (1992).
- ⁷² Havell, 186 Misc.2d at 731.
- ⁷³ M. L. Cross, *Annotation, Wife's Misconduct or Fault as Affecting Her Right to Temporary Alimony or Suit Money*, 2 A.L.R.2d 307 (1948) (citations omitted).
- ⁷⁴ Havell, 186 Misc.2d at 730.
- ⁷⁵ Stéphane Mechoulam, *Divorce Laws and the Structure of the American Family*, 35 J. LEGAL STUD. 143, 166 (2006).
- ⁷⁶ *Morning Edition*, *supra* note 24.
- ⁷⁷ Marcia Pappas, Op-Ed., *Divorce New York Style*, N.Y. TIMES, Feb. 19, 2006, § 14, at 11.
- ⁷⁸ *Id.*
- ⁷⁹ *Id.* (citing a Connecticut study conducted from 1977 to 1987 that showed that under unilateral no-fault divorce laws, only 37% percent of women were awarded the marital home, compared with 82% under fault divorce).
- ⁸⁰ National Organization for Women Albany Area Chapter, No Fault Divorce Hurts Women: NOW Speaks Out Against Legislation Introduced to New York State, <http://www.albanyareanow.org/issues/family.htm> (quoting the New York Bar Domestic Violence Task Force).
- ⁸¹ Havell, 186 Misc.2d at 730.
- ⁸² Boyd, *supra* note 13, at 620.
- ⁸³ Jane Bryant Quinn, *Divorce Court Ruling Favors Abused Spouses*, S.F. CHRON., Aug. 7, 2001, at E-5. This is also the case in Illinois. (In re Marriage of Cihak, 92 Ill. App. 3d 1123 (Ill. App Ct. 1981)). •

Win the War on Talent

(continued from page 16)

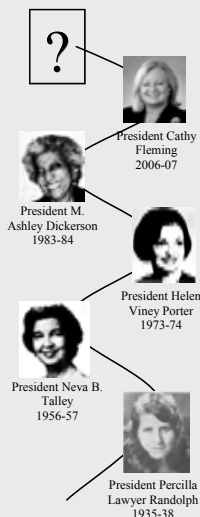
arrangements. We once had an experience where three women in a group in rather short order went to alternative schedules and another member of the group was a married man who had just become a father. He said, "I don't want all of the weekend and evening assignments laid on me just because I'm the one who didn't go for a part-time schedule." The other women had to understand, and they talked about it, and worked it out so he did not get all of the Friday night and Sunday assignments. Flexibility was required so they all felt that they were collaborative.

Generation "O"

What I call "Generation O" are the people who are a little bit before X and Y—"O" for a little bit older. One of the problems in breaking through the barriers was a generation of people, I'll break it somewhere above age 55, where the men

worked and the women did not. You had a lot of men who said, "I had to work on Saturday morning," and they'd tell us how hard they worked, this macho thing, they came to the office. Well, actually, they read the sports section and they had coffee with some friends and they didn't engage with their children. Now, people under 55, a lot of us have been trained by marrying other professional women. We understand that you can have a real serious problem if you miss a court conference, but that problem is no less than the problem you will have if it is your day for car pool at 2:45 at the elementary school, and if you are not there and a kid walks into the street and you aren't there on time. Forget what your wife's going to do to you, everything else must take a back seat. When it was my day, my time, I learned, and guess what, the world didn't come to the end. Once you have men who've absorbed that kind of responsibility, when they're in management they have a better appreciation for what women are going through with that responsibility. In response to a question that was asked earlier, "How do you make advancements, how do you make improvements?" Be realistic when you assess the situation. Don't ask of people things that put them in an uncomfortable situation anymore than you want them to ask you to do something uncomfortable. Recognize what that guy's situation might be. Give the partner who you're working for a nice book for Christmas. One of my favorites is Deborah Tannen's, "You Just Don't Understand." Let them read it. Explicit bias, it's really less and less out there. When I'm in a locker room with guys, they are not saying the kinds of things they said 15 or 20 years ago. Not only do they know it's inappropriate to say certain things publicly, they're not even saying those things privately, but they need your help to understand things. I hope it gets to the day when people on alternative work policies are not the trailblazers. Two observations: One, be good. You don't want the person who is not doing well to be the poster child for people in management to say, "See, it doesn't work." Second, realize you are a role model to someone junior to you coming up. Reach out to them. Lend them a hand, pull them up early. •

*We stand
on the
shoulders of
those who
came before
us.
We provide
shoulders
for those
who
follow us.*



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- Helen H. Maher, J.D. Pace University School of Law, resident in the Firm's Armonk, New York office, and specializing in complex antitrust, securities and derivative shareholder litigation;
- Sigrid S. McCawley, J.D. University of Florida College of Law, resident in the Firm's Ft. Lauderdale, Florida office, and specializing in complex commercial litigation; and
- Alanna C. Rutherford, J.D. Columbia University School of Law, resident in the Firm's New York City office, and specializing in antitrust and complex civil litigation and investigations.

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NAWL News

Recent NAWL Meetings

NAWL Cocktail Reception, ABA Annual Meeting
August 10, 2007
San Francisco, California

NAWL hosted a cocktail reception in San Francisco in connection with the ABA Annual Meeting. The reception was catered by the fabulous Bay Area restaurant, Yank Sing, and gave members the opportunity to catch up with their favorite women lawyers.

Seven Habits of Successful Women Rainmakers
August 10, 2007
San Francisco, California

In this interactive program, Sara Holtz, Founder and Principal of ClientFocus, addressed seven key habits that successful rainmakers consistently employ.

Annual Luncheon, Waldorf=Astoria
August 2, 2007
New York, New York

This year's annual luncheon was a huge success with 1,100 guests in attendance. Cathy Fleming presented this year's awards. Former New Jersey Governor Brendan Byrne administered the oath to the new board.

Her Place at the Table
August 2, 2007
New York, New York

At this breakfast program, Carol Frohlinger taught how to recognize and take advantage of negotiating opportunities and how to use strategic moves to position yourself successfully. Nixon Peabody LLP hosted the event.

Upcoming Program News

Her Place at the Table: Negotiating for Yourself and With Your Clients
September 18, 2007
San Francisco, California

In the first of two West Coast appearances, author Carol Frohlinger will teach you how to recognize and take advantage of negotiating opportunities and how to use strategic moves to position yourself successfully. The program will be held at the offices of Duane Morris LLP.

Her Place at the Table: Negotiating for Yourself and With Your Clients
September 20, 2007
Los Angeles, California

In this second West Coast appearance, Carol Frohlinger will incorporate the latest research on women as negotiators and provide essential guidance on how to negotiate more confidently and competently to get what you need to meet your business objectives. The program will take place at the offices of Weston Benshoof Rochefort Rubalcava & MacCuish LLP.

Third Annual General Counsel Institute
September 27–28, 2007
New York, New York

The third annual General Counsel Institute promises to be an engaging and innovative program with opportunities to learn and network with other senior legal and business professionals. The Institute provides a unique opportunity for women corporate counsel, in a supportive and interactive learning environment, to learn from experienced officers and directors about the pressure points and measurements of success for general counsel.

Networking Skills for Women Lawyers, Accountants & Business Executives
October 2, 2007
Chicago, Illinois

Susan Sneider, author of *A Lawyer's Guide to Networking*, and Gary Pines, noted business development trainer and coach, will speak. Co-sponsors of the event are Jenner & Block, Winston and Strawn; McDermott Will & Emery, LLP, Baker & McKenzie, LLP, and the Chicago Bar Association Alliance for Women. This program will be held at Jenner and Block's offices in Chicago.

Taking Charge of Your Career
November 2, 2007
Phoenix, Arizona

NAWL joins with the Arizona Women Lawyers Association to bring NAWL's popular career development program to Arizona for the first time.

From Theory to Action: Advancing Women Leaders in Law Firms
November 5, 2007
Washington, D.C.

NAWL will hold a national leadership summit that will invite prominent industry leaders to engage in interactive small group discussions. Summit participants will include managing partners and senior partners of law firms, general counsels, and nationally recognized experts on professional careers for women.

National Association of Women Judges (NAWJ) Annual Conference
November 7–11, 2007
Philadelphia, Pennsylvania

NAWJ is holding its annual conference in Philadelphia this year. More details are available at www.nawj.org.

Member News

Jane Allen, president of Counsel On Call, was a finalist for the 2007 Ernst & Young Entrepreneur of the Year Award (AL-TN). Her company is expanding to Charlotte, joining offices in Atlanta, Chicago, Memphis, and Nashville, and was recently named to the 2007 'Future 50' companies list in Nashville.

Kathy Bailey, from Washington DC-based Bailey Law Group, PC, announces the opening of its office in Irvine, California. Experiencing rapid growth in the last several years, an Orange County office provides the firm additional opportunities for sustained growth in key practice areas with a focus on environmental and employment matters.

Beverly P. Baker of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. was named as a Fellow of the Alabama Law Foundation. Baker, who is a shareholder in the firm's Birmingham office and chairperson of the firm's Diversity Committee, was also named to the 2008 Best Lawyers in America list.

Jeanne Schubert Barnum, a partner at Schnader Harrison Segal & Lewis in its Cherry Hill office, has again been named a Super Lawyer by New Jersey Monthly in construction litigation. She was also named in 2006. Ms. Barnum has also just agreed to serve as co-chair of the membership subcommittee of the Construction Litigation Committee of the Litigation Section of the American Bar Association.

Candace Beinecke, Chair of Hughes Hubbard, was named one of "The 50 Most Influential Women Lawyers in America" by The National Law Journal. "Beinecke broke new ground in 1999, when Hughes Hubbard & Reed became one of the first major law firms to elect a woman to lead it," The Journal wrote. "A corporate attorney, she is a pioneer in bringing the expertise of women lawyers into the boardroom." In addition, Beinecke was named one the 100 most influential businesswomen by Crain's New York Business; The list will appear in Crain's October 1st issue.

Barbara Boxer, Senator, California. On August 2, 2007 the Senate Judiciary Committee approved Boxer's legislation as part of a package of bills to make America's schools and students safer. She introduced the bill known as the School Safety Enhancements Act of 2007, will strengthen an existing grant program through the Department of Justice for partnerships between local law enforcement and schools to implement enhanced safety measures. Other parts of the package would improve the National Instant Criminal Background System, provide grants and benefits for law enforcement officers on rail lines and at private colleges and universities, and fund pilot programs on school safety.

Sharon Bridges, a Partner at Brunini, Grantham, Grower & Hewes in Jackson, Mississippi, specializing in product liability, commercial litigation and professional liability has received several recent honors. She was elected to the National Bar Association's Executive Board during its annual convention in Atlanta. At that time, also received the Presidential Award for Outstanding Leadership; and as Director of Region V, she received the Region of the Year Award. The Mississippi Women Lawyers Association selected Bridges as the 2007 Mississippi Woman Lawyer

of the Year. She was also named in the 2007 class of Mississippi's Leading Business women. This honor is sponsored by the Mississippi Business Journal and profiles dynamic women who have distinguished themselves in business.

Ellen E. Brooke has joined as an associate the civil defense practice group of Evans & Dixon, LLC, which specializes in practice of worker's compensation and civil litigation defense. She received her bachelor's and law degree from the University of Missouri-Columbia, and is licensed to practice in Missouri. She belongs to the American and Missouri Bar Associations. Brooke was employed previously by a law firm in St. Louis

Paulette Brown, a Partner in Edwards Angell Palmer & Dodge's Madison, New Jersey office, has been appointed the firm's Chief Diversity Officer. In this role, Ms. Brown is Co-Chair of the firm-wide Diversity Committee and is responsible for all of the firm's diversity initiatives and Women's Initiative Committee activities.

Marilyn J. Chimes, of counsel with Schoeman, Updike & Kaufman, LLP, has published commentary in the September 2007 issue of Lab Animal about the public availability of documentation regarding alleged non-compliance with regulations under the federal Animal Welfare Act. Responding to a hypothetical scenario, Dr. Chimes reviewed and explained the USDA's authority to take photographs and remove inspection-related documentation from a research facility, and the subsequent application of the federal Freedom of Information Act to that documentation.

Nancy Connery, a partner with Schoeman, Updike & Kaufman, LLP, was recently elected a member of the American College of Real Estate Lawyers (ACREL). ACREL is a national organization of real estate lawyers whose members are chosen on the basis of legal ability, experience, and high standards of professional and ethical conduct.

Niki Cung, of Kutak Rock, LLP, has been selected for inclusion in the 2007 list of Super Lawyers for the mid-south region. She was also asked by the Dean of the University of Arkansas School of Law to speak last month to the incoming Class of 2010 about "Practicing Law in a Diverse World."

Ruth T. Dowling, a Partner in the Edwards Angell Palmer & Dodge's Boston office has been named Co-Chair of the firm's Antitrust Practice Group. She shares the position with Executive Committee member Patricia A. Sullivan.

Amy Dulin, along with her colleagues at Hughes Hubbard, represented Almacenes Exito S.A., Colombia's largest retailer, in its \$700-million purchase of the Crulla Vivero supermarket chain in what has been named the Deal of

the Year” by Latin Finance Magazine in the Domestic M&A category. This transaction was Colombia’s largest transaction for 2006.

Amy Dulin and **Ana Spiguel** of Hughes Hubbard were also on the team for the \$80-million HSBC financing for the Noble Group, which, Trade Finance Magazine noted was “...the largest portfolio based soybeans export prepayment program in Brazil.”

Stephanie Taylor Dunn has relocated to Charlotte, North Carolina to join Transamerica Reinsurance, a division of Transamerica Occidental Life Insurance Company. As Second Vice President and Assistant General Counsel, Dunn oversees all of Transamerica Reinsurance’s litigation, and she also has involvement and responsibility in other areas. Before joining Transamerica, Dunn was with the Insurance and Reinsurance Litigation Practice of Steptoe & Johnson, LLP in Washington, DC.

Abbe F. Fletman, shareholder, head of Flaster/Greenberg’s Litigation Section of the Intellectual Property Practice Group and member of the Commercial Litigation Practice Group, was appointed by the American Bar Association’s 2007-08 Section of Litigation leadership to serve as Co-Chair of The Woman Advocate Committee. Fletman was recognized by the ABA for her achievements as one of the nation’s leading litigators and her active leadership in the regional and national legal communities.

Georgann Shelby Grunebach, Assistant General Counsel for the DIRECTV Group, Inc. has left the company for a promotion to Vice President, Intellectual Property of Fox Group Legal. Grunebach serves on the Executive Committee of the California Bar Intellectual Property Section and is Co-Chair of the Patent Standing Committee for the Bar.

Lisa DiPoala Haber was honored with the Central New York 2007 Women in Business Award. Lisa is a partner and chair of the business litigation practice at Gilberti Stinziano Heintz & Smith, PC, centrally located in Syracuse, with offices throughout New York, including New York City.

Shannon Antle Hamilton is one of Stites & Harbison’s 22 attorneys selected for inclusion in the 2007 Chambers USA. Shannon, a Member of the firm, co-chairs the firm’s Diversity Committee and leads the firm’s women attorney affinity group. She works in the Louisville, Ky., office and concentrates her practice in employment law.

Kathy Dudley Helms of Ogletree, Deakins, Nash, Smoak & Stewart, P.A. has been selected as a participant in the 20th anniversary class of Leadership America, a nationwide women’s leadership forum. Ms. Helms has also been selected as a participant in the Diversity Leadership Academy of The Riley Institute of Furman University and has again been listed in The Best Lawyers in America.

Patricia L. Kantor, a real estate attorney, has been appointed Co-Partner-in-Charge of Edwards Angell Palmer & Dodge’s New York office.

Linda D. Kornfeld of Dickstein Shapiro, LLP was named by Business Insurance in July as a Business Insurance 2007 “Woman to Watch.” Kornfeld represents corporate policyholders in disputes with their insurance carriers. She was also named as a Leading Lawyer in the 2007 edition of Chambers, USA.

Reta J. Lewis, former White House aide and U.S. Chamber of Commerce Executive has joined Edwards Angell Palmer & Dodge’s Washington, D.C. office as Counsel and will help to expand the firm’s government services offerings in the areas of public finance and emerging markets.

Rebecca Neri, an associate in the real property tax and condemnation practice at Gilberti Stinziano Heintz & Smith, PC in Syracuse, received the Central New York 2007 Women in Business Award. Rebecca is the co-founder of the law firm’s Volunteer Corps and remains active in community and professional organizations.

Kate Neville, a Harvard Law graduate, has started a career consulting practice for attorneys considering a professional transition, whether within the law or to another field. She brings experience practicing in the public and private sectors as well as management and policy positions to help others navigate career moves, and can be reached through www.nevillecareerconsulting.com.

Molly Peckman will be joining as Co-Director of Associate Development for its U.S. offices in October, 2007. As Special Counsel and Director of Professional Development at Pepper Hamilton for the past five years, Peckman was responsible for all aspects of associate development, including orientation and integration, mentoring, substantive and skills-related training, and formal Continuing Legal Education. Prior to that, she spent 10 years as a litigator. She has written extensively on associate development issues, is a columnist at The Legal Intelligencer, and freelances for other periodicals such as the National Law Journal.

Stephanie Scharf, former NAWL President, has opened the Chicago office of Schoeman, Updike & Kaufman, LLP, a majority women-owned firm whose partners also include NAWL Board Member Beth Kaufman. The firm focuses on complex litigation and transactional work for corporate clients, especially those in the pharmaceutical, biotech and chemical industries and companies that develop and market scientific and technical products. It is the only majority women-owned firm in the U.S. with offices in New York and Chicago and one of the largest such firms in the country.

Mona M. Stone was elected partner at Lord, Bissell & Brook LLP in July, 2007. Stone, who was born in India, is the first Indian attorney ever to be elected to the firm, and she is proud to represent the South Asian community at Lord, Bissell.

Bambi Faivre Walters, PC, which provides intellectual property and strategic business legal services, has received certification to participate in the U. S. Small Business Administration's (SBA) 8(a) Business Development Program and Small Disadvantaged Business (SDB) program. To obtain this distinction, Walters submitted US Patent & Trademark Office and American Intellectual Property Law Association statistics showing that approximately 3% of IP law firms are owned & managed by women (51%), women patent attorneys are paid less than male colleagues, and there is a historical trend of women being paid less. Walters is interested in hearing of any other women-owned intellectual property law firms that have received 8(a) certification and can be reached at bambi@bfwpatents.com.

Erin Ziaja, an associate with LeBoeuf Lamb Greene and MacRae, was appointed recently as Co-Chair of the Programs Committee for the Professional Women's Club of Chicago.

Law Firm News

Alston & Bird LLP was selected among the Working Mother magazine's and Flex-time Lawyers' 2007 Top 50 Best Law Firms for Women.

Covington & Burling LLP has been named one of the best law firms for women in Working Mother magazine's first ever survey on the topic. The August issue also features a profile on one of its partners, Catherine Dargan and her children, and quotes partner Caroline Brown and associates Emily Henn and Jenny Mosier in story called "Young, Gifted and Leaving." Another interesting finding on the magazine's list of best firms is the percentage of female equity partners at each firm. Of the AmLaw 100, Covington ranks second with 20%.

Hirschler Fleischer's Women's Initiatives Network takes pride in promoting the development and success of women in the Richmond community. In March 2007, the group welcomed world-renowned philanthropist Doris Buffett to speak to more than 100 local women business leaders on entrepreneurial philanthropy and meeting the community service challenge.

Holland & Knight has been named a "Best Law Firm for Women" by Working Mother magazine and Flex-Time Lawyers LLC. Further, we were ranked "Above Average" or "High" in every category for which we were evaluated, including workforce profile; benefits and compensation;

parental leave; child care; flexibility; retention and advancement of women. In addition, the Human Rights Campaign Foundation assigned Holland & Knight a "100," or "perfect" rating on its 2008 Corporate Equality Index, and as a result, the firm was named a "Best Place to Work for GLBT Equality."

Eighteen **Hughes Hubbard** lawyers and six practice groups are ranked in Chambers USA Guide 2007, six lawyers and one practice group more than were included last year. USA rankings are determined from interviews with clients and peer lawyers. Results are independently audited and based on a number of criteria, including technical legal ability, professional conduct and client service. In addition, Sixteen Hughes Hubbard attorneys were named to "The New York Area's Best Lawyers List" published in last week's New York magazine. Lawyers were chosen based solely on a vote of their peers.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., one of the nation's largest labor and employment law firms, recently opened offices in Memphis, Jackson, St. Louis, and Bloomfield Hills (Metro Detroit). The firm now has 32 locations across the United States strategically positioned to help employers with their legal needs.

Schoeman, Updike & Kaufman's approaches to flex-time work arrangements and alternative fee structures were recently featured by the National Law Journal and Wall Street Journal "Law Blog," which described the firm's business model as an innovative response to dissatisfaction with traditional big firm structures, especially among women lawyers. New York partner Beth Kaufman described the firm's business model, which includes the ability to offer permanent, flex-time positions to experienced lawyers and the parallel use of alternative billing arrangements for corporate clients, as the "missing model" that fills gaps in the marketplace. Chicago partner Stephanie Scharf described the Firm's "ability to attract very talented, experienced lawyers" who prefer the collegiality, focus and flexibility of the firm's work arrangements.

Stites & Harbison has been named a "Go-To Law Firm®" in a recent American Lawyer Media (ALM) survey. "Go-To Law Firms®" were identified through research conducted by ALM. Researchers asked general counsel at the leading financial services companies to which outside firms they turn.

Washington Women Lawyers announce the launching of the Breast Cancer-Legal Resource Guide for Washington State: A Collaborative Effort, available online and distributed in hard copy format thanks to donations from the Washington Gender and Justice Commission and the Komen Foundation. This guide was produced by judges, attorneys, and law students under the leadership of WWL. For more information, contact jtierney@seattleu.edu.

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“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

— Margaret Mead

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NAWL Networking Directory

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ACC	Accounting
ADO	Adoption
ADR	Alt. Dispute Resolution
ADV	Advertising
ANT	Antitrust
APP	Appeals
ARB	Arbitration
BDR	Broker Dealer
BIO	Biotechnology
BKR	Bankruptcy
BNK	Banking
BSL	Commercial/ Bus. Lit.
CAS	Class Action Suits
CCL	Compliance Counseling
CIV	Civil Rights
CLT	Consultant
CNS	Construction
COM	Complex Civil Litigation
CON	Consumer
COR	Corporate
CRM	Criminal
CUS	Customs
DOM	Domestic Violence
EDU	Education
EEO	Employment & Labor
ELD	Elder Law
ELE	Election Law
ENG	Energy
ENT	Entertainment
EPA	Environmental
ERISA	ERISA
EST	Estate Planning
ETH	Ethics & Prof. Resp.
EXC	Executive Compensation
FAM	Family
FIN	Finance
FRN	Franchising
GAM	Gaming
GEN	Gender & Sex
GOV	Government Contracts
GRD	Guardianship
HCA	Health Care
HOT	Hotel & Resort
ILP	Intellectual Property
IMM	Immigration
INS	Insurance
INT	International
INV	Investment Services
IST	Information Tech/Systems
JUV	Juvenile Law
LIT	Litigation
LND	Land Use
LOB	Lobby/Gov. Affairs
MAR	Maritime Law
MEA	Media
MED	Medical Malpractice
M&A	Mergers & Acquisitions
MUN	Municipal
NET	Internet
NPF	Nonprofit
OSH	Occup. Safety & Health
PIL	Personal Injury
PRB	Probate & Administration
PRL	Product Liability
RES	Real Estate
RSM	Risk Management
SEC	Securities
SHI	Sexual Harassment
SPT	Sports Law
SSN	Social Security
STC	Security Clearances
TAX	Tax
TEL	Telecommunications
TOL	Tort Litigation
TOX	Toxic Tort
TRD	Trade
TRN	Transportation
T&E	Wills, Trusts & Estates
WCC	White Collar Crime
WOM	Women's Rights
WOR	Worker's Compensation

The NAWL Networking Directory is a service for NAWL members to provide career and business networking opportunities within the Association. Inclusion in the directory is an option available to all members, and is neither a solicitation for clients nor a representation of specialized practice or skills. Areas of practice concentration are shown for networking purposes only. Individuals seeking legal representation should contact a local bar association lawyer referral service.

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