national association of women lawyers®

Women Lawyers Journal®

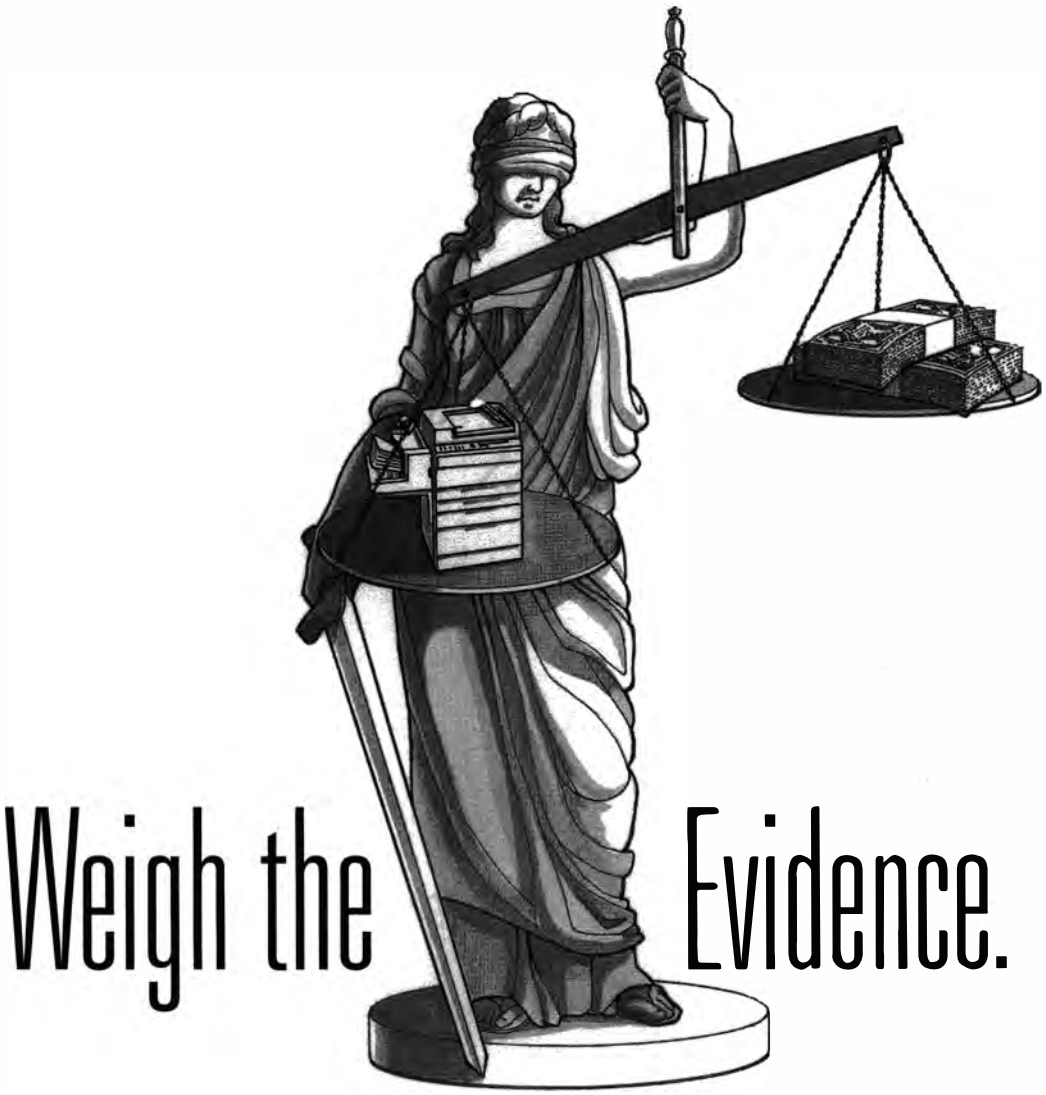
© 1997

Vol. 83, No. 1

January 1997

MAYHEM AND MURDER AFOOT!

Violence: a '90s upsurge



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PUBLISHED BY THE NATIONAL ASSOCIATION OF WOMEN LAWYERS®

Volume 83 Number 1 January 1997

Table of Contents

On the Record 4

In-Box 4

Association News 5

Workplace Violence: Moving Beyond the Headlines 6
By Rebecca A. Speer

Your Loss Becomes the State Coffer's Gain 13
By Todd R. Stimmel

Women Leaders in the Senior Lawyers Division 15
By Selma Moidel Smith

Barnett's Acceptance Remarks: "Women Olympians" 16
By Martha W. Barnett

Fatal Marketing Mistakes Lawyers Make 19
By Trey Ryder

Consider CD-ROM 22
By Veronica C. Boda

Book Talk 23
The Complete Guide to Contract Lawyering
By Kacy C. Eaves
The Neil Hamel Series
By Valerie Diamond
From Choice to Consent in the Abortion Debate
By Eillen L. McDonagh

Bulletin Board 28

Commentary 30

Roster of Private Practitioners 31

About the Cover: Violence, like immigration and human rights, has become a byword of the '90s. In the first of a series, attorney Rebecca Speer details the pandemic spread of workplace violence in American society. *Artwork courtesy of West Publishing.*

WOMEN LAWYERS JOURNAL® (ISSN 0043-7468) is published quarterly by the National Association of Women Lawyers® (NAWL®) with headquarters at 750 N. Lake Shore Drive, 12.4, Chicago, IL 60611-4497. Telephone: 312/988-6186.

Periodicals postage paid at Chicago and at additional mailing office. Subscription rates: $16.00 domestic; $20.00 foreign. Dues include $16.00 for a subscription to WOMEN LAWYERS JOURNAL®; $20.00 for an international member; and $8.00 for a law student member. Back issues are $5.00 each.

POSTMASTER: Send address changes to WOMEN LAWYERS JOURNAL®, National Association of Women Lawyers®, 750 N. Lake Shore Drive, 12.4, Chicago, IL 60611-4497.

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Association News

JUDGE SARAH T. HUGHES READING ROOM BECOMES REALITY AT THE UNIVERSITY OF NORTH TEXAS

On September 6, 1996, a reading room named in honor of the late **Hon. Sarah Tilghman Hughes** was dedicated at the University of North Texas in Denton. After her death in 1985, at the age of 88, her estate bequeathed her professional papers to the University. The Hughes Collection is reported to be the most used non-University collection in their archives.

The reading room (photo: top) provides seating for 14 and contains exhibit cases that currently display documents and artifacts concerning major aspects of Hughes' career. After years of planning, the Hughes Reading Room was made possible through public and private donations, including organized bar support.

Shortly after earning her law degree from George Washington University in 1922, Sarah T. Hughes moved with her husband to Dallas and established a law practice. Elected in 1930 to the Texas House of Representatives, Mrs. Hughes was the youngest woman and one of the first to serve in the Texas House. Appointed in 1935, she became the first woman to sit as a District Judge of Texas; she was re-elected each time until her presidential appointment in 1961 to the U.S. Northern District of Texas court.

Judge Hughes presided over or participated in many significant cases, including *Roe v. Wade*, the *Sharpstown Bank* case and the Dallas County jail case. When Judge Hughes was called upon to administer the oath of office to Lyndon B. Johnson, she became the only woman to ever swear in a United States president.

Judge Hughes remained on the federal bench until poor health forced her complete retirement in 1982.

Throughout her legal career, Judge Hughes was an active member of NAWL®, and participated in many association meetings. The association has contributed a copy of NAWL®'s "75 Year History" to the Hughes Reading Room in her memory. When presenting our donation to the University, NAWL® Historian **Hon. Mattie Belle Davis** said of Judge Sarah T. Hughes: "We admired her and held her in high esteem as one of the first women Judges on the United States District Courts and a leader in the legal profession."

NEWS ABOUT MEMBERS

Washington, D.C., attorney, **Brooksley E. Born,** was confirmed by the U.S. Senate on August 2 as chair of the Commodity Futures Trading Commission. CFTC is an independent federal regulating agency overseeing futures and options markets in the United States. Her term ends in April, 1999. Ms. Born was first admitted to the bar in 1965. She has been a member of NAWL® since 1981.

Janet Milam Howe is a part-time finance and banking contract attorney in the Seattle, Wash., law firm office of Preston Gates & Ellis. A NAWL® 1993 Honorary Law Student from Whittier College of Law in Los Angeles, Janet holds a B.A. degree in economics and finance.

Among the numerous NAWL® members serving the ABA, **Samuel S. Smith** of Miami, Fla., was nominated and elected to the Committee on Scope and Correlation of Work at the Annual Meeting in Orlando.

IN MEMORIAM

HON. HELEN WILSON NIES
August 7, 1925–August 7, 1996

Judge Nies, age 71, passed away last summer as a result of injuries sustained in a bicycle accident in Delaware. Nies, a former chief judge of the U.S. Court of Appeals for the Federal Circuit, was first appointed to the Court of Customs and Patent Appeals in 1980, the year NAWL® honored her as "Woman of the Year."

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*NAWL® members in private practice who have paid to be in this reference listing

Areas of Practice—Abbreviation Key

Ad	Administrative	Cor	Cooperatives & Condominiums	GC	Government Contracts	N	Negligence
Adm	Admiralty	Cr	Criminal	Gu	Guardianship	NP	Nonprofit Organizations
App	Appellate Appeals	DR	Alternate Dispute Resolution; Arbitration	H	Health	PI	Personal Injury
At	Antitrust			I	Immigration	Pr	Product Liability
AttMa	Attorney Malpractice	De	Defense	Ins	Insurance	Pro	Probate
Ba	Banks & Banking	Dis	Discrimination—age, sex, etc.	Int	International & Customs	Pub	Public Interest
Bd	Bonds, Municipal	Disc	Attorney Discipline	IP	Intellectual Property:C(Copyright); P(Patents); TM(Trademark); TS(Trade Secrets)	RE	Real Estate; Real Property
Bky	Bankruptcy & Creditors' Rights	Ed	Education			RM	Risk Management
Bu	Business	El	Elder Law			Sec	Securities
CA	Class Actions	Em	Employment; EEO; ERISA	La	Labor	Sex	Sexual Harassment; Assault
Ch	Children; Custody; Adoptions	Ent	Entertainment	Ld	Landlord, Tenant	SS	Social Security and Disability
Ci	Civil; Civil Rights	Env	Environmental	Le	Legal Aid, Poverty	T	Tort
C	Collections	Eth	Ethics	Leg	Legislation	TA	Trade Associations
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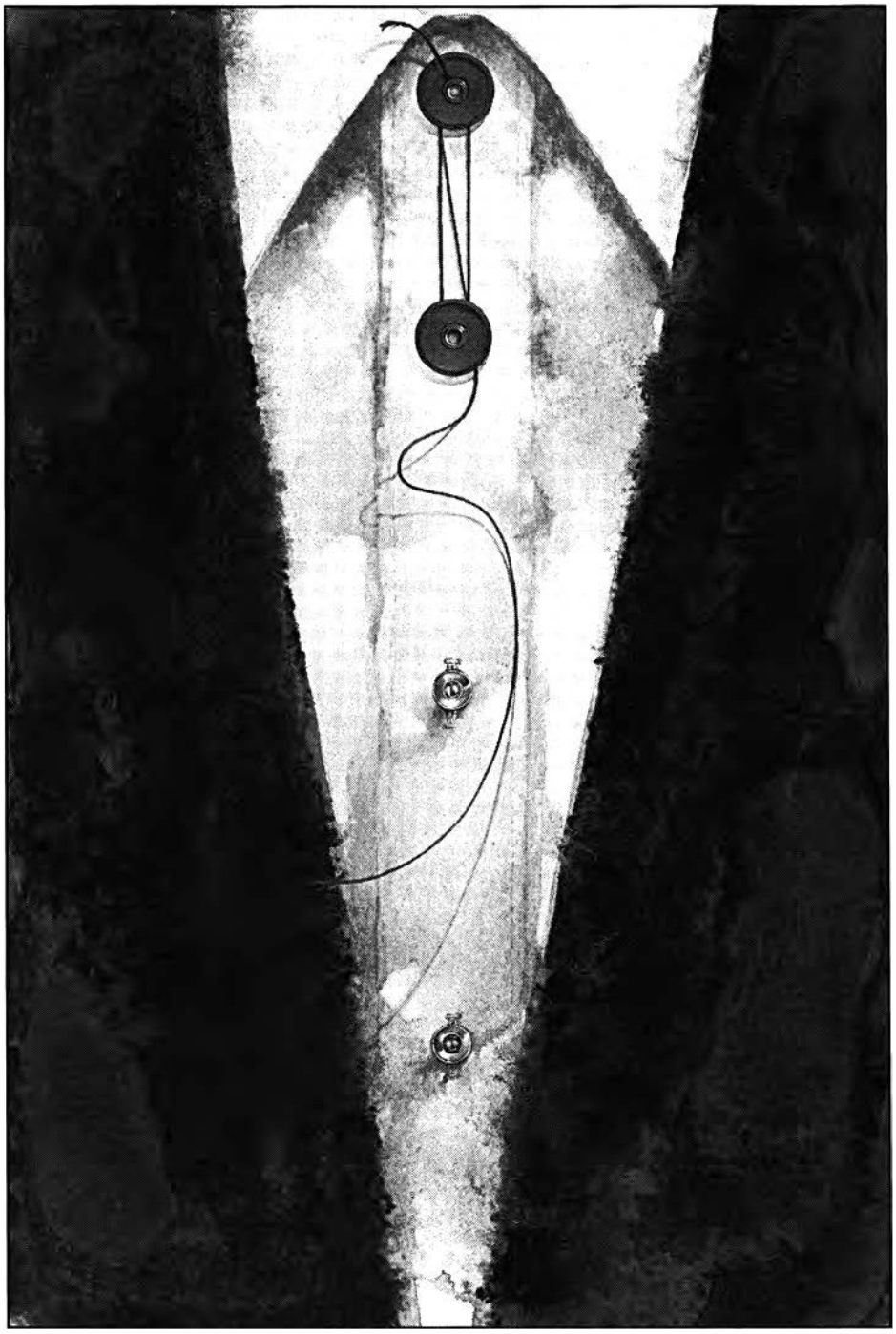
workplace violence since the late 1980s to a declining relationship between management and its workers, a lack of employee-support services, and the relative ease of obtaining firearms. Some hypothesize that unbearable work pressures and employers' failure to conduct adequate pre-employment screenings for psychological dysfunction and violent propensities cause work-related violence. Others say the rise in workplace violence may be attributed to a growing sense of despair, frustration, and alienation among workers affected by the downsizing of the '90s. Still others blame the increase in workplace violence on a breakdown in the family, the general level of violence in society, and the lack of social controls necessary to curb violent behavior.[4]

Organizational Inaction

Behind these headlines, statistics, and increasing efforts to understand workplace violence, though, lies a surprising lack of organizational responsiveness. Though some companies, governmental agencies, and nonprofit organizations have taken bold steps to address workplace violence, a much greater number have failed to act even minimally to address the potential for violence inside their walls.

A study conducted under the direction of Dr. L. Katharine Harrington of the University of Southern California School of Business revealed that, though violence in its various forms is prevalent in the workplace, a large percentage of organizations have done little to prevent or properly manage violent or threatening incidents. Forty-three percent of respondents to a national survey reported having experienced some act of violence in the workplace within the past three years. Yet two-thirds of them had no training programs in place to help managers and employees deal with violence or the threat



Crimes in the workplace: more than stealing company property, paper clips or trade secrets.

ARTWORK CREDITS

Cover: Harvey Dinnerstein, ARRAIGNMENT COURT, BROOKLYN, charcoal/24 x 19¼, Art and the Law 1982, Copyright 1982, West Publishing, Eagan, MN.

Page 7: Miles G. Blatt, WHITE COLLAR CRIME, transparent watercolor/15 x 10, Art and the Law 1982, Copyright 1982, West Publishing, Eagan, MN.

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Workplace Violence continued

It is an organization's responsibility to safeguard worker security and morale by addressing and preventing noncriminal aggression.

of violence. Fifty-six percent reported having no training *and* no formalized method for recording incidents of violence or threatened violence.[5]

A survey conducted by the American Management Association reached similar findings. The 1994 survey showed that, though 52 percent of respondents reported at least one incident or threatened incident of workplace violence since 1990, only 35 percent had any procedures in place that instructed employees what to do when confronted with potential or actual violence. Only 22 percent of respondents provided training to some employees concerning workplace violence; only 8 percent provided training to all employees.

Anecdotal evidence supports these findings. Many labor and employment law attorneys will agree that issues related to violence are often handled *ad hoc* by their clients, who often are entirely unprepared to respond to dangerous or threatening situations, rather than pursuant to an established plan of action.

Several factors may contribute to the widespread failure by organizations to implement policies and practices needed to help prevent workplace violence, and to properly manage threatened, attempted and completed acts of violence that occur.

Part of the reason behind organizational inaction may be simple denial. As a society surrounded by violence and violent images, we have an astounding propensity to assure ourselves, despite the facts, that what happens to others "out there" will never touch our organizations or us personally. Ironically, the apparent belief of many organizations, and those who counsel and govern them, that violence is not an immediate concern warranting swift preventive action might be fueled by the very headlines that raise awareness of the issue. The media focus on workplace murder—the rarest form of workplace violence—may very well obscure far more prevalent behaviors: non-lethal assaults; workplace conflicts that result in aggressive behavior; direct and veiled threats of violence; harassment and stalking; behavior suggesting emotional instability and a potential for violence; and, with great frequency, domestic violence that spills into the workplace.

For those organizations who acknowledge the potential for violence, inaction may be driven by a misapprehension that workplace violence is not preventable, or not an organization's responsibility. Some organizations, not unreasonably, may question how they can possibly protect workers from unpredictable eruptions of violence. Others will ask why responsibility for violence should be shifted to them, rather than remain in the hands of the perpetrator. Yet numerous studies show that workplace violence often does not come "out of the blue" but it is preceded by behavior and psychological characteristics that point to a potential for violence—behavior that a properly educated and prepared organization can recognize and promptly address. Further, the steady stream of case law holding organizations responsible under varied theories for failing to protect workers from violence communicates a collective judgment that organizations can, and should, do a better job of safeguarding worker safety.

Finally, the reason for organizational inaction may lie in the lack of easy answers to this complex, and often messy, problem. Even the most well-intentioned organization can get lost in the thicket of legal and logistical issues created by efforts to prevent and better manage workplace violence. Efforts to curb workplace violence through such practices as pre-hiring screening, "codes of conduct" prohibiting behavior that raises a concern for worker safety, and employee psychological counseling run up against compelling competing interests, such as worker privacy and anti-discrimination laws, causing some employers to complain of getting sued based on the very practices they have implemented to *enhance* worker well-being.

Paving the Way for Action

Those of us who have come to learn the heavy toll of workplace violence through personal experiences, the experiences of our clients, or both know that organizations must begin taking decisive steps to meet workplace violence—in all its forms—head on. We as lawyers have a tremendously important role to play in that regard: to make organizations' job easier. We can do that by learning what workplace violence is, so we can educate our clients about it. We can do that, too, by learning practical, legally sound approaches to workplace violence, so we can guide our clients towards effective action. And, we can do that by learn-

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ing the benefits addressing workplace violence will bring to an organization, so we can begin building critical organization and community-wide commitment to preventive policies and practices.

This first in a series of articles will begin by exploring the general parameters of workplace violence—the light that statistics, studies, and varied commentary shed on this complex issue and, in particular, what they say about women's safety in the workplace. As detailed here, data collected by various public and private organizations show that workplace violence affects millions of workers annually, including many women who must deal with domestic violence on the job.

The Broad Impact of Workplace Violence

Studies and statistics published by the U.S. Departments of Labor and Justice and various private organizations help us take a first critical step toward affecting action on workplace violence: understanding what workplace violence "is." Despite unfortunate limitations in aim, scope and result,[6] certain studies help answer discrete questions concerning the incidence and impact of workplace violence and fill in a partial picture: How many Americans are killed and assaulted in the workplace? What types of crimes typically are committed in the workplace? Who are the victims of these crimes, usually?

Statistics show that 1,024 workers were murdered in the workplace in 1995, accounting for 14 percent of all workplace deaths for men and 46 percent of all workplace deaths for women.[7] Other top causes of workplace deaths included highway traffic incidents (the leading cause of death for men) and falls (which accounted for 10 percent of all workplace deaths).

Quite predictably, statistics show that workplace murder more frequently occurs in settings traditionally considered unsafe: retail establishments vulnerable to theft. Seventy-one percent of workplace homicides in 1995 resulted from robberies and other "miscellaneous," undefined crimes, mostly in retail establishments. However, when homicides related to thefts are put aside, a startling picture emerges concerning murder in the American workplace. In 1995, 15 percent of workplace homicides occurred to workers at the hands of a personal acquaintance or work associate. Four percent were killed by a personal acquaintance (most commonly a current or former husband or boyfriend, or relative), and 11 percent by a work associate (a current or former co-worker, or customer or client).[8] When this 15 percent figure is compared to the number of police officers and guards killed that same year in the line of duty—14 percent of the total workplace homicides—it becomes readily apparent that, each year, a significant segment of workers not in traditionally hazardous jobs face lethal force.

Ms. Speer will present the keynote address at NAWL®'s August 1, 1997 Annual Meeting program in San Francisco on workplace violence. To spur debate about workplace violence issues and encourage readers to direct any questions, concerns and commentary beforehand, a program Web site has been established: **http://www.workplacelaw.com.**

Statistics further show that beyond each workplace murder lies an equally damaging problem: conduct resulting in non-fatal injuries or a threat to worker safety from violence. The severe under-reporting of non-fatal workplace violence prevents an accurate estimate of the number of workers who annually experience non-fatal assaults, verbal threats, harassment, stalking, and other conduct generating a fear for personal safety.[9] Despite that difficulty, however, existing statistics confirm that non-lethal workplace violence affects millions of Americans yearly.

A study conducted by the U.S. Department of Justice found that, in 1994, *over two million workers* fell victim to non-fatal violent crime—simple and aggravated assault, robbery, and rape or sexual assault—either at work or while traveling to or from work. Thirty percent of those were threatened by lethal force. According to that study, an estimated 8 percent of the rapes, 16 percent of the robberies, and 23 percent of the assaults occurred at work during 1994.[10] A second study by the U.S. Department of Labor, which reflected only officially reported assaults resulting in lost days of work, showed that, in 1994, over 20,000 workers were assaulted at work, resulting in an average of five days lost from work. One-fifth of those assaults caused injuries lasting twenty-one days or more.[11] A third governmental source reported 18,000 workplace assaults *weekly*.[12]

A private study, too, points to a prevalence of non-fatal workplace violence. The study, which measured a broader range of conduct affecting worker safety from violence, found that, between July 1992 and July 1993, a startling *one out of four full-time workers* in America fell victim to harassment, threats of vio-

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Workplace Violence continued

lence, and non-fatal assaults on the job.[13] According to that study, more than two million workers were physically attacked, another six million were threatened, and another sixteen million were harassed. The study further showed that 15 percent of workers had been physically attacked some time during their work life, and that 21 percent had been threatened with physical harm.

Studies unveil the heavy human and economic toll of workplace violence. One study found that victims of workplace violence or harassment experienced twice the rate of stress-related conditions than non-victims; were twenty times more likely to say their productivity was reduced; and were ten times more likely to want to change jobs. Fear alone was enough to generate stress and reduce worker productivity. Twenty-one percent of workers polled reported that fear on the job resulted in one of more of the following consequences: mental or physical distress; a desire to change jobs; reduced productivity; one or more days of work missed; and employee turnover.[14] Other studies estimate that workplace violence costs American businesses millions, even billions, of dollars annually. According to one study, 18,000 weekly workplace assaults cause 500,000 employees to lose 1,751,1000 days of work annually, leading to a loss of $55 million in wages alone.[15] Other studies measuring losses from additional factors such as lost productivity, diminished public image, legal expenses, increased security, and other related factors report that workplace violence costs American businesses anywhere from *$6.4 billion to $36 billion annually*.[16]

Taken together, the above statistics show that workplace violence has reached critical proportions in terms of both human and economic costs.

During 1992-93, over 24 million workers were victims of non-fatal violence.

Gender Differences in the Migration of Domestic Violence to the Workplace

Statistics reveal some gender differences in the incidence of workplace violence. For instance, they tell us that women are much less likely to die as a result of workplace violence than men, who appear to fall victim in higher-risk occupations. Though fairly equally represented in the work force,[17] 780 men and 244 women died as a result of workplace homicide in 1995.[18] These figures may show that fewer women are killed at work, but they far from establish that working women are safe from violence. Indeed, 46 percent of women who die at work do so as a result of violence, and many more suffer from non-fatal assaults. At least one study has shown that a full three-fifths of all assaults resulting in lost days of work in 1994 occurred to women.[19] Just as troublesome, statistics show that domestic violence follows many women into the workplace, creating fear on the job, and wide-ranging problems for employers.

Namely, U.S. Department of Labor statistics show that, between 1992 and 1994, 17 percent of all women and 28 percent of African-American women killed at work were murdered by a current or former husband or boyfriend.[20] Battered women not killed are often harassed and stalked. One study found that 75 percent of battered women who responded to the survey reported being harassed at work by their abusers, either in person or by telephone.[21] The study further found that domestic violence greatly disrupts women's job performance, often leading to reprimands and termination. More than 50 percent of battered working women responding to the survey reported missing three days of work per month due to abuse.[22] Another study found that almost all battered women—*an overwhelming 96 percent*—had experienced some negative consequences in the workplace as a result of domestic violence: 60 percent were late for work; 50 percent missed work; 70 percent had a difficult time performing their work; 60 percent had been reprimanded for problems associated with the abuse; and 30 percent had lost their jobs as a result of their victimization by domestic violence.[23]

Though domestic violence most assuredly affects battered women most directly, it also generates financial and security concerns for employers nationally, turning what some may term a "personal issue" into a corporate dilemma.

Domestic violence affects organizations in two ways: organizations employing battered women suffer from the diminished safety and productivity of those women and the workers around them; and organizations employing battering men suffer when those men turn their violence towards those in their own workplace. Two examples help illustrate this point. On October 21, 1995,

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in Carmel, Indiana, a man entered the bank in which his wife worked, chased after his wife and co-workers, then shot and killed his wife. On April 25, 1996 in Jackson, Mississippi, a 32-year-old fire fighter shot his wife in the head and then proceeded to a firehouse armed with several weapons. Using an assault rifle, the man shot six of his co-workers, killing four of them. He then fled the scene and led police on a 10-mile chase, eventually shooting himself.

An informal study conducted by Polaroid Corporation under the direction of James Hardeman confirms this large "spill over" effect of domestic violence. That study revealed that domestic violence is tied both to decreased safety and productivity of battered women, and to company-wide problems with violence: *half* of the people who had committed acts of workplace violence at Polaroid during a 3-year period battered their spouses or partners at home.[24]

Organizations are well aware of this "spill-over" effect. A survey of corporate security and safety directors showed that *94 percent* ranked domestic violence a *high security problem*. Ninety-eight percent reported having experienced incidents of domestic violence in the workplace and 93 percent reported having dealt with at least three incidents of men stalking women.[25] A survey of Fortune 1000 companies further found that *four out of ten corporate leaders were personally aware of employees in their companies who had been affected by domestic violence*. Nearly half of all corporate leaders surveyed confirmed that domestic violence harmed their company's productivity, hurt employee attendance, and generated higher health care costs. The survey also found that 33 percent of those surveyed believed their company's balance sheets reflected problems stemming from domestic violence, and that *66 percent agreed that their company's financial performance would benefit from steps to address the issue of domestic violence at work*.[26]

These statistics illustrate that domestic violence, beyond its obvious impact on women, has become an organizational concern.

Why We Must Address Workplace Violence

Workplace violence raises a wealth of issues we as lawyers must decipher and address if we are to remain effective advocates and counselors. As the next article in this series will discuss, workplace violence engenders a complex maze of legal issues that greatly concern us as advocates charged with helping our clients avert or minimize damaging liability. As this article demonstrates, though, workplace violence demands our attention not only as legal advocates, but as counselors called upon to resolve problems that more broadly affect our clients. As the statistics above show, workplace violence takes a heavy, and often irreparable, human and financial toll. It affects the physical and psychological well-being of innumerable workers and generates staggering economic losses for employers across the country. We as lawyers, then, must learn about and develop legally sound approaches to workplace violence not only because it makes good sense as a legal matter for our clients to confront this issue, but because it makes good policy and business sense as well. ✱

Next in this series: the legal implications of workplace violence.

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1. In late 1992, the Centers for Disease Control and Prevention declared an "epidemic" of workplace homicides.

2. National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, *Violence in the Workplace*, DHHS (NIOSH) Pub. No. 96-100 (July 1996) (hereinafter "NIOSH study"). The National Traumatic Occupational Fatalities Surveillance System is a death certificate-based census of traumatic occupational fatalities in the United States. Quoted data was collected from surveys conducted between 1980 and 1992.

3. Bureau of Labor Statistics, U.S. Department of Labor, *National Census of Fatal Occupational Injuries, 1995*, USDL Pub. No. 96-315 (August 1996) (hereinafter "August 1996 BLS study").

4. For a discussion of various suspected causes of workplace violence, *see* Joseph Kinney, *Violence at Work* 21-30 (1995), and well as any sampling of news stories: *e.g.*, "Psychologists: Job Screening Could Show Workplace Violence Tendency," *The San Diego-Union Tribune*, Feb. 12, 1993; "Shootings Reflect Stress in the Workplace," *The Los Angeles Times*, May 7, 1993; "Despair, Alienation Called Reasons For Workplace Attacks," *The Orange County Register*, May 7, 1993.

5. L. Katharine Harrington & Eric J. Gai, *Research on Workplace Violence Summary Report*, University of Southern California Center for Crisis Management, Graduate School of Business (March 1995).

6. Though studies conducted on workplace violence are essential to helping define the problem, many suffer from inherent limitations. The U.S. Department of Labor studies, for instance, are based largely on data supplied to governmental agencies. For that reason, they do not reflect the scores of injuries from workplace violence that go unrecorded annually. Other studies are based on voluntary surveys that reach a limited audience and that do not necessarily elicit a complete set of data. Some studies answer part of the question about workplace violence (how many people are killed by workplace homicides, for instance) but do not give other information, such as gender data, that helps define victims of crime. Most of the studies fail to track the problem of workplace violence over a significant period of time, giving therefore more of a "snapshot" of the problem than insight into historical trends. To further complicate an analysis of findings culled from

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Workplace Violence continued

various studies, the studies employ different definitions of non-fatal workplace violence: one study limits the term to violent crimes (assault, robbery, and sexual assault and rape) that lead to workplace injury; another limits the term to assaults leading to actual lost days of work; and still another broadens the term to include conduct such as harassment that creates a concern for personal safety at work.

7. August 1996 BLS study, *supra.*

8. *Id.*

9. Several studies reveal a chronic underreporting of non-fatal incidents of workplace violence. *See, e.g.*, Bureau of Justice Statistics, U.S. Department of Justice, *National Crime Victimization Survey: Criminal Victimization 1994*, NCJ Pub. No. 158022 (April 1996) (noting that only 42 percent of violent crimes committed in 1994 were reported to the police); Reliastar Life Insurance Company (formerly Northwestern National Life Insurance Company), *Fear and Violence in the Workplace*, (hereinafter "Reliastar study") (stating that 58 percent of harassment victims, 43 percent of threat victims, and 24 percent of attack victims did not report the offenses).

REBECCA SPEER *is an employment and labor law attorney in San Francisco who provides comprehensive consulting to organizations of all sizes concerning the steps they can, and must, take to minimize the risk of damaging liability stemming from incidents of workplace violence. Ms. Speer helps employers institute preventive policies and practices, and provides critical advice and legal counsel as issues concerning every aspect of workplace violence arise in an organization. She also performs community outreach as a member of the Santa Clara County Committee on Workplace Violence.*

10. Bureau of Justice Statistics, U.S. Department of Justice, *National Crime Victimization Survey: Criminal Victimization 1994*, NCJ Pub. No. 158022 (April 1996).

11. Bureau of Labor Statistics, U.S. Department of Labor, *Characteristics of Injuries and Illnesses Resulting in Absences From Work, 1994*, USDL Pub. No. 96-163 (May 1996) (hereinafter "May 1996 BLS study").

12. NIOSH study, *supra*.

13. Reliastar study, *supra*. The study defined "harassment" as "the act of someone creating a hostile work environment through unwelcome words, actions, or physical contact not resulting in physical harm"; defined "threat" as "an expression of an intent to cause physical harm"; and defined "physical assault" as "aggression resulting in a physical assault with or without the use of a weapon."

14. *Id.*

15. NIOSH study, *supra*.

16. Though analysts agree that workplace violence takes a tremendous economic toll on American businesses, none have agreed on the actual financial impact of workplace violence. Estimates range from $6.4 to $36 billion annually. *See* Joseph Kinney, *Violence at Work, supra*, 18 (estimating a $6.4 billion toll); Jeff Rowe, *Violence at Work: a $36 Billion Toll*, The Orange County Register, April 19, 1995 (citing a study conducted by the Workplace Violence Research Institute located in Southern California). The wide variance in estimated economic losses stemming from workplace violence reveal a need for further, more rigorous, study of this issue.

17. Statistics show that 69 million men and 58 million women were employed in 1995. *See* August 1996 BLS study.

18. *Id.*

19. May 1996 BLS study.

20. Bureau of Labor Statistics, U.S. Department of Labor, *Fatal Workplace Injuries in 1994: A Collection of Data and Analysis*, DOL Report 908, 29 (July 1996).

21. Women's Bureau, U.S. Department of Labor, Facts on Working Women, Pub. No. 96-3 (October 1996) (citing New York Victim Services Agency, *Report on the Costs of Domestic Violence*, 1987).

22. *Id.*

23. *Id.* (citing Domestic Violence Intervention Services, *Domestic Violence: An Occupational Impact Study*, 1992).

24. James Hardeman, Corporate EAP Manager at Polaroid, has led the companyís nationally-recognized effort to address the impact of domestic violence on employees and the workplace.

25. Family Violence Prevention Fund, *Domestic Violence—A Workplace Security Problem* (citing a survey of 248 corporate security and safety directors in twenty-seven states conducted by the National Safe Workplace Institute).

26. Women's Bureau, U.S. Department of Labor, Facts on Working Women, Pub. No. 96-3 (October 1996) (citing *Addressing Domestic Violence: A Corporate Response*, a Liz Claiborne, Inc. survey conducted in 1994 by Robert Starch Worldwide of 100 senior executives in Fortune 1,000 companies across the country).

Your Loss Becomes the State Coffer's Gain

Legislators are considering latest escheat law model revisions as a revenue source for balancing state budgets

By Todd R. Stimmel

The *Uniform Unclaimed Property Act* (1995), a model law that embodies the rules and procedures requiring companies to report abandoned property, also known as the escheat laws, was published in early 1996.

Twenty states have enacted versions of the 1981 Uniform Act, while 16 states retain the original 1954 Uniform Act or its 1966 revision. The other 14 states have some number of provisions of the 1981 Uniform Act incorporated into their abandoned property statutes. Since the adoption of the 1981 Uniform Act, the states have become increasingly aware of the revenue opportunities available to them as a result of enforcing their abandoned property statutes, especially in the last few years as the states have faced severe strain in their efforts to balance their budgets. Given today's political climate, it is likely that more states will embrace and expand non-tax revenue-generating programs like abandoned property.

As a result of their desire to increase revenues and of the general acceptance of the notion that it is much easier to locate missing owners after a shorter period subsequent to their becoming "lost," states have progressively shortened the dormancy period required to presume that property is abandoned. Since 1981, states have also taken different paths as to many issues contained in their abandoned property statutes. Holders of abandoned property have increasingly complained that the failure of states to follow a single set of rules in their approach to reporting abandoned property represents a significant impediment to holder compliance with the state's abandoned property statutes.

Consequently, in 1989, The National Association of Unclaimed Property Administrators (NAUPA), an organization that represents the states, formed a study committee to review the 1981 Uniform Act and to propose revisions for consideration by the Conference of Commissioners on Uniform State Laws. The Conference formed a Drafting Committee that began to meet in 1994 to discuss revisions proposed by NAUPA as well as by other members and advisors to the Drafting Committee. The Conference adopted the revisions in 1995. The new act is entitled the *Uniform Unclaimed Property Act* (1995).

The Uniform Act contains many changes to the 1981 Act that clarify certain provisions and strengthen enforcement. The most significant revisions involve the following:

- redefining "holder" so as to make it the person actually obligated to make the payment to the owner;
- including mineral rights as property subject to the Uniform Act;
- clarifying that all insurance proceeds are subject to the Uniform Act, providing that the insurance check is *prima facie* evidence of a property right that may become abandoned;

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Unclaimed Property continued

- prohibiting the use of locator/heir finder services for the period commencing with presumed abandonment until two years after delivery of property to the state;
- reducing the presumption of abandonment for most property from seven to five years; for dividend-paying stock, the period will commence after the return of the first dividend; for non-dividend-paying stock, the period will commence following the return of the second mailing to stockholders in the ordinary course;
- reducing the presumption of abandonment for debt obligations other than bearer bonds and zero coupon bonds, five years after the return of the last unclaimed interest check;
- providing for the presumption of abandonment of pension and IRA assets to occur three years after the earliest of (a) the date of attempted distribution, (b) the date of required distribution, or (c) the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid tax penalty;
- limiting dormancy service charges to those generally enforced and not subsequently waived;
- requiring reports to include social security or TIN numbers, if known or accessible;
- reducing the dormancy period for gift certificates from five to three years after December 31 in the year in which the give certificates are sold and permitting the holder to deliver to the state only [60]% of the face value amount where the gift certificate was exchangeable only for goods and services and not cash in the face amount;
- providing for property to accompany reports and not to subsequently be remitted after six months;
- permitting a state to examine the books and records of record-keepers like transfer agents, paying agents and other third-party administrators;
- commencing the statute of limitations only after a property report has been filed; and
- reducing the state publication requirement to one time.

The 1995 Uniform Act also significantly increases the magnitude of interest and penalties for noncompliance. Under the 1995 Uniform Act, interest at 12% is not generally waivable by the state; penalties have been increased to $5,000 for the inadvertent failure to report property and up to $25,000 plus 25% of the value of the property for the willful failure to report property.

The 1995 Uniform Act will only become effective when adopted in whole or in part by a state. Indiana and Alaska have adopted the 1995 Uniform Act in most part and many other states are likely to follow suit in upcoming legislative sessions.

A recent publication, *The Little Book about Abandoned Property*, provides a brief discussion of the history of abandoned property law as well as the new 1995 Uniform Act. It can be obtained by calling NAPPCO at 212/826-8370.

NAPPCO is the only company that dedicates all its resources to providing comprehensive abandoned property outsource services. For companies reporting any particular category of property for the first time, NAPPCO generally provides its services and prepares the required reports for all states at no charge to the company because NAPPCO receives its fees from the states. After a company becomes fully current in its reporting, NAPPCO offers annual reporting services, on a fee basis, to ensure continuing compliance with state abandoned property laws. ✱

A graduate of Columbia College and Harvard Law School, Todd R. Stimmel is chairman & CEO of NAPPCO, The National Abandoned Property Processing Corporation. Prior to joining NAPPCO, Mr. Stimmel was in private law practice for 15 years. He advised the Unclaimed Property Drafting Committee of the National Conference of Commissioners on Uniform State Laws, with respect to the drafting of the recently adopted Uniform Unclaimed Property Act (1995).

Women Leaders in the Senior Lawyers Division

Leadership opportunities for older women prevail in this ABA group

By Selma Moidel Smith

The Senior Lawyers Division (SLD) of the American Bar Association (ABA) offers important opportunities for women lawyers. Formed in 1985, the SLD comprises lawyers 55 years of age or more, whether retired or still in active practice.

Of particular interest to women lawyers is the SLD's policy of encouraging participation and leadership by women members.

A Diversity Committee was initiated in 1995 by Victor Futter of New York, then chair of the SLD, to bring more women lawyers into the work and rewards of the organization. The present SLD chair, John Pickering of Washington, D.C., has long been known for his sensitivity to women's issues and carries that conviction into the new year.

Several NAWL® members have risen to prominence in the Divison:

The **Hon. Mary S. Parker** of Los Angeles served this past year as the first chair of the newly created Diversity Committee, and has now completed her term on the Division's governing Council. She is also serving a 2-year term as the NAWL® Delegate in the ABA House of Delegates.

Mary Pat Toups of California serves in multiple roles. As secretary of the SLD, she is one of four elected officers. In addition, she chairs the Pro Bono Committee and serves as vice chair of both the Legal Aid Assistance and Continuing Legal Education committees.

Clara Weiner Dworsky of Houston is the chair of the Social Security Law and Practice Committee, and writes a regular column on the subject for the SLD's quarterly magazine. She is also a former

Selma Smith: our SLD link

member of the Division's governing Council.

The **Hon. Mattie Belle Davis** of Florida, a NAWL® Past President, serves as vice chair of the Judiciary Committee, and has served several times on the Nominating Committee. NAWL® Past President **Virginia S. Mueller** of California serves as vice chair of the Diversity Committee.

NAWL® is further represented by members who serve on these and other SLD committees. Other women lawyers, outside of NAWL®, are also active in the Division.

Topics of ongoing concern to senior women lawyers figured prominently among the subjects covered in the SLD's first Continuing Legal Education (CLE) Conference held last year. These included: Elder Abuse, Advance Directives, Housing Options, Financial Aspects of Retirement Planning, Social Security, Pro Bono, Second Careers, Legal/Ethical issues of Suicide, Family Law and Of Counsel.

Such interests, and many others, are reflected in the growing list of SLD committees, which currently total 36. Two quarterly publications are produced by committees of the Division: a newsletter, *Senior Lawyer*; and a magazine, *Experience*, which contains articles of special interest to lawyers at this stage of their careers and lives. Unique among the committees is the Travel and Leisure Committee that plans an active schedule of trips and cruises during the year.

The Senior Lawyers Division holds quarterly regional meetings open to all SLD members. Two of these meetings are held in conjunction with the Midyear and Annual meetings of the ABA. The SLD is seeking women lawyers who will serve as speakers on various topics at these joint meetings.

Parker points up a distinct advantage of membership in the Division. "Where too often women lawyers find themselves overlooked for advancement and recognition by reason of age, this organization welcomes them to its ranks and leadership." After 10 years of active participatiion in the SLD, she emphatically recommends this additional involvement to NAWL® members. ❋

Selma Moidel Smith is the first NAWL® liaison to the Senior Lawyers Division of the ABA. She is a past president of the Women Lawyers Association of Los Angeles, and a former NAWL® Regional Director for the Western States. She followed her three brothers into the practice of law in the family firm of Moidel, Moidel, Moidel & Smith.

Barnett's Acceptance Remarks: "Women Olympians"

By Martha W. Barnett

Last August, Martha W. Barnett, a partner in the Tallahassee, Florida, law firm of Holland & Knight, completed a 2-year term as chair of the ABA House of Delegates. She is the first woman to hold that position in ABA history. A dedicated member of many professional organizations, she was recognized by NAWL® to receive its "1996 Arabella Babb Mansfield Award."

ABAJ/MIKE EWEN

On June 15, 1869, Arabella Babb Mansfield of Iowa became the first woman admitted to a state bar. One hundred years later, NAWL® and many other women's organizations commemorated her achievement by declaring a "Centennial Year" to focus public attention on the contributions of women to American society. Now NAWL® has created a new association award in tribute to "Belle" Mansfield, celebrating the recipient's "success, positive influence and valuable contribution to women in the law and women in society." Mrs. Barnett received the first Mansfield Award on August 3, 1996, some 127 years after Belle's historic bar admission.

Thank you for that very kind introduction. I am honored and humbled for I know that everyone in this room is a success story, achievers who have overcome the odds against success in life and work. Women's progress during my lifetime—our entrance into places where once we were not wanted—is a cause for applause and for celebration.

While my service as the "first woman" to chair the House of Delegates is cited, you need only to look around this meeting to see that women lawyers have moved into leadership roles in just about every prominent ABA position, from the president of the association to the First Lady of the country. Maybe it is because I am getting older, but I am especially conscious of all of the women who have come before me—as women lawyers, women judges, active ABA groupies—the real "first women." I want to take every opportunity I can to acknowledge and honor their sacrifice and commitment.

Certainly Arabella Babb Mansfield, who I understand was affectionately known as "Belle," the first woman to be admitted to a state bar, is a shining example. So too, Margaret Brent, the first woman lawyer in America. We don't have to go quite so far back to find other "firsts." One of particular importance to me is Judge Mattie Belle Davis who was NAWL® President 1965-1966. First, Judge Davis is a fellow (or perhaps I should say "fella") Floridian. Second, she has a unique place in the House of Delegates. At one time, she was the only woman who was a member of the House of Delegates, representing the National Association of Women Lawyers®. I am told that when the chair of the House of Delegates opened that particular meeting, he greeted the delegates as "Gentlemen and Judge Davis."

I was impressed by this Award's focus on contributions of women to

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"The U.N. Conference and the Olympics underscored for me in graphic ways the growing importance of women in the world community and how far women have come in the past two decades."

American society, not just women lawyers, but all women. During the last year, I have attended two world gatherings—the 4th U.N. World Conference on Women in Beijing, China, and the Centennial Olympic Games in Atlanta, Georgia. Both have had an enormous impact on me, on my view of the world, and on my respect for women. I would like to share some of my impressions, impressions that were molded and formed by experiences I had at the two events.

The U.N. Conference and the Olympics underscored for me in graphic ways the growing importance of women in the world community and how far women have come in the past two decades. While the focus of a U.N. Conference is very different from an Olympiad, there were many similarities.

The most obvious is the gatherings themselves. Men and women from all over the world—representatives from 187 countries at the World Conference on Women; 189 countries at the Olympics—brought together for a common purpose: not winning the "gold," although that certainly is what gets the most attention and keeps us riveted to the TV, but to celebrate the human spirit—indeed to celebrate "the Olympic Spirit." They were gatherings where we could share our hopes and dreams for our families and communities for a peaceful future—a future where all men and women are treated equally and with dignity; a society where courage, determination, and the effort to excel—whether on the playing field, in the court room, or living room—are recognized and rewarded.

As many of you know, the ABA sent a delegation to the U.N. Conference on Women. (Some of us believe the ABA did this because of the association's longstanding commitment to international human rights; others think it had something to do with the fact that for the first time in our history, the top two offices are held by women!) We had a multi-faceted agenda that included meeting with Chinese lawyers, participating in the Non-Governmental Forum, and impacting the official Platform for Action. Our theme, indeed the theme of the Conference, was "Women's Rights are Human Rights." The terms are synonymous.

While in Beijing we met with U.N. Ambassador Madeline Albright, the U.S. delegation, the Chinese Minister of Justice and Minister of Legislative Affairs, numerous Chinese lawyers, and dignitaries of all sorts from Hillary Clinton to Jane Fonda. We were Official Observers at the U.N. Conference and sat at the drafting table, crafting the language for the Platform for Action.

The event, however, that will stay with me forever occurred on my last day in Beijing, and illustrated the spirit that is uniquely female. First, I should briefly describe the site of the Non-Governmental Forum, Huairou.

On its best day, the Huairou site was marginal. The main buildings reminded me of my junior high school, long after it was abandoned by the School Board—two- and three-story concrete block buildings, without air conditioning or access for the handicapped or bathroom facilities. The rest were tents—regular tents, blow-up tents, large circus-like tents (indeed there was often a festive circus atmosphere). When the weather was bad, the conditions were outrageous. The last day it was raining—hard; indeed it had been raining hard for several days. Most of the tents were no longer standing, collapsing from the weight of the water accumulated on the roof or from the wind.

Several of us walked around to get one last, good look. Through the pouring rain, we saw that the two or three large tents that were still standing were filled, indeed overflowing, with women. Those women were seemingly unaffected by the physical conditions. They did not let the rain dampen their enthusiasm nor blur their vision. They were focused on what they had come to China (many at great expense and hardship) to accomplish, and a little rain was not going to interfere. It spoke volumes to me about the spirit, indeed the Olympic Spirit, of women, a spirit that is a universal quality. It evidenced the dedication, commitment, strength, the ability to keep going—regardless of the inconveniences or even the pain.

We have seen the same spirit evidenced by many of the women athletes during the past two weeks. When U.S. swimmer Amy Van Dyken won the gold in the 50-meter freestyle, she became the first female American to ever win four gold medals in a single Olympic games. Amy also won golds in the 100 butterfly, the 400 medley relay and the 400 freestyle relay. Asthmatic to the point of collapse and prone to allergies, Amy was the subject of rejection and ridicule on her high-school swim team. She once overheard three relay partners say they could not win with her and demanding that the coach replace her. Amy said, upon winning her gold, "This is for all of the nerds out there."

Who can forget the now-famous Keri Strug's vault on an injured leg that led to the U.S. Women's Gymnastic Team's gold medal? One commentator said, "Keri came through like a man. She did it in front of a camera, in the most-watched Olympic sport...; she came through in the

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Barnett Remarks continued

clutch. It was high drama, and she did it hurt. It will be the defining moment of the Atlanta Centennial Games."

Donna Lopiano, executive director of the Women's Sports Foundation, said: "I think it does a lot to bust the myth of the female as overly sensitive, quick to tears and really not strong enough to withstand the pressures of the world, the eternal victim. It throws it all to the wind. It does great service to women of the world."

These qualities, honored, indeed glorified, in the Olympics, are what have always defined women for me. It is just that now they are being demonstrated in forums—venues if you will—that were traditionally closed to most women. In many ways, women dominated the Olympic games—from Michelle Smith of Ireland, said to be "faster than Flipper, a miraculous mermaid with three Olympic gold medals," the U.S. Women's gold-medal soccer team, to the "real dream team," the U.S. Women's softball team. Our showing—the "Olympic Spirit" of the women athletes—may well change the world view of the role and capabilities of women and move women closer to our universal goals of equity and equality. Surely, they will have as much, if not more impact, than the World Conference on Women.

We have our own Olympians in the legal profession. Women who have beat the odds, stayed the course, run through the pain, completed the marathon, captured the gold, and paved the way for women like me not only to play, but to win. In addition to Belle Mansfield and Mattie Belle Davis, we have the obvious—Justice Sandra Day O'Conner, Justice Ruth Bader Ginsberg, Attorney General Janet Reno, First Lady Hillary Clinton. There are far more unsung heroes—women who

"We have our own Olympians in the legal profession. Women who have beat the odds, stayed the course, run through the pain, completed the marathon, captured the gold, and paved the way for women like me not only to play, but to win."

embody the Olympic Spirit: such as Carol Dinkins, the first woman to serve as Acting Attorney General of the U.S. and now the head of the environmental department at Vinson, Elkins, chair of several ABA sections and on the Nominating Committee; or Harriet Miers, the managing partner at the Locke Purnell Rein Harrell law firm in Dallas and chair of the *ABA Journal* Board of Editors and my Rules & Calendar Committee chair; or Roberta Cooper Ramo, first in our hearts and first in this association (incoming ABA President Lee Cooper, in honoring Roberta yesterday, commented that like the "Shack," "Madonna," "Marilyn," Roberta has joined the select group of people who are so famous that they are referred to with a single name); or Linda Fairstein, chair of the Manhattan District Attorney's Sex Crimes Unit, who prosecutes some of the country's worst sex offenders; or Judge Martha Crais "Sissy" Daughtery of the United States Court of Appeals for the 6th Circuit.

In fact, there is a wonderful story about Sissy's appointment that illustrates the rapidly developing "history" of women lawyers. It starts with Florence Allen of Ohio, the first woman ever to hold a life-tenured federal judgeship. When named to the 6th Circuit by President Franklin D. Roosevelt, one judge in the Circuit was so sorely distressed he reportedly took to his sick bed for two days following the announcement. Her colleagues daily dined without her at their all-male club. Undaunted, Judge Allen bought a hot plate to warm her lunch in chambers, an item passed on to Judge Cornelia Kennedy when President Jimmy Carter appointed her to the 6th Circuit in 1979. Sissy, appointed in 1993, now owns the coveted hot plate, proudly displays it in her office, and I am told puts it to good use on occasion.

I could go on and on and happily still not complete the list of our women Olympians—a good sign in and of itself—but I won't, mostly out of fear of leaving someone out, but also concern that you will quickly tire of my litany and leave me, literally.

Let me close by saying, despite the victories that have been won—in the cornfields in Huairou, on the playing fields at the Olympics, or the battle fields of the legal profession—we cannot be blinded by the glitter of a few gold medals representing success. There is much to be done. The world is changing. As scary as it is for some, perhaps all, change can be a constructive, progressive process if we embrace it and make it our own. Belle certainly knew that. So do you, and so do I; so do all of the women who so ably exhibit their "Olympic Spirit" each and every day.

Thank you once again for this great honor. I appreciate it more than words can express. ✱

Fatal Marketing Mistakes Lawyers Make

Advice for rethinking and redefining your business aims

By Trey Ryder

Lawyers who rely on traditional marketing methods are fast discovering that many time-proven methods no longer work. You could dramatically improve your marketing results by avoiding the following mistakes and heeding some updated advice.

MISTAKE #1: Relying on referrals. When you depend on referrals as your sole source of new business, you allow others to control your flow of new clients. You may discover that whether you receive referrals has nothing to do with your knowledge, skill or experience. Instead, it may be based on your ability to contact the referrals.

ADVICE: Make sure your marketing program attracts inquiries *directly* from prospects. This allows *you* to manage your market ing program, rather than relying on third parties over whom you have no control.

Depending on media exposure. Without question, articles in the print media and interviews on radio and television can help you attract new clients. But many lawyers rely on publicity as their entire marketing program. True, exposure can increase your credibility; often, exposure by itself isn't enough. Lawyers routinely report, "We were very happy with the number of articles about our firm, but we didn't get a single new client"!

ADVICE: Design your marketing program to bring about an interaction between you and your prospect, whether over the telephone or in person. Direct interaction is a critical step in the marketing process. It's also the step most attorney marketing programs overlook.

MISTAKE #3: Relying on networking groups as a primary source of new business. Networking to meet prospects and cultivate referrals is a time-consuming exercise. While it may bear fruit, lawyers often underestimate the time required.

ADVICE: Pursue opportunities to talk with genuine prospects, but don't place networking above other marketing strategies.

MISTAKE #4: Competing on low price. When you lower your fee to attract new clients, you undermine your credibility because clients conclude your services were not worth what they previously paid. Plus, you attract clients who will leave you when competing lawyers offer fees lower than yours. Clients who are loyal to the dollar are never loyal to you. In addition, you often lose money because the cost of attracting new clients in volume is often greater than the profit you can earn from those clients.

ADVICE: Instead of competing on price, compete on value. You're better off being the most expensive lawyer in town—with prospects who appreciate your knowledge—than being the cheapest lawyer with prospects who question your skill.

MISTAKE #5: Delivering an incomplete marketing message. Many lawyers believe common marketing methods don't work because their results were mediocre. Usually the problem isn't the marketing method, it's the message. When your message lacks even one essential element, your efforts fail.

ADVICE: Before you implement your marketing program, make sure you create a complete marketing message. This is the most important step you can take.

An estate planning lawyer delivered a seminar to a crowd of 85 prospective clients; afterward, almost no one came into his office for a free consultation. After a review, we added less than five minutes of information to his program. At his next seminar, 10 of the 11 couples requested appointments with him. The information we included was as simple as explaining how to hire an estate planning attorney, but it was enough to significantly boost his marketing results.

MISTAKE #6: Not effectively reaching your target audience. A tax attorney who represents doctors before the IRS advertised his services in a weekly "shopper" newspaper distributed free to homes. Not surprisingly, he was disappointed with the response. Before running the ad, the lawyer could have saved his $2,000 investment by asking,

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Marketing Mistakes continued

"Will doctors look for a tax attorney in a free weekly newspaper"?

ADVICE: Choose different methods to reach your prospects. Then test each method on a small scale before you invest significant dollars. That way you'll know which method is most effective at reaching and attracting the clients you want.

MISTAKE #7: Making decisions by committee. Often, the quality of a marketing decision is based on how long it takes to make the decision and how much the decision has been watered down by compromise. One person working alone has the potential to make good decisions. When two people work together things begin to bog down. And if you're waiting for three people to agree—well, don't hold your breath. Marketing is like football. Can you imagine how long it would take if the entire team offered their ideas and everyone had to agree before they could make the next play?

ADVICE: Choose one quarterback to direct your program. If you don't get the results you want, change strategies or change quarterbacks. But don't compound your quarterback's problems by bringing in more people to make decisions.

MISTAKE #8: Not taking the leadership position in your market. When prospects perceive you as the leader in your field, you have a substantial advantage over other lawyers. Yet many marketing programs aren't designed to attain this powerful, profitable position.

ADVICE: Look at your position in the marketplace. From your prospect's point of view, ask yourself: Is any lawyer clearly the leader in that category? If not, design your marketing program so you take control of your niche. If that niche is already dominated by other lawyers, create a new category for yourself. Then promote the category so prospects see you as first in that area. One of my clients created a new category and successfully dominated his niche for over five years. You gain an extraordinary advantage when prospects perceive you as the leader.

MISTAKE #9: Not delivering your marketing message until prospects come into your office. Attorneys often have no problem persuading prospects to hire their services once prospects are in their office. But getting prospects through the door is another matter.

ADVICE: Develop materials you can send to prospective clients. Then create a marketing program using the print and broadcast media to attract inquiries from prospects who ask to receive your information. When prospects call your office, mail your packet and add their names to your mailing list. This allows you to put your marketing message into their hands regardless of their location, rather than waiting for them to come into your office.

If your materials are powerful and persuasive, you'll find prospects calling and requesting appointments. One of my lawyer-clients received 426 calls from prospects after offering his materials on a radio talk show, over 500 calls after a television interview, and another 400 inquiries from an article in the newspaper.

MISTAKE #10: Not marketing to your practice mailing list. Your mailing list is your own personal area of influence. It should contain the names of all your past clients, current clients, prospective clients and referral sources.

ADVICE: Make sure to mail your newsletter at least *quarterly*. And don't believe you must make your newsletter a 16-page treatise. A simple educational letter of even one or two pages works fine. Your newsletter's size is not nearly as important as how often you mail it and the value of the information contained in it.

MISTAKE #11: Taking marketing shortcuts. Lawyers who achieve success often trim back their marketing programs, hoping to save money by eliminating the bells and whistles. What they often don't realize is that many of the so-called bells and whistles are actually the essential components that make their programs work.

An attorney hired me to refresh his seminars. When we kicked off his program, he attracted 247 prospects to five seminars, an average of 49 people each. His calendar filled up almost overnight.

In six months, he took his marketing in-house and began cutting corners. He no longer attracted inquiries from prospects so he could add names to his mailing list. Instead, he advertised for prospects to come directly to his seminars. He no longer advertised in targeted publications; he shotgunned his ads in expensive, broad-based news-

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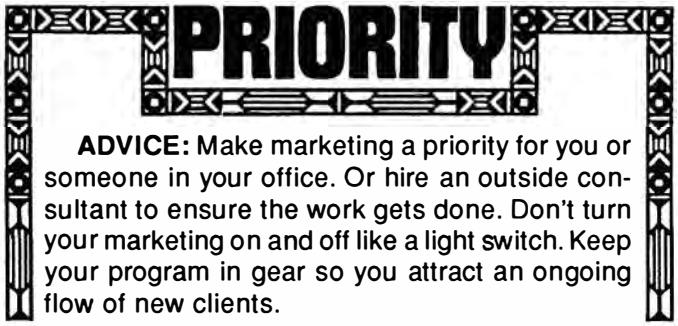
papers. Within 90 days, his results were as dismal as they had been before he called me.

ADVICE: If you want to streamline your marketing and determine if any steps might not be needed, start slowly and track your results. Be careful not to cull the steps that are responsible for your success. When you shortcut your marketing on the front end, you shortcut the number of new clients on the back end.

MISTAKE #12: Not making marketing a priority. For most lawyers, practicing law is the highest priority. When they get busy, they often reduce their marketing efforts because they need that time to work on their clients' behalf. They operate under the false hope that their momentum will attract new business long into the future. But when they cut their marketing efforts, they actually shift their marketing into neutral. As a result, business slowly coasts to a standstill.



ADVICE: Make marketing a priority for you or someone in your office. Or hire an outside consultant to ensure the work gets done. Don't turn your marketing on and off like a light switch. Keep your program in gear so you attract an ongoing flow of new clients.

MISTAKE #13: Writing an intricate marketing plan that becomes impossible to carry out. Many marketing plans look like jigsaw puzzles with hundreds of pieces. And while the plans might work, most lawyers and their staffs don't have the hours needed to administer the plans.

ADVICE: Make sure your marketing plan is built on simple steps proven to be effective and efficient. In my 24 years in marketing, the most profitable method I've found is *education-based marketing*, which provides information and advice to prospective clients.

MISTAKE #14: Never completing—and, therefore, never implementing—your marketing plan. Many lawyers get so caught up in gathering facts that they never stop designing their plan. They collect data, add more steps, collect more data....

ADVICE: Implement your plan at the earliest possible moment. A poor marketing plan that is up and running is infinitely more profitable than the "perfect plan" that never gets off the ground.

MISTAKE #15: Delaying your marketing program until your cash flow improves. You may become the victim of faulty logic: your cash flow won't improve until you begin your marketing program.

ADVICE: Start your marketing program now so you can enjoy an ongoing flow of new clients. Maintaining an effective marketing program is the most important investment you can make. Why pay for an office and staff if you don't have enough business to justify the overhead?

MISTAKE #16: Carrying out a marketing program that does not achieve the essential components for success.

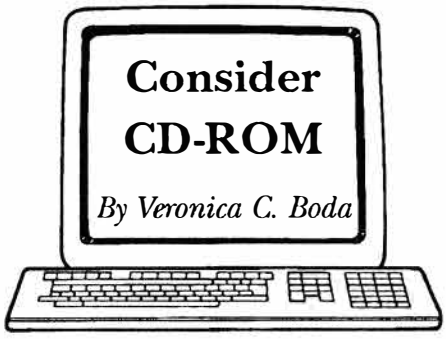
ADVICE: Anytime you evaluate a marketing opportunity, consider how well that method will accomplish these four objectives: (1) establish your credibility, (2) generate interactions between you and your prospects, (3) gain your prospects' commitment, and (4) maintain client loyalty. Programs that don't include all four steps will fail.

MISTAKE #17: Promoting your services. When you promote your services, you take on the role of a salesperson hawking his or her wares. This method, called selling-based marketing, undermines your credibility and causes prospects to question whether they can trust you.

ADVICE: Instead of promoting your services, promote your *knowledge* by educating prospects. Education-based marketing gives prospects what they want—information and advice; it removes what they don't want—a sales pitch. It attracts prospects who come to you because of your knowledge, skill, judgment and experience. ✱

Trey Ryder is a law firm consultant, specializing in education-based marketing for attorneys. His article, "Marketing With Education, Not Sales," appeared previously in Women Lawyers Journal®, Vol. 82, No. 1 (December 1995) (pp. 20-22). He offers a free fact kit that includes "7 Secrets of Dignified Marketing." To obtain it, call 800/876-5788 or write to him at P.O. Box 2115, Payson, AZ 85547-2115.

Whether to use books or technology for legal research depends chiefly on time, accessibility and cost. When making research decisions



Legal publishing has been with us for more than 500 years. The activity continued unchanged until the late 1800s when a few innovations were introduced: advance sheets by the West Publishing Company in 1876, looseleaf services by the Corporation Trust Company in 1907 and West's pocket parts in 1916.

Commercial computerization of legal information first began in 1973. Since then, hardbound-book research has been substantially augmented by technological developments that permit faster turn-around time for legal research. Computer-assisted legal research is now so user-friendly that the primary reason for utilizing it comes down to cost.

The two main types of technology-driven research are computer-assisted legal research (CALR) and Compact Disk-Read Only Memory (CD-ROM). The principal CALR providers are LEXIS and WESTLAW. The advantages of CALR over manual research are accessibility to countless published and unpublished sources, access speed, timeliness of information and multi-database access capability. While other vendors and governmental units are providing law on the Internet, LEXIS and WESTLAW are unmatched for their reliability and accuracy of information. Other Internet legal service options now include e-mail, financial and news information, and CLE programs, such as those offered by LEXIS Counsel Connect and The West Network. Using these on-line services exclusively for legal information or research in every instance is the most expensive method regardless of ease or availability.

Another way to utilize CALR and contain cost is with CD-ROM technology. On-line computer charges add up dramatically, particularly when searching repeatedly for the same information. CD-ROM usage represents a fixed cost to the attorney or law firm that decides to replace future bound volumes or begin a law library.

Similar in appearance to a music compact disc, a CD-ROM stores pictures, text and sound on a laser-encoded optical piece of plastic. One CD-ROM disc can hold up to 300,000 typewritten pages. Your computer needs a CD-ROM disc drive and search software to access information. The information on a CD-ROM cannot be changed (like songs on your old LPs), but is downloaded to floppy disc for word processing.

Some vendors can provide both the discs and the search software, such as West's PREMISE software, available for DOS, Apple® Macintosh® and Windows™ environments. More current and updated information from WESTLAW can be accessed with the exclusive PREMISE on-line link. West provides free on-line updates to all their jurisdictional CD-ROM products: state case law, statute and federal libraries. PREMISE Research Software 3.0 now has Natural Language search capabilities. With Natural Language searching, PREMISE users are able to enter their search requests in plain English, as well as using fill-in-the-blank fields and traditional Boolean queries.

West Group is now the only legal publisher to offer both PREMISE and Folio Views software for searching CD-ROM titles. According to Jennifer Moire, a communications specialist at West Group, West and Thomson Legal Publishing combined now produce over 400 CD-ROM titles.

A true space-saver, per square foot CD-ROM discs hold more text than bound volumes: for instance, West's *Code of Federal Regulations* on CD-ROM contains all 50 titles on 2 discs. "The best candidates for purchase or conversion to CD-ROM are unquestionably the large series of bound case reporters [because they] lack any systematic subject-matter organization of their own and can be most effectively utilized with...print finding tools (digests) or computer-assisted full text search capability," writes Rhode Island state law librarian Kendall F. Svengalis. Author of "The Legal Information Buyer's Guide & Reference Manual," Svengalis is an expert in law library administration and acquisitions. This first-ever reference guide for legal-information consumers comments on all major legal-information sources and provides hundreds of cost-saving tips.

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Designed "to address the needs of the solo practitioner and the attorney in the small or medium-sized law firm operating without a law librarian," the Svengalis "Guide" points out distinct advantages of CD-ROM over books and on-line research. The "Guide" contains advice for consumers to consider before selecting a CD-ROM product.

- The initial cost and cost of the updates. Compare the costs of the various competing products. If the products are roughly equivalent, determine which eliminate the up-front licensing fees in favor of annual or monthly charges only.
- Which libraries of information are contained on the disc(s)? Does it contain statutes, reports, court rules, and administrative regulations on one disc or must you buy three or four separate products to assemble the same information? For example, compare the more comprehensive LOIS (Law Office Information Systems) products with the combined cost of the separate West libraries. What is the historical coverage? Must you retain some older case reporters in bound volumes to maintain a complete run?
- Are the discs sold or leased? If leased, what limitations does the vendor place on your use of the product?
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**Law Student*

THE COMPLETE GUIDE TO CONTRACT LAWYERING,What Every Lawyer and Law Firm Needs to Know About Temporary Legal Services

by Deborah Aron and Deborah Guyol

317 pages, softbound

includes in-depth appendix covering ethical considerations, office equipment, legal personnel agencies and supplemental resources

Niche Press, 1995

ISBN: 0-940675-45-5

For information, call 800/468-1994

Reviewed by Kacy C. Eaves

"Everybody's talkin' 'bout" it...from CLE meetings to corporate counsel meetings. The latest hiring trend in the legal profession is contract lawyers. Many of us started our careers believing we would be hired by big firms, settle into partnership tracks and be crowned partners seven years later. Economic changes have shattered this career pattern for many.

Attorneys are now "contracting out" on projects. The legal profession faces the latest craze of contingent workers, previously endured by lower-skilled employees. Various reports imply contingent lawyers are a new phenomena; in fact, contract lawyering is a mere modification of the classic solo practitioner. Our images of the large practice are a fallacy. As late as the mid-1950s, only 2 percent of all lawyers were in firms of over ten attorneys. Since law began in America, attorneys have been performing work exclusively for other attorneys, which is the defining element of a contract lawyer. There are few distinctions between a solo practitioner working directly for a client and a contract attorney working for another lawyer. The solo practice is slightly altered since the contract attorney performs work solely for another attorney or in addition to an independent client practice. This book shows us that temp attorneys are not new but re-invented for the '90s.

The legal profession is undergoing radical changes in hiring patterns. In 1988 there were an estimated 1,300 attorneys temping; by 1994 over 10,000 attorneys contracted their services and the numbers continue to climb. Cataclysmic economic changes are forcing attorneys and those who hire attorneys to change their approach to work. Pressures in the form of record numbers of law graduates, the purported attorney "glut"—along with numerous "downsized" mid-career attorneys—have plunged the legal community into this form of work.

"The Complete Guide To Contract Lawyering" details the benefits and risks in contract relationships. Written in a tightly organized style, it is organized by topic and interest area. You can focus on contracting as a process, as a contractor or as a firm. The well-organized chapters are topically focused. This structure permits you to skip around the book, allowing you to find answers you are looking for quickly. You can get the information you want by simply scanning the table of contents and reading the chapters that apply. Besides contracting advice, the book offers tips for new office setups, providing good information on equipment and management of your own contract office.

For those considering "contracting out" their services, you will learn many lawyers have found temping as an effective way for them to control their work hours; a way to bring quality of life back into their lives. Others have found that it provides them opportunities to be their own boss without the risks of a solo practice. Some find contracting out can nurture and insulate a young solo practice, providing needed income. Still others find contract lawyering meets their immediate economic needs while seeking more traditional employment arrangements. Many have found it to be an effective "time out" where they can evaluate their feelings of burnout and decide their future. This book is a must for any attorney—novice or seasoned veteran—who is considering contracting.

"The Guide" also shows how hiring attorneys, firms and small partnerships may benefit professionally and economically by using short-term employment relationships. Firms can "try out" potential hires with no long-term commitments and with immunity from Title VII ramifications. In-house counsels are able to protect their associates by filling in large projects with temporary contract attorneys. Others find contracting tedious tasks can enhance their law prac-

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tice, freeing up valuable time for more productive projects. Several chapters are dedicated exclusively to the issues facing potential employers, providing wise advice on when to, how to, and how not to use temporary talent.

Individuals attorneys—whether as niche specialists, mid-career changers, individuals seeking more liveable schedules, or those desiring to leave the profession—will find strong arguments for considering contract lawyering. The book is filled with case histories from attorneys who have found that contract arrangements provide an effective economic buffer during employment gaps. Many experience that "contracting out" provides life styles they enjoy, giving them freedom in their working lives.

"The Guide" does not specifically target women; both authors (women attorneys) have integrated their own personal experiences with contracting, burnout and desire for better work lives. To augment the presentation of some of the options and perils of contracting, they have integrated real-life profiles of numerous women attorneys. Compelling arguments are made for alternative schedules that many women need, showcasing how to arrange their career to support their personal lives.

Guyol and Aaron lead you step by step through several "how-to" guides that will help determine your suitability for and compatibility with contract arrangements. Included in these chapters are work sheets to help you focus on your own personal limits and to establish your professional goals. By carefully guiding the reader with good self-assessment tools, the checklists not only help identify your individual likes and strengths, but offer frank discussion on when you should and should not consider contract lawyering. Other work sheets help you evaluate your skills, develop an effective marketing campaign, establish realistic work schedules and determine fair hourly rates.

"The Guide" offers the different perspectives of the contract relationship, providing a balanced and perceptive evaluation of many difficult issues facing contracting and hiring attorneys. Concerns about who is ultimately responsible for the case, who owns the project, malpractice liability, and risk issues are well-covered. The downsides of contract lawyering and when contract positions may not be appropriate for the project are also discussed.

If you are a managing partner considering contract lawyers, a recent graduate in search of a first job, or somewhere in-between, "The Complete Guide" will help determine if contracting is right for you. ✱

A graduate of The University of Georgia School of Law, Georgia native Kacy Eaves is one of NAWL®'s 1996 Honorary Law Students. Now living and working in Cincinnati, Ohio, employed as a law clerk at the firm of Kircher, Robinson, Newman & Welch, she serves as NAWL®'s chair of the Young Lawyers Committee, and liaison to the ABA Legal Services Consortium.

JUDITH VAN GIESON'S NEIL HAMEL MYSTERY SERIES

"It's what lawyers do—all the miserable things people can't or won't do for themselves."
"The Other Side of Death"

Reviewed by Valerie Diamond

Since the '80s, growing numbers of women lawyers have begun to appear in the pages of current fiction. Many are heroines of their own series, maturing over the years with their readers like old friends. A popular legal series for the '90s is the Neil Hamel mysteries, set in the vicinity of Albuquerque, New Mexico.

Author Judith Van Gieson has created an independent and unconventional woman lawyer to star in her series. Named for an uncle who died in World War II, Neil responds to queries of "Isn't Neil a man's name?" with "Not when I'm wearing it." Neil has a taste for adventure, never wears a watch, and has not yet gotten used to being part of the establishment. She carries a pistol in her purse, smokes Marlboros, and occasionally drinks too many shots of tequila and Jell-O. Never domestic, Neil thinks housework means throwing away the fast-food containers. She loves wild things—animals and unspoiled wilderness—and puts her life on the line to protect them, bemoaning nuclear waste, environmental pollution and the vanishing of endangered species.

Formerly of Ithaca, New York, Neil chose the University of New Mexico Law School, fell in love with the Southwest, and stayed. The series enchants the reader with its evocative descriptions of New Mexico's scenery and ethos: the lonely desert highway, sunlit snow-capped mountains, thirty-foot Saguaro cacti and scorching hot salsa.

Abandoned by her mother as a young child, the adult Neil, veteran of a divorce, finds intimacy challenging. Her romantic partner is a young Latino mechanic from Mexico City whom everyone calls the Kid. Neil maintains a distance in her relationship with the Kid, observing that others may disapprove of a woman lawyer whose lover is "younger, darker, and better looking" than herself. But as the series progresses, so does the unique relationship that began when Neil's Volkswagen Rabbit broke down near the Kid's shop. "Maybe the Kid and I weren't

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Neil Hamel continued

a perfect match in society's eyes," she comments in "Parrot Blues," "but there had to be some connection deep in the threads of our DNA."

Kid is an appealing character in his own right. A mechanic by day, he plays the accordion in the El Lobo Bar at night, sending most of the money "back there" to his family in Mexico City. His presence in her life sensitizes Neil to an appreciation of the Latino culture and the problems of Latin American immigrants. The Kid is also adventurous enough to help Neil out when one of her cases turns dangerous.

Neil left a fast-track slot in a large law firm to open the firm of Hamel and Harrison. She now has a small practice—predominately divorces and real-estate closings—together with her clueless partner and their fashion-conscious secretary. Occasional cases involving murder or environmental protection make a welcome change for Neil, forming the plots of the novels in the Neil Hamel series.

"North of the Border" (1988) shifts our focus south to Mexico as Neil researches an adoption as a favor for an old lover who fears that the biological parents of his adopted son may be planning to kidnap the boy. The murder of the Mexican lawyer who handled the adoption puts Neil on notice that she may be next.

In "Raptor" (1990), Neil takes advantage of her deceased aunt's pre-paid plane ticket to Montana, where she joins a birding expedition to get a rare view of an Arctic gyrfalcon, and begins her love affair with wild creatures, incidentally solving a murder, apprehending the killer, and saving the falcon.

"The Other Side of Death" (1991) takes Neil to the Sante Fe area, "one place in America where psychics make more than lawyers" to reconnect with old friends from the days of the counter-culture. She comes to party, but stays to investigate the suspicious death of a protester against a proposed addition to the Sante Fe skyline known as "the ugly building."

In "The Wolf Path" (1991), Neil once more answers the call of the wild to help out an ex-con-turned-environmentalist whose wolf-education project has been the target of harassment from police and local ranchers. Neil confronts federal biologists from the Fish and Wildlife Service and a trigger-happy Animal Damage Control representative to solve the mystery of a missing wolf and a murdered man.

Memories of the Vietnam War protests of her high-school days resurface in "The Lies that Bind" (1994) when the mother of Neil's old school friend, Cindy, is charged in the hit-and-run death of her late grandson's girlfriend. The knowledge that the dead woman was a political activist sought by Argentine hit men places Neil at great risk. Helping Cindy cope with her aging mother's decline also forces Neil to confront her feelings about her own abandoning mother.

When a client's wife disappears with one of a pair of valuable Indigo Macaws in "Parrot Blues" (1995), Neil and the Kid discover smugglers transporting parrots illegally across the border. Appalled by the cruel way the birds are treated, Neil and Kid join forces with the U.S. Fish and Wildlife Service to help stop the illegal trade in wild birds. Neil retrieves the bird and solves the mystery of the wife's disappearance and her client's sudden death.

In her latest adventure, "Hotshots" (1996), Neil begins to reevaluate her life. Investigating the on-the-job death of a female firefighter, Neil herself is trapped in a forest fire. Recovering from the blaze, she loses her taste for cigarettes and makes room for the Kid's shirts in a closet of her new house. As Neil herself commented in "The Lies that Bind": "Sooner or later you have to turn the headlights on in your life."

In that same story, Neil asked the Kid one night, "Do you think I'd be any happier, if I had a big car? If I went to work for a prestigious firm and made real money?"

"I think you're happy just the way you are," answered the Kid.

The Neil Hamel series is timely and thought-provoking as well as entertaining. The unconventional, clear-thinking protagonist is likely to appeal to an audience of women lawyers. Neil is a woman of both insight and action. While she takes her responsibilities as a lawyer seriously, she also chooses to take the kinds of risks most of us would prefer just to read about. ✱

The Neil Hamel Series

"North of the Border." Pocket Books, Simon & Schuster, Inc., 1993. (Copyright 1988 by Judith Van Gieson).

"Raptor." Pocket Books, Simon & Schuster, Inc., 1990.

"The Other Side of Death." HarperCollins Publishers, 1990.

"The Wolf Path." HarperCollins Publishers, 1992.

"The Lies That Bind." HarperCollins Publishers, 1993.

"Parrot Blues." HarperCollins Publishers, 1995.

"Hotshots." HarperCollins Publishers, 1996.

Valerie Diamond is the Collection Development/Reference Librarian at the University of Maryland School of Law, Thurgood Marshall Law Library, Baltimore, Maryland.

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FROM CHOICE TO CONSENT IN THE ABORTION DEBATE

by Eileen L. McDonagh

Synopis by author of "Breaking The Abortion Deadlock: From Choice to Consent"

Oxford University Press, 1996

ISBN: 0-19-509142-6

For over 20 years it has been common to portray the abortion debate as, in the words of Laurence Tribe, a "clash of absolutes," one which pits pro-life advocates who believe the fetus is a person against pro-choice proponents who vehemently disagree. It is time to change the terms of this debate from what the fetus "is" to what the fetus "does."

Legally and medically, human pregnancy is defined as the condition in a woman's body resulting from a fertilized ovum throughout its developmental stages. Notably absent from this definition is men or sexual intercourse. While it is common to attribute the cause of pregnancy to sex, medically and legally it is a fertilized ovum, not a man, that causes a woman's body to change from a nonpregnant to a pregnant condition. Although sexual intercourse usually precedes pregnancy, it need not, since women can become pregnant without engaging in sexual intercourse, as when using in vitro fertilization or artificial insemination. A woman who seeks to terminate her pregnant condition, therefore, seeks to remove the fetus from her body as the cause of that condition, not a man.

What the fetus does when it transforms a woman's body from a nonpregnant to a pregnant condition is extraordinary. In a medically normal pregnancy, some hormones rise 400 times their base level; a woman's blood system is rerouted to make all of her blood available to the fetus; a new organ is grown in her body, the placenta; her blood plasma and cardiac volume increase 40 percent; and her heart rate increases 15 percent, just to cite a few of the massive changes. In a medically abnormal pregnancy, a woman can be crippled for the rest of her life as the result of pregnancy, or even die.

The U.S. Supreme Court has ruled that it is constitutional to protect the fetus as a separate entity from the woman, but what the court has failed to consider in over 20 years is the constitutional significance of what the fetus does to a woman in its capacity as state-protected preborn life causing pregnancy. The legal consequence of examining what the fetus does, rather than on what it is, dramatically recasts the abortion debate. Rather than merely a woman's **right to choose** what to do with her own body, as established in *Roe*, the right to an abortion also stems from her **right to consent** to what the fetus does to her body as state-protected preborn life.

Consent is the foundation of the American political system, and the law recognizes that all people are entitled to consent to what is done to their bodies by private parties. Without consent, even a medically life-saving operation becomes a legal injury. Furthermore, the law already recognizes that when pregnancy is imposed upon a woman without consent, as in the case of failed sterilization, rape or incest, she has suffered serious bodily injury, termed *wrongful pregnancy*. Similarly, once children are born, no state requires parents to donate even a pint of blood to their children, much less bone marrow or kidneys, even if a child's life is at stake. What is more, if a child captured a parent and forcibly took needed blood or body parts, state policy does not protect a born child by allowing it to intrude even in minimally invasive ways upon a parent's body without consent; to the contrary, the state acts to protect the parent's right to bodily integrity and liberty in relation to the child.

So, too, with preborn life. While it is constitutional for the state to protect the fetus, the state cannot use a means of protection that allows preborn life to intrude upon a parent's body without consent, thereby causing serious injury. Rather than allow preborn life to injure a woman by imposing a medically normal, not to mention a medically abnormal pregnancy, to the extent that the state acts to protect people from violations of their bodily integrity and liberty, the state must act to stop preborn life from imposing such injuries on a woman who does not consent to be pregnant. To do otherwise, deprives pregnant women of their fundamental right to equal protection by the state of their bodily integrity and liberty in violation of the Equal Protection Clause of the Constitution.

Moving from choice to consent in the abortion debate, therefore, opens new constitutional avenues, ones which promise to guarantee not only a stronger right to an abortion, but also to abortion funding. ✱

NAWL® Professional Associate Eileen L. McDonagh is an associate professor of political science at Northeastern University and a visiting scholar at the Murray Research Center at Radcliffe College.

BULLETIN BOARD

NEW INFORMATION BOOKLET ON DOMESTIC RELATIONS ORDERS was issued in September by the Pension Benefit Guaranty Corporation (PBGC) to help attorneys and others who prepare domestic relations orders in a divorce or legal separation to divide pension benefits payable by PBGC.

The booklet reviews PBGC requirements for court orders that divide pensions. PBGC is responsible for nearly 2,100 terminated plans covering some 400,000 workers and retirees. As trustee of a plan, PBGC pays pension benefits, subject to legal limits, to plan participants and beneficiaries. PBGC also will pay some or all of the benefits to an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant) who submits a qualified domestic relations order that meets specified legal requirements.

"A pension often is a person's largest asset. When there is a divorce, attorneys need to know how best to protect spousal pension benefits in plans that PBGC administers," said PBGC Executive Director Martin Slate.

Copies of the booklet, *Divorce Orders & PBGC*, and additional information about submitting a domestic relations order to PBGC may be obtained by calling PBGC's Customer Service Center at 800/400-PBGC or writing to the PBGC QDRO Coordinator, P.O. Box 19153, Washington, DC 20036-0153. The booklet also is available from the PBGC home page on the World Wide Web at: http://www.pbgc.gov.

ALI-ABA RELEASED FOR COMMENT REPORT OF ITS SUBCOMMITTEE ON THE FUTURE. The subcommittee was appointed in 1994 after the ABA Board of Governors voted against a proposed merger of ALI-ABA and the ABA Division for Professional Education. The 8-member subcommittee was asked to review the accomplishments of ALI-ABA since its inception in 1947, assess the current state of the continuing education of the bar, and chart a prospective course for ALI-ABA's future.

The report makes 24 specific recommendations to achieve three primary goals: (1) to renew ALI-ABA's commitment to the general project for the continuing education of the bar; (2) to make ALI-ABA a model provider of continuing legal education; and (3) to restructure ALI-ABA to serve as a national resource center for the education of the bar.

Interested persons are invited to comment on the report by **March 1, 1997.** The ALI-ABA Committee is expected to discuss the report's recommendations and any comments at its next meeting in April. Contact Donald Maclay, 800/CLE-NEWS, x1636.

CORPORATE COUNSEL INSTITUTES is offering two conferences for women attorneys: "The 1997 National Conference for Women Litigators," **March 6-7, 1997** in San Francisco; and "The 1997 National Conference for Women Employment & Labor Law Attorneys," **May 8-9 1997** in Chicago.

For more information and registration forms for either conference, call 800/394-9390.

"WOMEN MAKING HISTORY MONTH" CELEBRATIONS. The Greater Philadelphia Chapter of NAWBO is the principal sponsor of this year's program: "Women in Business and Government" to be held on **March 11, 1997** in Philadelphia at the Wyndham Franklin Plaza Hotel.

This program features women who have had dual careers in business and government. Speakers include: Joan Spector, business woman and former City Council member; and Emily Bittenbinber, former business woman and current director of Capital Projects for the City of Philadelphia.

For more information, contact Philadelphia NAWL® member Patricia Larson, 215/772-7342.

BRAND NAMES EDUCATION FOUNDATION ANNOUNCES 1997 BOAL SCHOLAR AWARD. The purpose of the Boal Scholar Award is to encourage original legal scholarship and writing on international trademark issues of current importance, and to encourage communication and exchange of information among trademark

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scholars worldwide. The Award is open to applicants throughout the world. Persons interested in applying must complete an official Application Form. The topic for the 1997 Boal Scholar Award is: **Enforcement of Trade Mark Rights In Europe**. Completed applications must be received by the Foundation prior to **April 1, 1997**.

Applications may be obtained by contacting Brand Names Education Foundation, 1133 Avenue of the Americas, New York, NY 10036-6710; telephone 212/768-9885; fax 212/768-7796.

THE DEPARTMENT OF DEFENSE'S SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM will award $36 million in research and development contracts to small technology companies working cooperatively with research institutions such as universities and federally-funded R&D centers. The STTR solicitation closes **April 2, 1997**. For more information call 703/205-1596.

VIP'S SPRING '97 REGIONAL TRAINING & NETWORKING INSTITUTE, April 4-5, 1997 at the Omni Durham Hotel & Durham Civic Center, Durham, North Carolina. VIP's 2-day training and networking institute will feature specially designed training and networking opportunities for both volunteers and professionals who utilize, or would like to utilize, volunteers in the juvenile and criminal justice field.

A brochure, including workshop and registration information is available by calling VIP at 313/964-1110 or writing VIP at 163 Madison Avenue–Suite 120, Detroit, MI 48226. Fax 313/964-1145.

THE AMERICAN ASSOCIATION OF LEGAL NURSE CONSULTANTS PRESENTS ITS 8TH NATIONAL EDUCATIONAL CONFERENCE April 9-12, 1997 at the Westin William Penn in Pittsburgh, PA. Topics covered will include: electromagnetic field litigation, latex allergy lawsuits, the opportunities and ethical costs of organ procurement, medical malpractice case studies, shifting nursing duties to unlicensed staff and legal nurse consulting.

For more information, contact AALNC at 4700 W. Lake Avenue, Glenview, IL 60025-1485, telephone: 847/375-4713; fax: 847/375-4777; e-mail: info@aalnc.org or their home page at http://www.aalnc.org/.

THE 3RD ANNUAL HEALTH CARE ANTITRUST FORUM—CHICAGO 1997, May 12-13 at Holiday Inn-Mart Plaza, will explore possible new legislation and anticipated changes in antitrust enforcement policy affecting the health care industry in the second Clinton administration. Antitrust experts from government enforcement agencies, the judiciary, the healthcare industry and academia will join attorneys, who have handled some of the leading cases decided in the last year, as featured speakers.

Some topics to be addressed are: trends in joint venture analysis, actions by state enforcement agencies to regulate health care transactions, and merger enforcement updates.

For information, call 312/214-3299.

THE 5TH ANNUAL NAWL®/NAWBO NETWORKING RECEPTION for attorneys and business professionals will be held in Philadelphia on Wednesday evening, **May 14, 1997.** Advance reservations are required.

For more information or a registration form, contact Philadelphia NAWL® member Patricia Larson, 215/772-7342.

WILLIAM H. (BILL) GATES, MICROSOFT CHAIRMAN AND C.E.O., WILL BE KEYNOTE SPEAKER AT ASSOCIATION OF LEGAL ADMINISTRATORS' CONFERENCE AND EXPOSITION to be held **May 19-22, 1997,** in Seattle, Washington.

"This will mark the first time Mr. Gates has addressed an association in the legal community. We're very pleased and fortunate to have him as the keynote speaker for our 1997 conference," said Theodore J. Boersma, chairman of ALA's 1997 Conference Planning Committee. "The role of technology in the practice of law is rapidly expanding. The experience and insight that Mr. Gates can share with law office professionals will undoubtedly be a great enhancement to our 1997 conference."

ALA's 1997 conference and exposition will be held at the Washington State Convention & Trade Center. For more information, contact ALA Headquarters at 847/816-1212.

Commentary

By Kathryn Tullos

Wall Street v. Main Street: That Losing Feeling

Reading the *Wall Street Journal* always wakes me up in the morning, because I generally find something to offend me mightily on the editorial page. However, the first page of the Thursday, September 5, 1996 edition did more than Starbucks could ever do. [In] [a]n article entitled "Mood Swings; White Men Shake Off That Losing Feeling of Affirmative Action," Jonathan Kaufman of the *Journal* reported on white men who were feeling more secure in their jobs now that they believe the big push for affirmative action and diversity inside the American business world is over. Kaufman cited many specific examples of that sentiment among white men, including individual managers who had very little trouble in booming economic times finding good positions and groups of disgruntled white men in corporations such as IBM that were disbanding since they no longer felt discriminated against. Although I found the fact that men no longer need to consider diversity per se threatening to be heartening sentiment, when I got to the second paragraph of the article, my blood began to boil. Kaufman related that one Tom Shugrue of Traveler's Insurance Company was "content." His new boss was a woman, "but white men hold three of the other four jobs one level above him. After that, the executive suite at the Traveler's Group, Inc. unit is almost exclusively white and male, *suggesting to him that endeavor, not race and gender, is the best road to advancement.*" [Italics mind.]

When exactly and by what radical leap of logic did we conclude that having an executive group composed entirely of one race and one gender was a sign of opportunity instead of pervasive prejudice? My guess is Mr. Shugrue would feel quite differently if he looked ahead and saw members of a different race and gender occupying those top level positions. In fact, he might continue to feel himself discriminated against. I wonder how the women and minorities who are Mr. Shugrue's colleagues at Traveler's feel about this statement?

As far as I can tell, the *Journal* has two options in explaining this outrageous comment. One option is that they simply do not believe the overwhelming numbers of one gender or race in a given set of top level positions is any evidence whatsoever that discrimination might still exist in the workplace. This option seems unlikely coming from a sophisticated business publication. The other option, which is much more insidious, is that the *Journal* somehow has assumed that white men are inherently more qualified than women and minorities; hence, the presence of agglomerations of white men indicates agglomerations of merit as well. At least in my book that assumption is totally unfounded.

Whatever motivated Jonathan Kaufman to write these statements, and Tom Shugrue to draw the conclusion he did, seems clear to me that this article is evidence that there is, instead of a decrease of concern about diversity in the workplace, call for much alarm on the part of those who would like to see the most meritorious candidates win places of position and power, regardless of race, gender, ethnicity, etc. This article is just another piece of evidence showing us that there is much work on equality left to do in the American business world. ✱

Kathryn Tullos is the editor of The Womens Link of Texas Lawyers, *the quarterly newsletter of Texas Women Lawyers (TWL). Reprinted with permission from* The Womens Link, *Vol. 2, No. 4 (Winter 1996/97).*

Workplace Violence: Moving Beyond the Headlines

How today's employees are putting their lives on the line at work

By Rebecca A. Speer

First in a series

On August 1, 1997, at its Annual Meeting in San Francisco, NAWL® will take a leadership role by presenting a program designed to move lawyers beyond the headlines towards a fuller understanding of workplace violence and, ultimately, towards action to prevent and better manage threats to employee safety from violence. The August 1 session will teach lawyers the facts about workplace violence, offer them tools for developing effective responses to this broad-reaching problem, and motivate them to bring those tools back to their practices and clients. Further, this session will examine and stir debate concerning the particularly debilitating impact workplace violence has on women: how the migration of violence from the streets and the home to the workplace acts to threaten the very means women need to escape an abusive relationship and, more generally, to gain personal power and societal influence.

In the first of a series, San Francisco employment and labor law attorney Rebecca A. Speer discusses the complexity and pervasiveness of workplace violence, and the many legal, practical and ethical issues it raises for organizations nationwide.

The term "workplace violence" readily calls up frightening images of workplace murders that leave survivors feeling stunned, fearful, and powerless. In fact, in the 1990s, we regularly read accounts of workplace homicides in uncomfortable detail. News stories tell us that in July 1993, Gian Luigi Ferri, heavily armed and ready to kill, entered the 101 California Street high-rise in downtown San Francisco and massacred eight people, mostly lawyers and other professionals; that in March 1994, an employee terminated from a Southern California electronics company returned to the workplace and killed three employees; that in July 1995, a Los Angeles worker killed four people after getting a poor evaluation; that in August 1996, a graduate engineering student shot and killed three San Diego State University faculty members who he believed had criticized his thesis; and that in addition to those and many other incidents dozens of people were killed in post office-related shootings.

These and other headlines have shaped a national consciousness about workplace violence and have made "workplace violence" a term more familiar to all of us. Ironically though, by focusing on the rarest form of workplace violence—the multiple-murder spree—the very headlines that help raise an awareness of workplace violence obscure the true magnitude of this devastating problem.

Statistics emerging from varied governmental agencies concerned with public health issues confirm an increase, and what some even deem an "epidemic,"[1] of workplace violence in the 1990s. Data from the National Traumatic Occupational Fatalities Surveillance System show that workplace violence began rising in 1990 and surpassed machine-related deaths by the close of 1991.[2] Figures released by the U.S. Department of Labor show that workplace violence is the second leading cause of job-related deaths for all workers and the leading cause for women.[3] Just as troublesome, statistics show that, for each incidence of workplace homicide, *thousands* of employees suffer from damaging forms of non-fatal workplace violence: non-lethal assaults and other behavior creating a fear for personal safety.

Shocking accounts and statistics concerning workplace violence have sent researchers scrambling to determine why our killing fields are moving steadily from our streets into our workplaces—not just our late-night convenience stores, taxis, and other places traditionally considered unsafe, but into seemingly sheltered workplaces, such as the professional offices that formed the site of the 1993 San Francisco rampage. Analysts from varied academic and professional disciplines are asking: What is happening in our workplaces and, more, *why*?

Some attribute the steady rise of

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ON THE RECORD

By Veronica C. Boda, Editor

LAWYER ALERT! Mayhem and murder are afoot! Honestly. No exaggeration. No, this editor's imagination has not run amuck. I have not been reading too much fiction—if that's possible—nor playing one too many games of "Clue." Evidence exists, proving these tragic occurrences: corpus delicti, smoking guns, fatal and non-fatal attacks documented in daily news and government statistics. These are the '90s types of malevolence, so don't hunt for the usual suspects or think the bodies are in the library. The butler most certainly didn't do it. Neither did Colonel Mustard with the rope. And don't accuse "certain elements in our society" for causing these devastating consequences. The clues—as well as the incidents—could allude you, until they involve you or your clients directly.

So what is all this about? Many factors of domestic violence are spreading into the workplace environment, precipitating more and more incidences of mayhem and murder at work. Reported cases show that women are the victims more often than men. The ever-increasing human toll calls for lawyers to educate themselves by learning how to deal with and help prevent workplace violence. A good starting place can be found on the World Wide Web. A special Internet site has been established where you can begin looking for clues or communicate facts about real workplace situations (see p. 9). Collectively, we can strive to crack "The Case of Workplace Violence" for our clients. Murder on the Internet? Oh, how Margaret Trumanesque.

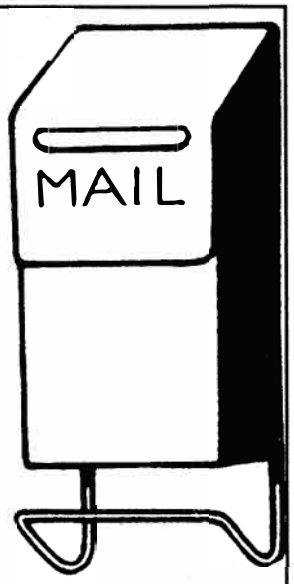
Premeditated murder is a crime; don't let your business fall victim to unintentional homicide. Marketing expert Trey Ryder (see p. 19) provides timely advice about how to communicate your talent and expertise to prospective clients: avoid fatal mistakes!

Mayhem and murder should be read about, but not happen. No, this editor's prose will not continue amuck. I leave that genre to Judith Van Gieson, the authoress of a 7-book mystery series headlining women-lawyer protagonist Neil Hamel (see p. 25). Ms. Van Gieson pens quite a bit about mayhem, and of course, murder. And workplace violence, too. ✱

Editor's note: We extend our condolences to NAWL® President Sally Lee Foley and her family on the passing of her father, Dr. Arthur Foley II.

IN-BOX

Letters from WLJ readers



In a stimulating article by attorney Gail Sasnett-Stauffer and Dr. Gail Rosseau, "Why and How Women Can Be Mentors For Girls" (April 1996), they discussed the serious gender gap in different medical specialties and explored the need for women mentors in the legal profession.

The lack of female role models is a critical factor in why so few women professionals are in the upper echelons of law, medicine, business and academia. Even today, for many young female lawyers there is no one woman attorney they see as a role model. These new women attorneys often feel there is no one to talk to about professional concerns. You can be a source of inspiration—a role model—by shaping the professional development of young lawyers in your community. Although there are record numbers of women entering the profession, it is still very isolating and difficult for new women attorneys.

We need you to become a mentor. You have already changed the face of the profession. Now you can help change it for others by giving time and individual coaching that is essential for their long-term career success. Send me relevant information as to how you can be contacted by telephone. We will work to pair you with young lawyers in your area. If we do not have a ready match for your area, let us know if you are willing to be a mentor by mail, e-mail or telephone.

I can be reached at 2515 Moorman Ave., Cincinnati, OH 45206-2132; telephone 513/221-6756 or 513/381-3523.

Kacy C. Eaves
Chair, NAWL® Young Lawyers Committee

All letters received must include your full name, title, address and telephone number. Send letters to the attention of WLJ editor. Letters may be edited for publication.

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