national association of women lawyers

Women Lawyers Journal

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Voices of our Experience

Judge Ilana Diamond Rovner of the U.S. Seventh Circuit looks at women's progress and the risks ahead and Justice Joyce Kennard of the California Supreme Court explains why justice is more than mere law. Pages 7 and 10

JOIN US FOR THE MIDYEAR MEETING

When NAWL member ◀ Rebecca Speer leads a panel on what happens when domestic violence enters the workplace and researcher Sandra Thomas explores the good side of anger, and then when federal appeals judge Martha Craig Daughtrey ▶ receives the President's Award for accomplishments as any lawyer's role model.

January 30 and 31 in Nashville / Details on Page 15

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Join the **LIST**. Include **your name and practice areas** in the NAWL Networking Directory. A listing **in** each issue of ***Women Lawyers Journal*** for a full year costs only $20. Details are on page 2.

THINK SPRING IN *San Diego*

The National Association of Women Lawyers is planning its western regional meeting for April 7 at the U.S. Grant Hotel. U.S. Senator Barbara Boxer will be the special guest and will receive the NAWL President's Award for her sponsorship of legislation designed to reduce the threats of violence against women.

Details will be in an upcoming President's Newsletter or call NAWL headquarters. Date is tentative and subject to change.

Global view makes practice spin

Virginia Mueller is as fluent in French (her father taught French at Stanford University) as she is in English, which can lead to opportunities such as serving as a translator for a Rwandan woman attorney during the 1995 Soroptomist International Conference in San Francisco. "It's a marvelous way to find out about people," she observes, "and I learned a lot about the unfortunate politicization in Rwanda."

She credits her insatiable curiosity about the world and her aspirations to promote peace through law as the driving forces for her longevity in the legal profession and her development as an international advocate.

She didn't start out in international law. After graduating from Cornell Law School in 1946 and working as a research attorney for the California District Court of Appeal in San Francisco for three years, she attended the University of Paris. There she received a Doctorate in Law with her thesis comparing French and American adoption law. Adoption law continues to be the focus of her pro bono work in Sacramento.

Subsequently she worked as a deputy prosecuting attorney in Seattle, and in 1959 was the first woman prosecuter (deputy district attorney) hired by the Sacramento District Attorney's Office. She opened her own office in general law practice in 1971, handling family law and criminal defense.

What led to your interest in international affairs and the law?

"While I was working on my law degree at Cornell, I became interested in the formation of the United Nations and followed its events from that moment on. My affiliation with Soroptimists International afforded me a multitude of opportunities to meet and become involved with so many different women lawyers in other parts of the country and the world. As a result, I became a member of the International Federation of Women in Legal Careers in 1964. Like NAWL, they have consultative status at the United Nations. When I would attend their international conferences, I would listen to them speak about how other countries had ratified the United Nations human rights conventions and ultimately I'd be asked why the United States hasn't ratified more of them. I wondered the same thing.

"I attended the 1971 World Peace Through Law Conference in Belgrade and then another one two years later in Abidjan, Ivory Coast. By Abidjan, I was working on a conference committee with Bruno V. Bitker and at his suggestion, I became involved with the ABA Section of International Law. At the ABA convention in Montreal, I spoke in favor of a resolution supporting ratification of the Genocide Convention, and as a result, it was submitted to their newly formed Human Rights Committee headed by Bitker. I chaired the International Courts Committee from 1974-77. From these two committees came many resolutions that were ultimately adopted by the ABA House of Delegates—not only ratification of the Genocide and Racial Discrimination Conventions, but also the resolution for creation of an international criminal court."

Virginia S. Mueller

City Sacramento.

Practice Sole practitioner with focus on probate and family law; international human rights advocate.

Recent accomplishments Recognized by Board of Governors of State Bar of California for 50 years of service; named Lawyer of the Year by Sacramento County Bar; received 1995 Frances Newell Carr Achievement Award for professional excellence and promoting women's issues and interests.

NAWL activities Chair of Past Presidents' Council (NAWL president 1985-86); member of International Law Committee; delegate to International Federation of Women in Legal Careers.

How have your many international connections enhanced your practice?

"It has certainly made it more exciting, and it has added a passion to the practice, which is why I continue rather than retire. And my international advocacy and pro bono work actively fulfills my oath I swore to uphold as a legal professional."

What are the issues you care about most passionately?

"I've dedicated myself to the promotion of peace through law, international understanding, protection of human rights and an end to all discrimination against women.

"Most recently, I've been working on the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the U.S. has not yet ratified. As a member of NAWL's International Law Committee, I've also volunteered to monitor the CEDAW compliance report of the Republic of Korea, where I visited in late August when the Sister City agreement between Sacramento and Yong San-Gu was signed."

A hundred years from now, how do you want to be remembered?

"As Virginia S. Mueller, Citizen of the World."

Mrs. Mueller's report on this year's International Federation of Women in Legal Careers conference in Italy appears on page 17.

In this issue of

Women Lawyers Journal

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Secrets of My Success
Virginia S. Mueller blends a solo practice and an international outlook. **Page 3**

President's Message
Janice Sperow says women lawyers also need to be advocates for health. **Page 5**

The Future
Judge Ilana Diamond Rovner looks at women's progress and future. **Page 7**

Delivering Justice
Justice Joyce Kennard explains why justice is more than law. **Page 10**

Toxic Warning
Even without tort changes, some cases are getting tougher to bring. **Page 12**

NAWL Report
An award and CLE programs are part of the midyear meeting. **Pages 15, 16**

First Impressions
Dineen M. Pashoukos reflects on why the guys seem to win in law school. **Page 19**

Book Reviews
Members issue opinions on books of interest to lawyers. **Pages 20-23**

Networking Directory
The guide to locating NAWL members by practice areas. **Page 24**

About NAWL

Founded in 1899, NAWL is a professional association of attorneys, judges, law students and nonlawyers serving the educational, legal and practical interests of the organized bar and women worldwide. *Women Lawyers Journal*®, National Association of Women Lawyers®, NAWL®, and the NAWL seal are registered trademarks.

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About Women Lawyers Journal

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ARTICLES Book reviews or articles about current legal issues of general interest to women lawyers are accepted and may be edited based on the judgment of the editor. Editorial decisions are based upon potential interest to readers, timeliness, goals and objectives of the association and quality of writing. Unsolicited articles by nonmembers will not be published. No material can be returned unless accompanied by a self-addressed, stamped envelope.
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Let's be advocates for health, too

By Janice L. Sperow

Most of us in the United States are aware of emerging women's health issues. We wear pink ribbons to public functions, and we don red ribbons at fund-raisers. But do we really know the state of our own health?

Since World War II, breast cancer has steadily increased in industrialized countries. Now new case rates are rising markedly in developing countries as well.

Scientists do not yet know why most women get breast cancer, yet breast cancer is the most frequent tumor in women worldwide. The International Agency for Research on Cancer reports that breast cancer is the most common female cancer in industrialized countries, and second only to cervical cancer in developing countries.

WE HAVE ALL heard that one in eight women is diagnosed with breast cancer. But do we know that a woman who dies of breast cancer is robbed of an average of nearly 20 years of her life? Every year about 2 million of these "women-years" are lost to this deadly disease in the United States and Europe alone.

And new breast cancer cases are growing worldwide. The International Agency for Research on Cancer's most recent survey found that breast cancer had increased 26% from 1980 to 1985. Its survey reported 719,000 new cases and 308,000 deaths from the disease worldwide in 1985. The International Agency for Research on Cancer estimates 1.2 million new cases and 500,000 deaths from breast cancer worldwide for the year 2000.

Breast cancer rates in industrialized countries are highest in North America, northern Europe, Australia and New Zealand. However, breast cancer rates are also rising in developing countries, particularly in South America, the Caribbean, western Asia and northern Africa. The risk of getting breast cancer worldwide is lowest in western Africa and eastern Asia.

Perhaps most frightening, breast cancer does not always follow a strict profile. While the possibility of breast cancer increases with age and exposure to estrogen, approximately 70% of all breast cancer occurs in women with no identifiable risk factors.

LET'S EXAMINE more closely the status of breast cancer worldwide. First, in Canada—the site of our next annual meeting—approximately 20,000 Canadian women will have been diagnosed with breast cancer in 1997, and 5,000 will die of it. This rate is quite startling if we understand that it is nearly identical to our own, the neighboring United States, which has ten times as many people. The Canadian Cancer Society estimates that 99,000 potential years of life were lost to breast cancer in Canada in 1994.

Breast cancer is rising in Central America and the Caribbean. The World Health Organization projects that the proportion of breast cancer cases from developing countries will increase from 40% in 1992 to 50% by 2000. Puerto Rico experienced the largest increase of all American populations with a 60% increase between 1970 and 1985.

In South America, breast cancer is also making its mark. The risk of getting breast cancer is increasing about 4% every five years in Colombia. The high incidence in Uruguay is similar to that of North America, but fairly constant, while the lower rates of other South American countries have, unfortunately, steadily increased.

In the European community, breast cancer rates are lower than the United States, but mortality rates are very similar. Both breast cancer incidences and mortality are higher in northern European countries than in the south; they are also higher in the west than in the east.

Breast cancer mortality rates have consistently increased in central European countries in the last 30 years. Poland, which had one of the lowest breast cancer rates in Europe, nevertheless had breast cancer count for 25.7% of the nation's cancer incidents in females in 1994. Scandinavian countries have relatively high incidents in mortality rates. Breast cancer has been increasing by more than 10% every five years for younger women in Norway. In the United Kingdom, one in 12 women will develop breast cancer in her lifetime. There were 34,500 new cases in 1991. In 1994, 14,080 women died of breast cancer, totaling 270 deaths a week. The United Kingdom has the highest breast cancer mortality rate in the world.

In many parts of Africa, patients seek medical evaluation and treatment late in their disease. In most instances, this tardiness is due to lack of knowledge, inadequate information about cancer and other diseases, socio-cultural beliefs or taboos, inaccessibility to health care facilities and underutilization of these facilities when they do exist. As a result, breast cancer mortality is increasing in this region.

Cancer in all forms is rising steadily in India. One in every 12 women and one in every 12 men are expected to get some form of cancer in their lifetimes. For women, breast cancer accounts for one in 10 of these cancer cases. Southern Asia has the lowest breast cancer incidents and mortality in the world.

HERE IN the U. S., one in eight women will develop breast cancer in her lifetime. The U. S. has one of the highest incidents of breast cancer rates in the world. New cases of breast cancer increased 52% from 1950 to 1990, with a 4% rise every year from 1982 to 1987. In 1997, 180,200 cases are expected with an estimated 44,191 deaths. Breast cancer is the leading cause of cancer deaths for women aged 15 to 55 and the second for women aged 55 to 74. Breast cancer accounts for 39% of all cancers diagnosed in U. S. women. And the result, unfortunately, often depends upon the color of your skin. In 1991, the death rate for black women with breast cancer was 19% higher than for white women with breast cancer.

Okay, we know that the history of breast cancer is quite bleak, but what about our future? With new awareness, technology, and detection will we fare better in the future?

According to the *Boston Globe*, the *New York Times*, and the Union of Concerned Scientists, the answer is no. According to these and other qualified

Continued on page 6

sources, breast cancer is influenced most significantly by environmental factors, yet our environmental health is in even worse shape.

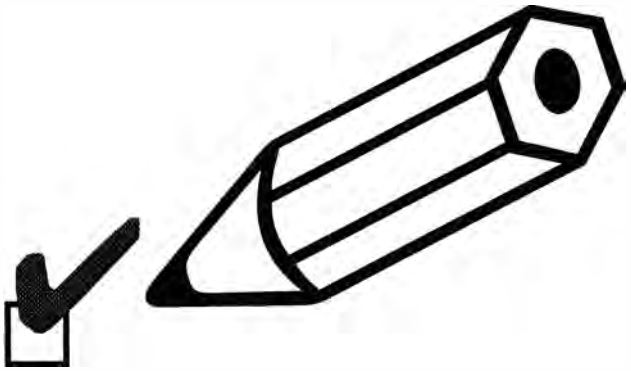
For example, a 15% rise in cancer-causing ultraviolet-B radiation is anticipated in the northern spring and early summer through 1998. In fact, scientists predict that it will take an estimated 80 years for ozone levels to return to pre-1970s levels.

MEANWHILE, the surface air temperature has increased since the last half of the 19th century, with all of the ten hottest years on record occurring in the last 15 years. A further rise of nearly five degrees is projected by the year 2001. Similarly, a 30% rise in CO_2, or approximately 150 billion tons since the Industrial Revolution, will stay in the atmosphere hundreds of thousands of years. About 350 times more synthetic chemicals were produced globally between 1940 and 1982.

Today, in the United States, there are about 68,000 man-made chemicals in use. The rise of global pesticide use is now about 5.5 billion pounds annually. Finally, there has been a rise in the total number of toxic pollution and diseases. We now have developed 30 new infectious diseases in the last 20 years, along with a resurgence of old diseases as well.

HOW DO THESE connect, you ask? How did we jump from breast cancer to environmental toxins? The answer is quite simple. The current state of medical and scientific research shows that breast cancer is environmentally, not genetically, based. For example, studies show that relocating women acquire the breast cancer risk of the country they move to within as little as one generation. Similarly, only 5% of breast cancer is inherited. About 80% of the women diagnosed with the disease will be the first in their families to get breast cancer.

So what can we do about it? First, you can join NAWL's health committee which will be looking at this and other women's health care issues this year. Second, you can be part of a global action network working with women's environment and development organization by calling (212) 973-0325. But most importantly, you can guard the health of yourself and your family through self breast examination, early detection, and a healthy lifestyle. As advocates, we as women lawyers can work effectively on behalf of others and this important cause. As women, we must begin with our own health and the health of our loved ones.



Check this out

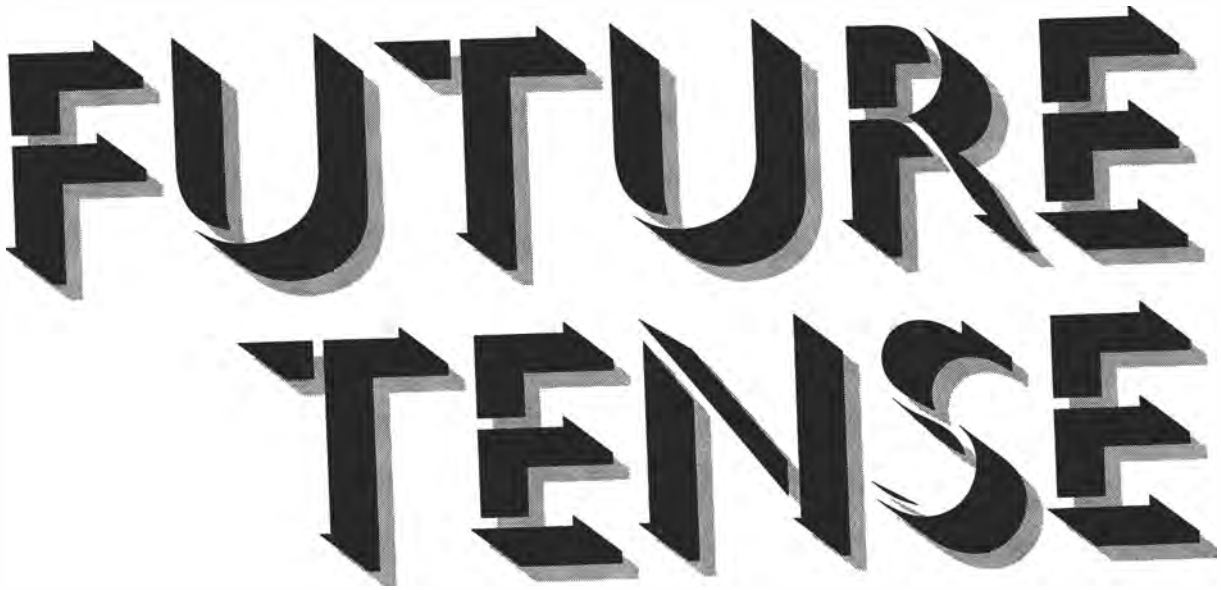
The NAWL midyear meeting is Jan. 30 and 31 in Nashville. That means:

✔ A chance to meet and talk with lawyers from throughout the nation about their practices.

✔ Participate in the national meeting with only one full day away from the office.

✔ Winter fares and rates can help make the trip a low-cost get-away week-end for family or companions.

Registration details are in the December President's Newsletter, or use the Back-Page Fax-Back of this issue to request materials.



Will women's gains as lawyers and professionals the past few decades be able to survive an era of downsizing?

BY JUDGE ILANA DIAMOND ROVNER

I read an article in the *Philadelphia Inquirer* that described a survey in which women rated better at key management tasks than their male counterparts. Indeed, according to this survey, women do a better job than men in 28 of 31 key management categories, including keeping productivity high and generating ideas.

Janet Irwin, who coordinated the study for the non-profit Foundation for Future Leadership, said: "Women have traditionally been given credit for being good in terms of intuitive skills, and the study confirmed that they do do well and out-perform men in that area." The study noted, however, that women were behind in a key area: self-promotion. "Women...have been raised traditionally to be good little girls and...women translate that to mean, 'If I just do a good job, people will come around and notice me and give me rewards for it,' and that just isn't the case. Women have to be more assertive in demanding recognition for their efforts."

The fact is, however, that I come from an era when most women worried about being what was viewed as aggressive or argumentative or ambitious—the "a" words. Although to be perfectly honest, I suppose I never was one of Ms. Irwin's "good little girls," for I knew exactly what I wanted to be at age seven—a lawyer—despite the fact that was something the other little girls and boys in my neighborhood found very odd. I of course had never seen a lawyer, met a lawyer, spoken to a lawyer, but I knew I wanted to be a lawyer...I sincerely believed, from all my parents had taught me, lawyers did good for people in America. After all, as my parents explained, lawyers were responsible for seeing that laws were enforced. And I learned very early on that if the laws had been adhered to and followed in Europe, the war, the Holocaust, and all of the tragedy I had seen unfold by the time I was seven, would not have taken place.

▶ First in a series of commentators reviewing where we've been and where we're going.

And so, from an early age, my future was set in my own mind—I would be a lawyer. [I]t simply never occurred to me there were not a lot of women lawyers or I could not be one. In fact, in the neighborhood, I was both lovingly and humorously referred to as "Portia."

Of course when I am asked if I ever believed or ever hoped I could be a judge, the answer is an absolutely resounding "no." I did not hope for anything that unreachable. Aside from the fact I had parents, and in particular a father, who believed women actually needed to be prepared to fend for themselves in the world, I would say the biggest influence on my life were the schools I was fortunate enough to attend...

Philadelphia High School for Girls was a very unusual place. It was a public school which drew from all of Philadelphia and its suburbs. And it was, in the homogenized 1950s, a cross-section of the world as we have now come to know it. What was really amazing about Girls' High was that we were taught we could accomplish anything we set our minds to accomplishing. The education was rigorous and the opportunities were manifold. Just try to tell someone who has been editor of the newspaper or captain of the basketball team or president of the math club they are not qualified to do these things. And if I needed any more impetus to realizing my goal of becoming a lawyer, Bryn Mawr College gave me that...by reinforcing the seeds that had been planted in high school. We were taught we could be whatever we set out to be. What we were not told, however, was it was going to be an olympian struggle. Because we were women at a women's college, we would be given a mind set that all things were possible, but we learned

straight away that they might not be probable. Indeed, only two of us were going to law school. Even at Bryn Mawr, we were viewed not as odd, as in childhood, but rather as quite courageous. I, for one, did not fully comprehend why. I was not aware that a woman of the caliber of Sandra Day O'Connor was being offered nothing but secretarial jobs after graduating amongst the top of her class at Stanford Law School. Nor did I realize what it would be like to be one of only three women in a section at the country's largest law school. Such was the naivete and unsophisticated world-view of the "Bryn Mawr girl" in 1960.

In those days, none of us could ever have imagined that in these days, over 15 percent of federal and 10 percent of state judges would be women. And we could never in those days have entertained the daring notion that those percentages are very modest indeed...only two women had ever been appointed federal judges in the history of the United States. Those women were viewed as some sort of phenonema.

The 36 years that have passed have brought much to applaud. I think of the younger women amongst you who begin light years ahead of the young women lawyers of my day. And most importantly, you begin with role models. And your role models do not spend a lot of time worrying about being "good little girls," and they do not worry about being viewed as "too ambitious" or "too aggressive" or "too achieving"...things have improved greatly.

But why have they not improved more? Or, as some would say, why are we not moving forward faster?

We live in difficult times—about that there can be no question. We live in difficult political times and difficult economic times. Downsizing has not occurred just in the business world. It has occurred in the legal world as well. Women lawyers have a whole set of other concerns than do our male counterparts. In more families than not, women are still the traditional childcare givers. I would like to think the superwoman mystique has been abandoned…I grew up in another time and in another place. At the time, the conventional wisdom which I was bombarded with turned out to be wrong.

In fact, my own path to the bench was not remotely typical. After completing law school, I promptly retired to have a family. And the refrain heard so often during my law school interviews -"You will be taking the seat of a man—are you absolutely certain that it will not be a wasted seat and that you will practice law?"—reverberated in my head. I did not return to legal work until my son started school in 1972. My timing could not have been better. Judge James Benton Parsons, the first African-american to sit on a U. S. District Court, was making a concerted effort to hire a female law clerk—his first. In great measure this was because his secretary—who had all the qualities and none of the opportunities to study law—had encouraged the idea of a woman law clerk...

In 1973, when my clerkship ended, I joined the U.S. Attorney's office as an Assistant U.S. Attorney. There had been very few women in that office, and it was not until the 1970s, under U. S. Attorney Jim Thompson, that women were given parity and full opportunity to try major law suits. I was privileged...to try some of the most significant and complex public employment discrimination suits then pending in the nation, including landmark cases involving the Chicago Police Department and the Chicago Fire Department. In early 1974, I became Chief of the Public Protection Unit in the U.S. Attorney's Office—the first woman supervisor in its history. I marvel today at how much interest was engendered by that event, not just in the legal community but in the daily press, and how much discussion about whether the men in my unit would be willing to report to a woman. Most were. I stayed in the U.S. Attorney's Office for four years, and then in 1977, joined Jim Thompson, who had been elected governor, as his deputy governor and legal counsel.

Almost 20 years ago, I sat on a panel discussing how women could handle both professional and personal lives, particularly how women lawyers could manage families and careers. I remember being asked a question about how I dealt with men who were rude or condescending or unaccepting...I said at that time, "Hopefully, men's consciousness is being raised, but there is a whole generation of men out there who simply cannot and will not accept us, and they will simply have to die with their prejudices and biases intact, and we will have to overcome them by outliving them." I would like to think by this time many of those men, if they have not gone to their heavenly reward, have had life experiences that have changed them. Indeed, many of those men have had daughters and granddaughters who have become lawyers. It is amazing to see how men's attitudes change when a woman in their family wants to attain that which at one time they may not have thought women should attain. But I think...I mirrored the feelings of many of the women of my generation. We had a lot of patience—perhaps too much patience.

Lest you think I believe all was wonderful amongst the women of my generation, let me share with you the fact there were queen bees, women who, fearing there was room at the top only for one or two, were unwilling to give up even an iota of the power they had won so bitterly. But I...think women today more fully understand we have secrets to share with each other—the things we have learned by being who we are in a profession that was not shaped by us.

About the author

Judge Rovner, U.S. Court of Appeals for the 7th Circuit, was born in Latvia and reared in Philadelphia. She studied law at King's College of the University of London, Georgetown University and New York University before graduating from Chicago-Kent College of Law in 1966. In 1984 she was appointed to the U.S. District Court, Northern District of Illinois. She joined the Court of Appeals in 1992.

Among her awards: a Special Commendation Award and a Special Achievement Award from the U.S. Department of Justice. Chicago-Kent sponsors an Ilana Diamond Rovner Appellate Advocacy Program and Moot Court Competition annually.

This article was adapted from her keynote address last year to the Midwest Regional Conference of Women in the Law in the 21st Century.

All things are possible, but we learned they may not be probable.

I know whenever women judges meet, we look searchingly into our memories. We listen to each other's anecdotes with a heightened sense of alertness. We revel in each other's victories. Many of us believe that we have helped to bring the legal profession to a time when young women lawyers can begin their careers already possessed of assurance and faith in self. And to know they have mentors available that look like them—this is indeed a point of pride for each of us...I think how wonderful it is you are meeting and networking and communicating with each other. You will send each other clients and articles and ideas. And if you do so, you will prosper as individuals and as a group.

The first legal groups I joined were groups devoted solely to women. That is the only place we were welcome. I remember meetings of th[e Women's Bar Association of Illinois] that consisted of a dozen of us placed by the hostess always in the farthest corner of the Chicago Bar Association's dining room. There we would sit, a little island engulfed by a sea of male lawyers. And as we would pass the other tables, almost always one of the men would look up and chuckle and say, "Here come the ladies."

The truth of the matter is, we simply were not a force to be reckoned with—we were too few—and we were spending all of our time struggling to make a living in the profession. At that time, some of us decided that the only way to forge forward was to somehow also involve ourselves in a meaningful way in one of the male dominated organizations—a dual route, if you will. A number of us joined the Federal Bar Association in part because it...had shown an interest in giving women a voice. Indeed, there had been one woman president of the local organization. Eventually I made my way up to the position of president of the Chicago chapter, and then became a vice-president of the national. It was hard work, but worth every moment in the larger scheme of things. I and the other women of the Federal Bar Association made certain that issues that touched our lives were given a hearing, and the skills I learned working in the association were enormously helpful in educating men to those issues we women particularly cared about—issues that included flex-time, day care in federal facilities, gender neutral wording in statutes and laws, harassment in the workplace...

There are, of course, individuals who are non-educable—there always have been and there always will be professional jealousies. It is, however, a truism that there is strength in numbers, and in order to be a force to be reckoned with, women must be organized.

In whatever type of group an individual may find expression, we must have agendas. We must not simply allow opinion-makers to become aware of those agendas—in order to have some measure of influence over our lives, we must be the opinion-makers ourselves. If we just follow along, we will be the victims of everyone's agendas but our own...Women have established a beachhead but not a birthright in the preserves once closed to them. And although it may seem self-evident we have unique contributions to make, self-evident truths are not always synonymous with the received wisdom of the day. If we do not fight as hard and creatively as we possibly can, the representation of women in the bar, on the bench and in the public sector could as easily decline as increase in the next generations. It is easier to integrate institutions when they are growing, and women lawyers have done that. Now the institutions are shrinking, long before they have been satisfactorily transformed.

I read an interview with Justice Beatrice Burstein of the New York State Supreme Court. Having had the benefit of her statutory three post-retirement extensions, Justice Burstein reluctantly retired after 30 years on the bench. She was asked "Have there been any changes in the way women judges are regarded?" and Justice Burstein replied: "On my three certifications to continue past 70 as a Judge I passed the required physical with flying colors. Let me read you part of the report as evidence: blood pressure—normal; cholesterol—normal; heart and lungs—normal; prostate—no problem. Actually, the last was quite a problem. That statement indicates an unconscious assumption about who judges are. Even after all the changes in law school admissions, after all the contributions to our profession by members of my sex, a physician could unthinkingly assume, 'If it's a judge, it must have a prostate.'"

That interview took place five years ago. In those five years, more of us without prostates have become judges. It took 101 years for a woman to join the court on which I sit. Thankfully, it took less than three years thereafter for a second woman to become my sister.

Today, the women who appear before me and every other judge are extraordinary lawyers, and they will be extraordinary judges. They are doing the job right, and they are also doing it with grace and civility.

No longer are women constrained to tailor themselves to fit the image of a lawyer or a judge that grew out of centuries of female exclusion. People are no longer surprised to see a woman in a judge's robe, and a woman's voice no longer sounds odd instructing from the bench. Our voices carry authority. Courtrooms are now places where women get respect because they demand respect—a demand we were unable to make in years past. My own experience is that I have been listened to by my fellow judges with respect and careful attention...being on the court has added a different viewpoint and has changed the content of certain opinions on certain issues. Women bring a different perspective—certainly and most obviously to discrimination and harassment cases—but more broadly, we are more likely to see cases pragmatically, having been outsiders. And not having had the benefit of certain advantages, we are keenly aware of the human side of many of the cases that come before us.

When Judith Shapiro, who was Dean of Students at Bryn Mawr, was invested as President of Barnard College, she said, "In a society that favors men over women, men's institutions operate to preserve privilege; women's institutions challenge privilege and attempt to expand access to the good things of life."

Being a lawyer or judge is undoubtedly one of the good things of life...a place in life where one can make an extraordinary difference. It also carries responsibilities. And our impact on the bar and bench is the result of our character, life experience and ability. Life experience is the one profoundly different ingredient in women lawyers and judges, the one that enables them to understand more freely the life experiences women encounter in our society. No one is infallible. We recognize certain giants in the history of jurisprudence because they were able to see beyond the limitations of their class and sex and race and time. The body of law must be the work of many minds in dialogue. Diversity of experience is necessary not only to inspire confidence in the legal system or make it comfortable to its diverse constituency—public perception aside, diversity of experience at the counsel's table and on the bench is necessary, period.

The question whether women's interests and issues can be well-served by a legal profession and judiciary composed solely of men has been answered in the negative by history.

Diversity of experience at the counsel table is necessary, period.

Why justice is more than law

BY JUSTICE JOYCE KENNARD

California Supreme Court Justice Joyce Kennard, who presided in San Francisco at the installation of the 1997-98 NAWL Executive Board, was born in West Java, Dutch East Indies (now Indonesia). After her father, a Dutch citizen, died in a World War II prison camp, she and her Indonesian-Chinese mother survived the war in a camp in Java. After the war they moved to New Guinea, living with four other families in a Quonset hut in the jungle. In 1955, they moved to the Netherlands. Five years later, at the age of 20, Joyce Kennard immigrated alone to the United States.

After earnings a bachelor's degree at the University of Southern California, she earned degrees in law and public administration. She served as a California deputy attorney general in Los Angeles and senior attorney for the State Court of Appeal, becoming a Los Angeles County Municipal Court Judge in 1986. She was appointed associate justice of the California Supreme Court in 1989, and was elected to a 12-year term, beginning January 1995.

The following commentary is excerpted from her remarks at the International Committee of Lawyers for Tibet reception and dinner with the Dalai Lama earlier this year in San Francisco. NAWL was a co-sponsor of the event.

From my perspective as a judge, the first part of the equation of justice through law and compassion is not a difficult concept. Law, in the sense of rules and legal principles, is the raw material of a judge's work. The law is the compass of the judge. Guided by the law, judges seek to do justice.

The hard question is whether there can be justice through law and compassion.

What is compassion? *Webster's Third New International Dictionary* defines it as sympathy, or feeling the suffering of another. In dialogues on compassionate action, the Dalai Lama has described compassion as the ability to see suffering in others. That description is in harmony with the dictionary's definition. Both describe compassion as simply an understanding of, or a feeling for, the suffering of others.

Does compassion, so defined, have a proper place in jurisprudence? No, say some, because a judge should consider only the law and the evidence, and not give way to an emotional response, which is what compassion is. Others, however, view compassion as generally appropriate in the process of judging. Justice Anthony Kennedy of the United States Supreme Court has said that the qualities of a good judge include compassion. Judge John Noonan of the United States Court of Appeals for the 9th Circuit, though firmly believing that compassion cannot be the compass of a judge, acknowledges that "compassion is a proper, desirable, even necessary component of judicial character." And Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court echoed this thought when she wrote that the ideal judge should be "dispassionate, but also compassionate."

Let's explore this seeming paradox of being compassionate, yet dispassionate. To do justice, a judge should consider not only the law but

also the facts, including the experiences and suffering of the parties that lie at the roots of the dispute. To disregard the human aspect would turn judges into robots, applying sterile rules in a mechanistic fashion. I hasten to add that, as Judge Mary Schroeder of the United States Court of Appeals for the 9th Circuit has pointed out, there are certain rules of procedure that, because of important public policies, must be applied in an almost mechanical manner, without consideration of hardship to the adversely affected litigant. Statutes of limitations and rules governing appellate jurisdiction are examples.

NEVERTHELESS, MUCH of what a judge does cannot be reduced to the mechanical. As I see it, in those cases the qualities of compassion and impartiality converge in the concept of fairness. A "fair" judge is what most people expect of the ideal judge. Fairness requires the judge to be neutral and detached, but not so detached as to be indifferent to the parties and their concerns. Instead, the judge must have an attentive and empathetic engagement or connection that allows him or her to understand the point of view of each of the parties, their histories that led them into conflict, and their goals in resolving this conflict.

Thus, a compassionate understanding is a component of fairness. It can create a space within which the voices of the persons affected by the decision can be heard, their humanity acknowledged, their sufferings understood and properly taken into account. There are certain cases in which the story of the human participants has a strong bearing on the proper resolution of the case; among these are cases involving adoption, surrogate parenting, and racial and sexual discrimination. To illustrate my point, let's take a look at the United States Supreme Court's 1896 decision in *Plessy v. Ferguson*, which upheld the legality of racial segregation.

In that case, the court denied Homer Plessy, who was black, the freedom to sit in a railway car reserved for whites. In reaching its decision, the court made the following assertion: "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."

The lone dissenter in that case was Justice John Harlan. Because of his compassion for those subjected to racial segregation, he was able to see, and to speak, a truer understanding of the reality the court was adjudicating. Justice Harlan rejected the fictional rhetorical construction that the court's majority attempted to impose on the situation, a construction that pretended to enlighten and liberate Homer Plessy from his ignorance even as it bound him into oppression. Justice Harlan recognized, as the rest of the court did not, that the "real meaning" of the segregation law was "that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens." He recognized the "humiliat[ion]" that segregation was calculated to impose on its victims, and the "evils" lying within the court's decision upholding segregation. He recognized that "[t]he destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law." From this understanding, Justice Harlan concluded, "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

Justice Harlan's compassionate understanding enabled him to reach a position of fairness and equality. In contrast, the majority's lack of compassion condemned it, and the nation, to prejudice and bias for many years. While Justice Harlan sought to be color-blind, the majority was simply blind, a blindness that was not the impartiality of our blindfolded figure of justice but an imprisoning ignorance that led to an unjust result.

THE PLESSY CASE illustrates that compassion (that is, the ability to understand the suffering of others, or the ability to listen to the litigants' description of their plight) can help a judge see a more complete picture of the case at hand, including the applicable law and its purpose.

Of course, as a judge, one must guard against using compassion as the determinative factor in reaching a result. To do so would violate the principles of impartiality and neutrality that are fundamental to the judicial role.

Once the judge understands the purpose of the applicable law, the legal arguments of the parties, and human emotions underlying the litigation in a particular case, the judge should stand back and render a detached judgement, one based on fairness. As Professor Patricia Cain put it in *Good and Bad Bias: A Comment on Feminist Theory and Judging*, 61 So.Cal.L. Rev. 1945 (1988): "What we want from our judges is a special ability to listen with connection before engaging in the separation that accompanies judgement." In other words, judges who are compassionate, yet dispassionate.

THERE ARE MANY doors through which compassion can enter the realm of justice. The international human rights movement is one example. This movement arose in response to the Holocaust and the other horrors of organized inhumanity in World War II. It sought to create an understanding and recognition among the nations of the world of the inherent dignity of each person and the rights of all to freedom, justice and peace. Unrealistic as its goals may have seemed at the beginning, the human rights movement is responsible for a growing body of national and international human rights law. It has also fostered what L. Sohn described in *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 Am.L.Rev. 1 (1982), as a greater public understanding that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Efforts of the Dalai Lama on behalf of the people of Tibet exemplify compassion working to achieve justice through respect for international human rights. By seeking to resolve the conflict between Tibet and China through a peaceful dialogue that cultivates mutual understanding and reconciliation, he embodies the hope that compassion can contribute to justice.

Sometimes, compassion can also motivate legislators to propose and pass certain laws. Thus, compassion led Congress to enact the historic civil rights legislation of the past thirty-five years, and to enact a law compensating Japanese-Americans for their internment during World War II.

AND COMPASSION CAN enter the legal system through public interest or pro bono activities.

Compassion can be a powerful inspiration for individual attorneys working within and through the legal system. Attorneys who open their hearts to compassion serve the cause of justice and, to borrow the words of the Dalai Lama, can lead the way to "a more peaceful and more compassionate century."

For judges, for lawmakers, and for individual lawyers, compassion provides the spark that illuminates our vision of justice and our hopes, our dreams, for a better world. We should never give up on hope, on dreams. In the words of the poet and author Langston Hughes, "Hold fast to dreams, for if dreams die, life is a broken-winged bird that cannot fly."

Toxic Fallout

Even without sweeping tort changes, some cases are tough to pursue. But lawyers with solid toxic-damage claims can still get clients a day in court.

BY LOUISE ROSELLE
and AMELIA ROBERTS

The winds of change are stirring in the courts, and toxic tort plaintiffs are directly down-wind. Recent cases have made hurdles of establishing causes of action, certifiable classes, and causation. In many instances, plaintiffs who have come to the courts with traditionally solid cases have been shown the door by a judiciary feeling the pressure of corporate and legislative cries for tort reform. That pressure has culminated with common law tort reform under which judges are re-examining, in each phase of a litigation, just how much injury is enough to bend the court's ear. The bar has indeed been raised, but a litigator does not have to be an Olympian to overcome these hurdles; he or she only needs to be a strategist who can maneuver them.

Causes of Action

Despite the commonality of toxic tort claims, which include negligence, nuisance, diminution in property value, medical monitoring, and emotional distress, courts have of late become skeptical of plaintiffs' injuries and these time-tested causes of action have come under fire.

The recent Supreme Court decision in *Metro North Commuter Railroad v. Buckley*, 117 S.Ct. 2113 (1997), is a striking example of this new climate. In *Buckley*, the Court rejected the emotional distress and medical monitoring claims

About the authors

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Amelia Roberts is a law clerk with the firm and a student at the University of Cincinnati College of Law.

of a railroad pipefitter who was negligently exposed to asbestos during the course of his work but was asymptomatic for an asbestos-related illness. The Court held that the plaintiff had no "injury" under FELA and that he could not recover for negligently inflicted emotional distress unless he manifested symptoms of a related disease.

The Court in *Buckley* adopts fundamentally a distrustful view of plaintiffs under emotional distress claims, and declares that it prefers to err on the side of the tortfeasor in stating that "permitting recovery here ... would on balance cause more harm than good." Here, it appears the balance has been tipped as the decision puts healthy corporation balance sheets ahead of healthy citizens.

That is made still clearer by the Court's denial of medical monitoring for a plaintiff. In *Buckley*, exposure to asbestos was so great that the plaintiff and his co-workers were dubbed "the snowmen of Grand Central." Regardless of such exposure, the Court did not allow the plaintiff medical monitoring costs for early detection, but instead offered that "an exposed plaintiff can recover related reasonable medical monitoring costs if and when he develops symptoms." The Court passed on the ultimate issue of medical monitoring, focusing on the fact that it was requested as a lump sum in this case. In rejecting the Court of Appeals decision that the medical monitoring was reasonable, the Court has thrown into question when and how medical monitoring costs will be an available form of relief.

In rejecting medical monitoring and emotional distress of an exposed plaintiff until that plaintiff becomes symptomatic, the Court has completely ignored the nature of the relief sought. Medical monitoring is the HMO of tort damages as it is requested for prevention and early detection, and the emotional distress claim stems from the anxiety of "not knowing." Exposure to toxins is truly a nightmare for a plaintiff, and the Court in *Buckley* has mandated that in order to recover, the nightmare must first come true. Once a plaintiff becomes symptomatic, the emotional distress is of a different nature, in that of living with illness (or in the worst cases, living with dying from that illness).

By adjudicating policy and not the case before it, the Court not only leaves the plaintiff without relief for the present time, but perhaps with no avenue for relief when and if he or she does become symptomatic. The Court recognized that the plaintiff had a legitimate claim, but that fact was overshadowed by its concern with forestalling potential illegitimate claims. By not acknowledging the plaintiff's causes of action, the Court has added insult to injury.

In her dissent in *Buckley*, Justice Ruth Bader Ginsberg called the majority opinion "enigmatic" as it related to the medical monitoring claims, suggesting that a plaintiff would still have medical monitoring available if it were requested in other than a lump sum and held that the plaintiff did suffer an injury, which she described as "the invasion of [his] interest in being free from the economic burden of extraordinary medical surveillance."

While it is too soon to know the ramifications of this decision, the tone has been set. A litigator bringing a toxic tort claim must choose his or her causes of action carefully and choose the form of the relief even more cautiously.

Class Certification

The fact that such causes of action are more difficult to bring should distress a great number of people because typical toxic tort cases are brought where a substantial number of people have been affected. While class actions have come under fire in recent cases, the wounds may not be as deep as they appear.

In *Georgine v. AmChem Products, Inc.*, 117 S.Ct. 2231 (1997), the Supreme Court affirmed the decision of the Third Circuit, decertifying a nationwide settlement class relating to asbestos personal injury claims. As certified by the district court, the class had up to two million members. The Court found that the class did not meet the Rule 23 requirements of common issue predominance and adequacy of representation because of what it saw as competing interests between the presently injured and the latently injured parties. "Most saliently, for the currently injured, the critical goal is generous immediate payments. That goal is up against the interest of exposure only plaintiffs in ensuring an ample, inflation-protected fund for the future," the court noted. In *Georgine*, a masterful picture was drawn, pitting plaintiff against plaintiff, and in so doing, all plaintiffs lost.

Much attention has been focused on the Seventh Circuit decision in *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir.), cert. denied, 116 S.Ct. 184 (1995), which was a nationwide, personal injury class action brought on behalf of hemophiliacs infected with the HIV virus that causes AIDS. Judge Richard Posner wrote the 2-1 opinion not to certify the class for reasons which focused on the merits of plaintiffs' claims, and the possibility that defendants might have to pay high damages. The opinion prompted a vigorous dissent in which Judge Ilana Rovner stated Rule 23 "expressly permits class treatment ... when its requirements are met, regardless of the magnitude of potential liability."

Other courts have strongly criticized the opinion for its focus on conclusions and its implied mistrust of juries.

For example, in *In Re Telectronics*, 168 F.R.D at 210, the court commented that "While Judge Posner's economic theories and distrust of juries may carry weight in the Seventh Circuit, we are still bound by the Federal Rules of Civil Procedure." And in a footnote to *In Re Copley Pharmaceutical, Inc.*, 161 F.R.D. 456, the U.S. District Court in Wyoming observed that Judge Posner's reasoning in Rhone-Poulenc "shows a profound mistrust in the jury system."

Despite the attention they have been given, these decisions have not led to a domino-like procession of district courts decertifying longstanding classes. Neither involved claims for property damage, and neither requires a court to deny certification. Rather, courts have continued to find certification proper in numerous instances.

For example, in *Yslava v. Hughes*, the court certified a medical monitoring class under Rule 23(b)(2) relating to exposures from contaminated ground water and holding, in the alternative, that the class qualified for certification under Rule 23(b)(3). In

Plaintiffs and juries are suspect

Baker v. Motorola, the court certified a medical monitoring class under a state counterpart to Fed. R. Civ. P. 23(b)(2), and a property class under a state counterpart to 23(b)(3) relating to ground water contamination.

Other courts, both federal and state have continued to certify mass torts as class actions. Among those cases at the federal level is *In Re Copley Pharmaceutical*, denying a motion for decertification in a mass tort case.

Cases in state courts include *Amerada Hess Corp v. Garza*, No. 13-95-554-CV, slip op. (Tex 13th Dist. Ct. App. Aug. 22, 1996), affirming class certification of a property class alleging damage from water and air pollution; *Peters v. Brants Grocery*, No. CV 96-29, slip op. (Coosa County, Ala. May 8, 1996), certifying a class to pursue claims of property damage from leakage of underground petroleum storage tanks; and *R.J. Reynolds Tobacco Co. v. Engle*, 672 So.2d 39 (Fla. 3d DCA), rev. denied, 682 So.2d 1100 (1996), affirming class certification for personal injury claims relating to cigarettes, but limiting class to Florida.

Also in the states are *Lane v. Champion Int'l Corp.*, No CV 92-781.81, slip op. (Baldwin Co. Ala. June 14, 1994), certifying a class of property owners alleging harm from contamination from a pulp and paper mill, and *Broin v. Philip Morris Companies, Inc.*, 641 So.2d 888 (Fla. 3d DCA 1994), rev. denied, 654 So.2d 919 (Fla. 1995), reversing trial court's decision dismissing class action complaint brought on behalf of 60,000 flight attendants alleging harm from inhaling second-hand smoke.

Despite these certifications (which occurred before the Supreme Court decided *Georgine*), the precedent is now there that a court in a class action may look to the ends of the litigation (that is, the potential pay-out) in order to justify the means of the class action vehicle. A plaintiff's attorney may have to convince a court not just that a class action is the best way to proceed, but may have to allude to a case's merits to show it is meritorious.

Causation

Even if a plaintiff can bring a claim and/or get a class certified, courts have made the criteria for admitting evidence of causation truly a burden. In a toxic tort case, causation is a key. In perhaps the single largest environmental suit, the only issue the jury heard was causation. [See *In re "Agent Orange" Products Liability Litigation*, 996 F.2d 1425 (2nd Cir. 1993).]

In a toxic tort case, it does not just take an expert to show causation; it takes an army of them. The prelude to the battle of experts is that of surviving the *Daubert* motion, the standard the U.S. Supreme Court established in *Daubert v. Merrell Dow Pharmaceuticals*, 113 S.Ct. 2786 (1993), for admission of scientific expert testimony. While that originally consisted of merely assessing whether or not the expert used "generally accepted" scientific principles, that ambiguous language has proven to be dangerous in its application. "General acceptance" is an irrational standard when the goal is finding truth. Every generally accepted scientific principle began as a novel idea. With opposing theories, one will always have a "broader" acceptance, but in the courts that distinction has been blurred wherein one side will be "generally accepted" and the other therefore unacceptable. In an adversarial legal system where there will always be (at least) two theories, the focus should be on scientifically sound methodology in order for juries to weigh the opposing theories and decide which it accepts. The problem in recent cases has been that the juries have not been given that opportunity. Judges have excluded experts, using the Daubert terminology of "general acceptance" to make determinations based upon what suspiciously resembles medical conclusions.

In *Baxter v. Merrell Dow Pharmaceutical*, 1997 WL 378060 (Texas, July 9, 1997), the Supreme Court of Texas found the plaintiff's expert testimony that the drug Bendectin caused birth defects was scientifically unreliable because the theory was not "generally accepted," and the court wanted a higher statistical likelihood. The court decided to delve into "the substance of the testimony," and in language which clearly seems to contravene Daubert at every turn, the court decided in favor of the defendants by determining the "sufficiency" of the evidence, rather than determining its admissibility.

In *Hall v. Baxter HealthCare Corp.*, Civ. No. 92-182-JO (Oregon, 1996), the Supreme Court of Oregon hired its own panel of experts, and from their findings concluded that the court would not allow any plaintiff's expert testimony as to causation, effectively sounding a death knell for all breast implant disease claims in the state of Oregon.

In looking to the medical conclusions to determine whether or not the experts' opinions will be tested by a jury, these courts have ignored *Daubert* and focused on the facts of the case before a jury convenes. In bringing together such a panel, a judge acknowledges his or her own limited scientific knowledge, but at the same time, such a judge, in looking to the experts' conclusions to decide which testimony will even be admitted, has usurped the power reserved for the jury.

Fallout

In looking at medical diagnoses and conclusions to determine whether causes of action and experts will be allowed, and in looking to factual conclusions of a case to determine whether to certify a class, the U.S. courts are establishing a common law tort reform—one that demands that plaintiffs plead with concrete evidence.

In creating this common law tort reform, the courts are taking legitimate cases and adjudicating them as if they are running a snake-oil salesman from town. Just as in the myth of the fateful error of Epimethius (whose name means "after-thought"), the courts have opened their own 'Pandora's Box' through these potentially far-reaching cases, and the ramifications are yet to be seen. In myth, hope was still left; in reality, plaintiffs might not be so lucky.

Litigators must be forward-thinking, though, in order to keep a case afloat. While the concrete evidence, which courts of late seem to crave, may be difficult in some toxic tort cases (where illness is latent or defendants are not forthcoming in discovery), litigators can still be at the helm of the litigation. With properly worded pleadings, proper timing, and aggressive discovery, toxic tort plaintiffs might be steered to a jury.

Scientific evidence raises hurdle

Judge will receive NAWL honor

Judge Martha Craig Daughtrey of the 6th U.S. Circuit Court of Appeals has given a woman's perspective and voice to Lady Justice.

That unique voice and her many "firsts" in Tennessee will be recognized Jan. 30 in Nashville when she receives the 1998 NAWL President's Award for Excellence at our luncheon in her honor. The award salutes Judge Daughtrey's outstanding work in the judiciary and her outstanding example as a role model for women in the legal profession.

JUDGE DAUGHTREY was the first woman in Tennessee to prosecute in federal court and later in state court. She was the first woman on the tenure-track faculty of Vanderbilt's School of Law, the first woman to sit on a court of record, trial or appellate, in Tennessee, and the first woman on the State Supreme Court.

Judge Daughtrey was appointed to the 6th Circuit by President Clinton and confirmed in 1993 with bipartisan support. The 6th Circuit encompasses Tennessee, Kentucky, Ohio and Michigan.

"Thankfully, when I got to the 6th Circuit, I not only wasn't the first, I was the fourth. And two of the women who preceded me on the court are still active judges." The Hon. Florence Allen was the first, Judge Daughtrey noted.

Judge Daughtrey

"Being the first woman is no bed of roses, but my main focus, in addition to survival, was to make sure that there were more women coming in behind me. There are, of course, lots of funny stories that go with [my] resume, and several good men along the way who were willing to be what we now call mentors, since I really had no female role models. When I went to law school, I had never laid eyes on a woman lawyer, and the same was true when I went on the bench - I had never seen or met another woman judge. I kept asking myself if it was appropriate for a judge to wear mascara!"

Judge Daughtrey received bachelor's and law degrees from Vanderbilt University. From 1968 to 1972, she was a prosecutor in federal and state courts in Nashville. She joined the Vanderbilt law faculty in 1972 and taught there until her appointment to the Court of Criminal Appeals in 1975. In 1990, she was appointed to a vacancy on the Tennessee Supreme Court and was subsequently elected to a full eight-year term.

Midyear Meeting Preview

Where Nashville, Tenn., Opryland Hotel.

When Jan. 30 and 31.

Highlights Workplace violence and anger-control programs for CLE credit; President's Award for Excellence luncheon.

To register Return the form in the December issue of the President's Newsletter or use the Back-Page Fax-Back of this magazine to request registration material.

As a justice of the Supreme Court, her perspective as a woman was typified by a 1992 case involving an application of the doctrine of foreseeability. Justice Daughtrey dissented when the court held that a developer who kept a set of marked keys to its condominium was not liable when two construction workers took the key to a single mother's home, entered her condo, and raped her. Justice Daughtrey wrote that of course the attack was foreseeable: it was the direct result of leaving the key marked and unguarded.

MORE RECENTLY, she dissented forcefully when the appeals court held that a state judge could not be prosecuted under federal civil rights law for sexually assaulting female court employees and litigants in his chambers. The court held en banc that the Supreme Court had never allowed the particular law to be used to protect people from sexual assaults by public officials.

Judge Daughtrey criticized the notion that the law could be applied only in factual situations similar to those already reviewed by the Supreme Court.

"No Supreme Court decision has explicitly ruled that constitutional principles protecting bodily integrity forbid a sitting judge, in his chambers, and in some cases, while in his judicial robes, from fondling and raping women with business before the court. Such a scenario, however, is the 'easy' case that demonstrates a blatant violation of those Supreme Court and courts of appeals precedents [that forbid] interference with personal security and bodily integrity that shocks the conscience," she wrote.

This past March, the Supreme Court agreed with her. It unanimously reversed the Cincinnati-based appeals court and cited her dissent in its opinion.

Her perspective as a woman is important, Judge Daughtrey told a newspaper interviewer this past year. "At this point in our history, women and men have had very different life experiences." As one of a number of female appellate judges, she is now part of a group that can muster a voice in a system in which the majority rules. "It tends to keep the spotlight off you when you're not the only one," she said. "You achieve a critical mass around the conference table and at least I think the men aren't thinking, 'Here she goes again.'"

Judge Daughtrey has served as chair of the Judicial Division of the American Bar Association and as chair of the ABA's Appellate Judges Conference. She is a past president of the National Association of Women Judges and of the Women Judges Fund for Justice. From 1988 to 1990, she was a member of the Board of Directors of the Nashville Bar Association and she has chaired various Tennessee Bar Association committees. She is a member of the American Law Institute and a Fellow of the American Bar Foundation, the Tennessee Bar Foundation, and the Nashville Bar Foundation. From 1988 to 1992, she was a delegate to the ABA House of Delegates and a director of the American Judicature Society. In April 1991, she was a member of the ABA-sponsored CEELI delegation to Romania to consult with the drafters of the new Romanian constitution and she recently traveled to Beijing for a Ford Foundation interchange with the Chinese Women Judges Association. From 1994 to 1997, she was a member of the ABA Commission on Women in the Profession. She currently serves on the Board of Editors of the *ABA Journal.*

She and her husband, Larry Daughtrey, have a daughter, Carran, who is a 1994 graduate of Vanderbilt Law School (and Vanderbilt's NAWL Outstanding Law Student that year) and heads the Domestic Violence division of the District Attorney's Office in Nashville.

The luncheon is part of a series of programs sponsored by NAWL for the midyear meeting at the Opryland Hotel.

1-2 punch of anger, violence on meeting slate

Workplace violence and anger control are the focus of the two seminars that bookend NAWL's award luncheon in Nashville.

At 9 a.m. Jan. 30, the spotlight is on domestic violence as a major component in workplace violence, now the leading on-the-job killer of American working women.

Ms. Speer

The panel discussion, "Workplace Violence: When Domestic Violence Enters the Workplace," will be moderated by Rebecca A. Speer.

Ms. Speer is the San Francisco employment and labor law attorney chairing NAWL's national committee on workplace violence. Her experience as a survivor of the July 1993 rampage at the 101 California Street highrise in San Francisco, which killed nine people and injured six others, is a major motivation to her advocacy concerning workplace violence prevention and management.

MS. SPEER WAS ONE of the keynote speakers for NAWL's 1997 annual meeting in San Francisco and authored a series of articles on workplace violence for this magazine.

Sgt. Mark Wynn and attorneys Sharon Eiseman and Lynne Z. Gold-Bikin will join Ms. Speer on the panel. Sgt. Wynn is head of the Domestic Violence Unit of the City of Nashville Metro Police Department. Ms. Eiseman is with the Chicago law firm of Ancel Glink Diamond Cope & Bush, representing employers in the governmental sector. Ms. Gold-Bikin of Wolf Block in Norristown, Penn., is co-chair of the ABA Commission on Domestic Violence and former chair of the ABA Section of Family Law.

CLE PROGRAMS will continue with a workshop on anger control and management in the workplace from 2 to 4 p.m.

"Use Your Anger" will be presented by Dr. Sandra Thomas, director of the Ph.D. program in nursing at the University of Tennessee in Knoxville.

Her clinical specialization is mental health nursing and her practice and research have primarily focused on women's stress, anger and depression. Dr. Thomas is author of *Use Your Anger: A Woman's Guide to Empowerment*, published by Pocket Books, and the editor of Issues in Mental Health Nursing.

In her book, Thomas addresses anger as an emotion we can learn to control. She examines women's choices in expressing or repressing anger, "losing it or using it." Self tests include anger proneness, stress, depression, problem drinking, health and relationship issues. Exercises explore intimidation and anger in the workplace.

From "banishing banshees" to "tempering tantrums," her emphasis is on identifying and assessing anger to develop accessible, proactive strategies—methods you can use at home as well as at work.

DR. THOMAS HOLDS bachelor's, master's, and doctoral degrees in education as well as a master's degree in nursing. She conducted the first large-scale comprehensive study of women's anger, and with various collaborators she has examined anger in adolescents, college students, registered nurses, AIDS caregivers, PMS sufferers, chronic pain patients, middle-aged and older adults.

Dr. Thomas

Her research has been presented at numerous conferences, a two-part article in the *New York Times*, women's magazines, radio and television, including "Good Morning America."

A 32-YEAR MEMBER of the American Nurses Association, Dr. Thomas is also a board member of the International Council on Women's Health Issues.

She chaired the Nursing and Health Psychology Committee of the American Psychological Association for three years and served two terms on the governing board of the health planning agency for a 16-county area in Tennessee. Named a Fellow of the American Academy of Nursing in 1996, she's been listed in *Who's Who in American Nursing, Who's Who in American Women,* and *Who's Who in the World.*

Member profile

Laura M. Wolfe
Winston-Salem, N.C.

1997 NAWL Outstanding Law Student from Wake Forest University School of Law.

Born East Lansing, Mich.

Family Parents, brother and sister-in-law in Winston-Salem; older brother, sister-in-law and new niece in Todd, N.C.; and her chow, Bear.

Practice Having passed the bar in July, she's with the firm of Womble, Carlyle, Sandridge & Rice in the products liability litigation group, which includes complex tobacco litigation.

Recent accomplishment Assisted in the implementation of the Domestic Violence Advocacy Center, a new program at Wake Forest. In the award nomination letter for Ms. Wolfe, Associate Dean James Taylor, Jr., wrote: "She is a tireless worker in the domestic violence program. This program allows law students to represent victims of domestic violence at the '10 Day' Hearing in district court. In addition to counseling the victim women and negotiating child custody agreements, Laura has obtained four protective orders for battered women."

Recent movies *The English Patient*, and *The Full Monty*, which she describes as "hysterically funny."

Memorable moment Trying her first case in federal court, a jury trial which resulted in a favorable verdict.

Passionate causes Domestic violence and elder law.

Member finds backing for idea

Resolution against discrimination gains international vote

International Law Committee member Virginia S. Mueller of Sacramento attended the Union Internationale des Avocats 1997 Congress in Philadelphia Sept. 3-7, 1997, before travelling to Italy for the 16th Congress of the International Federation of Women in Legal Careers held in Naples, Sept. 17-21.

In Philadelphia, she attended a workshop on French litigation involving immigrants who violate French law by inflicting genital mutilation on their daughters.

IN NAPLES, Mrs. Mueller introduced a resolution concerning CEDAW which was adopted by the International Federation of Women in Legal Careers on Sept. 20. The resolution states:

"The International Federation of Women in Legal Careers fully supports work of American men and women in their fight to obtain the ratification by the United States of America of the Convention on the Elimination of All Forms of Discrimination Against Women."

Mrs. Mueller reports an interesting CEDAW problem has arisen in the Democratic Republic of the Congo, as related by Congolese lawyers attending the 16th Congress. The new government refuses to recognize the ratification of CEDAW by the former government.

Breda Pavlic, Director for the Promotion of the Status of Women and Gender Equality for the United Nations Educational, Scientific and Cultural Organization (UNESCO), provided an update at the Naples Congress on UNESCO's efforts to promote the status of women, girls and gender equality.

"Most of the international normative standards adopted by UNESCO that make specific reference to the discrimination of women are those in education," Ms. Pavlic explained in her remarks.

"UNESCO contributes also to the implementation of other major international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—to name but the most important one as regards women and gender equality.

"SINCE THE Fourth World Conference on Women (Beijing 1995), UNESCO's work regarding women and girls has focused on five critical areas of concern...equal access to education; peace; the media; women's contribution to the management of natural resources and environmental protection; and the girl child with regard to access to education and literacy...[these] commitments have been, and continue to be, UNESCO's main preoccupation as regards women, girls and gender equality.

"Educating girls and women, from infancy and throughout life, from literacy and basic education to higher education, remains the most important task as it is a key—if not the key—to development, eradication of poverty, social justice, democracy and, above all, a key to human dignity."

In commenting on the pending 50th anniversary of the Universal Declaration of Human Rights, Ms. Pavlic noted, "...it is a fact that in some parts of the world human rights continue to be threatened, or are outrightly ignored, and that this is particularly true regarding women and girls. Be it a governmental decree barring women and girls from education and jobs, as is the case in Afghanistan, various forms of sexual mutilation imposed upon African girls, or the forced prostitution and trafficking through organized crime in East-Central Europe, the Middle East, Asia and Latin America—each of these has been, and continues to be condemned by UNESCO in the name of basic human rights."

MS. PAVLIC DISCUSSED UNESCO's emphasis on developing a worldwide culture of peace based on values and behaviour that reinforce non-violence and respect for the fundamental rights and freedoms of every person.

Citing peace as the primary objective of their present six-year strategy, she announced the intention of UNESCO's director-general to present a draft Declaration on the Human Rights to Peace at the 29th session of UNESCO's General Conference in Paris Oct. 21-Nov. 12, 1997. The Declaration would proclaim peace as a human right (Article 1), peace as a duty (Article 2), and peace through the culture of peace (Article 3), calling upon all individuals, governments and international organizations to promote and implement the human right to peace.

Affiliate groups share NAWL concerns

Two affiliates of the National Association of Women Lawyers—Hawaii Women Lawyers and Women Law Students Association at the University of Georgia, Athens—have undertaken efforts to promote interests of women.

Hawaii Women Lawyers recently published multi-lingual domestic violence help cards for distribution by social agencies, immigrant centers, and volunteer programs.

Recognizing that language barriers prevent immigrants from seeking protection, the cards provide victims of domestic violence information on where and how to obtain help. Designed to fold to the size of a business card and discreetly tuck into a pocket, they provide 24-hour emergency phone numbers for shelters, sex abuse treatment centers and child protection services.

The cards, which are printed in seven languages, also provide information on immigrant agencies who can help in the language of the victim.

THE UNIVERSITY of Georgia's WLSA presented their 16th Annual Edith House Lecture and Reception on campus Oct. 15. Anne M. Coughlin, a professor of feminist jurisprudence at the University of Virginia School of Law, was the featured legal scholar and lecturer, discussing "Sex and Guilt".

Since 1994, membership has grown from 65 to 125 members, according to Kimberly DeWitt, president. Programs include a gender bias forum, a supreme court forum, a power communications seminar, joint meetings with the Georgia Association of Women Lawyers, cooking meals for homeless shelters, collecting books for the Clarke County Jail, working with Habitat for Humanity, and organizing collections for the Project Safe battered women's shelter.

In addition to Ms. DeWitt, the student executive board for 1997-98 includes Amy Burton and Nichole Reynolds, vice presidents; Wendy Houser, treasurer; Katy Lewis, secretary; Jill Benton, publicity; Kim Brackett, Precious Green, Wanda Vance and Amanda Woodall. Sarajane Love is the faculty advisor.

Of quotes and elections


Gloria Allred

Gloria Allred, Los Angeles, NAWL's 1997 Outstanding Member, and president-elect **Susan Fox Gillis,** Chicago, were quoted in the Oct. 26 *Chicago Tribune* article by Bonnie Miller Rubin: "First Lady's 50th Casts Golden Glow on Boomer Women." The article explores the impact of these Boomers—Hillary Rodham Clinton and her peers—as they move between 50 and 80 in the next three decades. From mentoring to designer bifocals, altruism (Gillis) to political activism (Allred), change is the operative mode as 2 million women a year turn 50.

• • •


Sally Lee Foley

NAWL Immediate Past President **Sally Lee Foley**, Bloomfield Hills, Mich., has been appointed to a three-year term on the ABA Standing Committee on Public Education by ABA President (and NAWL member) **Jerome Shestack**.

• • •

The Hon. **Sue McKnight Evans** of Nashville has been elected presiding judge for the General Sessions Court of Davidson County, Tenn.

• • •

Dean **Herma Hill Kay** of the University of California at Berkeley School of Law is serving on the Nominating Committee of the American Law Institute, charged with selecting a new Director Designate for ALI by late winter/early spring 1998. ALI drafts and publishes restatements of the law, model codes and proposals for legal reform.

• • •

NAWL member **Rebecca Speer** of San Francisco joined Patricia Ireland, president of the National Organization for Women (NOW) and Irma Herrera, executive director of Equal Rights Advocates, in presenting a program on "Working Towards Women Friendly Workplaces" in Palo Alto Nov. 8. The program was sponsored by the Palo Alto/Mid-Peninsula Chapter of NOW. Ms. Speer, as chair of NAWL's Workplace Violence Committee, is taking our message "on the road."

• • •

Melanie S. Stone, NAWL 1997 Outstanding Law Student from Mercer University, has joined the firm of Smith, Gambrell & Russell, in Atlanta.

• • •

Changing firms: **Susan M. Zidek** from Columbus, Ohio, to Cleveland, joining the firm of Walter & Haverfield.

NAWL benefactors

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Member profile

Margaret Bell Drew
Norwood, Mass.

NAWL member since 1990; currently serves on the Executive Board as corresponding secretary.

Born Boston.

Family Married to George Slama, CFO with the Greater Boston Chamber of Commerce.

Practice Solo practitioner concentrating in domestic relations, estates, trusts and real estate.

Recent accomplishment Immediate past president of the Massachusetts Association of Women Lawyers.

Favorite book *The Prince of Tides* by Pat Conroy—"the book may be prose, but it's great poetry crafted from a dysfuntional family situation"—and the poetry of William Butler Yeats.

Memorable moment "Recently I was asked to speak on behalf of the alumni association of Northeastern University School of Law at a memorial service for one of my law professors, Donald Berman—one of those rare opportunities to reflect on how someone had profoundly affected my life. To speak publicly about his influence as a teacher of life as well as the law, and in particular, to share with his family the impact of his wisdom and his personal example, was a special moment for me."

Passionate cause "Domestic violence—I believe that abuse at all levels is a fundamental cause of most family and societal woes. If we could just teach people to be nonviolent and respectful, so many of today's problems would fade away."

Numbers aside, guys still win

By Dineen M. Pashoukos

I didn't think I needed a women's organization when I reached law school. After all, my entering class was Georgetown's first to have more women than men.The year I matriculated, the editor in chief of *The Georgetown Law Journal* was a woman. Our dean was a woman. And in my first semester, half of my professors were women.

But despite these attractive figures, I soon learned that gender differences still figured into the law school calculus.

On a whim, I attended a brown-bag luncheon sponsored by our campus Woman's Legal Alliance.The topic was Lani Guinier's study of gender differences at University of Pennsylvania Law School. Guinier discovered that at Penn, men were three times more likely than women to be in the top ten percent of their class, despite comparable entry-level qualifications. Guinier attributed the difference partially to the Socratic teaching methods at law school, partially to large classroom size, and partially to lack of mentoring.

In an attempt to test Guinier's study, some students used graduation programs from the past several years to confirm that although each graduating class was around 50 percent women, fewer than fifty percent of those graduating in the top 10 percent of the class were women.

Guinier's observation seemed to apply at Georgetown. The question was, why?

Even without formal study, I can offer some observations. Some of my reasons echo Guinier's findings, and others I have come up with on my own. These differences add up to a strong need for women's organizations such as NAWL to be available to women at the law school level.

Teaching method

Many of my female classmates first year seemed highly intimidated by the prospect of being called on in class. Socratic method professors seem to relish humiliating unsuspecting students who don't provide the exact answers the professors were looking for - and often even a decent answer was ridiculed.

Of course, the Socratic method was new to male and female students alike. But the guys seemed much more gung-ho about sticking their necks out, easily laughing off the professor's jibes after class.

The women took the professor's criticism much more personally, and avoided the possibility of such humiliation at all costs by rarely raising their hands. This does not mean that women law students should be labeled "meek" or "docile"—few truly meek or docile people could gain admission into law school to begin with.

Rather, the women were merely more cautious than the men, choosing to contribute only when they were sure that they were correct. Because the Socratic method seemingly makes all answers incorrect, the women chose not to raise their hands at all.

Life Gets in the Way

I believe that perhaps the biggest reason for the reported grade gap is that women simply do not have as much time to dedicate to their studies as the men do.

The women have more external forces vying for their time—marriage, children, parents, relationships. Although many of the male students were also married and had children and relationships and parents to contend with, it seemed that the women in their lives bore more of the emotional load and time commitment than they did.

By contrast, the female students in similar situations continued to bear most of the responsibility for child care, parent care, and emotional care of their relationships.

Since I have been at Georgetown, at least three female students have had babies. Each of those women were back in class within weeks, babies in tow. Fellow students or understanding support staff would watch the babies while the mothers were actually in class, and the mothers would attend to their babies while studying in the cafeteria, rather than the library, so as not to disturb fellow classmates.

I never saw the new fathers in our ranks attend class with baby in tow.

Mentoring

Many of my male classmates seemed to have a built-in mentoring network when they arrived at law school. The male students had fathers, uncles, other relatives or family friends who were already successful attorneys. They had been groomed to go to law school, and entered the class with a sense of entitlement that professional and economic success were a mere three years away. The women, by contrast, seemed to be much more likely to be the first in their families to attend law school.

Of course, it would be a gross over-generalization to say this is true of every student. But it was true often enough for me to detect a pattern. And it certainly explains to some extent why some of my female classmates had trouble adjusting to law school life. There was no one to tell us what to expect; no one to warn us about the Socratic method; no one to show us what law practice was like so that our classes could be absorbed within the context of what we would be doing after law school.

Male students, more likely to speak up in class, were also more likely to seek out professors outside of class and develop mentoring relationships there as well.

It is in this regard that NAWL members can have the greatest impact. By seeking out women law students and sharing your experiences, you can help them become better prepared to deal with the strange new world of law school.

And it is for this reason that, despite all the positive strides law schools have taken, I still need NAWL.

Dineen M. Pashoukos is a third year law student at Georgetown University Law Center in Washington, D.C. She serves as NAWL's representative to the American Bar Association's Law Student Division Board of Governors.

NAWL members issue their opinions on...

A Woman Scorned; Acquaintance Rape on Trial by Peggy Reeves Sanday. **Reviewed by Elizabeth K. Bransdorfer**, a litigation attorney with Mika, Meyers, Beckett & Jones, in Grand Rapids, Mich., and NAWL treasurer.

Abuse of Power by Nancy Taylor Rosenberg. **Reviewed by Andrea Schultz**, a lawyer in Middleton, Wisc.

Law v. Life: What Lawyers Are Afraid to Say About the Legal Profession by Walt Bachman. **Reviewed by Sarah Elisabeth Curi**, in-house counsel for Shields Health Care Group in Massachusetts.

A Civil Action by Jonathan Harr. **Reviewed by Louise Roselle**, a litigator with Waite, Schneider, Bayless & Chesley in Cincinnati and chair of the NAWL Environmental Law Committee.

'Scorned' is solid analysis of perspectives on rape

BY ELIZABETH K. BRANSDORFER

By subtitling *A Woman Scorned* "Acquaintance Rape on Trial," anthropologist Peggy Reeves Sanday implicitly promises a great deal. Her scholarly work delivers.

A Woman Scorned is worth reading, although it leaves the lawyer in me somewhat disappointed. In an otherwise excellent book, Sanday's efforts to look behind the study or the historical "fact" that she cites are inconsistent. Sometimes she explains why the source ought to be believed or discounted; sometimes she just presents the source's statement as truth with no such analysis. The practical limitations of recorded history may explain this phenomenon in the early chapters, where there may be little critical background available. Despite this shortcoming, *A Woman Scorned* (Doubleday) is clearly and effectively written to provide an apparently comprehensive overview of the evolution of Anglo-European attitudes toward rape and the fear of false accusations.

AFTER AN excellently written description of the St. John's case (a group of college males charged with the rape of a female student after coercing her to get so drunk she passes out), Sanday begins her legal-historical recitation of the way the criminal law has dealt with the issue of rape committed by a person who is known to his victim and with whom she has apparently consented to some contact, but not the range of sexual contact that occurs.

I was fascinated reading much of the six chapters that took me from the Margery-Evers case, a 1631 Welch criminal prosecution for an assault on a young woman who was walking alone in the forest on Midsummer, through the first study on acquaintance rape which was conducted in 1957, during a time when *Playboy* "took the evil out of sex by sexualizing the nice girl next door." The theme that runs through these chapters (Puritan era, Revolutionary War era, 19th century, turn of the century, and the '20s through World War II) is that society inconsistently resolved questions of whether women like sex and, if we do, whether we were free to say so or whether we must have been pretending to want to be forced.

I am resisting the temptation to quote extensively my favorite parts of this discussion so you'll decide to buy the book (or check it out from the library) and because the flow of the telling is important to the appreciation of the lesson. Interspersed and integral to the insights and highlights are the "slap in the face" painful-to-read statements that display the disrespect for, and unimportance of, women for generations. Famed and still respected psychologists, as well as noted and still renowned legal scholars and judges, were allowed to make outrageous statements about what women wanted and needed, how they behaved and reacted to pain and force. It is important to read their words to understand our culture.

Sanday reports these words and these opinions as "truth" during the relevant time. Perhaps this is why she does not critically analyze the research or other evidentiary basis for their conclusions. Sometimes she notes the benefit to men of the rules or presumptions imposed.

For example, she notes that in "making women the gatekeepers of an explosive, uncontrollable male sexuality, the creators of female passionlessness ensured the continued reality of male libertineism just as the Puritans ensured the existence of explosive sexual energy by erecting so many taboos against it." Sanday also reports, "[i]n the courtroom, belief in female sexual voracity remained the dominant view of female sexuality." These statements are not consistent. There is no attempt to explain how or why a public perception or presumption that women don't like sex can be or should be translated into juries deciding that they do.

The fear of the false accuser (frequently, the author notes, a girl 10 or younger) is blamed for the low conviction rate in the studies based on court records, but the reason for that blame is not explained. The inconsistency is not even acknowledged or directly addressed. The reader doesn't know if the records reviewed in the study disclose the arguments of counsel for the prosecution or the defense or the views of the judge. Sanday does not disclose the sources available to and used by the studies' authors for information about the victim, the defendant, and the reason for the verdict.

THESE ARE, to my lawyer's mind, essential for an understanding of the results. I would also submit that the fact that so many trials involved "acquaintance rape" as compared with "stranger rape", for example, is a relatively meaningless fact unless one also looks at how many guilty pleas there were during the same time for "stranger rape" offenses. The importance of prosecutorial attitude and the community tolerance or pressure that contributes to guilty pleas or the decision to take a case to trial cannot realistically be ignored if the study is to have meaningful and reliable use as a description of the attitudes of society.

Despite the seemingly uncritical use of certain kinds of records, reports, studies and academic and professional opinions, the discussion is challenging and helpful to a better understanding of recent developments in the legal and societal reaction to acquaintance rape. The next four chapters take the reader from the proclamation of a "sexual revolution" in 1961,

through the early identification of "acquaintance rape" and the relatively recent trials of Mike Tyson and William Kennedy Smith, to the rise of the anti-feminist feminists. About one hundred pages covers 30 years. The influx of women in academia is evident. More importantly, the increased rigor of academic research results in studies that can be discussed and criticized for what they include and what they don't.

I FOUND Sanday's discussion of the evolving definitions of rape to be particularly challenging. The vast difference in perception of the violence of coercion is at the base of the debate, and is almost never addressed head on. Sanday notes that the state rape laws were almost all changed to protect victims from the worst abuses the system historically heaped on their characters and privacy.

She also notes that virtually none of the changes went to the basic definition of rape—where the law allows the problem of perception (how much protest is needed to demonstrate to the perpetrator that the victim wasn't just enjoying the force? or how much force must the perpetrator use before the victim can convince the fact-finder that she did not consent?) to continue. The issue continued to be whether she resisted. Sanday submits that it should be whether he obtained her consent.

One section of the book especially valuable to understanding the issues underlying acquaintance rape is found in Chapter 9. It precedes, includes and follows the section Sanday entitles "What We Know about Sexually Aggressive Men" and includes discussions of numerous studies of what men consider to be normal, acceptable, non-criminal behavior. Not surprisingly, men in all of the studies found a significantly higher and more intense level of violence acceptable and normal than women did. The degree of the disparity is not, however, critically assessed on any sociological basis—age, education, income, race, marital status, and so forth.

THIS TYPE of information would be particularly important to lawyers who want to learn how to persuade juries to look at a case from their client's perspective. Knowing how college students (who are the subjects of most of the academic studies cited) view certain behaviors is of little help—there are never going to be more than one or two jurors with college degrees and their perceptions are, therefore, not likely to be determinative of the verdict.

The book discusses the anti-feminist view—that women hurt themselves by allowing their vulnerability to become the focus of rape discussions. The perception of the victim is different from the defendant's perception and the American legal system has historically protected the accused from the emotional effect of a victim's pain. If one wants to allow the strong and powerful to set the standards of behavior that govern their own conduct, and that the less strong and powerful must accept, then the anti-feminist view is the better one.

Like Sanday, I disagree that the standard of behavior that the law ought to allow is necessarily that of the most aggressive members of society. I am not sure I would go so far as the author does, however, as she concludes with an argument that "affirmative consent" ought to be the focus or test that is applied by the criminal justice system. Sanday makes a cogent argument silence should not be interpreted as consent and everyone should be free to be as sexually involved as he or she wants and not one bit more. In an ideal world, her choice to put the burden on the person who wanted to have more sexual contact to prove that his or her partner wanted it too would be the fair location for that burden.

However, in the real world of proof problems and an inability to accurately recreate a scene for the jury, the risk or danger of such a burden is unacceptable. So long as our legal system continues to be based on the premise that it is better that a hundred guilty people go free than that one innocent person be convicted, the burden on a criminal defendant cannot be shifted that far without projections that the economic reality of our justice system does not allow.

THIS LIMITATION on the adoption of Sanday's proposed solution does not diminish the need for our society to adopt the philosophy she advocates. Sexual aggressors should not be allowed to believe and behave as if "no" means "yes". We should not teach our children to expect dishonesty in sexual response.

Sanday notes "sex does not spring full flowered out of male hormones like Athena from the head of Zeus. Sex is what we make of it. Sexual aggression in any society is curtailed and enhanced by the prevailing sexual ethos and by the societal response to rape. The idea that male sexual aggression is natural is ingrained in the American sexual ethos. While I do not deny a biological component to aggression, how societies channel the human sex drive is of greater consequence."

Her book will help us educate ourselves (preaching to the choir being the first step in converting the multitudes) and what we do with the knowledge she has given us to educate others will help define the true value of her work.

'Abuse' lacks power to thrill

BY ANDREA E. SCHULTZ

Abuse of Power is a police-legal thriller by Nancy Taylor Rosenberg, the author of the best selling *Trial By Fire.* Published in March, the novel is an easy read—a nice break from legal briefs and opinions. However, if looking to lose yourself in a gripping novel on the level of Frederick Forsyth or John Grisham, *Abuse of Power* will not fit the bill.

The plot revolves around Rachel Simmons, a second year police officer who finds corruption on her police force, refuses to go along with it, becomes a target of her fellow officers, is framed by them, and struggles to combat the corruption. She must also deal with her loss of faith in the criminal justice system.

THE READER is first introduced to Rachel in a courtroom scene. She is being questioned by a district attorney about a gun her partner, Jimmy Townsend, claims was being carried by a suspect. Rachel refuses to say she saw the gun, which implies Townsend planted it on the suspect. In a verbal exchange with Townsend, he criticizes her for not making a false statement to back him up on his story.

From this point, Rachel's observations of corruption escalate. The level of depravity becomes increasingly severe and Rachel's faith in the criminal justice system to protect herself and the public wanes. The rapid ascent contributes to the novel falling into a trap of predictability, triteness and melodrama.

Ms. Rosenberg's strength in the novel is addressing issues of women in the work force, the career choices open to them and the obstacles they face. She lends credibility with her personal career experiences as a police officer and investigative probation officer.

HER PROTAGONIST, Rachel, made the choice to become a police officer after her husband's death. Previously, Rachel worked in retail as a sales clerk and realized this traditional female occupation would not be adequate in pay or benefits. Despite inherent danger, she felt being a police officer would be her best opportunity to support her family.

In professions traditionally dominated by men, there is a need for female networking. Ms. Rosenberg addresses

Plunge into 'Law' shows real-life job

BY SARAH ELISABETH CURI

Law v. Life: What Lawyers Are Afraid to Say About the Legal Profession should have been titled "What I Wish I'd Learned in Law School But Didn't." With chapter titles like "The Thrill of Victory, the Agony of Defeat, & the Other 99% of Your Life" and "Law School's Best Forgotten Lessons," this book is a must read for anyone who feels frustrated or disillusioned by the legal profession. Lawyers, recent graduates, and law students will find Walt Bachman's wisdom is as solid as their grandmother's—and likely as hard earned.

Bachman's career in law has spanned over 25 years and encompasses a wide variety of practice: small and large firm, public and private, poor clients and corporate giants. He also investigated and prosecuted lawyers' ethical violations. His range of experience enables him to view the legal profession from several vantage points.

Peppered with personal vignettes, this book is a quick and interesting read. His intent is neither to lawyer-bash nor offer remedies. Rather, Bachman seeks to break the silence and stimulate a dialogue about the not so glamorous, the not quite "LA Law" aspects of practicing law in the '90s and to question where our profession is going. He explores the often harsh realities of present day lawyering—the glorification of dispute—the suppression of morality by "objective" legal reasoning—the stresses of law school, of being responsible to clients, and of that almighty billable hour.

Bachman summarizes each chapter with a "lesson". In a chapter entitled "Helping Until It Hurts," he explores how a lawyer's obligation to zealously represent a client essentially enshrines an amoral dedication to obtaining the best possible outcome for the client at the expense of others. On cross examination, for example, a lawyer is "ethically" permitted to disparage, cast doubt upon, and even destroy the credibility of an eyewitness. Thus, in Lesson Two, Bachman reminds us, "Law is the only learned profession in which one is ethically obligated to hurt people."

In a chapter entitled "A Lawyer's Dual Life," Bachman explains that to be a good person, a lawyer must live a dual life, since the behaviors which enable one to succeed in each area are diametrically opposed. By way of example: the essence of a successful personal relationship is trust while the stance of a successful lawyer is distrust. Bachman notes, perhaps only partially tongue in cheek, "You don't have to be screwed up to be a good lawyer, but it may help."

The source of this book's strengths—one man's story—is also the source of its limitations. Bachman offers a rather generic, somewhat sanitized view of the profession. He does not explore the many dark undercurrents of sexism, racism, classism, etc. which compound the broad topics which he examines so thoughtfully. Bachman's *Law v. Life* (Four Directions Press) is, nonetheless, a good place to start needed discussions about lawyering in the '90s. Perhaps it will inspire others to tell their own stories in their own words.

the concern with this observation: "Rachel wasn't crazy about the woman, but in the mostly male world of cops, she felt the females should stick together." Ironically, Rachel is never able to speak openly with anyone on the force, including the few women police officers.

Abuse of Power (Dutton) is hampered by the shallowness and stereotypical construction of characters. The best example is Grant Cummings, the main antagonist, the ring leader of the police corruption and responsible for the most heinous attacks on Rachel. Portrayed as a monster, his viciousness is extreme to the point of being unbelievable, taking away from the novel's sense of reality.

Ms. Rosenberg does attempt to flesh out other characters who go along with the police corruption, providing background as to why the reader should not just view the person as corrupt or evil. One example is a police officer, Ratso, Grant Cummings' lackey. His transgressions include smashing a juvenile's face into the ground and involvement in a sexual assault of Rachel. Ms. Rosenberg includes a story about Ratso sending part of his paycheck back to his home country, while working under false immigration papers. Such an apparent attempt to present a sympathetic dimension to Ratso fails.

THE MAIN CHARACTER, Rachel, is difficult to categorize. She is supposed to come across as a heroine, struggling but retaining the strength of her convictions. Early in the novel District Attorney Mike Atwater describes her as a woman of integrity, which he notes is in short supply these days. However, she often comes across as ineffective, pliable, and lacking principles. Later in the book, Rachel sleeps with Atwater and tells him that she used him.

Rachel's judgment is suspect. The reader can easily predict, when she is talked into going to a morning beach party with the male officers, she is going to be assaulted. She only fights the police corruption aggressively when she is almost killed and then must defend herself against attempted murder charges. Rachel's actions fail to hold up to the district attorney's heroine label for her.

OF PARTICULAR interest is Ms. Rosenberg's portrayal of attorneys, continuing her practice of using stereotypes. Her district attorney, Mike Atwater, is obsessed with gaining power and is a "notorious womanizer." First shown betraying Rachel's confidence in the same courtroom scene which opens the novel, he is later concerned about Rachel going to the press before he has a chance to hold his own self-serving press conference. Rachel's sister, Carrie, is another example: a civil litigator in San Francisco, "dressed in a white linen suit, nude hose and stiletto heels...her hair dyed jet black and cut severely to frame her face at the jaw line", flashy, divorced, with money—an "LA Law" attorney.

IT'S NO SURPRISE when Rachel mentions her sister is an attorney and her sister then ends up representing her. Ms. Rosenberg's use of a civil litigator as a criminal defense attorney in an attempted murder case is the realm of television. Carrie has misgivings for a few paragraphs, then eagerly takes on the case and appears to know what she is doing with minimal outside assistance. Very little time or character development is taken to explain why she feels she can manage this leap in expertise.

It is refreshing to read a novel with a female heroine in a non-traditional role. The issues the author raises of police corruption and women in the work force are important, her insights informative. Nevertheless, the novel suffers from weak construction and cardboard characters. Although at times Ms. Rosenberg's descriptions are gripping, *Abuse of Power* is not a page-turner.

'Civil Action' hot reading before summer film hits

BY LOUISE ROSELLE

A Civil Action, a well written and accurate portrayal of civil environmental litigation, is worth reading for three reasons. First, as a book it is "pleasure reading." Second, it informs the reader about the battles encountered in civil environmental litigation. Quite often the public has an opinion of litigation shaped by the media.

This book dispels all illusions about litigation and "tells it like it is." Finally, *A Civil Action* clearly demonstrates that the decisions a lawyer makes from the first meeting with the client until the end of the legal representation affect the resolution of the case. In many ways, this is a book about choices—the choices that are made, the reasons for those choices, and the consequences.

(Another reason to give it a read is to see how this winner of the National Book Critic's Circle Award for Nonfiction fares in its movie version, scheduled for summer release with John Travolta playing the driven lawyer.)

THIS NONFICTION book describes the legal fight of Woburn, Mass. citizens against W. R. Grace and Beatrice Foods. Defendants owned subsidiaries that, according to the complaint, had poisoned the plaintiffs' drinking water with toxic chemicals. The complaint stated that the poisoned water had resulted in a cluster of leukemia, the deaths of five children, and injuries to all of the family members who were party to the lawsuit. Jan Schlichtmann and Kevin Conway represented the plaintiffs; Jerome Facher and William Cheeseman represented the defendants. Judge Walter Ray Skinner of the U. S. District Court for the District of Massachusetts presided. The litigation process extended over nine years.

This book, which reads more like a novel than a nonfiction manuscript, looks at all aspects of litigation including the attorney-client interactions, funding of the litigation, trial preparation, jury selection, trial, settlement talks, resolution, and the aftermath. The author, Jonathan Harr, began working on this project in February 1986 before the start of the trial and was present throughout the trial. In addition, he relied on the official record including 196 volumes of sworn deposition testimony, 78 days of trial testimony and 57 volumes of pre- and post-trial hearings. He also conducted many interviews and observed many meetings referenced in the book.

Even though every decision made by a trial lawyer impacts in some way the ultimate resolution of the case, it is often difficult to gauge the importance and effect of the decisions when a case is ongoing. This book gives the reader an opportunity to know the outcome of the case and to reflect on how decisions impacted outcome. The reader also gets the chance to "second guess" the decisions

The book graphically illustrates how decisions are made based on assumptions about the future which sometimes turn out to be incorrect. Yet once the decision is made, it cannot be undone. [The book] allows the reader to evaluate whether, in his/her opinion, the reasoning process was sound. For example, the first decision in any case is "Do I take the case?" The author describes the analysis for taking this one:

"Despite all its difficulties, the case tantalized Schlichtmann. He believed that it had merit. He kept thinking that if he was destined for something great in life, this case might be his opportunity. If he were to win it, he would set new legal precedents and gain a national reputation, among his fellow plaintiffs' lawyers. He would no doubt make a lot of money. And he would have helped the families of east Woburn. Fame, fortune, and doing good—those were, in combination, goals worth striving for, he thought."

A lawsuit, especially a complex environmental case which involves issues of medical causation, can take on a life of its own. It consumes money, time and the lawyers. It becomes the focus of each day for years. This book portrays that all-consuming experience to the reader.

Have an opinion on a recently published book of interest to lawyers? Send your review to Teresa J. Bowles, book review editor, at her law office, Arnold, White & Durkee, 1900 One American Center, 600 Congress Ave., Austin, TX 78701, to be considered for publication.

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NAWL member since 1996; currently serves on the International Law Committee.

Born Columbus, Ohio.

Family Husband, Donald G. MacDonald, retired foreign service officer, son Christopher MacDonald, age 13, a National Cathedral chorister, and daughter Joan MacDonald, age 11, a junior girls chorister at the National Cathedral. Joan attended several of NAWL's annual meeting programs in San Francisco, where her mother was a featured panelists in "The Shoemaker's Children."

Practice Counsel with Wilmer, Cutler & Pickering, concentrating in international financial and transactional law with an emphasis on the financial structuring of international projects.

Recent accomplishments Financing ten Boeing aircraft; the first Marriott Hotel in Lima, Peru; two power plants in Israel; Very Small Aperture Technology (VSAT), a high tech project in Indonesia; and receiving the 1996 Award for Service from the Association for Women in Development (AWID).

Recent movies A French movie, *Ridicule*, about the 16th century French court which reminded her of Washington, D.C.

Memorable moment Being elected a member of a men's club.

Passionate cause Her children's well-being.

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