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ahead at the
NAWL Annual
Meeting in
cool Toronto

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Women Lawyers Journal

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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. ©1998 National Association of Women Lawyers. All rights reserved.

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About Women Lawyers Journal

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ARTICLES Book reviews or articles about current legal issues of general interest to women lawyers are accepted and may be edited based on the judgment of the editor. Editorial decisions are based upon potential interest to readers, 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 Unsolicited articles by nonmembers will not be published.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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Good Transitions, Prairie Style



Mary G. Keller

City Huron, S.D.

Practice Private practice with spouse/law partner John since 1981. In 1997-98 she handled criminal defense, civil practice and served as special assistant attorney general for child support enforcement in Beadle County, S.D.

Recent accomplishment Served as president of the state prosecutors' association in 1996.

NAWL activities Member of the Membership Committee and District 17 (North and South Dakota) representative; she also provided NAWL with a treasurer — daughter Elizabeth Bransdorfer, who is profiled on this page.

Mary Keller doesn't think she has an interest span of exactly 12 years, but that's certainly the pattern her major career changes have followed.

After marriage in 1957 and completion of her undergraduate degree in 1958, she worked off and on in library and rural education—a real one-room school—until the family (husband John and children Liz, Whit and Tom) moved to Chamberlain, S.D. There she taught high school speech and English 12 years.

What moved you toward a career in law?

"With my 40th birthday nearing and 25 more years of teaching looming ahead, law school looked pretty good. As John recalls, I said, 'You're having more fun than I am!' So I applied to the University of Minnesota where Liz was enrolled.

"After passing the South Dakota bar in 1981, John and I began our law partnership."

Why did you switch from the private to the public sector?

"I recognized an opportunity, and I needed courtroom experience. So I ran against the incumbent county prosecutor and won. In 1985, I became the first woman state's attorney in my county, a position I held unchallenged until I announced my intention not to seek re-election."

Why did you leave government service?

"Twelve years was enough of almost daily courtroom experience. The second week of January 1997 found me beginning again in private law practice."

What were some of the challenges with this latest transition?

"My office staff, deputies and overhead subsidy were gone. I had my major asset—John, my life partner of 40 years—and I soon found a

part-time secretary/receptionist who wanted that sort of work.

"My practice is now divided between criminal defense and domestic relations. My husband handles bankruptcy, personal injury and business law.

"There is no real 'secret' to this successful transition. I sincerely believe my ethical behavior as a prosecutor led to private clients, including both victims and perpetrators of crimes. That men and women I prosecuted seek me out to represent them in civil and

further criminal difficulties continues to be a gratifying surprise."

What are some of the rewards you're enjoying?

"The practice has grown. I put in fewer hours now than as a prosecutor. The financial aspects are improving gradually. And I am a happy woman.

"I look forward to 10 more years in this role to conclude this 12-year cycle. It sounds a lot like a good definition of 'success' to me."

Member profile

Elizabeth K. Bransdorfer
Grand Rapids, Mich.

NAWL member since 1992; currently treasurer.

Born Vermillion, S.D.

Family Husband, Mark Bransdorfer, a lawyer and doctoral candidate in comparative literature, daughter Samantha, 5, and son Henry, 18 months.

Practice A member of the firm Mika, Meyers, Beckett & Jones. She is a litigator, concentrating in commercial and real estate law, plus personal business matters.

Recent accomplishments New chair of the litigation section of the Grand Rapids Bar Association.

Favorite movie Anastasia. "What do you expect with a 5-year-old daughter? And the TV show I never miss is Teletubbies. This is my life away from the office."

Memorable moment "I decided I needed to get involved in women's bar

associations when a judge called me at the office to get my father-in-law's new address because he didn't want to disturb my husband at work. I gave him the address and promptly volunteered to run for office as a regional rep for the Women Lawyers' Association of Michigan." She was president of WLAM in 1994-95. The involvement gave her the chance to network and learn from other women's experiences.

Passionate cause "Trying to find balance without feeling cheated. I want to do good for my clients. I want to do good for my kids. I want to do good for my husband. I want to do it all — and there aren't enough hours in the day. I do all these things for self-satisfaction. I love everything I do. I just need more time to do it all so I can savor every minute of it. My No. 1 goal is to be more like my mother. She is the most generous, sharing person I know. She'll drop what she's doing to help other people anytime, anyplace. And she enjoys her life the most of anyone I know."



The work remains for us to finish

Priority for Action VIOLENCE

In August 1997, when I was installed as president, the National Association of Women Lawyers inaugurated its educational campaign to increase public awareness of workplace violence and its devastating impact on women. It is only fitting then, in the last column of my presidency, to revisit this priority and our progress.

Our public awareness campaign has taken us across the country; NAWL has presented, or will soon present, workplace violence programs in San Francisco, Chicago, Nashville, San Diego, Washington D.C., Charleston, and Toronto. We have forged critical strategic alliances with governmental agencies, corporations, non-profit organizations, law enforcement, bar associations, women's groups, and individuals across the country, who have joined us in our fight to end the violence. We have closely examined the epidemic of workplace violence, but more importantly, we have also worked with other women's bar associations to replicate our educational efforts.

IN ADDITION to passing our own anti-violence resolution, NAWL is also sponsoring a resolution before the American Bar Association at the ABA Annual Meeting in Toronto in July-August, 1998, inviting the ABA to urge all employers to address workplace violence by adopting meaningful practices to help better prevent and manage on-site violence and threats. But, now we have a unique opportunity to do more at the national level.

In 1994, the United States Congress passed the Violence Against Women Act, an historic piece of federal legislation, co-authored by U.S. Senator Barbara Boxer, D-Calif., who received NAWL's 1998 President's Award for Excellence in the Advancement of Women for her work on behalf of women.

The Violence Against Women Act of 1994 contained a broad array of ground breaking laws to combat the epidemic of violence against women in their homes and on our streets. But, funding for vital programs created under the Act expires this year; and the remaining funding has already run out or will soon. Moreover, despite the Act's success, many gaps in the law still remain. While the Act addresses violence perpetrated against women in their homes, the legislation does not fully address violence against women in their workplaces. Yet, the prevalence of violence against women in the workplace is dramatic.

As we know from NAWL's prior articles on the topic, homicide is the leading cause of death of women on the job. Women who are victims of workplace violence are twice as likely as men to know their attackers; husbands, boyfriends, and ex-partners commit 15% of workplace homicides against women. Fifty percent of rape victims lose their jobs or are forced to quit their jobs after a violent crime. Three-quarters of battered women who work are harassed by their abuser at work either by telephone or in person. Moreover, employers now recognize the economic effect that violent crime against women has on American business.

RECENT ESTIMATES show that domestic violence alone—excluding violence committed at the work site—costs employers at least \$3 to \$5 billion a year in lost days of work and reduced productivity. A recent study found that one-third of business executives surveyed thought that domestic violence affected their balance sheet, nearly half recognized that it harms productivity, and two-thirds agreed that their company's financial well-being would improve if they addressed domestic violence. Ninety-four percent of corporate security and safety directors rank domestic violence as a high security concern in their workplace. In short, employers can no longer afford to ignore the impact that violence against women has on their bottom line.

To address these legal gaps and to reauthorize the Act's funding, Congressional Representatives Conyers, D-Mich., Morella, R-Md., and Schumer, D-N.Y., introduced the Violence Against Women Act of 1998 (H.R. 3514) in the House of



*By Janice L.
Sperow*

Representatives on March 19, 1998.

The Violence Against Women Act of 1998, or VAWA II, is an omnibus package designed to reauthorize and enhance the programs initiated by the Violence Against Women Act of 1994, VAWA I; it specifically continues and expands the Congressional commitment to making our schools, streets, homes, and now workplaces safe for women and children. Here are some of the programs that VAWA II would reauthorize.

VAWA I authorized \$10 million in demonstration grants to non-profit local organizations to establish model programs on domestic violence intervention and prevention which were to be designed and implemented as a coordinated community effort. VAWA II would continue this community initiative program which was funded only through 1997.

VAWA I provided \$1.3 million for the development and dissemination of model programs for training state and federal court judges and personnel in the laws regarding violence against women. This funding was allotted for fiscal year 1996, but no funds were actually appropriated, and judges and court personnel have never received the benefit of this training program. VAWA II specifically revitalizes this educational program.

VAWA I ALSO established grants to states, Indian tribes, and local governments to implement mandatory arrest programs, improve the tracking and monitoring of domestic violence cases, increase coordination among law enforcement, prosecutors, and the judiciary in domestic violence cases, and to strengthen legal advocacy service programs for victims of domestic violence. VAWA II reauthorizes these grants. VAWA I targeted rural communities by allocating grants to rural states, localities, and Indian tribes to improve prosecution of domestic violence and child abuse cases and to increase prevention strategies and victim services in these isolated areas. VAWA II would ensure that these areas so often lacking in resources would continue to be funded.

Indeed, this program has proven to be so crucial that Congressional appropriations actually exceeded legislative authorization in 1998. VAWA I provided access to federal crime databases by civil and criminal courts for use in domestic violence and

stalking cases; it also authorized federal victim-witness counselors to provide crucial link between prosecutors and victims in the federal prosecution of sex crimes and domestic violence. This program was so successful that Congress appropriated double the authorized amount. VAWA II would continue these two critical components.

VAWA I provided grants to non-profits for street-based outreach and education, treatment, counseling, and referral of runaway and homeless youth who are victimized by sexual abuse. VAWA I also created a national domestic violence telephone hotline. Since the hotline opened, operators have assisted more than 188,000 callers. But the demand for services has far exceeded Congressional expectations. Thus, VAWA II would increase the program's funding in order to maintain this invaluable resource. VAWA I authorized \$325 million for battered women's shelters under the Family Violence Prevention and Services Act.

THIS FUNDING has provided thousands of women and children with safe harbor. VAWA I also provided funding for victims of child abuse, national rape prevention education and training, and local rape hotlines. VAWA I further provided grants, commonly called STOP grants, to each state and territory to implement a coordinated effort among all systems in the state, including law enforcement, judicial, social services, and shelters, in order to improve the legal response and victim services in cases of violent crimes against women. VAWA II continues these efforts.

VAWA I also authorized funding for the development of four model programs for the education of young people about domestic violence and violence among intimate partners. But, Congress never authorized funding for the implementation of the models that were developed. Similarly, VAWA I provided for lighting, surveillance, security, and other capital improvements to public transit, national parks, and public areas to reduce violent crimes against women. But, the safety improvements were never made.

VAWA I directed the National Research Council to develop a research agenda to help reduce violence against women. But, once again, Congress never authorized funding to carry out the research agenda that it directed.

VAWA II would ensure that these vital programs are actually implemented. Thus, the Violence Against Women Act of 1998 is essential to truly complete the safeguards and security programs begun by our nation over four years ago.

IN ADDITION TO reauthorizing funding for the innovative programs begun in 1994, the Violence Against Women Act of 1998 expands our commitment to addressing and preventing violence against women. VAWA II amends the Family Violence Prevention and Services Act to provide \$1 billion to battered women's shelters over the next five years. It includes training on domestic violence and child abuse in custody determinations. VAWA II allows closed-circuit televising and video taping of child testimony to protect the child from the trauma of facing the abuser in court in child abuse and violence cases.

In fact, VAWA II adds several provisions specifically designed to limit the effects of violence against children. The Act provides grants to operate supervised visitation centers to facilitate child visitation and visitation exchange in a safe, controlled, and supervised environment. These facilities will allow women who are the victims of domestic violence but who must remain in contact with their abuser in order to coordinate visitation rights, to do so in a less threatening and safer environment; they will also allow the children of abusers to be protected while in contact with violent and potentially violent parents.

VAWA II establishes training and educational programs for teachers and students about domestic violence and sexual assault. It amends the Parental Kidnaping Prevention Act to provide defenses in domestic violence and child sexual assault cases. The Act also permits private employee pension benefits to be assigned to satisfy a judgment against a person for physically, sexually, or emotionally abusing a child.

The Violence Against Women Act of 1998 adds additional safeguards for

domestic violence victims. It makes Section 8 housing available for victims of domestic violence, enhances full faith and credit enforcement of out-of-state orders in domestic violence cases, and prohibits insurance discrimination against victims of domestic violence. VAWA II prohibits the sale of firearms to intoxicated persons, provides legal assistance and referral services to domestic violence victims who have inadequate financial resources, and amends the Federal Witness Protection statute to permit coverage of domestic violence victims.

THE ACT also directly addresses the needs of women in underserved communities. VAWA II authorizes law school clinical programs on domestic violence against older women, training programs for law enforcement, social service and health care providers on domestic violence against older women, community initiatives and outreach targeted to older women who are victims of domestic violence. It ensures inclusion of women with disabilities in existing programs, provides for judicial training on violence against women with disabilities, and prevents immigration status from undermining legitimate domestic violence claims.

VAWA II also deals with violent crimes against women in educational institutions by authorizing grants for campus administrators, student organizations, and victim services to improve their response to violence against women on campus and to conduct a study of campus procedures in case of a report of a sexual assault. It expands the category of people required to report crimes, requires statistics to be submitted to the United States Department of Education, amends Title VII and Title VIII of the Public Health Services Act to give priority in funding to medical schools and training programs that require students to be trained in identifying, treating, and referring patients who are victims of domestic violence or sexual assault, and expands the federal reporting requirements of colleges and universities to cover all incidents of hate crimes.

VAWA II directs the United States Attorney General and Department of Health and Human Services to establish a multi-agency task force to coordinate research on violence against women; supports research on causes of violence against women and effectiveness of education, prevention, and intervention programs; addresses gaps in research on violence against women, particularly divorce and child custody cases where

Grim Numbers

1 *Ranking of domestic violence as cause of injury to U.S. women ages 14-44.*

9-12 *Seconds elapsing before another woman is beaten by a partner.*

42-52 *Percent of female homicides at hands of husbands or boyfriends.*

domestic violence is a factor; mandates a study and report by the United States Sentencing Commission on sentences given in crimes of domestic violence; conducts research on experiences of women and girls in the health care, judicial, and social services systems who become pregnant as a result of sexual assault; and authorizes study and report on the uniformity of laws among states and their effectiveness in prosecuting rape and sexual assault offenses.

THE VIOLENCE Against Women Act of 1998 specifically includes measures to address violence against women in the workplace.

VAWA II establishes a clearinghouse and resource center to give information and assistance to employers and labor organizations in their efforts to develop and implement responses to assist victims of domestic violence and sexual assault, prohibits employers from taking adverse job actions against an employee because they are the victim of violent crime, provides tax credit to businesses implementing workplace safety programs to combat violence against women, ensures eligibility for unemployment compensation to women separated from their jobs due to domestic violence, allows women to use employer provided leave to address domestic violence, and encourages full worker's compensation benefits to be provided to women injured in the workplace.

The Violence Against Women Act of 1998 is clearly a much-needed piece of legislation for women and indeed all Americans. But, it does not yet have the requisite number of Congressional votes to pass. Please join me in writing our Congressional representatives and urging them to sponsor, support and vote for the Violence Against Women Act of 1998. Or, contact NOW Legal Defense and Education Fund at (202) 544-4470 to obtain an advocacy package.

WRITE A LETTER to the editor of your local paper, or send a copy of this column. Make your vote count by voting for leaders who support measures, like the Violence Against Women Act of 1998, to protect women and children from violence in all of its forms.

Nearly 100 years ago when NAWL was first created, we, as women, had to fight for the right to vote. Now, a 100 years later, we must fight to have our vote serve what is right. Thank you for honoring me by allowing me to serve as your President this year.

Writers, panelists, honorees in spotlight

New York attorney **Leona Beane**, 1988-89 NAWL President, is author of several chapters and Associate Editor of *Guardianship Practice in New York State*, a two-volume treatise published by the state bar association.

Chicago lawyer **Susan Bogart**, who serves on NAWL's gender bias committee and is a featured panelist for "The Shoemaker's Children," will be routinely commuting between "The Windy City" and Washington, D.C. for awhile. She has been appointed to the judiciary committee of the U.S. House of Representatives.



Ms. Bogart

1998 has been a very good year for Judge **Martha Craig Daughtrey** of the U.S. 6th Circuit Court of Appeals. Not only did she receive the NAWL 1998 President's Award for Excellence at the Nashville midyear meeting, but she's also been named Honoree of the Year by the National Association of Women Judges. The award will be presented at NAWJ's fall conference in St. Louis.

Nashville member **Katie Edge** was elected vice president of the Tennessee Bar Association and **Claudia Jack**, outgoing president of the Tennessee Lawyers' Association for Women, is running for the Middle Tennessee Governor seat for the Tennessee Bar Association's Board of Governors. **Nancy Krider Corley** put together the CLE programs for TLA's annual conference, which was held in conjunction with the state bar meeting in Nashville June 18-20.

Philadelphia members have been seeing more of **Patricia Larson** this spring. An attorney with Montgomery, McCracken, Walker & Rhoads, LLP, Pat represented NAWL at the "Women Making History Month" program organized by the Greater Philadelphia Chapter of the National Association of Women Business Owners in March and organized NAWL's participation in the

NAWBO/NAWL networking event, "Women to Women: Mentoring for Business and Personal Growth," in mid-May. A big "thank you" to Pat for all her hard work!

Miki McGovern is this year's president of the Iowa Organization of Women and **Anjela Shutts**, also of Des Moines, is serving as CLE co-chair. Anjie was the NAWL Outstanding Law Student award recipient for Drake University in 1996.

Three NAWL members from California were prominent as speakers at the 23rd Conference on Women in the Law, held in San Francisco during March: **Rebecca Speer** on domestic violence in the workplace; **Janice Sperow** and **Celia Ruiz** on gender equity and social change; and Celia Ruiz on affirmative action in California after Proposition 209. Janice was also on the faculty of the 1998 South Carolina Women Lawyers Association Seminar in Charleston May 29, discussing "Violence in the Workplace: An Issue for Women Advocates, Employers, and Bar Organizations."



Ms. Ruiz

Marcia Wiss is always happy to sing the praises of her D.C. law firm, Wilmer, Cutler & Pickering. Now she has one more kudo to add to her refrain: Wilmer, Cutler & Pickering has been selected as a recipient of the 1998 ABA Pro Bono Publico awards. The awards were established in 1984 to recognize lawyers and law firms for extraordinarily noteworthy contributions to extending legal services to the poor and disadvantaged. The awards will be presented at an Aug. 3 luncheon in Toronto during the ABA Annual Meeting.

Deval Karina Zaveri, a graduate of the University of Georgia Law School where she was a student member of NAWL, is now Lt. Zaveri, assigned to the Naval Legal Service Office Southwest at the Naval Air Station, North Island, San Diego.

Time to stop the HURTING

BY HEATHER BOND VARGAS

Should an employer have a plan to deal with domestic violence problems in someone's private life?

In the April 1, 1995 issue of *Personnel Journal*, Charlene Marmer Solomon cited an independent study of employers which revealed that 57% of corporate leaders surveyed believe domestic violence is a major problem in society and 40% are personally aware of employees in their companies who have been affected by it. Only 12% of these senior executives said that business should play a major role in addressing the issue.

Corporate apathy, while common, may prove to be a short-lived phenomenon.

Corporate involvement in domestic violence issues affecting their abused and abusing employees can prove to be beneficial to the company, to the victim, to the batterer, and to society.

There are a variety of definitions for the term "domestic violence." For example, the Florida Code states that "'Domestic violence' means any assault, battery, sexual assault, sexual battery, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same dwelling unit." Domestic violence victim advocates tend to use broader definitions than the legislatures. For example, Virginians Against Domestic Violence defines domestic violence as "a pattern of abusive behaviors used by one individual to control or exert power over another individual in the context of an intimate partner relationship."

There are four types of abuse typically associated with these definitions: physical, emotional, economic, and sexual abuse.

**Priority
for Action
VIOLENCE**

BEYOND NUMBERS

Carol Bird of Sacramento was shot on the parking lot of the state agency for which she is an accountant by an ex-boyfriend who had stalked her.

Physical abuse is the type with which most people are familiar and which the law can address most easily. Physical abuse includes kicking, pinching, punching, slapping, biting, and other behaviors by the perpetrator designed to cause the victim physical pain or discomfort.

Emotional abuse includes insulting, nagging, humiliating the victim in front of others, and isolation of the victim. Isolation refers to the systematic separation of the victim from friends, family, and society. This type of abuse is common, and in some cases can be quite extreme. The law is less adept at addressing this type of abuse, because it is more difficult to define, although vigorous prosecution could yield convictions for assault, false imprisonment and stalking.

Sexual assault includes rape, sodomy, and object penetration. The law has great difficulty in addressing these issues because of problems with evidentiary proof. The American criminal justice system has additional difficulty in addressing forced sexual behaviors between married or cohabiting individuals, particularly in those states in which marital rape and marital sexual assault are not considered criminal.

Economic abuse is manifested by complete control of the family finances by the abuser. The victim may be given an allowance, but he/she is typically not permitted to keep his/her own paycheck (when permitted to work at all), and in some cases, may not be given enough money to survive. There is little, if anything, that the current laws can do to protect against this type of abuse, unless theft or conversion can adequately be proven.

Studies and lengthy observations of victims and abusers have revealed a pattern which domestic abuse typically follows, commonly referred to as the "cycle of violence." The cycle begins with the "honeymoon phase." In the first cycle, this phase is the courtship. The abuser brings the victim gifts, treats the victim with affection, and makes promises to the victim about their future. This phase is followed by the "tension building" phase, during which the abuser will insult the victim, will make accusations about the victim's fidelity, and will begin to systematically erode the victim's sense of self-respect and self-worth. Isolation, economic abuse, and torturing of children and pets may occur during this phase. This phase culminates in the "explosion." During the explosion phase, the batterer will engage in verbal, physical, and/or sexual abuse of the victim.

Once the explosion phase is completed, the relationship

will return to the honeymoon phase. This phase will now be marked by apologies, tears, gifts, and promises that the batterer will change and that he/she will never again abuse the victim. In most relationships, it will happen again. Over time, the cycle becomes more violent; the honeymoon phase becomes shorter and eventually nonexistent; the tension phase becomes shorter and more intense; and the explosions become longer and more violent. Visually, the cycle may be more accurately described as a downward spiral. The termination of the spiral occurs when the victim either leaves the abuser or is killed.



The author

Heather Bond Vargas of San Martin, Calif., is a lawyer with Employment Mediation and Litigation Services. She was the 1997 NAWL Outstanding Law Student for the University of Richmond (Va.) This is the first of two articles about domestic violence in the workplace and what some corporations are doing about it.

Violence in the Workplace

While statistics are not available for lawsuits specifically by the families of slain domestic violence victims, in 1991 murder in the workplace cost American businesses \$42 million in lawsuits. These figures only address fatalities in the workplace. Current and former boyfriends and husbands also perpetrate 13,000 nonfatal violent acts against women in the workplace each year. Aside from the trauma caused to other workers and the negative publicity, corporations face massive liability from workplace violence. The extent and circumstances of the business liability is dependent upon the relationship between the company, the batterer, the victim, other employees, and the public.

The Restatements

The common law as stated in the Restatement of Torts and the Restatement of Agency supports the concept of employer liability for domestic violence in the workplace. Section 213 of the Restatement Second of Agency states: "A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless: . . . (d) in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control.

Comment (d) to this section further explains that "[a]n agent, although otherwise competent, may be incompetent because of his reckless or vicious disposition, and if a principal employs a vicious person to do an act which necessarily bring him in contact with others while in the performance of a duty, he is subject to liability for harm caused by the vicious propensity."

This section addresses the issue of negligent hiring and retention of violent individuals. Typically, an abuser is not violent toward anyone but his or her partner. Thus, an employer may not be aware of the potential for violence from a particular individual unless that individual's partner is present. Therefore, those situations in which both the victim and the abuser are employed by the same company represent particularly complex and potentially dangerous situations.

Co-Worker Domestic Violence

No cases have been reported which specifically address the issue of negligent hiring and retention in domestic violence co-worker cases. However, interpretations of this Restatement section in other contexts reveal arguments comparable to these situations.

For example, in *Prince v. Atchison Topeka and Santa Fe Railway*, the court indicated that "[o]ther jurisdictions have split widely on the question as to whether an employer is liable for hiring and retaining unfit employees" but that "the majority

BEYOND NUMBERS

Jacqueline Pritchett of Sterling Heights, Mich., was at work on an auto assembly line when she was shot by her boyfriend and co-worker.

of the cases in which the rule has been applied involve either intentional torts or criminal conduct on the part of the employee." Violence perpetrated against another employee exceeds this threshold requirement by being both an intentional tort and criminal conduct. It is reasonable to conclude therefore, that in those jurisdictions in which negligent hiring and retention are recognized torts, employers will be held liable if they meet the negligent or recklessness standard when employing an abusive individual.

The Restatement Second of Agency also provides for punitive damages in limited cases involving reckless employment. Section 217 C states that "[p]unitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if . . . (b) the agent was unfit and the principal was reckless in employing him." This recourse is only available if the employer in some way suggested its approval of the employee's behavior. One would presume that this section may be successfully used first in a military or law enforcement case where violence is more acceptable among employees than in the average work environment.

The Restatement of Torts provides additional grounds for actions against employers for the violent behavior of their employees. For example, Section 317 imposes an affirmative duty on the employer to "... exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if (a) the servant (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, . . . and (b) the master (i) knows or has reason to know that he has the ability to control his servant, and (ii) knows or should know of the necessity and opportunity for exercising such control."

Parsing this statement reveals the possibility that it will be applicable to corporations employing both parties in an abusive relationship. The introductory clause requires the employer to use "reasonable care" to prevent intentional harm. Reasonable care would seemingly include virtually any action within the employer's ability to protect a victim from abuse in the workplace. The phrase "outside the scope of his employment" would clearly address abuse of a co-worker. This section is particularly applicable because it attempts to direct the behavior of the employee who is at the workplace, but not actually working (subsection (a)(i)). Employer liability is limited to those circumstances in which the employer knows that he or she can control the abuser and knows that it is necessary to do so, protecting innocent employers from a strict liability standard.

This section could be used to impose liability on an employer with knowledge of a violent co-worker situation. If an abusive partner is present at the workplace during hours in which he or she is not working, or has left his or her work area to harass the victim, the requirements of the introductory clause and section (a) have already been met. The ability to control the abuser is evidenced by the employer's power to threaten the employee with sanctions, including termination and police involvement. Awareness of the location of each of the parties and their proximity to one another provides qualification for subsection (b).

This interpretation has not been tested in a domestic violence case yet. However, section 317 was interpreted in *Baab v. AMR Services*, and found applicable in sexual harassment

cases. The Ohio United States District Court was careful to enunciate its rationale for finding employer liability in that case. Rather than declaring sexual harassment to be a tort for which employer's are liable, the court established employer liability for existing tort claims "predicated upon allegations of workplace sexual harassment." Transferring this logic to the domestic violence arena requires no distortions of legal thinking.

Alternatively, the Third Circuit denied the use of Section 317 in *Teal v. Kings Farms*. This case is distinguishable, however, because the court found that the employer had no prior knowledge of the attacker's propensity for violence. In domestic violence situations, the employer may have notice based on prior conduct by the abuser or disclosure by the victim employee.

Employee Victims

The most common situation in which domestic violence will affect the work environment is that in which the victim is the employee and a non-employee, abusive partner harasses the employee during work hours. Seventy-four percent of victims report that they are harassed by their abuser at work, either in person or by phone. Liability for failure to protect a victim who is being harassed is not without support in the law. The Restatement Second of Agency and Restatement Second of Torts recite precisely the same language in this regard: "If a servant, while acting within the scope of his employment, comes into a position of imminent danger of serious harm and this is known to the master or to a person who has duties of management, the master is subject to liability for a failure by himself or by such person to exercise reasonable care to avert the threatened harm."

This rule seemingly imposes broad requirements on employers to protect endangered employees. Again, reasonable care requires little more than calling the police to enforce a restraining order when the abuser appears at the victim's workplace. However, comment (a) further elaborates, "A servant may be exposed to risk of harm from a cause for which the master is not responsible under such conditions that the threatened servant has no power to save himself. If this becomes known to persons having duties of superintendence, the employer is subject to a duty to take such reasonable measures for relief as may be open."

This comment seemingly expands and limits employer liability simultaneously when applied to domestic violence in the workplace. The comment expands the rule by clarifying the employer's duty to protect employees even if he or she did not cause the danger. The rule is limited by the comment through the requirement that the threat be made "under such conditions that the servant has no power to save himself." It may be difficult to prove that the victim was without "power to save himself" until actual violence has erupted, rendering the victim physically helpless.

Based on the above discussion, victim employees are not very adequately protected under the Restatements. However, cases seeking compensation from employers have succeeded under various state laws. For example, State Mutual Life Assurance Company and Duddleston Management Company were forced to settle with Francesia La Rose's family for \$350,000 after her death. Grounds for bringing these alternative suits include failure to provide a secure environment and gross negligence.

UN forum views women's issues

BY EVA HERZER

The 42nd Session of the UN Commission on the Status of Women (CSW), held in New York March 2 through 14, had two major focuses. On the one hand, the CSW, which had acted as the preparatory and organizing body for the UN Fourth World Conference on Women in Beijing, was to work on implementation measures for the Beijing Platform for Action.

In particular, this session addressed four critical areas of concern: Women and Armed Conflict; Women and Human Rights; Violence against Women and the Girl Child. The second focus of this session was on finalizing an "optional protocol" to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

WHILE THE first area of discussion produced interesting exchanges of ideas and initiatives, the second bogged down and ended in failure, at least for this year. This report will examine the obstacles met by women's rights advocates in the development of an effective enforcement mechanism for CEDAW. The next issue of the Journal will highlight some of the discussions on implementation of the Beijing Platform for Action.

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women, usually referred to as CEDAW or the Women's Convention, has been ratified by 161 of the 185 UN member states. As readers of this Journal know, the United States is one of the few remaining states which has not yet acceded to this convention. Efforts to achieve US ratification are underway and are actively supported by NAWL.

UN conventions set forth the inter-

national standard of conduct and are binding on ratifying states. Such states are periodically required to produce compliance reports which are reviewed by UN committees, empowered to question the state and request additional information. However, treaty compliance committees do not have the power to receive and investigate complaints from persons who allege state violations of conventions unless the treaty specifically provides for this authority or unless it has an optional protocol to allow for such scrutiny. International scrutiny is what

able to achieve agreement on a number of key elements which were at issue at this year's session of the CSW. The three most contentious issues involved first, the question of standing, second, whether the CEDAW committee would be authorized to make inquiries into cases of serious and systematic violations and third, whether or not a state could register reservations when ratifying the optional protocol.

The issue of who can initiate a complaint is of course the major threshold issue for an optional protocol on complaints. By narrowing or expanding the definition of who has standing to bring a complaint, states decrease or increase the potential for international scrutiny.

Women's and human rights advocates, supported by a minority of states, which included the Philippines, South Africa and a number of African Nations belonging to the South African Development Community (SAC), took the position that standing should be conferred not only to individual victims, but also to groups of individuals and to individuals and groups making complaints "on behalf of" victims. Such an expansive definition of standing is essential, particularly for women living in totalitarian and

repressive countries in which the act of initiating a complaint is enough to endanger an individual's liberty and bodily integrity.

ONE SUCH example, that I have followed closely, took place in 1995 in China when the UN's Special Rapporteur on Religious Intolerance traveled to Tibet. Though he was constantly surrounded by Chinese security, effectively isolating him from Tibetans, one courageous monk snuck a list of imprisoned monks and nuns into his hand. Chinese agents grabbed the list, and even though the UN Rapporteur requested and received an assurance that no harm would come to this monk for exercising his internationally guaranteed right to freedom of expression, Yulu Dawa Tsering has been deprived of his liberty ever since.

In states which do not protect their citizen's fundamental human rights, a complaint procedure which does not allow for advocacy groups to raise complaints is practically meaningless. Regardless of the political climate of a par-



Eva Herzer, NAWL representative to the 42nd session of the UN Commission on the Status of Women, at the UN Plaza with Tibetan delegates from India, Canada and the U.S.

most states wish to avoid as much as possible, especially when it comes to their treatment of women! Lack of scrutiny, of course, translates into lack of remedy for those abused by the state. State resistance to effective international law enforcement mechanisms is the primary cause for the relative weakness and ineffectiveness of international human rights law to date.

When CEDAW was first drafted, some states suggested inclusion of an individual complaint procedure. However such a mechanism was strongly opposed by the majority of states. This resulted in a relatively weak treaty, especially when compared to other human rights treaties, which do include such provisions, such as the Race Convention and the Torture Convention.

In 1993, the Vienna UN World Conference on Human Rights called for the development of an optional protocol for the Women's Convention. Since then an expert group developed a draft protocol. However the expert group was un-

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BEYOND NUMBERS

Kelly Dunk of Quantico, Va., was shot twice in the head by her husband, who then shot himself. They were on the Navy base where he was stationed.

granted the defendant's motion. The appellate court affirmed and the Supreme Court reversed. The Supreme Court essentially collapsed the distinction between the "arising out of" and the "course of" employment requirements and held that because Raybol was working at the time of the assault, she qualified for worker's compensation benefits. They reversed the finding of summary judgment for the defendant, but did not grant the plaintiff's motion, and remanded the case to the trial court.

Two justices dissented from the majority opinion. The dissenting opinion clarified the distinction between the "course of" and "arising out of" employment requirements and suggested that the impetus of the attack on Ms. Raybol was purely personal and thus not compensable.

Monahan v. United States Check Book was a 1995 case of first impression in Nebraska. Mr. Robertson and Ms. Radtke both worked at the United States Check Book Company. She worked during the day and he was the night maintenance man. Robertson abused Radtke throughout their marriage.

After being hospitalized on one occasion, Radtke left Robertson. He threatened to kill her if she did not move back in with him and even arranged for a truck to move her things without her consent. She did not want to move back and indicated to a third party that she was afraid of Robertson. The night before she was scheduled to return to Robertson's home, she went to the United States Check Book Company and shot Mr. Robertson.

This case was brought in an attempt to recover worker's compensation benefits for Robertson's minor child. The Workers Compensation Court dismissed the action. A review panel affirmed, as did the Court of Appeals.

The Court of Appeals held that "the general rule is that where an assault is committed by a person intending to injure the employee because of reasons personal to him, and not for reasons directed against him as an employee or because of his employment, the injury does not arise out of the employment." The court made reference to the exception for assaults exacerbated or facilitated by the victim's employment, but rejected Monahan's argument that Robertson's position as the only night employee facilitated the attack. Robertson's estate was denied benefits.

Ross v. Mark's was a 1995 case decided by a North Carolina Court of Appeals. Ms. Brock and Mr. Godwin had been divorced for several years when they resumed their relationship in 1990. Brock, an assistant manager at a local Hardee's, continued to date other men until Godwin asked her to move out of their home.

Encouraged by a roommate, Godwin developed a plan to "embarrass" Brock. Godwin and the roommate waited for Brock to leave the store with the night deposit. He convinced her to let him into her car. The two began to fight and Godwin shot her twice. The roommate, who was following in another car, shot her one more time and left her body in a secluded area.

This case was brought by Brock's children. The Deputy Commissioner denied their claim. The Full Commission affirmed, as did the Court of Appeals. The court held that the incident occurred in the course of employment (delivering the night deposit) but did not arise out of Brock's employment. The court rejected the plaintiff's argument that the assault was caused by two motivating factors—the personal relationship between Brock and Godwin and the roommate's desire for financial gain. The court held that the relationship between the

parties was the sole cause of the assault and denied the plaintiff's claim, finding that her employment did not facilitate her injuries.

Weiss v. Milwaukee was decided in March 1996. It is the most recent in this line of cases. The facts present an archetypal case of the effects of domestic violence on the victim's work environment. After leaving her abusive husband (Mr. Abughanim) and filing a restraining order against him, Ms. Weiss received so many threatening phone calls from him that she was fired from her job.

Two months later, she obtained a position with the City of Milwaukee, where she worked as an engineering technician. As a city employee, she was required to live in Milwaukee and thus found an apartment within the city limits. She informed the payroll office of her ex-husband's behavior and requested that her new address remain confidential. They assured her that it would be, indicating that the City had a policy prohibiting the disclosure of such employee information to private individuals. Abughanim later called the City and claiming to be a bank officer confirming Weiss' address for credit purposes, requested her address. They gave it to him and he resumed his campaign of calling Weiss to threaten her life and the lives of their two children.

Weiss instituted an action against the City for negligent infliction of emotional distress. The City moved for summary judgment claiming (1) that Weiss' claim was barred by the exclusive remedy provision of the state's worker's compensation clause and (2) that they were permitted to disclose the information under Wisconsin's open records law.

The trial court found for the City, accepting the open records argument and further finding that damages were too difficult to determine. The appellate court affirmed, finding that Weiss did have an action against the City, but that it was barred by the worker's compensation exclusive remedy provision. The Supreme Court agreed, finding that Weiss' injuries were facilitated by her employment and thus adequately addressed by worker's compensation.

Essentially, these cases display a notable lack of consensus about whether this type of case is compensable, or to what extent employment has to be a cause of the attack to make them compensable, under the worker's compensation laws. If Mrs. Epperson had told the security guard that her husband was potentially armed and dangerous, would the court have found her claim to be compensable as it intimidated in its opinion? If Mr. Rivet had only received directions to Ms. Raybol and not had the door to her building unlocked for him, would the Louisiana court have denied her claims? If the roommate had shot Ms. Brock first, would her children have won her benefits?

The Weiss case raises another new issue. By suing for negligent infliction of emotional distress, Weiss caused her employer to argue for its liability under the worker's compensation statute. Does this case provide instruction to future plaintiffs on how to approach their claims, or does it represent a breach in employers' absolute denial of liability and portend a future of employer responsibility? Cases decided in the next decade will ultimately resolve this issue.

► In the next issue of Women Lawyers Journal

A look at cases outside of workers compensation, what domestic violence costs employers and how some companies are stepping in on the side of safety.

It's a nuclear power.
It's the largest democracy.
But on global measures,

is

India

a friend of women's rights?

By
Versha
Sharma

The status of women in India changes from time to time and diametrically opposite views are often simultaneously held regarding women's place at different points of Indian civilization. Laws exist, but women are afraid to seek remedy through law enforcing agencies. Indians, in their family life, have been governed by personal and religious laws which fail to give women their due. Women in India still live under the stress of male domination that manifests itself in the form of various cruelties.

The constitution

The Indian Constitution has a "fundamental rights" chapter that guarantees various rights. Those of special importance to women are the Right to Equality in Article 14 and the Express Prohibition Against Discrimination in Article 15. Article 14 mandates that "the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

Article 15 (1) prohibits discrimination against any citizen by the state "on grounds only of religion, race, caste, sex, place of birth or any

of them". Article 15 (3) also allows for special provision for women and children by clarifying that "nothing in this Article shall prevent the state from making any special provision for women and children." This article has been used by courts to justify reservation in favor of women and to justify a provision, Section 497 (1) of the unamended Indian Criminal Procedure Code of 1898, which gave special treatment to women and children and prescribed leniency in granting them bail.

In addition, Article 16 (1) mandates equality of opportunity for all citizens in matters relating to employment or appointment to any state office. Article 16 (2) specifies that "no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State." Article 19 guarantees the basic freedoms of speech and expression, movement, and peaceable assembly, and the right to form associations or unions.

Another important right is the protection of life and personal liberty provided in Article 21, since this right has been very widely interpreted by the courts and has been held to include the

right of privacy and the right of an individual to live with dignity. These fundamental rights in Chapter III of the Constitution are enforceable in a court of law.

Chapter IV of the Constitution of India contains principles of law known as the "Directive Principles of State Policy," which, though not enforceable, are supposed to be fundamental in the governance of the country. It is also supposed to be the duty of the state to apply these principles in making laws.

These principles direct the state, in Article 39 (a), to ensure that all citizens - men and women equally - have the right to an adequate means of livelihood. In Article 39 (d), the state is directed to ensure that there is equal pay for equal work for both men and women.

The Equal Remuneration Act passed by the Indian Parliament in 1975 specifies that men and women will be paid equally for doing the same work or work of a similar nature. This act also states that there will be no discrimination against women at the time of recruitment or at the time of

promotion. In Article 39 (e) of the Constitution, the state is directed to secure that the health and strength of workers - men and women - and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter occupations unsuited to their age or strength.

Article 42 of the Directive Principles directs the state to make provisions for securing just and humane conditions of work and for maternity relief. The Maternity Benefit Act of 1961 was ostensibly passed to achieve this purpose.

Another very important article of the Directive Principles of State Policy aims at ending the regime of personal and regional laws: "the State shall endeavor to secure for the citizens a

uniform civil code throughout the territory of India".

Personal laws

After 1947, the government realized the need to enact laws to protect the legal and social status of women. The British were not prepared to interfere significantly with Hindu and Muslim laws. The social reforms which were of great importance to women involved controversy and delay.

Past prime minister Nehru Ji was against discrimination on the basis of gender and felt that discriminatory laws had to be changed.

Because of Nehru Ji, the Hindu Code Bill survived and was eventually passed, despite the bitter opposition it encountered each time the bill was taken up. It included the Special Marriage Act (1954); Hindu Marriage Act (1955); Succession Act (1956); Hindu Minority and Guardianship Act (1956); and the Adoption and Maintenance Act (1956).

The significant changes resulting after the passage of the Hindu Code Bill were registration of marriages; divorce by mutual consent; legalization of intercaste, interregional and interreligion marriages. Monogamy became the law.

Hindu women could adopt children, were entitled to maintenance payments from the husband in case of divorce, were deemed the natural guardians of their children, and were entitled to share in their fathers' property.

Other important laws passed in recent history include laws for the protection of women working in factories, mines and plantations; the Anti Dowry Act; and the Family Courts Act. Passed in 1984, the Family Courts Act set up family courts to promote reconciliation and secure speedy settlement of disputes in marriage and family affairs.

A 1983 amendment of the Indian Penal Code provided protection to rape victims from publicity, changed the definition of rape to remove the element of consent, and shifted the onus of proof to the accused. It recognized that women, as victims of rape, deserve different treatment.

Debates on the definition of rape, however, continue in actual practice, as demonstrated in the Times of India discussions from 1990-97.

Amendment of the criminal law in 1983 gave recognition to domestic violence for the first time. The law of evidence was also amended to provide that if a married woman committed suicide within seven years of marriage,

the presumption would be that her husband and his family had forced her to commit suicide.

But even in this decade one would agree with the observation of the Committee on the Status of Women in India that "there is hardly any evidence of social consciousness in the country today" and that the educated youth are grossly insensitive and unashamedly contribute to the perpetuity of such evils.

Obstacles

In pursuance of the above provisions the state has enacted a number of acts meant not only to protect the interests of women, but also to ameliorate their condition in all walks of life. The Constitution addresses the health and protection of female workers, including safety against exploitation of young females under the age of 14 in employment.

It appears that the Indian legislature is fully conscious about the need to protect the interests of women and to give them a status equal to their male counterparts in society. However, the enforcement aspect generally remains neglected and needs improvement.

The judiciary helped the process of equalization between men and women during the post-independent period. However, the most sacred object, "the constitutional mission of equalization," could not be achieved fully due to general ignorance of law; indifferent and hostile attitudes of law-enforcing agencies; economic backwardness and lack of community support for women seeking justice against discrimination; and disregard for the socio-economic basis of the laws.

Implementing laws

There is a long list of statutes to ameliorate the status of Hindu women, but they are not properly implemented. For example, the Child's Marriage Restraint Act was passed sixty-seven years ago but a negligible number of cases have been reported. Either there is a slackness on the part of the implementing authorities or a lack of public awareness, because hosts of Hindu women are unaware of this law. Parliament passed the Sati Prevention Act (1987) to prohibit the Hindu religious custom of a wife being immolated with her dead husband, a practice prevalent in Indian society since ancient times.

The act was passed by the



The author

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government in reaction to the Deorala incident. [Editorial note: In 1987, 18-year-old Roop Kanwar was allegedly burned alive on the funeral pyre of her husband by the residents of the remote Deorala village in Rajasthan. Her death caused widespread public condemnation of the practice of sati.]

Nine years later, a state court in India acquitted the 37 people accused for lack of witnesses in court. It remains to be seen how far the stringent punishment provided will be able to prevent sati incidents.

The question arises: can any legislative reforms be effective if the will to implement is lacking? Liberation of women is not merely a sum of legal enactments and constitutional sanctions.

While not denying the importance of an effective legislative policy, it is not possible to bring about a change in the status of women through legislative action alone. There is a large gap between the law and social attitudes and beliefs, which act as barriers in the enforcement of laws for women's emancipation.

The complex system of social institutions, norms of behavior and religious proscriptions, some of which have hardened like statutory laws, obstruct proper implementation of special protective legislation for women.

Consequently, divorce remains

only a theoretical possibility due to women's economic dependence on men and the social ostracism suffered by divorced women.

The scope of marriage, though enlarged in law, stands narrow in practice. It is very difficult to marry

across the social barriers.

The Succession Law is unsuccessful. Widow remarriage has yet to be universally accepted.

Dowry has been outlawed, yet it remains a fundamental part of most marriage negotiations today.

As recently as Oct. 1996 the press was reporting suicides because of wedding dowries. That month four sisters, aged 12-24, hanged themselves from a staircase inside their home in Agra, 200 km. south of New Delhi, because their family

couldn't afford wedding dowries.

The eldest, who was already married and worked as a teacher earning 700 rupees (about \$20) a month, left a suicide note stating that her husband and in-laws ill-treated her because of the inadequacy of her dowry, forcing her to live with her parents.

Her three unwed sisters were joining her, according to the note, because they had no future. The press commented that although dowries are illegal, the practice of paying them remains widespread in India.

The protective legislation for working women is actually working against them: employers are reluctant to

hire women due to legal safeguards. Despite legislative restriction on the age of marriage, child marriage is a common practice.

The outlook

Indian women do not suffer from legal disparities but they suffer from practical disparities.

To bring about social change, a change in attitude is very important. Once this is achieved, Indian society will be receptive to ideas that accommodate both modernity and tradition.

Women must understand what their rights are and fight back if they are denied opportunities to work. Indeed, they must fight back whenever they feel they have been discriminated against. To become equals of men, they must have economic independence - not just a few women, but many.

Until the status of women in the family is changed—unless women strive to redefine their role within the family and revolt against traditions and customs which contribute to their sufferings—no amount of legislation can give them equality with men.

Many new laws have been passed and the old ones have been amended to help women, but the government alone can not do anything if the society does not support them. Gender issues are emerging strongly, but these need to be given proper direction and understood in the right perspective for women to actually achieve a better position at home, at work and in our society. Blind faith is not enough.

Global status of women

NAWL will explore the international rights of women in law during an Aug. 1 program at its annual meeting in Toronto. Meeting details are on Page 16.

CYBERSPACE

NAWL is there at

www.kentlaw.edu/nawl/nawl.html

With always accessible information about programs, awards, committees and a membership application. The site is hosted by IIT Chicago-Kent

College of Law and maintained by Sue Maloney. It's another way NAWL makes it easy for members to stay in touch.

Now the struggle is only half won

By the time this column is in print, I will no longer be a law student. I'll have marched across the stage and received my diploma, to the delight of my family and friends. Yet, I don't feel quite as happy, quite as watch-out-world-here-I-come as I did when I graduated from high school or college.

Maybe it's because it feels like the buck stops here. When I graduated from high school, I knew college was on the horizon for the following August. When I graduated from college, I got a job, but I knew it would be temporary because I was planning on going to law school in a year. Now, there are no more intermediate steps. I have to start a life.

But what will that life be? I know I am lucky to be a woman embarking on her career in 1998. Women in the law have taken on and excelled in formerly male-only positions, serving as Supreme Court justices, presidential cabinet members, heads of major corporations, partners in law firms, and just about any other position imaginable.

I OFTEN THINK about the struggles of the pioneering women who went before me. Women like Ellen Spencer Mussey, who was denied entrance to the law school at the National University in the District of Columbia, despite sixteen years experience working in her husband's law office, based on her gender. Mussey passed the bar anyway, and went on to found the Washington College of Law (now a part of American University) so that women and men could study without prejudice. She served as dean of the school for fifteen years, and presided over the first commencement exercises in 1899 (graduating six women, all of whom had been denied entrance to the National University).

Or Florence Ellenwood Allen, who served as a local prosecutor in Ohio before women had even won the vote. In the first election cycle after the nineteenth amendment became law, Allen was elected to a position as a trial judge, becoming the first woman judge to preside over a capital murder case. Allen was later elected to the highest court in Ohio, becoming the first woman to serve on a state high court. Later, she was appointed to serve on the 6th U.S. Circuit Court of Appeals, based in Cincinnati. Her colleagues on the Sixth Circuit weren't exactly happy with her appointment, however (one fellow judge reportedly took ill to his bed for two days after hearing that a woman was to serve on the bench with him. It wasn't until many years later that she felt accepted as part of the club by her fellow jurists).

Mussey and Allen and their contemporaries did not have many doors open to them, so they forged ahead and built their own doors. When a law school wouldn't accept Mussey, she founded her own. When her colleagues had trouble accepting her as a jurist, Allen worked "steadily and conscientiously" to earn the respect of colleagues, knowing that she made it when a former detractor commented that she had written a "a damn fine opinion."

IN CONTRAST, I have more doors than I know what to do with. Unlike Sandra Day O'Connor, who after graduating on the top of her class at Stanford Law School could only get job offers as a legal secretary, I was able to interview with and get job offers from several law firms.

Unlike Ruth Bader Ginsberg, who couldn't get a circuit court judge to even interview her for a clerkship, I am lucky enough to be clerking for a Federal circuit court judge in the fall (and a female judge, to boot).

But with all this opportunity comes an overwhelming sense of responsibility. Those early pioneers worked so hard to make this opportunity for me and those like me, that I feel an enormous pressure to live up to their legacy. There may be few "firsts" left to achieve (but as Justice O'Connor has said, "Women's equality under the law does not effortlessly translate into equal partnership in the legal profession." I may not need to be the pioneer, but women still need to prove their worth before they can be seen as an equal. The doors may be open to my generation, but we must strive to keep them open, and open them wider, for the next generation.



By Dineen M. Pashoukos

When I worry about the pressure of living up to the legacy of the female pioneers, I think about my fellow NAWL members. I am always both elated and sad when I leave a NAWL meeting. The elation comes from meeting so many wonderfully talented women attorneys, who pursue every conceivable avenue of legal practice, with great success. The sadness comes from hearing those same women discuss the sacrifices they have had to make in their personal lives. Unlike Ruth Bader Ginsberg, most women today need not hide their pregnancies with baggy clothes in order to keep their jobs. But while the pregnant law firm associate won't lose her job, she is likely to fall behind her male co-workers on the partnership track. I worry that my desire to have a family cannot co-exist with my desire to be a successful attorney. So many others seem to make it work, but it takes an extraordinary effort to *have* it all. I fear I won't have the strength to do what so many of you have done. Then I feel guilty for allowing myself to have such fears, when I have it so much easier than the women who went before me.

I THINK THE best thing I can do as I embark on my career and my life is to keep in mind the words and accomplishments of Tiera Farrow, who attended law school at night despite being told that no respectable girl would be on the streets alone at night, and went on to fight for women's equality in the eyes of the law. Farrow took to heart the words of Abraham Lincoln: "If you are resolutely determined to make a lawyer of yourself, the thing is more than half done." And she believed that the key to her success was not genius, but merely hard work, describing herself as a "consistent plugger." Farrow was correct on both counts. The key to success for myself and my fellow graduates, just as it was for Farrow and those that went before her, is essentially the same: determination and hard work. If we take those two principles as our guides, we may not make the history books as those early pioneers did, but we will nonetheless honor their legacy with our success.

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.

Meeting will honor, inform

The Hon Ilana Diamond Rovner, Judge of the United States Court of Appeals for the Seventh Circuit, and Dianna Kempe, Q.C., J.P., Secretary General of the International Bar Association, will be honored by NAWL Friday, July 31 at the 1998 annual awards and installation luncheon in Toronto, Ontario, Canada. The luncheon, part of the annual meeting held in conjunction with the American Bar Association, will be at noon in the Skydome Hotel in Toronto.

Judge Rovner will receive the 1998 Arabella Babb Mansfield Award, presented



Judge Rovner

ed to an outstanding individual in recognition of their professional success, positive influence, and valuable contribution to women in the law and in society. The highest honor awarded by NAWL, the silver cup commemorates the first American woman admitted to

a state bar in the U.S.—Belle Mansfield, 1869 in Iowa.

Judge Rovner was appointed to the 7th Circuit by President George Bush in 1992, after serving for eight years in the United States District Court for the Northern District of Illinois. She was the first woman supervisor in the U.S. Attorney's Office in Chicago and subsequently became Deputy Governor and legal counsel to Illinois Gov. James R. Thompson.

Judge Rovner has received numerous awards throughout her distinguished career, including the Louis Dembitz Brandeis Medal of Distinguished Legal Service, the first Myra Bradwell Award (1994) presented by the Women's Bar Association of Illinois, and the Decalogue Society of Lawyers Award of Merit in 1997. In 1996, *Crain's Chicago Business* listed her as one of "Chicago's 100 Most Influential Women."

Dianna Kempe, an international associate of NAWL since 1994, will receive the 1998 Outstanding Member Award in recognition of her personal and professional achievement. Ms. Kempe is serving her second term as Secretary General of the IBA and has been nominated by the IBA Council to serve as Vice President. She would be the first woman to hold that position in the IBA.

Ms. Kempe is managing partner of Appleby Spurling & Kempe in War-

At a glance

July
31

- 9 a.m. NAWL General Assembly, open meeting. Voting on new officers and a constitutional amendment.

- Noon-1:30 p.m. Luncheon and presentation of the Arabella Babb Mansfield Award to Judge Ilana Diamond Rovner.

- 2-5 p.m. CLE program on what women lawyers can learn from successful women managers in entertainment and sports.

Aug
1

- 9:30-11:30 a.m. CLE program on workplace violence.
- 1:45-3:15 p.m.

CLE program on global view of women in the law.

wicke, Bermuda, and is head of its liquidations/insolvency department. During 1975 she was as an acting magistrate—a first for a woman in Bermuda. She was appointed Queen's Council in April 1992—again, the first woman appointed. She is the founder of the Women's Interest Group of the IBA.

Other NAWL programs in Toronto: Following the General Assembly Friday morning and the awards and installation luncheon, a series of CLE seminars will be presented by NAWL at the ABA Presidential CLE Centre.

Diversity in the Big Leagues: Women at the Top in Music, Sports, Entertainment & Promotion kicks off Friday. Women are more prominent entertainment professionals and are now CEOs, executive producers, professional coaches and movie directors. *Diversity in the Big Leagues* explores the barriers faced by women in these industries and the business world in general. Featuring Canadian and American women of color, panelists include Rita Shelton Deverell, senior vice president of Vision TV, Canada; Tonya Heidleberg, Esq., former vice president of operations for Nickelodeon; Canadian Donna Holgate, former host, Images on Life Network, and current host of WTN Midday on Women's Television Network; Joan Jenkinson, executive director of Women in

Film and Television-Toronto; and Lenore Williams, general manager of WUFO-AM in Buffalo. NAWL Executive Board member Linda Diane Bernard, CEO of Wayne County Neighborhood Legal Services in Detroit, will serve as moderator.

San Francisco labor and employment law attorney Rebecca Speer will again present her workshop, *Workplace Violence: The Leading On-the-Job Killer of America's Working Women*, bringing the discussion to an audience of ABA and international participants Saturday.

As chair of NAWL's national committee on workplace violence, Ms. Speer authored the report and drafted the workplace violence recommendation scheduled for presentation to the ABA House of Delegates during its annual meeting in Toronto.

An international panel discussion on *Women in the Law, A Global Perspective* also is set for Saturday.

A distinguished panel of articulate women advocates from around the world will address the issues of business in a globalized economy, gender bias within the legal profession, and whether the practice of law by women and their opportunities to develop business is shaped by unique historical, cultural and political pressures within their respective countries. Confirmed panelists: Satoko Kuwabara, a litigator with the Mori Sogo Law Offices, Tokyo; Laura L. Legge, Legge & Legge law firm, Toronto; NAWL member Stephanie A. Scharf, a partner at Jenner & Block, Chicago; Ana Sihtar, president of the Croatian Women Lawyers Association, Rijeka, Croatia; and Salli A. Swartz, associate editor of *The International Law News* and co-chair of the ABA International Law Practice Management Committee, Paris.

Rita A. Fry, chief executive of the Office of the Cook County Public Defender, Chicago, will serve as moderator. In June 1994, Ms. Fry was selected by the President of the Supreme Court of Ethiopia to assist in establishing a long-term administrative structure for Ethiopia's first public defender system.

NAWL President-Elect Susan Fox Gillis served as program chair for the conference.



Ms. Speer

Senator gets award for her work

U.S. Sen. Dianne Feinstein of California and D.C. attorney Pauline Schneider were honored by NAWL Monday, May 11, at a luncheon in Washington. Sen. Feinstein received the association's



Sen. Feinstein

1998 President's Award for Distinguished Lifetime Service; Ms. Schneider received the 1998 President's Award for the Advancement of Women in the Legal Profession.

The luncheon was at the D.C. offices of Dickstein Sharp Morin & Oshinsky. Katherine J. Henry, counsel with the firm and NAWL vice president, chaired the event. NAWL President Janice L. Sperow of San Diego made the presentations.

Sen. Feinstein was San Francisco's first woman mayor, the first woman to be nominated by a major party for Governor of California, and the first woman elected to represent California in the U.S. Senate. She serves on three Senate committees: Judiciary, Foreign Relations, and Rules & Administration.

In the aftermath of workplace vio-

lence—the 1978 assassination of Mayor George Moscone—she was catapulted into national attention as she was sworn in as mayor. The following year she was elected to the first of two four-year terms. She is an ardent champion of gun control and public safety.

Pauline A. Schneider, a partner at the law firm of Hunton & Williams, is the first African American woman to serve as president of the District of Columbia Bar (one of the largest in the country). But she is even better known for her role as a mentor and role model for women in the legal profession, her work on behalf of women and people of color, and her leadership in the battles against breast and prostate cancer. She serves on the boards of the Women's Legal Defense Fund, the National Conference of Bar Presidents, the National Association of Securities Professionals, the MedAtlantic Healthcare Group, the Lab School of Washington, D.C., the Economic Club of Washington, and has won numerous



Ms. Schneider

awards and accolades within the D.C. legal community.

"Pauline Schneider's personal and professional achievements, her advocacy for women within the legal profession and society in general, her history of community involvement, and her tradition of mentoring other women attorneys and guiding them toward success deserves national attention," Ms. Sperow noted in nominating Ms. Schneider for the award.

In addition to the award presentation, attorney Rebecca A. Speer served as keynote speaker, addressing "Workplace Violence: The Leading Killer of America's Working Women." Ms. Speer is a San Francisco employment and labor law attorney chairing NAWL's national committee on workplace violence.

The emphasis of her discussion is providing organizations, and the lawyers who counsel them, a clearer understanding of workplace violence and the strategies to manage threats to worker safety.

The D.C. luncheon and program were made possible by the corporate support of Dickstein Shapiro Morin & Oshinsky. Administrative assistance was provided by Heather Hollis Sweeney, manager of marketing for the firm, and Alexandra Kaye Mitchell, secretary to Ms. Henry.

Regional meeting looks at what's next

BY MIKI McGOVERN

More than 120 lawyers and judges attended the second Midwest Regional Conference for Women in the Law April 16 and 17 in Kansas City. The theme of the event, hosted by the Women Lawyers Association of Kansas City, was "A New Framework for a New Century."

Marcia Greenberger, co-president of the National Women's Law Center in Washington, D.C. spoke at the banquet. In 1981, she founded the Women's Law Center as a vehicle to advocate for women's legal rights. Ms. Greenberger is a nationally recognized expert in the areas of employment, education, reproductive rights, and women's health issues.

NAWL MEMBER Roxanne Barton Conlin, the first woman president of

the Association of Trial Lawyers of America, was the luncheon speaker. A former Democratic nominee for governor of Iowa, Ms. Conlin is in private practice in Des Moines. She discussed balancing one's life between the personal and professional, reminding attendees of the importance of women lawyers taking care of themselves, spending time with loved ones and friends, and mentoring younger lawyers.

MEMBERS OF the judiciary discussed "Gender & Justice: The Status of State and Circuit Task Forces on Bias in the Profession and Courts." Each conference registrant was provided portions of the reports from the participating states' task forces on gender fairness in the legal system.

The second day of the conference featured breakout sessions on topics such as "Women Owned Law Firms: When and How to Make the Break"; "Technology Make-over for the Small Firm"; "Business Opportunities for Minority &

Women Owned Firms"; and "Creating a Personal Courtroom Style."

The final session was entitled "Life Beyond the Job: Civic and Community Leadership." Speaker Sally Lee Foley, immediate past president of NAWL, discussed the importance of participating in professional organizations and the role that community activities should play in the private law firm. She also discussed some of the conflicts which can occur when an attorney is encouraged to participate in civic activities but is required to meet certain performance goals on the job. She stressed the importance of finding employment where both business opportunities and community participation are accorded importance.

Other NAWL members participating included conference co-chair Teresa A. Woody of Kansas City and Iowa member Linda Whittaker of Muscatine.

THE NEXT conference will be in the year 2000 with Indianapolis as the probable site.

Miki McGovern is NAWL Regional Representative for Iowa and liaison to the National Conference of Women Bar Associations

Elder law booms as nation ages

BY SELMA MOIDEL SMITH

Liaison Report INTERNATIONAL

Lawyers of all ages are turning in increasing numbers to the practice of elder law. With the "graying of America," lawyers in every area of practice are encountering a greater proportion of older clients.

"Counseling the Older Client" was the subject of a Continuing Legal Education course presented on May 1 during the Spring Council Meeting of the ABA Senior Lawyers Division in Philadelphia.

Erica F. Wood, Associate Staff Director of the ABA Commission on Legal Problems of the Elderly, discussed the attorney-client relationship and effective counseling of the older client. Wood emphasized the necessity of learning the techniques of communication which are essential in all substantive elder law topics. These include family law, financial and estate planning, real property, probate, trusts, tax planning, disability planning (including use of powers of attorney, trusts, and health care advance directives), among many others in this broad-based field.

WOOD REFERRED to the National Academy of Elder Law Attorneys (NAELA), founded in 1988, which grew out of an initial gathering of five elder law lawyers at the 1984 ABA Annual Meeting. Membership now stands at 3,300. NAELA publishes a directory of members, including those certified by the National Elder Law Foundation, and holds educational conferences, in addition to providing consumer publications. NAELA may be reached online at www.naela.com.

From the standpoint of legal education, it is important to recognize these realities. Just as medical schools are adding courses to prepare young physicians for a practice in geriatric medicine, the law school curriculum increasingly

reflects the importance of preparing young lawyers to deal with the problems of the elderly.

Peter J. McGovern, who teaches elder law at The John Marshall Law School in Chicago, notes that, in the past five years, there has been a four-fold increase in the number of law schools offering such courses. McGovern, who is also Chair of Continuing Education for

medical viewpoint was addressed by Dr. Diane G. Snustad of the University of Virginia, who discussed such issues as normal and abnormal aging, cognition, memory, assessment of competence, medical directives, and elder abuse. The financing of long-term care by insurance was addressed by Harry L. Hathaway, Vice-Chair of the Elder and Long-Term Care Committee of the Senior Lawyers Division.

For those who may be interested in entering the practice of elder law, this course presented several important considerations: First, that elder law is an expanding and necessary field of practice; second, that the field is especially well suited to the solo and small firm practitioner, in addition to the larger law firm; and third, that many useful resources are available, including organizations, publications,

and experts such as those named above. Key national organizations include: the ABA Commission on Legal Problems of the Elderly, the Legal Advocacy Group of AARP, the National Senior Citizens Law Center, and the Center for Social Gerontology.



At the Spring council meeting, from left, ABA President Jerome J. Shestack, NAWL Liaison Selma Moidel Smith, ABA Executive Director Robert A. Stein, SLD Chair-elect Newton P. Allen, and SLD Chair Leigh B. Middleditch, Jr.

the SLD, says, "This is a vital and expanding field of knowledge for the profession, and lawyers who acquire the skills needed in this relationship can render a valuable service to the public."

Other aspects of counseling the older client were also presented. The

Women's history gets summer run

As a result of overwhelming interest in "Bar None: 125 Years of Women Lawyers in Illinois," the exhibition has been extended until July 26. The collection is on display in the Special Collections Exhibit Hall B, 9th floor of the Harold Washington Library Center, 400 South State Street.

A collaborative effort of the Chicago Bar Association Alliance for Women and the Special Collections and Preservation Division of the Chicago Public Library, the exhibit includes photographs, Journal issues and NAWL's 75 Year History book, loaned by the association.

And in another effort to commemorate women's history, Seneca Falls, N.Y., is inviting the nation to

come "Celebrate '98" June 26 through July 19, observing the 150th anniversary of the first women's rights convention there in July 1848.

The July 16 through 19 schedule includes a dramatization of the 1848 convention, historical performances and reenactments, "legacy" tents, a suffrage print shop run by the Women's Rights National Historic Park, a book fair, art exhibits, a women's expo, Finger Lakes food and wine tents, and historic house tours.

The National Women's Hall of Fame and the Elizabeth Cady Stanton House are located in Seneca Falls. "Celebrate '98" has a toll free telephone number for more information (888/732-1848) and a Web site at celebr98@flare.net.

Selma Moidel Smith is NAWL liaison to the ABA Senior Lawyers Division. She is a past president of the Women Lawyers Association of Los Angeles and a former NAWL Regional Director for the Western States.

BEYOND NUMBERS

Francesia La Rose of Houston was in her office at an insurance company when she was killed by her ex-boyfriend.

While it is not entirely clear whether the employer has a duty to specifically protect employees from violence under the common law as outlined in the Restatements, it is certain that they are encouraged to do so. Section 76 of the Restatement Second of Torts describes the protection available to third parties that protect others from harm. Assuming that the victim would have been acting in self-defense, an employer who acts to protect the victim from harm is only liable to the extent that the victim would have been, which is in most cases, not at all.

Other Victims

The violence of family abuse does not always remain between the two parties involved. Abusers seeking to injure or kill their victims may and often do injure co-workers, customers, and other uninvolved parties both in attempts to acquire access to the victim and in commission of the violent act. An abuser intent on injuring an employee may injure others and cause property damage incurring liability for the intended victim's employer.

There is no question about the liability of the company in these situations. Section 344 of the Restatement Second of Torts provides "A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it."

This section clearly imposes liability on a victim's employer for physical harm to co-workers, customers, and other business invitees. The first portion of the rule indicates that the employer must be a company that is open to the public. This will require alternative causes of action to be used in cases that involve manufacturing plants or other businesses not open to the public. However, assuming that a business is open to the public, or that employees are considered invitees under state law, the employer will be subject to liability for any harm caused by the abuser. This section will apply whether the employee is the abuser or the victim. An abusive individual will be considered a third person if acting outside the scope of his or her employment, which one would assume the abuser is when behaving in a violent manner. This section further requires that the employer discover that a third person is engaging in acts likely to cause physical harm or warn the visitors to avoid it. Assuming that the employer knows of the history of violence between the parties, or is even given notice of the danger by the abuser's behavior, they are caught in the liability scheme.

Case Law

To date, plaintiffs seeking to obtain damages from employers for domestic violence related injuries sustained in the workplace have sought to do so primarily through state worker's compensation laws. Generally, these statutes hold employers liable for those accidents which occur "in the course of the victim's employment" and "arise out of the victim's employment."

The requirement that the accident occur in the "course of employment" is met easily whenever the victim is at work or engaged in activities for the employer's benefit. The "arising

out of employment" requirement typically requires there be a causal connection between the victim's employment and the accident. Domestic violence related injuries tend to occur, therefore, in the course of employment (while the victim is working) but do not typically arise out of the employment (the injury is not causally related to employment). Thus, these injuries are typically not compensable.

Some jurisdictions have carved out an exception to this rule for those cases in which the victim's employment facilitated or exacerbated the incident. The cases that follow represent a chronological sample of the cases decided to date.

California Compensation & Fire v. Workmen's Compensation Appeals Board was a 1968 case before the Supreme Court of California—one of the earliest cases of this type. The victim, Lillian Schick, was employed by a table pad company to go to customers' homes and measure tables to be fitted for pads. Upon learning that she was planning to remarry, her ex-husband rented an apartment using an alias, called a department store to order a table pad, and requested that someone be sent to measure the table. When Mrs. Schick arrived at the apartment, Mr. Schick shot her and then himself.

The Workmen's Compensation Appeals Board awarded compensation to Mrs. Schick's daughter. The employer's insurance company appealed. The California Supreme Court affirmed the board's decision.

The insurance company argued that because the reasons for the assault were purely personal to Mrs. Schick, and not related to her employment, her death was not compensable (it did not arise out of her employment.) The court rejected this argument, finding that Mrs. Schick's death was facilitated by her employment. Her employment required that she go to an isolated apartment alone, allowing Mr. Schick the opportunity to kill her without interference.

Epperson v. Industrial Commission was a 1976 case decided by the Arizona Court of Appeals. The victim, Mrs. Epperson, stayed in a hotel one night to avoid her abusive husband.

Upon reporting to work the following morning, she informed the security guard that she did not want to see Mr. Epperson if he came to the building. Mr. Epperson arrived at the building as Mrs. Epperson was passing through the lobby. They spoke quietly for several minutes. When she insisted that she must return to work, Mr. Epperson disarmed the guard and shot her with a gun he had been hiding under his shirt.

The hearing officer for Mrs. Epperson's claim for worker's compensation found that the accident occurred in the course of employment, but that it did not arise out of her employment. This decision was affirmed by the Court of Appeals.

Mrs. Epperson argued that the security guard's failure to protect her facilitated her injuries. The court disagreed and held that Mrs. Epperson's injuries were the result of a purely personal matter and thus, not compensable.

Raybol v. Louisiana State University was a 1988 Louisiana Supreme Court case. Ms. Raybol was a custodial worker at the defendant university. Mr. Rivet was Raybol's ex-boyfriend. He sought her out at the university and was directed, and given access, to the building where she was working by another university employee. Rivet pleaded with Raybol to resume their relationship. Upon her refusal, he struck her several times before he was restrained by Raybol's co-workers.

Ms. Raybol instituted an action for worker's compensation. Both sides moved for summary judgment. The trial court

ticular state, complaints raised by groups are often the only effective remedy in situations where illiteracy, poverty and lack of political and legal sophistication would bar an individual from utilizing a complaint procedure. The U.S., aware of this fact, argued for a narrow definition of standing. It also joined those who opposed standing for groups outside of the country in which the complaint originated. Thus, groups of El Salvadorans, Chinese and Tibetans exiled in the U.S. could not file complaints involving their sisters still in their home country. The U.S.' position on the subject of a narrow definition of standing was considered by many with some irony and bitterness, given that the U.S. has not even yet ratified the Women's Convention and is unlikely to ratify an optional protocol.

A second issue of major contention was whether the protocol would contain a strong inquiry procedure which would allow the committee, upon receipt of "reliable information indicating a serious or systematic violation" of the convention, to undertake an inquiry, or in-depth examination of the underlying causes or patterns of discrimination against women. Again, the proposal for such authority met with strong resistance from many states. Even though, domestic remedies would have to be exhausted first in most instances, the U.S. and others are extremely weary of procedures which allow an international body to examine a state's pattern of non-compliance with international law.

The last issue was one which puzzled many legal scholars. Even though ratification of an "optional protocol" is by definition voluntary, some states, including the U.S., insisted that they be allowed to ratify the protocol subject to specific "reservations"—expressly exempting themselves from certain provisions of the protocol. This would in effect allow each ratifying state to choose which provisions of the optional protocol it wanted to adhere to and opt out of stronger protocol provisions, thus weakening this enforcement procedure at its discretion.

Faced with these obstacles and the likelihood that consensus could only be reached at a very low threshold, proponents of the optional protocol made a tactical decision to seek a delay on action. Women's rights activists thus took the view that developing an effective optional protocol was more important than finalizing a weak optional protocol now. As a result, no vote was taken on the protocol and activists will have one year to lobby states before the 43rd session of the CSW will resume this discussion next March.

The 1998 NAWL

Outstanding Law Students

They are among the brightest and the best. These outstanding law graduates have been selected by their schools to receive the NAWL Outstanding Law Student Award for 1998.

The criteria moves beyond academic achievement to acknowledge personal achievement—the work already accomplished to improve the position of women in society as well as to promote the concerns of women in the legal profession. And it was done with a motivation, tenacity and enthusiasm that inspired their peers and their law professors.

From clinical work on behalf of battered and abused women and their children to redefining and rejuvenating the role of the women law students' association on campus and in their communities, these remarkable women have been agents of change.

NAWL is for women who want to change the world and for the men who want to help them. We salute these dedicated law graduates—and encourage them to continue making a difference.

Boston University School of Law
Jaclyn S. Levine

**Brigham Young University
J. Reuben Clark Law School**
Bronwyn W. Petersen

Brooklyn Law School
Renee Pirone

**Campbell University
Norman Adrian Wiggins School of Law**
Linda Boettcher Sayed

**The Catholic University of America
Columbus School of Law**
Elizabeth Ann Yockus

Chapman University School of Law
Rachel Goldstein

**Cleveland State University
Cleveland Marshall College of Law**
Christine A. Murry

**The College of William and Mary
School of Law**
Krista L. Newkirk

DePaul University College of Law
Candice A. Bowen

**Detroit College of Law
at Michigan State University**
Tina McCree-Orr

The Dickenson School of Law
Michelle Hamilton

Emory University School of Law
Elizabeth Antonakakis

Fordham University School of Law
Teri Goldberg

Georgetown University Law Center
Charan J. Johl

Georgia State University College of Law
Usha Ramachandran

Hamline University School of Law
Jennifer Anh Tran

Harvard Law School
Amy E. McManus

**Indiana University School of Law-
Indianapolis**
Joan E. Champagne

Thomas Jefferson School of Law
Amelia A. Canegaly

Loyola Law School, Los Angeles
Akemi D. Arakaki

Loyola New Orleans School of Law
Yvette LeBlanc Trahan

Marquette University
Kara E. Nelson

**Mercer University
Walter F. George School of Law**
Elizabeth Jean Norman

New York University School of Law
Elizabeth Jane Kramer

**North Carolina Central University
School of Law**
Mildred A. Akachukwu

**Northern Illinois University
College of Law**
Tina L. Harris

Nova Southeastern University
Shepard Broad Law Center
 Camille Wallace

Ohio Northern University
Claude W. Pettit College of Law
 Nancy R. Richards

Oklahoma City University School of Law
 Elizabeth Douglass Guilbert

Pace University School of Law
 Bridget A. Short

Pepperdine University School of Law
 Julie Ann McCormick

Regent University School of Law
 Dawn Stevens

Roger Williams University
School of Law
 Casey Conrad

Rutgers School of Law-Newark
 Maria-Teresa Garcia

St. Mary's University School of Law
 Kimberly K. Kreider

St. Thomas University School of Law
 Jill Shawn

Samford University
Cumberland School of Law
 Cynthia Ransburg-Brown

Seton Hall University School of Law
 Nicole Lauren Huberfeld

Southern Illinois University
at Carbondale School of Law
 Britt Conroy

Southern Methodist University
School of Law
 Shannon R. Jackson

Southwestern University School of Law
 Danielle K. Dooly

Stetson University College of Law
 Monique Andrea McCloud

Suffolk University Law School
 Carlotta E. McCarthy

Temple University School of Law
 Randi Lynne Rubin

Texas Southern University
Thurgood Marshall School of Law
 Valerie Jewett

Touro College
Jacob D. Fuchsberg Law Center
 Kelly Caputo

The University of Akron School of Law
 Nancy L. Reeves

The University of Alabama
chool of Law
 Caroline A. Davenport

University of Arkansas
Robert A. Lefflar Law Center
 Eva Madison

University of Arkansas at Little Rock
School of Law
 Lea Levavi

University of California, Boalt Hall
 Karen M. Kennedy

University of California,
Davis School of Law
 Dana S. Baker

University of California,
Hastings College of the Law
 Maureen Burke Cobarr

University of California,
Los Angeles School of Law
 Michelle M. Ahnn

University of Cincinnati College of Law
 Trina M. Walton

The University of Connecticut
School of Law
 Sarah Eden Tippet

The University of Dayton School of Law
 Deborah M. Chess

University of Denver College of Law
 Karla C. Robertson

University of Detroit Mercy School of Law
 Cheri Bruinsma

University of the District of Columbia
School of Law
 Sara Gene Davis

University of Florida College of Law
 Joye Bartok Wolford

The University of Georgia
School of Law
 Lisa A. Sawaya

University of Hawaii at Manoa
William S. Richardson School of Law
 Elizabeth A.C. Thompson

University of Houston Law Center
 Anne Haenel

The University of Idaho College of Law
 Kama Sue Siegel

The University of Kansas School of Law
 Jennifer C. Roth

University of Louisville School of Law
 Denise A. DiLoreto

University of Maryland at Baltimore
School of Law
 Amy M. Reynolds

The University of Memphis
Cecil C. Humphreys School of Law
 Karen Stachowski

University of Miami School of Law
 Marianne L. Woolf

The University of Michigan Law School
 Elissa D. Barrett

University of Minnesota Law School
 Rinky Parwani Manson

The University of Mississippi
 Erica A. McKinley

University of Missouri-Kansas City
School of Law
 Susan Summers

University of Nebraska-Lincoln
College of Law
 Sue Ellen Wall

The University of New Mexico
School of Law
 Joanna Nellos

University of the Pacific
McGeorge School of Law
 Christine Long

University of Pittsburgh School of Law
 Heather R. Ercolani

University of Puerto Rico School of Law
 Tamara Sosa-Pascual

University of Richmond
T.C. Williams School of Law
 Cheryl L. Conner

University of San Francisco School of Law
 Diane Webb

University of South Carolina
School of Law
 Anne M. Kearse

University of South Dakota School of Law
 Ann Marie Vidoloff

University of Southern California
Law School
 Liliana M. Garcés

The University of Tennessee
College of Law
 Allison M. Barker

The University of Tulsa College of Law
 Catina Renee Drywater

University of Virginia School of Law
 Marylou Gerilyn Brown

University of Wisconsin-Madison
Law School
 Leslie Parker Cohan

University of Wyoming College of Law
 Pamala M. Brondos

Valparaiso University School of Law
 Jenny R. Mullennix

Vanderbilt University School of Law
 Rachel A. Nuzzo

Vermont Law School
 Lydia D. Bottome

Wake Forest University School of Law
 Deborah J. Sheedy

Washburn University School of Law
 Victoria L. Nilles

Washington and Lee University
School of Law
 Christa Dawn Haas

West Virginia University College of Law
 Monica Leah Robinson

Western New England College
School of Law
 Silvia A. Perez

Widener University School of Law,
Wilmington
 Patricia A. Widdoss

*One reader's
opinions on...*

***The Willa
Jansson Mystery
Series. Reviewed
by Valerie
Diamond,***

collection development
/ reference librarian at
the Thurgood Marshall
Law Library of the
University of Maryland
School of Law.

**Titles in the
series**

*Where Lawyers
Fear to Tread.* Bantam
Books, 1987.

*A Radical
Departure.* Ballantine
Books, 1991.

Hidden Agenda.
Ballantine Books, 1991.

Prior Convictions.
Ballantine Books, 1992.

Last Chants.
Ballantine Books, 1996.

Star Witness.
Ballantine Books, 1997.

An 'activist' lawyer lives life filled with humor, intrigue

BY VALERIE DIAMOND

With the Willa Jansson series, author Lia Matera, while offering plenty of humor and intrigue, also presents a character study of a psychological depth not always found in mystery series. Willa Jansson, a "red diaper baby" of ultra-liberal parents, grew up in the famed Haight-Ashbury district at the peak of its psychedelic splendor, and remained in San Francisco, though she still mourns the passing of the '60s. Disillusioned with washing dishes in a vegetarian restaurant, Willa entered law school a decade behind her peers and remains a lawyer because it is what people with a law degree do. But, although she was a "top 10% and law review" student, Willa, like her New York counterpart Nina Fischman (reviewed in Vol. 83, No. 2 of the *Women Lawyers Journal*) has never grown to love the law. She describes herself in *Last Chants* as needing a legal job because she is "one of the few lawyers without a legal thriller in the works."

WILLA CARRIES with her the legacy of her parents' political activism—a grown child's burden of resentment against parents who always had time for the plight of migrant farm workers or illegal immigrants, but not for her. The end often justifies the means for Willa's well-meaning but ingenuous parents who are not above deceiving her or sabotaging her interests when they feel it would benefit their latest cause.

It's not surprising that Willa has never learned to trust. Her longing for someone who will finally put her first, and her fear of betrayal show up in her life as a series of failed affairs and a long-term infatuation with a married police officer. For Willa, the ultimate act of rebellion against her parents' antiestablishment values is to become a corporate lawyer and fall in love with a cop! This pattern, and her struggle to recognize and move beyond it, is illustrated in each of the novels. The series employs a recurrent theme of betrayal in which an innocent character is set up to take the fall for a guilty one.

In *Where Lawyers Fear to Tread* the Willa Jansson series opens in Willa's final year of law school as she inherits the coveted position of law review editor by default when the editor-in-chief is murdered at her desk. The mystery becomes a bit heavy-handed as death stalks the law review, claiming the lives of students and faculty alike until Willa comes face to face with the killer in a paralyzing moment of terror.

Malhousie Law School, a fictional creation, is located in a run-down section of San Francisco where students mingle with the homeless in a street scene typical of many

urban campuses. Willa, in fact, owes her life to the timely aid of the homeless man students call "Plead My Case".

This series opener introduces both Willa's parents, fresh from a Peace Corps stint in Nicaragua, and Detective Surgelato, who turns up to solve the law school murders, and forges a bond with Willa that neither time nor his remarriage can erase.

IT IS FUN to see our heroine as a law student, background not often supplied in legal fiction. Willa as a student is bright and vulnerable, losing her place in the top five to a 78% on a federal income tax exam, having crushes on a number of male students at once, and obsessing over grades while her apartment turns into a wall-to-wall trash receptacle.

Law school details about exams, grade point averages, on-campus interviews, and vending machine junk food will bring back memories for many readers. *Where Lawyers Fear to Tread*, the author's first novel, was nominated for both the Anthony and the Macavity Awards.

In *Radical Departure* Willa takes her first job with famous lawyer Julian Warneke who once defended 60's radicals, and now handles the rights to their self-help books and videos on investment strategies or exercise programs. When Julian is fatally poisoned during a chic working lunch, Willa's past connection with the law school murders resurfaces, and she becomes a suspect in Julian's death.

Complicating matters is the surprising fact that Willa's impossibly idealistic mother has inherited the late attorney's valuable home. Willa becomes involved in the political labor struggles of the firm's Teamster clients, involving more murders and a trip to Las Vegas before she figures out who killed her boss, and not a moment too soon. *Radical Departure* was nominated for both an Anthony and an Edgar Allan Poe Award.

Hidden Agenda finds Willa accepting an unexpected job offer with a conservative firm at the salary of her dreams! Here was her chance to pay back her student loans and buy some new clothes, maybe even a couch! In spite of, or perhaps because of her parents' continual warnings about the dangers of being coopted by the establishment, Willa, for once, longs for financial security. Besides, having been associated with two incidents of murder, she can't be too picky.

THINGS BEGIN to sour quickly, however, when Willa learns that she was recommended for the job by a phantom figure who has set her up to take the rap for the murder of a rival within the firm, and the police believe she is crying wolf. This time Willa cannot figure out who the murderer is, as the firm's San

Francisco branch crumbles around her, and she herself becomes both suspect and prey. Again Willa's relationship with her parents is a poignant theme, as ideology gets in the way of familial love.

Prior Convictions opens as Willa finishes a year of drudgery with the Los Angeles office of her former firm, where she forced herself to remain to rehabilitate her resume, fearful that no one would hire a lawyer who appeared to jinx her supervising partners into an early grave. A surprise invitation to clerk for a liberal federal judge brings Willa back to her home town of San Francisco, where more intrigue awaits her. Her parents have set up a meeting between her and an old boyfriend, long estranged, and Willa finds that doing him a favor jeopardizes not only her job but her already fragile sense of trust.

In *Prior Convictions* Willa begins to feel an increasing disassociation from the law and wonders why she ever wanted to be a lawyer. A former activist, she takes a historical look at the period following the Vietnam War and bemoans the lack of social progress she perceives.

THE AUTHOR shows us Willa's vulnerability as she struggles to shed her dependence on marijuana and her anger with the former romantic partner who infected her with the herpes virus. This book begins and ends with the unusual speaking voice of a minor character who finally emerges to take center stage in the surprise climax. *Prior Convictions* was an Edgar Allan Poe Award nominee.

Lia Matera introduces a totally different focus with *Last Chants*, in which Willa abandons a new job on her way to work on the very first day. When she finds her parents' friend, Alfred, holding a gun, in the heart of San Francisco's banking district, Willa whisks him away from the police, knowing that the unconventional old professor already has two felony convictions in a state in which the third carries a mandatory minimum prison sentence of 25 years.

Upon hearing that the professor's young colleague, Billy, a Native American healer/shaman, has just been murdered, Willa fears that Arthur has been set up to take the blame and appeals to her old boyfriend, Edward, who hides them away in his primitive mountain cabin. Coincidentally, the cabin is a short walk from the murder scene, and

Willa, Arthur and Edward join forces to discover the identity of Billy's killer.

The new ingredient in this novel is the presence of a strong mythic element, skillfully woven into the plot through the character of Alfred, who enlists Willa's help in making a psychic journey to another level of reality to discover the truth about Billy's death. Nearby, a business called Cyberdelics is on the verge of producing a pheromone-sensitive computer program capable of simulating a psychic journey, and their investigation into Billy's role in its design involves the three adventurers in the company's machiavelian inner workings.

Who was the naked man in the forest? Was Terry, wife of Cyberdelics' manager, really insane? Will Willa remain a lawyer? Here Willa, herself, takes on a new identity, and the question, "What is reality, really?" is explored on a number of levels.

In Lia Matera's latest, *Star Witness* (1997), Willa Jansson is almost out the door on her summer vacation when she receives a call from her old boyfriend Edward's psychiatrist brother, begging her to take the case of a patient who claims, under hypnosis, that he was abducted by aliens. During his "time out," his car crashed through the roof of another vehicle, killing the driver. Can Willa make the "outer limits defense" stick? How will her firm react to the sensational publicity such a case is bound to attract, even in California? Does Willa believe her client's story, and will she risk her career and even her safety to defend him?

While the focus of *Star Witness* is long on the theories of extraterrestrial contact and short on the details about Willa and her eccentric parents, which readers have come to expect and enjoy, still, fans will want to keep up. From cyber-science to aliens, Lia Matera's material is current, well researched, and unique.

THE SERIES presents Willa Jansson, not as a stereotype, but as a woman facing her own unique personal challenges with humor, conscience, and wit. The historical background of the liberal movement from the 1960's forward, and the descriptions of the bay area setting are detailed and well executed. The novels move along at a good pace with plenty of excitement. We can only wonder what Willa will do next.

Before she became a full-time mystery writer, author Lia Matera served as a Teaching Fellow at Stanford Law School and was editor-in-chief of the *Constitutional Law Quarterly* at Hastings College of Law. Her other popular legal mystery series spotlights high-profile defense attorney Laura Di Palma.

Member profile

Judith Seeds Miller
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member since
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Family Husband Gary J. Miller, a lawyer, sons Jonathan, 6, and Samuel, 3, both passionate hockey and soccer fans.

Practice Joined with her husband in April 1997 to form Miller & Miller, representing debtors, creditors and litigants in U.S. Bankruptcy Court. Also of counsel to A.S.K. Financial, prosecuting preference and fraudulent transfer actions for bankruptcy estates.

Recent accomplishment Co-chair of Women Lawyers Association of Los Angeles' Status of Women in Law Committee, which recently completed a two-year project creating an annotated bibliography of works on advancement of women in the profession and related work and family issues. (It's available on the Internet.) Also current second vice-president of California Women Lawyers.

Memorable moment "My first oral argument before a three-judge appellate panel. It was the distillation of what I think being a lawyer is. They were prepared and asking questions; I was prepared and responsive. Even the courtroom had a grandeur. It was so exhilarating that I stayed for the rest of the calendar."

Passionate cause The advancement of the status of all women. "Some friends think I'm a left-wing feminist nut, but that's because they've never actually met a militant feminist. I'm fairly mainstream. Their perception shows how far we have to go."

NAWL members who would like to submit book reviews should mail them to Teresa J. Bowles, book review editor, at her law office, Arnold, White & Durkee, 1900 One American Center, 600 Congress Ave., Austin, TX 78701.

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AttMa	Attorney Malpractice
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Bky	Bankruptcy, Creditors
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Dis	Discrimination
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Em	Employment; ERISA
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Leg	Legislation
Li	Litigation
LU	Land Use
Mar	Maritime
M/E	Media & Entertainment
Me	Mediator
MeMa	Medical Malpractice
MeN	Medical Negligence
N	Negligence
NP	Nonprofit Organizations
PI	Personal Injury
Pr	Product Liability
Pro	Probate
Pub	Public Interest
RE	Real Property
RM	Risk Management
Sec	Securities
Sex	Sex Harassment; Assault
SS	Social Security
T	Tort
TA	Trade Associations
Tx	Taxation
U	Utilities—Oil & Gas
W	Wills, Estates & Trusts
WC	White Collar
WD	Wrongful Death
Wo	Workers' Compensation
Wom	Women's Rights

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Plain-talking Bella Abzug spoke out for women

BY EVA HERZER

On March 31, women and human rights activists around the world lost an irreplaceable ally and eloquent spokesperson for social and political justice. After three terms in the U.S. Congress, Bella Abzug, a lawyer by profession, decided to bring about social change on the international level. She took on the daunting task of opening the United Nation to civil society, and especially to women from all walks of life. She organized an international network of 20,000 women from the global south and north, and fought valiantly to have their voices heard in the United Nations.

Bella did not mince words. She expected 150% commitment and effort from everyone and would not settle for less. She irritated some and was loved by many. Her trademark voice was radical and irrepressible, humorous yet very serious, and always straight from the heart.

When I last saw her a few weeks before her death she challenged the UN Commission on the Status of Women, in what turned out to be her last public speech, to scale the wall of gender apartheid, reminding state delegates that "we have done everything in pairs since Noah, but govern". She insisted on getting to the core of issues. The women's movement, for her, was not "about women being



Bella Abzug and Eva Herzer

mainstreamed into a polluted stream, [but] about cleaning the stream, changing the stagnant pools into fresh flowing waters. "Our struggle", she said, "is against violence, intolerance, inequality and injustice. Our struggle is about creating sustainable lives and attainable dreams...to build real democracies, not hypocrisies".

She was one of those rare people who could address and command the attention of heads of state and generals one minute, and lean over her wheelchair five minutes later, answering questions from a group of African or Tibetan woman she had never met before. She truly knew how to work the system, often to the great annoyance of the powers-that-be. She helped us strategize at the UN, and by sharing her knowledge gave us tools for working more effectively. More than anything, she inspired us, through her example, to speak the truth, to insist on having our concerns addressed, and to settle for nothing less than justice, human dignity and equality for all.

Berenice Gremmels overtook history

L. Berenice Gremmels of Chicago, a NAWL member since 1953 and a special member since 1978, died March 26, 1998, at the age of 103.

Unable to find a job as a teacher in her home state of Iowa, she moved to Chicago in 1926. She was in her 40s and working as a secretary to a book publisher when she decided to enroll in law school at Loyola University, taking law classes at night.

After earning her law degree in 1939, she worked for 20 years with attorney David J. A. Hayes in probate law.

In 1959 she became the staff director of the ABA Standing Committee on Law Lists, which was responsible for certifying compliance with ABA standards by law list publishers. After retiring from the ABA, she continued her probate practice until 1989.

She was a special guest at the NAWL/WBAI tea held at the The Children's Room of the Daly Center during NAWL's May 1996 regional meeting in Chicago, where she joked that she hoped to live into the year 2000 so she could claim to have lived in three centuries.

At the time of her death, she was NAWL's oldest member.

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☐ I would be interested in writing for the *Women Lawyers Journal* if there are any plans to publish articles on the topic of _____. Please have someone contact me.

☐ My new address or phone number (specify business or home) is _____

☐ Here is some news about me or my practice the *Women Lawyers Journal* might want to publish: _____

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