

national association of women lawyers

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SUMMER 2000



Arabella Babb Mansfield Award winner

Judge Sonia Sotomayor

U.S. Court of Appeals, Second Circuit

Getting Relief from the Tax Sins
of Spouses

Alyson Meiselman petitions
U.S. Supreme Court

Overview of Immigrants and
Domestic Violence

The Face of Domestic Violence

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When the Unexpected Happens

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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. ©2000 National Association of Women Lawyers. All rights reserved.

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About Women Lawyers Journal

EDITORIAL POLICY *Women Lawyers Journal* is published for NAWL members as a forum for the exchange of ideas and information. Views expressed in articles are those of the authors and do not necessarily reflect NAWL policies or official positions. Publication of an opinion is not an endorsement by NAWL.

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 Unsolicited articles by nonmembers will not be published.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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PRESIDENT'S MESSAGE

Greetings from Florida! As I take the reins of this 100-year-old organization, I am excited about the opportunity to have a positive impact on women and the law. After returning from New York, where our organization began in 1899, we are energized to begin a new year. We had fabulous programs for our conference this year, one focusing on technology and the other on women breaking through the glass ceiling. Our session with Eliot Spitzer as the keynoter for the panel on Privacy and the Internet was standing room only. Our other programs were also very well attended. I want to thank Christa Stewart and Donna Case for the hard work that they put into planning the programs — with outstanding results.

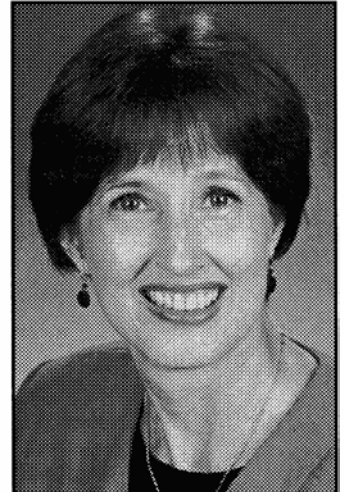
This year, NAWL will continue to update and expand our technology resources, because the world continues to become more and more technologically oriented. Using the internet makes it so much more efficient to provide information to members and to others. For the latest information from us, be sure frequently to check our web site at www.abanet.org/nawl and to inform us of your e-mail address. While you are at our web site, click on "Gender Bias Survey" and complete the online questionnaire so that we can include your opinion in our latest study of bias exhibited toward female law partners/supervisors. Also, sign up for the listserv at ncwba@aol.com to stay in tune with what's happening on a daily basis.

My platform this year will continue to focus on diversity, because including everyone will make us strong. We will have programming at both our midyear and annual conferences this year that calls attention to the need to increase diversity in the legal profession.

Glass ceiling issues continue to be at the forefront of NAWL's concerns. Many of our younger members have told me of their concern about balancing career and family life. Consequently, my platform will focus on that aspect of the glass ceiling this year. I well recall the struggles that I endured as a working mother of two young children, particularly my years as a single mother. Although my children are now grown, those struggles remain very real concerns for far too many working women.

My platform will also focus on the impact that women attorneys, judges and professors can have and have had on the law. As more women have come into the profession in many roles, I have seen the results. Many women are unwilling to sacrifice their family lives totally for the practice of law. Women law professors and others have addressed in their writings legal issues from a female perspective, rather than the traditional male perspective. Alternative courts, different ways of dealing with children in the court system and addressing the needs of women offenders are a few of the ways that I have seen women impact — and change — the court system and the law.

Let me remind you once more, as I said in my presidential acceptance speech, that there is no reason that we cannot have a tremendous effect, not only on the legal profession, but also on the individuals with whom we come into contact each day. The only thing that prevents us from doing great things is our unwillingness to do great things. The only thing that prevents us from shining the light for other people is our unwillingness to step out from the darkness. I invite you to step out from the darkness. Let your own light shine so that others may see the way and also let their lights shine. ■



Gail Sasnett, NAWL President

Gail Sasnett is the Associate Dean for Student Affairs at the University of Florida, Levin College of Law.

CORRECTIONS TO SPRING 2000 ISSUE

Mary Jo Cusack was credited in error as author of Wave of the Future Attorney Certification article. The article was authored by Jennifer Povill, State Compliance Administrator for the National Board of Trial Advocacy. We apologize for the error.



In Selma Moidel Smith's article *ABA Senior Lawyers Division Meets in Puerto Rico*, the correct identities in this photo are: Left to Right: Hector Reichard, Jr., Council member (Host), Selma Moidel Smith, Council Member, Superior Court Judge Carmen Rita Vélez-Borras, San Juan, Supreme Court Chief Justice José A. Andréu García, San Juan

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New York Highlights

NAWL wishes to thank LEXIS Publishing for sponsoring our Dallas Awards Luncheon honoring Charlye Farris and Louise Raggio. LEXIS offered its sponsorship as part of its Grant to Advance Bar Initiatives promoted by Lawyers for One America.

Lawyers for One America is a collaboration of legal professionals and organizations formed following a "Call to Action" by President Clinton in July 1999. At that time, the president asked the legal profession to address two areas of interest to minorities: increasing pro bono resources and use of the bar's legal skills to help minorities advance economically, and increasing the diversity of the legal profession at all levels.



NAWL immediate past President **Katherine Henry**, current President **Gail Sasnett** and President-Elect **Elizabeth Bransdorfer**, with Arabella Babb Mansfield award winner Judge **Sonya Sotomayor**



Privacy and the Internet panelists from left to right: **Parry Aftab**, founder of Cyberangels.org and specialist in issues related to children and the internet; **New York State Attorney General Eliot Spitzer**; and **Gerry Fifer**, whose expertise is in electronic information and intellectual property law. (Not shown here are panel moderator, Lynne Anne Anderson, specialist in employer internet security; and **Caitlin Halligan**, Internet Bureau Chief of the Office of New York State Attorney General.)

Transsexuals, DNA and the Defense of Marriage:

NAWL Member Meiselman Challenges Texas Appeal Court Decision

by Lisa L. Smith

Texas trial and appellate courts have dismissed Christie Lee Littleton as a plaintiff from a wrongful death malpractice lawsuit that she brought after the death of her husband of six and a half years. The courts opined that Littleton could not possibly have been married, because in the eyes of Texas, she's still a man.

After the Texas Supreme Court refused to review the case, NAWL member Alyson Meiselman of Maryland and cocounsel Phyllis Frye of Texas petitioned the United States Supreme Court for certiorari on Littleton's behalf. The High Court has not yet ruled on their petition.

Three dozen medical conditions create sexual ambiguity in the human species . . . These conditions affect between 1 percent and 2 percent of the general population. . . . Cheryl Chase, director of the Intersex Society of North America quoted in article by Adolpho Pasquera, San Antonio Express News April 8, 2000.

Littleton Undergoes Sexual Reassignment and Subsequently Marries

Christie Lee Cavazos successfully completed sexual reassignment in 1979. With a sworn medical affidavit from her sur-

geon and an order from the Texas District Court, she applied for and received a State of Texas Public Safety ID card that indicates her sex as female and legally amends



her birth certificate. She met and legally married Mark Littleton in Kentucky in 1989. They returned to Texas and lived as husband and wife until his death in 1996.

The Trial Court Dismissed Littleton's Claim Because She Is "Male"

After her husband's death, Mrs. Littleton, together with her mother-in-law and her husband's children, sued Dr. Mark A. Prange in Texas for malpractice and wrongful death. When Dr. Prange's counsel discovered what Mrs. Littleton had never hidden — that she had undergone corrective genital reas-

signment surgery — he moved for and the court granted summary judgment against Littleton and dismissed her claim.

Although both parties had stipulated to two medical affidavits stating that Mrs. Littleton was medically and psychologically female, the trial ignored the medical evidence and dismissed Littleton's cause of action solely because her original birth certificate stated that she was male. Under Texas law, only a male and a female can legally marry; under the federal Defense of Marriage Act (DOMA) (28 U.S.C. § 1738c (1996)), no state is required to recognize the same-sex marriage of any other state.

The Appellate Court Relied on Littleton's Birth Certificate and Ignored Significant Controverting Evidence

The Texas Court of Appeals ruled that Christie Lee was born a male and that her chromosomes would doubtless reveal that she is still a male. The appellate court relied on Christie's original birth certificate and presumed chromosomal pattern, even though Littleton had never been tested to determine whether her chromosome patterns are the "standard" XY presumed by the court. The court's opinion states:

The male chromosomes do not change with either hormonal treatment or sex reassignment surgery. Biologically a post-operative female transsexual is still a male.

The evidence fully supports that Christie Littleton, born male, wants and believes herself to be a woman. She has made every conceivable effort to make herself a female, including a surgery that would make most males pale and perspire to contemplate.

Some physicians would consider Christie a female; other physicians would consider her still a male. Her female anatomy, however, is all man-made. The body that Christie inhabits is a male body in all aspects other than what the physicians have supplied.

The court cited *In re Ladrach*, 32 Ohio Misc. 2d 6, 513 N.E.2d 828 (Ohio Probate Ct. 1987), and a 30-year old English case, *Corbett v. Corbett*, 2 All E.R. 33 (P1970). In both cases, the determination of gender by the birth attendant and the presumed underlying genetic DNA outweighed any other considerations in determining gender.

The dissent noted that Littleton "presented significant controverting evidence that indicated she was female," and that in the ordinary case a court would find that Littleton had raised a genuine issue of material fact — "but not so in "this rather extraordinary case."

Littleton Petitions the United States Supreme Court

Meiselman and Frye have petitioned the United States Supreme Court on Littleton's behalf. Their petition argues that the Texas decisions violate Constitutional protections, among them, the rights of equal protection and full faith and credit owed between states. They point out that this case offers the High Court an opportunity to untangle a web of conflicting state and federal decisions.

For example, in *B. v. B.*, 78 Misc. 2d 112, 335 N.Y.S.2d 712 (1974), the New York court upheld the marital status of an incomplete female-to-male genital reassignment: "The Equal Protection clause of Amendment XIV applies equally to all women, including those who medical professionals identify as women, at birth or later and to their heterosexual marriages, regardless of whether the parties' genitals were present at birth or medically formed."

Meiselman believes there are enough constitutional issues at stake that the United States Supreme Court will accept review — and she fully expects to win. "If cert is granted, I can win this case. There's no question in my mind. I don't think Dr. Prange has a prayer of prevailing unless the Court turns a blind eye to the existing body of law."

Frye, cocounsel in *Littleton*, argues that the outcome of *Littleton* reaches far beyond transgendered individuals. Most of us are unaware of our chromosomal makeup and the percentage of "intersexed" persons and those having extra (or fewer) Xs and Ys is higher than is commonly thought. There may be numerous circumstances in the not-too-distant future when individuals may be required to "prove" their sexual identity: in cases of wrongful death, divorce, probate and insurance benefits.

For example, in a divorce proceeding, one spouse could demand genetic testing; should the test be flawed or there are unexpected chromosomal surprises, the marriage could become legally void. Frye points out that if the Texas ruling stands, couples in Texas will need to undergo expensive chromosome tests before they marry to protect the legal validity of their marriage contracts. She also sug-

gests that attorneys may be open to malpractice suits if they fail to demand chromosome tests in insurance and divorce cases.

Gender and Chromosomes: More Than Two "Sexes"

Our culture conceives sex anatomy as a dichotomy: humans come in two sexes, conceived of as so different as to be nearly different species. However, developmental embryology, as well as the existence of intersexuals, proves this to be a cultural construction. Anatomic sex differentiation occurs on a male/female continuum and there are several dimensions. Genetic sex or the organization of the "sex chromosomes," is commonly thought to be isomorphic to some idea of "true sex." However, something like 1/500 of the population have a karyotype other than XX or XY." ("What is intersexuality (hermaphroditism)?" at Intersex Society of North America web site <http://www.isna.org/faq.html>)

Were the Texas courts wrong to declare that Christie Lee's chromosomes were the deciding factor? DNA doesn't lie — it is scientific evidence admissible in court. As with so many things, the question cannot be so easily answered. Chromosomes are only one method of defining gender. Contrary to common beliefs, gender is not unambiguously binary on the chromosomal level — or any other level for that matter.

Most people who are post-puberty meet all seven criteria appropriate to a binary social gender classification. Where questions begin to arise is when medical sex determining criteria are missing or mixed through natural or medical intervention means. For instance, if a woman has a complete hysterectomy, she no longer meets gonadal sex criteria; socially, does lack of this medical sex criteria make her "not a woman" in the social gender milieu? Most rational people would say she is still a woman regardless of her loss of female reproductive capability.

(*Medical Sex v. Social Gender: Tried in the Court of Human Knowledge and Experience, the 21st Century CE*)

Evidence is accumulating that gender is far more complex than the dichotomy of primary sexual characteristics present at birth – and even those can be misleading.

A Cornell study shows that there are chemicals produced in the brains of all vertebrates that dictate male and female behavior and sometimes those chemicals cross over: "[T]here can be a neurochemical dissociation — an uncoupling — between an ani-

mal's gonadal sex and the regulation of behaviors typical of a sex." (*Nature*, 378: 68-70 (1995) citing Zhou J.-N, Hofman M.A, Gooren L.J, Swaab D.F (1997) *A sex difference in the human brain and its relation to transsexuality*. IJT 1,1, <http://www.symposium.com/ijt/ijt0106.htm>.)

The Littleton petition now asks the United States Supreme Court to answer the question: Is gender determined absolutely and unequivocally at birth and if so, are chromosomes the deciding factor in the eyes of the law? ■

Addendum to Littleton: Recently two women in Houston, Texas, one a male-to-female transsexual, went with their birth certificates and a copy of the *Littleton v. Prange* decision to get a marriage license. The Harris County Clerk's office ignored the Texas Court of Appeals decision and said that since the two women were of the same sex, Texas Family Code 2.001(b) barred the issuance of a marriage license.

The *Littleton* decision determines legal gender not on the basis of genitals or hormones, but chromosomes. Jessica Wicks is a transgendered woman with an "M" on her birth certificate with presumably male, XY chromosomes. Under the *Littleton* decision, can Texas have it both ways?

IOC RECOGNIZES THAT DNA TESTING NOT A RELIABLE MEANS TO DETERMINE GENDER

The International Olympic Committee began checking the gender of female athletes by visual inspection during the Cold War era, initially because of the participation of Eastern bloc women who looked suspiciously masculine. The IOC introduced sex chromatin testing at Grenoble in 1968, even though experts argued it was unreliable. At the 1992 games, the IOC resorted to DNA-based methods to test for Y chromosomal material. Unfortunately, not only have these tests never revealed a male impostor, but they have damaged the careers of superb athletes who were "unsuspectably feminine but who happened to have an XY chromosomal pattern. Many of these individuals had variants of androgen resistance" ("Gender Verification No More?" *Medscape Women's Health* 5(3) 2000, by Myron Genel, MD. Yale University School of Medicine, New Haven, Connecticut).

The Olympic Committee has finally responded to criticisms (by medical experts) of its testing and recently announced that it will suspend DNA testing at the Sydney Olympics in 2000. The IOC has recognized that, because some drugs can produce false chromosome readings on urinalysis and because a person's physical appearance does not necessarily indicate chromosomal makeup, such testing has proved notoriously unreliable.

Member News

Alyson Meiselman

is an attorney in North Potomac, Maryland concentrating in family law, human and civil rights, gender and sexuality law, and providing arbitration/mediation of family law cases.



She is qualified to practice before the bar of the United States Supreme Court, U.S. Court of Appeals for the Fourth Circuit, U.S. District Court for the District of Maryland, Court of Appeals of Maryland, Supreme Court of Georgia, Court of Appeals

of Georgia, and the Superior Court of Fulton County, Georgia, and, is a former member of the U.S. District Court for the Northern District of Georgia.

Meiselman majored in Sociology as an undergraduate at the University of Maryland and received her J.D. from the Potomac School of Law, Washington, D.C.

Because she has always been a concerned community activist with a social conscience, she has worked with emotionally disturbed children and as a VISTA volunteer. Meiselman is currently devoting thousands of "pro bono" hours to the *Littleton* case.

She is married with three children. ■

Obtaining Relief from the Tax Sins of Spouses

by Amy J. Liebau

Most people don't realize that when they file joint returns with their spouses they are jointly and severally liable for any tax due under the returns. This generally becomes an issue when a liability comes to light after a divorce or separation. For example, assume that after a couple's divorce is final, the IRS audits a joint return that was filed while the couple was still married and discovers that the husband failed to report certain income earned from his business. The IRS has the right to pursue both the husband and the wife for the liability — even if the wife was not involved in the business and was unaware of the husband's wrongdoing.

Divorce decrees and separation agreements commonly include provisions addressing which spouse is responsible for tax deficiencies from returns filed while the couple was married. However, because the IRS is not a party to such agreements, it is not legally bound by them. Thus, the IRS will still pursue both spouses for the deficiency.

The good news is that the IRS does provide relief from the joint and several liability rules for taxpayers it deems "innocent spouses." The innocent spouse relief provisions were significantly expanded by the IRS Restructuring and Reform Act of 1998 (the "1998 Act"). The 1998 Act relaxed the requirements for traditional innocent spouse relief and created two new forms of relief: the separate liability election and equitable relief. The requirements and considerations

for each form of relief are discussed below.

The Innocent Spouse Relief Election

Prior to the 1998 Act, taxpayers only qualified for relief if the following four conditions were met:

- A joint return was filed;
- There was a substantial understatement of tax attributable to a grossly erroneous item of one spouse;
- At the time the return was signed, the "innocent spouse" did not know, and had no reason to know, that there was a substantial understatement on the return; and
- It would be inequitable to hold the innocent spouse liable for the deficiency.

The innocent spouse relief election is the modified version of the traditional form of relief. Under the traditional form of relief, the regulations provided thresholds for determining whether the understatement was substantial and standards for determining if it was attributable to a grossly erroneous item for purposes of the second requirement above. These thresholds and standards often precluded deserving spouses from obtaining relief due to the size or nature of the liability.

The "substantial" and "grossly" thresholds were eliminated by the 1998 Act and the innocent spouse must now prove only that there was an understatement attributable to an erroneous

item. The 1998 Act also added the requirement that the election for innocent spouse relief be made no later than two years after the date of the first collection activity taken against the innocent spouse.

Separate Liability Election

The separate liability election is based on the notion that responsibility for the tax should fall on the spouse most likely to have knowledge and records regarding the transaction giving rise to the liability. The election allows taxpayers to allocate any tax deficiency between them based on their proportionate share of the income and deductions reported on the return. The effect of the election is that each spouse will be liable only for the portion of the deficiency attributable to his or her income and expenses.

For example, assume that an IRS audit reveals a \$10,000 deficiency, \$9,500 of which relates to unreported income of Husband and \$500 of which relates to an overstated deduction of Wife. If a separate liability election is made, Husband will only be liable for his \$9,500 portion of the deficiency and Wife will only be liable for her \$500 portion.

Although most innocent spouse cases involve couples who are divorced or separated, it is generally not a prerequisite to relief. The separate liability election is the exception to that rule. To be eligible to make the election, the spouse must be divorced, widowed or separated, must not have had knowledge of

the errors or omissions caused by the other spouse,¹ and must not have been involved in any asset transfers with the ex-spouse.

If one spouse makes the separate liability election, but the other does not, the nonelecting spouse remains liable for the entire amount of the deficiency. Thus, in the above example, if Wife makes an election, but Husband does not, Wife's liability would be limited to her portion of the deficiency (i.e., \$500), while Husband would be liable for both his portion and Wife's portion of the liability or the entire \$10,000.

Equitable Relief

Before the 1998 Act, taxpayers only qualified for relief if the liability arose as a result of an IRS audit (i.e., there were errors or omissions on the original return which were detected in an audit). If the tax liability was properly reported on the original return, but unbeknownst to one spouse, did not get paid, there was no relief available for the innocent spouse. The 1998 Act created a new basis for relief for such taxpayers and allows relief to be granted based on equitable circumstances.

Equitable relief will automatically be considered for any taxpayer who makes an innocent spouse relief election or separate liability election, but who does not qualify for such relief. It can also be affirmatively requested if a liability reported on the return is unpaid and at the time the return was signed, the requesting spouse did not know and had no

reason to know that the tax would not be paid. There are additional eligibility factors, including an absence of transfers between the spouses, lack of fraudulent intent in filing the return and a timely election for relief.

Currently, the only form of published guidance for requests for equitable relief is a revenue procedure issued in January of this year. The revenue procedure, however, does not address every issue that may arise. For instance, it is unclear whether a spouse would qualify for relief if she knew at the time the return was filed that the tax would not be paid, but believed her husband would pay with money he was expecting in the next few weeks. We will have to wait until regulations are issued to find out the Service's position on this issue and many other questions that remain unanswered.

In conclusion, while the 1998 Act significantly expanded the availability of relief for innocent spouses (thereby increasing the number of requests received by the IRS), it also created serious problems for the IRS, as it was unable to consider any requests until its employees were trained on the new forms of relief and the changes to the traditional form of relief. This created a serious backlog of requests, which was as high as 46,000 at one time. The backlog has been exacerbated by requests which don't meet the basic requirements for processing.² For example, many practitioners are advising all of their

divorce clients to request relief even when there is no tax deficiency. The IRS has taken the position that an unpaid liability or deficiency is a prerequisite to relief and has been denying such requests. However, the requests cannot be denied without complying with all formalities, including multiple levels of review, notification to the nonelecting spouse, etc. — all of which take time.

Recently, the IRS has made significant headway in reducing the backlog of requests. But the system is still far from perfect. To do our part to assist deserving taxpayers in obtaining relief from the tax sins of their spouses, we as practitioners should educate ourselves in the various forms of relief and the eligibility requirements of each. ■



Amy Liebau is an attorney with the Hinkle Elkouri Law Firm L.L.C., where she practices primarily in the area of tax litigation.

¹ The test under the separate liability election is no actual knowledge of the erroneous item, as opposed to the test under the innocent spouse relief election, which is no actual knowledge of the erroneous item and no reason to know of such item. Thus, knowledge can be inferred based on what a reasonable person in the spouse's circumstances would have known. With respect to the separate liability election, the burden is on the IRS to prove that the electing spouse actually had knowledge of the erroneous item and knowledge cannot be inferred.

² Of the 73,777 requests filed between March 1999 and March 2000, almost 21% were determined not to meet the basic requirements for processing.

IS DIVERSITY LOSING GROUND IN THE LEGAL PROFESSION?

New president Gail Sasnett is continuing NAWL's commitment to increase diversity and eliminate discrimination within the legal profession. A recent progress report demonstrates that these efforts are still necessary.

The American Bar Association Commission on Racial and Ethnic Diversity report, "Miles to Go 2000: Progress of Minorities in the Legal Profession," says that minorities have fared worse in the legal profession than in other fields, and progress for minorities in law has slowed, and may even be reversing:

- Minority representation in the legal profession is significantly lower than in most other professions, with only dentistry and natural science demonstrating worse records.
- Total minority representation in law is about 10 percent (according to projections based on 1990 census data, the most recent available), while representation of African American and Hispanic lawyers was seven percent in 1998. That compared to 1998 proportions of 14.3 percent among accountants,

9.7 percent among physicians, 9.4 percent among college and university teachers, 7.9 percent among engineers, 6.9 percent among natural scientists and 4.8 percent among dentists.

- Minority entry into the legal profession slowed considerably after 1995. Minority enrollment has grown by only 0.4 percent since 1995, the smallest five-year increase in 20 years. 1999 marked the first time since 1985 that fewer minorities graduated from law school than in the preceding year.
- Substantial differences in employment persist between minority and white male and female law school graduates, particularly in the number entering private practice, with minority women graduates entering private practice in the lowest proportion. Minorities continue to gravitate toward government and public interest jobs and business at higher rates than whites.
- The number of minorities in upper-level jobs remains "miniscule," and those

minorities who do achieve partnerships, for example, tend to be "partners without power."

- Minority men progress at a significantly higher rate than do minority women.

The report points out several avenues for change, one of which is in the area of education. Law schools must commit themselves to research and teaching about the profession, the structure of lawyers' careers and the organizational and institutional contexts in which lawyers practice, better equipping students to choose employers and manage careers. Schools must commit themselves to diversity in faculty hiring and tenure decisions.

The report was written for the commission by Elizabeth Chambliss, research director for the Program on the Legal Profession at Harvard Law School. An executive summary is available for free, either upon request to the commission or on the commission's web site at <http://www.abanet.org/minorities/home.html>. ■

IMMIGRATION AND DOMESTIC VIOLENCE: SELECTED ISSUES

by Heather Maher, ABA Commission on Domestic Violence

Domestic violence is a serious problem in our country. Experts estimate that two to four million women are battered in the United States every year.¹ Domestic violence affects families across America in all socioeconomic, racial, and ethnic groups² and has been identified as a criminal justice issue, a public health crisis, and a costly drain on economic productivity.³

Domestic violence is also a serious problem for women from other countries. Some women flee their countries and come to the United States to escape domestic violence. Others leave their countries with their family members or join their family members in the United States and are victimized in the United States. There are immigrant and refugee victims of domestic violence living all across our country.

The laws that impact immigrant and refugee victims of domestic violence are extremely complex. This article overviews the barriers to the legal system that battered immigrants and refugees face in the United States and discusses two forms of immigration relief: (1) the immigration provisions of the Violence Against Women Act, which were designed specifically to help a certain class of battered immigrants, and (2) gender-based asylum, which has recently been

limited as a protection for battered immigrants by the Board of Immigration Appeals. This article also provides resources for attorneys and advocates who are working with battered immigrants or who seek more information.

A cautionary note is important here. This article is not a treatise on immigration law or an exhaustive discussion of all the laws that

reader to competently handle a case involving immigration and domestic violence. No matter what area of law you practice, always refer battered immigrants and refugees to a person experienced in immigration and domestic violence law or seek assistance from the experts listed in this article if you have any questions about how to handle a

case involving a battered immigrant or refugee. A "loss" in a case involving a battered immigrant or refugee would most likely lead to deportation, which would be devastating to the victim and to her children.

Barriers Faced by Battered Immigrants and Refugees

Language Barriers

The language barrier is one of the most immediate and damaging barriers that battered immigrants and refugees confront. Not speaking English often prevents them from obtaining legal or social services assistance. An immigrant who does not speak English may not be able to communicate with law enforcement officers responding to an emergency call. Very often when the victim cannot communicate effectively, the batterer or a child translates for the victim when the police arrive. This is problematic



are available to help battered immigrants and refugees. This article will not delve into the effects that the criminal justice system can have on a battered immigrant or refugee. There are a myriad of issues that must be taken into account when representing a battered immigrant or refugee. Attorneys should not take this article as a primer on immigration and domestic violence law that will enable the

for a number of reasons. The batterer may lie to the police, telling them that the victim initiated the violence or that nothing happened at all. The child may not feel comfortable telling the officer what really happened, because of fear of the batterer. As a result, the officer may arrest the victim inappropriately, fail to arrest the perpetrator or fail to provide the victim with information about her legal rights. If the perpetrator is arrested or if the police make a report, the police officer may put an inaccurate statement in the report, creating credibility problems for the victim when the police report is introduced at trial.⁴

Battered immigrants may also have trouble accessing other community resources because of a language barrier. Most courts, domestic violence shelters, crisis hotlines and social service agencies have limited access to interpreters. An inability to communicate may prevent a battered immigrant from seeking necessary legal, shelter or emergency services. To help address these problems, battered immigrant advocacy programs should identify a wide cross-section of social service agencies that provide language-appropriate services.

Perception of Law Enforcement and the Legal System

Fears of the legal system often cause battered immigrants to avoid seeking help. Battered immigrants may distrust the U.S. legal system for a number of reasons. They may have had negative experiences with repressive or nonresponsive law enforcement and judicial systems in their countries of origin. Their batter-

ers may threaten that the police will report them to the INS or remove their children. A recent survey found that nearly 83% of battered immigrants did not contact the police for help despite lengthy histories of domestic violence.⁵

The vast differences between the U.S. and other legal systems also prevent many battered immigrants from utilizing the system. Many immigrants are afraid to use the system because they do not understand how it works.⁶ Other countries have very different legal procedures or standards for credibility.⁷ For example, oral testimony or the testimony of women may not be persuasive in

"As a result, many immigrant victims keep silent about the abuse, refrain from calling the police, going to the hospital, or seeking legal assistance. Regardless of their actual immigration status, many battered immigrants believe that they will be deported if they seek help."

the courts of other countries. Battered immigrant women may have great difficulty understanding that their testimony has any value in U.S. courts.⁸ In some legal systems, money or governmental ties, rather than due process, determines legal outcomes.⁹ Battered immigrants who have learned not to expect justice from such legal systems find it difficult to believe that our system functions any differently.

In addition to previous experience or personal knowledge, misinformation from abusers causes many battered immigrants to distrust the U.S. legal system. Abusers may tell victims that they will never be believed in court or that they will be deported if they

call the police or go to court. Lawyers and advocates for battered immigrants should explain the U.S. legal system to their clients and answer any questions that their clients may have.¹⁰ Battered immigrants may feel more comfortable utilizing the system if they understand that oral testimony of both men and women can be credible evidence and if they know the legal relief available to them.

Fear of Deportation

One of most powerful threats an abuser can use against a battered immigrant is the threat of deportation.¹¹ Abusers frequently threaten battered immigrants

with deportation if they complain about the abuse, threaten to leave or threaten to call the police or others for help. As a result, many immigrant victims keep silent about the abuse, refrain from calling the police, going to the hospital or seeking legal assistance. Regardless of their actual immigration

status, many battered immigrants believe that they will be deported if they seek help. Lawful permanent residents who attained their green cards through marriage may be particularly vulnerable to the threat of deportation, because they may believe that because the abusers helped them get their green cards, the abusers can also have it taken away. Even though this is untrue, an abuser's threat can be a powerful deterrent. If the victim is undocumented, the risk of deportation is greater. An abuser can provide the INS with damaging information that can lead to deportation simply to punish the victim. The INS will act on such

information regardless of the abuser's reason for supplying it.

Fear of deportation has dire consequences for battered immigrants. Not only does it prevent them from seeking help, but it can also lead to a lack of evidence about the violence despite the long history of abuse — if the victim does not seek help, there will be no medical records, police reports or protection orders. A lack of documentation of the abuse could affect a victim's ability to obtain immigration relief, because to obtain relief, the abuse must be proven.

Battered immigrants fear deportation for very legitimate reasons. Deportation will not only prevent them from living in the United States, but it can also lead to dangerous or troublesome situations in their home country. When deported, battered immigrants may be ostracized or abused by the abuser's family or community members.¹² Their home country may not have laws to protect them from the batterer's ongoing violence. To counter these fears and the abuser's threats, advocates and attorneys can discuss the risks of deportation with battered immigrants and help them understand that, in the United States, domestic violence is a crime and that legal, medical and social service professionals are willing to help them escape the violence.

Not only do battered immigrants fear their own deportation, but also their abuser's deportation. Many battered immigrants rely on their abusers for financial security and the ability to stay in the United States. Reporting the abuse may result in the abuser's deportation, which could jeopardize the financial or immigration status of the victim and/or the children.

Cultural and Religious Issues

Cultural factors may also inhibit battered immigrants from seeking help. Cultural pressure can come in the form of social mores, community attitudes, cultural traditions or discrimination. Social mores may hinder a battered immigrant's ability to leave an abusive relationship. Some cultures have strict guidelines regarding the role of women, which may lead a battered immigrant to conclude that she does not have the right to disobey her husband or that she cannot leave because she is her husband's property. Some battered immigrants may be reluctant to leave abusive relationships because of cultural or religious beliefs in the sanctity of marriage. Some religious principles may require wives to obtain their husbands' permission for divorce, giving perpetrators an additional means of control.¹³ Religious leaders may instruct battered immigrants that they have a duty to make their marriages work. Consequently, many battered immigrants choose to stay in abusive relationships and may not feel comfortable seeking assistance for fear that service providers will not understand the choice. Attorneys should convey to their immigrant clients that they understand their unique concerns. For more information on how to provide culturally sensitive services, see the list of experts at the end of the article.

Community pressure, which is strongly linked to social mores, may also obstruct a battered immigrant from seeking help. As in American culture, a battered immigrant may fear that she will be disbelieved or ignored because of the abuser's powerful standing within the community. Battered immigrants may be ostracized by members of their community if they seek help from outsiders

because of a strong belief in keeping violence private or maintaining an allegiance to the community. Most often, all of an immigrant's family and friends are a part of her community¹⁴ — thus, it can be extremely difficult for an immigrant to risk losing her community support by seeking help outside the community.

Cultural traditions — such as eating or sleeping arrangements — may also discourage a battered immigrant from seeking assistance.¹⁵ Many cultural traditions are quite different from American customs. It is very difficult to find services that satisfy the needs of all communities. Battered immigrants hesitate to seek help from a shelter, for instance, because of a fear or belief that they will be unable to follow certain dietary customs that are very important to them.¹⁶ Battered immigrants who choose to go to a shelter may feel alienated and alone without access to culturally familiar surroundings. Their discomfort may cause them to avoid seeking help in the future.

Actual or perceived discrimination may also prevent battered immigrants from obtaining services they need. For example, sometimes African or Latin American men are characterized as violent,¹⁷ and women of color as more prone to victimization. Some victims may choose to avoid seeking help because of these negative stereotypes. In addition, some victims may avoid the police and the courts because of a belief that they are part of a system that has historically discriminated against people of color.¹⁸

Each of these barriers keeps battered immigrants away from the help that they need. Communities are beginning to address the unique issues that

face battered immigrants. In addition, there are a number of immigration laws that are available to help them. The rest of this article will briefly discuss two such forms of immigration relief: the Violence Against Women Act and gender-based asylum.

The Violence Against Women Act

Prior to the passage of the Violence Against Women Act (VAWA) in 1994, battered immigrants going through the family-based visa process had to rely on their batterers in order to become lawful permanent residents and U.S. citizens.¹⁹ In the family-based immigration process, certain relatives of U.S. citizens or lawful permanent residents may obtain lawful permanent residency based on their relationships to the U.S. citizens or lawful permanent residents. To receive this immigration status, the U.S. citizen or lawful permanent resident must file a visa petition with the Immigration and Naturalization Service (INS) for the relative, usually a spouse or child. The U.S. citizen or lawful permanent resident controls whether or when the petition is filed for the family member. If this person is a batterer, he had a powerful way to control the victim. The batterer could refuse to file the petition and he could withdraw it at any time after it was filed. Battered immigrants in the family-based immigration process had to rely completely on their batterers, and unless they had some other family members to file the petition on their behalf, there was nothing they could do to become lawful permanent residents.

In response to these problems, battered women's advocates, immigration attorneys and domestic violence attorneys joined forces to change the law.

In an unprecedented collaborative effort, these groups drafted the VAWA immigration provisions and worked tirelessly with key Congressional sponsors to pass the law. Due to their effort, legislators began to realize that immigration law exacerbated the abuse of immigrant women and children by providing abusers with the power to control their victims' immigration status. Congress found that many immigrant women were trapped in violent homes.²⁰

Congress addressed the plight of battered immigrants by enacting several provisions in the VAWA.²¹ These provisions permit certain groups of battered immigrants to file for immigration relief without their abusers' assistance and enable them to become lawful permanent residents. Since VAWA, positive changes have been made in other areas of the law as well. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996²² (IIRAIRA), the hard work of advocates and attorneys also resulted in welfare access for battered immigrants, confidentiality protections and access to shelter and other emergency and short-term services necessary to protect life and safety for all persons without regard to immigration status, among other things. Congressional action on behalf of battered immigrants is not over. There is currently pending legislation in Congress that would affect battered immigrants that experts expect will be passed in this legislative session.²³

The VAWA provides two forms of relief for certain battered immigrants: they may *self-petition* for permanent resident status²⁴ or apply for *cancellation of removal* (formerly called "suspension of deportation") once placed in immigration proceedings. These

forms of relief are available to battered spouses, battered children and the parents of battered children.²⁵ However, this form of relief is not available unless the battered immigrant is married to the abuser or has children who are abused by the other parent. In addition, this form of relief is not available unless the batterer is a U.S. citizen or a lawful permanent resident. Immigrants who are battered by undocumented people are not protected by VAWA.

To be successful in self-petitioning or the cancellation of removal process under VAWA, a battered immigrant must prove that: (1) she is married to or the child of a U.S. citizen or a lawful permanent resident, (2) she has been subjected to battery or extreme cruelty, (3) she is a person of good moral character, and (4) that if deported, she would be subjected to extreme hardship.

Gender-Based Asylum

What about battered immigrants who are not married to their abusers? Are there any options for them? Gender-based asylum may be an option for all battered immigrants, including those who are not married to their abusers. However, a June 1999 Board of Immigration Appeals decision, *In re R-A*,²⁶ makes it extremely difficult for a victim of domestic violence to meet the standard required of asylum claims.

Asylum is available to immigrants who are fleeing persecution in their home countries or who have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

In re R-A is the story of Rodi Alvarado, a Guatemalan woman who endured 10 years of terror at the hands of her husband.²⁷ From

the beginning of her marriage at 16 years of age, Ms. Alvarado was brutally beaten, repeatedly raped and basically held as a prisoner by her husband. Her husband once dislocated her jaw when her menstrual period was late. He kicked her in the spine when she refused to get an abortion. He kicked her in her genitals, causing her to bleed for eight days. When she protested forced sex, he told her, "You are my woman, you do what I say." He knocked her unconscious when he found her after she fled with their children in 1994 and when she woke up, he beat her to unconsciousness again. He whipped her with an electrical cord, threatened to cut off her arms and legs with a machete and told her that he would find her wherever she ran.

Throughout the 10 years she lived in Guatemala with her husband, Ms. Alvarado was not protected by the authorities, despite her attempts at getting help from the legal system. The police occasionally responded to her emergency calls, but they refused to follow through when her husband did not show up to court. Ms. Alvarado was once told by a judge that he would not intervene in domestic disputes. Her husband told her that the police would not do anything because he had served in the military. Her experience with the Guatemalan legal system confirmed her hus-

band's threats. There were no battered women's shelters or other services in Guatemala to help her. Ms. Alvarado escaped in 1995, ending up in Texas.

Ms. Alvarado filed for gender-based asylum and an immigration judge decided on September 20, 1996 that Ms. Alvarado faced persecution as a member of the particular social group of "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination." The immigration judge also found that because Ms. Alvarado fought back against her husband, he believed her to have the political opinion that men should not dominate women, and it was this political opinion that inflamed him enough to abuse her.

The INS appealed this decision, arguing that the social group set forth is not a particular social group, that Ms. Alvarado's husband did not abuse her because of membership in that group and that he did not abuse her because of her political opinion that men should not dominate women. The Board of Immigration Appeals held that it is not enough that members of the particular social group share certain characteristics. Rather, in order to be recognized for purposes of asylum, the group must be perceived as such by the per-

secutor, the asylum applicant and by society. In addition, the Board held that the applicant must show that the persecutor harmed the applicant because of membership in the particular group. Finally, the Board held that the applicant must show meaningful evidence that the persecutor harmed the applicant because of political opinion. The Board denied Ms. Alvarado's asylum application because it believed that she did not show that her social group was a recognized part of Guatemalan society, and that she did not show that she was abused because of her political opinion.

In addition to the strong dissent of five members of the Board, this decision has attracted attention from advocacy groups and the media.²⁸ Advocacy groups argue that the decision flies in the face of U.S. immigration law and policy and international human rights law.²⁹ The decision clearly makes gender-based asylum for domestic violence victims an even longer shot than it was before. For more information on this case and the work of advocacy groups on Ms. Alvarado's behalf, or to find out what you can do to help, contact Jane Kroesche at 415/984-2682 or jkroesch@skadden.com. ■

¹ Antonia C. Novello, From the Surgeon General, U.S. Public Health Service, 267(23) JAMA 3132 (1992). See also Ronet Bachman, U.S. Dep't of Justice, Violence Against Women: A Nat'l Crime Victimization Survey Report iii (1994).

² Mary P. Koss et al., No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community 49-58 (1994).

³ See, e.g., Ted Miller et al., U.S. Dep't of Justice, Victim Costs and Consequences: A New Look 18-19 (1996) (finding that domestic violence costs \$67 billion a year in property damage, medical costs, mental health care, police and fire services, victim services, and lost worker productivity).

⁴ Leslye E. Orloff, Deeana Jang, Catherine F. Klein, With No Place To Turn: Improving Legal Advocacy for Battered Immigrant Women, 29 Fam. L.Q. 313, 317 (1995).

⁵ Leslye E. Orloff & Naomi Dave, Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the D.C. Metropolitan Area, Poverty and Race July-Aug. 1997 at 9 (25% of battered immigrants stated that immigration issues prevented them from leaving their abusers).

⁶ Catherine F. Klein & Leslye Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 Hofstra L. Rev. 801, 1020 (1993).

⁷ See id. at 1021-22.

⁸ Leslye E. Orloff, Address at National Conference on Family Violence: Health and Justice (1994).

⁹ United States Commission on Civil Rights, Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination 75 (1993).

¹⁰ Orloff et al., supra note 4 at 316.

- ¹¹ Orloff & Dave, *supra* note 5, at 10.
- ¹² Leslye E. Orloff & Minty Siu Chung, *AYUDA, Inc. Washington D.C., Overcoming Cultural Barriers* (1993).
- ¹³ See, e.g., Beverly Horsburgh, *Lifting the Veil of Secrecy: Domestic Violence in the Jewish Community*, 18 *Harv. Women's L. J.* 171, 193 (1995).
- ¹⁴ Orloff & Chung, *supra* note 12 at 3.
- ¹⁵ Orloff, *supra* note 8; Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminists and Multiculturalist Reformers on a Collision Course in Criminal Courts?* 70 *N.Y.U. L. Rev.* 36 (1995); Alice J. Gallin, *The Cultural Defense: Undermining the Policies Against Domestic Violence*, 35 *B.C. L. Rev.* 723 (1994); Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 *Stan. L. Rev.* 1311 (1991).
- ¹⁶ For example, the Asian Women's Shelter in San Francisco provides for a range of dietary traditions to meet the needs of clients, including stocking six different types of rice (short grain, long grain, sticky rice, basmati rice, etc.).
- ¹⁷ See, e.g., Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 *B.C. Third World L.J.* 231, 234 (1994).
- ¹⁸ Linda Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and The Battered Woman Syndrome*, 1995 *Wis. L. Rev.* 1003, 1018 (1995).
- ¹⁹ There are other ways to get a visa besides the family-based process, including, e.g., the student visa and employment visa process. This article focuses on the family-based process because this is the process that batterers manipulate.
- ²⁰ HR Rep No 395, 103d Cong, 1st Sess 26-27 (1993). Congress referred to a survey which found that in Washington, D.C., 77% of Latina immigrant women married to U.S. citizens or lawful permanent residents were abused, and that in 69% of these cases, the abuser never filed a visa petition on behalf of the victim.
- ²¹ 8 USC §1154(a)(1-2), 1186a(c)(4), 1254 (1999).
- ²² 8 USC §1229 (1999).
- ²³ H.R. 357, 106th Cong. (1999); S. 51, 106th Cong. (1999); S. 245, 106th Cong. (1999).
- ²⁴ 8 U.S.C. 1154(a)(1)(A)(iii)(I) (1999). In this report, Congress explicitly stated that "[t]he purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse."
- ²⁵ Although these VAWA provisions equally apply to abused children, this discussion focuses on abused spouses.
- ²⁶ *In re R-A-*, Interim Decision 3403, 1999 WL 424364 (BIA 1999).
- ²⁷ *Id.*
- ²⁸ Frederick N. Tulskey, *Abused Woman is Denied Asylum*, *Washington Post*, June 20, 1999, A1; Esta Soler, *Denying Asylum to a Battered Woman*, *Washington Post*, November 8, 1999, A21.
- ²⁹ The Convention on the Elimination of All Forms of Discrimination Against Women (1980) and the Declaration on the Elimination of Violence Against Women (1993) state that gender-based violence is not a random crime or a private matter. The U.S. Department of Justice's *Considerations for Asylum Officers Adjudicating Asylum Claims from Women* (1995) states that asylum claims can be based on a well founded fear of domestic violence.

Recent Poll Shows Declining Optimism for Career Advancement for Women

A poll conducted by the ABA Journal revealed that 56% of women lawyers who responded believe that they receive equal treatment with men in the workplace. This sounds good, until compared to responses to a similar poll in 1983. Both male and female lawyers today are less likely to say that women have the same opportunities for advancement as men in the profession. In 1983, 72% of women and 83% of men surveyed thought that opportunities for advancement were non-discriminatory, compared to only 52% of women and 60.4% of men polled today.

ABA JOURNAL SURVEY: WOMEN LAWYERS LESS OPTIMISTIC ABOUT CAREER OPPORTUNITIES THAN IN 1983

CHICAGO, Aug. 25, 2000 - Although a majority of women lawyers believe that male and female lawyers are treated equally in their organization, a new *ABA Journal* poll indicates that women in the legal profession are less optimistic about their career opportunities than they were in 1983.

The poll results appear in the September issue of the *Journal*, which is devoted to the topic of women and the law.

Fifty-six percent of the female lawyers who responded to the telephone poll, which was conducted in April and May, indicated that they think female lawyers are treated the same as men at work. However, compared with the 1983 poll results, both women and men are now considerably less likely to say that they share the same prospects for advancement. The new poll reveals that 52.5 percent of women and 60.4 percent of men feel their prospects are equal compared to 72 percent of women and 83 percent of men surveyed 17 years ago.

According to the *Journal*, female lawyers who believe they are treated differently by men most often attribute this behavior to gender differences, disapproval of time spent on family matters, attitudes toward women in general, and male domination of the profession.

"Sometimes decision-makers in corporations are more comfortable dealing with someone who looks like they do," Joyce Edelman told the *Journal*. Edelman headed the Ohio Joint Task Force on Gender Fairness, a group formed by the state supreme court and bar association. "Many times those [decision-makers] are white males, and they may not feel comfortable dealing with women and minorities."

The *Journal* poll results suggest that women who have children are particularly likely to be treated differently than their male counterparts.

"Women who have families are perceived as not as committed to their jobs as similarly situated men," Edelman told the *Journal*. "Often women with families are not putting in as many hours as men, and that can hurt their advancement."

Forty-six percent of female survey respondents say that a lawyer who takes a leave of absence or switches to part-time status is "very likely" to adversely affect chances for advancement, and another 35 percent say that such moves are "somewhat likely" to affect advancement prospects.

According to the poll, most lawyers say male and female lawyers have equal access to various categories of perks such as high-level responsibilities, advancement, and high salary rates. But the percentage of female lawyers who say such access is equal has dropped significantly in all categories since 1983.

The *ABA Journal* is the flagship publication of the American Bar Association and the largest legal periodical in the world, with a circulation of 430,000. The *Journal* is managed by an independent Board of Editors with the mission to make it the preeminent magazine of the legal profession.

The American Bar Association is the largest voluntary professional membership organization in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

THE FACE OF DOMESTIC VIOLENCE:

a view from the immigrants' rights perspective

by Christa M. Stewart, Esq.

I have worked in the field of immigrants' rights since my graduation from law school and seen first-hand the particularly disadvantaged place that the newcomer in our society often inhabits. No area has been as complicated but fraught with hope as the problem of domestic violence in immigrant communities.

"The number of domestic violence murders have dropped sharply."

The Justice Department recently released a study that underscores the fact that there are no easy solutions for remedying domestic violence. *Bureau of Justice Statistics, Special Report: Intimate Partner Violence* (May 2000) NCJ 178247, reports the good news that overall, the number of domestic violence murders have dropped sharply over the past two decades. Unfortunately, black women seem to be the disproportionate subjects of domestic violence murders at a rate of 4.5 per 100,000 compared with 1.75 per 100,000 for white women. Overall, however, the number of white women killed by partners has risen since 1976, to 876 in 1998 from 849 in 1976. Further findings state that more than three women are murdered by their partners in this country every day. Although the study examined race, it included only four categories: African American, white, Hispanic and non-Hispanic. The study did

not consider immigration status.

Partner violence is usually triggered when a woman asserts independence or attempts to leave an abusive relationship. An abuser's control is compounded for immigrant women because of the possible immigration consequences of asserting independence. Abusers often use the threatened loss of immigration status as the trump card to keep women under their control.

"Partner violence is usually triggered when a woman asserts independence."

While some theorists maintain that certain immigrant groups are more prone to domestic violence because of cultural considerations that devalue women, there are many other factors at play in this dynamic. Displacement from one's own culture can often lead to increased strain on family relationships. Women tend to adapt more quickly to their new populations and may become the sole breadwinners in their families. Loss of status of the male as the primary income producer may exacerbate tensions and result in violence. Conversely, freed from "old world" cultural restrictions in a new environment that emphasizes autonomy, women may tap the same inner strength that initiated their migration and confront this violence. At this point, the greatest challenge for

immigrant women is finding resources that appropriately assist them.

Immigrant women aren't always aware there are avenues of relief available to them

Two brief case examples demonstrate that there has been success in reaching these communities and offering assistance. While handling calls on the New York Immigration Hotline (designed to assist people with immigration inquiries), I received a call from a desperate young woman from Trinidad. The caller initially was attempting to obtain food for her children and was calling to find out if she could qualify for public assistance. As we discussed her options, the caller told me that her husband had been physically abusive for years. Aside from withholding financial support from her and her two children, her biggest fear has been his threats to cancel their interview date with the INS. I told her that she had an avenue of relief under the Violence Against Women Act [VAWA] and explained the general criteria. Because she was in the New York metropolitan area, I could refer her to three organizations with legal services divisions to assist women in her situation. Each agency offers counseling through a related division and attempts to interact with clients in a holistic way. I was not so lucky with a caller from outside the Chicago area. In that case, by the time the

counselor I was assisting had located some agencies that might help, the caller had hung up.

Gender-Based Asylum

Another avenue of relief for women presenting problems of domestic violence may be gender-based asylum. Asylum is a basis of relief under U.S. immigration laws and is granted to those meeting the definition of a refugee, based on the international definition in the UN Convention Relating to the Status of Refugees. This convention generally declares that a refugee deserves protection in the receiving country if that person faces a well founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his/her nationality and owing to such fear, is unable or unwilling to return to it.

Seeking asylum based on gender-specific torture or persecution is difficult in that "gender" itself is not a protected category. Such a claimant must somehow fit the other categories. In 1995, the INS's Office of International Affairs issued INS Gender Guidelines, which guide fact finders and adjudicators in gender-related areas. (*Memorandum from Phyllis Coven, Office of International Affairs, INS: "Considerations for Asylum Officers Adjudicating Asylum Claims from Women,"* May 26, 1995.)

These guidelines are a step towards assuring women's claims in the gender-based asylum context. For instance, these guidelines explicitly recognize Female Cutting/Female Genital Mutilation as a form of persecution directed primarily at women and girls. Following the promulgation of

these guidelines, the Board of Immigration Appeals heard the case, now well known, of Fauziya Kassindja, a Togolese woman who sought asylum on the grounds that if she returned to her country she would be subject to this practice. The Board granted asylum to Ms. Kassindja in 1996, finding that she had a well founded fear of persecution.

Unfortunately, the few cases that are reported seem to undermine women's claims in this area. A colleague of mine recently won a difficult case claiming gender-based asylum, however. The appli-

"Seeking asylum based on gender-specific torture or persecution is difficult in that "gender" itself is not a protected category. Such a claimant must somehow fit the other categories."

cant came from a poor rural area in Puebla State, Mexico. Her mother died while she was seven years old. Her father then moved to the city; she and her siblings were separated and raised by the paternal and maternal grandparents. She was treated poorly by the paternal grandmother. At age 10, her father raped her during a visit. She told no one. She asked to live with her maternal grandmother and this extended family treated her well. One evening, when she was 14 years old, the maternal grandfather raped her and she became pregnant as a result. Confused and ashamed, she decided to leave home, saying that she wanted to work in the town. She avoided telling her grandmother because she didn't have the heart to offend her. Her family thought that a local boyfriend named V. got her preg-

nant and blamed him. She left town and revealed the identity of the true father to no one. She managed to find a well-to-do family who hired her as a live-in domestic. She raised her daughter and worked for five years until the employer moved away.

Without a job, she returned to her village. The applicant rekindled a friendship with V. They had one son together in Mexico. The three crossed the U.S. border without inspection in 1991. Although never married, they lived together and had two U.S.-born children. V. did not share his income, he frequently abused alcohol and whether sober or not, he often emotionally and physically abused her. Her husband forced her to have sex, sometimes in the presence of her minor children, even when she was in her last month of pregnancy. His abuse was verbal, emotional and physical.

The applicant was arrested in 1998 in an INS factory raid. She was unable to earn any income thereafter and was dependent on her husband. After she confided that her firstborn was a product of incest and not his child, V.'s attitude worsened. He felt that she had "betrayed" him; he was offended because she was "not a virgin" and that he was not her first. His abuse continued and worsened. She confided in a schoolteacher who noticed her son's declining classroom performance, but refused to call the police. In one altercation, the husband threatened to take the son back to Mexico, leaving her with the two daughters. She finally fled with the children to a women's shelter, where she participated in weekly counseling and support group. She secured a temporary restraining order and served it on V., who did

not attend the family court hearing. The applicant's family in Mexico reported that V. returned to the village and constantly threatened that if the applicant returned she would "get it," that she had betrayed him and that he would kill her and take the children.

"[M]any of these critical cases that advance women's rights and recognize domestic violence as actionable violence against women go unreported."

My colleague argued that the applicant suffered past persecution based on her social group status of abused women and that she has a well founded fear of future persecution. She was a multiple victim of incest and domestic violence most of her life at the hands of several male members of her own family. Given the lack of resources available to her in her home country, this applicant would be in great danger should she be returned to her home country. Fortunately, asylum was granted by the immigration judge hearing the case.

Unfortunately, many of these critical cases that advance women's rights and recognize domestic violence as actionable violence against women go unreported. On May 4, 2000, the INS wrote a letter to the Board of Immigration Appeals (BIA) seeking publication of a recent BIA decision granting asylum to a Moroccan woman who was subjected to severe domestic abuse by her father. The INS's letter notes that the decision "addresses important issues arising in asylum law after the precedent decision in *Matter of R- A-*."

Widespread legislative and NGO efforts attempt to reverse decision in *Matter of R- A-*.

In fact, many advocates have attempted to reverse the effects of the widely criticized recent case of *Matter of R- A-* (discussed in the accompanying Maher article in this issue). Last September, Ms. Alvarado's attorneys filed a motion to reopen her case with the Board of Immigration Appeals pursuant to the Convention Against Torture. In January 2000, briefs were submitted to the Attorney General arguing that she should reverse this case. Attorney General Janet Reno is currently considering whether or not to do so. The Ninth Circuit has stayed the proceedings until September 26, 2000 to allow time for the Attorney General to decide whether or not to act on the request that she review and reverse *Matter of R- A-*.

On the legislative front, Representatives Luis Gutierrez, Chris Smith, Connie Morella, Carolyn Maloney and Rosa DeLauro wrote a letter to their House colleagues asking their support for Attorney General Janet Reno to reverse *Matter of R- A-*. Over 80 members of the House of Representatives have since written to the Attorney General asking that she review *Matter of R- A-*. On December 2, 1999, five Senators sent the Attorney General a letter expressing their concern with that case; Senator Dianne Feinstein of California sent a similar letter. Leading figures, including Senator Leahy of Vermont, have made powerful public statements and editorials criticizing the case.

Major non-governmental organizations are pressing these and other gender-based matters in the international context. For instance, **Amnesty International**, *Refugee Action NSA 5/00*, released May 15, 2000, details a number of gender cases affected by *Matter of R- A-*

and again asks the Attorney General to reverse that decision. Amnesty's original *Refugee Action NSA 6/99* on this case is dated May 25, 1999. The influential United States Committee for Refugees has added its voice to the call for the Attorney General to review and reverse *Matter of R- A-*. We must hope that the combination of all of these efforts will enable broader protection of battered immigrant women.

Similarly, the advocacy surrounding a number of legislative efforts to systemically address violence against women gives cause for hope. Most recently, the House Judiciary Committee's Subcommittee on Immigration and Claims scheduled a hearing on the Battered Immigrant Women Protection Act, HR 3083. On the Senate side, advocates are looking at the Biden-Hatch Violence Against Women Act of 2000, S2787, which strengthens protections for battered immigrant women.

Further resources include the Center for Gender and Refugee Studies, University of California, Hastings College of Law [<http://www.uchastings.edu/cgrs>], which lists the following resources that are helpful for attorneys:

Kroesche, Jane and Karen Musalo, *Brief to Attorney General Janet Reno seeking review and reversal of the BIA's decision in Matter of R- A-*.

Anker, Deborah, Nancy Kelly, Pamela Goldberg et al., *Amicus Brief to Attorney General Reno*, signed by 100 organizations and individuals (January 2000) [78 pp.].

Goldberg, Pamela and Bernadette Passade Cissé, *Gender Issues in Asylum Law After Matter of R-A-*, *Immigration Briefings* No. 00-2 (February 2000).

Goldberg, Pamela et al., *Practice Pointer: Asylum and Gender — Matter of R-A-BIA Decision* (Oct. 1999).

Jane Kroesche and Karen Musalo, counsel for Rodi Alvarado

Peña, *Reply Memorandum in Support of Motion to Reopen and Remand Pursuant to the Convention Against Torture* (October 28, 1999).

Ninth Circuit Court of Appeals, *Order Staying Petition for Review of Matter of R- A-* (September 30, 1999). On February 4, 2000, the Ninth Circuit granted a further stay until May 26, 2000.

INS, *Opposition to Alvarado's Motion to Reopen Pursuant to the Convention Against Torture* (Amy T. Lee, Assistant District Counsel, September 15, 1999).

Jane Kroesche and Karen Musalo, counsel for Rodi Alvarado Peña, *Memorandum in Support of Motion to Reopen and Remain*

Pursuant to the Convention Against Torture (September 2, 1999).

Jane Kroesche and Karen Musalo, *Letter to Attorney General Janet Reno* requesting certification of *Matter of R- A-*, August 9, 1999.

Congressional Hispanic Caucus, *Letter to Attorney General Janet Reno* supporting Ms. Alvarado's asylum claim and requesting certification of *Matter of R- A-*, July 22, 1999.

Decision of the Immigration Judge: *Matter of Rodi Alvarado Peña* (1996).

Decision of the Board of Immigration Appeals: *Matter of R- A-*, Int. Dec. 3403 (BIA 1999) [50 pp.].

Decision of the Board of Immigration Appeals: *Matter of A- C-*

Amicus Brief submitted to BIA in *Matter of R- A-* by Refugee Law Center (Nancy Kelly and Debbie Anker) and International Human Rights/Migration Project (Karen Musalo) [59 pp.].

Decision by the British House of Lords in *Islam (A.P.) v. Secretary of State*, __ App. Cas. __ (House of Lords, 1999), recognizing Pakistani women as social group. This decision was **criticized** by Britain's Interior Minister Jack Straw (September 1999).

Decision by the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, 2 S.C.R. 689 (Supreme Court, 1993) recognizing gender as a potential social group. ■

Member News

Christa Stewart received NAWL's Outstanding Law Student award while attending Brooklyn Law School in 1994 and has been a NAWL member ever since. During NAWL's recent annual meeting in New York, NAWL's Board of Directors designated Stewart to serve as

NAWL's new alternate observer at the United Nations. Stewart is currently Director for the New York Immigration Hotline, which provides assistance to immigrants and refugees. She is also a member of the Comptroller of the City of New York's Immigration Advisory Committee. Earlier in her career, Stewart worked for the Mexican American Legal

Defense and Education Fund in Washington, D.C. She has also worked in several law firms where she specialized in immigration matters, often representing individuals seeking political asylum in deportation proceedings. Her background and experience reflect her passionate dedication to women's rights and human rights and her compassion for the difficult

transitions experienced by many immigrants. ■



THE UPHILL STRUGGLE CONTINUES

By Eva Herzer

Has the status of women improved or declined since the 1995 Fourth World Conference on Women in Beijing? What obstacles are women facing in achieving equality, development and peace and what should be done to address them? These were some of the questions faced by the UN General Assembly, which met in special session June 5-9, 2000 in New York, to review implementation of the Beijing Platform for Action.

In 1995, 187 states signed onto the Beijing Platform for Action, the consensus document that emerged from the UN Fourth World Conference on Women. Governments pledged to overcome gender bias and discrimination by pursuing strategic objectives and actions in the following twelve areas: women and poverty, education and training, health care, economy, power and decision-making, media, environment, human rights, violence against women, women and armed conflict, institutional mechanisms for the advancement of women and the girl child. The 344 paragraph Platform for Action detailed clearly articulated actions to be taken by governments, businesses and nongovernmental organizations (NGO).

Over 180 governments and 1,200 NGOs assembled in New York for the General Assembly's special session, known as "Beijing + 5." The picture that emerged was one of harsh realities still faced by too many women and one of lacking political willingness, on the part of many governments, to vigorously counteract the status quo.

Progress has been slow. Educational status and participation in the political system, for example, are two of the key indicators of a group's societal status. According to the United Nations Development Fund report released at Beijing + 5, only eight nations have suc-

cessfully met the goal of gender equity in secondary school enrollment and the goal to fill 30 percent of parliamentary seats with women.

The UN Commission on the Status of Women (CSW), acting as a preparatory body for Beijing + 5, identified five major obstacles and constraints to the implementation of the Platform, most notably insufficient resource allocation. States did not allocate enough funds to implement the Platform for Action and the corporate world has largely ignored the issue. "To ensure progress in meeting the needs of women, we must follow the money," UNIFEM executive director Noeleen Heyzer said. "In today's world, it is not just governments that must be held accountable for progress in meeting global targets, but also the private sector. Governments must prioritize resources in such a way as to assure women's concerns are on the agenda, but corporations, too, must be prevailed upon to exercise more social responsibility." Heyzer's call for private sector involvement is certainly to the point in a world in which the 200 wealthiest individuals have amassed more material resources than the two billion poorest people in the world (that is one third of the world population) and a world in which 51 of the 100 largest economies are not states but corporations.

Two of the other major obstacles identified by the CSW were economic change/instability and conflict and displacement. For example, economic turmoil in the former Soviet Union and in Eastern Europe have caused 120 million people to sink into poverty in the last decade, most of them women and children. Armed conflict has displaced millions of civilians, again predominantly women and children around the world, subjecting them to utter poverty, starvation, ill health and often brutal violence. In Sierra Leone, for example, rebel

200 wealthiest individuals have amassed more material resources than the 2 billion poorest people in the world.

forces "perpetuated systematic organized and widespread sexual violence against girls and women," according to a recently released report by Human Rights Watch. "The rebels planned and launched operations in which they rounded up girls and women, brought them to the rebel command center and then subjected them to individual and gang rape. Young girls under 17 and particularly those deemed virgins were specifically targeted. While some were released or managed to escape, hundreds continue to be held in sexual slavery after being 'married' to rebel commanders." The human devastation that ensues from such degrading gender-based violence is maybe best summed up by one 25-year-old woman who had delivered a stillborn child the day the rebels of the revolutionary front attacked her village. She was unable to flee. Five rebels took turns raping her while her husband, who tried to intervene, was killed. "I thought at first I was dealing with human beings, so I said I was sad and confused because I had just delivered a dead baby; I was bloody and weak," she said between sobs. "But they were not human beings. After they left I gave up, I wanted to die. I had no reason to live anymore."

While such violence is not directly the result of the actions of a legitimate government, it is the result of inadequate international peacekeeping, which in turn, is a matter of lacking political will and resource allocation. In this context, it is interesting to keep in mind the following figures. The UN spends approximately \$.25 per person, worldwide per year for peacekeeping operations, while the world's governments spend \$150 per person for military operations. Total UN expenditures, for all of its operations and programs worldwide, amount to \$1.90 per person. To put it another way, the total budget of the UN, approximately \$11 billion is one third of what the citizens of the United Kingdom spend on alcoholic beverages or about twice what U.S. citizens spend on cut flowers and potted plants each year (\$6 billion). Since the UN derives its funds from national governments, this unreasonable resource allocation must be addressed on the international as well as on the national levels.

Violence is often sanctioned by private and governmental discriminatory attitudes, another of the major obstacles identified by the CSW. The UN's Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, Asthma Jahangir, reported that more and more women and girls are being slain in "honor killings" around the world. Honor killings, in which women are slain for perceived violations of a family's moral code, have been reported in Bangladesh, Britain, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey and Uganda. According to the Rapporteur, such killings are more prevalent in, although not limited to, countries where the majority of the population is Muslim. In Egypt, a father recently paraded his daughter's severed head through the streets shouting "I avenged my honor." Perpetrators are often not arrested at all or receive greatly reduced sentences. In Jordan, the lower house of Parliament rejected a law in January of 2000 that would have reversed the current law, which provides for reduced sentences for men who kill their female relatives for the sake of honor. In Pakistan, approximately 300 women are killed every year for crimes of "honor."

Discriminatory and stereotypical gender attitudes are also to blame for the fact that as many as 50,000 women and girls from Asia, Latin America and Eastern Europe are brought into the United States under false pretenses each year. According to a CIA report published this spring, these women, who answer ads for au pair, sales clerk and secretarial work in the United States, find upon their arrival that these promised jobs do not exist. Rather, they are taken prisoner, held under guard and are forced into prostitution or become abused laborers or servants. The report "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery" states that some of these women are sold outright, while others are treated like slaves. A recent conference in Manila estimated that the crime syndicates responsible for these actions generate profits in excess of \$17 billion per year. The CIA report recommends law reform in the United States to facilitate the conviction and appropriate punishment of perpetrators.

More and more women and girls are being slain in "honor killings" around the world. . . . In Egypt, a father recently paraded his daughter's severed head through the streets shouting, "I avenged my honor."

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Stereotypical attitudes about gender roles often lead to what can only be called absurd results. For example, in the Nigerian state of Zamfara, Islamic Shari'a law was recently instituted allegedly to fight prostitution, gambling and other vices. The law directs all single women to marry within three months or lose their jobs. Women's coalitions in Nigeria are actively fighting against this legislation.

Women have successfully used the courts to reverse discrimination based on stereotypical attitudes. For example, the European Court of Justice recently held that Germany may not exclude women from military posts which involve use of arms. Women in Kuwait are also taking their most fundamental demands to the courts after the National Assembly, in November of 1999, by a two-thirds vote, rejected their right to vote and to run for political office. They rely heavily on the UN women's treaty, CEDAW, which was ratified by Kuwait in 1994 and which guarantees the right to vote.

Fortunately the news is not bleak everywhere. Egypt, for example, following an intensive international campaign in which NAWL participated, outlawed genital mutilation. It also revised laws to make it easier for a woman to obtain a divorce. Egypt also created a national council of women that works to encourage female political candidates. In Afghanistan, women slipped back into the dark ages under the Taliban rule in 1995. Today, there are visible improvements as a result of massive international pressure. For example, some women are allowed back to work, particularly in the field of health care and some girls have been readmitted to schools. On the economic front, much progress has been achieved through micro credit, which is mostly granted to women and has reached 20 million people so far.

To address the ongoing obstacles and barriers faced by women, Beijing + 5 was to set specific targets and benchmarks, to put in place successful monitoring mechanisms and to help determine responsibility for achieving targets. In order to concentrate on these tasks, the CSW recommended to the General Assembly that Beijing + 5 not open up the Beijing Platform for

Action for discussion. However, exactly the opposite occurred. Government delegates spent most of their time in ideological discussions aimed at reversing the achievements of the Beijing Platform for Action. Much of the debate focused on the Holy See's and its allies' attempt to roll back language regarding reproductive freedom. Fortunately, this attempt, which lasted into the wee hours of the last night's discussion, was in the end unsuccessful. The General Assembly did reaffirm the Beijing Platform for Action, which thus remains the normative reference point on women's rights. It did, however, waste precious time that should have been spent adopting concrete benchmarks, numerical goals, time-bound targets, indicators and resources aimed at implementing the Beijing Platform.

Nevertheless, some progress was made. The Beijing + 5 "Outcome Document" ([see www.women.2000newsroom.org](http://www.women.2000newsroom.org)) made maternal mortality a health sector priority. It strengthened the international commitment to educational programs aimed at enabling men to practice safer sex, an obvious priority during the current AIDS epidemic. In the area of violence and forced marriage, the UN for the first time in a consensus document, called for national legislation outlawing honor killings and forced marriage. It also adopted strong language calling on governments to eliminate dowry-related violence and to pass more effective legislation aimed to curtail and punish marital rape. Women's economic rights also were strengthened through language calling for equality in inheritance, equal property rights and equal access to credit. The Outcome Document calls for greater participation of women in political parliaments and suggests quotas and other measurable goals to achieve gender parity in political decision-making.

While Beijing + 5 was certainly not the success women had wished for in 1995, it also did not degenerate into the rollback that was feared in the days before this General Assembly session. The strong and sophisticated NGO participation in Beijing + 5 showed once again that women across the world are determined to achieve equality, development and peace and that they are willing to work one small step at a time

*Much of the
debate focused on
the Holy See's
and its allies'
attempt to roll
back language
regarding repro-
ductive freedom.*

until their goals are realized.

Very importantly, the international framework created through the Beijing Platform for Action and the Outcome Document continues to lend legitimacy and legal foundation to women's demands on the national level.

The ever-expanding international women's network provides women on the national level with the often necessary international political pressure to bring about national action. History shows that such support greatly enhances the effectiveness of women's struggles on the national level, especially in countries that tend to blatantly disregard women's fundamental rights. NAWL's International Law Committee is a part of this network and in the past six months has supported the demands of women in Nepal, Burma, Afghanistan and the United Arab Emirates. If you would like to add your voice of support to international women's campaigns, please contact Eva Herzer, Chair of the committee at eva@igc.org. ■



NAWL's Eva Herzer is a mediator and attorney in Berkeley and Kensington, California. She chairs NAWL's International Law Committee.

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Member Profile

Margaret Basch became the youngest attorney in Illinois when she graduated from the Chicago Kent School of Law in 1985. In the 15 years since then, she has become a very successful solo practitioner specializing in personal injury litigation.



Active for many years in the Illinois Trial Lawyers Association and the Association of Trial Lawyers of America, she has excelled in what has been traditionally a male domain. Basch was among the very first female members of a Rotary Club after the United States Supreme Court ruled that service clubs could no longer exclude women

members.

Basch adopts what some may consider a somewhat iconoclastic approach to women, power and the law. She states that nobody learns anything useful in law school, except perhaps to use a law library. Basch believes that being a lawyer is in itself empowering, particularly for women, who have a lot of catching up to do in the power department.

Basch has just published

a book targeted to women entitled *Every Woman Should Go To Law School, or Read This Book*. In her book, Basch suggests that the best networking comes from joining groups and getting to know people by working on projects in which you believe.

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WHEN THE UNEXPECTED HAPPENS ...

Restoring balance when everything around you is turned upside down

by Susan Ann Koenig

Your senior partner tells you no partnership will be offered to you. Your biggest client fires you. Your spouse is transferred to a city 1,200 miles away. Your child is diagnosed with a chronic health condition. Your mother suffers a stroke.

Crises occur. Events outside our control can make even the calmest of us feel that all is chaos.

When those times come, we can draw upon the skills we use in everyday life to help us.

1. **Pause Instead of Panic.** Breathe. Whether you just heard a disappointing verdict from the jury or received a call about the death of a loved one, take a moment for some deep breaths.

Return to your breathing every time you feel that anxious tightening in your chest or before you respond to any question.

Several deep breaths will help you physically and emotionally to make it through the most miserable of moments. It will help you to restore calm and assist you in thinking more clearly.

Bringing your attention to your breathing also helps to take your mind away from the racing thoughts about the worst-case scenario to which our fearful minds can be tempted to race.

One of the great things about breathing deeply is that you can do it any time in any place and most people will not even notice.

2. **Think in Terms of Limitless Possibilities.** How many times have you worried yourself sick thinking of events that never occurred? Did you conjure up the great disaster, just as the problem resolved itself easily?

To live in the present moment, we must refuse to allow our minds to live in some negative future that may never come to pass. Only then can we open ourselves up to exploring all possibilities.

Every situation presents countless possibilities. It may be that we cannot immedi-

ately see all of our choices, but there will be many if we open our minds to seeing the situation differently.

Some of what I thought were my life's greatest disappointments in love and career turned out to be tremendous gifts to me, now that I can enjoy the benefit of looking back.

Windows opening when doors close. Important life lessons learned. These and so many other blessings can come from what look to be disastrous situations.

In short, your difficult situation may not only have solutions, but it may bring unexpected treasures to your life as well.

3. **As Always, Plan.** When we are in a crisis, even sitting down to develop a plan may feel overwhelming. Start anyway.

Your initial plan may merely consist of setting aside time to develop a plan. Take baby steps if that is all you are up to.

Think about others who could help you explore your resources and problem-solve.

While tasks to be completed may be daunting, identify those matters that are truly urgent and need to be attended to today. Separate those from jobs that others may be willing to do, those that are not essential and those that can be postponed.

A key component of your plan must be the measures for taking care of yourself. Planning a time to exercise or to take a soak in the tub, even in 20-minute increments, is imperative. Waiting for time to do self-care reduces the prospects of it ever happening. Planning for it can make it a reality. It will support you in doing everything that must be done.

4. **Set Aside Time to Worry.** With your plan in place and tasks prioritized, set aside a specific time of day to worry. When worrisome thoughts enter your head, remind yourself not to think about it until your "worry time."

You will feel yourself sigh (remember how important that breathing is?) as you relax, knowing that you do not have to think about your difficulty right at this moment.

This technique will help reduce the obsessive thinking that we can have when our minds cannot let go of a concern. You are able to enjoy life, rather than finding your life consumed by a problem.

Any woman who has caught herself thinking about a case when a family member was trying to share something important with her knows how critical it is to stay present in each moment.

Be present at each moment and worry only when it is time to.

5. **Accept Your Shifting Priorities.** Be aware of shifting priorities during times of great change in your life.

As women attorneys, our lives are full of commitments to employers, to clients, to family and to community. We pride ourselves on our excellence.

Sometimes we are forced to alter our vision for our lives. Who is really important? What do I most want to accomplish? How do I want to spend my time?

What was once very important to us may no longer make our list of priorities. While you may experience a feeling of loss, there will also be a sense of relief.

6. **Ask for Help.** This is my least favorite piece of advice, undoubtedly because I need it the most. As women we have grown up in a culture that highly values our caretaking of others. Often it is difficult to recognize our own need to be taken care of.

As attorneys, we might fear that asking for assistance is perceived as incompetence. Women attorneys call to ask me questions that they are reluctant to ask lawyers in their own firms, for this very reason.

When we pride ourselves on our ability to manage work and home, to be successful in career and community, it is tough to say

that we need help with the laundry or the committee work.

Others who care about you or about the projects you are involved in will benefit from helping. Surely you have helped others on countless occasions. Why deprive others of the opportunity to help, especially when they offer?

Most importantly, recognize that you are worthy and deserving of assistance during a tough time.

7. **Fill Your Heart with Gratitude.** When times are hard, gratitude can sometimes be the last emotion that we experience. Engaging in a few moments of gratitude each day is a wonderful gift that you can give to yourself.

Experiencing gratitude is more than just being grateful that your situation is not as bad as someone else's. It is the full appreciation of the many wonderful pieces, both big and small, of our rich lives.

Some recommend making a bedtime ritual of the "gratitude list." At the end of a trying day at the office, it may include being grateful to be educated and employed. When coping with the problems of others around you, consider your good fortune to have the resources to help.

It is impossible for gratitude and resentment to coexist. When you fill your heart with gratitude, you eliminate space for anger and fear about your immediate situation. Instead, you increase the probability of more peaceful thoughts.

Should the unexpected happen, remember to go back to the fundamental skills that we use each day to keep our lives in balance. Until then, keep practicing them for a more enjoyable life each and every day. ■

As attorneys, we might fear that asking for assistance is perceived as incompetence.

Susan Ann Koenig is a lawyer in Omaha, Nebraska, where her general practice emphasizes family and juvenile issues. She is also an adjunct professor at Creighton University School of Law and at the University of Nebraska at Omaha School of Social Work.



Concentrations Key

Ad	Administrative
Adm	Admiralty
App	Appellate Appeals
At	Antitrust
AttMa	Attorney Malpractice
Ba	Banks & Banking
Bd	Bonds, Municipal
Bky	Bankruptcy, Creditors
Bu	Business
CA	Class Actions
Ch	Child; Custody; Adoption
Ci	Civil; Civil Rights
C	Collections
Co	Corps.; Partnerships
Com	Commercial
Comp	Computer
Con	Municipalities; Takings
Cons	Constitutional
Cs	Consumer
Cont	Contracts
Cor	Coops; Condos
Cr	Criminal
DR	ADR; Arbitration
De	Defense
Dis	Discrimination
Disc	Attorney Discipline
Ed	Education
El	Elder Law
Em	Employment; ERISA
Ent	Entertainment
Env	Environmental
Eth	Ethics
F	Federal Courts
Fi	Finance or Planning
FL	Family Law
Fo	Foreclosure, Creditors
Fr	Franchising; Distribution
GP	General Practice
GC	Government Contracts
Gu	Guardianship
H	Health
I	Immigration
Ins	Insurance
Int	International & Customs
IP	Intellectual Property (C-copyright; P-patents; TM-trademark; TS-trade secrets)
La	Labor
Ld	Landlord, Tenant
Le	Legal Aid, Poverty
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

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

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