WLJ WOMEN LAWYERS JOURNAL

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NAWL'S FOURTH ANNUAL GENERAL COUNSEL INSTITUTE

Some members of the NAWL Executive Board gathered at NAWL's Fourth Annual General Counsel Institute event in New York. Seated from left to right are Wendy Schmidt, Dorian Denburg, Lorraine Koc and Lisa Passante. Standing from left to right are Lisa Horowitz, ABC News Legal Correspondent Jan Crawford Greenburg, Anita Thomas, Lisa Gilford and NAWL Executive Director, Vicky DiProva.

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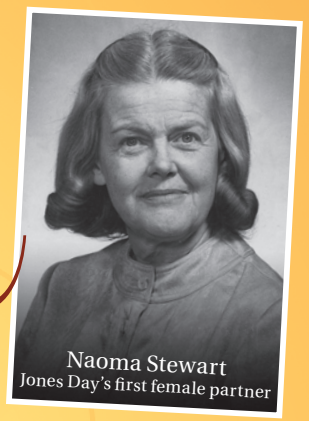
National Association of Women Lawyers®
the voice of women in the law™

From One To Many



Naoma Stewart
Jones Day's first female partner

Jones Day's 2008 class of women partners

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ABOUT WOMEN LAWYERS JOURNAL

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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. We reserve the right to edit all submissions.

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

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National Association of Women Lawyers®
the voice of women in the law™

About NAWL

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

By joining NAWL, you join women throughout the United States and overseas to advocate for women in the legal profession and women's rights. We boast a history of more than 100 years of action on behalf of women lawyers. For more information about membership and the work of NAWL, visit www.nawl.org.

BENEFITS OF MEMBERSHIP

- A voice on national and international issues affecting women through leadership in a national and historical organization
- Networking opportunities with women lawyers across the United States
- Access to programs specifically designed to assist women lawyers in their everyday practice and advancement in the profession
- A subscription to the quarterly Women Lawyers Journal and the ability to be kept up to date on cutting edge national legislation and legal issues affecting women
- The opportunity to demonstrate your commitment and the commitment of your firm or company to support diversity in the legal profession.

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EDITOR'S NOTE

What exciting times we live in! I just witnessed the inauguration of the first African American president of the United States of America. While we are in uncertain economic times, there is certainly a palpable spirit of hope that has permeated the nation's capital for the past couple of weeks. Setting aside the traffic and logistical nightmares, Washington seems to have handled the crush of people relatively well. All in all, there is much to be thankful for and much opportunity ahead. Please read the letter on the opposite page from the president of NAWL about taking time to do those things that we don't always have time to do when we are living a full-on 24/7 existence.

Unfortunately, while women in law firms have come a long way, they still have a long distance to travel. In November, NAWL and the NAWL Foundation published the third annual National Survey on Retention and Promotion of Women in Law Firms and it is included in this issue for everyone to read. The Survey shows that women still do not occupy leadership positions in law firms in the numbers that they should. The Survey helps makes the business case for advancement of women into law firm leadership. A copy of the Survey is also available for download on the NAWL website—www.nawl.org. I urge you to circulate the Survey to your colleagues and think about ways to implement changes to move women forward.

The pictures included in this issue are from some of the great events that NAWL has put on over the past few months, including its Fourth Annual General Counsel Institute in New York and highlights from its Inaugural Night of Giving held in Washington, D.C. in December.

We have a winner published here as well—the winning essay in the ABA Commission on Domestic Violence's Annual Law Student Writing Competition. The winning essay, entitled "*Breaking into the Marital Home to Break Up Domestic Violence: Fourth Amendment Analysis of 'Disputed Permission*'," was written by Amanda Jane Procter, a third year student at the University of Mississippi School of Law. Congratulations, Amanda, on a job well done!

I love hearing from our members and readers about what they like and don't like about the *Women Lawyers Journal*. If you have suggestions or want to write an article, please drop me an email. I hope you enjoy the issue!

Warm wishes,

Deborah S. Froling, Editor
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As I am writing this, 2008 is coming to an end and we are about to usher in 2009. This past year has been a year of challenges for us all. We have seen the stock market tumble and some of the hard-earned money in our 401(k)s disappear. We have seen the equity in our houses reduced and the ability to get credit tighten. Some of us have lost a job and others live with the fear of losing one. Some wonder—where do I go from here? Could there possibly be opportunity in these challenges?

I am not Pollyanna. I don't see the world through rose colored glasses. And this is not the change that I suggested was needed in my remarks in July. However, I do believe that we must keep our eyes on the ball and look for opportunities to work for positive change during these challenging times. Here are some thoughts. I welcome yours.

The beginning of the new year is a good time to take stock and take action. Revisit your goals for 2008 and set goals for 2009. While the economy was flourishing and many of us were working 24-7 to keep up, there was less, if any, time for self-reflection. There was less time to stay in touch with friends and colleagues and less time to mentor and be mentored. There was, unfortunately, often less time to give back. The challenges we now face permit us (indeed require us) to reflect on what really matters, set some new goals, and determine how to achieve them.

In my remarks at last year's Annual Meeting, I said that "NAWL is here for you." NAWL is here to help you achieve your 2009 goals by creating new connections and reconnecting with those with whom you may have lost touch. Our mentoring committee can pair you with a mentor or mentee. Join one of our committees and meet others with similar interests. All are welcoming new members. Check out NAWL's *Directory of Women-Owned Law Firms and Women Lawyers* and network with NAWL members in your area. Attend one of our events—NAWL's Midyear meeting is in Atlanta on February 5 and we have a series of NAWL *Nights of Giving* scheduled around the country in the spring where you can both connect and give back. If cost is an issue, scholarships are available.

The power of connecting and collaborating is extraordinary. Most recently, I saw this power at NAWL's Fourth General Counsel Institute where 200 largely in-house counsel shared ideas on how to better serve their clients and how to advance in the C-Suite. I saw it at the inaugural Night of Giving in Washington, D.C. in December where close to 150 women from law firms, government, and corporate law departments mixed and mingled and shared ideas, business cards and gifts for a new Girls Inc. center at Howard University.

These challenging times also provide our law firms with an opportunity to take stock and take action. NAWL's 2008 Survey Report released in November (and reprinted in this issue) reveals that law firms are still not advancing and promoting talented women attorneys at the same rates as their male counterparts. Nor are they compensating them equally. The result—talented women attorneys appear to be "talking" with their feet—taking their talents and business to firms that do treat them equitably and that have implemented work/life policies that align with their goals. Younger talented women (and men) will follow them to these firms.

In these challenging times, those firms that take action to change and align their practices with the expectations of their most important asset—their talent—and the expectations of their clients—who are now more diverse than ever—will excel. Women attorneys continue to represent half of those graduating from law school and half the attorneys entering law firms. To provide excellent client service, law firms must retain their talented women attorneys by taking action to insure that they have equal opportunities to develop and by advancing them to equity and leadership positions. *NAWL's National Leadership Summit Report: Actions for Advancing Women into Law Firm Leadership* (see www.nawl.org) provides an excellent blueprint of actions to make this change happen.

On behalf of the NAWL Board, I wish you a healthy, prosperous and peaceful 2009.

Warm wishes,

Lisa Horowitz
NAWL President 2008-2009
McDermott Will & Emery LLP
LHorowitz@mwe.com

NAWL Fourth Annual General Counsel Institute

November 6-7, 2008 New York, New York

On November 6 and 7, 2008, at the Westin New York at Times Square hotel in New York City, NAWL held its Fourth Annual General Counsel Institute. Over 200 lawyers attended presentations and CLE programs featuring, among others, keynotes by Jan Crawford Greenburg. ABC News Legal Correspondent, Mary Anne Gibbons, General Counsel and Senior Vice President of the U.S. Postal Service, and Deirdre Stanley, Executive Vice President and General Counsel of Thomson Reuters, and once again a presentation by Dr. Barbara Tannenbaum of Dynamic Communication. The Institute was chaired by Marsha L. Anastasia of Pitney Bowes, Inc. and vice-chaired by Lisa M. Passante of DuPont and a member of the NAWL Executive Board.

Attendees, including NAWL President-elect Lisa Gilford, enjoy some networking time during a break from the information-packed presentations.

Members of the Fourth Annual General Counsel Institute Planning Committee enjoy a break from the presentations and bask in the limelight for a job well done.

The attendees at the GCI enjoy one of the many substantive presentations throughout the two-day program.

From left to right, General Counsel Institute Chair Marsha Anastasia, Jan Crawford Greenburg, ABC News Legal Correspondent and author of *Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court,* and Vice-Chair and NAWL Executive Board member Lisa Passante.

Photos on this page were taken by Fifth Avenue Digital.

NAWL Fourth Annual General Counsel Institute

November 6-7, 2008 New York, New York

Immediate Past Chair of the General Counsel Institute and NAWL Executive Board member Dorian Denburg speaks to the attendees.

One of the panel presentations at the GCI.

Photos above were taken by Fifth Avenue Digital.

NAWL's Inaugural Night of Giving

December 3, 2008 – Offices of Willkie Farr & Gallagher LLP Washington, D.C.

Over 120 attorneys attended NAWL's inaugural Night of Giving at the offices of Willkie Farr & Gallagher LLP in Washington D.C. The event benefitted Girls Inc. of the Washington D.C. Metropolitan Area, a national nonprofit organization dedicated to inspiring high-risk, underserved girls to be "strong, smart and bold." LexisNexis was a Premier Sponsor of this event. The event was co-sponsored by the Women's Bar Association of the District of Columbia, Women in eDiscovery, Jones Day, Kilpatrick Stockton LLP, McDermott Will & Emery LLP, Navigant Consulting, and Willkie Farr & Gallagher LLP.

Dawn Conway of event Premier Sponsor LexisNexis, Elizabeth Rector of LexisNexis, NAWL President Lisa Horowitz and Amy Fitzpatrick of co-sponsor Willkie Farr & Gallagher pose for the camera during the event.

A few of the attendees at the Night of Giving enjoy some conversation during the event.

Report of the 2008 Nawl Survey on the Status of Women in Law Firms[1]

The National Association of Women Lawyers® (NAWL®) and the NAWL Foundation® are pleased to report the results of the third annual National Survey on the Status of Women in Law Firms ("Survey").

The Survey program began in 2006 in recognition of the gap in objective statistics regarding the advancement of women lawyers into the highest levels of private practice. NAWL's Survey is the only national study that annually tracks the professional progress of women in the nation's 200 largest law firms[2], by providing a comparative view of the careers and compensation of men and women lawyers at all levels of private practice, including senior roles as equity partners and law firm leaders, and data about the factors that influence career progression. By compiling annual objective data, the Survey aims to provide (a) an empirical picture of how women forge long-term careers in firms and what progress is being made in reaching the highest positions in firms; (b) benchmarking statistics for firms to use in measuring their own progress; and (c) over a multi-year period, longitudinal data for cause and effect analyses of the factors that enhance or impede the progress of women in firms. Several state and local bar associations have used the Survey to begin their own dialogues about the progress of women in particular regions. We would be pleased to work with other organizations to extend the Survey into local and regional areas.

Snapshot of the 2008 Survey Results

- In spite of more than two decades in which women have graduated from law schools and started careers in private practice at about the same rate as men, women continue to be markedly underrepresented in the leadership ranks of firms. Women lawyers account for fewer than 16% of equity partners, those lawyers who hold an ownership interest in their firms and occupy the most prestigious, powerful and best-paid positions. The average firm's highest governing committee counts women as only 15% of its members—and 15% of the nation's largest firms have no women at all on their governing committees. Only about 6% of law firm managing partners are women.

- There is evidence that more recent women graduates are being promoted to equity partner at a somewhat greater rate. Women constitute fewer than 10% of equity partners who graduated from law school before 1982. Of those equity partners graduating from 1982 through 1997, women comprise roughly 19% of equity partners. And, for those relatively few equity partners who graduated in 1998 or later, women constitute 24% of the total. These numbers show, however, that even in the best of circumstances, women are promoted to equity partner only about half as often as men.

- Women of color are hired as associates in large firms in roughly the same proportion that they graduate from law school. But women of color are much less likely to be in partnership positions than white lawyers of either gender or men of color. In the average firm, women of color account for about 11% of associates but only 3% of non-equity partners and only about 1.4 % of equity partners. Thus, in the average firm, the percentage of women of color at the equity level is a small fraction—1/8—of the number of associates who are women of color. Clearly the combination of being female and a lawyer of color presents additional challenges within law firms.

- The Survey has captured data on a newly identified category of law firm, the "mixed-tier" firm, which has a different partner compensation structure than the traditional one-tier or two-tier partnership. In the traditional structure, an equity partner is both required to invest in the firm and compensated on the basis of his or her ownership share. In the mixed-tier firm, in contrast, all "equity" partners are required to contribute capital to the firm but some of them are paid as if they were income partners, receiving fixed compensation and not sharing in firm profits or losses. This is not an equity structure that has been reported very often although our data show that about 15% of the nation's largest firms are mixed-tier firms. The preliminary data also indicate that mixed-tier firms are less likely to retain and advance women lawyers to partnership than either one-tier or two-tier firms.

- At every stage of practice, men out-earn women lawyers, a finding that is consistent with NAWL'S previous Surveys and data from other sources.[3] At the level of equity partner, the income difference is greatest. Male equity partners earn on average over $87,000 a year more than female equity partners. In 99% of large firms, the most highly compensated partner is a man.

- The market for lateral partners impacts promotion to equity partner. For both male and female lawyers, moving is likely to be a better strategy than staying in the lawyer's original firm. Laterals account for roughly two-thirds of the women and three-quarters of the men who were newly promoted to equity partnership. A startling 31% of new equity partners are recent laterals, suggesting that they were specifically recruited for or negotiated a move for equity positions. It also appears that males are recruited more often for equity partnership than females. Firm structure impacts the extent to which home-grown lawyers or lateral hires are promoted to equity partner. One-tier firms are almost equally likely to promote women from within or import female talent, while two-tier and mixed-tier firms are much more likely to import equity level women lawyers than to advance their home-grown women lawyers.

- Today it is the rare large firm that does not make some effort to enhance career prospects for its women lawyers. Nearly 97% of law firms have implemented women's initiatives, which provide a combination of programs on professional development, networking, mentoring and/or business development. Indeed, over 90% of firms include business development activities as part of their women's initiatives, perhaps in recognition that women have not historically developed as much business as their male peers and that women frequently seek help in navigating the cultural and social issues associated with the development of business relationships. Given that women's initiatives and formal programs for business development skills are relatively new activities in firms, it is too early to say whether these programs will enhance the level of business development by women lawyers.

We now turn to more detailed analyses.

How Well Do Women Lawyers Progress in Law Firms?

Women start out in about equal numbers to men when they enter law firms as first year associates. But the fall-off of women lawyers begins early in their careers and gains momentum at each level of seniority, which ultimately shrinks the partnership pool of women lawyers. Women constitute 48% of first- and second-year associates, a percentage that approximates the law school population (especially considering the pool of law schools from which the nation's largest firms recruit first-year associates). There is a small fall-off at higher levels of the associate ranks, with women constituting 45% of mid-level associates and 44% of 7th-year associates. The associate statistics have not changed substantially for over 20 years, demonstrating that for over two decades there has been a steady pipeline of women lawyers entering large firms at the same rate as men.

Beyond the associate level, however, the number of women shrinks at each level of the firm. Women constitute 34% of of-counsels, 27% of non-equity partners, and fewer than 16% of equity partners. To put an image on what these statistics mean, if a client were to enter a conference room of 50 first-year associates in the average large firm, about 23 (almost half) of the associates would be women. In contrast, if that same client were to enter a conference room of 50 equity partners in the average large firm, only eight equity partners would be women. Recent graduates have had a somewhat greater chance of becoming equity partners than those who graduated more than 25 years ago. Nevertheless, considering that women have been entering firms in roughly equal numbers with men for more than two decades, these percentages are much smaller than expected.

With respect to of-counsel lawyers, in the average firm, there is a greater percentage of men than women and the majority of women in of-counsel positions have graduated since 1982. In contrast, the highest percentage of men in the of-counsel position are those who graduated before 1982. It appears that men are more likely to occupy the of-counsel position as they approach retirement years. The of-counsel role was traditionally reserved for senior lawyers transitioning to retirement, but in recent years has increasingly been used by firms as an intermediate position for lawyers who are not promoted to partner but have many similar practice skills as partners. Anecdotally, the of-counsel title has also been given to partners who were "de-equitized" by their firms but who, for various reasons, continued to be employed by the firm.

In measuring the advancement of women in firms, in the first instance we focus on equity partnership because other than a law firm leadership role, there is no more important criterion of professional success than being an owner of a firm. Equity partners are the highest paid lawyers and enjoy the highest status and influence within a firm. Given the current fragile state of the U.S. economy, however, we are concerned about the near-term prospects for improving the number of women equity partners. As of May 2008, legal employment was down from the preceding year and since then, there have been highly publicized downsizings and even dissolutions among AmLaw 200 firms.[4] Moreover, women leave firms at a higher rate than men during the years preceding equity partnership decisions. Since the data show that women start out at slightly less than half of incoming associates and taper off over time, even an equivalent departure rate may translate into a substantial decline in the percentage of women lawyers practicing in the large firm environment. If senior women lawyers are not visible as colleagues, role models, and mentors, their contributions may be overlooked or devalued, and firms may come to accept as a given that women will not advance into senior positions in substantial numbers.

The year-over-year failure to move the needle, in spite of near-universal commitment to remedies such as women's initiatives and part-time work policies, raises the concern that firms have not yet implemented effective strategies and practices to bring about needed change. Certainly there are beneficial actions to take. In this regard, NAWL has recently issued a report outlining its recommended actions for law firms to take for advancing women lawyers. See Report of the National Association of Women Lawyers National Leadership Summit, "*Actions for Advancing Women into Law Firm Leadership,*" (2008) (hereinafter "NAWL Summit Report").[5]

Race/Ethnic Background of Lawyers and Position in Firm

The 2008 NAWL Survey asked firms to report for the first time the race/ethnic background of their equity partners, non-equity partners, of counsels, and associates, both male and female.[6] While race/ethnicity data are available from other sources for lower levels of lawyers within firms[7], we were especially interested in data beyond the level of first-tier partner. A few trends are worth noting. The data suggest that women of color are being hired at the associate level in numbers roughly proportional to the number graduating from law school. But there is only a very small percentage of women of color who are law firm partners—at either the equity or non-equity level—and the low percentage is not especially due to a lack of candidates.

For more than 10 years, some 20% of all J.D. degrees have been awarded to lawyers of color, and in the past few years, degrees awarded to lawyers of color accounted for about 22% of total law degrees.[8] Assuming that graduates of color are about equally divided between male and female lawyers, it would appear that women of color enter private practice at a rate consistent with the number who graduate from law school: the Survey found that on average, roughly 11% of associates in firms are women of color.

At the same time, it appears that once women of color enter firms, they are much less likely to move up the partnership ladder than the pipeline of graduating lawyers suggests they should, and substantially less likely to advance than either white women or men of color. Thus, while women of color account for about 11% of associates, they account for only 3% of non-equity partners and about 1.4 % of equity partners.[9] By way of contrast, in the average firm, white women account for some 35% of associates, 23% of non-equity partners, and 14% of equity partners. Women of color also have a lesser chance of promotion than men of color, who in the average firm account for a smaller number of associates (8%) but constitute 6% of non-equity partners and 4% of equity partners. Thus, even though there is a greater percentage of female associates of color than male associates of color, the women are less likely than men to hold the position of non-equity partner or equity partner.

The Survey data complement research on the felt experiences of women of color in law firms[10], reinforcing the conclusion that women of color face more impediments to advancement in private firms than either white men and women or men of color. Focusing on firms as a whole, the Survey found that, on average, the percentage of women of color at the equity level is a small fraction—only 1/8—of the number of women associates of color. In contrast, the number of white women at the equity level represents roughly 40% of the number of white women associates.[12] These statistics suggest that, apart from smaller starting numbers, different dynamics apply to the process of retaining and advancing women of color.[13] Along the same lines, it is not clear to us if the higher statistics for men of color are an outgrowth of more intense lateral recruitment for male partners and/or the dynamics of large firms which result in better outcomes generally for men than women.

Clearly the combination of being female and a lawyer of color presents additional challenges associated with promotion within law firms. The emergence in many (but certainly not all) large firms of diversity committees, among other practices, is just one of a range of strategies that firms may undertake to address the gaps.[14] With corporations continuing to clamor for minority lawyer representation on their cases/matters, it will be telling to see how firms without minority representation in higher positions respond to such pressures.

The Impact of Firm Equity Structure: One-Tier, Two-Tier and "Mixed-Tier" Firms

While statistics about careers in law firms traditionally focused on the blunt distinction between associate and partner, in many firms, the term "partner" now carries some meaningful distinctions as firms have moved from the traditional one-tier structure to a two-tier or even a "mixed-tier" structure. About 31% of the largest U.S. firms are one-tier partnerships, meaning that at least 95% of their partners own equity in the firm and are compensated on the basis of their equity investment. About 54% of firms govern themselves under a two-tier structure, in which some but not the large majority of partners are equity partners (known variously as "equity," "share," "point," or "principal" partners) who contribute capital in exchange for an ownership stake in the firm, receive annual compensation on the basis of their ownership interest, and have governing authority. The non-equity partners are paid a fixed annual salary with bonus based on performance and have less say, if any, in the overall governance of the firm. While typically marketed to the outside world as "partner," within the firm, non-equity partners have neither the level of compensation, status nor obligations of an equity partner.

Variations on these models were bound to emerge. Today, some large firms officially describe themselves as "one-tier" or "two-tier" firms but in fact implement a mixed structure. In these "mixed-tier" firms, there are partners deemed "equity" partners who are required to contribute capital to the firm but at the same time are paid on a fixed income basis—an arrangement that significantly strains the meaning of the term "equity partner." In 2008, we asked for the first time about mixed-tier firms and found that overall, 15% of firms fit this category. Moreover, mixed-tier firms are spread throughout the AmLaw 200.

Our data raise intriguing questions. For example, mixed-tier firms have a higher median attorney headcount and higher median firm revenue than two-tier firms. A mixed-tier structure, which in essence adds another tier to the firm's partnership, might be a way of achieving a larger geographic footprint or greater visibility for a firm while nevertheless keeping the concentration of firm profits in a subset of the identified "equity partners." A mixed-tier structure might also be a way of infusing capital into the firm by forcing more people to contribute capital than will see a return on that capital, in exchange for employment.[15]

One important question is: for a woman lawyer, is a mixed-tier firm a better or worse place to fashion a career than either a one-tier or two-tier firm? The numbers, although preliminary, suggest that working in a mixed-tier firm is somewhat disadvantageous for a woman lawyer. In mixed-tier firms, women constitute fewer than 13% of equity partners and 24% of non-equity partners, lower levels than in one-tier or two-tier firms. It is also the case that women who begin practicing law at mixed-tier firms have a substantially lower chance of advancing to equity partnership within those firms than do women in either one- or two-tier firms.[16]

Mixed-tier firms do not usually publicize their structure and even attorneys in the firm may not have a clear understanding of what the structure means.[17] And we do not as yet know how many equity partners receiving fixed compensation are working in these firms. If these turned out to be a few senior attorneys in the process of winding down their practices (after many years of being paid like any other firm owner), we might conclude that such treatment did not have an untoward effect on women lawyers. On the other hand, if the majority of equity partners receiving fixed compensation were women, that would lead to a different conclusion. Further study is required in order to determine why firms choose this structure and the longer term impact on women.

Are Women in Law Firm Leadership?

Women play a lesser role in firm management than would be expected from the pipeline of women entering firms. The groups of people responsible for overseeing law firm governance provide the principal example. Virtually every large firm identified a highest governing committee[18], which oversees the firm's strategies, policies and practices, including policies for recruiting, training and promoting lawyers. The highest governing committee consists, on average, of 11-12 members. These committees, however, are overwhelmingly male. Whether in one-tier or two-tier firms, on the average governing committee, 85% of members are male. To our surprise, 15% of the nation's largest firms have no women at all on their highest governing committees.

An even less diverse picture emerges when we look at managing partners. While almost all of today's big firms (95% of those surveyed) report that they have managing partners, only 6% of managing partners are women. Women have a slightly greater chance of being a managing partner in a two-tier firm.

What are the implications of these statistics? One is that women are unlikely to play high-level leadership roles in U.S. firms in large numbers in the near future. We could debate the reasons, but it is unequivocal that there are few women currently involved in leadership at large firms and a smaller pipeline of women than men at the equity partner level to draw from in filling these top positions.

A second implication is that the quality of a law firm's decisions will be different when it lacks a critical mass of women leaders. Research about corporate boards, analogous to law firm governing committees, shows that decision-making suffers when there are only one or two women on a governing board.[19] To paraphrase: one woman can make a positive contribution, and having two women is generally an improvement, but it takes three or more women on boards for an organization to benefit the most from women's contributions. And women make distinctive types of contributions. "They broaden boards' discussions to include the concerns of a wider set of stakeholders, including shareholders, employees, customers, and the community at large; they are more persistent than male directors in pursuing answers to difficult questions; and they often bring a more collaborative approach to leadership, which improves communication among directors and between the board and management."[20]

The Continuing Compensation Gap Between Men and Women Attorneys

If money equals power, there is little question that with each move up the law firm ladder, power increasingly rests with male lawyers. Women start out earning roughly the same as men. We emphasize "roughly" because even at the associate level, gender differences exist. Male associates earn, on average, a median income of about $175,000 and female associates earn, on average, a median income of about $168,000.[21,22] At levels above associate, compensation differences persist and accelerate. Male of-counsels earn, on average, $14,000 more than female of-counsels, with an average median income for males of $220,000 and for females of $205,000. Male non-equity partners earn on average $292,000 while female non-equity partners earn on average $269,000. The most striking difference is seen at the equity level, where in the average firm, men earn some $87,000 more than women. The average median compensation for male equity partners is $660,000 and for female equity partners, $573,000 (or 87% of the average median male compensation).

These numbers show that at each level of seniority, women in large firms do less well than men, and the size of the difference increases as women move up the law firm ladder. Associate women earn 97% of the compensation earned by male associates; women of-counsels earn 93% of the compensation earned by male of-counsels; women non-equity partners earn 91% of the compensation earned by male non-equity partners; and women equity partners earn 87% of the compensation earned by male equity partners. While promotion to a higher position provides increased status and compensation, it also promotes lawyers to the level of greatest compensation differences between men and women.

The Market for Lateral Partners: How Does It Affect Women? (or, "Should She Stay or Should She Go?")

As recently as twenty years ago, few lawyers changed firms. The operating presumption was that a competent and hardworking lawyer would advance to partnership within his (or less frequently, her) original firm in due time. A lawyer who made a lateral move, particularly within the same city, was regarded skeptically, often with an implicit presumption that he was either incompetent, impossible to work with, or both.

In the current marketplace, legal talent moves around frequently, for a whole host of reasons. No longer is there an onus associated with a change of firms. Both individual lawyers and practice groups with portable business are in great demand and may change firms to capture a greater share of the value of that business. Lawyers who begin practice in a steeply structured firm may be forced to move when equity partnership is unavailable to them. Partners may be "de-equitized" and move when their firm decides that it needs to be higher in the all-important "profit per partner" metric. As lawyers mature, they may seek a firm with different values and culture. And mergers of entire law firms, even at the AmLaw 200 level, have become a regular feature of the legal news.

The growing phenomenon of lateral partners raises questions about its impact on women lawyers.[23] In the 2008 Survey, we asked questions designed to determine whether it is a better strategy for promotion to equity partnership for a woman lawyer to stay with her original firm or to make a lateral move.

The responses indicate that for both male and female lawyers, moving is likely to be a better strategy than staying. Among all "new" equity partners in our sample (i.e., those promoted between March 1, 2007 and March 1, 2008), two-thirds of the women and three-quarters of the men are laterals. A startling 31% of all new equity partners were "recent" laterals (i.e., joined the firm after March 1, 2006), suggesting that they were specifically recruited or negotiated for equity positions. We cannot tell from these numbers whether home-grown lawyers are being passed over for partnership in favor of laterals or whether the large number of laterals reflects the growth of many large firms over the past few years by recruiting broadly from other firms both within and outside of the AmLaw 200. But it is clear that the cadres of new equity partners in large firms are largely made up of persons who have not been practicing law together throughout their careers. This phenomenon, particularly if it persists in future years, may have important implications for firm culture and long-term stability.

It also appears that men laterals are recruited more often for equity partnership than women. In the average firm, women made up almost 30% of new home-grown equity partners but only 17% of new equity partners who are recent laterals. These numbers suggest that a woman lawyer's career strategy would favor staying at her original firm although the conclusion is tempered by the fact that a high percentage of laterals become equity partners.

The data also show that type of firm structure impacts the extent to which home-grown lawyers or lateral hires are promoted to equity partner. On average, in one-tier firms, new female equity partners were 48% home-grown and 52% laterals; in two-tier firms, new female equity partners were 28% home-grown and 72% laterals; and in mixed-tier firms, 17% of new female equity partners were home-grown, with the remaining 83% being laterals.[24] Thus, one-tier firms are almost equally likely to promote women from within or import female talent, while two-tier and mixed-tier firms were far more likely to import equity level women lawyers than to advance their home-grown women lawyers.

Another way to look at the data is to ask whether firm structure affects the proportion of women, home-grown or lateral, who are newly promoted to equity partner. Among all one-tier firms, women represent 28% of new equity partners; among all mixed-tier firms, 21%; and among all two-tier firms, 18%. At these rates, and over time, one-tier firms are on track to have a much more gender-diverse equity partnership than firms with mixed-tier or two-tier structures.

These data raise a number of intriguing questions that deserve further exploration, either in subsequent Surveys or other studies. Are women lawyers pursuing lateral moves in the same proportion as their male peers, or does their lower representation in the lateral new-partner category reflect a lower rate of participation in the lateral market? Do women laterals evince different salient characteristics from women who do not pursue lateral moves or from men laterals? For example, do women laterals have better or worse educational credentials, more or less portable business, fewer or more years of practice, more or less practice specialization? Are there different standards or practices that enhance the prospects for women in one-tier firms? Additional study could shed important light on whether women lawyers are taking appropriate advantage of lateral opportunities, and bring us closer to answering the question whether a woman lawyer should "stay or go."

Women's Initiative Programs and Business Development

The NAWL Survey asked firms whether they have women's initiatives in place which provide professional development activities, social networking events, and/or a formal mentoring program. The 2008 Survey also included specific questions about business development activities directed to women lawyers.

Virtually all firms—including 100% of one-tier firms and 97% of two-tier firms—reported that they have women's initiatives. Whether these programs are designed to improve recruiting, retention, and/or the promotion of women lawyers within firms is unclear. However, because of their prevalence it can be inferred that these programs are viewed as adding value to firms with a specific focus toward women lawyers.

Women lawyers' presence on these committees is predominant. Forty-four percent of firms with women's initiatives report that the initiative's committee consists of women partners and women associates. Another 18% report that their committees consist solely of women partners. Twenty percent report that their committees are not all-women and 17% report that they have some "other" composition.

The scope of women's initiative programs varied. All firms reported offering social networking events as part of their program and 94% offered professional development activities. This is an increase over the number of firms that reported such events and activities last year. Clearly networking and education are two elements of women's initiatives which appear to be widespread.

By contrast, however, women's initiatives did not uniformly offer programs in an area known to have a direct impact on the ability of women to progress in firms: mentoring. To the extent mentoring affects women's advancement in law firms[25], nearly half of the nation's largest firms have yet to add this component to their women's initiatives. Fifty-five percent of women's initiative programs include a formal mentoring component. It is not possible to tell whether the absence of mentoring components in women's initiatives reflects a firm's desire not to provide mentoring programs along gender lines or reflects the imbalance between the number of women who have achieved a senior status and those at more junior levels seeking mentoring.[26]

The ability to develop business is another critical skill for advancement in firms, and nowhere is the skill more critical than in the decision to promote a lawyer to equity partner or to a position of leadership.[27] Ninety-one percent of firms indicated that their women's initiatives included business development activities. If one credits the anecdotal evidence that women lawyers encounter additional challenges developing business within the traditional "male model" (e.g. attending sporting events, playing golf or having drinks after work), then the relatively high number of women's initiative programs containing a business development component may be a first step in addressing this need.

While firms are sponsoring women's initiatives with business development components, it also appears from the Survey that firms with these programs are focused on providing support generally for business development activities of partners and associates, men and women alike. A substantial majority of firms (83%) offer individualized or small-group coaching within the firm to strengthen business development skills. Only 11% of firms direct this support to women lawyers only. Ninety-five percent of firms offer some type of group program to strengthen business development skills. Nine percent of firms target these programs to women only. Eighty-four percent of firms offer business development training to male and female attorneys at all levels by an organization outside the firm. Seven percent of these programs are for women only. Ninety-seven percent of firms hold some form of large social event for clients and potential clients of the firm. Eight percent of firms conduct these events only for women lawyers. Seventy-seven percent of firms conduct in-firm business development programs to which clients are invited as guests or speakers. Eleven percent of these programs are exclusive to women lawyers.

Our data show that training in business development has become pervasive in firms. We cannot tell from the data whether women are being given training and coaching opportunities to help them overcome business development and networking social biases and concerns about cultural norms[28] or whether such support is focused on non-gender specific skills in areas commonly cited by women as challenging, i.e., asking for the business, stating accomplishments, transitioning personal relationships into business relationships, identifying comfortable venues for developing business relationships, and other concerns about cultural norms and socially reinforced conduct. Certainly from a purely economic standpoint, the extent to which firms can support and train women lawyers to grow their own books of business has positive financial implications that reach beyond the achievement of equity partnership status and/or holding a leadership position within the firm.

Conclusion

The NAWL Foundation oversees an annual Survey designed to provide reliable benchmarks about the status of women lawyers in private firms and the factors that impede or advance their retention and promotion. We know from our communications and activities with law firms that there is a desire within firms to implement meaningful, concrete steps that assist women lawyers in advancing to more senior levels in greater numbers. We thank all of the firms that participated in the Survey, and we also thank NAWL for its leadership in initiating the Survey in 2006 and its generous ongoing support. Finally, we applaud NAWL's Law Firm Members and Sponsors for their interest in initiatives like the Survey and their cooperative efforts to enhance the role of women in the profession.

Appendix on Survey Methodology

The NAWL Survey was sent in early Spring 2008 to the 200 largest firms in the U.S. as reported by *American Lawyer*.[29] Although most attorneys in private practice work in smaller settings, we chose to focus on the largest firms because they are an easily defined sample, include firms from all parts of the U.S., and are viewed as benchmarks for the larger profession.

The Survey solicited information about each firm's U.S.-based lawyers as of March 1, 2008. The questionnaire included questions about total law firm size; numbers of male and female associates, of-counsel, non-equity and equity partners; whether the firm was a one-tier, two-tier or "mixed" tier partnership; median and highest

compensation by gender; representation on the firm's highest governing committee; gender of the managing partner; business development programs; lateral promotions; and racial/ethnic diversity within firms.

As part of the Survey, NAWL committed not to publish individual law firm data. The particular statistics of any given firm were of less interest than our goals of finding out how women were doing overall and setting benchmarks. We also believe that at the current time, aggregate analyses rather than a focus on particular firms allows greater response rates on sensitive questions.

The Survey was designed and developed by Stephanie Scharf under the auspices of NAWL and first administered in 2006 and annually since then. The 2008 analysis was assisted by CRA International, Inc., which generously contributed significant time and resources to analyzing the survey data. The analyses, conclusions and opinions expressed in this report are solely those of NAWL.

A total of 137 firms responded to the Survey. In the 2008 Survey, responding firms were not significantly larger than non-responding firms in terms of gross revenue, revenue per lawyer, net operating income, profits per equity partner, number of lawyers or regional distribution. The Survey's compensation questions obtained a lower response rate than any other portion of the Survey, with 59 firms responding at least in part.

[1] Copyright 2008 by the National Association of Women Lawyers and the NAWL Foundation, all rights reserved. This report may not be used or duplicated without written permission. This report was authored by members of the NAWL Survey Committee, including Committee Chair Stephanie A. Scharf, Schoeman, Updike, Kaufman & Scharf; Committee Co-Chair Barbara M. Flom; and Committee Member Marianne M. Trost, The Women Lawyers Coach, LLC. Other members of the Survey Committee who provided substantial assistance implementing the 2008 Survey include Lynn Whitcher Alvarez, McGuire Woods LLP; Jacqueline Beaumont, Morrison & Foerster LLP; Monika Blacha, Winston & Strawn LLP; Marty Beard Duncan, Texas Advocacy Project; Lucinda Glinn, Nauman Smith Shissler & Hall LLP ; Amanda Groves, Winston & Strawn LLP; Alicia Harrison, Starnes & Atchison LLP; Grace Ho, Jenner & Block LLP; Betsy Katten, Winston & Strawn LLP; Lorraine Koc, DebShops, Inc.; Jennie La Prade, Pillsbury Winthrop Shaw Pittman LLP; Catherine MacDonagh, Legal Sales and Service Organization; Linda Monica, Monica & Associates, PC; Cheryl Tama Oblander, Winston & Strawn LLP; Jenny Pickell, Jenner & Block LLP; Kathleen Russo, formerly Hughes Hubbard & Reed LLP (now at FDIC); and Liisa Thomas, Winston & Strawn LLP. Courtney Murtaugh and Katherine Petrusek provided administrative assistance and we thank them for their fine service. In addition, this report was greatly benefited by the generous contribution of time and analytic services provided on a pro bono basis by CRA International, Inc., through a team lead by Felix Verdigets under the auspices of CRAI Vice President Elizabeth Davis.

[2] As compiled by The American Lawyer and reported in May and June 2007.

[3] See, e.g., U.S. Census Bureau data, as recently reported in National Law Journal, Sept. 29, 2008, vol. 31, no. 5 at 1. Also see reports of the 2006 and 2007 Surveys conducted by NAWL, at www.nawl.org.

[4] As of May 2008, the legal services sector had shed 9700 positions in the preceding twelve months. http://amlawdaily.typepad.com/amlawdaily/2008/06/legal-sector-lo.html . Since then, there have been highly publicized downsizings among AmLaw 200 firms. See, e.g., National Law Journal, Oct. 20, 2008, vol. 31, no. 8 at 10 (describing layoffs of partners and/or associates at Orrick, Herrington & Sutcliffe; Katten Muchin Rosenman ; Sonnenschein Nath & Rosenthal; Clifford Chance; and the dissolution of Heller Ehrman).

[5] Available at http://www.nawl.org/Assets/Summit+Report+2008.pdf.

[6] We asked specifically about percentages of lawyers who were: Black/African American; Hispanic/Latino; White/Caucasian; Asian; Native Hawaiian/Other Asian Pacific; American Indian/Alaska Native American; or two or more races. Because small percentages in any given category made analyses based on a given racial/ethnic group statistically unreliable, for this Report we concentrated on analyzing all lawyers of color combined.

[7] Most notably, data compiled annually by the National Association for Law Placement, www.nalp.org. See also *A Closer Look at Women and Minorities in Law Firms—By Race and Ethnicity* (NALP Bulletin, February 2008).

[8] See http://www.abanet.org/legaled/statistics/stats.html.

[9] We observed no meaningful differences by law firm structure.

[10] See, e.g., *Visible Invisibility: Women of Color in Law Firms*, ABA Commission on Women (2006).

[11] 11.1% associates compared to 1.4% equity partners or roughly an 8 to 1 ratio.

[12] 35% associates compared to 14% partners or roughly a 2 ½ to 1 ratio.

[13] We also recognize that one factor in the reduced numbers at the equity level may reflect a smaller pipeline of minority lawyers in decades past. Minorities across all ages comprise some 11% of lawyers in the U.S. See 2000 U.S. Census, Bureau of the Census, Lawyer Demographics as compiled by the American Bar Association Market Research Department (© 2008). However, in the younger cohorts, there has been a large enough pool of women lawyers of color graduating from law schools that the numbers for equity partner should be better than they are today.

[14] *See From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, ABA Commission on Women (2008).

[15] Because U.S. law firms are not public companies, we are unable to determine the historical return to equity partners of their capital investments in the firm. Nevertheless, even the most modestly-compensated equity partner who is compensated on an equity basis comes out ahead of a fixed compensation partner who stands to risk the loss of her contributed capital if the firm fails, and who does not fully participate in the upside when the firm is profitable.

[16] See section of this report discussing the market for lateral equity partners.

[17] Anecdotally, it is certainly possible that an attorney, upon being promoted to equity partner, only learns for the first time that s/he will have to make a significant capital investment but not share in firm profits.

[18] Called by such names as the Executive Committee, Policy Committee, Management Committee, and others.

[19] V. Kramer, et. al., *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance* (Executive Summary) (2006), http://www.wcwonline.org/component/page,shop.getfile/file_id,21/product_id,1113/option,com_virtuemart/Itemid,175.

[20] Id.

[21] Our compensation statistics comparisons are based on data about median income within a given firm for a given lawyer position. When we speak of income within the average firm for a given category of lawyer, we are referring to the average median income for the particular lawyer category.

[22] It is possible, though, that the gender difference between male and female associates reflects the loss over time of women lawyers within the "associate" category, so that there is a greater number of senior male associates (who are presumably higher earners based on seniority) than senior women associates.

[23] When we speak of a "lateral" lawyer, we mean a lawyer who started practice in a different firm from his or her current firm.

[24] There is a similar pattern, but not as pronounced, for male equity partners in different types of firms: home-grown men represent 35% of new partners at one-tier firms, 22% of new partners at two-tier firms, and 21% of new partners at mixed-tier firms.

[25] See "*Navigating the Bridges to Partnership*", NALP Foundation (2007); New York City Bar Committee on Women in the Profession, "*Best Practices for the Hiring, Training, Retention and Advancing of Women Attorneys*" (2006); NAWL Summit Report at 10-12. As an example, one area where having a mentor might be a substantial advantage is for those women on a part-time schedule who are working toward partnership. Those are tricky waters to navigate. Women who have successfully worked part-time and become partners are in a unique position to mentor other women encountering the same challenges. Although the part-time years are usually few for women when viewed as part of a lifetime career, they are often critical to the advancement and promotion (and retention for that matter) of women in law firms.

[26] We expect that many firms try to match junior women with senior women mentors. As noted in the NAWL Summit Report at 12, that strategy has both advantages and disadvantages, one of which is that typically, there are not enough senior women available to act as mentors to the pool of junior women within the firm.

[27] NAWL Summit Report at 17-22.

[28] Alice H. Eagly and Linda L. Carli, *Women and the Labyrinth of Leadership*, Harvard Business Review (Sept. 2007 at 62-71); Cynthia Fuchs Epstein, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 Fordham Law Rev. 291 (1995)

[29] The list of the nation's largest 200 firms was published by American Lawyer in 2007 and was the basis for the population of firms surveyed in early 2008. Other data about these firms was obtained from lists published in "The AmLaw 100", American Lawyer May 2007, and "The AmLaw 200", *American Lawyer*, June 2007.

Breaking Into The Marital Home To Break Up Domestic Violence: Fourth Amendment Analysis Of "Disputed Permission"

By Amanda Jane Proctor

Editor's Note: The ABA Commission on Domestic Violence holds a writing competition each year for law students to submit essay on issues relating to domestic violence. The essay contest winner for 2008 is Amanda Jane Proctor, who is originally from Brandon, Mississippi. She received a Bachelor of Science in Mathematics and a Bachelor of Arts in English from the University of Mississippi. Amanda is currently in her third year at the University of Mississippi School of Law and is ranked first in her class. After graduation, Amanda will join Wright Law Firm in Ridgeland, Mississippi, where she will practice family law.

I. Introduction

In an idyllic world, married couples would live together in blissful harmony in a home that is their castle. Spouses would share common interests geared toward preserving their marital partnership and would naturally agree on whom could enter their abode. However, in the real world, some marriages are characterized by domestic violence; when police officers come knocking at their door, the officers may be met at the threshold by both an abused wife who consents to police entry and her husband who objects—otherwise known as "disputed permission."[1] Under such circumstances, the Supreme Court has held that a warrantless search may not be justified as to the husband on the basis on the wife's consent.[2] However, police entry is not necessarily barred if the search is otherwise rendered reasonable, for example by exigent circumstances.[3] I will contend that the wife's consent, while not dispositive, should have some weight in determining whether exigent circumstances justify the police entry.

Section A of this paper will review origins of third-party consent and exigent circumstances in Supreme Court precedent and provide categorizations of what constitutes exigent circumstances. Section B will analyze how the Supreme Court's recent decisions in *Georgia v. Randolph* and *Brigham City, Utah v. Stuart* have altered these doctrines, and section C will describe why the nature of domestic violence justifies giving weight to a victim's consent in the exigent circumstances calculation.

II. Discussion

A. The Origins of Third-Party Consent and Exigent Circumstances

It is an elementary concept of Fourth Amendment jurisprudence that police entry into a person's house without a warrant is *per se* unreasonable, absent certain well-defined exceptions.[4] One well-recognized exception is that a search pursuant to the voluntary consent of the person whose property is searched to obtain evidence against him is valid under the Fourth Amendment.[5] The Supreme Court first addressed whether the doctrine of consent extends to third parties in *United States v. Matlock*.[6] In *Matlock*, the Supreme Court held that search pursuant to the voluntary consent of an occupant who shares common authority over the property is valid against any absent, non-consenting co-occupant.[7] The *Matlock* Court reasoned that co-occupants' mutual use of the property through joint access or control for most purposes renders a search pursuant to one co-occupant's consent reasonable because each has assumed the risk that the other might permit a search and that each has the right to do so.[8] Sixteen years later, in *Illinois v. Rodriguez*,[9] the Supreme Court held that the doctrine of third-party consent also applies to persons who are reasonably believed to share common authority over the property but who in fact do not.[10] In the wake of *Matlock* and *Rodriquez*, lower courts found no difficulties in applying this same doctrine to cases of "disputed permission": the majority of state courts and all of the Courts of Appeals addressing the issue found that third-party consent was also valid over the present objection of a co-occupant.[11]

Aside from third-party consent, another exception to the Fourth Amendment warrant requirement is the doctrine of exigent circumstances.[12] In *Mincey v. Arizona*, the Supreme Court described this doctrine as when "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment."[13] Recognized exigencies include

the need to avoid destruction of evidence during the time necessary to obtain a warrant and the need to protect the safety of officers or others from danger.[14] The *Mincey* Court elaborated on the latter exigency, explaining that police officers may enter and search a home without a warrant when they reasonably believe someone within needs protection from serious injury or immediate aid, and during the course of such search, officers may legitimately seize any evidence within plain view.[15] However, the warrantless search must still be "strictly circumscribed by the exigencies which justify its initiation."[16]

Some confusion has arisen in lower courts over the distinction between exigent circumstances and something called the "emergency aid doctrine."[17] Traditionally, exigent circumstances must have been accompanied by probable cause to justify police entry;[18] however, some courts described the emergency aid doctrine as a subset of exigent circumstances when the police reasonably believe that an occupant needs immediate aid or assistance but have no probable cause.[19] In domestic violence cases, the distinction between the two doctrines often collapses because the same facts that give rise to the exigency also provide probable cause of a suspected crime.[20] Thus, under the application of either doctrine, the outcomes generally have been the same.[21]

The government bears a heavy burden in proving that exigent circumstances justify the police entry,[22] and the inquiry is necessarily fact-based.[23] However, the following circumstances have supported a finding of exigencies in cases of domestic violence: sounds of domestic violence heard by the police,[24] blood or other signs of physical injury possibly requiring medical attention,[25] a known history of domestic violence,[26] signs of tumult in the form of property damage,[27] an inability to assess the condition of an alleged victim inside the premises,[28] and when the suspect has demonstrated a willingness to use firearms.[29] While an exigency is unlikely to exist if the victim has left the premises or is under police protection,[30] courts differ over whether the threat that an imprisoned abuser may shortly return to the home creates an exigency.[31]

One problematic issue is whether emergency calls constitute an exigency justifying police entry, especially since "911 calls are the predominant means of communicating emergency situations."[32] At least two circuits hold that a 911 call alone creates exigent circumstances.[33] Others courts decline to follow such a rule.[34] Among these latter courts exists a marked continuum of circumstances that may constitute an exigency: anonymous 911 calls are comparatively unreliable and unlikely to be exigencies,[35] identified callers have more credibility,[36] as do emergency calls confirmed by people present on the scene,[37] 911 calls leading to scenes with distraught individuals present are likely exigencies,[38] and 911 calls from neighbors corroborated by police observations are doubtless exigencies.[39]

While in most cases "[c]ourts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer's belief that warrantless entry was justified by exigent circumstances,"[40] at other times courts seem less inclined to defer to police judgment. For example, in *United States v. Davis*, the Tenth Circuit found that exigent circumstances did not justify police entry.[41] The court relied on these facts: (1) the officers, who were responding to an alleged domestic disturbance, did not observe the male occupant, Davis, acting in a threatening or aggressive manner, (2) the woman occupant, Coleman, appeared at the door without any signs of harm, (3) both occupants attempted to keep the officers outside, and (4) the officers did not believe Davis had any prior history of violence.[42] On the other hand, the facts also indicated that Davis had bloodshot eyes and alcohol on his breath, that Davis initially lied to the officers, telling them Coleman was not present, and that Davis and Coleman presented differing accounts—he stated the noise had come from his disciplining his child while she stated they had been arguing.[43] Moreover, Coleman tried to stop Davis from closing the door on the police, but Davis ordered her out of the house; he then retreated into the house, prompting the police to enter because they thought he might be going for a weapon.[44] These troubling facts did not dissuade the Tenth Circuit from holding that exigent circumstances did not justify the police entry.[45] The Tenth Circuit was especially persuaded by the fact that the officers could have assessed the alleged victim's condition without any entry into the home and that the officers knew Davis had a child and should have felt no threat when he retreated into the home to retrieve the child.[46]

Obviously, exigent circumstances as a possible justification for warrantless police entry is a well-developed doctrine in domestic violence cases. However, prior to 2006, many courts found no need to resort to an exigent circumstances analysis as warrantless police entry was often justified by the consent of the victim,[47] even when the abuser was present and objecting.[48] Then, in early 2006, the Supreme Court altered the landscape of third-party consent by ruling on the

issue of disputed permission in *Georgia v. Randolph*. Shortly thereafter, the Supreme Court also reevaluated the application of exigent circumstances in cases of domestic violence in *Brigham City, Utah v. Stuart*.

B. The Supreme Court Readdresses Third-Party Consent and Exigent Circumstances

In *Georgia v. Randolph*, police officers responded to Janet Randolph's complaint that her estranged husband, Scott Randolph, took their son away after a domestic dispute.[49] When the officers arrived at the Randolph residence, Janet told them Scott was a cocaine user. Scott arrived shortly thereafter, denied any cocaine use, and stated he had dropped their son off at a neighbor's house.[50] Janet left briefly to retrieve her son and upon her return, again alleged that Scott was a drug user and volunteered that evidence of drugs was in the house.[51] When the officers asked for permission to search the premises, Scott unequivocally refused, but Janet consented.[52] The Supreme Court granted certiorari in order to address this issue of disputed permission and held that the warrantless search of a shared dwelling over the express objection of a physically present co-occupant cannot be justified as reasonable as to him on the basis of a co-occupant's consent.[53]

The *Randolph* Court re-read *Matlock* from the perspective of a visitor seeking entry, reasoning that a visitor has a common understanding based on social expectations that a present occupant may admit him, even though an absent co-occupant may be nonconsenting.[54] Thus, a visitor is entitled to rely on the co-occupant's assumption of risk that another occupant may admit someone in his absence.[55] However, co-habitation is not "privacy waived for all purposes."[56] When, as in *Randolph*, a visitor is faced with disputed permission—an invitation to enter from one occupant and a command to stay out from another present occupant of equal authority, the visitor has no such common understanding of which occupant has the right to prevail and, thus, would not enter.[57] Therefore, a present co-occupant's express refusal to permit entry prevails over the co-occupant's consent,[58] necessitating some other justification for the officers' warrantless entry. Through this re-reasoning of precedent, *Randolph* was able to leave *Matlock* and *Rodriguez* intact such that an occupant's consent is still sufficient justification if the nonconsenting co-occupant is absent or if his permission to search is simply not requested.[59]

The *Randolph* Court also emphasized that its holding was limiting merely evidentiary searches[60] and had "no bearing on the capacity of the police to protect domestic victims."[61] Despite a present occupant's objection, police may lawfully make a warrantless entry into the home if justified by exigent circumstances; the *Randolph* Court defined such exigent circumstances as when officers have good reason to believe that a threat of domestic violence exists as well as when officers enter to protect a domestic violence victim while she collects her belongings.[62]

Two months after *Randolph*, the Supreme Court reaffirmed its recognition of the exigent circumstances doctrine in *Brigham City, Utah v. Stuart*. In *Brigham City*, officers responding to a 3 a.m. call about a loud party at a residence heard shouting inside and saw two minors drinking beer in the backyard.[63] Through the screen door and windows, the officers saw four adults attempting to restrain a minor, who then broke free and struck one of the adults, causing him to spit blood in the sink.[64] The other adults forcefully pushed the minor against a refrigerator in their attempt to restrain him.[65] One of the officers then opened the screen door and announced their presence.[66] When this went unnoticed, the officer entered the residence, he repeated his announcement, and the altercation subsided.[67] The Supreme Court held that the warrantless police entry was justified under its reformulation of the exigent circumstances doctrine.[68]

The *Brigham City* Court redefined exigent circumstances to exist when officers have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury and when the manner of the warrantless entry is also reasonable.[69] The Supreme Court also resolved the previous disagreement among lower courts over whether the exigency standard was objective or subjective[70] and held that the officer's subjective motivation is irrelevant as long as the circumstances viewed objectively justify police entry.[71] In addition, the Supreme Court emphasized that exigent circumstances has no threshold requirement of a certain gravity of injury—at least when the police are entering in a preventive capacity.[72] *Brigham City* firmly established that ongoing physical violence within the home is a category falling within the exigent circumstances exception that justifies warrantless police entry.[73]

The net result of *Randolph* and *Brigham City* is that when officers at the home of a domestic disturbance are faced with disputed permission, warrantless entry cannot be justified by the victim's consent but must be able to satisfy the Supreme Court's new definition of exigent circumstances. However, in the wake of these two decisions, many lower courts continue to justify warrantless police entry on the basis of the victim's consent without having to resort to an exigent

circumstances analysis. Lower courts have found it all too easy to distinguish the narrowly drawn *Randolph* holding on the following bases: the potentially nonconsenting co-occupant was absent,[74] the co-occupant's objection's was made off-site,[75] the present co-occupant never objected,[76] the co-occupant's objection was not express,[77] the objection was too soon,[78] the co-occupant did not object but rather abdicated authority over the property,[79] the co-occupant was present but his permission to search was not requested,[80] or amazingly because the officer entering the home pursuant to an occupant's consent was simply unaware that a present co-occupant had objected.[81] Courts also routinely reject arguments that the police procured a co-occupant's absence in order to avoid his potential objection to the police search.[82] On the other hand, some lower courts have extended *Randolph*'s holding to arguably ambiguous objections[83] and to later objections.[84]

In an interesting development, *Randolph*, which was a third-party consent case, has spawned decisions citing "community caretaking functions" as a potential exigency justifying warrantless police entry into a home to protect a domestic violence victim as she retrieves her belongings.[85] While commentators believe this doctrine will accord law enforcement "new power" in protecting domestic violence victims,[86] case law demonstrates that the scope of the police entry must be narrowly tailored to protecting the potential victim with the minimal amount of intrusion. For example, entry is not justified when the abuser is absent and his arrival is not imminent,[87] and police cannot venture into other areas of the home when the abuser is contained in one room.[88] On the other hand, police entry is justified if the police fear that the woman who was gathering her belongings inside is hurt and in need of assistance, even if the abuser has been located outside.[89] Thus, the community caretaking function of law enforcement can easily bleed into the traditional exigent circumstances doctrine.

The newest variation on the traditional exigent circumstances doctrine after *Brigham City* is that the officers need not actually see someone inside the house in immediate danger; rather, exigent circumstances are satisfied if the officers have an objectively reasonable basis for believing that someone, including themselves, might be in danger.[90] On the other hand, a least one circuit has held that an officer's "near total lack of information regarding the situation inside…the home (including specifically, whether [the person sought] was present there)" distinguishes *Brigham City* such that exigent circumstances do not exist.[91] Nevertheless, lower courts are usually generous in applying exigent circumstances to permit police entry to protect and aid domestic violence victims and have craftily distinguishing *Randolph*'s harsh rule such that dispositive weight may be given to the victim's consent to search. However, in troubling cases like *United States v. Davis*, where police entry was not justified by an exigency, or in merely evidentiary searches where the victim's consent cannot prevail because of disputed permission, then consenting victims are left with the alternative means of assisting law enforcement that were offered in *Randolph*.

C. Why the Randolph Alternatives are Insufficient and Why Weight Should be Given to a Victim's Invitation to Enter

The *Randolph* Court assures that those who wish to expose the crimes of their co-occupants and deflect any suspicion raised by co-habitation can, on their own initiative, deliver evidence or provide information to officers, who might then be able to go before a magistrate and obtain a search warrant, thereby comporting with the Fourth Amendment's warrant preference.[92] Unfortunately, neither of the *Randolph* Court's alternatives[93] are likely to be exercised by domestic violence victims who are often uncooperative and who have learned from the cycle of violence under which they suffer that affirmative efforts to assist law enforcement is not in their best interests.

Victims of domestic violence live in a "continuing 'state of siege'" from abusive behavior that often includes physical, sexual, and psychological abuse.[94] Each of the three phases of domestic violence presents the victim with incentive to avoid seeking police assistance. The first phase, tension-building, is characterized by the victim's repeated attempts to avoid an escalation of the violence through pacification and by covering for the batterer in order to win favor.[95] The second phase of an acute battering incident is when women are subjected to brutal violence, usually lasting from two to twenty-four hours.[96] During this phase, the victim has no control, feels psychologically trapped, and will often wait several days to seek medical attention, if at all.[97] The third phase, called the honeymoon period, is "a tranquil period of loving contribution" where the spouses exhibit emotional dependence upon each other —she depends on his caring behavior and he depends on her forgiveness.[98]

Not only does the nature of domestic violence create disincentives for victims to seek out police assistance, but victims may be uncooperative because they are intimidated by their abusive partners and understand that any attempt to break the cycle of violence often increases their short-term danger.[99] Thus, even if officers come knocking at her door, a victim will not be forthcoming

about the harms she suffered or is likely to suffer at the hands of an aggressor who remains on the scene, leaving an interview outside the home an insufficient alternative.[100] The *Randolph* majority concedes the point, stating "we understand that a battered individual will be afraid to express fear candidly," but argues that does not justify crediting consent over denial because it would distort the Fourth Amendment with little or no effect on domestic abuse investigations.[101]

However, the *Randolph* Court fails to recognize that victims' fear of retaliation does affect domestic abuse investigations by foreclosing exercise of its offered alternatives. The majority's contention that a fearful, consenting co-occupant can simply walk outside the home and seek police protection without any danger of being restrained by the objecting tenant,[102] similarly fails to recognize the psychological "restraint" that batterers exercise over their victims that may prevent them from leaving.[103] Moreover, leaving the home is a dangerous alternative to a woman, who is more likely to be killed by her partner when she has separated from him.[104]

In addition to fear of physical harm, a victim of domestic violence may also fail to utilize the *Randolph* alternatives because seeking police assistance to arrest and/or escape from her abuser would have other negative consequences. For example, the victim may be financially dependent on her abuser and fear that she can not provide for herself and her children if he was arrested or withdrew his support because of her compliance with police.[105] If the victim leaves, her abuser may also withhold child support payments and harass her employer, neighbors, and babysitters such that the victim is left without a job, home, or means to care for her children.[106] Moreover, compliance with the police would not prevent an abuser from obtaining custody over their children.[107] Thus, victims of domestic violence may be uncooperative with law enforcement efforts because they have good reason to believe that cooperation would do them more harm than good.

Because victims of domestic violence will not use the *Randolph* alternatives to seek out police assistance and because *Randolph* holds that an express objection prevails over consent in cases of disputed permission, victims must rely on exigent circumstances to justify warrantless police entry. Even though exigencies cover a wide range of domestic disturbances,[108] this should not prevent a victim's consent from having any weight in the exigency calculation. The *Randolph* Court argued that its bright-line rule was necessary for clarity and practicality,[109] but it is contrary to how "[i]n determining whether an entry is objectively reasonable, the Supreme Court has 'consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry,' and looked to the totality of the circumstances."[110] In fact, Justice Breyer's concurrence in *Randolph* contends that the Fourth Amendment does not insist upon bright-line rules, but rather that reasonableness is determined by the totality of circumstances and may include evaluation of victim's consent.[111] Moreover, because *Randolph* was a case addressing third-party consent and not exigent circumstances, its insistence that consent "adds nothing" should be limited to third-party consent analyses and should not extend to exigent circumstances, which is a separate exception to the Fourth Amendment's warrant preference.

There are also various affirmative reasons why a domestic violence victim's consent to police entry should have weight in determining whether exigent circumstances exist. First, studies have shown that arresting the abuser is the best method of stopping domestic violence,[112] and to make an arrest, officers need evidence. As the preceding discussion demonstrates, not only are victims initially uncooperative, but many victims who are initially cooperative become uncooperative,[113] and are unwilling to assist with prosecutorial efforts after an abuser's arrest.[114] However, police may easily obtain a victim's consent to police entry at the scene because "a victim is typically 'cooperative' immediately after an acute episode of violence—at least to the extent that she needs police assistance to protect her from further injury."[115] Thus, the victim's consent can indicate the availability of rapidly evaporating evidence in the form of a victim's immediate willingness to speak that might not otherwise exist.[116] Her consent may also represent access to the home to gather physical evidence that her abuser may easily dispose of in the meantime if the police wait until a search warrant is obtained.[117] Because "exigency" by definition includes the need to avoid destruction of evidence during the time necessary to obtain a warrant,[118] and because the cycle of violence under which a domestic victim suffers rapidly destroys her willingness to cooperate,[119] officers should be able to weigh a victim's consent to police entry in the exigency calculation.

A second justification for giving weight to a victim's consent is that the objecting abuser may view such an invitation for police entry as an attempt by the victim to separate from her abuser or to increase control over her life—events which often escalate the violence.[120] If officers fail to heed this danger of escalation and fail to take a suspect into custody, the fact that the victim resides with her abuser

will necessarily result in a continuation of the conduct that triggered the involvement of law enforcement.[121]

Third, the victim's content can reflect her subjective fear about being left alone with the abuser.[122] A domestic violence victim is the intimate partner of her abuser and familiar with the cycle of violence and, thus, may reasonably perceive herself to be in imminent danger in situations where such danger is unapparent to outside observers.[123] Because a victim may attempt to communicate her heightened awareness of her personal danger through her consent to police entry, officers should be able to weigh whether her consent adds to the objectively perceived exigency of the occasion.

Fourth, in cases where the woman is an alleged victim of domestic violence and she has denied police entry into her home, courts have generally permitted officers to "reasonably consider whether the victim is acting out of fear or intimidation, or out of some desire to protect the abuser, both common syndromes."[124] Because officers can weigh the victim's denial of police entry in the exigency calculation and choose to disregard it, officers should similarly be permitted to weigh a victim's invitation to enter and determine whether it gives credit to their belief that exigent circumstances exist.

Some critics may claim that weighing the victim's consent is a disguised *per se* rule that will result in a victim's consent always prevailing over her abuser's objection or that it will significantly lower the government's burden of proving an exigency in domestic violence cases.[125] However, permitting officers to weigh a victim's consent as part of the exigency determination does not create a *per se* rule nor alter the government's burden because consent would assist the government in meeting its exigency burden only when the consent itself indicates exigent circumstances. For example, if a woman's consent to police entry seems motivated by her desire to retaliate against a cheating boyfriend who has contraband hidden in the house, then her consent would not add to the exigency calculation. On the other hand, various factors could lead officers to believe that a woman's consent reflects the existence of exigent circumstances, including the wording of the invitation, the victim's tone of voice, and whether the invitation was made without prompting or in response to a request from police. For example, a woman's unprompted request in a shaky voice that officers "please come inside right away" weighs more towards an exigency than a woman's drawling response to a police request for entry that "yeah, sure, you can come on in."

Finally, I am particularly persuaded by the Eleventh Circuit's argument in *United States v. Backus* that "[t]o begin with, expectations of privacy must be reasonable to be honored by the law…and it is not reasonable to expect the law to honor an expectation of a wrongdoer that is grounded in events brought about by his wrongdoing."[126] In *Backus*, a man's verbal and physical abuse had driven his wife away six months prior to the police search, but the Eleventh Circuit held that his wrongdoing did not invalidate his wife's retention of enough common authority over the home to consent to a police search.[127] In domestic violence cases where officers are faced with disputed permission, the cycle of violence inflicted by the abuser upon his partner has forced her to be uncooperative with law enforcement and foreclosed any other option she had of bringing his wrongdoing to light. Thus, when an abuser engages in suspicious conduct that brings officers on his door, it is not reasonable that his expectation of privacy be given absolute dominion without giving due consideration to the consent of his co-occupant in the exigency calculation.

III. Conclusion

When police arriving at the home of an alleged domestic disturbance are faced with disputed permission to enter, officers can no longer validate a warrantless police entry on the basis of the victim's consent. Instead, the government must be able to satisfy its heavy burden of proving exigent circumstances. The *Brigham City* exigency standard and the community caretaking functions language from *Randolph* may have expanded the reach of the exigent circumstances doctrine, but that expansion is not enough. In borderline cases such as *United States v. Davis* or anonymous 911 calls, the facts may objectively indicate circumstances just short of an exigency, but a victim's consent in opposition to her co-occupant's objection may be enough to tip the scales in the government's favor. In those cases, it is necessary that a victim's consent have weight in the exigency determination because *Randolph* has foreclosed its evaluation under a third-party consent doctrine and because *Randolph*'s offered alternatives have also been foreclosed by the cycle of violence inflicted upon the victim by her abuser. Thus, exigency is the only place in the Fourth Amendment analysis where a victim's voice is left to be heard. Her voice should not be silenced forever by *Randolph*, but rather should find its home in the exigent circumstances determination, thereby giving victims of domestic violence the small comfort, that while their voice doesn't mean everything, it doesn't mean nothing.

[1] The term "disputed permission" comes from the majority opinion in *Georgia v. Randolph*, 547 U.S. 103, 115 (2006).

[2] *Randolph*, 547 U.S. at 106.

[3] *See infra* note 62 and accompanying text.

[4] *E.g.,* Brigham City, Utah v. Stuart, 547 U.S. 398 403 (2006); *Randolph*, 547 U.S. at 106; Mincey v. Arizona, 437 U.S. 385, 390 (1978).

[5] *Randolph*, 547 U.S. at 109 (citing Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973)).

[6] 415 U.S. 164 (1974).

[7] United States v. Matlock, 415 U.S. 164, 170-71 (1974). In *Matlock*, Mrs. Graff consented to police search of Matlock's bedroom after he had been arrested in his front yard. *Id*. at 166. The Supreme Court found that Mrs. Graff had sufficient common authority over the bedroom: Mrs. Graff admitted both she and Matlock occupied the bedroom, both were seen retiring to the bedroom in the evenings, the room bore evidence of a woman's presence, and Matlock had previously told others they were married. *Id*. at 175-77. Thus, Mrs. Graff's consent was valid as to her absent co-occupant Matlock, who was restrained in a squad car a short distance from the house. *Id*. at 177; *Id*. at 179 (Douglas, J., dissenting).

[8] *Id*. at 172 (majority opinion). The Court also held that common authority is not justified by property law or by any property interest the third party has in the property. *Id*.

[9] Illinois v. Rodriguez, 497 U.S. 177 (1990). In *Rodriquez*, Gail Fisher summoned the police to Rodriquez's apartment, told them he had assaulted her, and consented to a police search while Rodriquez was asleep in the apartment. *Id*. at 179. The Supreme Court agreed with the lower court that Fisher had no actual common authority over the apartment as she had moved out of the apartment a month before, only occasionally spent the night when Rodriguez was also present, and was not listed on the lease nor paid rent. *Id*. at 181-82. However, the Court remanded the case for a determination of whether officers reasonably believed that Fisher had authority to consent, such that her consent would be valid as to Rodriguez. *Id*. at 189.

[10] *Id*. at 181-89. The *Rodriguez* Court's rationale piggybacks off *Matlock* by saying that when officers make a reasonable mistake in believing that a person has authority to consent to a police search the Fourth Amendment, which requires only reasonableness and not absolute correctness, is satisfied. *Id*. at 184-88.

[11] Georgia v. Randolph, 547 U.S. 103, 108 n.1 (2006).

[12] *See* Mincey v. Arizona, 437 U.S. 385, 392-94 (1978).

[13] *Id*. at 394 (citations omitted).

[14] Thacker v. City of Columbus, 328 F.3d 244, 253 (6th Cir. 2003); Fletcher v. Town of Clinton, 196 F.3d 41, 49 (1st Cir. 1999). Two other recognized exigencies are when officers are in hot pursuit of a fleeing felon and the need to prevent a suspect's escape. *Thacker*, 328 F.3d at 253; Fletcher, 196 F.3d at 49.

[15] *Id*. at 392-93. In Mincey, the Court found that no emergency or exigent circumstances justified the exhaustive four-day search of the scene of a narcotics bust and homicide when all occupants had been located and a warrant could have been easily obtained at any time without any loss of evidence. *Id*. at 387-89, 393-94.

[16] *Id*. at 393 (citing Terry v. Ohio, 392 U.S. 1, 25-26 (1968)).

[17] Deborah Tuerkheimer, *Exigency*, 49 Ariz. L. Rev. 801, 812 n.60 (2007).

[18] Tuerkheimer, *supra* note 17, at 811 n.53; *see also* United States v. Davis, 290 F.3d 1239, 1242 (10th Cir. 2002); Commonwealth v. Snow, 80 Pa. D. & C.4th 262, 274 (Pa. Com. Pl. 2006).

[19] State v. Geraghty, 163 P.3d 350, 357 (Kan. Ct. App. 2007).

[20] Tuerkheimer, *supra* note 17, at 811 n.53; *see also* United States v. Brooks, 367 F.3d 1128, 1135 (9th Cir. 2004) ("Many of the same facts that showed probable cause to suspect evidence of crime are also relevant to show [the officer's] exigent need to enter.").

[21] *See* Tuerkheimer, *supra* note 17, at 813 n.64.

[22] *Snow*, 80 Pa. D. & C.4th at 274.

[23] Davis, 290 F.3d at 1242; United States v. Bartelho, 71 F.3d 436, 442 (1st Cir. 1995). Some courts consider such factors as the gravity of the underlying offense, whether delay would threaten the police or public safety, whether the delay necessary to obtain a warrant would likely result in destruction of evidence, *Bartelho*, 71 F.3d at 442, as well as the peaceful circumstances of the entry, the likelihood the suspect will escape, and reason to believe the suspect is armed and in the premise to be entered, Moore v. Andreno, 505 F.3d 203, 213 (2d Cir. 2007).

[24] United States v. Barone, 330 F.2d 543, 544 (2d Cir. 1964) (exigency existed when a patrolman and two others heard screams emanating from within a rooming house at 1:50 a.m.); State v. Applegate, 626 N.E.2d 942, 944 (Ohio 1994) (exigency existed when police responding to an emergency call heard sounds of violence from within).

[25] Thacker v. City of Columbus, 328 F.3d 244, 254-55 (6th Cir. 2003) (exigency existed when a belligerent and intoxicated male requested medical assistance for the bleeding cut on his hand; even though he denied police entry, the uncertainty of the situation, including that the man refused to explain how he was injured, that it was unclear who else was in the house, and that the police may need to safeguard the attending paramedics justified entry); United States v. Booth, 455 A.2d 1351,1352, 1356 (D.C. 1983) (officer responding to a reported assault in progress knocked on the door and was met with a man with dried blood on his face, who would not explain where it came from; the officer was justified in crossing the threshold to ask the occupants of the living room who called the police and if anyone needed assistance and in going upstairs when another male with blood on his face appeared and summoned the officer upstairs); State v. Dillon, 738 N.W. 2d 57, 58-59, 62-63 (So. Da. 2007) (blood drops and no response from within the dwelling where a reported stabbing victim was allegedly located and where people could be heard inside supported exigency); State v. Lynd, 771 P.2d 770, 771, 773 (Wash. Ct. App. 1989) (exigency existed when police responding to a 911 hang-up call found a man with a cut on his face loading things into an automobile; the man admitted he argued with and hit his wife, but claimed she had since left the house and objected to the police entry); City of Laramie v. Hysong, 808 P.2d 199, 201, 204 (Wy. 1991) (exigency was an alternative justification for warrantless entry because two store clerks' report that a man jerked a child out of shopping cart, dangled the child by his arm, and repeatedly struck the child could have led an officer to reasonably conclude the child had an injured arm and bruises on the buttocks), *abrogated* by Georgia v. Randolph, 547 U.S. 103 (2006).

[26] Tierney v. Davidson, 133 F.3d 189, 192-93, 197-99 (2d Cir. 1998) (exigency existed when two men on the street reported they heard screaming and banging from within the residence and that there had been prior domestic altercations and when the officers saw a broken plane of glass in the front door and were met at the door by a shaken women with a red face who denied any altercation); see Drennan cited infra note 39; State v. Hyde, 268 N.E.2d 820, 820-21 (Ohio Ct. App. 1971) (exigency existed when a hysterical woman called for police assistance, one of the responding officers knew of a previous incident of domestic disturbance, and the officers heard loud noises and screams from within and were told by a crying girl on the porch to "get inside, there is trouble in there").

[27] *See Tierney* cited *supra* note 26; United States v. Brooks, 367 F.3d 1128, 1135 (9th Cir. 2004) (exigency justified police entry when officers responding to emergency call for aid, talked to a hotel guest who feared an assault was in progress and the occupant of the room confirmed that the woman who was inside had been loud, but the officers could not see her and the room was in disarray); *but see* Kucharski v. Leveille, No. 05-73669, 2007 WL 522715, at *14 (E.D. Mich. Feb. 12, 2007) (holding that a cracked windshield at a car accident scene did not rise to the level of an exigency when there were no visible injuries, other adults were present who could tend to any injured, and the impact was not severe enough to deploy the vehicle's airbag), *vacated*, 478 F. Supp. 2d 928 (E.D. Mich. 2007), *vacated*, 526 F. Supp. 2d 768 (E.D. Mich. 2007).

[28] *See Brooks* cited *supra* note 27; State v. Drennan, 101 P.3d 1218, 1224-25, 1232 (Kan. 2004) (exigency existed when neighbor reported that a man grabbed his wife, pushed her into the house, and that he heard screams, a ruckus, and then silence; one of the responding officers recalled being dispatched to the same residence for a prior domestic disturbance, and the officers received no response to their initial knocking, and then a sweaty man smelling of alcohol appeared but refused to explain where his wife was).

[29] *See Kucharski* cited *supra* note 27, at *12-14 (cataloging cases where shots fired supported exigency); United States v. Donlin, 982 F.2d 31, 34 (1st Cir. 1992) (exigency justified third police entry when the occupant of a residence, who was known to be intoxicated and violent, threatened officers with a sawed-off shotgun), *abrogated by* Georgia v. Randolph, 547 U.S. 103 (2006); Stallings v. Commonwealth, No. 2690-06-3, 2007 WL 4380109, at *4 (Va. Ct. App. Dec. 18, 2007) (exigency existed when an eleven-year-old girl staying at the residence told her aunt she was scared because a gun was in the house and when the girl's father threatened both his sister and his neighbor with a gun when each attempted to check on the girl).

[30] Root v. Gauper, 438 F.2d 361, 363, 365 (8th Cir. 1971) (police entry into home was not justified by an emergency when the victim had been already been transported to the hospital, there was no suggestion of other victims, and the officer waited until the sheriff arrived with a camera to enter the house); Commonwealth v. Snow, 80 Pa. D. & C.4th 262, 275-76 & n.8 (Pa. Com. Pl. 2006) (no exigency existed when there was clearly no immediate danger to the defendant's wife, who was apparently protected by the police or had already left the scene with their child, and when the defendant was showering and had not shown any sign of intoxication nor a threatening or violent manner that would corroborate his wife's accusations of DUI and harassment).

[31] *Compare* United States v. Henderson, No. 04 CR 697, 2006 WL 3469538, at *3 (N.D. Ill. Nov. 29 2006) (rejecting as pure speculation the government's argument that "dangerous circumstances" justified police entry because the defendant, who had been placed under arrest, stood a good chance of bonding out and returning to the house where his weapons were stored and his wife, the victim of a recent physical beating, was living), *with* United States v. Hendrix, 595 F.2d 883, 886 (D.C. Cir. 1979) (exigent circumstances and the threat to Hendrix's wife and baby were an alternative justification for police entry when because of the early hour, it would have taken at least a few hours to obtain a warrant, during which time Hendrix, who had been arrested merely for disorderly conduct, likely would have been able to secure his release, return home, and conceal or use the sawed-off shotgun on the premises), *abrogated by* Georgia v. Randolph, 547 U.S. 103 (2006).

[32] United States v. Najar, 451 F.3d 710, 719 (10th Cir. 2006) (citations omitted), *cert. denied*, 127 S. Ct. 542 (2006).

[33] United States v. Brooks, 367 F.3d 1128, 1136 (9th Cir. 2004) (noting that the Seventh and Ninth Circuits have held that a 911 call reporting a domestic emergency without more may be enough to support a warrantless search); United States v. Snipe, 515 F.3d 947, 953-54 (9th Cir. 2008) (officers responding to an emergency call from a hysterical male, who told the dispatcher to "[g]et the police over here now," were largely justified in their response by that call alone; the police were not required to verify the facts or the caller's identify before entry because that would dramatically slow emergency response time in a delay that may cost lives); State v. Greene, 784 P.2d 257, 257-59 (Ariz. 1989) (en banc) (exigency justified entry in response to family fight-domestic violence call because "[t]he call itself creates a sufficient indication that an exigency exists allowing the officer to enter a dwelling if no circumstances indicates that entry is unnecessary").

[34] Thacker v. City of Columbus, 328 F.3d 244, 254 n.2 (6th Cir. 2003) ("Gallagher's 911 call reporting an emergency, justified a police response to investigate the situation, but did not necessarily justify entry into a private home…We make no determination that exigent circumstances necessarily arise every time both a police officer and a paramedic respond to a cutting or stabbing); United States v. Davis, 290 F.3d 1239, 1244 (10th Cir. 2002) ("an officer's warrantless entry of a residence during a domestic call is not exempt from the requirement of demonstrating exigent circumstances").

[35] State v. Gooden, No. 23764, 2008 WL 186646, slip op. at *1, *4-5, 2008-Ohio-178, at ¶¶ 1, 11-13, 17 (Ohio Ct. App. Jan. 28, 2008) (anonymous tips require independent police corroboration; thus, a brief anonymous phone call reporting a fight with weapons and a woman being held against her will without any corroborating information did not justify police entry).

[36] United States v. Bartelho, 71 F.3d 436, 442 (1st Cir. 1995) (exigency justified police entry when caller identified herself, lending credibility to her report that a woman was being threatened by a man with a loaded rifle).

[37] United States v. Brooks, 367 F.3d 1128, 1135 (9th Cir. 2004) (exigency justified police entry when officers responding to emergency call for aid talked to a hotel guest who feared an assault was in progress and the occupant of the room confirmed that the woman who was inside had been loud, but the officers could not see her and the room was in disarray).

[38] United States v. Gwinn, 46 F. Supp. 2d 479, 481-83 (S.D. W. Va. 1999) (exigency justified police entry when officers responded to a mother's report that Gwinn was threatening to kill her daughter and had a gun, and when after officers arrested an intoxicated Gwinn outside, they saw through the screen door, the daughter and her baby on the couch both crying), *aff'd but criticized by* 219 F.3d 326 (4th Cir. 2000); State v. Chiampo, No. 02CA0042, 2003 WL 21078082, at *1, 2003-Ohio-2422U, at ¶ 5 (Ohio Ct. App. May 14, 2003) (exigency justified police entry when an officer responding to an emergency call for help was met at the door by a woman and her daughter who were both crying and upset).

[39] Tierney v. Davidson, 133 F.3d 189, 192-93, 197-99 (2d Cir. 1998) (exigency existed when two men on the street reported they heard screaming and banging from within the residence and that there had been prior domestic altercations and when the officers saw a broken plane of glass in the front door and were met at the door by a shaken women with a red face who denied any altercation); State v. Drennan, 101 P.3d 1218, 1224-25, 1232 (Kan. 2004) (exigency existed when neighbor reported that a man grabbed his wife, pushed her into the house, and that he heard screams, a ruckus, and then silence; one of the responding officers recalled being dispatched to the same residence for a prior domestic disturbance, and the officers received no response to their initial knocking, and then a sweaty man smelling of alcohol appeared but refused to explain where his wife was).

[40] *Tierney*, 133 F.3d at 197; *see also* Tuerkheimer, *supra* note 17, at 820.

[41] United States v. Davis, 290 F.3d 1239, 1244 (10th Cir. 2002). *Davis* was one of the cases used in Chief Justice Roberts' dissent in *Randolph* to criticize the majority's holding and to argue that exigent circumstances may not suffice to protect the safety of occupants in domestic disputes. Georgia v. Randolph, 547 U.S. 103, 140 (2006) (Roberts, C.J., dissenting).

[42] *Davis*, 290 F.3d at 1243-44.

[43] *Id.* at 1240-41, 1243.

[44] *Id.* at 1241.

[45] *Id.* at 1243-44.

[46] *Id.* at 1241, 1243. The *Randolph* majority similarly dismissed the Chief Justice Roberts' concern with *Davis* by summarily stating that "immediate harm [was] extinguished after husband 'order[ed]' wife out of the home." Georgia v. Randolph, 547 U.S. 103, 119 (2006) (majority opinion).

[47] *See* Tuerkheimer, *supra* note 17, at 806;

[48] *See supra* note 11 and accompanying text.

[49] *Randolph*, 547 U.S. at 107.

[50] *Id.*

[51] *Id.*

[52] *Id.* The police entered the home and seized a drinking straw covered with cocaine residue, which was then used to obtain a search warrant that led to the seizure of further evidence of drug use. *Id.*

[53] *Id.* at 108, 120.

[54] *Id.* at 111. In his dissent, Chief Justice Roberts criticized the majority's social expectations concept, arguing that it is a departure from any traditional Fourth Amendment inquiry. Georgia v. Randolph, 547 U.S. 103, 130 (2006) (Roberts, C.J., dissenting). Even though this concept resembles the test for whether a search has occurred or a person has standing to object to a search, which asks whether a person has a subjective expectation of privacy and whether it is one society is prepared to recognize as reasonable, it has not been applied to questions of consent. *Id.*

[55] Georgia v. Randolph, 547 U.S. 103, 111 (2006) (majority opinion).

[56] *Id.* at 115 n.4.

[57] *Id.* at 113-14.

[58] *Id.* at 106. The *Randolph* Court stressed that the co-occupant's objection is accorded "dispositive weight," such that the other's consent "adds nothing" to the government's grounds for entering and the officers have "no better claim" for entry. *Id.* at 114-15, 121.

[59] *Id.* at 121-22. The Supreme Court cautioned that while officers have no duty to seek out absent, potentially objecting co-occupants, they must not procure a co-occupant's absence in order to avoid his objection. *Id.*

[60] *Id.* at 119.

[61] *Id.* at 118.

[62] *Id.* at 118. However, the Court again emphasized that when a present co-occupant expressly objects, the victim's consent would have no bearing on this exigency justification because "the justification then would be the personal risk, the threats to life or limb, not the disputed invitation." *Id.* at 113.

[63] Brigham City, Utah v. Stuart, 547 U.S. 398, 400-01 (2006).

[64] *Id.* at 401.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.* at 403-06.

[69] *Id.* at 403, 406. The police entry in *Brigham City* passed the second part of this exigency test because the Court reasoned that the officer's announcement of his presence was at least equivalent to a knock, and that such a knock in the midst of the altercation would have been futile anyway. *Id.* at 1949. The officers were not required "to stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence." *Id.*

[70] *Id.* at 403.

[71] *Id.* at 404.

[72] *Id.* at 405-06 ("Nothing in the Fourth Amendment required them to wait until another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering"); *see also* Tuerkheimer, *supra* note 17, at 811.

[73] *Brigham City*, 547 U.S. at 405-06.

[74] United States v. Crosbie, No. 06-047-CG, 2006 WL 1663667, at *1-2 (S.D. Ala. June 9, 2006) (*Randolph* does not extend to the absent defendant who had been ordered out of the house by his wife; her consent as the only occupant present was valid); United States v. McCurdy, 480 F. Supp. 2d 380, 390 n.9 (D. Me. 2007) (*Randolph* does not extend to the absent defendant who was in police custody at the time of search); *see also* cases cited *infra* note 82.

[75] United States v. Hudspeth, No. 05-3316, 2008 WL 637638, at *1-2, 6-7 (8th Cir. Mar. 11, 2008) (en banc) (husband's earlier objection given at his place of business did not invalidate his wife's consent given at their home after the husband had been arrested and taken to jail), *reinstating in part on reh'g* 459 F.3d 922 (8th Cir. 2006); *but see* United States v. Henderson, No. 04 CR 697, 2006 WL 3469538, at *2 (N.D. Ill. Nov. 29, 2006) (citing with approval that "the same constitutional principles underlying the Supreme Court's concerns in *Randolph* apply regardless of whether the non-consenting co-tenant is physically present at the residence…or…off-site" (quoting United States v. Hudspeth, 459 F.3d 922, 930-31 (8th Cir. 2006), *reinstated in part on reh'g by* No. 05-3316, 2008 WL 637638 (8th Cir. Mar. 11, 2008) (en banc))).

[76] United States v. Hilliard, 490 F.3d 635, 639, 640 n.5 (8th Cir. 2007) (no evidence Hilliard objected or expressly refused consent to police entry); United States v. Davis, No. 1:06-CR-69, 2006 WL 2644987, at * 2 (W.D. Mich. Sept. 14, 2006) (Davis was present but never objected to police entry because he was asleep); United States v. Cantrell, No. 04-03127-02-CR-S-ODS, 2006 WL 3391406, at *3 (W.D. Mo. Nov. 22, 2006) (no evidence Cantrell expressly or implicitly objected to police entry); Commonwealth v. Ocasio, No. 06-P-1831, 2008 WL 522946, at *3 (Mass. App. Ct. Feb. 29, 2008) (defendant was at the threshold but no evidence of any protest or objection).

[77] United States v. McKerrell, 491 F.3d 1221, 1222, 1226-27 (10th Cir. 2007) (a man barricading himself in his residence to avoid lawful arrest was not an express objection to search as required by *Randolph* when his sole concern was to avoid arrest; he never told officers to stay out of his home, and he only spoke of the validity of the arrest warrants during telephone negotiations), *cert. denied*, 128 S. Ct. 553 (2007); State v. Clavette, 969 So. 2d 463, 464-66 (D.C. Fla. 2007) (occupant's refusal to respond to police entreaties by telephone and public address system prior to entry did not constitute an express objection as required by *Randolph*); People v. Lapworth, 730 N.W.2d 258, 260 (Mich. Ct. App. 2007) (Lapworth's invocation of the right to remain silent or the right to counsel following *Miranda* warnings was not a tacit objection, but, regardless, a tacit objection would be insufficient under *Randolph*), *appeal denied*, 732 N.W.2d 543 (2007).

[78] United States v. Groves, No. 3:04-CR-76, 2007 WL 171916, slip op. at *6 (N.D. Ind. Jan. 11, 2007) (girlfriend's consent to search when Groves was not at home was sufficient justification and not invalidated by the fact that Groves had refused a police request to search two weeks prior). In one noteworthy case, *People v. Olmo*, the defendant's objection given before he was arrested did not invalidate his wife's consent given a short time later when the defendant had already been taken to the police department for processing. People v. Olmo, 846 N.Y.S.2d 568, 570-71 (N.Y. Sup. Ct. 2008). The court reasoned that *Randolph* was meant to avoid confrontations between co-occupants disputing police entry. Here, there was no such risk, and, thus, there was "no good reason in law, custom, policy or precedent why defendant's wife should not…have the right to cooperate with the police." *Id.* at 571.

[79] United States v. Reed, No. 3:06-CR-75 RM, 2006 WL 2252515, at *5 (N.D. Ind. Aug. 3, 2006) (*Randolph* does not extend to withheld consent in the form of Reed's false claim "that's not my place. I can't give you permission for that"); United States v. Murphy, 437 F. Supp. 2d 1184, 1192-93 (D. Kan. 2006) (*Randolph* would not extend to Murphy's statement "[y]ou cannot go in there. It's not my home, but none gave you permission. It belongs to my mother," which was not an objection but rather Murphy's erroneous belief that his mother had not consented and a disavowal of his authority to consent); United States v. Sandoval-Espana, 459 F. Supp. 2d 121, 135-36 (D. R.I. 2006) (*Randolph* does not extend to a response of "it's not mine," which was an abdication of authority over the vehicle and not an express refusal of consent).

[80] United States v. Alama, 486 F.3d 1062, 1065-67 (8th Cir. 2007) (co-occupant's consent was valid when the defendant, hidden inside the house, did not participate in the request to search colloquy, was arrested and removed from the scene when he finally emerged, and then the search commenced); State v. Chilson, 165 P.3d 304, 306-07, 309 (Kan. Ct. App. 2007) (son was segregated from his father pursuant to police protocol for domestic disputes, and, thus, son did not take part in the colloquy in which his father consented to search); Beall v. State, 237 S.W.3d 841, 846-48 (Tex. App. 2007) (Beall was not invited to take part in the permission to search colloquy because he was present in the motel room but in the shower at the time his co-occupant consented to police entry); *see also* United States v. DiModica, 468 F.3d 495, 497-98 (7th Cir. 2007) (wife met with officers and gave consent to search; officers then went to the DiModica residence, arrested DiModica for domestic abuse without asking for his consent to search, and then searched the home after he was taken to the police station).

[81] People v. Kane, No. 267899, 2007 WL 1687581, at * 2 (Mich. Ct. App. June 12, 2007) (son's consent to search given at the front door to the officer who then proceeded to enter the house was sufficient and not invalidated by the fact that the father, who was a short distance away in the yard, told another officer he objected when the father never communicated his objection to the entering officer nor his son), *appeal denied*, 740 N.W.2d 264 (2007).

[82] *E.g.*, United States v. Wilburn, 473 F.3d 742, 745 (7th Cir. 2007) (police did not procure Wilburn's absence but rather kept him in the back of a squad car following a valid arrest), *cert. denied*, 127 S. Ct. 2958 (2007); United States v. Williams, No. 06-20051-B, 2006 WL 3151548, at *1-2, 5 (W.D. Tenn. Nov. 1, 2006) (police did not procure Williams' absence but rather transported him to jail "based on his state of agitation" following his arrest for domestic violence and damaging his girlfriend's car); United States v. Cosby, No. 2:07-CR-54 TC, 2007 WL 2317431, slip op. at *2, 4 (D. Utah Aug. 7, 2007 (police did not procure the Cosby's absence but rather had him handcuffed and taken downtown to continue a robbery investigation); Commonwealth v. Yancoskie, 915 A.2d 111, 114-15 (Pa. Super. Ct. 2006) (police did not strategically wait until husband was out of town to conduct their search but rather husband voluntarily went on a fishing trip), *appeal denied,* 927 A.2d 625 (2007), *cert. denied*, 128 S. Ct. 901 (2008).

[83] United States v. Henderson, No. 04 CR 697, 2006 WL 3469538, at *1-2 (N.D. Ill. Nov. 29, 2006) (holding that Henderson's statement to police to "[g]et the [f*ck] out of my house" included an objection to the search of his residence such that his wife's consent to search after he was arrested and removed from the scene could not justify the search).

[84] Commonwealth v. Snow, 80 Pa. D. & C.4th 262, 269-72 (Pa. Com. Pl. 2006). In *Snow*, police entered the residence after receiving consent from the wife, who was in the front yard, while her husband was present on the scene but inside the home. When the police came upon Snow showering in the bathroom, he immediately objected to their presence. *Id.* at 263, 271. The court held this objection held the same weight as an objection at the front door, thereby revoking the wife's prior consent and requiring the police to cease their warrantless presence in the home. *Id.* at 269-72.

[85] *See* cased cited *infra* notes 87-89.

[86] *See* Tuerkheimer, *supra* note 17, at 813.

[87] Moore v. Andreno, 505 F.3d 203, 213-14 (2d Cir. 2007). In *Moore*, Ruth Sines decided to move out of her boyfriend Moore's home after he threatened to kill her. *Id.* at 205. While she was moving out, Sines received an anonymous phone call; she feared it was Moore en route to his house and bent on violence, so she requested police assistance. *Id.* The Second Circuit held that exigent circumstances did not justify the police entry because Sines told the officers at the scene that Moore was not at home and there was no indication his arrival was imminent. *Id.* at 213-14.

[88] People v. Mikrut, 864 N.E.2d 958, 963 (Ill. App. Ct. 2007). In *Mikrut*, police accompanied a woman to retrieve her personal belongings from her boyfriend's home after she told the police she was afraid of her boyfriend, that he had threatened her with violence, and that he had firearms on the premises. *Id.* at 959-60. The police entered over Mikrut's objection and accompanied the girlfriend to the bedroom, where they saw a rifle in the closet. *Id.* at 960. The court held that the officers acted beyond the scope of their community caretaking function and unreasonably entered the bedroom because Mikrut was secured in the living room. *Id.* at 963.

[89] United States v. Black, 482 F.3d 1035, 1039 (9th Cir. 2007), *reh'g denied*, 482 F.3d 1044 (9th Cir. 2007), *cert. denied*, 128 S. Ct. 612 (2007). In *Black*, Tyroshia Walker called 911 and reported that her ex-boyfriend Black had beaten her up and had a gun, but that she intended to return to his apartment to retrieve her clothing and would wait outside for police to arrive. *Id.* The responding officers found no signs of Walker, and their knocks on the door went unanswered, but they found an agitated Black in the backyard who denied knowing of Walker's whereabouts. *Id.* The subsequent police entry was justified by exigent circumstances because Walker could have returned to the apartment after her 911 call but before the officers arrived at the scene and because they feared she was inside the apartment and severely injured. *Id.*

[90] United States v. Layman, 244 F. App'x 206, 211 (10th Cir. 2007) (exigency existed when officers thought a wanted felon was residing at the residence, paths worn in the grass indicated occupancy, and thus, officers reasonably believed someone may be inside and overcome by the strong chemical odor indicating the presence of a meth lab), *cert. denied*, 76 U.S.L.W 3441 (2008).

[91] Bates v. Harvey, No. 07-10570, 2008 WL 565774, at *12 n.14 (8th Cir. Mar. 4, 2008). In *Bates*, the Eighth Circuit held that parents' statement in an affidavit supporting a civil commitment order that their son presented "a substantial risk of imminent harm to himself or others" and his mother's statement that her son might be staying at a friend's house did not demonstrate an exigency that would justify police entry into a third party's home after a resident of that home stated he was not there. *Id.* at *1, 12.

[92] Georgia v. Randolph, 547 U.S. 103, 115-17 (2006).

[93] The Court acknowledges additional alternatives of sequestering the nonconsenting co-occupant from the house until a warrant can be obtained, *id.* at 117 n.6, or not inviting the potential objector to take part in the threshold colloquy, *id.* at 121. However, because these options are exercisable at the discretion of law enforcement, they are not true alternatives for the consenting co-occupant.

[94] Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1204-08 (1993).

[95] Lamis Ali Safa, *The Abuse Behind Closed Doors and the Screams That Are Never Heard*, 22 T. Marshall L. Rev. 281, 293-94 (1997).

[96] *Id.*

[97] *Id.* at 294-95.

[98] *Id.* at 295-96.

[99] Fletcher v. Town of Clinton, 196 F.3d 41, 51-52 (1st Cir. 1999). The *Randolph* Court also recognized the danger of escalating violence by stating that an exchange of information between a consenting co-occupant and the police in front of an objecting co-occupant may give rise to an exigency justifying entry. Georgia v. Randolph, 547 U.S. 103, 117 n.6 (2006).

[100] United States v. Brooks, 367 F.3d 1128, 1136 (9th Cir. 2004). The *Brooks* Court specifically stated that a hallway interview outside a hotel room that was the scene of an alleged domestic dispute would not necessarily have protected the victim. *Id.* at 1136. Thus, the police were entitled to search the hotel room because of the victim's potential unwillingness to speak to officers and because the Supreme Court has "repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment." *Id.* at 1135-36 (citations omitted).

[101] Georgia v. Randolph, 547 U.S. 103, 119 n.7 (2006).

[102] *Id.* at 119.

[103] *See* Georgia v. Randolph, 547 U.S. 103, 138 (2006) (Roberts, C.J., dissenting) (arguing that the co-occupant's very presence may prevent the consenting party from leaving). And as Justice Roberts retorts, the victim shouldn't have to depart with the police—"it is her home too." *Id.*

[104] Dutton, *supra* note 94, at 1212.

[105] Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 Yale J.L. & Feminism 359, 368 (1996) (stating that there is a 50% chance a victim's standard of living will drop below the poverty line if she leaves her abuser).

[106] *Id.* at 368-69.

[107] *See id.* at 368 & n.53 ("Violent fathers are quite successful in winning custody of their children").

[108] *See* discussion *supra* pp.3-8, 10-11, and 14-15.

[109] Georgia v. Randolph, 547 U.S. 103, 121 (2006).

[110] United States v. Snipes, 515 F.3d 947, 953 (9th Cir. 2008) (quoting Ohio v. Robinette, 519 U.S. 33, 39 (1996)).

[111] Georgia v. Randolph, 547 U.S. 103, 125-27 (2006) (Breyer, J., concurring). In fact, Breyer's argument that *Randolph* will not adversely affect ordinary law enforcement practices hinges on his belief that officers may consider a victim's motivation for consenting in justifying immediate entry. *Id.* at 127.

[112] Town of Castle Rock, Colo. v. Gonzales, 545 U.S. 748, 781 n.8 (2005).

[113] Sanctis, *supra* note 105, at 367-68.

[114] Tuerkheimer, *supra* note 17, at 806 n.29. *See also* Brandon v. State, 778 P.2d 221 (Alaska Ct. App. 1989). In *Brandon*, Joyce Brandon arrived at an abused women's shelter severely beaten and told a counselor that her husband had beaten her throughout the day. *Id.* at 222. However, when testifying before the grand jury, Joyce said another man had beaten her, and at her husband's trial, Joyce exercised her Fifth Amendment rights and refused to testify. *Id.* at 223.

[115] Tuerkheimer, *supra* note 17, at 808.

[116] Georgia v. Randolph, 547 U.S. 103, 127 (2006) (Breyer, J., concurring).

[117] *See* Georgia v. Randolph, 547 U.S. 103, 138 (2006) (Roberts, C.J., dissenting) (arguing that once the door shuts, the objecting co-occupant will destroy any evidence of wrongdoing and inflict retribution, "both in short order"). The *Randolph* majority concedes that if the objecting tenant cannot be incapacitated from destroying easily disposable evidence during the time required to get a warrant, exigent circumstances may justify immediate police entry. Georgia v. Randolph, 547 U.S. 103, 117 n.6 (2006) (majority opinion).

[118] *See supra* note 14 and accompanying text.

[119] *See* discussion *supra* pp. 16-18.

[120] Tuerkheimer, *supra* note 17, at 817 & n.88.

[121] Tuerkheimer, *supra* note 17, at 818. *See also* Dutton, *supra* note 94, at 1229 (stating that in one study where battered women called the police, almost 20% indicated that calling the police resulted in increased violence by the batterer).

[122] *See* Georgia v. Randolph, 547 U.S. 103, 127 (2006) (Breyer, J., concurring). Chief Justice Roberts makes a similar argument in his dissent in *Randolph*, stating "Mrs. Randolph did not invite the police to join her for dessert and coffee; the officer's precise purpose in knocking on the door was to assist with a dispute between the Randolphs-one in which Mrs. Randolph felt the need for the protective presence of the police." Georgia v. Randolph, 547 U.S. 103, 139 (2006) (Roberts, C.J., dissenting).

[123] *See* Dutton, *supra* note 94, at 1194-95.

[124] Fletcher v. Town of Clinton, 196 F.3d 41, 51-52 (1st Cir. 1999) (finding that officers might reasonably conclude that a woman was at risk for retaliation for previously having her boyfriend arrested despite the fact that she told officers she did not want them in her home that night, especially given that she ignored the officers' knocking, lied about her boyfriend's presence, and that officers knew the boyfriend had previously interfered with her efforts to contact the police); *see also* Tierney v. Davidson, 133 F.3d 189, 192-93, 198 (2d Cir. 1998) (holding that exigent circumstances justified police entry and search even though the victim said nothing had happened and asked the officer to leave; the officer could have reasonably concluded that the victim and her children were intimidated, in danger, or that she had a gun pointed at her from another location, especially given that she appeared shaken, had a red face, and made self-contradictory statements); United States v. Bartelho, 71 F.3d 436, 438, 441-42 (1st Cir. 1995) (responding to a report of a domestic disturbance, officers' entry was justified by exigent circumstances despite the victim's objection to the entry and her statement that her boyfriend had left the building; the officers concluded that the woman was protecting her boyfriend, possibly out of fear of reprisal and they were not required to take her statements at face value, especially given the officers' domestic violence training and that the victim had puffy eyes, wouldn't make eye contact, and appeared nervous); United States v. Barone, 330 F.2d 543, 544 (2d Cir. 1964) (police rightfully demanded entrance after hearing screams even though the occupant stated she had no knowledge of any cause for the screams and suggested she might have had a nightmare).

[125] Chief Justice Roberts' dissent in *Randolph* argues this is precisely what the majority has already done by creating a "consent plus good reason" rule, Georgia v. Randolph, 547 U.S. 103, 140 (2006) (Roberts, C.J., dissenting), but that argument is contradicted by the specific language in the majority opinion that the co-occupant's consent "adds nothing," officers have "no better claim" for entry, and the other's objection is accorded "dispositive weight." Georgia v. Randolph, 547 U.S. 103, 114-15, 121(2006) (majority opinion).

[126] United States v. Backus, 349 F.3d 1298, 1304 (11th Cir. 2003).

[127] *Id.* at 1304-05.

Spotlight on the NAWL Legislative Committee

The Legislative Committee's mission is to monitor federal legislation that has the potential to impact women's rights and the ability of women to practice law. Neither the Legislative Committee nor NAWL will lobby Congress. The Chair of the Legislative Committee is Zoe Sanders Nettles. She can be reached at zoe.nettles@nelsonmullins.com.

National Association of Women Lawyers Legislative Update
January 12, 2009

NAWL publishes the below information to inform NAWL members of pending federal legislation which has the potential to impact women. NAWL does not lobby for or against legislation.

The U.S. House of Representatives passed two bills January 9, 2009 that would advance fair pay for women. In a vote of 247-171 the House passed the Lilly Ledbetter Fair Pay Act (HR 11) to address the holding delivered by the U.S. Supreme Court last year regarding the time period limitations for women who bring cases for pay discrimination, and in a 256-163 vote they passed the Paycheck Fairness Act (HR 12).

The Ledbetter legislation will essentially reverse the Supreme Court decision that requires workers to file charges on a pay discrimination claim within the first six months of receiving their first discriminatory paycheck.

About this legislation:

Ledbetter Fair Pay Act (H.R. 11)

1/6/2009—INTRODUCED

Lilly Ledbetter Fair Pay Act of 2009—Amends the Civil Rights Act of 1964 to declare that an unlawful employment practice occurs when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to the decision or practice; or (3) an individual is affected by application of the decision or practice, including each time compensation is paid. Accrues liability, and an aggrieved person may obtain relief including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to practices that occurred outside the time for filing a charge. Applies the amendments of this paragraph to claims of compensation discrimination under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. Amends the Age Discrimination in Employment Act of 1967 to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice, including each time compensation is paid.

Paycheck Fairness Act (H.R. 12)

1/6/2009—INTRODUCED

Paycheck Fairness Act—Amends the portion of the Fair Labor Standards Act of 1938 (FLSA) known as the Equal Pay Act to revise remedies for, enforcement of, and exceptions to prohibitions against sex discrimination in the payment of wages.

Revises the exception to the prohibition for a wage rate differential based on any other factor other than sex. Limits such factors to bona fide factors, such as education, training or experience.

States that the bona fide factor defense shall apply only if the employer demonstrates that such factor: (1) is not based upon or derived from a sex-based differential in compensation; (2) is job-related with respect to the position in question; and (3) is consistent with business necessity. Avers that such defense shall not apply where the employee demonstrates that: (a) an alternative employment practice exists that would serve the same business purpose without producing such differential; and (b) the employer has refused to adopt such alternative practice.

Revises the prohibition against employer retaliation for employee complaints. Prohibits retaliation for inquiring about, discussing, or disclosing the wages of the employee or another employee in response to a complaint or charge, or in furtherance of a sex discrimination investigation, proceeding, hearing, or action, or an investigation conducted by the employer.

Makes employers who violate sex discrimination prohibitions liable in a civil action for either compensatory or (except for the federal government) punitive damages.

States that any action brought to enforce the prohibition against sex discrimination may be maintained as a class action in which individuals may be joined as party plaintiffs without their written consent.

Authorizes the Secretary of Labor (Secretary) to seek additional compensatory or punitive damages in a sex discrimination action.

Requires the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs to train EEOC employees and affected individuals and entities on matters involving wage discrimination.

Authorizes the Secretary to make grants to eligible entities for negotiation skills training programs for girls and women. Directs the Secretary and the Secretary of Education to issue regulations or policy guidance to integrate such training into certain programs under their Departments.

Directs the Secretary to conduct studies and provide information to employers, labor organizations, and the general public regarding the means available to eliminate pay disparities between men and women.

Establishes the Secretary of Labor's National Award for Pay Equity in the Workplace for an employer has made substantial effort to eliminate pay disparities between men and women.

Amends the Civil Rights Act of 1964 to require the EEOC to collect from employers pay information data regarding the sex, race, and national origin of employees for use in the enforcement of federal laws prohibiting pay discrimination.

Directs: (1) the Commissioner of Labor Statistics to continue to collect data on woman workers in the Current Employment Statistics survey; (2) the Office of Federal Contract Compliance Programs to use specified types of methods in investigating compensation discrimination and in enforcing pay equity; and (3) the Secretary to make accurate information on compensation discrimination readily available to the public.

Directs the Secretary and the Commissioner of the EEOC jointly to develop technical assistance material to assist small businesses to comply with the requirements of this Act.

Upcoming Events

FEBRUARY 5, 2009

NAWL's Mid-Year Meeting

TWELVE HOTEL & RESIDENCES
TWELVE ATLANTIC STATION
ATLANTA, GA 30363
404.961.1212

Join NAWL at our Mid-Year Meeting honoring Turner Broadcasting Systems, Inc., Roxanne Douglas, Chief Counsel of McKesson Corporation, and John C. Childs, Chief Counsel of Georgia-Pacific LLC.

CLE Topics include:

- Rising To The Top: Taking Action to Advance Women Into Leadership
- Getting Down to Business: Does Diversity Really Matter?
- The First Hundred Days And Beyond: The Legal Landscape Under The Obama Administration
- Financial Crisis Fall Out: How The Meltdown Is Changing The Corporate Environment
- Now That You Have "Made It," Are You Sure This Is Where You Want To Be?

End the day at Nelson Mullins Riley & Scarborough LLP reception, Cocktails on the Couch—They were high school classmates 25 years ago; a conversation with women leaders in politics, philanthropy, business and the law.

> Register at www.nawl.org.

FEBRUARY 11, 2009

Connect, Listen and Learn

2:00 P.M. EST
TELECONFERENCE

Never Eat Alone and Other Secrets to Success, One Relationship at a Time, by Keith Ferrazzi.

New Year's resolution: develop and expand relationships, they are the pathway to generating a fun and valuable community of colleagues, friends and mentors. Keith Ferrazzi in his best-seller, Never Eat Alone, discusses how to broaden and strengthen your professional outreach without becoming "a networking jerk." In today's economy, his message—the primacy of deeply generous relationships to success—is more important than ever and plays into most women's comfort zones and strengths. In February's Connect, Listen and Learn, we will discuss how to add depth, purpose and focus to your outreach. Keith will offer both philosophy and best practices to unlocking the full potential of your network.

> To register, please email nawl@nawl.org

Upcoming Co-Sponsored Programs

FEBRUARY 2, 2009

Women in eDiscovery Charity Event

Benefiting the Susan G. Komen Foundation

6 P.M. – 8 P.M.

NEW YORK HILTON

1335 AVENUE OF THE AMERICAS

NEW YORK, NY 10019

Support the fight against breast cancer!
Join the Women in eDiscovery at a charity event benefiting the Susan G. Komen Foundation. There is no cost to attend, however, donations to the Susan G. Komen Foundation for Breast Cancer will be taken at the door. There will also be Breast Cancer awareness items for sale. All proceeds will go to the charity.

> Please email Shawnna Childress at shawnna@womeninediscovery.com to RSVP..

FEBRUARY 7, 2009

Hit the Ground Running: Practical Skills You Need to Succeed

A WBA PROGRAM FOR 3L'S

9:00 A.M. – 5:30 P.M.

WASHINGTON, DC

LAW STUDENT MEMBERS-$40.00

LAW STUDENT NON-MEMBERS-$50.00

The Women's Bar Association of DC Initiative on Advancement and Retention of Women invites 3Ls from area law schools to join the WBA for an all-day practical skills training course that will provide you with the tools necessary to hit the ground running when you begin legal practice. The day will include multiple group training lectures followed by hands-on workshops with professional trainers and leaders in the DC legal community. Topics to be covered include communicating in a confident, effective manner; what it means to network as a newly practicing lawyer; getting the most out of your assignments; and positioning yourself for success.

> For more information, contact Consuela Pinto at consuelapinto@verizon.net or Linda Chanow at linchanow@cox.net. This program is limited to third year law students at DC-area law schools.

FEBRUARY 13, 2009

Mindbugs: The Psychology of Ordinary Prejudice

A COMMISSION ON WOMEN IN THE PROFESSION PROGRAM

10:00 A.M. – 12:00 P.M.

HYNES CONVENTION CENTER

ROOM 312, LEVEL 3

900 BOYLSTON STREET

BOSTON, MA 02115

ABA MEMBERS-$20.00

NON-MEMBERS-$30.00

LAW STUDENTS WITH ID-$10.00

CLE CREDIT HAS BEEN REQUESTED. DEADLINE FOR ADVANCED REGISTRATION IS FEBRUARY 5, 2009.

Prejudiced? Of course, we all are. Though we may believe that our own views are not affected by stereotypes or bias, the reality is surprisingly different.

This highly participatory discussion will be led by renowned Harvard Professor Mahzarin Banaji, who will educate participants on the effects of implicit and unconscious biases on all members of the legal profession. These subtle biases influence how we perceive our clients and witnesses, interact with other attorneys and judges and attempt to persuade juries. On a day to day basis, they even affect how we make decisions on hiring, work distribution, evaluations, promotions and layoffs.

Professor Banaji conducted groundbreaking research on mental processes that operate without our awareness, intention, or control. Biases can actually be measured, as Professor Banaji proved when she co-developed the Implicit Association Test nearly a decade ago. This highly regarded test, as well as physiologic measures, can help us to understand how we view each other.

> For more information, go to www.abanet.org/women/home.html.

Recent NAWL Programs

DECEMBER 3, 2008

NAWL's Night of Giving

WASHINGTON, D.C.
OFFICES OF WILLKIE FARR & GALLAGHER LLP

Over 120 attorneys attended NAWL's inaugural Night of Giving at the offices of Willkie Farr & Gallagher LLP in Washington D.C. The event benefited Girls Inc. of the Washington D.C. Metropolitan Area, a national nonprofit organization dedicated to inspiring high-risk, underserved girls to be "strong, smart and bold." Attendees brought school supplies, games, maps, videos and other items to stock the new Howard University center which will open in early 2009. LexisNexis was a Premier Sponsor of this event. The event was co-sponsored by the Women's Bar Association of the District of Columbia, Women in eDiscovery, Jones Day, Kilpatrick Stockton LLP, McDermott Will & Emery LLP, Navigant Consulting, and Willkie Farr & Gallagher LLP.

NOVEMBER 6 -7, 2008

NAWL's Fourth Annual General Counsel Institute

THE WESTIN NEW YORK AT TIMES SQUARE
NEW YORK, NEW YORK

NAWL's Fourth Annual General Counsel Institute targeted experienced, motivated women in-house counsel who want to build top-tier professional and management skills. This year's conference focused on what it takes to support the business and provide leadership in the face of the tumultuous economic and political developments that will undoubtedly shape where companies—and careers—are headed. GCI, a unique opportunity to network with a dynamic group of women in-house counsel from across the country, had plenary and interactive workshop sessions on key issues of significance to in-house counsel and chief legal officers, and developed skills that foster personal and departmental success. GCs and other professionals discussed, in a collegial environment, the knowledge and skills you need to grow professionally. Attendees represented Fortune 500 corporations, governmental entities, not-for-profits and small private companies.

NOVEMBER 12, 2008

Connect, Listen and Learn

TELECONFERENCE

The Comeback: Seven Stories of Women Who Went from Career to Family and Back Again, by Emma Gilbey Keller.

We've all heard the chatter in the media about off ramps and on ramps, decreased earning power, increased competition, too much re-adjustment, too little flexibility, no jobs, no hope—nothing to look forward to. Women are used to being told that once we get off the career track, we can't go back on. In *The Comeback*, Emma Gilbey Keller proves that this isn't true: more and more, companies today are looking at the value of hiring returning mothers. In this encouraging book, Keller tells the stories of seven very different women who sought to strike a balance between demanding careers and budding families. *The Comeback* provides the diverse role models needed to help women create the multidimensional lives that they desire.

DECEMBER 10, 2008

Connect, Listen and Learn

TELECONFERENCE

Bringing in the Rain: A Woman Lawyer's Guide to Business Development, by Sara Holtz.

The coming of the new year is a great time to think about strategies for creating business. Sara's new book offers successful approaches to making rain and lead you to consider an exciting business development plan for 2009.

Recent Co-Sponsored Programs

OCTOBER 23 AND NOVEMBER 15, 2008

American University Washington College of Law Lawyer Re-Entry Program, Reconnect, Refocus and Reclaim your Legal Career

WASHINGTON, D.C.

A six-day program, from 9:00 AM – 5:00 PM on Fridays and Saturdays in October and November with three individual coaching sessions—one during the program and two post-program.

The decision to re-enter the legal profession after an absence may feel daunting—but it needn't be so. The Washington College of Law Lawyer Re-Entry Program made this transition a rewarding, exciting, and energizing process. This six-day program, with follow-up one-on-one coaching sessions, prepared participants to renew their legal career in a way that works for them, their life, and their family.

The faculty and professional coaches who designed the program appreciate the work/life challenges many lawyers face. In the program, participants explored career options, updated their knowledge, and refreshed their job search skills. They also worked one-on-one with a professional coach to create a personal action plan for re-entry into the profession. Participants and their coach met individually during the second week of the program and two times after the program to sustain the re-entry efforts. Washington College of Law's exceptional faculty, together with experts in the field of career and professional development, led and facilitated this program. The Program was co-sponsored by the Women's Bar Association of DC and the National Association of Women Lawyers.

Visit www.wcl.american.edu/reentry/ for more information. Or, call 202-274-4138 or email lawyer.reentry@wcl.american.edu.

NOVEMBER 12, 2008

The Career Relaunch Forum

GEORGE WASHINGTON UNIVERSITY MARVIN CENTER

WASHINGTON, D.C.

A one-day return to work conference was held for mid-career professionals on career break looking for strategies and advice on resuming careers after time out of the workforce.

Agenda included:
- Back on the Career Track co-authors' keynote: "The 7 Steps To Relaunch Success"
- Panel of Employers describing work-life and women's initiatives
- Advice from successful relaunchers
- Networking opportunities with employers and fellow relaunchers

Dynamic Breakout Sessions covered:
- Marketing Yourself
- Assessing Your Career Options

The forum provided attendees with unprecedented access to career reentry resources and expert advice. Participants left with an early stage return-to-work plan and strategies and contacts for a successful career relaunch.

See www.careerrelaunch.com for more information.

Law Firm News

Schoeman, Updike & Kaufman, LLP is pleased to announce that Jeremy M. Weintraub, William J. Lippman and Erin Carney D'Angelo have joined the firm in its New York office and Deborah H. Bornstein, Barbara Andersen Wald and Gayle A. Stein have joined the firm in its Chicago office.

Jeremy M. Weintraub joins the Firm as Counsel in the Litigation Practice area. Mr. Weintraub has significant experience in commercial litigation and alternative dispute resolution. He has represented clients in state and federal courts in disputes involving breach of contract, fraud, the securities laws, tortious interference, breach of fiduciary duty, professional malpractice, and insurance coverage. In alternative dispute resolution, his experience includes FINRA and AAA arbitrations. He is an adjunct professor of Legal Writing at New York Law School and also serves as a mediator for the Commercial Division of New York State Supreme Court and as an arbitrator for New York City Civil Court. Mr. Weintraub received his J.D. from New York University School of Law and his B.A. from Yale University.

William J. Lippman joins the Firm as Partner in the Real Estate Practice area. Mr. Lippman represents institutional lenders, developers, investors, condominium and cooperative converters, and real estate brokerage firms in real property acquisitions, sales, leases, financings (including mortgage securitization), workouts, and restructurings. Mr. Lippman is an adjunct associate professor at New York University's Real Estate Institute and a member of the American College of Real Estate Lawyers. Mr. Lippman received his LL.B. from New York University and his B.A. from Harvard University.

Erin Carney D'Angelo joins the Firm as Counsel in the Employment Practice area. Ms. D'Angelo concentrates her practice in employment and labor law and has significant experience defending employers in federal and state courts, before administrative agencies and self-regulatory organizations in cases involving all aspects of labor and employment law. In addition to her litigation experience, Ms. D'Angelo has counseled clients on a variety of human resources issues, including equal employment opportunity laws, employee discipline and termination, leaves of absence, privacy, wage and hour compliance, restrictive covenants, and reductions in force. She also has counseled clients regarding compliance with state and federal occupational safety and health laws. Ms. D'Angelo received her J.D. from The American University, Washington College of Law, summa cum laude, and her B.A. from Boston College.

Deborah H. Bornstein joins the Firm as Counsel in the Litigation Practice area. Ms. Bornstein concentrates her practice in complex business litigation and alternative dispute resolution. She has three decades of experience in contract and business tort litigation, antitrust, employment, energy and public utility, healthcare, ERISA, environmental and administrative agency litigation and counseling. She has represented clients in federal and state trial courts and on appeal, and in AAA and International Centre for Dispute Resolution arbitrations. She is a former President of the Legal Assistance Foundation of Metropolitan Chicago and an adjunct professor of trial practice at Northwestern University Law School. Ms. Bornstein received her J.D. from the University Of Chicago Law School and her B.A. from Bennington College.

Barbara Anderson Wald joins the Firm as Counsel in the Litigation Practice area. A major focus of Ms. Wald's practice centers on Information Technology and Intellectual Property matters, including pre-litigation counseling and dispute resolution, as well as multi-million dollar patent infringement and other information technology litigation, based on computer software and hardware technology, cell phone technology, VOIP, and many other technology and sourcing matters and issues. Ms. Wald also has managed multi-million dollar complex commercial litigation, including breach of contract, securities law, consumer fraud, statutory, regulatory, and tort cases, including class actions, both at the lower level and through the state and federal appellate court levels. Ms. Wald received her J.D. from the University of Chicago Law School, where she was on the Law Review, her M.A. from Northwestern University, and her B.A., summa cum laude, from the University of Rochester. Prior to joining Schoeman, Updike & Kaufman, LLP, Ms. Wald was Technology Liaison for Litigation, VP, and Assistant General Counsel for JPMorgan Chase (formerly Bank One).

Law Firm News

Gayle A. Stein joins the Firm as an associate in the Employment Law Practice area. Ms. Stein concentrates her practice in employment, human resources and labor law. Her practice encompasses litigation, arbitrations, and administrative proceedings in the areas of employment discrimination, labor law, employment agreements/ restrictive covenants and related tort litigation. She also has participated in training managers, supervisors and employees in ADA, FMLA, sexual harassment, union avoidance, workplace violence, and other labor and employment topics. Ms. Stein received her J.D. from Temple University Beasley School of Law and her B.A. from The George Washington University.

Duane Morris LLP has added Julie Vogelzang as a partner in its Employment & Immigration Practice Group in the firm's San Diego office. She was formerly a partner at Luce, Forward, Hamilton & Scripps LLP. Vogelzang focuses on labor and employment law, with more than a decade of litigation experience in both federal and state courts. Her work encompasses all types of employment law issues in the defense of employers, including preventative counseling and litigation in the areas of wage and hour law, discrimination, harassment, leaves of absence and wrongful termination defense. She handles both single-plaintiff and class action cases, including wage and hour class actions. She also provides guidance on employment law issues and conducts investigations into employee complaints. Vogelzang's clients include companies in the electronics, insurance, manufacturing, housing and banking industries. She also provides guidance on employment law issues and handles investigations into employee complaints.

Vogelzang teaches at San Diego State University in the area of human resources management. She serves on the board of directors of the Legal Aid Society of San Diego and is a former board member of the Senior Community Centers of San Diego. She is a member of San Diego Lawyers Club and California Women Lawyers, as well as ATHENA, an organization for female executives in the San Diego life sciences, technology, healthcare and business communities. Vogelzang earned her J.D., cum laude, from the University of San Diego School of Law in 1994 and graduated with a B.A. in International Politics and Literature from the University of Virginia in 1991.

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Please send any interesting news about yourself or your member organization to **nawl@nawl.org** to be included in NAWL publications.

- all entries must be regarding active NAWL members
- all entries are limited to 50 words per entry
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PRACTICE AREA KEY

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

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