

January/February 2020

The Bencher®

THE MAGAZINE OF THE AMERICAN INNS OF COURT®



WOMEN IN THE LEGAL PROFESSION

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FROM THE PRESIDENT

The Honorable William C. Koch Jr.

The practice of law has changed significantly since the admission of Arabella Mansfield to the Iowa bar in 1869, making her the first woman in the country to be admitted to the practice of law. The barriers to women's entry into the legal profession have all but disappeared, and what was once a trickle of women into the profession is now a steady stream. More women than men are entering law school today, and almost 47 percent of all law school graduates since 2000 have been women.

This shift has triggered discussions about whether the legal profession will be changed by the increased number of women or whether women will be changed by the legal profession. While many insist that the higher numbers of women have transformed the profession, some caution may be in order.

The evidence that women bring demonstrably different qualities than men to their work is mixed. In addition, the increase in the number of women practicing law has coincided with a profound restructuring of the practice of law. The professional landscape has been dramatically altered by specialization, the growth of large law firms and the corresponding decline in solo practitioners, and the change in emphasis from the law as a profession to the law as a business. Many believe that these changes have benefitted men more than women and have slowed the progress toward gender parity.

With the lowering of the barriers to entry, more attention should be paid to women lawyers' career trajectory. A 2019 American Bar Association (ABA) report on the future of experienced women lawyers in private practice sounds a note of caution. It points out that (1) women lawyers on average do not advance along the same trajectory as men, (2) the gender gap continues and even widens after partnership, and (3) women lawyers are much less satisfied than their male colleagues.

The reasons lawyers leave the practice of law are not necessarily gender-specific. One frequently cited reason is the pressure of producing billable hours. In many practice environments, a lawyer's competence and commitment are measured in billable hours. Accordingly, working long hours becomes a key to retention and advancement.

The pressure to bill a large number of hours creates stress. It strains any lawyer's ability to achieve

work-life balance. Family considerations create additional complications. Women lawyers continue to shoulder much of the responsibility for raising children, and the time when these efforts are most needed coincides with the time when career advancement requires the greatest investment of time and energy.

In a 2015 report, the American Bar Foundation and the ABA Commission on Women in the Profession observed that "lawyers who take time out of the labor force to attend to family matters are less likely to become partners and earn less if they do become partners." For this reason, the 2019 ABA report notes that many women lawyers sideline their careers to avoid developing a reputation for not being sufficiently committed to their work.

Time demands and inadequate family-friendly policies are certainly not the only reasons for women lawyers leaving the practice of law. Even though intentional gender-based discrimination is on the wane, the progress toward gender parity continues to face cultural headwinds. Among the key impediments are (1) unequal access to experiences that are building blocks for success, (2) lack of access to sponsors, and (3) negative gender stereotypes and implicit bias.

This issue of *The Bencher* features six articles about women who have succeeded in the practice of law. They have followed different professional paths and have encountered and overcome both common and unique professional hurdles. They share a common commitment to use their talents and experience not only to advance their own careers but also the careers of other lawyers—both female and male.

Gender parity in the legal profession is achievable but remains a work in progress. We must continue to narrow the gap between our formal policies and our actual practices. Flexibility and mutual commitment are the keys. Rather than considering work-life balance as a "women's issue," we should view it as a bottom-line priority that will enable us to attract and retain a talented, diverse workforce. When more than half of law school graduates are women, legal employers cannot afford work environments that disadvantage so much of the talent pool. ♦

William C. Koch Jr.

Southwestern Law School American Inn of Court

Founded in 1911, Southwestern Law School is the second oldest law school in Los Angeles. On November 1, 2018, the American Inns of Court issued Charter No. 493 to alumni from the school, aided by members of the Hon. Benjamin Aranda III American Inn of Court in Redondo Beach, California. A Masters Committee was formed, and the first plenary meeting of the Southwestern Law School American Inn of Court was held at the law school on September 11, 2019, with 40 attendees, including 13 law students. The presentation was on ethics, civility, and professionalism to introduce the new members to these concepts that are central to the American Inns of Court. Caryn Worcester, CAE, American Inns of Court, director of chapter relations for the western region, presented the charter to Justice (Ret.) Gary Hastings, president of the new Inn and a founding member of the Aranda Inn. The second plenary meeting was held in October with a presentation on civility and professionalism within the family law field by Judge Scott M. Gordon; Robert Brandt, Esquire, and Patrick Baghdaserians, Esquire,



At the Southwestern Law School Inn's October meeting, from left to right, are Judge Scott M. Gordon; Patrick Baghdaserians, Esq.; and Robert Brandt, Esq., who presented on civility and professionalism.

all Southwestern graduates. The Inn plans five more meetings before May to allow the student members time to focus on finals. ♦

Colorado Intellectual Property American Inn of Court

In August 2019, the Colorado Intellectual Property (IP) American Inn of Court joined the U.S. Patent and Trademark Office (USPTO) in celebrating the five-year anniversary of the opening of the Rocky Mountain Regional Office of the USPTO. The afternoon reception was held in Denver on the rooftop patio at the law firm of Polsinelli. Andrei Iancu, USPTO director, and Molly Kocialski, director of the Rocky Mountain Regional USPTO, attended, along with other dignitaries, including Colorado Attorney General Phil Weiser. Overall, more than 125 people attended, including professional and student members of the Inn, USPTO examiners, and IP professionals from the greater Denver and Boulder areas.

Inn President Chirag B. Patel, Esquire, kicked off the reception with opening remarks followed by remarks from Inn member and Polsinelli attorney Gregory P. Durbin, Esquire. Iancu gave a short speech about the progress of the Rocky Mountain Regional Office and the wonderful opportunities that its opening has created, including stakeholder outreach in all of the Rocky Mountain states. ♦

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William L. Todd Jr. American Inn of Court

At the October meeting of the William L. Todd Jr. American Inn of Court in San Diego, California, members held their annual Supreme Court Preview. Each October, the Inn selects three to four of the most interesting upcoming Supreme Court cases for truncated oral



Members of the William L. Todd Inn present oral arguments as part of a Supreme Court Preview. From left to right, are Stacy Dooley, Esq.; Judge Timothy Casserly; and Michael O'Halloran, Esq.

argument. A Master of the Bench serves as "chief justice" for the evening, peppering the advocates with challenging questions. This year, Judge Timothy Casserly, of the San Diego Superior Court, presided over the oral arguments.

After the oral arguments, all members voted to predict how the Supreme Court will rule, including the split, i.e., 5–4. The results are always announced at the annual dinner, and the most "supreme" predictor gets an award. The Inn was honored to have Caryn Worcester, CAE, director of chapter relations for the Western Region of the American Inns of Court in attendance. The Supreme Court Preview educates all members on the upcoming Supreme Court docket, encourages discussion, and is always entertaining. ♦

Write for *The Bencher*

You are invited to write an article for

The Bencher

The Bencher® is the flagship publication of the American Inns of Court. Each issue features articles written to a central theme such as legal ethics, professionalism, civility or mentoring. Authors are invited to submit original feature length articles on the topics of professionalism, legal ethics, civility, mentoring, and other subjects that advance the cause of excellence in the practice of law.



For more information please visit home.innsofcourt.org/Bencher.

UPCOMING THEMES AND DEADLINES:

May/June 2020

Protecting the Vulnerable **Deadline: February 1, 2020**

What legal-related programs are in place in the courts, legal services organizations, and bar associations to protect the rights of children, the elderly, individuals with disabilities, and others? Share your experience and ideas about how to protect the vulnerable. What are some of the ethical concerns associated with this important work?

July/August 2020

American Inns of Court 40th Anniversary Issue **Deadline: April 1, 2020**

How has our organization changed over the years and where do you see it going in the future? What impact has the American Inns of Court had on the legal profession? What is the future of our profession and how can the organization help law students, lawyers, and judges adapt? What has your Inns of Court membership meant to you?

September/October 2020

Practicing Law in a Multicultural Society **Deadline: June 1, 2020**

Have you worked with clients from different cultures or countries who may not fully understand U.S. laws, the court system, and the role of lawyers? How have different perceptions of justice and fairness affected your work? How have cultural differences impacted your work? Have you represented clients in situations where a language barrier exists? What ethical and practical considerations may be at issue?

November/December 2020

Cybersecurity **Deadline: August 1, 2020**

How can you protect yourself, your firm, and clients from cyberattacks or data breaches? What are the obligations after an attack or data breach has occurred? How have you advised your clients regarding cybersecurity matters? What are some issues surrounding cloud storage of client information? What does cybersecurity mean to the modern day practice of law?

Aldona E. Appleton Family Law American Inn of Court

The Aldona E. Appleton Family Law American Inn of Court in New Brunswick, New Jersey, presented “Trial of the Century: The Hall Mills Murder Trial Play.” The play was a reenactment of the famous 1926 trial in Somerville, New Jersey, that captured the nation in the middle of the Roaring ’20s. Reverend Edward Hall was involved in a notorious affair with Eleanor Mills, one of the choir singers in his congregation. They were found murdered in a lover’s lane. Frances Hall and her two brothers were charged with the gruesome murders. Judge John A. Jorgensen, current president of the Inn, and his wife wrote the script. The play was performed in the actual courtroom where the original trial was held. Thirteen members of the Inn played the various roles. More than 150 people watched the play and provided a standing ovation at the end.

The Inn members have continued to enjoy their budding theatrical careers. In October 2019, the



Members of the Appleton Inn present “Trial of the Century: The Hall Mills Murder Trial Play.”

Hall Mills Murder Trial Play was the centerpiece of a New Jersey Institute for Continuing Legal Education seminar, which 75 lawyers attended. The play is also scheduled to be performed four times at a community arts center theater in July 2020. ♦

Charles F. Scanlon and Judge Samuel H. Bell American Inn of Court

In September 2019, the lead counsel in the team that won a \$44.2 million verdict in a defamation lawsuit against Oberlin College by a hometown bakery—a case that generated national news attention—shared information about the case and its aftermath with members of the Charles F. Scanlon and Judge Samuel H. Bell American Inn of Court in Akron, Ohio.

The Inn heard from plaintiffs’ attorney Lee E. Plakas, Esquire, of Tzangas Plakas Mannos Ltd., which is based in nearby Canton.

Plakas described how he and the other seven attorneys on the team that represented the Gibson Bros. Bakery devoted more than 14,400 hours to the case, including scouring through electronically stored information. He highlighted the themes the team presented to the jury. The trial in Lorain County, Ohio, took more than a month and included a separate presentation of evidence on punitive damages.

Gibson Bros., which has been in business in Oberlin, Ohio, since 1885, sued Oberlin College for defamation, tortious interference with contract, and intentional infliction of emotional distress for the actions the college and college officials took in the wake of the shoplifting arrests of three Oberlin College students at the bakery and subsequent student protests.

The case attracted news media attention, not only in Ohio but from major U.S. newspapers, as well as the *Spectator* in the United Kingdom. ♦

Save the Date!

DETAILS COMING SOON!

2020 Leadership Summits

Coming to a city near you!

- Atlanta** • March 27, 2020
- Central Florida** • May 1, 2020
- Cleveland** • May 1, 2020
- Denver** • May 1, 2020
- Houston** • May 1, 2020
- Minneapolis** • TBD
- Nashville** • March 20, 2020
- New York** • May 8, 2020
- Lawrence, KS** • May 8, 2020
- Philadelphia** • TBD
- Portland** • May 15, 2020
- San Diego** • April 2020
- Washington, DC** • March 13, 2020



INN THE NEWS



At the 2019 National Conversation on Civility from left to right, are Kannon K. Shanmugam, Esquire, moderator; Judge Consuelo M. Callahan; Judge Carl E. Stewart; and Judge Cheryl Ann Krause.

2019 National Conversation on Civility Highlights Impact of Civility on Lawyer Well-being

On Saturday, October 26, Judge Cheryl Ann Krause, of the U.S. Court of Appeals for the Third Circuit, kicked off the 2019 American Inns of Court National Conversation on Civility with remarks based on her 2019 Warren E. Burger Prize-winning essay, which addresses a growing health and well-being crisis in the legal profession. She talked about how a lack of training opportunities has led to a decline in competence in the courtroom, tying into a decline in confidence; how a decrease in autonomy when it comes to case involvement and decision-making contributes to lower satisfaction with practicing the law; and how being disconnected from others in the legal community leads to isolation and—in many cases—depression. She highlighted the need for more frequent open discussion on these issues and solutions for lawyers and judges to implement in their day-to-day interactions. ♦

Judge Carl E. Stewart Honored



Congratulations to Judge Carl E. Stewart, center, U.S. Court of Appeals for the Fifth Circuit, and immediate past president of the American Inns of Court, who received the federal judiciary's preeminent award, the Edward J. Devitt Distinguished Service to Justice Award, on October 17, 2019, in a ceremony at the Supreme Court of the United States.



Joanne Kane, Judge Morrison C. England Jr. of the U.S. District Court for the Eastern District of California, and Jonathan Metzger.

2019 English Pegasus Scholars Visit United States

Each year, the American Inns of Court participates in an exchange program with the English Inns of Court called the Pegasus Scholarship Trust. The program was established to provide young English barristers with an opportunity to spend six weeks abroad for the purpose of learning about a foreign legal system. The Pegasus Scholarship Trust also provides young lawyers from other countries with an opportunity to spend six weeks in London learning about the English legal system.

The 2019 English scholars were Joanne Kane and Jonathan Metzger. Kane is a barrister with Carmelite Chambers in Central London and is a member of The Honourable Society of Lincoln's Inn. Metzger is a barrister with 1 Crown Office Row Chambers in Central London and is a member of The Honourable Society of Lincoln's Inn.

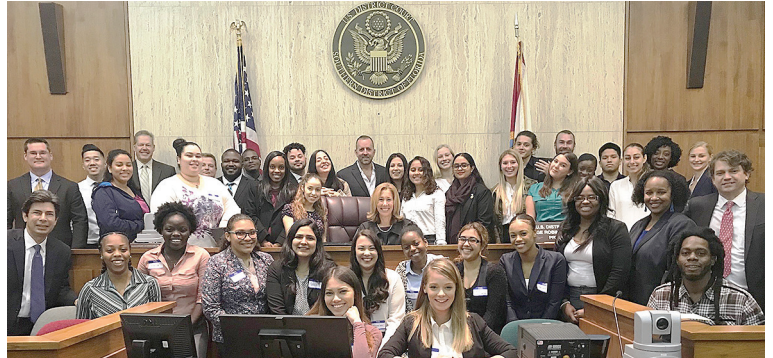
While in the United States, the scholars met with leading attorneys and members of the judiciary to understand and learn the mechanics and day-to-day work of the U.S. justice system. Kane and Metzger enjoyed trips to Sacramento, California, hosted by the Anthony M. Kennedy Inn; Roanoke, Virginia, hosted by the Ted Dalton Inn; and Cheyenne, Wyoming, hosted by the Ewing T. Kerr Inn.

The scholars also spent time in Washington, D.C., where they visited the Supreme Court of the United States and attended the American Inns of Court Celebration of Excellence event held there. They visited Capitol Hill, FBI headquarters, and a number of federal, state, and local courts in Virginia, Maryland, and the District of Columbia. The scholars also attended a World Series baseball game in which the Washington Nationals played the Houston Astros. ♦

Craig S. Barnard American Inn of Court

In September, the Craig S. Barnard American Inn of Court, of West Palm Beach, Florida, again met with Federal District Judge Robin L. Rosenberg to participate in the Civil Discourse and Difficult Decisions program. For the past two years, the program has been supported by Inn Presidents Tami L. Augen-Rhodes, Esquire, and Judge Robert M. Gross, of the Fourth District Court of Appeals. The program was initiated by Federal District Judges Beth F. Bloom and Robin L. Rosenberg in conjunction with the Administrative Office of the U.S. Courts.

Civil Discourse and Difficult Decisions is a national initiative of the federal courts that brings students into federal courthouses for legal proceedings that stem from situations that law-abiding young people can find themselves in. These court hearings showcase jury deliberations in which all students and learning styles participate in civil discourse. Proceedings are conducted in courtrooms presided over by federal judges assisted by volunteer attorneys. Although student attorneys argue the case,



student jurors and their deliberations are at the centerpiece of the courtroom event.

Students leave these three-hour programs with sharpened tools for civil discourse and decision-making and a heightened awareness of legal and long-term consequences. Participants interact with the human face of the justice system, and their courtroom experience can motivate them to serve on juries. ♦

Nominate an Outstanding Lawyer or Judge Today! 2020 American Inns of Court Professionalism Awards

The American Inns of Court Professionalism Awards are presented on a federal circuit basis, to a lawyer or judge whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession and the rule of law.

Deadlines for Nominations:

February 21, 2020—Federal, 3rd, 5th, 7th, 11th circuits

March 20, 2020—4th, 6th circuits

April 17, 2020—2nd,* 8th, 9th, 10th circuits

**Nominations in the 2nd circuit are limited to a senior attorney.*



Members are encouraged to nominate outstanding legal professionals in their respective circuits.

For more information on the nomination process, please visit www.innocourt.org/ProfessionalismAwards or contact Cindy Dennis at cdennis@innsofcourt.org or 571-319-4703.





In London, from left to right, are Judge Kent A. Jordan, vice president, American Inns of Court; Joel Michel, Esq.; John J. Burke, Esq.; Dean William C. Koch, Jr., president, American Inns of Court; and BG Malinda E. Dunn, USA (Ret.), executive director, American Inns of Court.

2019 Pegasus Scholars Attend Opening of Legal Year in London

The American 2019 Pegasus Scholar Scholars began their six-week long scholarship in London, England, on October 1 to coincide with the opening of the legal year activities. While in London, the scholars, John J. Burke, Esquire, and Joel Michel, Esquire, met with several of Great Britain's legal dignitaries, including Lord Chief Justice of England and Wales, The Rt. Hon. The Lord Burnett of Maldon; Court of Appeal of England and Wales Justice, The Rt. Hon. Lord Justice Flaux; and President of the Supreme Court of the United Kingdom, The Rt. Hon. The Baroness Hale of Richmond.

The scholars attended the ceremonial opening of the legal year at Westminster Abbey and met with officers of the General Council of the Bar and the National Pro Bono Centre. Other activities during their first week included tours of the Old Bailey and the Supreme Court of the United Kingdom.

The scholars remained in London through November 8, where they spent four weeks in "mini pupillage" in barristers' chambers, attended an advocacy training program, and traveled to Scotland and Northern Ireland to be introduced to other aspects of the United Kingdom legal system. ♦



On the steps of Gray's Inn in London, in the front row from left to right, are Kathryn L. Wynbrandt and Evelyn Blacklock; in the back row are Michael Skocpol; Judge Kent A. Jordan, vice president, American Inns of Court; Dean William C. Koch Jr., president, American Inns of Court; Kathryn Kimball Mizelle; and David W. Casazza.

2019 Temple Bar Scholars Introduced to 'Legal London'

On October 1, the 2019 Temple Bar Scholars began a month-long scholarship in London, England. The scholars are Evelyn Blacklock, David W. Casazza, Kathryn Kimball Mizelle, Michael Skocpol, and Kathryn L. Wynbrandt.

During their first week, the scholars toured the four English Inns of Court, met with the Inns' leadership, and had lunch in the dining halls. The scholars met with several legal dignitaries, including Lord Chief Justice of England and Wales, The Rt. Hon. The Lord Burnett of Maldon; in charge of the Commercial Court, The Hon. Mr. Justice Teare; and the President of the Supreme Court of the United Kingdom, The Rt. Hon. The Baroness Hale of Richmond.

The scholars attended the ceremonial opening of the legal year at Westminster Abbey and met with officers of the Commercial Bar Association, the General Council of the Bar, and Law Society. Other activities included tours of the Old Bailey and the Supreme Court of the United Kingdom. The scholars also attended a reception held in their honor.

The scholars remained in London through October 25, where they spent two weeks in "mini pupillage" in barristers' chambers. Their placement in chambers was arranged by the Commercial Bar Association. Most of the final week was spent in the Supreme Court of the United Kingdom shadowing the justices. The scholars also got a glimpse of the solicitor's side of the profession by spending a day at Clifford Chance, a leading solicitor's firm.

The Temple Bar Scholarships program is partially underwritten by Thomson Reuters and the Commercial Bar Association. ♦



American Inns of Court Amity Visit in London

The Honourable Society of Lincoln's Inn hosted members of the American Inns of Court for an Amity Visit in London, England, at the beginning of October. Inn members from 28 Inns across the United States learned about advocacy training in the English Inns of Court and had the opportunity to sit in proceedings at the Old Bailey. The visit included lectures, meetings, and discussion with leaders of the English bench and bar. They enjoyed afternoon tea with justices at the Supreme Court of the United Kingdom, plus dining at three of the four English Inns of Court. ♦



At the presentation of the American Inns of Court Bankruptcy Inn Alliance 2019 Distinguished Service Award, from left to right, are Patricia Ann Redmond, Esq., Distinguished Service Award committee member and 2015 award recipient; Judge Joan N. Feeney (Ret.), 2019 award recipient; Judge John E. Waites, NCBJ president; and Andrew R. Turner, Esq., Bankruptcy Inn Alliance co-founder.

Bankruptcy Alliance of the American Inns of Court Presents 2019 Distinguished Service Award

The Bankruptcy Alliance of the American Inns of Court presented its 2019 Distinguished Service Award to Judge Joan N. Feeney in Washington, D.C., before the National Conference of Bankruptcy Judges (NCBJ) opening plenary session on November 1, 2019. The award is presented annually to a lawyer or judge whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession, civility, and excellence in the practice of law.

Until she retired in May 2019, Feeney was the chief judge of the U.S. Bankruptcy Appellate Panel for the First Circuit in Boston. She was a U.S. bankruptcy judge for the district of Massachusetts since 1992, serving as chief judge from 2002 to 2006. She is vice president of the American College of Bankruptcy and a past president of NCBJ. Feeney was also a co-chair of the Massachusetts Bankruptcy Court's pro bono committee. "She cares about her colleagues, the lawyers who appear before her, her staff, and most of all the litigants who come before her," says Robert J. Keach, Esquire, of Bernstein Shur Sawyer & Nelson PA in Portland, Maine. "She wants the honest debtors who come before her to get the relief they deserve and to have better futures." ♦



Judge Hugh Means American Inn of Court

In July 2019, the Douglas County Bar Association and the Judge Hugh Means American Inn of Court in Lawrence, Kansas, gathered at Judge Amy Hanley's beautiful home for a social evening to celebrate the Inn's 25th anniversary. The summer heat didn't deter a great turnout. Many thanks to the party organizers, who kept plenty of cold beverages on hand!

Attendees enjoyed a taco bar from Salty Iguana and competed in guacamole and dessert competitions. Eric Weslander, Esquire, took top prize in the guacamole arena. Inn President Kate Marples Simpson, Esquire, won acclaim (and a glittery first-place crown) for her elegant dessert offering: dulce de leche brownies.

During the celebration, retired U.S. Court of Appeals for the 10th Circuit Judge Danielle Tacha spoke about the start of the Inn. She also judged the guacamole competition. ♦

2019 Celebration of Excellence

October 26, 2019
Supreme Court of the United States
Washington, DC

PHOTO CREDIT: www.KevinKennedy.com



Professor Sherman L. Cohn, left, and Judge Kent A. Jordan present the President's Cup to Dean William C. Koch Jr., president, American Inns of Court.



Kannon K. Shanmugam, Esq., center, presented the 2019 Warren E. Burger Prize to Jane Chong, Esq., left, and Judge Cheryl Ann Krause, right.



Timothy Conlon, Esq., and Maria Caley, Esq., of the Edward P. Gallogly Inn, Providence, Rhode Island.



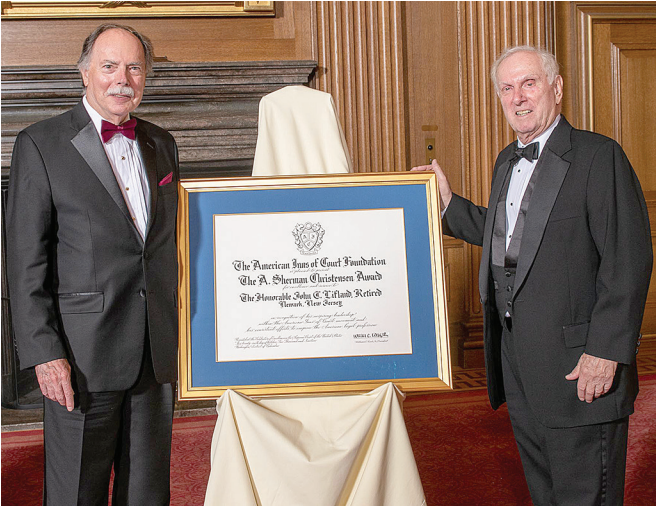
From left to right, are Joe A. Spencer, Esq., president elect, George A. McAlmon Inn, El Paso, Texas; Mrs. Bernadine Spencer; Bradford E. Dempsey, Esq.; and Nancy L. Dempsey, Esq., immediate past president, Colorado IP Inn in Denver, Colorado.



2019 British Pegasus Scholars Joanne Kane, left, of The Honourable Society of Lincoln's Inn; Jesse R. Binnall, Esq., Pegasus Scholar Placement Committee chair; and Jonathan Metzger, right, of the Honourable Society of Lincoln's Inn.



Judge Elizabeth Erny Foote, president, and Jerry Edwards, Esq., secretary/treasurer, of the Harry V. Booth-Judge Henry A. Politz Inn in Shreveport, Louisiana.



Judge Richard Linn, left, presents the 2019 A. Sherman Christensen Award to Judge John C. Lifland, (Ret.).



Chief Justice Donald W. Lemons, left, received the 2019 Lewis F. Powell Award for Professionalism and Ethics from Dean William C. Koch, Jr.



Judge Consuelo M. Callahan, left, presented the 2019 Sandra Day O'Connor Award for Professional Service to Carmen-Nicole Cox, Esq.



Left to right, are Judge Mary Bowen (Ret.), U.S. District Court for the District of New Jersey; BG Malinda E. Dunn, USA (Ret.), executive director, American Inns of Court; and Judge Anne E. Thompson (Ret.), U.S. District Court for the District of New Jersey.



Sean M. Flaim, Esq., right, Pegasus Placement Committee and member of the Giles S. Rich Inn in Washington, DC, and his wife, Elizabeth Flaim.



The 2019 Professionalism Awards recipients were recognized by Judge Carl E. Stewart during the event. Standing from left to right, are Zachary W. Carter, Esq., Second Circuit; Judge Carl E. Stewart; and A.J. Kramer, Esq., DC Circuit. Seated are Wayne J. Lee, Esq., Fifth Circuit; and Justice Mary E. Fairhurst, Ninth Circuit. (Not pictured, Dean Joseph D. Kearney, Seventh Circuit.)

[MENTORING]

The Judge and the Pupil

Judge Nina Ashenafi-Richardson has been an awesome friend and mentor to me. After I was accepted as a Pupil member in the William H. Stafford American Inn of Court, in Tallahassee, Florida, Judge Nina sent out an email asking for volunteers. I responded immediately because I am eager to get involved; I like to invest my talents wherever I can. Judge Nina called me on the phone to see just how much of myself I was willing to invest. We spoke for an hour, discussing various plans of action for the volunteer project, the importance of mentorship, and furthering mentorship within the Stafford Inn.

Together we discovered that while mentorship is of critical importance to the success of any professional, it is not the primary concern of Pupil members, who are often more focused on securing post-graduation employment. Throughout the process, Judge Nina worked with me and my fellow Pupil members to develop a job-based mentorship curriculum for the Stafford Inn.

Beyond our roles as Inn president and Pupil, Judge Nina saw me as a person. One evening after an event, she noticed I was troubled. Over the course of an hour-long chat, she explained to me that I should cease being troubled by the woes of pigeons because I am an eagle. By connecting with personal stories, she explained that my strong work ethic is obvious and that I should not be concerned with my insatiable desire for excellence.

Her advice and mentoring did not end with my tenure at the Inn. As I termed out of the Inn as a Pupil, we stayed in touch. I found out that the mentoring program for Pupils did not catch on as I planned. I was disappointed, but Judge Nina noted that the seed we planted and watered was lasting. And, just recently, she reached out to me to ask me to assist some young women who are developing their public speaking skills. Judge Nina is showing me how to teach others to fish in the same way she taught me.

Of pivotal importance to my development as a professional, I dutifully observed Judge Nina's display of what it means to advance with humility. As an immigrant, I marvel at her as the first Ethiopian-born person to serve as a judge in the United States, as well as the first African American elected president of both the Tallahassee Women Lawyers Association and the Tallahassee Bar Association. Astonished at her warmth, I once commented on her radiance to a peer of hers, who responded, "Trust me, I know. Despite all of her accolades, Judge Nina just has that effect of making you feel like a rock star." In fact, when my parents met Judge Nina, she teased us about being my Tallahassee mother. My mother, who reminds me from time to time to remain humble, asserted that I was in good hands. Of course, such sentiment and effect on others does not occur by happenstance, as implied by Holly Dincman, immediate past president of the Stafford Inn who recommended Judge Nina for the Florida Supreme Court's 2019 Distinguished Judicial Service Award that recognized Judge Nina's impact on her community.

Judge Nina and I connected in a way that I never expected by her investing in me, my life, and my career. Most mentors like her know that their efforts are helpful, regardless of their breadth or depth. They invest time and other resources without expectation of a quid pro quo. However, recognizing them with a simple "thank you" can repay many debts.

Advice is often situational, and acquaintances can be fleeting, but solid and meaningful mentorship can last a lifetime. It is my hope that my relationship with Judge Nina will stay on the long trajectory; she is an open, giving, and overall awesome person—truly a class act. ♦

—Submitted by Curt Bender, former Pupil of the William H. Stafford American Inn of Court, Tallahassee, Florida.

[MENTORING]

We Have a Resource for That!

The start of the year is a good time to start something new... why not start mentoring at your Inn? Start a formal program, organize a coffee hour in judges' chambers for your associate members, or hold a speed-mentoring program with your local bar association. You can find a wealth of mentoring resources at home.innsocourt.org/mentoring. Contact Libby Bingham, director of education and mentoring programs, to get started at lbingham@innsocourt.org.

Happy Mentoring Month! ♦





Lawyers' Duty of Candor to the Court

Most lawyers are familiar generally with their duty of candor to the court. This short ethics column is intended as a cursory overview of some of the nuances of that obligation, with reference to a few selected court decisions that have applied the rule in different factual settings.

Rule 3.3 of the Delaware Lawyers' Rules of Professional Conduct provides that a lawyer may not make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. See Rule 3.3(a)(1). A lawyer also is required to disclose legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

Rule 3.3(a)(3) prohibits a lawyer from offering evidence that the lawyer knows to be false. The duties of candor in subparagraphs (a) and (b) apply even if compliance requires disclosure of information that is otherwise protected by Rule 1.6, which is the duty of an attorney to maintain confidential information received by the client.

By comparison, California does not limit a lawyer's duty of confidentiality to the client by the duty of candor to the court. See California Rule of Professional Conduct 5-200; California Business and Professional Code Section 6068(e). The Delaware rule, however, expressly limits the duty of confidentiality that a lawyer owes to her client by the superseding obligation of candor that a lawyer owes to the court. Compare San Diego County Bar Association Legal Ethics Opinions 2011-1, which applied the California version of the duty of candor to the court to permit a lawyer to refuse to answer a question from the court if it required the disclosure of confidential information that came from the client.

At least in Delaware, trial courts are not often required generally to address a violation of the Rules of Professional Conduct, although Rule 3.3 is one of those rules that might attract greater attention from the court if violated. The reason for that approach, to the surprise of some readers, is that the Delaware trial courts do not view their primary role as enforcers of the Rules of Professional Conduct—unless those violations “prejudicially disrupt judicial proceedings” or “threaten the legitimacy of judicial

proceedings.” See, e.g., *Crumplar v. Superior Court*, 56 A.3d 1000, 1009 (Del. 2012).

Other rulings have used the threshold phrase that would trigger the court's direct involvement as violations of the rules that “interfere with the administration of justice.” See *Lendus, LLC v. Goede*, C.A. 2018-0233-SG (Del. Ch. Dec. 10, 2018). See also *In re McCarthy*, 173 A.3d 536 (Del. 2017) (explaining that disbarment was the appropriate penalty for the intentional misconduct of an attorney who repeatedly failed to disclose altered medical records during a trial, and despite multiple opportunities for corrective action, failed to correct a client's false testimony, among other serious errors during both pretrial proceedings and at trial). When the violation is serious enough, even if the court does not directly address it, the court can refer the matter to the Office of Disciplinary Counsel, which is an arm of the Delaware Supreme Court and which has the resources to conduct investigations and, in the appropriate case, to prosecute violations. See generally *Charter Communications Operating LLC v. Optimize LLC*, C.A. No. 2018-0865-JTL (Del. Ch. Mar. 5, 2019) (observing that the Delaware Supreme Court has sole and exclusive responsibility over all matters affecting governance of the Bar).

The *Goede* case was a decision from the Delaware Court of Chancery in December 2018, revoking a *pro hac vice* admission that provides an excellent example of a measured and thoughtful approach to violations of the Rules of Professional Conduct by a trial court. For example, the court exhorts attorneys who think that other counsel have violated rules, or have done something that might warrant a request for attorneys' fees, to “think twice, three times, four times, perhaps even more” before seeking penalties against other attorneys for allegedly inappropriate conduct.

The court emphasized in the introduction to its decision that it derives no pleasure in criticizing attorneys because judges understand the “pressures and frustrations of practice.” The court referred to members of the bench as not being above reproach, with the following quotable phrase: “none of our own eyes being timber-free...”

In addition to its discussion of Rule 3.3, the *Goede* opinion contains many quotable articulations of the

Continued on the next page.

standards of attorney conduct that are expected even if they do not rise to the level of a violation of applicable rules. For example, citing other court decisions, the court explained that it will “not condone, accept, or permit the use of profanity, acrimony, derisive jibes, or sarcasm with respect to any communication related to a matter, proceeding, writing, meeting, etc.”

Regarding Rule 3.3(a), the court also referred to the Principles of Professionalism for Delaware Lawyers, which provide at paragraph A(4) that in addition to candor to the court, professional civility requires “conduct that shows respect... for all people encountered in practice, which includes emotional self-control and the absence of scorn and superiority in words or demeanor.” The court explained that these standards also apply to those attorneys admitted *pro hac vice*.

Delaware courts have often revoked *pro hac vice* admissions when attorneys have not complied with Delaware standards. See *Manning v. Vellardita*, C.A. No. 6812-VCG (Del. Ch. March 28, 2012) (finding a violation of the duty of candor to the court and revoking a *pro hac vice* admission for not disclosing in the motion for admission *pro hac vice* a conflict of interest involving other parties in the case). In *Sequoia Presidential Yacht Group LLC v. FE Partners LLC*, C.A. No. 8270-VCG (Del. Ch. July 5, 2013), the Delaware Court of Chancery referred to the appropriate agency in New York the conduct of an attorney from New York admitted *pro hac vice* based on sub-par conduct by that New York lawyer. The court explained how hesitant it was to take the action it did. The following “money quote” deserves mention:

No state benefits more from admissions to its Bar *pro hac vice* than Delaware, and no judges benefit more from that system of admissions than the members of this Court. Having said that, the opportunity to practice before this Bar, even on a temporary basis, is a privilege. Like Delaware attorneys, attorneys from other states are expected to abide by high standards of professional conduct. Nonetheless, for the following reasons I am content to stay my decision here. This Court’s jurisdiction to police attorney behavior only extends to conduct which may prejudice the “fair and efficient administration of justice.” (Footnotes omitted.)

In the most egregious of situations, a court may dismiss a case due to misrepresentations intentionally made to the court in an attempt to have the court make a ruling based on those false facts.

Such was the result in *Parfi Holding AB v. Mirror Image Internet, Inc.*, 2008 WL 4110698 (Del. Ch. Sept. 4, 2008), in which the court provided a *magnum opus* on the importance of being earnest. Some wags might suggest that such truisms need not be explained in an opinion, but this decision provides a high watermark for the type of misrepresentations to the court that have drastic consequences.

The court explained the reasoning that supported its conclusion by stating: “When a party knowingly misleads a court of equity in order to secure an unfair tactical advantage, it should forfeit its right to equity’s aide. Otherwise, sharp practice will be rewarded, and the tradition of civility and candor that has characterized litigation in this court will be threatened.”

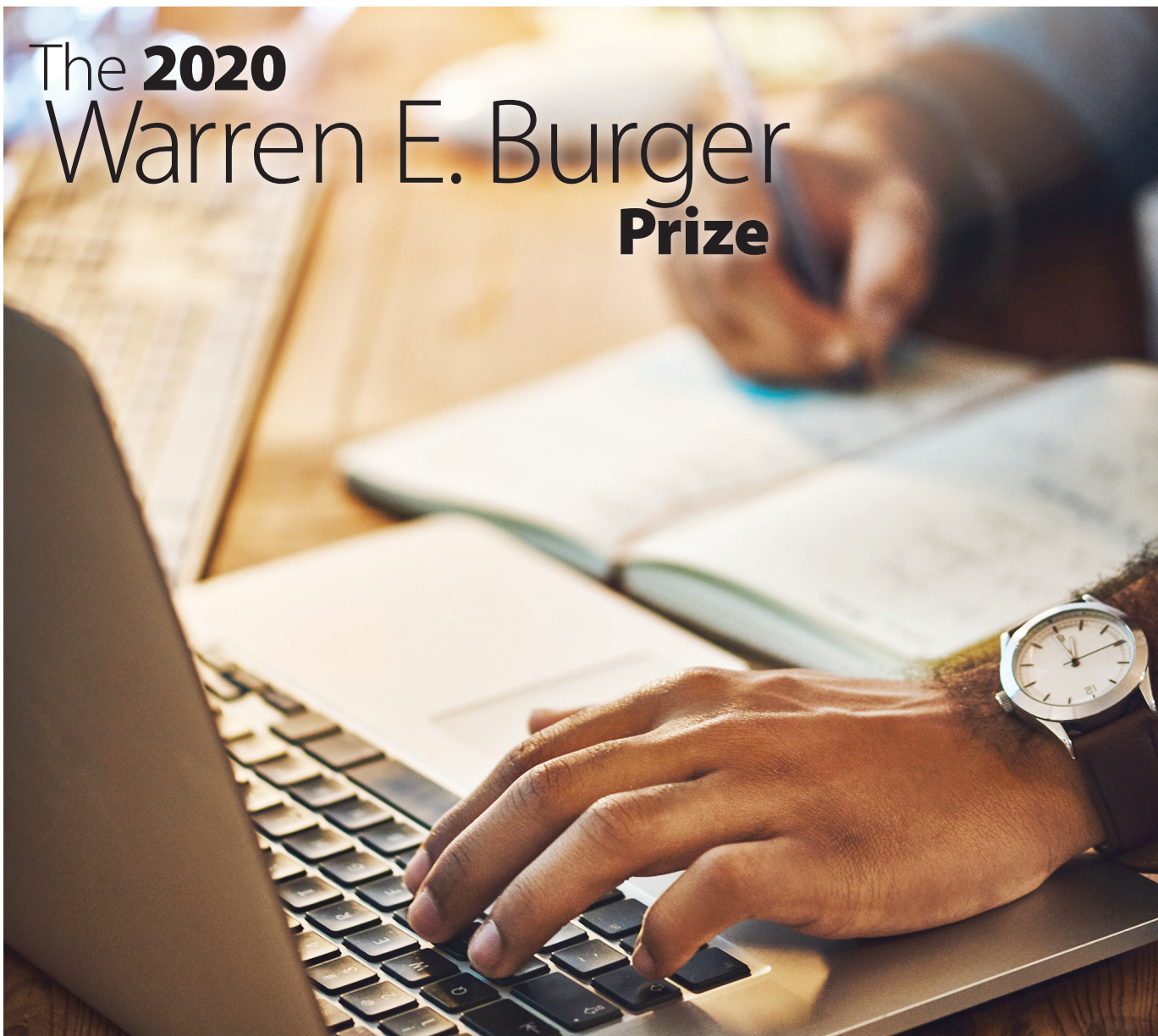
The court provided copious citations to extensive authority for penalizing a breach of the duty of candor to the court, including dismissal, in order to ensure, based on its inherent authority to police the litigation process, that acts that undermine the integrity of the judicial process are penalized.

The specific misrepresentation to the court in the *Parfi* case involved an initial stay of the Chancery proceedings based on the understanding that the parties would proceed to arbitration in Sweden. At a routine status conference in the Chancery case, the court inquired about the pendency of the arbitration in Sweden. It became apparent to the court during that conference that the primary plaintiff was attempting to “game the system” and avoid proceeding to arbitration. The court found that there was a material misrepresentation to the court about the inability to proceed with the Swedish arbitration, in an attempt to seek a modification of the stay order in Chancery. The court allowed discovery into whether the plaintiffs engaged in sanctionable delay and made misrepresentations to the court. The result of discovery confirmed evidence of both.

In sum, many instances of failure to comply with Rule 3.3 may not rise to the level of severity requiring dismissal of the case, and there may be some instances where there is less than abundant evidence or clarity about unambiguous facts supporting a lack of candor, but this short overview of selected cases provides several examples of boundaries that were crossed—resulting in dire consequences. ♦

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Submissions are due July 1, 2020.



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A CONVERSATION WITH Military Lawyer Trailblazer Malinda E. Dunn

BY MARY ANN AIELLO, ESQUIRE, AND MARY KATE COLEMAN, ESQUIRE

As members of the American Inns of Court Foundation Board of Trustees since 2013, we have enjoyed working with and getting to know the organization's executive director, Malinda E. Dunn, Brigadier General, USA (Ret.). What we knew of Dunn's life and work history was fascinating and inspiring. So when we saw the theme of this issue of *The Bencher*, we set out to learn more about this former military lawyer and trailblazer who has many "firsts" to her name, including being the first woman brigadier general on active duty in the Army Judge Advocate General (JAG) Corps. The following are excerpts from our conversation, which took place in Alexandria, Virginia, last summer:



Coleman: Tell us about your family background and how it affected what you did later in life.

Dunn: I was the oldest of six and grew up in Pakistan, Nepal, Taiwan, Afghanistan, India, and Ethiopia, where we moved for my father's job. My father was a big outdoorsman and took me along on multi-day hunting/fishing trips with his friends and their sons starting when I was six and seven years old. This experience—as well as growing up with four brothers (I also have one sister, who is the youngest)—gave me a certain level of comfort operating around men that stood me in good stead during my early years in the Army. Further, my father never once suggested that I could not or should not do something because I was a girl.

Aiello: What led you to be interested in going into the military?

Dunn: I wanted to travel and live overseas, but most legal jobs are not conducive to that. A close friend in law school did a summer internship with the Army JAG Corps and could not stop talking about what an amazing summer she had and the amazing people with whom she worked. The idea of living overseas and practicing law piqued my interest. After my first year with the JAG Corps, I knew I was going to stay.

Coleman: Tell us about being one of the first women in leadership in the military.

Dunn: The first women integrated into the regular Army in 1978. I joined the JAG Corps only three years later. There were definitely not many female officers around—in the JAG Corps or elsewhere. Fortunately, officers are managed by their branch, and the JAG Corps was fairly serious about assigning women into all units open to women. As it happened, the JAG Corps sent me where I asked to go—places like Korea, Fort Bragg and Fort Carson—and my bosses put me in the developmental jobs in which I needed to be. It also was fortunate that the Army's strong culture of mentoring meant that senior officers mentored junior officers, so it did not matter whether you were male or female.

Aiello: Were there any barriers that you faced in the military, and how did you overcome them?

Dunn: The Army was, and is, a fairly egalitarian environment. If you could keep up physically, do your job well, be professional, and keep your sense of humor, you could succeed. Having a sense of humor was helpful because if you were a woman or a minority you had to prove yourself in each new unit. Once you did, though, I found there were few barriers. And, the concept of proving myself did not seem out of place to me at that time. I had done it

in college, where the first women students were seniors when I was a freshman and the entire faculty was male. I had proved myself in law school where there was one female professor who left after my first year and no female professors after that. So, proving myself seemed perfectly normal to me.

Coleman: Did the attitude toward women in the military change during the time you were in service? If so, how?

Dunn: Vastly. Over time, there were more women. More women to mentor women. More women in leadership positions. More “dual military” couples. More pregnant female soldiers. More women moving up the rank ladder with children. More women with different goals coming into the Army and the JAG Corps and women of differing physical abilities, different family goals, and different personal goals. All of this led to more paths for women and lots more men working for women at different stages in their careers, not just in the JAG Corps, but in most branches of the Army. Women became a truly integral part of the force. One of my favorite stories from Iraq involves a young company commander (a captain) who called me because he was unclear about whether his female soldiers could go out on patrol. As he was talking, I was getting my back up just a bit. Then, he said, “Ma’am, I hope you’re not going to tell me they can’t go out on patrol because they are my best soldiers!” Ah, exactly (chuckling)!

Aiello: If a young woman wanted to join the military today, what would you say to her?

Dunn: The military is a huge adventure, and it is personally and professionally rewarding beyond measure. It is an honor and a privilege to serve your country. You will have tremendous responsibility for work and for people at a very young age—and the training and mentors to help you succeed.

However, you need to be prepared to work really hard, to push yourself physically and mentally, to keep your sense of humor, and to have the confidence to correct people and not take any nonsense from anyone. There is no rank when you are talking about right and wrong. If someone starts to cross a line, you must call them on it immediately. This applies to everything—a woman whose hair is not to standard, a man whose uniform is wrong, any soldier who does not render a proper salute—and anyone, junior or senior, who gets out of line with comments, gestures, and the like. Back in the day, I chased down many a military vehicle from which inappropriate commentary emanated and did on-the-spot impromptu sexual harassment training for the occupants!

Coleman: What was it like serving in Iraq and Afghanistan, and what were your job duties in those locations?

Dunn: In Afghanistan, I was the staff judge advocate for the Combined Joint Task Force, which translates to being the senior legal adviser to the senior U.S. commander on the ground. I was in Afghanistan fairly early on, in 2003. We had about 20 lawyers in the country—doing everything from working with commanders on targeting to sorting through some serious fiscal law issues; parsing international agreements; working detention operations; teaching and working to change rules of engagement to make them more relevant to operations on the ground; overseeing the constant investigations; assisting soldiers with personal legal issues; prosecuting and defending soldier misconduct; paying claims; managing the different rules of engagement under which our allies were operating; and much more.

Iraq was a much more developed theater; by the time I got there in 2005, we had more than 200 lawyers in the country, doing all the functions listed above plus being involved in environmental and labor law issues; working on significant intelligence law issues; supporting the Central Criminal Court of Iraq as it tried insurgents; working to rebuild police stations and police functions; working to rebuild local courthouses and court functions; being significantly involved with detention operations; engaging with Iraqi Army lawyers; and working really significant targeting issues. In Iraq, I was the staff judge advocate for the commander, Multi-National Corps, Iraq. My boss was the senior commander for all combat forces on the ground in Iraq.

Aiello: How did you balance your career and your family life?

Dunn: (Laughing) I lecture on this. I have an entire slideshow!

First, the military is actually fairly flexible. However, you do deploy, and there are long periods of time where you work 12 hours a day (and you have early-morning physical training). So, my advice is to evaluate what you want to do career-wise. Figure out what you want to accomplish family-wise. Assess the person to whom you are married. Make a plan as to how you are going to handle things. Military child care options are way more flexible and reasonable than out in the civilian world, but even so, there are limitations. Nannies and au pairs are good because they can do errands and watch the children. Lawn services and house cleaning services are a must. All of this preserves your time to

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“I think mentoring is the single most important aspect of any workplace. A workplace where those even slightly more senior and more experienced take the time to guide and mentor those who are more junior and less experienced is a workplace where you can make mistakes, learn, and grow—and a workplace where values and work ethic are passed down and reinforced.”

be with your children. And, if you are senior, as I was (I had my daughters at age 37 and age 40), make a point to your subordinates that it is okay to get up from your desk at 11 a.m. and go to your child’s preschool play—by putting it on your public calendar and doing it.

Coleman: *Is there any one thing you did in the military of which you are particularly proud? What is it and why?*

Dunn: I was proud to represent the Army at repatriation ceremonies at Dover Air Force Base during the height of the Iraq conflict in 2006, 2007, and 2008. It is somber duty, but such a privilege to honor our fallen as they return to the United States—no matter the day of the week or the time of day or night. It made me proud to be an American.

I also was proud to be part of one team after another that made a difference to the Army at the unit, installation, and, eventually, national level. As I became more senior, I was very fortunate to be able to support some incredible subordinates who had great ideas. One example is the colonel who came to me with an entire plan to create a cadre of specially trained prosecutors to handle child and adult sexual assault cases. This occurred several years before all the media attention on sexual assault in the Armed Forces. The Army created the Special Victim Prosecutor program and had it in place.

Aiello: *Who inspired you and served as your role models?*

Dunn: First, my father, who taught me to be straightforward, treated me just like my brothers so it never occurred to me that I could not do what men did, and demonstrated that you can manage both family and significant work. Also, the commanders for whom I worked at every level in the Army who inspired me with their intellect, leadership, love of soldiers, and common sense—and who treated me just like everyone else in the unit. By doing that they gave me credibility and enhanced the credibility of all women. Finally, women who were my peers in the Army who gave me great ideas on child care options, reassured me that children

are very capable of distinguishing caregivers from parents, showed me that a little sass and a little humor goes a long way, delighted me with their friendship and support, and astonished me with their brains, commitment, and resilience.

Coleman: *Why did you choose to work for the American Inns of Court when you retired after more than 28 years with the military?*

Dunn: As I was preparing to retire, I knew that I had to find a job with a real mission. I wasn’t even sure whether it would be related to the law. I was very fortunate to find the American Inns of Court with its important mission and absolutely amazing members and leaders.

Aiello: *You have served as a mentor to others in the military. How does it inform what you do for AIC since mentoring is such an important part of our mission?*

Dunn: I think mentoring is the single most important aspect of any workplace. A workplace where those even slightly more senior and more experienced take the time to guide and mentor those who are more junior and less experienced is a workplace where you can make mistakes, learn, and grow—and a workplace where values and work ethic are passed down and reinforced. The mentoring that goes on in American Inns of Court around the country is absolutely crucial to our profession and the rule of law.

Coleman: *Is the American Inns of Court a good organization for women lawyers?*

Dunn: Absolutely! It brings women in legal communities together, thereby fostering the oh-so-important mentoring. It creates a community where women lawyers can bounce things off each other: family issues, substantive work issues, and personal work issues. And, women are strong leaders within the American Inns of Court, which makes us a better organization and shines a spotlight on those great women leaders in their own legal communities across the country.

Aiello: What is your vision for the American Inns of Court in the future?

Dunn: My vision is for a larger and more connected American Inns of Court. I want all members to be excited about being part of an organization that makes our profession better. We are the lawyers; we are responsible for respect for the rule of law.

Coleman: Do you have any goals you would like to accomplish while you are still working?

Dunn: I am very excited about the strategic planning the board did and the focus on bringing new and expanded programs like the National Advocacy Training Program and the annual National Conversation on Civility to our members. We are taking the first steps toward establishing a regular development process for the Foundation, beginning this fall, so that we have the resources to support scholarship programs and to reach out to more lawyers in more communities in order to make our profession better. I know our Inn members want other lawyers and judges to share in the great experience of belonging to an American Inn of Court.

Aiello: Do you have a vision for what your eventual retirement looks like?

Dunn: That's the \$64,000 question! I hope it involves lots of family time with my husband and daughters. I know it involves some sort of



Mary Kate Coleman, Esq.; Mary Ann Aiello, Esq.; and Malinda E. Dunn.

consistent, significant volunteer activity. And, I hope it continues to involve travel and adventure!

For more information about Malinda Dunn, go to home.innsofcourt.org/Dunn. ♦

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Nominations are due June 1, 2020

For nomination information, please visit www.innsofcourt.org and click on Awards and Scholarships.





Like Mother, Like Daughter?

BY JUDGE GENE E.K. PRATTER AND V. PAIGE PRATTER, ESQUIRE

The glory of each generation is to make its own precedents.

—**Belva Lockwood**, the first woman to argue before the U.S. Supreme Court

Like mother, like daughter? When mother and daughter are both lawyers, this question is too dicey to address here. Instead, our focus will be to make some observations about our profession, principally concerning women, in the 28 years between our respective law school graduations—1975 and 2003—and now.

Both of us work full time in law, having done so since our graduations from the University of Pennsylvania Law School. We each have two children but chose different child care options after returning from brief maternity leaves. Our husbands also have law degrees, though one stayed with non-law pursuits. Both of us have worked in large law firms, one of us for more than

30 years in the same firm before becoming a federal district court judge, and the other in three firms in three cities after a federal court clerkship and before becoming an assistant U.S. attorney and now leader of an in-house legal team in a multi-national tech corporation. These experiences contribute to our reflections as to whether and, if so, how women affected the legal profession and vice versa.

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Focusing on the numbers, what is different?

GEKP: Since 1975 the gap between the number of women and men in our profession has been shrinking. Considerably more women now participate in every aspect (except in support service roles if reports of secretarial buy-outs and reductions-in-force are accurate). In the 1970s, between 15 percent and 30 percent of law students were women, typically coming directly from college. In the 1990s and early 2000s, women still represented less than half of law students, but by 2009 about 48 percent of law school graduates were women. Now, many schools report that more than half their students are women. A similar pattern appears in large law firms. Reports show entering associate classes of approximately 45 percent women; in the 1970s it was closer to one-fourth. The first time I ventured into a federal courtroom in the mid-1970s Article III women judges were few and far between. Of course, none were U.S. Supreme Court justices. Then, in 1979, 23 women were appointed to federal judgeships, more than doubling the number of women nominated as federal judges in the previous 190 years. Reports for 2018 show one-third of judges on highest-level state courts are women.

VPP: In federal and local prosecutors' offices, the presence of professional women has been steadily increasing too. The count of women U.S. attorneys went from none in 1975 to 11 in 2002 and equivalent numbers now. There is similar increase in the number of women in law enforcement generally.

GEKP: The reference to more women in law enforcement and prosecutors' offices reminds me of a criminal case I had a few years ago. Mid-way through a hearing I noticed that all of the participants—the prosecutor, defense counsel, FBI agent, probation officer, deputy U.S. marshal, court reporter, the judge and the defendant all were women. Whether that represented progress of some sort, it was surely significant that no one noticed the gender demographics earlier in the case.

What about women lawyers in leadership positions?

VPP: Role models can be instrumental to anyone's success, so it's worthwhile to look for women in leadership positions, such as women Supreme Court justices. Notably, most of the Supreme Court's law clerks in this term are women. More women are leading corporate in-house legal departments, large and small, just as more women are first chair on trial teams. This is also true in law schools. In 1974, 3 percent of the deans of 157 law schools

were women; now the number is almost 40 percent. Law faculties track similar changes.

GEKP: Of course, leadership is seen through the eye of the beholder and exhibited differently person-by-person and institution-by-institution. It is a tough concept to nail down. When I graduated from law school, women in Congress were a rarity; not so this term. However, in the 1970s lawyers were a much larger percentage of state and federal legislators than they are now. Various women leaders say that the most successful women leaders are those who are, and appear to be, comfortable with who they are, who take care not to use their gender as a feint, and those whose toughness has a purpose and is only one of many tools in the box. Women leaders are quick to say that more leadership opportunities for women are needed and institutional obstacles have to be removed.

Even though women enter law firms at comparable rates to men and may achieve parity in promotion to nominal partnership ranks, women remain relatively scarce in firm governance, ownership, and profits. They still represent about a quarter of the partners and just slightly above one-fifth of equity partners. In nonprofits, government, in-house positions, and academia women lawyers do represent higher percentage rates in senior roles than in private practice.

VPP: From the standpoint of providing role models or becoming leaders, we should be concerned that women leave law firms before attaining seniority at a greater pace than their male counterparts. This narrows the pipeline and shrinks the pool of women available for promotion. Fortunately, leaders are found in many places, and we can find women leaders elsewhere among governors, state attorneys general, Cabinet secretaries, and municipal governments, for example. Some of us are even lucky enough to find it in our mothers.

Do today's women lawyers have significantly different experiences than women did four decades ago?

GEKP: Probably, yes. Because there are more women in the profession generally, there are more role

Even though women enter law firms at comparable rates to men and may achieve parity in promotion to nominal partnership ranks, women remain relatively scarce in firm governance, ownership, and profits.

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Attitudes about part-time and flextime have progressed so that the majority of newer lawyers look favorably on legal industry employers who offer these arrangements.

models, more potentially or presumably sympathetic or empathetic colleagues as mentors. This also means—for good or ill—any given woman is less likely to be perceived as unusual or unique. Instead, there is a possibility that an institution may consider a woman merely part of a constituency of “the women.” While the risk that any individual woman lawyer could be marginalized should be reduced now, unacceptable or unfortunate events still happen. Nonetheless, the expectation is that there are fewer surreptitious or pejorative discussions about a “mommy track” for those pursuing both a career and motherhood. There is flextime and telecommuting. As useful as such options can be, they are not without risk of sidetracking the lawyers who use them. Still, many of the “good/bad old days” are gone, replaced, if not exactly by a new dawn or new normal, then at least by something of a new age.

VPP: Some of the 1970s and '80s stories make my hair stand on end. My own experience includes far fewer problematic examples. My contemporaries and I hear about negative experiences women lawyers and judges had 25 or 30 years ago; I can't imagine being expected to research and write the brief, prep the experts, and bring the coffee! Attitudes about part-time and flextime have progressed so that the majority of newer lawyers look favorably on legal industry employers who offer these arrangements. Recent surveys report that many newer women attorneys say they are interested in these options at some point in their careers. Although there are now more families with stay-at-home dads and lawyer-mother breadwinners, more women lawyers than men work part time. Fewer men and women may do so, perhaps because many younger lawyers are concerned that working part time or on flexible schedules is or can be career limiting, notwithstanding contrary protestations.

Have institutions changed because there are more women lawyers and an increase in the presence of women generally?

GEKP: They have changed, though I doubt there is a primary cause. Thirty or 40 years ago there hardly would ever have been a lawsuit by a woman lawyer

against her firm. Now, such reports in the legal news are not rare. To be fair, years ago there were virtually no reports of any lawyer leaving, much less suing, his or her firm. Another change is the presence of ubiquitous consultants offering costly advice about attracting, interviewing, retaining, compensating, and developing women professionals. These businesses started to appear in the 1980s, but not many firms used them. Now, many lawyers themselves have become the consultants or headhunters.

Networking events for women abound. Bar associations and firms sponsor “high tea,” not just golf outings. Care is given to gender balance for assembling panels and programs. Bar publications regularly include articles about dress codes. Many men also benefit from the increase in women lawyers. For example, it is not unusual for both men and women to ask that a court hearing or conference wrap up early because of carpool duty. I try to gently remind some of my judicial colleagues who may not themselves have had (or have) primary child care duties that scheduling court matters for very early or late in the day can be especially tough and stressful for lawyers—most often women—who get kids out the door in the morning or get dinner ready or both. This, by the way, is my most frequently used example when asked if women judges “do things differently” than their male colleagues. Perhaps this is one small way we judges can help the profession become more family friendly, a welcomed change for men and women alike.

VPP: Maybe because of increased numbers, but hopefully because it is the right thing to do, women expect equal opportunity for getting into law school, leading firm practice groups or bar committees, being hired and enjoying promotions in firms and legal departments, and stepping into professional leadership roles in all sectors. Many communities have successful all-women firms and, for example, the Women's White-Collar Defense Association and the Women Antitrust Plaintiffs' Attorneys group have robust worldwide participation. Firms have experimented with on-site or co-op day care. Efforts to adjust hiring interview routines and enhance client development skills and opportunities for women also result in a much different experience for more recent generations. These changes likely are here to stay.

What about women professionals' relationships with each other?

VPP: No doubt my experience is colored by 13 years in an all-girls K-12 school, but I think professional

women today really believe that a rising tide lifts all boats. We enjoy each other, including the chance to support one another. As an example, I recall a criminal trial where the judge (perhaps one who hadn't yet received the gentle reminder about family schedule demands) announced we were staying until the jury reached a verdict, no matter that he finished charging the jury at 5 p.m. Defense counsel—a mom I had only met during this case—then scrambled to sort out child care coverage. We realized we lived in the same neighborhood, so her baby was brought to my house where our sitter watched all the kids until the verdict was announced later that evening. Opponents in the courtroom, we had each other's backs in life.

GEKP: There is greater interest in mentoring now. This was not a topic much written about 35 or 40 years ago, much less the subject of serious attention in law firms and corporate legal departments. Now, it is so central to professional development, there is even the counter-consideration of the so-called "Queen Bee" phenomenon—namely, do some senior, experienced women professionals have the attitude of "I had to do it the hard way; so should you"? Some career strategists even caution against expecting professionals to wholeheartedly look out for those coming along later. This is often couched in gender terms, but it might apply to men too, senior and junior, thus making the American Inns of Court, with its emphasis on mentoring, even more valuable for everyone.

What about changing views by clients or the public in general?

GEKP: There has been a sea change in the expectations of clients, probably prompting speedier acknowledgment of the importance of women lawyers. I recall a big gender discrimination case in the late 1970s against our firm's college client that vetoed the inclusion of a woman associate in a key role on the defense trial team. Our senior partner risked losing the client by insisting the preferred associate remain on board. That associate—an Inn member—later became chancellor of the Philadelphia Bar Association. And as roles of women generally have changed, our profession has had to take notice. Nationwide demographics tell us that in 1975 women were heads of 13 percent of households; that has doubled since 2003. Women-owned businesses have multiplied at a faster rate: 1.0 million in 1977 to 2.5 million in 1980, a gain of 33 percent as compared to an 11 percent gain for men in the same years. Now, in 2018, about 12.3

million (40 percent of all businesses) are owned by women. Even women's events in the Olympics and other athletic pursuits show remarkable and similar growth in numbers and attention. It's hardly surprising the law profession responds.

Any other thoughts about what is or could be ahead for women lawyers?

GEKP: I suppose we will know that women are equal at all levels and in all aspects of our profession when we do not just celebrate "firsts." Frankly, just cracking the glass ceiling is not enough. Indeed, the cracks appeared long ago. Wouldn't it be better if there was no glass ceiling to discuss? I'd like to see some language changes so that we no longer refer to a "woman litigator," a "woman lawyer," a "woman prosecutor," a "woman G.C.," and such. After all, when reference is to a man, we talk, or the press writes, about "lawyer," "litigator," "G.C.," "prosecutor," "judge," or "dean." And I hope we cease the debate between the gradualists or apologists ("It is OK if changes happen in moderation eventually...") and those who are more impatient ("We shouldn't have to wait one minute more...") to a realistic optimism that accepts the unmistakable and irresistible momentum for change in all aspects of our profession. It's my hope that we soon get to the point where we do not automatically think that exceptional women lawyers and judges are exceptions. ♦

Endnote: For the data presented we are indebted to Michael Hayes, manager of library research for the Library of the Third Circuit Court of Appeals. He was indefatigable and good-spirited in tracking down reliable and interesting information. Of course, what we have done or failed to do with his hard work is our responsibility.

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WOMEN IN THE LAW: Reflections from a Mother-at-Law

BY SUSAN E. FARLEY, ESQUIRE

Undeniably, women have made great inroads into the private practice of law during my 35-year career. Yet, I believe working full time while simultaneously raising children remains a challenging hurdle to overcome. I have raised three children while in full-time private practice, which is probably my proudest accomplishment. When I look back at the start of my career, I recall some—but not many—women blazing the trail ahead of me, particularly in my practice area. However, I cannot recall any of them being mothers. Today, that has changed, as well it should. Many women lawyers are also moms. In my opinion, mothers-at-law bring tremendous talent, insight, skill, and even grit to the bar. Nothing is more formidable in nature or in our community than a mother protecting her young. When that same drive and passion are brought to the practice of law for the benefit of clients, it is powerful. From my perspective, clients recognize and appreciate the maternal qualities of caregiver, teacher, mentor, sage, and loyal and sometimes fierce supporter, especially when they are in trouble or their life's work is being challenged. In fact, they count on it. Mothers are naturals at law.

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Having no mother-at-law role models, I had to find my own way through trial and error. There were many firsts. Indeed, of the three firms at which I had the pleasure to work, none had a maternity leave policy when I arrived. Fortunately, there were plenty of wonderful dads helping to clear the path for me and others. Yet, it is unrealistic to ignore the unique challenges of working moms. Looking back, I can identify a dozen things I learned along the way that contributed to my ability to maneuver through the ever-changing minefield toward a successful legal practice while being a mother-at-law. My suggestions are set forth below, and I invite you to use them as your preliminary road map, if helpful, to move you toward your goal:

1 Keep it simple and stay organized, both at home and at work. For me, this meant having one calendar, one cellphone, one computer, and limited paper. I am a list-a-holic, but I keep my lists in one small, purse-portable, bound journal, turning a new page each week. On the left page are weekly work tasks, and on the right are weekly home tasks. I keep meals simple and healthy. Grocery lists are repetitive forms requiring only a check box, and the kids learned to check the box or make a note for a needed item. Otherwise, it wasn't purchased. I designated a place for everything, whether at home or work, and everything was put in its place as a matter of habit. I observe many people spending a great deal of time looking for things. I avoid that waste of time. I learned very early on that having less of everything and putting what I had in its place meant having more time for what is important. I constantly seek ways to simplify, organize, and reduce.

2 Prepare and lay out all you can the night before, whether at the office or at home. Before leaving the office at night, identify and add to your list those action items that should be addressed the following day. At home, I prepared lunches the night before and planned the next evening's meal. The kids laid out their clothes, as did I. I learned the hard way, as there was nothing worse than starting a day in chaos with a clothes war or wardrobe failure. There are enough opportunities for unexpected events to disrupt the morning routine; thus, it became important for me to have time in reserve to address those unexpected events rather than collapse under their weight because I had to attend to routine events. Similarly, at work, despite my plans and lists, the practice of law is frequently interrupted by legal emergencies. At least by pre-planning, I knew what to bump and what to prioritize, and I did not feel quite so overwhelmed by the unexpected.

3 Hire out and delegate all that you can and pay for those supportive services until it hurts. While doing this, it meant having a less prestigious home, a less expensive car, fewer fancy vacations, and less of the other trappings that often accompany a higher salary. A significant portion of my salary went to support those who supported me and made my work and home life possible. Using a payroll service, I paid everyone on the books, with benefits, if they weren't an independent contractor. Those helping me, whether in child care or other household tasks, were highly valued and, in turn, assisted brilliantly and loyally. Throughout this process, both at home and in the office, I enjoyed the unexpected good fortune of meeting some of the most wonderful people in my life. This is one area in which you should not be stingy or greedy, not only because generosity is the right thing to do, but because you will benefit from it as your life becomes more manageable.

4 Seek out colleagues, both dads and moms, also working in the legal profession. Obviously, receiving another perspective is very valuable, but there is a great sense of esprit de corps and camaraderie in the trenches. I particularly enjoy observing younger dads in the legal profession, many of whom share their lives and child raising with another professional. It is terrific to see a more equitable sharing of responsibilities at home, which would have been unimaginable 35 years ago. And, in my opinion, this development begets a greater understanding by those in our profession of the complex pathway so many of us travel.

5 Give yourself a break and don't be too hard on yourself. Needless guilt should be strictly avoided. I vividly remember years ago, after landing in Vancouver, British Columbia, for a week of court-ordered depositions, calling from the airport to say goodnight to my children. I was a single mother-at-law at the time. On the phone, my mom calmly greeted me and informed me that my five-year-old had just come down with chicken pox. Two days later, my three-year-old bloomed with the same condition. Yet, during this time, I had to stay in Vancouver for five days of depositions. Upon my return home, severely tired, jetlagged, and feeling like a mother-at-law failure, I knew what awaited me. While trying to reclaim my motherhood, I gave my three-year-old an oatmeal bath. He looked at me with his sad, fully pocked face and said, "I like Grandma better." I responded, "I like Grandma better, too!" Sometimes you must give yourself a break and realize that

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things cannot be perfect. Now, at age 30, my son assures me he likes me pretty well! And my daughters have thanked me for showing them how to do it, namely model the balance between work and home life. Looking back, I realize those times I felt guilty for not doing whatever I thought I should be doing was misspent energy.

6 Always have a plan A and then have a plan B and then have a plan C. Things happen, child care falls apart, kids get sick, you get sick, causes of action fall apart, unforeseen evidence comes in against your client. Unexpected things happen routinely. Always have a preplanned A, B, and C, and never leave anything to the last minute. Plan. Plan. Plan.

7 Focus less on being a “woman lawyer” or “working mom” and define yourself more as being a great lawyer and a great mom. Let others define you as they wish, but you define yourself. If you are in the legal profession, you deserve to identify yourself as a great professional without any other modifiers. The same goes for motherhood.

8 Make sleep a priority. Coping mechanisms are more effective and clarity of thought is heightened after a good night’s sleep. That means seven to eight and a half hours a night minimum. I would rather have a tough day after sleeping well than an easy day while sleep deprived. It is important to know when to say, “I am turning off the day, goodnight.” And then you need the discipline to do it.

9 Use your commute and travel time productively. If you are driving, it is the perfect time to think. Turn off the radio and use it as quiet reflection time. It will invigorate you and help with your planning. If you have calls to make, line them up in advance and make them. I used this time during long rides to make calls that did not require note taking. Now, I use the time first thing in the morning, every morning, to touch base briefly with my elderly parents and other family members. They count on it and so do I. If you are riding during your commute, you have the added option of doing a task. For instance, complete or review your daily time records for accuracy. Do not leave them for the next day when they are not fresh in your mind. During morning travels, start your instructional emails or clean out your email boxes.

10 When telecommuting from home, have a dedicated space that is yours and yours alone. Do not spend time in it unless you are working. Otherwise, you may feel as if you are working all the time. Concomitantly, do not invite others to enter your working space. It should be your work zone only. My children knew not to bother me if it could possibly wait until I exited my home office. Even our beloved golden retriever knew never to cross the threshold.

11 Be attendant to exercise. This is the thing that mothers-at-law tend to give up first because they have so little extra time. Exercise could be as simple as taking a walk at any part of the day. Use that time to think and plan and even make phone calls. Just moving and getting out of your chair is very important because the better your body feels, the better your mind works.

12 Lastly, and in my opinion, most importantly, carefully choose the right person to join you as a co-pilot because it will heavily influence the quality and enjoyment of your mother-at-law journey. This choice is often made early in a career before fully understanding the bumps in the road ahead. If you are lucky enough to find a parenting partner who is unconditionally supportive, selfless, and willing at times to step into your role as mother, you will arrive with less stress, happier, and probably faster. Sometimes, this co-pilot is hard to find, but if you do, be grateful, pay close attention to their needs, and make your relationship your most important priority. Similarly, while at work, your partners should reflect your values. If they do not, find new ones.

Upon reflection and review of this list, I thought momentarily how much easier it would have been had I been given this road map before beginning my journey. Yet, there is nothing like experience as a teacher, and I am sure you have your own experiences, favorite routines, and successful tips. I encourage you to share them with others as I have done, with the knowledge that whatever works for you is the best path. I wish you a wonderful journey. ♦

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WOMEN IN THE LEGAL PROFESSION: We've Made Progress but We're Not There Yet

BY JUDGE AMY C. YERKEY

On the 20-year anniversary of my graduation from law school, I was intrigued to review how women are faring in the practice of law. While the number of women in private and public sector jobs has increased, there is still much room for improvement, especially in positions of power. Women continue to face barriers that may be overcome with honest dialogue and courage. Changes such as recognition of implicit bias, strong connections with mentors, and cultural shifts regarding perceptions about mothers can help women achieve equality at top positions.

When I first started law school, the statistics for women looked good on paper: Approximately half of the students enrolled were women. The number of women thinned as I joined law review and even more so when I became an editor on law review. I was even more discouraged when I began working at a large New York City law firm immediately after graduation. There were only two female partners at a firm of more than 1,000 attorneys. What happened to all of the women? In 1999, women were not adequately represented throughout the legal profession, especially in positions of power.

Today, I am fortunate to be surrounded by many terrific female colleagues and role models as a judge on the Superior Court of California. Thanks to a recent push for diversity on the bench, the number of women is increasing in the California courts, according to 2019 data from the state's Judicial Council. This was in part due to removing a barrier that likely prevented many women from seeking and receiving judicial appointments. Then-Gov. Jerry Brown specifically shifted the focus away from trial experience, which had previously been a major criterion for judicial candidates. A national study published in 2015 demonstrated that women were consistently underrepresented in lead counsel roles, making the shift understandable. For judges, criteria such as keen intellect and appropriate demeanor are arguably more relevant than trial experience and do not carry the same bias. Allowing strengths other than trial experience to be highlighted resulted in a significantly more diverse bench. California's trial courts are now comprised of approximately one-third women. Its

appellate and Supreme Court fare even better at approximately 40 percent women, according to the Judicial Council.

This trend holds true for women throughout the legal profession. Recent data from the American Bar Association (ABA) Commission on Women show that the workforce comprises between 30 and 40 percent in both public and private sector jobs. While this may sound like good news, when juxtaposed against the fact that female students now outnumber male students in law schools, according to ABA data, the bottom line is that women are still underrepresented. For women of color, the differentials are even more dramatically pronounced. This remains true especially in top positions across all areas of the legal profession.

For example, in the Superior Court of Los Angeles, where I currently sit, only two women have ever held the prestigious position of presiding judge. The first trailblazer was Justice Lee Smalley Edmon, who currently sits on the California Court of Appeal. Edmon recently spoke at the Ball-Hunt-Schooley American Inn of Court and shared that she was inspired to become presiding judge in part because no woman had ever held that role and that it was time for a change. I am inspired by her courage and determination for change.

How can we, as a profession, provide more opportunities for women in top positions? A starting point is recognizing that implicit biases, or stereotypical attitudes, may affect whether women are offered high-level positions. Implicit bias can

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take many forms, such as leadership definitions, management criteria, and performance evaluation criteria that reflect stereotypically masculine biases. For example, a 2007 McKinsey & Company gender diversity study found a company that measured performance based on “unfailing availability” and “total geographic mobility.” As stated in the report “Breaking Barriers: Unconscious Gender Bias in the Workplace,” which was published by the International Labour Organization, “In general, the reduced domestic obligations of men make it easier for them to be available and geographically mobile. Thus, this criterion has a pro-male, pro-childless bias, and thus penalizes women, partic-

ularly working mothers.” Recognition of these consequences is vital to effecting change.

Training tailored to address these issues is one way to combat implicit biases. The California courts provide

How can we, as a profession, provide more opportunities for women in top positions? A starting point is recognizing that implicit biases, or stereotypical attitudes, may affect whether women are offered high-level positions.

education to all new judicial officers to help them expose and understand the impact of their implicit biases. The Superior Court of California, County of Los Angeles (LA Superior Court), is taking this idea one step further and requiring all judges who are on a hiring committee to undergo implicit bias training before beginning the selection process. Perhaps the state bars could require annual implicit bias training as a component of mandatory continuing education.

Another approach includes encouraging or even requiring that employers pair women with mentors. My own experience of having both male and female mentors significantly shaped my career path and gave me confidence to pursue positions that I thought were beyond reach. I am fortunate to have a powerful example of mentoring in my current organization. LA Superior Court’s current presiding judge, Kevin Brazile, sought to promote many female judges to supervisory positions. To assist with this transition, he paired less experienced judges with senior judge mentors. This not only helps the individual judge mentee learn

the new responsibilities, it also gives women the opportunity to demonstrate that they possess the necessary skills. In the courthouse where I work, experienced Supervising Judge James Otto works closely with newly appointed Assistant Supervising Judge Nicole Heeseman. Heeseman’s demonstrated competence earned her a lot of responsibility and input into areas that were traditionally beyond the scope of an assistant supervising judge.

Equal opportunities for all women can be achieved by challenging cultural norms like face time and perceptions about mothers. In a brilliant article for *The Atlantic* in 2012, Anne-Marie Slaughter, former top aide to Hillary Clinton, put forth numerous innovative ideas on how to change the landscape for women to reach positions of power. These are especially applicable to the legal profession. Slaughter receives full credit for the ideas shared here.

Changing the expectation about when, where, and how work will be done can profoundly affect a woman’s ability to balance career and family obligations. These considerations also apply to parents in general, keeping in mind single dads and same-sex couples. They also benefit employers. It is noteworthy that a two-year Stanford University study found that telecommuting increased productivity and decreased employee attrition, sick leave, and time off. Policies that permit telecommuting and calling in to meetings are a good start, but legal employers must go further and ensure that they are not penalizing those who take advantage of such opportunities. Another simple change that would help the vast majority of parents with work and family balance issues would be if school hours matched work hours. While this change would ideally occur at a national level, in the meantime, individuals in the legal profession can take small steps toward this goal. In addition, legal employers must challenge perceptions that women, particularly mothers, are less dedicated or disciplined simply because they have chosen to have children.

The journey to achieve equality for women in the legal profession remains as pressing today as it did 20 years ago. Although some positive change has occurred, until women have equal access to positions of power, we must continue to search for avenues to bring about these opportunities. As Ruth Bader Ginsburg aptly stated, “Women belong in all places that decisions are being made... It shouldn’t be that women are the exception.” ♦

Amy C. Yerkey is a judge for the Superior Court of California, County of Los Angeles.

“Miss, Are You an Attorney?” Tales of a ‘Lady Lawyer’ in the Midwest

BY MEGAN STUMPH-TURNER, ESQUIRE

I often wonder if my fellow female Inn members experience what I call being “bar-carded”—the phenomenon in which a female attorney has her credentials to practice law questioned by others in the courtroom.

The impulse to “bar-card” women attorneys occurs across professions. Judges, lawyers, parties, and courtroom deputies alike have all been guilty of this practice. My first experience with this was when I covered a deposition during my first year of practice. When I arrived, the defendant, a slick, suited, 40-something male, grinned at me and asked, “Oh, are you the court reporter?” Before I could really think about it, I bluntly replied, “No, I am the attorney who sued you.” Since then, there have been countless instances of being asked to show my bar card or to provide assurance that I am, in fact, a licensed attorney, other than wearing a suit and sitting at counsel table.

Recently, I went to dinner with a client who was in town for a hearing the following day. Being an attorney from the East Coast, he was curious to know what it was like to be a practicing female attorney in the Midwest. At this point, I had been practicing for almost 11 years and was promoted to member status, and I told him that my gender certainly had not inhibited my opportunities for career growth at my current firm. But I did mention the practice of “bar-carding” and other half-humorous/half-annoying similar practices. He seemed stunned.

The next day, the client and I attended the hearing. While waiting for the docket to begin, I sat alongside no fewer than 10 other attorneys, all of whom happened to be male. The courtroom deputy walked over to me and asked, “Miss, are you an attorney?” I looked at my client and could not help but laugh, given our conversation the night before. “Yes,” I replied. My client chimed in, incredulously, “she’s a partner at her law firm!”

In speaking with colleagues and other local women attorneys, I know I am not alone. These types of situations are not, in and of themselves, serious issues that affect the day-to-day practice of law. However, they are symptomatic of a larger problem when it comes to women in the practice of law. That is, that despite gradual progress toward gender equality in the law, there is still much work to do. Women in the law still face challenges of being

taken seriously in the courtroom, as well as when it comes to marketing on behalf of their firms. This leads to challenges in rising up the ladder to becoming majority equity members or directors of their firms. Which, of course, leads to the reported income disparity between male and female attorneys of 44 percent.

So, what can we all do in the legal community to bridge this gap? Well, we certainly need the help of not only our female, but our male, counterparts. It starts within the law firm. Senior male attorneys who bring in big business have an opportunity to get female attorneys involved in those clients’ cases. Having female insight on complex cases will lead to better strategy, as numerous studies have concluded that teams with gender diversity are far more effective at solving problems than those without gender diversity. And, after all, we lawyers are charged with being problem solvers for our clients.

Similarly, law firms are well advised to find ways to promote women to leadership roles for the same reasons. Having women in important partnership roles, as well as on executive committees, will result in more comprehensive and sound leadership.

Judges may be in a position to help as well, by paying attention to interactions between opposing counsel of different genders. Unfortunately, sometimes judges either do not notice, or choose to ignore, instances in which male attorneys attempt to bully their female counterparts with intimidation tactics, body language, and interrupting when women speak. There is no reason why a judge must tolerate such behavior in his or her courtroom.

Lastly, and perhaps most importantly, we women must command the respect and compensation that we have earned with our hard work and dedication to the practice of law. Ask for opportunities to be put on important cases at your firm. Attend networking functions that will grow your connections for future business and leadership opportunities, and do not be afraid to be the first

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one in the room to strike up a conversation, even if you do stick out like a sore thumb. Do not be shy about letting your supervising attorney know how your priorities are balanced, whether they are more family-focused or all about financial opportunity. Ask yourself, would my male colleague be afraid to say this? If not, then why should I be? If you want the seat at the head of the table, then act like it. Do not be afraid to self-promote; it is not empty, vain bragging—it is marketing, and it is effective. It feels uncomfortable sometimes to share accomplishments or community involvement. But if you do not do this for yourself, then who will?

And then there are the inevitable “bar-carding” occasions. Do not let these silly encounters hold you back or ruffle your feathers. Know that this says everything about the other person’s bias or

shortcomings and nothing about yours. Learn when to pick your battles, but never allow someone to be abusive toward you. Zealously represent yourself the same way you would your clients.

These anecdotes and tokens of advice are not intended to make any woman shy away from the practice of law. I love it. I am incredibly grateful for where this profession has taken me and what lies ahead. And because I’m here, I get the opportunity to be part of the movement of women attorneys taking charge in the courtroom, the conference room, and the boardroom. I hope you will join me. ♦

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Virginia's First: An Interview with Judge Rebecca Beach Smith

BY JENNIFER L. EATON, ESQUIRE

The biography “First,” written by Evan Thomas, shares the inspiring profile of the first female U.S. Supreme Court justice, Sandra Day O’Connor. But O’Connor is only one of a series of influential women in the profession who—on the state and federal bench—have significantly shaped the law.

This interview highlights one such pioneer, Judge Rebecca Beach Smith, who was not only the first female federal judge in Virginia, but later would go on to become the first female federal chief judge in Virginia. Smith grew up in Hopewell, Virginia, and was a civil practitioner before being appointed to the bench in 1989 by President George H.W. Bush. She has presided over many civil and criminal cases during her tenure, including the famous RMS Titanic case, in which she decided the salvage rights that allowed for the removal of artifacts from the famous vessel. She was also a founding member of the l’Anson-Hoffman American Inn of Court in Norfolk and Williamsburg, Virginia. The following interview provides only a small glimpse into her career and impact on the profession:

Q: You were the first female federal judge to be appointed in Virginia. Do you ever think about the significance of your appointment? Do you consider yourself a trailblazer?

A: At the time, I did not consider myself to be a trailblazer. I was just very honored and pleased to be appointed. Looking back now on the trail that led me to the bench and beyond, I am proud of how far we have come as a profession but cognizant that there is much more that still needs to be done to increase the number of women judges, managing partners, and business executives. Even now, I do not look at myself as a trailblazer any more than the few other women who started the practice of law with me and changed the course of our profession in their own right.

Q: What experiences or characteristics do you believe best prepared you to serve as a federal court judge?

A: I do not think that you can prepare to be a judge in any particular way because becoming a judge is like waiting for lightning to strike. Planning to be a judge will only hamper your abilities as an attorney and make you less happy as a person. I would advise to be the best attorney that you can be, and you will be noticed and respected. My dedication to

the law and work ethic helped me adapt to the differences between private practice and the bench—what works for one works for the other.

Q: Who are some people that have inspired you throughout your professional career?

A: My parents and my judicial mentors. My parents taught me to work hard and stay focused; they gave me my work ethic. That work ethic has always served me well, especially when I started as a law clerk in the same Walter E. Hoffman Courthouse where I sit today. My clerkship led me to my judicial mentors: Judge J. Calvitt Clarke Jr., Judge Walter E. Hoffman, Judge Richard B. Kellam, and Judge John A. MacKenzie. I grew up as an attorney watching and admiring those judges. Their court presentation, professionalism, and exceptionalism inspired me.

Q: Has there been a case or judicial responsibility during your tenure as a federal judge that has been most impactful or meaningful to you? In what way?

A: There are a few things I can think of that touch on various different aspects of my role as a federal judge. In general, one of the most wonderful things about being a judge is mentoring law clerks. I do not have career law clerks because I enjoy the fresh ideas each year that law clerks bring to chambers. As hard as it is to see my law clerks leave at the end of the year, I think my mentorship of them is an important part of my role as a judge. As for a meaningful case, the RMS Titanic salvage case has been a highlight of my career. I have had the privilege of working to preserve the legacy of the people who lost their lives and to keep the artifacts together to tell their story. I am also proud of my service as a member and chair of the U.S. Judicial Conference Codes of Conduct Committee for eight years (2010–2018)—a role that I was appointed to by Chief Justice of the United States John G. Roberts Jr. In that capacity I directed



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the rewriting the Codes of Conduct for all federal judges and federal employees.

Q: The U.S. District Court for the Eastern District of Virginia is sometimes called the “Rocket Docket.” What stands out about the Eastern District of Virginia to you?

A: In general, I am proud of the Eastern District's recognition as being efficient. We are driven by the notion that justice delayed is justice denied, but we do not put speed over excellence and quality. The collegiality and cooperation of the judges make the Eastern District function as efficiently as it does, together with the outstanding support of our clerk's office, our probation office, and all of our court units. In my opinion, we function together as a team to make the Eastern District of Virginia a court of excellence.

Q: Are there any misconceptions regarding federal court that you would like to set straight?

A: A common misconception is that federal court is not a place for young attorneys. I believe that federal court is a great place for young attorneys to practice because the rules are all in place—there are no unwritten rules. Young attorneys who are prepared have an early opportunity to exercise their written and oral advocacy skills and ultimately become seasoned practitioners. Do not be afraid to appear in federal court. We want you to succeed, as you are the future of our legal profession.

Q: What makes you optimistic about the future of the practice of law? Do you have any hopes or aspirations for what the practice of law looks like in 20 years?

A: I am optimistic when I see the quality and enthusiasm of newly admitted attorneys. They are the best and brightest of their generation, and I believe they will preserve and protect the rule of law. There have been so many changes over the past 40 years since I became an attorney, and I would not even try to predict the changes over the next 20 years, but my hope is that the changes will be ones that move our profession forward in a positive way.

Q: What is the biggest challenge you see for the next generation of young attorneys? How would you recommend addressing that challenge?

A: Balancing a law practice while achieving a sense of personal well-being is the biggest challenge I see for the next generation of lawyers. Improvements in technology have changed the practice of law over my career, in many ways for the better. However, these changes—with the ever-present emails and

texts—have brought increased stress. To be a good lawyer, you need to enjoy other aspects of your life outside of the law. I would recommend finding some time on a regular basis to turn off electronic devices and spend more time with family and activities that totally separate you from your law practice.

Q: The path to an enjoyable, meaningful legal career is not a straight one. What advice would you have for someone dealing with obstacles or questioning whether the practice of law is right for him or her?

A: For anyone questioning whether the practice of law is a good fit, I would recommend taking time off, if at all possible, to see if you miss the practice. With all things, there will be times of boredom and stress, but as long as you enjoy your work more often than not, then you are probably doing something worthwhile and something you find fulfilling. However, ask yourself, “Do I feel passionate about the law?” and go from there. Life is a journey to be enjoyed and fulfilled, not to just be endured.

Q: You have been involved in many professional and community organizations. How, if at all, has this service to others shaped you as a judge?

A: My outside activities have helped me in three important ways. First, they give me a perspective outside of the law. Sometimes we get tunnel vision and forget that there is more to life than just the practice of law. Second, community involvement helps me show others that lawyers and judges care about the community and are “real people” too, just like them. It helps distill their negative image of lawyers. Third, my involvements have always made me feel good about serving others and promoting my community, together with contributing to a positive image of the legal profession.

Q: Do you have any recommendations for how others in the legal profession can pay it forward?

A: Be a mentor to a lawyer younger than you. You can pay it forward by setting a good example and by shining a positive light on our profession for future generations of lawyers to follow.

Q: What do you want your legacy to be?

A: She did her best and gave it her all. She may not have always done it right, but it was never for lack of caring or trying. ♦

Jennifer L. Eaton, Esquire, is an attorney at Vandeventer Black LLP in Norfolk, Virginia. She is an Executive Committee member of the James Kent American Inn of Court. The views advanced in this article should not be mistaken for the official views of Vandeventer Black LLP.

PROFILE IN PROFESSIONALISM

Chief Justice Mary E. Fairhurst 2019 Professionalism Award for the Ninth Circuit

By Rebecca A. Clay



Back when Mary E. Fairhurst was serving as a clerk to the chief justice of the Washington State Supreme Court, she never imagined that 31 years later she would be the court's chief justice.

"When I told the chief justice I was leaving, he said, 'Don't you want to be my law clerk forever?'" remembers Fairhurst. "I said, 'I want to be a justice one day, so I have to be a lawyer.'" But becoming a supreme court justice seemed unlikely, given that there are only nine positions and thousands of lawyers in the state.

That dream became a reality in 2002, when Fairhurst became a Washington State Supreme Court justice. In 2017, her colleagues selected her to become the court's chief justice. She stepped down on January 5 after learning that her colon cancer—first diagnosed in 2008—had spread.

Fairhurst was not always so gung-ho about the law. As a child, her parents and everyone around her told her she should be a lawyer. "I was very good at explaining positions, defending people, and standing up for things I thought were unjust," she laughs. "But I didn't know any lawyers or judges, so I didn't know very much about it." Instead, she thought of becoming a creative writer or perhaps a psychologist or psychiatrist.

But after studying political science at Gonzaga University in Spokane, where she graduated cum laude in 1979, she entered law school at the advice of a mentor who urged her to consider public service. She told herself she could drop out any time, but ended up loving it, graduating magna cum laude from Gonzaga University School of Law in 1984.

After two years of clerking at the Washington State Supreme Court, Fairhurst left to join the state's office of the attorney general, where she spent 16 years. During that time, she got involved with Washington Women Lawyers, eventually becoming president. She later became the first public sector attorney and second woman to become president of the Washington State Bar Association.

When a position on the state's Supreme Court opened up, Fairhurst—at the urging of family, friends, and colleagues—went for it. One of her proudest moments as a justice, she says, was when the court deemed the state's death penalty unconstitutional and abolished it in 2018.

Fairhurst also helped improve Washingtonians' lives with work unrelated to her cases. She pushed for a constitutional amendment to increase crime victims' rights while protecting the accused's constitutional rights. She helped organize the state's first conferences on domestic violence. She also helped organize a summit on youth violence and moderated conferences on how to deal with sex offenders in the community.

Fairhurst has been especially active in civics education programs for young people, including iCivics, We the People, and the YMCA's Youth and Government Program. Such initiatives can help young people understand their rights as well as the roles of the Constitution, the rule of law, and an independent judiciary—knowledge that was lost when schools stopped requiring civics or government classes, Fairhurst says. "It's really important that in whatever ways we can, we help young people—the future voters and decision-makers in our country—understand the role of government, especially the role of the judiciary," she says. "It's very easy for people...to give up rights or not even understand they have them."

One theme has dominated Fairhurst's career, says Jessica Skelton, Esquire, who clerked for Fairhurst and is now a partner at Seattle's Pacifica Law Group. "Ensuring access to justice has long been Mary's calling," says Skelton, who nominated Fairhurst for the award. Even in her last months as a judge, for instance, Fairhurst was meeting with representatives of the U.S. Department of Homeland Security and other agencies to try to persuade them to designate courthouses as "sensitive locations" where immigration enforcement activities are prohibited. "When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access justice is compromised," she wrote to the Secretary of Homeland Security in 2017.

With her life expectancy predicted to be less than two years, Fairhurst now hopes to focus on exercise and travel. "If I don't have the energy to do that, I'll just be at home with my family and make more memories," says the Olympia resident, whose family includes a "sweetheart," his adult children, her six siblings and their children, dozens of cousins, her law clerks and their children, and many, many friends. ♦



TECHNOLOGY IN THE PRACTICE OF LAW

Kevin F. Brady, Esquire

Trust but Verify When It Comes to Digital Redactions

Redaction missteps leading to a major and embarrassing revelation in a high-profile case seem to be a recurring issue. At the beginning of 2019, the headlines were about lawyers for the former Trump campaign manager, Paul Manafort, botching a redaction of information for a court filing. In the latest episode, a reporter was able to retrieve information protected by grand jury secrecy rules from a court filing, which a team from the Jones Day firm had reviewed to confirm the grand jury testimony had been redacted.

In addition to the embarrassment of having exposed protected information, in some cases disciplinary consequences are possible, as attorneys in Illinois and Kentucky learned for failing to redact personal information in court filings properly.

Redaction of information is a process that occurs hundreds of times each day in law firms and at vendors across the country. That fact, however, does not mean that performing the task is simple or that errors will not occur. For example, in the recent case in which Jones Day is representing a pharmaceutical company accused of fraudulently marketing a prescription opioid, the attorneys handling the matter had blacked out the protected text and then done a print-to-pdf (using Word and Adobe Acrobat). A reporter copied the boxes of blacked-out text from the court filing and pasted to a new document on which the underlying text appeared. (The same technique was used in the Paul Manafort case.) The faulty redactions described grand jury testimony and said four grand juries had heard testimony from 79 witnesses before returning an indictment against the pharmaceutical client.

Jones Day did not seek to excuse the error but explained in a letter to the court that a “technical weakness in the redaction process was caused by the method of redaction [using Microsoft Word and ‘printing’ to Adobe PDF], rather than the redaction software our law firm has in place that is specifically designed to avoid such issues” and that “the failure to use this software was inadvertent oversight.”¹

Under Rule 1 of the Model Rules of Professional Conduct, lawyers are required to understand and

¹ See Letter from James R. Wooley, Esq. (Jones Day) to Magistrate Judge Pamela Meade Sargent, (Sept. 13, 2019), Case No.: 1:19-cr-00016, Dkt.No. 144, (W.D Va).

manage the risks associated with the use of technology. In addition, Rules 1.6 and 1.15 require attorneys to preserve the client’s confidential information. Perfection in handling digital information may not be attainable, but repeated mistakes like those described in this article highlight the increasing technological complexity attorneys face and the need for vigilance to avoid mistakes that might be characterized as demonstrating a lack of competence and result in claims for attorney malpractice or discipline.

While it is easy to be a Monday morning quarterback, the reality is that there are many lawyers and law firms who do not have an IT or litigation support team on staff to explain the not-so-obvious risks associated with technology. Many lawyers have small institutional clients that may not have a general counsel, an IT staff, or individuals with the expertise to understand the risks.

What these cases teach is that to minimize the risk of embarrassment, disclosure of information entitled to protection, or even ethical ramifications, it is critically important to understand what options exist for doing redactions correctly, executing the chosen option carefully, and double-checking the result.

The Model Rules establish that it is counsel’s responsibility to understand legal and technical issues associated with managing even simple tasks involving digital information. In this connection, it is imperative that you or a competent consultant understands how the software—even software as ubiquitous as Word or Adobe Acrobat—functions and, more importantly, its limitations. At the very least, for redacted documents, follow the “trust but verify” approach: Take a sample of your redactions, copy them, and paste the redacted (blacked-out) information into a new document to see if you can see the redacted text.

With the increase in state privacy laws and federal regulations regarding the management and disclosure of confidential personal information, the challenges to manage information properly, and redact where necessary, will continue.

Understanding and assessing the risks associated with any technology you use, especially technologies that others have struggled to use properly, is one of the keys to successfully managing your data and complying with your ethical obligations. ♦

Kevin F. Brady, Esquire, is of counsel in the firm of Redgrave LLP in Washington, DC. He is a member of the Richard K. Herrmann Technology AIC in Wilmington, DE.

Power of the Female Vote

Program No.: P13636

Presented By: The Temple American Inn of Court
 Presented On: November 8, 2016
 Materials: Script, Articles, Citations of Law, Legal Documents, List of Questions
 CLE: Approved (1.0 hrs)

Summary

This program spoke to the past, present, and future of the women’s rights movement and to the power of women and the female vote. Just as their strength in the struggle for the vote changed society, the strength of women voters is still changing society today. Highlighting the achievements of trailblazing female leaders in the political and legal arenas, presenters read monologues while playing the roles of famous figures such as Lucretia Mott, Jeannette Rankin, and Shirley Chisholm. The program included a presentation of statistics about female representation within the judiciary, pay disparities between male and female lawyers, and other issues affecting women in the legal profession. Further, the program included a discussion about American Bar Association Model Rule 8.4(g), its prohibition on attorneys engaging in conduct that discriminates against people on the basis of their gender, and the extent of each individual attorney’s obligation to promote equality within the profession. Lastly, the program concluded with a lively discussion about the results of the 2016 presidential election and what role Hillary Clinton’s gender may have played in its final outcome.

Roles

Moderators (2) Masters of the Bench
 Historical Role-players (8) All membership levels
 Roundtable Discussion Leaders (4) All membership levels

Agenda

Act 1: Historical Figures Read Scripted Monologues 25 minutes
 Act 2: Presentation by Local Civic Organization Leader about Women’s Rights 5 minutes
 Act 3: Scripted Roundtable Discussion Regarding Gender Issues 15 minutes
 Act 4: Discussion about Gender Bias and a Lawyer’s Ethical Obligations 10 minutes
 Act 5: Review of Tweets from the 2016 Presidential Election about Gender Issues 5 minutes

Recommended Physical Setup

Stage with podium(s), table, and chairs.

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