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Women and the Judiciary
 With the gradual increase of women in law school and women practicing law, more and more women are being appointed or elected to serve as judges. The appointments being made are slowly reflecting our diversity in




Spotlight

 [Conflicts in Courtroom Couture](#)
 A rich history of case law elucidates the tension between trendy courtroom couture and traditional norms of attorney attire. The next chapter in the conflict between personal fashion choices and professional decorum has begun.

[Join Us: Gala in Support of Contra Costa Senior Legal Services](#)
 Please join us at this year's BAR FUND Gala in Support of Contra Costa Senior Legal Services, taking place on Thursday, September 19th from 6-8 pm at the Lafayette Park Hotel.

News & Updates

[Working Effectively with Interpreters](#)
 In juvenile delinquency, juvenile dependency, criminal cases and traffic infractions, the court will provide an interpreter, free of charge, if a person who is charged with a crime has limited English proficiency.

 [Women's Section Power Lunch \[photos\]](#)
 On June 19, 2013, the Women's Section held a Power Lunch at Tender Greens in Walnut Creek. The Power Lunches are hosted every other month, with the next one scheduled for August 14, 2013.

The Contra Costa Lawyer is the official publication of the Contra Costa County Bar Association (CCCBA). It is published 12 times a year: six in print and 12 online issues.

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I Think I Can

Thursday, August 01, 2013



I-think-I-can. I-think-I-can. We all know the story of “The Little Engine that Could,” a book used to teach children the value of hard work, determination and optimism. The story of the little engine has been told and retold many times. The underlying theme remains the same: A long train must be pulled over a high mountain. Larger engines, treated anthropomorphically, are asked to pull the train; however for various reasons, they refuse. The request is sent to a small engine, who agrees to try. As the little engine nears the top of the steep grade, it goes much more slowly. However, it keeps on going saying, “I-think-I-can, I-think-I-can.” It reaches the top, overcoming a seemingly impossible task through sheer determination. The little engine congratulates itself by saying, “I thought I could, I thought I could.”

As a child, I loved reading this story. Over the years, “The Little Engine” has served as a constant reminder to always follow my dreams. Whenever I encounter an obstacle that I just can’t seem to get my arms around, I close my eyes and say, “I-think-I-can, I-think-I-can.”

It is my pleasure to serve as guest editor of this “Women in Law” edition of the Contra Costa Lawyer.

March 8, 2013, marked the 100th International Women’s Day—a day when women from all over the world celebrated the accomplishments of women. It was a day set aside to celebrate women and their economic, political and social achievements around the world, as well as a time to focus on places and situations where women’s rights, equality, health and safety still have a long way to go.

In March 2011, the White House released a report entitled, “Women in America: Indicators of Social and Economic Well-Being,” a report that focuses on families, income, education, employment, health, crime and violence. It is the most comprehensive look at women since the 1960s. Working through many “I-think-I-can” moments, women have made enormous progress on some fronts. Women have not only caught up with men in college attendance, but younger women are now more likely than younger men to have a college or master’s degree. Women’s earnings have steadily increased, constituting a growing share of the family income.

However, gains in education and labor force involvement have not yet translated into wage and income equality. It’s been 50 years since President Kennedy signed the Equal Pay Act, but its goals still have not been fully realized today. On June 10, 2013, President Obama delivered remarks commemorating the 50th anniversary of the Equal Pay Act. This quote is taken from his remarks: “The day that the bill was signed into law, women earned 59 cents for every dollar a man earned on average. Today, it’s about 77 cents. So it was 59 and now it’s 77 cents. It’s even less, by the way, if you’re African American or a Latina. So I guess that’s progress, but does anybody here think that’s good enough?”

Look inside this edition and you will discover many reasons to celebrate the accomplishments of women in the law. However, you will also see that we still have mountains to climb.

In the article on Women and the Judiciary, we learn that the history of women in the judiciary begins with a struggle. In fact, the law actually worked against women interested in practicing law, as illustrated in the story of Arabella Mansfield, the first female lawyer, admitted to practice in 1869.

Three years later, Charlotte E. Ray became the first African American woman (the second woman), to receive a law degree. Charlotte E. Ray learned that Howard University did not allow women to enroll in their law program, but she soon found a way around her gender. Charlotte E. Ray used her initials and applied to Howard University as "C.E. Ray." She graduated in 1872 and was the first woman to be admitted to the District of Columbia Bar Association.

The article of a recent law graduate gives us hope that the current opportunities for women in the law are expanding. We can also share the author's appreciation for the pioneer women who paved the way, and we can feel grateful for the "heavy lifting that the past generations of women attorneys have done so that gender issues ... are not a major factor."

The word "rain" is often described as a metaphor for money. If you are interested in tips on how to support one another and generate new business, then don't miss the article entitled "Making Rain!" Find out how as an organization, California Women Lawyers has "changed attitudes, laws, the profession and the judiciary." Read further and you will learn progressive legislation is changing women in the workforce.

Ever wonder if "Supreme Court Justices are People Too?" The review of Justice Sonia Sotomayor's book, "My Beloved World," gives us insight into how she overcame obstacles in her life. In the spotlight, "Conflicts in Courtroom Couture" is a delightful article that contemplates just how we might dress for court in a manner that does not rise to the level of "unsuitable, unconventional or inappropriate attire."

We have come a long way since the first woman lawyer was admitted 144 years ago. We stand on the shoulders of the many giants who have come before us and paved the way. I am so very proud of the numerous accomplishments of women in law. Our job is to continue the race, to climb the mountain, to take the torch and to carry it further. I think we can. I think we can.

Judge Diana Becton is a Superior Court Judge in Contra Costa County.

Summer and Civility

Thursday, August 01, 2013



It seems to me that everything just feels a little bit better when the sun shines brightly, the days are long and the weather is good. A general sense of optimism and goodwill toward others infuses the soul. It is a perfect time to work on civility in the law.

Much preaching is done about civility and much bemoaning about the real or perceived lack of it in the dealings of civil litigators with one another.

I sense a lack of civility more and more as time goes on, and I begin to know better the attorneys that I face. This is one clear value of active involvement in the Bar Association: Many of the nasty and manipulative things we are tempted to do are far harder to do to people we know than to those we do not. Attorneys who oppose one another frequently tend to get along better than those who do not. This is especially true of attorneys who see each other socially as well as in the courtroom.

Not all of you have the time to integrate yourselves into the legal community this way. You may find yourselves more isolated and tempted to do things and express yourselves in ways you would not to attorneys that you might see the next day at a CCCBA function.

For those of you who fall into this category, consider using this time of summer optimism to extend an olive branch to your adversaries. Respect that they have families to spend time with, just as you do, and their own plans for time off. Extend them common courtesies regarding extensions of time and deposition scheduling. Share stories of great vacations and time away from work. View them as people as well as adversaries. Your clients will not suffer. Rather, both you and they will benefit by confining your strife to things that matter to the end result, rather than to things that do not. Plus, you will share the camaraderie of athletes who understand and respect a peer's skill rather than the disquiet of mortal enemies who are always looking over their shoulders and must fight to the death on every issue, no matter how peripheral to the larger dispute.

In addition to serving as CCCBA's President this year, **Jay Chafetz** has a solo practice in Walnut Creek and specializes in personal injury, medical malpractice, elder abuse, trust

and estate litigation and general civil litigation.

Women and the Judiciary

Thursday, August 01, 2013



The history of women in the judiciary begins with the history of women struggling to become lawyers. Arabella Mansfield became the first female lawyer in the United States when she was admitted to the Iowa bar in 1869. She was allowed to take the bar exam and passed with high scores, despite a state law restricting applicants to white males over age 21. Shortly after Mansfield passed the exam, Iowa amended its bar licensing statute and became the first state to allow women and minorities into its bar.

Esther Hobart Morris, a Tioga County, New York, native, distinguished herself as the first female justice of the peace in the United States. A mother of three boys, she began her tenure as justice in South Pass City, Wyoming, on February 14, 1870, and served a term of less than nine months. The Sweetwater County Board of County Commissioners appointed Morris as justice of the peace after the previous justice resigned in protest of Wyoming Territory's passage of the women's suffrage law in December 1869.

Clara Shortridge Foltz was the first female lawyer on the West Coast. In 1876, her husband deserted her and their five children. She began studying law in the office of a local judge and supported herself by lecturing. She wanted to take the bar examination, but California law at the time allowed only white males to become members of the bar. Foltz authored a state bill replacing "white male" with "person," and in September 1878, she passed the examination and was the first woman admitted to the California State Bar. Having little formal education, she wished to study at the first law school in California to improve her skills. After being denied admission to Hastings College of the Law because of her gender, she sued, argued her own case and won admission.

In 1914, another pioneering woman who became a judge was Georgia Bullock. Judge Bullock was the "woman judge" of Los Angeles in charge of a court segregated by sex where "she would serve as a model of Victorian ideals of womanhood for female misdemeanants." The purpose of the L.A. women's court paralleled the cultural attitudes of the time: "the purity of women ... in their vulnerability to the sexual demands of the 'stronger' sex provided acceptable reasons for setting aside public spaces where acculturated women could provide protection and guidance to weak and resourceless women." Judge Bullock considered her appointment important, not because of concerns of equality, but rather because she felt women would be better served by a woman judge who could tell the "good girls" from the bad and help them reform their ways.

Finally, in 1920, the 19th Amendment was ratified, granting women the right to vote. A new era was born focusing on women's rights. However, it took 100 years after the first woman was named to the bench in the U.S. before women began to achieve any significant representation in the judiciary. In the 1970s and 80s, most women appointed to the bench were white. In 1977, Rose Elizabeth Bird served for 10 years as the 25th chief justice of California. She was the first woman hired by the Santa Clara Public Defender's Office. As the head of the State Department of Agriculture, she was also the

first woman to hold a cabinet level position in California. In the November 1986 state election, she also became the only chief justice in California history to be removed from office by the voters.

In the early 1960s, Judge Betsy Fitzgerald Rahn became the first female judge in Contra Costa County serving in the Walnut Creek Municipal Court. Following her example, Judge Bessie Dreibelbis was appointed in the early 1970s to the Richmond Municipal Court. I, myself, was appointed to the Mt. Diablo Judicial District in 1976 and to the Contra Costa Superior Court in 1982. Judge E. Patricia Herron became the first woman to serve on the Contra Costa Superior Court when she was appointed in 1977. At that time, only four women judges served Contra Costa County. Now there are currently 40 bench officers on the Contra Costa Superior Court and only one vacancy. This number includes 37 judges and three commissioners, and is composed of 40 men and 40 women. Excluding the commissioners, the judges are composed of 19 women and 18 men. Fifty percent of the bench is composed of women. This is certainly progress.

With the gradual increase of women in law school and women practicing law, more and more women are being appointed or elected to serve as judges. The appointments being made are slowly reflecting our diversity in terms of race, gender and sexual orientation. The mere presence of women judges, no matter their ideology, has had important policy implications. The judicial system has become more representative of the population, and the presence of women in the judiciary has legitimated the participation of women in the legal system, making the system itself more just. Most importantly, women, no matter their political persuasion, are supporting other women in their efforts to become more engaged in the judiciary. With the population of our law schools over the past 10 years averaging 50 percent women nationwide, the judiciary will hopefully reflect this percentage in the not too distant future.

Catherine MacKinnon is a law professor, writer, feminist and scholar whose work largely focuses on the difference between the quality of social and economic conditions for women in both the private and public spheres of life. Her ideas are very informative and important for the development of women in the public sphere. MacKinnon believes that society fails to recognize the existing hierarchies present within it that have subordinated women in particular for such a long time that these hierarchies have been perceived as natural. She argues that the law often has a difficult time judging women's inequalities, or is simply powerless to do so because of this distinction between private and public life. Much of the injustice that women experience occurs in private settings, which in our social hierarchies places women in a subordinate or vulnerable position.

MacKinnon states that equality requires promoting equality of status for historically subordinated groups, as well as the dismantling of the group hierarchy. In MacKinnon's view, this requires a substantive approach to equality jurisprudence in its examination of hierarchy, whereas before, abstract notions of equality sufficed. MacKinnon argues that the law can be used as a tool for ordering and maintaining gender distinctions.

The legal system is an integral part of the complicated fabric of racism, sexism and class throughout the country. This is a continuous battle that requires constant vigilance. The recent U.S. Supreme Court decision on voting rights reminds us all of the steps backward that our moral progress can make. The goals of the Equal Pay Act, signed 50 years ago by President John F. Kennedy, are still unrealized today. As Dr. Martin Luther King Jr. said, "the arc of the moral universe is long but it bends toward justice." Our women judges are making a difference in leading us forward on this path.

Hon. Ellen Sickles James (Ret.) serves as a mediator and arbitrator.

A Personal Reflection: Gender Issues and Women in Law

Thursday, August 01, 2013



When I first contemplated attending law school, I never considered gender issues as they related to me as a person. I wanted to practice public interest law, either by dealing with issues of women/minority civil rights or by seeking justice for victims of crimes serving as a district attorney. My concerns were about other people. Of course, being a woman and a minority gave me perspectives that would be helpful as an advocate for women and minorities. After all, I was both. But issues of gender impacting my career as a district attorney? It didn't happen. Not at first anyway.

After commencing a career in the legal field, I became aware of some facts that changed my mind: When Sandra Day O'Connor, the first woman Supreme Court justice, graduated from Stanford Law School in 1952, only 3.5 percent^[1] of all JD students in the United States were women. That scarcity meant a smaller candidate pool that could serve in private and public sector law. It took many years for this to change.

In 1992-93, women represented a majority of JD degree recipients at 50.4 percent,^[2] but since then, the percentage of women in JD programs has decreased to 47.2 percent in 2009-10. Recently, there has been a downward trend for law school applications from both women and men, and many have attributed this to the economy, the high cost of law school and the tight job market for law school graduates. Still, slightly more than 68,000 women earned their JD in 2011-12, almost 4,000 higher than in 1992. Thirty-one percent of current practicing attorneys are female and it will take many years before this number increases to the current male-female ratio. Other factors affect the numbers such as women leaving the legal profession to pursue other career paths or the taking of a sabbatical to start a family.

Thinking back, I can't recall women attorneys who were role models in my youth. Instead, I remember hearing about attorneys such as Melvin Belli, F. Lee Bailey and Alan Dershowitz. What I do remember about women attorneys came from television shows and movies: "Ally McBeal," "LA Law," "The Practice" and "Legally Blonde." Needless to say, these women were not icons. Female attorneys were more of a prop to provide storylines involving relationships with male counterparts instead of providing a role with status, money and power. Female attorneys were associates. They were not partners. They were not the head of the firm. Only recently have women attorneys been portrayed positively, such as the female assistant DA in "Law & Order SVU," but at least there is now a better image than the Ally McBeals of the world.

The figures that I mentioned were far from my thoughts when I began my JD program and even further away when I applied for internships. In that sense, my experience was atypical. My perceptions were that I was treated with respect and equality during my law school career. When I sought internships, I felt confident that I would be judged on my

education, ability, knowledge, experience and desire to succeed, unlike the women in the past who had to deal with issues of gender bias and the glass ceiling. I'm grateful, in hindsight, that these barriers did not seem to be an issue. But hindsight and a more thorough knowledge of gender issues in the legal field also provided me with the insight that I did not realize how much I didn't know about gender issues in general. Perhaps I was not as afraid or concerned as I should have been. Success did not happen because of a diligent awareness of biases against women and minorities. It happened in spite of that lack of awareness.

During the past few years, women have been setting new precedents. Our first woman Chief Justice of the California Supreme Court, Tani Cantil-Sakauye, was nominated by then-Governor Schwarzenegger in the summer of 2010 and then elected in November. She is of Asian Pacific heritage, breaking another barrier in California. In that same election, Kamala Harris became California's first female attorney general as well as the first attorney general of Asian and African-American descent—another barrier broken.

Between 2009 and 2012, more women attained prominent legal positions. There are nine women serving as state attorney generals. Eight of them came into office less than seven years ago. Women now make up one-third of the Supreme Court of the United States, with the last two appointees being justices Sonia Sotomayer and Elena Kagan. There are 21 U.S. attorneys among the 94 Federal Judicial Districts.[3] The percentage of women in the U.S. District Courts increased from 12 percent to 16.2 percent.[4]

In my perspective, as a female, the odds were against me. Had I known the extent to which that was true, I believe it would have affected my performance. But I did not know about the history of women in the legal arena, which I think gave me an advantage. Accordingly, the extent to which gender issues have impacted my career after becoming a deputy attorney general is not readily apparent because that impact was strictly internal. I have learned how much I do not know about gender bias after gaining a career, not before. The effect has been a change in my awareness and a resulting advocacy for both women and minorities.

As a recent graduate, the opportunities for women in law are expanding and there seem to be limitless opportunities whether it is in criminal law, corporate law, advocacy practice and beyond. The opportunities to serve as a judicial clerk and to become a judge at all levels of government are also growing. This trend will continue especially as we have more competent women attorneys and judges not only as role models, but as mentors.

I am thankful for the heavy lifting that the past generations of women attorneys have done so that gender issues, at least in the public interest areas of law, are not a major factor. As the financial industry says it best, "Past performance does not guarantee future success," so historical data is just that. It acts as a useful reminder of the place from whence we came. It is important that women in law keep striving to maintain the standards put forth by earlier generations of women attorneys and to actively foster and mentor new generations of women in law.

I look forward to being one of them.

Mika Domingo-Spagna is a Deputy Attorney General at the Office of the Attorney General. The views expressed in this article are the author's own and do not necessarily reflect the views of the Attorney General's Office.

[1] Historical First Year and Total J. D. Enrollment by Gender, 1946/47 to 2011/12.

[2] Ibid.

[3] <http://www.justice.gov/usao/about/usattorneys.html>.

[4] Charting Our Progress: The Status of Women in the Profession Today, 2003 report.
ABA Commission on Women in the Profession.

Making Rain!

Thursday, August 01, 2013



Gone are the days when the nice girl showed up early, worked hard, stayed late, answered every request with a pleasing affirmative, exceeded expectations and was rewarded with an equity partnership at her law firm. Actually, those were never the days.

The Secret's Out

The June 2013 cover of the ABA Journal pictures Susan C. Levy, managing partner of Jenner & Block, with the headline, "Women in Charge," which features six female managing partners of large and mid-sized firms. The article includes a snapshot of each attorney's personal journey from employee to firm leader. Levy credits the mentorship she received from Joan M. Hall, who knew "that those with big books

dominate law firm management" and set out to instill rainmaking skills in female attorneys. Levy recounts being a young associate sitting at a luncheon hosted by Hall and asking, "Why are we talking about business development?"

Levy was lucky that her mentor knew the secret and was modeling the answer to her question: Having a book of business is the foundation of institutional power within a law firm and to any attorney's job security. Similarly, in "Women in Charge," Lisa A. Borsook, executive partner at WeirFoulds echoes that, "There's an intimate connection between being a good revenue generator for the firm and being asked to take management positions."

On November 7, 2013, the CCCBA Women's Section will host San Francisco-based partner, Patricia Gillete, as the keynote speaker for the section's annual scholarship dinner. Like Levy's mentor and Borsook, Gillette notes in "Women in Charge" that it is imperative to get more women into positions of "economic and institutional power." Along with creating excellent legal work, women must embrace the habit of business development and professional advancement early in their careers. As the 2012 recipient of Inside Counsel's Rainmaker Award, Gillette discussed her goal of changing "the discussion and have women thinking about this from day one in their careers: 'How do I advance myself or another person into a leadership position?' Because if we're in the leadership positions and have a book of business, then we can make change in law firms. That's how change is made. It's not made by whining, it's not made by women's initiatives—none of that works. You have to be in the room. My goal is to get women in the room."

The secret is out. No matter what the attorney's personal goal, in order for her to secure promotion, power, equity, independence, control, leadership or simply job security, women lawyers must secure their own books of business to have a seat at the table.

Because business development is inherently relationship based, a bedrock principle of rainmaking is that the female attorney must get out of the office to forge and foster business relationships. In "50 Simple Ways You Can Market Your Practice," No. 18

emphasizes this fundamental relationship: “*Attend bar association events.* Lawyers only refer cases to people they know; and if they don’t see you, they won’t think of you.”

Barriers, however, abound for the would-be rainmaker in getting out of the office. Whether they are institutional or unique to the individual, one significant barrier is time. How does a female attorney, who is likely also a parent, juggle kids’ schedules and family commitments while at the same time accomplishing great work and still find time to get out of the office and build a book of business? To a large extent, they don’t.

Business breakfasts conflict with morning routines and school drop-offs, and happy hour events conflict with after-school activities, homework habits and family dinners. Lunch events starting at noon or 12:30 p.m. can easily last until 2 p.m., leaving a small window of time left in the day. Just finding enough time get all of the legal work complete can require working through lunch as it is.

If the first rule is “get out of the office,” the second rule is “do business in whatever room you’re in.” In “Women in Charge,” Anastatia D. Kelly, co-managing partner for the Americas at DLA Piper, observes that women typically do not use the rooms that they are in to professionally network and do business. Notes Kelly, “Women are great at networking with each other and talking about the most intimate personal things, but for some reason they think it’s an imposition on friendships and relationships to talk about giving and getting business for each other.” If they’re not doing business with each other, then women are not using their “stiletto network,” as coined in Pamela Ryckman’s book, “Stiletto Network: Inside the Women’s Power Circles That Are Changing the Face of Business.” Similarly, Ekaterina Walter summarizes in “7 Shared Traits That Unite Women In Power” that women first surround themselves with strong, passionate, creative women and then they support each other.

If the rainmaking challenges of finding time and locating a room to professionally connect sound familiar, the CCCBA Women’s Section hopes to encourage and support the rainmaking habit.

This year the CCCBA Women's Section began hosting Power Lunches at Tender Greens in Walnut Creek. To see photos from the last Power Lunch, [click here](#). A Power Lunch is designed to eliminate many of the barriers that hinder attendance in other settings. There is no agenda, no presentation, no CLE and no formal introduction period. Attendees come when they can and leave when they must. There is no such thing as being late to a Power Lunch.

To avoid cutting into the afternoon work schedule, lunch starts on the early side at 11 a.m., but it is not unusual for attendees to arrive as late as 12:30 p.m. RSVPs are purely for reserving table seating but attending without sending an RSVP is welcomed and encouraged. If an attendee suddenly finds that she is available (hearing over, depo cancelled, draft completed), she should come to lunch.

There are no pre-registration payments, no split checks and no awkward “I need to leave, how much do I owe, what are we doing regarding the bill?” because attendees individually order, pay and pick up their food before heading to the Power Lunch tables.

Attendees are greeted and seated in the next open spot and so also eliminated is the “I don’t know anyone so where am I going to sit” experience. If attendees come with friends, they are typically split up between the different tables. To encourage the exchange of

business cards, attendees deposit their cards in a water glass at the table and are then entered to win a gift card.

Power Lunch attendees diversify their professional network and strengthen existing relationships while in conversation about their practices areas, business needs and professional goals. In so doing, they lay the groundwork for their book building and nurture those relationships on a regular basis.

The Power Lunches are hosted every other month, with the next one scheduled for August 14, 2013. Email announcements are sent to CCCBA Women's Section members but anyone is welcome to attend and section members are encouraged to forward the email and to bring friends. To receive the Power Lunch email invitation directly, please join the CCCBA Women's Section and let's make it rain together.

Wendy McGuire Coats of McGuire Coats LLP is an East Bay appellate lawyer. She serves on the ABA's Council of Appellate Lawyers publications committee, the CCCBA Women's Section Board and the California Women Lawyers Amicus Committee. In addition to her state and federal appellate practice, Wendy publishes "the Ninth" (www.theninthcircuit.com), a legal blog dedicated to tracking the trends of the country's biggest and busiest circuit court of appeals. You can find Wendy at www.mcguirecoats.com.

California Women Lawyers: Strong Roots Promise a Bright Future

Thursday, August 01, 2013



California Women Lawyers started with a bang. It was at the 1973 annual State Bar Conference following a particularly sexist remark from a male speaker at the podium that a woman stood up, banged both hands down on the table and loudly proclaimed "On behalf of California women lawyers, I must state ...". Several women at that conference session began to talk, and soon thereafter, while standing in line for the restroom, decided that women lawyers in California should have a statewide voice. The need became clear when one of the conference delegates wanted to comment to the governor about a particular resolution to change a law. However, each of the conference delegates' representatives had to go back to their board before they could sign on to the letter. The women discussed that they needed to coalesce the

power of women lawyers. They wanted to change attitudes, laws, the profession and the judiciary. In short, they wanted to speak with a solid voice. The idea and the spark for California Women Lawyers sprang into motion.

The founding mothers went about the process of formation. They successfully met the challenges of uniting Northern and Southern California practitioners, agreeing on the selection of Joan Dempsey Klein as provisional president. Justice Klein was even then a much-esteemed and well respected jurist, and, since 1978, has been presiding justice of the California Court of Appeal, Second District, Division Three. The provisional board created the bylaws and mission statement during what has come to be called the "slumber party," involving over two days and nights around the pool at the Los Angeles home of then-Judge Joan Dempsey Klein.

California Women Lawyers (CWL) was organized "to advance women in the profession of law; to better the position of women in society; to eliminate all inequity based on sex; and to provide an organization for collective action and expressions germane to the aforesaid purposes." The organization was incorporated in 1975. Jerry Brown had just been elected governor of California following the two-term tenure of Gov. Ronald Reagan. Luminaries Rose Bird and Fey Stender attended the first meeting. One founding mother commented that the name "California Women Lawyers" may have made it sound much larger than it was at the time.

Here are some pertinent statistics:

- Women attorneys practicing in California have increased from 1 percent in the 1960s to 3 percent in 1975, when California Women Lawyers was formed. Those numbers had increased to 5,000 by 1980, or 8 percent of total bar members. Approximately 40,000 women were practicing in 1995, constituting 30 percent of California's bar membership. Women practitioners made up approximately 34 percent of the California bar's membership in 2006 and 39.4 percent in 2011.

- Law students: Women comprised 4 percent of law students who graduated and passed the bar in 1960. In 1975, that rose to 19 percent and hit 50 percent in 1995. This figure declined slightly in 2012.
- Regarding women judges: Between 1958 and 1977, 4 percent of judicial appointments were female, 26 percent were female according to a 2008 survey and currently our judiciary is comprised of 31.3 percent females (end of 2012).

The founders of California Women Lawyers strived to mobilize the growing number of women in the law to define the avenues to full participation of women in the profession and, through their combined strength, to muster the political clout necessary to influence the direction and pace of change.

Included among their core issues and activities has been the bench: Since its inception, CWL has labored to increase diversity in the judiciary. This is accomplished in several ways. CWL actively encourages women to apply for judicial appointments, performs judicial evaluations upon the request of judicial candidates (over 500 evaluations completed) and also presents the "So You Want to Be a Judge?" seminars. This program brings together the governor's appointment secretary, members of the Commission on Judicial Nominees Evaluation (JNE) and experienced judicial applicants to enlighten aspiring candidates. The program recently won acclaim from the National Conference of Women's Bar Associations. CWL also sponsors receptions in both Northern California and Southern California each year to recognize outstanding women jurists and showcase them as role models to women lawyers.

Another very important role of CWL is in the courts. The advancements of a woman's rights agenda depends heavily on court decisions for its success. Since its beginning, CWL has devoted major energy to an active amicus program in which the organization either writes or joins others in presenting amicus briefs in cases relevant to its goals. Key CWL amicus briefs include cases on reproductive rights, sex discrimination, sexual-harassment and parental consent, among others.

Lobbying is perhaps the activity that most distinguishes CWL from other women lawyers organizations. CWL's lobbying program addresses not only issues of interest to women lawyers but also issues impacting California's women and children. The broad reach of CWL's advocacy spans issues from the glass ceiling to battered women's syndrome. CWL has lobbied on pay equity, breast cancer, child support/custody and care, reproductive choice, comparable worth, domestic violence, gender discrimination, healthcare /insurance and their delivery systems, among other important issues.

CWL's headquarters in the state capital and its network of California women's bar associations represented by CWL affiliates provide the political presence and power necessary to influence statewide and national action. For more information on CWL, including how to join, go to www.cwl.org.

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Women in the Workforce

Thursday, August 01, 2013



According to the Bureau of Labor Statistics, the past several decades have been marked by notable changes in women's labor force activities.[1] Women's labor force participation is significantly higher today than it was in the 1970s, particularly among women with children, and a larger share of women work full time and year round than in past decades.[2] In addition, women have increasingly attained higher levels of education: Among women ages 25 to 64 who are in the labor force, the percentage with a college degree roughly tripled from 1970 to 2008.[3] Thus, more and more professional women are participants in the workforce. This progress is both the result of women's activism and a catalyst of further change. Women's increased workforce participation and increasing level of formal equality was achieved

through feminist activism in the 1960s and 1970s.[4] Feminist critique of restrictive legal structures led to anti-discrimination legislation and the evolution of constitutional jurisprudence recognizing women's rights to social and economic independence.[5] But the increased presence of women in the workforce continues to disrupt entrenched patriarchal systems and contribute to the development and further refinement of anti-discrimination laws.

For example, women are less willing to merely play the passive victim, and are actively challenging oppressive structures in the workplace. Women undertake the burden of publicly airing their grievances as plaintiffs,[6] and provide civil rights attorneys with test cases for impact litigation and Private Attorney General lawsuits.[7] Some of these cases provide further tweaks of the terms in existing legislation, while also fueling the movement to increase the bases of protection for minorities.[8] Litigation demonstrates to courts the changing cultural landscape and may make the courts more receptive to broader interpretations of existing statutes, such as Title VII and the Family Medical Leave Act.[9] Thus, litigation and legislation work in tandem in achieving greater substantive equality.[10] Even a litigation loss is "useful" as it often creates the necessary impetus for progressive legislation: Congress enacted the Pregnancy Discrimination Act and the Fair Pay Act to remedy rather regressive Supreme Court decisions.[11]

Similarly, a litigation success may spur equal rights advocates into action in pursuing even broader legislative goals. In 1982, Ann Hopkins found herself firmly under the glass ceiling and in "an intolerable and impermissible Catch-22":[12] She was deemed too aggressive and too unfeminine for elevation to partnership in a Big Eight accounting firm, where her assertiveness earned the firm a fairly large contract with the Department of State.[13] In 1989, the Supreme Court found that the sex stereotyping practiced by Price Waterhouse was a form of sex discrimination. The court said: "It takes no special training to discern sex stereotyping in a description of an aggressive female employee as requiring 'a course at charm school.' Nor (...) does it require expertise in psychology to know that, if an employee's flawed 'interpersonal skills' can be corrected by a soft-hued suit or a new shade of lipstick, perhaps it is the employee's sex and not her interpersonal skills that has drawn the criticism." [14] The court held that the requirement that an

employee conform to sex stereotypes is gender discrimination, while using the terms sex and gender interchangeably in the opinion.[15]

Based on Price Waterhouse, however, it is difficult to say what the actual definition of impermissible “sexual stereotyping” is, and to define the extent to which the distinction between “sex” and “gender” should be relevant to a sex discrimination suit under Title VII.[16] State legislatures are, nevertheless, picking up the subtle differences between sex- and gender-based discrimination, and are acting in increasing numbers to refine these terms and disallow employment discrimination under state laws based on sex or gender, including gender identity and gender expression.[17] Expressly including “gender identity and gender expression” among the protected bases for employment (and often housing) discrimination should, at least, provide notice to employees of their rights.[18] The broad definitions that equal employment statutes give to these terms also assist not only women, but other gender minorities towards their goals of substantive equality.[19]

A number of states now expressly prohibit employment discrimination on the basis of gender identity or gender expression. For example, the California Fair Employment and Housing Act (FEHA) was amended in 2011, to prohibit discrimination on the basis of sex or gender, including gender identity and gender expression, the latter meaning “gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”[20] Connecticut enacted a similar bill, also in 2011.[21] The New Mexico Human Rights Act defines “gender identity” to mean “a person’s self-perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior or physical characteristics that are in accord with or opposed to the person’s physical anatomy, chromosomal sex or sex at birth.”[22]

Other jurisdictions that expressly extend protection against discrimination in employment on the basis of gender identity include Connecticut,[23] Colorado,[24] the District of Columbia,[25] Illinois,[26] Iowa,[27] Maine,[28] Massachusetts,[29] Rhode Island,[30] Vermont[31] and Washington.[32] The list keeps growing, even as an attempt in the New York legislature to enact the Gender Expression Non-Discrimination Act (GENDA), which would have prohibited discrimination because of a person’s gender identity or expression, failed yet again.[33]

After seven years of litigation, Ann Hopkins was admitted to partnership at Price Waterhouse under court order.[34] Her victory was bittersweet: She had to leave a position she learned to love with the World Bank, and the firm she returned to had changed considerably during the years of litigation.[35] It took her a few years to feel comfortable again working as a partner in Price Waterhouse.[36] In 1998, Price Waterhouse merged with Coopers & Lybrand, and in 2001, Hopkins retired from the firm.[37] In October 2002, PricewaterhouseCoopers sold its consulting arm to IBM.[38] Yet, Hopkins’ legacy lives on in the continuing evolution of sex discrimination law and policy.[39] With her brave step into the limelight as plaintiff, a new frontier opened in the law of gender equality.[40] Her landmark case still inspires policymakers, advocacy groups, attorneys, judges and legislators, and continues to influence the ongoing change in the law of sex stereotyping and gender expression discrimination.

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[1] Bureau of Labor Statistics, U.S. Department of Labor, Women in the Labor Force: A Databook 1 (Sept. 2009) available at <http://www.bls.gov/cps/wlf-databook-2009.pdf> (last accessed July 6, 2013).

[2] Id.

[3] Id.

[4] Jill Maxwell, Leveraging the Courts to Protect Women's Fundamental Rights at the Intersection of Family-Wage Work Structures and Women's Role As Wage Earner and Primary Caregiver (2012) 20 Duke J. Gender L. & Pol'y 127, 132.

[5] Id.

[6] Ann Hopkins, *Price Waterhouse v. Hopkins: A Personal Account of A Sexual Discrimination Plaintiff* (2005) 22 Hofstra Lab. & Emp. L.J. 357, 365 ("I was as weary as the title was long.")

[7] Douglas Nejaime, Winning Through Losing (2011) 96 Iowa L. Rev. 941, 990 ("[S]ophisticated social movement lawyers engage in multidimensional advocacy that moves beyond, but not without, litigation.")

[8] See Carol Smart, Feminism and the Power of Law 152 (1989) ("Not only are rights part of the very history of modern social movements, they also give status to the groups or minorities who are making demands. The person demanding her rights is not a supplicant or seeker of charity, but a person with dignity demanding a just outcome according to widely accepted criteria of fairness.")

[9] Maxwell, *supra* note 5, at 138.

[10] See *id.*

[11] *Id.* at 139.

[12] "An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not." *Price Waterhouse v. Hopkins* (1989) 490 U.S. 228, 251.

[13] "After two and a half years, travel to thirty or forty countries, and a 26 volume proposal, Price Waterhouse won the \$30-50 million implementation project for [the State Department]. At the time, that project was the biggest consulting deal the firm had ever done." Ann Hopkins, *Price Waterhouse v. Hopkins: A Personal Account of A Sexual Discrimination Plaintiff* (2005) 22 Hofstra Lab. & Emp. L.J. 357, 360

[14] *Price Waterhouse v. Hopkins* (1989) 490 U.S. 228, 256.

[15] The Civil Rights Act of 1991 overruled another prong of Price Waterhouse's holding, allowing the "mixed motives" defense in Title VII employment discrimination cases. See 42 U.S.C.A. § 2000e-2(m) (West).

[16] Francine Tilewicz Bazluke & Jeffrey J. Nolan, "Because of Sex": The Evolving Legal

Riddle of Sexual vs. Gender Identity (2006) 32 J.C. & U.L. 361, 364-65.

[17] *Id.* At 402-03.

[18] “[I]n 2011, California joined the modern trend and made the protections for trans and gender nonconforming people explicit throughout its nondiscrimination statutes. A.B. 887, authored by Assemblymember Toni Atkins, added both “gender identity” and “gender expression” to the lists of protected characteristics enumerated in [the Fair Employment and Housing Act (FEHA)], the Education Code, and dozens of other nondiscrimination provisions. As a result, “gender identity” and “gender expression” are finally included on the posters that inform employees of their right to be free from discrimination, required by California law to be posted in every workplace.” Ilona M. Turner, *Pioneering Strategies to Win Trans Rights in California* (2012) 34 U. La Verne L. Rev. 5, 12-13

[19] L. Camille Hébert, *Transforming Transsexual and Transgender Rights* (2009) 15 Wm. & Mary J. Women & L. 535, 547-48; Turner, *supra* note 18, at 12-13.

[20] Calif. Gov. Code § 12926(q)(2)(emphasis added).

[21] Conn. H.B. No. 6599 (May 23, 2011).

[22] N.M. Stat. Ann. §§ 28-1-2(Q), 7(A) (LexisNexis 2008); Hébert, *supra* note 19, at 547.

[23] State Employment Law Developments, SU033 ALI-ABA 1445, 1451.

[24] Colo. Rev. Stat. §§ 24-34-401(7.5), 402 (2008); Hébert, *supra* note 19, at 547.

[25] D.C. Code Ann. §§ 2-1401.02(12A), 1402.11 (LexisNexis 2008) (“Gender identity or expression” is defined to mean “a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.”); Hébert, *supra* note 19, at 547-48.

[26] 775 Ill. Comp. Stat. Ann. §§ 5/1-103(O-1), (Q), 5/2-102 (West Supp. 2008); Hébert, *supra* note 19, at 548.

[27] Iowa Code §§ 216.2(10), 216.6 (2008) ; Hébert, *supra* note 19, at 548.

[28] Me. Rev. Stat. Ann. tit. 5, § 4553 (9-C) (2008) (defining “sexual orientation” to include “gender identity or expression”) ; Hébert, *supra* note 19, at 548.

[29] State Employment Law Developments, SU033 ALI-ABA 1445, 1451.

[30] R.I. Gen. Laws §§ 28-5-6(10), 7 (2003). “Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.” *Id.* at § 28-5-6(10); Hébert, *supra* note 19, at 547, 590.

[31] Vt. Stat. Ann. tit. 1, § 144 (2007); tit. 21, § 495 (2007) (“The term ‘gender identity’ means an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender-identity, regardless

of the individual's assigned sex at birth."); Hébert, *supra* note 19, at 548.

[32] Wash. Rev. Code Ann. § 49.60.040(15) (LexisNexis 2008) (defining "sexual orientation" to include "gender expression or identity," which is defined as "having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth"); Hébert, *supra* note 19, at 548.

[33] Andy Towle, *New York Senate Ends Session, Fails to Take Up Gender Expression Non-Discrimination Act (GENDA)*, Towleroad (Jun 22, 2013 at 5:10 PM EST) available at <http://www.towleroad.com/2013/06/new-york-senate-ends-session-fails-to-take-up-gender-expression-non-discrimination-act-genda.html> (last accessed July 8, 2013) ("Said Empire State Pride Agenda's executive director Nathan Schaefer in a statement lamenting the failure to take up the bill: 'The Gender Expression Non-Discrimination Act (GENDA) made historic progress during the legislative session that just concluded. A broad, deep and diverse statewide coalition of law enforcement, labor, faith, civil rights, LGBT, progressive and women's organizations stood shoulder-to-shoulder and called for GENDA. The community was united behind language that offered strong protections, particularly in the areas of housing and employment.'" (emphasis added)).

[34] Hopkins, *supra* note 7, at 365. ("Early in 1991, the firm paid what it was ordered to pay and I rejoined the firm as a partner with compensation and benefits set at the average of the partner group admitted in July 1983. I received checks for court ordered back pay, attorneys' fees that I had paid, and for back pay earned between the date of the court order and when I returned to the firm." *See also id.*, at 398. ("That's the only way she's going to be made a partner, by order."))

[35] *Id.* at 409.

[36] *Id.* at 409-10.

[37] *Id.* at 411.

[38] Jack Schofield, *IBM buying Price Waterhouse Coopers' consulting business*, Technology Blog – The Guardian (July 31, 2002) available at <http://www.guardian.co.uk/technology/blog/2002/jul/31/ibmbuyingpric> (last accessed July 16, 2013); News Release, *IBM, PricewaterhouseCoopers Complete Sale of PwC Consulting*, IBM (Oct. 2, 2002) available at <http://www-03.ibm.com/press/us/en/pressrelease/491.wss> (last accessed July 16, 2013).

[39] Ms. Hopkins also wrote a book telling a personal account of her story. *See generally*, Ann Branigar Hopkins, *So Ordered: Making Partner the Hard Way* (Univ. Mass. Press, 1996).

[40] *Id.* at 396 (quoting Transcript, *Hopkins v. Price Waterhouse*, 737 F. Supp. 1202 (D.D.C. 1990) (No. 84-3040) (on remand): "Somebody was going to get the first partnership case. This is the biggest partnership anybody could have imagined to have that case happen to. Hishon v. King & Spalding could have had it happen to it. It was a firm of about a hundred people with a former Attorney General who I'm sure didn't believe that they violated the law. That woman decided not to press that issue, but somebody was going to do it because it's an important part of Title VII.").

Supreme Court Justices Are People Too: A Review of Sonia Sotomayor'...

Thursday, August 01, 2013



I am not sure why I have been so interested in the Supreme Court of the United States (SCOTUS) lately. As a lawyer, obviously SCOTUS has significance to my everyday practice of law and the justices did make some viscerally monumental decisions recently on DOMA and Proposition 8, but it is not just the decisions that have fascinated me lately. It is also the personalities on the Supreme Court and how the justices' backgrounds affect the decisions that they make or may make.

A few years ago, at the urging of my husband (an extremely well-read cop) I first read, well actually listened to (I log a lot of listening miles from my home in Napa and my office in Danville, as well as touring the courts of Napa, Solano, Contra Costa and Alameda counties on any given day), "The Nine: Inside the Secret World of the Supreme Court." This was Jeffrey Toobin's first book about SCOTUS, in which he followed the Supreme Court from the Reagan era up to Obama. This was followed by Toobin's "The Oath: The Obama White House and The Supreme Court." The book began with the comical flubs by the new Chief Justice Roberts as he administered the Presidential Oath of Office to Obama. These books evaluated the underpinnings of some of the most hot-button opinions of SCOTUS like Bush v. Gore and the intellectual development (or lack thereof in the case of Scalia, Thomas and Alito) of the Supreme Court justices. It was interesting to learn that Justice Kennedy's love of travel and study of international law turned him into the liberal swing vote. These books also appealed to my E! Network voyeurism, too, for Toobin also provided some off-color details of the Justices' lives. For example, who knew that Thomas is a motor home and race car enthusiast, and his wife is a leader in the tea party movement? Or that Justice Scalia and Justice Ginsburg are best friends despite their political and ideological differences, and share a love of opera?

Sonia Sotomayor's book "My Beloved World" (read by Rita Moreno), however, is a very different animal. It is a personal reflection on Justice Sotomayor's life, from her hardscrabble childhood in the Bronx to her appointment by President George H.W. Bush to the U.S. District Court for the Southern District of New York in 1991. What is fascinating about this book is not just what is on the surface—her personal experiences

with poverty, race and affirmative action—but also what is implied: The disenfranchisement of the Hispanic race and the historic lack of focus of the civil rights movement on Latino issues. This is of particular interest because the Republican Party now points to the lack of attention to the Hispanic vote as a major factor in their 2012 election loss. Obama, of course, had the foresight in his first term to nominate Justice Sotomayor in 2009.

Learning about Sotomayor's intimate connection with affirmative action policies was compelling because almost to the day after I finished the book, the decision in *Fischer v. United States* was handed down. I was a little surprised to see her in the majority, although the court did not strike down the "affirmative action light" admissions process of the University of Texas. Still, I expected that based on her own experiences, she might join Justice Ginsburg in dissent in finding that the University admissions policy was flexible enough to avoid constitutional scrutiny.

Justice Sotomayor's book begins when she was seven years old, living in the projects in the Bronx right after it was discovered that she suffered from Type 1 diabetes, a far more harrowing disease in the late 1950s than today. In the opening scene, her parents, both born in Puerto Rico, are arguing. Her mother Celina, an emotionally distant practical nurse, is lampooning her alcoholic father about how his hands shake too badly to help administer Sonia's daily insulin shots. This argument, overheard by Sotomayor, prompted her to learn to administer the insulin shots herself at age seven. She credits this episode as a major factor in her independence and lifelong self-sufficiency. She also blames these same traits for her failed marriage and a subsequent life of singlehood.

Sotomayor's parents met during World War II, where her orphaned mother served in the Women's Army Corps. Sotomayor describes never seeing much happiness between them, and only much later in her life learns from Celina that theirs was a great love story gone sour due to Juan's undiagnosed psychological issues, self-medicated by drink. In sometimes painful detail, Sotomayor describes her family life in the Bronx. She was profoundly influenced by her beloved grandmother, "Abuelito," who threw raucous Saturday night parties ending with a séance of sorts with Abuelito speaking to the spirits. When her father died from alcohol-related heart problems, Abuelito blamed Celina for his death and lost her spirit. Celina, already emotionally distant from Sotomayor and her younger brother, Junior, completely withdrew into her grief. Although Celina finally came around due to Sotomayor's force of personality, the experience only further helped to solidify Sotomayor's independence.

The book details Sotomayor's path through strict, but not particularly good Catholic schools, Princeton and Yale Law School. This journey is really an observation of affirmative action at its best. She acknowledges that although she was a top student, it was affirmative action that got her into Princeton. It is fascinating to hear her chronicle her early years in Princeton as a "stranger in a strange land." She realized that while she was consuming the *Encyclopedia Britannica* that her mother had gloriously purchased when she was a preteen, others had been reading the building blocks of literature, such as Dickens and Golding. This lack of exposure and experience not only put her at a disadvantage educationally, but also gave her a profound inferiority complex. It is this complex, however, that she credits as the driving force in her outstanding achievements. She talks about how she and other Hispanic students were ostracized at Princeton and did not have a strong, unifying organization like the black students. Princeton is where, by necessity, she developed a strong sense of her culture and identity as a Latina and became involved in some grassroots Hispanic organizations that would become her

guiding force throughout her life. She graduated with distinction from Princeton and proceeded to Yale Law School to further her lofty early decision to be a district court judge. The inspiration for her goal? The judge on the television show, “Perry Mason.”

In her last year at Yale, despite being soon to graduate from one of the most prestigious law schools in the country, Sotomayor ran up against resistance from the “white shoe” New York law firms not quite ready to hire a scrappy Latina from the Bronx, who they believed didn’t really deserve to be at Yale Law School in the first place. I was surprised to learn that she wound up getting recruited by the New York District Attorney’s Office. As a criminal lawyer, I loved reading about the trials and tribulations of the criminal courts. She was, in my opinion, the best kind of prosecutor: Understanding her role to protect the public, but with compassion for the impact that a conviction and punishment can have on one’s family. She considered herself on the different side of the same coin as defense lawyers and even covertly befriended a public defender. Ironically, despite initially being rejected by the “white shoe” law firms she later found herself working for an exclusive New York law firm, representing luxury companies including Fendi and Ferrari. She even ends up befriending the Fendi family, travelling to Italy for visits and inviting the elderly Fendis to Celina’s apartment in Co-Op City for the holidays.

While pursuing her professional path towards judgeship, Sotomayor never forgot who she was or where she came from. She was a Latina from the Bronx and was never ashamed of that. The importance of family was a strong undercurrent in her life, especially her close relationship with her brother, Junior, an accomplished physician, and his family. She promoted the Hispanic voice in her work with the organization LatinoJustice, a connection that would cause her some problems at confirmation time. As a Latina, she understood that racial isolation and divisiveness is counter-productive.

The book ends with her appointment to the U.S. District Court for the Southern District of New York in 1991. I think it is no accident that she does not touch on her life as a judge. Sotomayor is very careful in “My Beloved World” to shy away from discussing her positions on hot-button issues such as abortion, gay marriage, voting rights and the like to avoid the book being used as a guide for attorneys practicing in front of SCOTUS. Despite her avoidance of these issues, the book was a wonderful read (listen). I looked forward to getting into my car to listen to the life of an amazing, inspiring woman who overcame poverty, adversity, racism, sexism and her own inferiority complex to become the first Hispanic, third woman and 111th justice of the Supreme Court of the United States.

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Patricia's Gray Sweater

On January 28, 1975, attorney Patricia DeCarlo appeared in Camden, New Jersey Superior Court on a criminal matter. She recalled sporting "A pair of gray wool slacks, a matching gray sweater and a green shirt." Upon concluding her court appearance, she was advised by the trial judge "not return to this court to try any matter as an attorney unless dressed in customary courtroom attire." DeCarlo requested written guidelines from the court for appropriate dress, which was denied, with the proviso that he did not object to slacks and did not care whether they matched the jacket or not. He would permit the defendant to wear a dress in his courtroom, even if it was "loud," because he was "not fussy about the color."^[2] Upon returning to court two days later, she was held in contempt, "for deliberately defying the court by again wearing a sweater" atop her open collared blouse. On appeal from the Order of Contempt, the Appellate Division of the New Jersey Superior Court held, "as a matter of law and fact, that the conduct shown by the present record does not constitute a contempt of court." The order that DeCarlo should divine the meaning of "appropriate courtroom attire" as referring to her slacks and twinset was simply too vague to be the basis of a contempt conviction.^[3]

Chandler's Freakish Hat

Long before the East Coast lady-sweater and miniskirt controversies, Los Angeles lawyer Elinor Chandler found herself in hot water over her choice of toppers. The year was 1963, and she was defending Herbert Rainey, who was on trial for perjury and assorted other felonies. On the first day of trial, Chandler was reported to have worn what is described initially only as a large hat. The trial judge repeatedly requested, in the presence of the jury, that she "appear hatless" because of the distraction to jurors caused by hats.^[4] Chandler assigned the court's comments as misconduct and requested a mistrial. When it was denied, she continued to wear her hat throughout the day, and even donned a new hat the following day. After his conviction, Chandler based Rainey's New Trial Motion upon the alleged prejudice he suffered by virtue of the trial court's criticism of her hat. Sadly, the hats themselves were not entered into evidence. This particular gap in the record did not hinder Division Three of the 2nd District from characterizing Chandler's "parading a freakish hat before a jury as pure exhibitionism."^[5] In a concurring opinion justices exclaim, "It is to be noted that hat number 2 was no less obnoxious to the court than hat number 1." Venturing even deeper into the uncharted territory of fashion commentary, the court observed, "A woman's hat, when worn indoors, serves no utilitarian purpose and its virtue as a protection against the elements went out with the sunbonnet. It is purely an article of adornment, worn to attract attention, to enhance the appearance of the wearer and earn admiration. However, the artistic creation that would add to the beauty of a garden party would be, in most cases, entirely out of place in a courtroom."^[6] Conceding that a chapeau of more modest proportions would not have engendered the continuing criticism of the trial judge, the court found Chandler's conduct discourteous and disrespectful and her claims of prejudice to be without merit.

Jensen's Turban

J. Kenneth Jensen, a San Diego attorney, regularly appeared in the Superior Courts wearing a turban during the 1970s and 80s. After numerous confrontations over the years, Jensen challenged a judge who promulgated a local edict, barring turbaned lawyers from his courtroom unless it was shown that the turban was worn for religious, cosmetic or other "legitimate" purpose.^[7] Compelling the turbaned attorney to disclose religious beliefs, cranial disfigurement or other reasons for turban wearing for the trial court's review as a condition precedent to the practice of law was deemed unlawful. "We

hold to the belief no person need declare his or her faith, or lack of it, to engage in the practice of law. Courtroom inquisition concerning physical condition or cosmetic appearance is an invasion of privacy. To deny Jensen the right to practice law for his failure to explain his wearing of the turban affronts these simple precepts which require no citation of authority.”[8]

The court set forth a rule about attorney attire, which remains valid to this day in California. "The test for attire is whether it interferes with courtroom decorum disrupting justice, i.e., whether it tends to cause disorder or interfere with or impede the functioning of the court.”[9] The appellate court declined to announce a dress code for attorneys but urged judges to remain mindful of “our pluralistic society, the preservation of individual choices and appreciation for divergent lifestyles” while expressing confidence that the trial court’s “good taste and sense of community mores ... seasoned with perceptions of changing times, will strike the balance between attire appropriate to the circumstances and that which distracts and thus disrupts judicial proceedings.”[10]

Whether one is on the sideline or the frontline of courtroom couture conflict, one perspective endures: “Vain trifles as they seem, clothes have, they say, more important offices than to merely keep us warm. They change our view of the world and the world's view of us.” - *Virginia Woolf*, “Orlando”

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[1] *Peck v. Stone*, 32 AD 2d 506 - NY: Appellate Div., 4th Dept.

[2] *In re De Carlo* 141 NJSuper Page 44.

[3] 141 NJSuper Page 45.

[4] *People v. Rainey*, (1964) 224 Cal. App. 2d 93 fn 1.

[5] 224 Cal. App. 2d 98.

[6] *Id.*

[7] *Jensen v. Superior Court (Johnson)* (1984) 154 Cal. App. 3d 533.

[8] *Id.* at 541.

[9] *Id.*

[10] *Id.* at 542.

Ethics Corner: August 2013

Thursday, August 01, 2013



When it comes to discrimination in the legal field, everyone knows that it's not right, and everyone also knows that it still happens anyway. What everyone doesn't understand is *why* it still happens.

According to American Bar Association statistics, 47 percent of all enrolled law students are female and 24 percent are minorities.[1] These numbers tend to echo themselves through the associate stage of law firms, with women making up 45 percent of all associate positions in private practice and minorities making up 20 percent. However, once you move up to the partner stage, women and minorities are dramatically under-represented. Only 20 percent of partners in private practice are female and only 7 percent of them are minorities. Part of this problem is caused by the fact that partners tend to be older and had graduated at a time when there were simply fewer women and minorities in law school. But that's not the whole story, especially since women have outnumbered men in law school for many years.

There is an ethics protection in place aimed at closing the gap. California Rule of Professional Conduct 2-400 prohibits discriminatory conduct in a law practice. However, the rule is extremely narrow in what it deems unacceptable behavior. Only "unlawful" discrimination based on race or gender is prohibited, as is only "knowingly" permitting it. No mention at all is made of the more subtle and thus "legal" forms of discrimination that can be even more detrimental to the fate of women and minorities in a law firm. Furthermore, the rule requires an absurdly high standard of proof in order for the State Bar to take action. The State Bar will not even investigate against a member "unless and until" a court has entered a final judgment against that member for unlawful conduct. In practice, this leaves the rule without any teeth. Employment suits based on discrimination are extremely difficult to win, as legal employers usually have a plethora of pretexts to hide behind, and even when an employee has a good case, most of the time it ends in a settlement, not a judgment. I have yet to see a single case be brought before the California State Bar in which a lawyer was disciplined due to a discrimination judgment, even with the abysmal partner-track statistics.

In some ways, we have come a long way since the times of open and hostile discrimination in the legal field. Back in the so-called "golden age" of the industry, lawyers were chosen largely based on the social pedigree. As recently as the 1980s, there was still open discrimination against blacks. When Harold Washington, a black man, was elected mayor of Chicago in 1983, he made it clear that the city under his rule would only work with law firms that demonstrated a commitment to diversity. David Wilkins, a Harvard scholar, interviewed several black partners who benefited from this policy directly.[2] Two of them told him that after Washington died unexpectedly in 1987, they were called in by the manager of their firm and asked how they intended to support themselves now that Washington was dead and they could potentially no longer bring in city work; a demonstration of less than a full commitment to diversity.

Compounding the problem is that many junior partners “inherit” clients from senior partners who are retiring and leave the firm. Senior partners are statistically more likely to be white men, who are likely to bond with and thus directly benefit other white men.

But perhaps the biggest explanation for why there aren’t more female partners is the most obvious: For now at least, women have to be the ones to bear children. Studies have shown that even if women simply take off time for maternity leave, they are less likely to make partner. Furthermore, the responsibility of raising the children generally lies on the woman in a marriage, and this can put a great strain on the amount of time she is able to devote to work. Most women cannot put in 80 hours a week at work and still manage responsibilities for their children. Thus, many women are forced by the realities of life to resign their partner track careers and instead take a more relaxed position or even work part time. People who observe this phenomenon call it the “mommy track” instead of the “partner track.”

Stuart Hanlon wrote an article entitled “Getting It,” in which he chronicled his experiences at his firm after his wife died and he became a single father. He had to withdraw as counsel in a very high profile case to take care of his two young children, and was worried there would be backlash against that decision. Not only was there no backlash, he was applauded by people at his firm for “taking the moral high road” and putting his children first. Only then did he realize that if he had been a woman in the same situation, he would not have been lauded as a hero, but instead would have been criticized for not putting his career first. Women are seen as “choosing” to be mothers, whereas he was seen as being forced into the situation and handling it with dignity, even though he, too, chose to have children. This to him was enlightening and embarrassing.

Two things are needed for women to surmount the hurdles that biology places in front of them: A paradigm shift to where society no longer thinks that women need to choose either career or motherhood, and employer-subsidized child care. Unfortunately, in an economy in which many firms have been facing budget cuts, the latter seems unlikely, at least for awhile. But that doesn’t mean we can’t pursue the former. With women beginning to out-earn men, in another 20 years it may be men who complain about bias.

I think only then will we see some real changes in who makes partner.

Carol M. Langford has a practice in State Bar defense and professional licensing issues in Walnut Creek. She teaches professional responsibility as an adjunct at U.C. Berkeley, Boalt Hall School of Law and Hastings College of the Law. Additionally, Ms. Langford serves as an expert witness in cases involving complicated ethics issues and presents at conferences and symposiums across the state. She is a past Chair of the California Committee on Professional Responsibility and Conduct.

[1] American Bar Association, A Current Glance at Women in the Law, February 2013.

[2] David Wilkins, "Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms."

Working Effectively with Interpreters

Thursday, August 01, 2013

According to the 2010 U.S. Census, 32.8 percent of Contra Costa County residents over the age of five speak a language other than English at home. A good understanding of the rules governing the use of interpreters in the courtroom is critical to working effectively with this segment of the population.

In juvenile delinquency, juvenile dependency, criminal cases and traffic infractions, the court will provide an interpreter, free of charge, if a person who is charged with a crime has limited English proficiency. Moreover, absent a clear waiver by a defendant, each defendant that has limited English proficiency is entitled to a separate interpreter in those kinds of cases.[1] Witnesses with limited English proficiency may also be entitled to interpreters in some of these case types. In addition, to the extent allowed by funding, the court will provide interpreters, free of charge, in domestic violence restraining order hearings and elder abuse cases. The court has certified Spanish interpreters on staff who provide Spanish language services as needed. For languages other than Spanish, the court contracts with interpreters on an as-needed basis or obtains an interpreter from another nearby court to provide the services needed.

Pursuant to Government Code §68562, the judicial council has designated 14 languages that require the services of a certified interpreter when available: Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog and Vietnamese. Presently, there is no certification requirement for any other language. To be certified, interpreters must pass a written and oral examination in the certified language as well as in English.

Occasionally, a certified interpreter's services are needed, but no certified interpreter is available. These circumstances constitute "good cause," which allows the court to use a "provisionally qualified" interpreter under Government Code §68561(c). California Rule of Court 2.893 sets forth the procedure for provisionally qualifying interpreters. These procedures are also detailed in Judicial Council forms INT-100, INT-110 and INT-120.

Non-certified/non-registered interpreters who have not followed the procedure outlined above and so are not "provisionally qualified"—such as family members, or other members of the public who may be fluent in another language—may still be permitted to interpret "to prevent burdensome delay or in other unusual circumstances, at the request of the defendant or minor in a juvenile delinquency proceeding." [2] Under these circumstances, the non-certified/non-provisionally qualified interpreter may interpret a brief routine matter, provided that the judge follows the procedure set forth in the Rule of Court.

Additional resources on court interpreters are available on the Judicial Council website at www.courts.ca.gov.

Select the tab for "Programs" at the top of the page. From the Programs tab, click on the link for the Court Interpreters Program.

Magda Lopez is the Director of Court Programs and Services for the Superior Court of Contra Costa County.

[1] People v. Resendes (1985) 164 Cal.App.3d 812.

[2] CRC 2.893(b)(2)(A).

Women's Section Power Lunch [photos]

Thursday, August 01, 2013

On June 19, 2013, the Women's Section held a Power Lunch at Tender Greens in Walnut Creek. Below are photos from the event:

[gallery columns="2" ids="6447,6453,6448,6450,6451,6452,6449,6454"]

The Power Lunches are hosted every other month, with the next one scheduled for August 14, 2013. Email announcements are sent to CCCBA Women's Section members but anyone is welcome to attend and section members are encouraged to forward the email and to bring friends. To receive the Power Lunch email invitation directly, please join the CCCBA Women's Section.

Welcome to Our Newest Members!

Thursday, August 01, 2013

Please welcome our newest members that have recently joined the CCCBA:

Lucia Borgman Julia Levitskaia Jonathan Braunstein Sophie Mankikar Nicholas Burke
Tammy Mercado Michael Caples Anne Naffziger Sean Culligan James O'Brien Laura
Curtis Deborah Panter Leandro Duran Annick Persinger Horace Green Jamie Serb Lisa
Hutton Julie Skeen Douglas Kelly Oksana Tsykova Aaron Langberg Christina Vigilia Alvin
Lee Jonathan Wolff

Coffee Talk: What are the pros and cons of working from home?

Thursday, August 01, 2013

Pros: I can work in my casual clothes, play with the dogs, and take "power" naps.

Cons: My home is now associated with work, I only have one screen hooked to my computer, and I have to use my cell phone for business calls which degrades quality.

Dawn Ceizler

Pros: no need to don the monkey suit.

Cons: no need to don the monkey suit.

I actually enjoy dressing up and going to my office. It keeps me focused and makes it easier to separate work life from home life. At the same time, as an employer, there are far fewer distractions when I work from home.

Gary Vadim Dubrovsky

pros - less distractions

cons - more distractions

pros - more time in day committed to work

cons - no bright line as to when work day ends

pros - get to be near to family

cons - family does not always recognize you are "at work" (when you are trying to work)

pros - can focus in on the work

cons - lose some face time and camaraderie with co-workers (can be isolating)

Michael Durkee

Without an office, I can save a bundle on overhead while providing added value to my mediation clients by mediating in attorneys' offices. Administrative stuff is easy to do from home. The downside is that my wife tells me that I'm "hovering!"

Malcolm Sher

Dogs.

Steven J. Kahn, Bardellini, Straw, Cavin & Bupp, LLP

Pros: less overhead, no dress code, flexible hours, efficiency & economy, learn new computer resources and skills daily, easier to take naps, comfort and convenience of home.

Cons: temptation to work odd hours, temptation not to work, copies take forever, collating and stapling and file chores boring, harder to meet with clients at home (sometimes), no receptionist.

There are probably other pros and cons. I have been doing this for 12 years and would not go back to a structured office. It works for me, but not for all.

Wayne Smith

Pros include better concentration on issues without ordinary office related distractions. Spending less on gas, tolls, parking and public transportation. Multi-tasking, as in doing laundry, dishwash[ing], watering the garden, while you do office work at the same time. Taking or picking up the kids from school or activities, if they are in that age group. Cons involve lack of immediate second opinions or feedback on difficult issues that come up, non-work related distractions, visitors, vendors, telephone calls can be a negative, oh of course, the long "to do" list on the fridge door which is tempting to avoid when walking by for some other work-reason!

Marc P. Bouret, Bouret ADR & Mediation Firm

There are cons? After 16 years doing it, seems pretty darn nice to me.

David S. Pearson

Join Us: Gala in Support of Contra Costa Senior Legal Services

Thursday, August 01, 2013

Please join us at this year's BAR FUND Gala in Support of **Contra Costa Senior Legal Services**, taking place on Thursday, September 19, 2013, from 6-8 pm at the Lafayette Park Hotel.

We will be honoring retired **Contra Costa Superior Court Probate Commissioner, Don Green**, a longtime champion of senior legal issues who wrote and shepherded critically important legislation that protects seniors. Well-known local attorney **Bill Gagen** will serve as MC, and founding judge of the Contra Costa Superior Court's Elder Court **Judge Joyce Cram (Ret.)** will be sharing some remarks about her support of Contra Costat Senior Legal Services and its staff and volunteers.

Tickets:

Single Ticket Price: \$75

Individual Sponsors: Those who purchase two or more tickets at \$100 each will be listed on the program.

RSVP:

Please send an RSVP card **by September 12th** to: CCCBA, 2300 Clayton Rd., Ste. 250, Concord, CA 94520.

Sponsors:*(as of 8/1/13)*

Platinum

- Archer Norris
- Barr & Young
- Estate Planning & Probate Section
- Hartog & Baer

Gold

- Acuna, Regli & Klein
- Bramson, Plutzik, Mahler & Birkhaeuser LLP
- Buchman Provine Brothers Smith LLP
- Casper, Meadows, Schwartz & Cook
- Wells Fargo Private Bank

Silver

- Bowles & Verna
- Brown Church & Gee LLP
- Frankel Goldware Ferber
- Gagen, McCoy, McMahon, Koss, Markowitz & Raines
- Horner & Singer, LLP
- JAMS
- Littler Mendelson
- McNamara, Ney, Beatty, Slattery, Borges & Ambacher

- Miller Starr Regalia
- The Mullin Law Firm
- Steele George Schofield & Ramos LLP
- Vasquez, Benisek & Lindgren

To register or take advantage of sponsorship opportunities, please contact Theresa Hurley athurley@cccba.org (925) 370-2548. Please make checks payable to "The Bar Fund."

About Contra Costa Senior Legal Services:

Contra Costa Senior Legal Services (CCSLS) is a non-profit organization that provides free legal services to residents of our county who are 60 years of age and over. In continuous operation since 1979, CCSLS has assisted thousands of seniors with legal issues that affect their quality of life, such as housing, consumer finance and elder abuse.

CCSLS volunteer and staff attorneys not only meet with clients in their Richmond office, but also provide services in coordination with the Contra Costa Superior Court at the Senior Self-Help Clinic and through the Conservatorship Workshop. In addition, they organize clinics at senior centers throughout our county at which seniors are assisted by pro bono attorneys.

CCSLS is honored to have been selected as the beneficiary of this year's "The BAR FUND" Gala fundraiser. With your help, they hope to continue their efforts to advocate for seniors in our community.



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Women and the Judiciary

With the gradual increase of women in law school and women practicing law, more and more women are being appointed or elected to serve as judges. The appointments being made are slowly reflecting our diversity in



Spotlight



Conflicts in Courtroom Couture

A rich history of case law elucidates the tension between trendy courtroom couture and traditional norms of attorney attire. The next chapter in the conflict between personal fashion choices and professional decorum has begun.

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News & Updates

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