RAISING

THE BAR

Women's Bar Association of the District of Columbia

SUMMER 2001

2001 WBA/WBAF Annual Awards Dinner

Women Around The World—Honoring Global Leaders

WBA Past President Mary Kate Whalen (r) presents the Janet Reno Torchbearer Award to Wilma Lewis

BY KAREN LOCKWOOD

"'Let me light my lamp,' said the star, 'and never debate whether it will remove the darkness.'" With this quotation of an Indian poet, The Honorable Wilma A. Lewis received the Torchbearer Award at the Annual Awards Dinner sponsored by the WBA and WBAF. Her award and address capped an evening in which the WBA and WBAF gathered at the National Building Museum to honor pre-eminent women global leaders.

The Annual Awards Dinner is a key event on the landscape of the metropolitan area bar activities. This year, the dinner focused on the tremendous increase in the numbers of women who hold prominent positions of leadership and authority around the world. The Honorary Committee, selected to represent these remarkable achievements by women, included ten individual women and The Council of Women World Leaders. The Council comprises 25 women heads of state and heads of government.

The Honorable Delissa A. Ridgway, Judge of the U.S. Court of International Trade and past president of the WBA, was named the 2001 WBA Woman Lawyer of the Year. Her address focused upon the accomplishments of women global leaders, honoring the leaders selected for the evening's Honorary Committee and examining the obstacles that remain in the paths of women leaders. Judge Ridgway's comments, both entertaining and

—*continued on page 14*

Annual Dinner Pictures

Pictures from the dinner are available for purchase. See page 15 for details.

The Women's Bar Association and the Women's Bar Association Foundation thank the following for their support of the 2001 Annual Awards Dinner:

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—*continued on page 15*

HIGHLIGHTS

WBA RAISING THE BAR

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PRESIDENT'S COLUMN

"She's A Woman, Offer Her Less"

BY DEBORAH J. ISRAEL

Eighty-five years after the Women's Bar Association was founded, the legal and business periodicals still buzz with articles, surveys and theories about the challenges facing women in the legal profession today.

For example, in a recent study targeting the pay gap between the genders, Sara J. Solnick of the University of Vermont performed an experiment. She involved players in a negotiation game for cash. "The results were revealing. When the player's sex was known, men and especially women made lower offers to women. And on the receiving end, both men and women insisted on a higher amount when they knew the offer came from a woman." Applied to salary negotiations in the real world, Solnick suggests that "despite significant increases in women's relative wages in recent decades, both sexes may still feel that women will accept lower pay than men and that women are more malleable in a bargaining situation." "She's A Woman, Offer Her Less," by Gene Koretz, *Business Week*, May 7, 2001, p.34. Simply put, women are still discriminating against women. And while the reasons for this are probably complex and require an education that I lack, it doesn't take rocket science to realize that this is a major problem.

In another study of women in the legal profession, researchers found that "[a]lthough women account for nearly half of the law school enrollments nationwide, they are less satisfied than men with their advancement in the legal profession." "Survey: Women See Bars to Promotion," by Victoria Rivkin, *Legal Times*, February 5, 2001, p.18. According to Rivkin, "[w]hile enrollment in top-tier law schools has steadily increased from 40 percent in 1985 to almost 50 percent in 2000, last year women represented only 15.6 percent of law firm partners nationwide, and 13.7 percent of the general counsels of Fortune 500 companies." But perhaps most importantly, the study found that "[w]omen identified *lack of mentoring opportunities* and *exclusion from informal networks* as barriers to their advancement." (Emphasis added).

Even today, we know obstacles exist and we have witnessed the challenges facing women in the profession. Each week we read of the armies of top notch women leaving the profession, particularly private practice. While we have been privileged to bear witness to great milestones for women in the law, it seems harder than ever to identify and pinpoint the obstacles to advancement of women in the legal profession, let alone the solutions.

The Women's Bar Association has always been particularly interested in the obstacles and challenges facing women in our profession. We have participated in the investigation and study of these challenges. Today it seems we are as in need of solutions as ever. In our 85th anniversary year, we need every ounce of top-notch talent and brainpower that we can muster to articulate the barriers for women in our profession and to propose workable solutions. And while this is critically important work, it's evolution is on a longer course—certainly longer than each of us may need to face our daily hurdles. For the immediate hurdles, the studies point to informal networks and no one does informal networking better than the WBA. Informal networking is how we came to exist and it is one of the things we do best.

In the face of difficulty plotting the course of obstacles, let alone solutions, the compass heading repeatedly points in the same direction and, according to the studies, North always seems to equal "Networking." Perhaps the best navigational aid we have to offer is the chart passed from one of us to another about the waters ahead. In my personal experience, there has been no aid, no suggestion, no solution offered greater than the experiences of my many "mentors" in the WBA. So as we engage in the critically important dialogue of identifying the obstacles and proposing solutions this year, your new president asks you to participate in the daily solution that only you can provide. ■

NEWS FROM THE OFFICE

NEW OFFICERS, BOARD MEMBERS ELECTED

May marked the transition to new leadership for the WBA. Deborah Israel began her term as President, and Heidi Sorensen assumed the position of Treasurer as provided by the bylaws. Ellen Jakovic was elected President-Elect, and Marjorie Burnett was elected Treasurer-Elect. Jennifer Duane, was elected Secretary of the WBA.

The following members were elected to the Board of Directors: Joanne Young (one-year term); Alyza Lewin (three-year term); and Hazel Groman (three-year term).

NEW EXECUTIVE DIRECTOR ON BOARD

Kimberly Knight, CAE joined the WBA in early April as the new Executive Director. Kim comes to the WBA with close to 10 years of association management experience, and has earned the Certified Association Executive (CAE) designation through the American Society of Association Executives (ASAE). Only 10% of ASAE's 28,000 members have earned this certification. Kim has worked with a range of D.C.-based trade associations and professional societies to help them manage and develop membership, create and execute marketing plans, and produce top-notch meetings. She most recently helped a trade association start its own bar association for attorneys in that particular industry. Kim and husband, Officer Dorsee Knight of the Metropolitan Police Department, reside in Southern Maryland.

WBA SEEKING OFFICE SPACE

The WBA has learned that the building at 815 15th Street is set to be renovated in April 2002, prompting a search for new office space. If you know of suitable office space or sublease opportunities in the range of $20 per sq. ft. please contact Kimberly Knight in the WBA office.

OFFICE SUMMER HOURS IN EFFECT

The WBA office will be closed on Fridays during the summer. Regular business hours will be Monday through Thursday, 9:00 am to 5:30 p.m. Friday office hours will resume after Labor Day.

INTERNSHIPS AVAILABLE

The WBA thanks Katie Susong, a student at Miami University (Oxford, OH), who served a spring internship in the WBA office. Katie, a communications major, provided invaluable assistance in the planning and execution of the 2001 Annual Dinner. Internships with the WBA are available for the upcoming semester. Please direct interested parties to the WBA office for further details.

IT'S THAT TIME AGAIN!

Membership renewal forms have been mailed to all members. If you did not receive your renewal form please contact the office. Please return completed renewal forms to the office as soon as possible. ■

FROM THE EDITOR

By Cynthia Thomas Calvert

I heard a radical idea the other day: it is good not to check voice mail and email while on vacation or on the weekends. In these days of hyper-connectivity and 24/7 on-call duty, this idea may cause a bit of a shock. Alison Hooker of Ernst & Young described the concept as part of a new initiative at EY that is having a bit of trouble catching on—it is hard to cut the umbilical cord to business.

Maybe some of us already forgo the ritualized checking in, perhaps out of necessity because of other demands on our time. But for those of us who can't conceive of tuning out, consider the benefits: true relaxation, without the expectation that you are always emotionally engaged in your work; the ability to be more responsive to clients and colleagues as a result of engaging in non-work activities; and never again having to suffer the disappointment of finding out that you are, in fact, not needed and therefore must do the laundry. Summertime may be just the right time to give this no-check idea a try.

As always, RTB tries to bring you timely articles you can use. With the time you save not checking for messages, read how Geraldine Gennet crafted a unique career path that enabled her to follow her interests to work she loves. Check out what's new about arbitration clauses in employment agreements; Elaine Fitch gives you the lowdown so you can decide whether your clients should require their employees to arbitrate. Brad Hendricks reviews the book *Living Your Best Life*—a good recharge-your-batteries read. Finally, make plans to: publish an article to enhance your marketing; get involved with WBA committees and fora; and help the Project for Attorney Retention take the next step in its work to remove the stigma from part-time work. All the information you need is in this issue.

Enjoy the rest of your summer—and remember, turn off the phone and the computer and relax! ■

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WBA Member Is New Leader of NOW

Kim Allison Gandy was elected President of the National Organization of Women at the Organization's conference on July 1, 2001. Ms. Gandy had been NOW's executive vice-president. She succeeds Patricia Ireland, who was president for 10 years.

Ms. Gandy plans to focus on legislative action and judicial appointments, continuing the work she did as executive vice president. She told the Associated Press that she wants to prevent judicial appointments that could lead to the overturning of *Roe v. Wade* and that "One of the things at the top of my agenda is sending George Bush to Texas." One of her first public statements decried the Bush administration's proposal to allow states to define a fetus as a person under the Children's Health Insurance Program. "This is a transparent ploy to undermine birth control and abortion rights by granting 'personhood' to embryos and fetuses," she said.

Ms. Gandy has been involved with NOW since 1973, and credits the organization as her motivation for attending law school. She has held officer positions since 1987. Before moving to the District of Columbia, she served as a senior assistant district attorney in New Orleans and opened a private practice that focused on women's rights issues. ■

MEMBERS ON THE MOVE

Maria Perugini recently was promoted to shareholder at Littler Mendelson, P.C. Her practice focuses on employment litigation. She also counsels employers regarding various employment law issues, and has provided employment law training programs for employers.

Kim Keenan Solomon is the new president of the Washington Bar Association. Ms. Solomon is a trial attorney with Jack H. Olender & Associates, where she handles catastrophic medical malpractice and personal injury cases.

Erica Frohman of Sodexho, Inc. (formerly Sodexho Marriott Services) was recently promoted to Assistant General Counsel. Sodexho, Inc., a food and facilities management company, is headquartered in Gaithersburg, MD. Ms. Frohman handles commercial and state tax litigation for the Company

Jamie Gorelick, Vice-Chair of Fannie Mae, has been appointed to the Board of Directors of the John D. and Catherine T. MacArthur Foundation.

Deadline.....
for the September/October issue is
August 20, 2001.

Marna Tucker Receives ABA's Margaret Brent Award

WBA member **Marna S. Tucker**, name partner at Feldesman, Tucker, Leifer, Fidell & Bank, LLP, has been chosen to receive the 2001 Margaret Brent Women lawyers of Achievement Award. The award is bestowed by the ABA's Commission on Women in the Profession, and is named after the first woman lawyer in America. Ms. Tucker has long been a supporter of women's rights. Her many contributions include helping to create the Women's Legal Defense Fund and the National Women's Law Center. She was the first woman president of the D.C. Bar, the first woman president of the National Conference of Bar Presidents, and the first female fellow of the American College of Trial Lawyers. Ms. Tucker was the WBA's Woman Lawyer of the Year in 1985. She and four other distinguished women will receive the awards on August 5, 2001 at the Margaret Brent Women Lawyers of Achievement Award Luncheon. Congratulations! ■

Representing the Representatives
A FEW MOMENTS WITH GERALDINE GENNET

BY CYNTHIA THOMAS CALVERT

Long-time WBA member Geraldine Gennet is General Counsel to the U.S. House of Representatives. She has charted a unique career path for herself, which has included solo and firm practice, service as General Counsel to the Metropolitan Police Department of the District of Columbia, and litigation counsel for the Office of Thrift Supervision. She joined the Office of General Counsel for the House in 1995 as Deputy General Counsel, and became General Counsel in 1997. She is a graduate of Yale College and American University, Washington College of Law. Here are some excerpts from our recent conversation about her varied career:

RTB: Your early career seems oriented toward criminal law. You worked after college as a probation officer and while in law school, you worked as an investigator for the Public Defender Service. Your solo practice included a lot of criminal defense work. Is it fair to say that you've always had an interest in criminal law?

GRG: I have always had an interest in law enforcement and criminal law, but I never wanted to go to law school. When I graduated from college in 1971, it was impossible to get a good job without a graduate degree of some kind, and if you had no discernible talents (such as the ability or interest to get through medical school or become a teacher), law school was the only alternative—and in the early 70's, that's where everyone with just a BA seemed to be going. In fact, I was one of very few women who graduated from Yale that year who did NOT apply to law school, although I figured out by the end of the first summer that I would have to do so. It took me several years of practicing law, doing trials, to realize that this was probably something for which I was really suited.

RTB: You started a solo practice right out of law school, which takes a lot of guts. Why didn't you join a firm or some other legal organization?

GRG: I already sensed that I didn't want to be in a hierarchical situation—at least not at the bottom of the ladder—and I didn't want to be in a legal organization that did just one type of work, even if it was criminal law. I went down to Superior Court one day to watch a friend pick up Criminal Justice Act cases. I came home and said I really didn't want to do that, but the next week I found myself picking up CJA cases. I seem to do best in situations where I can assume overall responsibility myself and have a fair amount of autonomy. At the time, sole practice was the only apparent way for me to achieve that.

RTB: Did you do anything other than CJA work?

GRG: Yes, of course. Once you start your own practice, people come to you with all sorts of legal problems. I ended up doing the divorce of the guy who printed my first business cards. I used to get referrals from friends in large firms who either didn't do the type of work needed (such as criminal, traffic, or domestic relations) or needed a lawyer to provide separate representation for employees of a corporation the firm represented. As a criminal defense lawyer, I got to know police officers and a number of them wanted to hire me. I definitely had a general practice back then. The CJA hourly rates were so low, and the payments so delayed and so often arbitrarily reduced by the judges that it was an illusion that you could depend on them, so it was necessary to have other work.

RTB: You spent some time in a firm. How did that compare to your solo practice?

GRG: It gave me the opportunity to work with some superb lawyers, who taught me an incredible amount, particularly about thinking out and preparing a case. I had already been trying cases for several years, so I was able to absorb and utilize what I learned pretty quickly. I am always torn about the best way to train young lawyers who want to do litigation—I always think someone should work with them and they should be able, sooner rather than later, to argue motions, examine witnesses, take depositions, second-chair trials. But sometimes I think the way

■ *Geraldine Gennet*

I did it in the beginning was useful—definitely painful—but it forced you to think for yourself. In sole practice, I met and talked to a lot of other lawyers and got advice from them, but I was always aware that they were giving me their time. It was great then to be at a firm, somewhere where people were supposed to be talking to you about your work and you could even bill for some of the time. While at the firm, I filed a civil rights case involving the DC Metropolitan Police Department and I took it with me when I went back to sole practice in D.C. I do believe that I did a much better job on that case thanks to what I learned at the first firm and later the help I got while I litigated the case at the firm where I had become a tenant. Of course, everyone who knew me in those years had to hear about the case and give me any advice they could think of—just to get me to stop talking about it.

RTB: Let's talk about that case a minute. You're referring to Henderson?

GRG: Yes. It was the first decision by the D.C. Court of Appeals construing the Civil Rights Act of 1871—42 USC Sec 1983—which had just become applicable to D.C. in 1979, as well as the Civil Rights Attorney's Fees Award Act of 1976. My client was a police officer named Henderson who had

been set up by the Internal Affairs Division because they thought he had taken something on an earlier occasion. They gave him a radio run to pick up a handbag they had left under a bush. When he got back to the station, he didn't see the cash in the wallet so he didn't list it on the property book and he put the bag in the locked property room. Internal Affairs only checked the property book, not the handbag, and ordered him arrested. They couldn't figure out where the money was and finally searched the handbag and found it, but they went right on with the arrest and then tried to have him indicted. Henderson was suspended without pay for a year and a half. I filed a civil rights lawsuit on his behalf, won his police trial board and got him reinstated, but then had to try the case to get his back pay and other damages. He won back pay, compensatory and punitive damages, had his arrest record expunged, and was given a retroactive promotion and an award of attorney's fees. The case was important for many reasons, including sensitizing the police department to issues of compliance and due process.

RTB: You continued to represent police officers after that.

GRG: Yes. I was getting hired a lot to help officers who were having trouble with the Department. After a while, I was getting retained to defend relatives of police officers I knew.

RTB: How was it to have to cross-examine police officers?

GRG: Well, I never cross-examined a client, although some of the officers and officials I met when I cross-examined them later became clients. Police officers are just like anyone else. Once you are in a case representing a client, all your thinking and your emotions and adrenaline go toward representing that client. The witnesses and documents and issues are all pieces of the case that you have to manage. Doing a trial is more like being a director of a play—maybe also the stage manager.

RTB: Do other cases stand out in your mind?

GRG: I had one case involving a woman police officer who was arrested for shoplifting, whose husband, also a police officer, I represented briefly on a murder charge. I got rid of the wife's case by checking the store detective's license, which had expired—invalidating the arrest. You have to learn to check things like that—it is true in all fields. That's what good preparation is. In my early days, I sometimes missed things, but I learned a lot from those mistakes.

There were other exciting moments in those early days of my practice—the judge who periodically invited women lawyers from the Public Defender Service to sit on his lap . . .

RTB: Is there anything you miss about life in Superior Court?

GRG: Back then, judges in the local and federal courts would call defense lawyers and prosecutors into chambers and talk to them, try to help them—in my case by telling me what I had messed up after the case was over. There certainly was a paternalistic aspect to it, but as a sole practitioner, you appreciated any assistance you got. Everyone—courtroom clerks, Deputy Marshals, even jurors—tried to help and were free with their opinions about your work. It actually led to many good friendships. Judges complained to me in later years that they couldn't get new young prosecutors to come into chambers—that they didn't want to hear criticism. As an older lawyer now, of course, I think the young lawyers don't realize how much they have to learn and that they have to learn from everyone and everything they can.

There were other exciting moments in those early days of my practice—the judge who periodically invited women lawyers from the Public Defender Service to sit on his lap; being called "Honey" by a judge when he woke up after sleeping through most of my argument on my first motion; having a true Perry Mason moment when the critical impeaching evidence arrived at the courtroom just in time to cause a material witness to change her testimony on the stand; watching the jurors crowd around my prostitute client after acquitting her of robbing her client, urging her to "choose another line of work."

It was a great education. I learned to roll with things because you were always going to get hit with things you didn't expect.

RTB: Did you surprise a lot of people when you decided to become general counsel of the police department? You had had some pretty significant wins against the department, and one reporter even said that you had "clobbered" the department. What was the reaction to your decision?

GRG: Most people who knew me knew I had wanted the position for a long time and the big surprise was that I finally actually got it. I was dealing with Chief Turner regularly in administrative matters, and we became good friends. He used to tell me that I was the only one who would tell him what was going on with the Department's legal matters. It took several years to get the Mayor to make the appointment—another saga in itself.

RTB: The police department is a pretty hierarchical place. How hard was the transition from solo practice to the department?

GRG: Being a general counsel—at least the way I handle the position—provides a lot of autonomy. That was true in the police department and it is true now at the House. I am expected to figure out what it is people need to know and to tell them in a way they can tolerate, and then to get decisions from them when necessary.

So I didn't fit into the regular chain of command at MPD. There really was no place for a high-ranking civilian woman in the police department hierarchy. People did try to stuff me into a particular space, but that generally didn't work.

RTB: At the time, you were the only woman general counsel of a police department in the country, right?

GRG: That was probably true, especially with regard to major cities. But most police departments don't have individual general counsel's offices now—even in D.C., the office has been technically placed under the D.C. Corporation Counsel.

RTB: When you moved over to the federal government, to the Office of Thrift Supervision, how did you prepare yourself to litigate savings and loan matters, which are so different from the issues you had been litigating?

GRG: It took some time to get familiar with litigating federal jurisdictional issues,

—continued on next page

but litigation is litigation and one learns what is needed to handle a matter. There were a number of areas—such as FOIA and personnel cases—with which I was already familiar. It was very useful experience for the job I have now.

RTB: Were there new substantive areas you had to learn for the job you have now?

GRG: One of the substantive areas—a significant House institutional issue with which I had not dealt before—involves the speech or debate clause of the Constitution. This privilege protects Members of Congress and staff from having to answer questions about matters in the legislative sphere, and it has been interpreted to cover a fairly broad spectrum of Congressional activity. Issues involving the privilege often arise when Members, Committees, staffers or other employees receive subpoenas or are sued or otherwise receive requests for information. We are very careful in dealing with this privilege in order to preserve it and not make bad law.

RTB: Can you give us an idea of what your position now is like? What issues are you dealing with?

GRG: We deal with a wide variety of issues. We provide advice and representation to Members, Committees, staffers, etc. with respect to subpoenas they receive. We also represent Members and staffers in lawsuits arising from performance of their official duties. Many of these are what we charitably call "nuisance" cases but some raise serious issues of institutional significance to the House. We research and provide opinions on legal questions posed by Members' offices, Committees and the House leadership on many topics—for example, whether a particular purchase by a House office is exempt from federal taxes; whether a particular law, passed by Congress, was meant to apply to the House; whether a Committee staffer who is a lawyer is subject to D.C. Bar disciplinary rules in a given situation. We also provide advice to Committees on their investigations and subpoenas they wish to issue.

RTB: What about politics?

GRG: The House Rule that establishes my office says that the General Counsel is to provide legal assistance and representation without regard to political affiliation. The next sentence says that the General Counsel is to function at the direction of the Speaker, who may consult with majority and minority leadership groups. When legal issues arise that implicate differing political interests of the parties, one sometimes ends up walking a fine line. We have been there a while, however, and the two sides seem to recognize the need for our office to function and to be perceived as functioning on a non-partisan basis. The everyday work of the office is readily performed on a non-partisan basis.

When legal issues arise that implicate differing political interests of the parties, one sometimes ends up walking a fine line.

RTB: I know you have some pretty pressing demands on your time outside the office right now. Can you find the flexibility in your job to take care of them?

GRG: I have both elderly parents now in the Washington area, and it is very difficult because I need to be out of the office often and am often called while there. Other people in the office have had similar issues. We try to accommodate everybody's needs in this respect. Generally, it works well because people don't abuse it. It is a small office, but when people need to take time to deal with personal issues, they generally can.

My situation appears now to be unending (at least to me), and I am finding it very taxing. Having both parents unable to manage their affairs has made me very conscious of how useful advance planning is. If you can get your parents (and spouses and significant others) to do it, proper estate planning, orderly transition of responsibility with powers of attorney, listing the location of important documents—all are important to think about before it is too late for your parents and others to make decisions for themselves. I am hoping to be able to get myself to keep doing this preparation and making these decisions for myself before disaster strikes. There are so many of us having to care for our parents and there are so many issues—financial, emotional, psychological—if you add to that having your own family, it is even more difficult.

RTB: When I first met you, in 1986, you stopped by the chambers of the judge for whom I was clerking. I was in the midst of my job search, and one of the things I remember is you telling me to make sure that whatever I did, it was something I really loved. Is it fair to say you have followed your own advice?

GRG: I like being a lawyer. There were times when I loved preparing for and being in trial—after getting past my utter reluctance to start gearing up for it. In general, I find it hard to make myself do things I don't want to do. That is why I would give that advice again today—you should always try to find something you really want to do and that gives you some satisfaction. Life is tough enough, and there will be so many unpleasant things testing you along the way that if you don't like what you do, it seeps into all the other parts of your life. If you like what you do, even if it doesn't pay a lot, you may find that you can parlay it into something later that will give you the money, or whatever you think you need.

You can't let yourself get too restricted by where you are at the moment, or by what others expect you to do.

RTB: Do you have any other advice for attorneys who may be trying to create careers that uniquely fit them?

GRG: I think it is important to meet people, other lawyers and people in other fields, to find out what others do and what they think about it. You can't let yourself get too restricted by where you are at the moment, or by what others expect you to do. Keep testing yourself to find out what you might like better, or ways to improve the way you do things so you can enjoy them more. It is very dangerous to put your head down and do a job and not allow yourself to think about how you feel about it. You pay dearly in the long run if you do that. ■

Short Circuiting Employment Litigation: The Supreme Court Endorses Mandatory Arbitration Clauses

BY ELAINE FITCH

Mandatory arbitration clauses in employment contracts are here to stay. In March 2001, the Supreme Court decided Circuit City v. Saint Clair Adams, 121 S.Ct. 1302, 2001 U.S. LEXIS 2459, a case that has spawned a great deal of controversy and untold hours of discussion and debate. The Court held that the Federal Arbitration Act, 9 U.S.C. §§ 1-16, is applicable to employment contracts. This means that an employer can require an employee, as a condition of employment, to arbitrate any disputes arising in the course of their employment.

In October 1995, Saint Clair Adams applied for a job with Circuit City. The employment application that he signed contained a clause which stated: "I agree that I will settle any and all previously unasserted claims, disputes or controversies arising out of or relating to my application or candidacy for employment, employment, and/or cessation of employment with Circuit City, exclusively by final and binding arbitration before a neutral Arbitrator." Adams was hired as a sales counselor, and two years later, he sued Circuit City in California state court for discrimination. Adams asserted only state causes of action. In response, Circuit City filed suit in the United States District Court for the Northern District of California, seeking to enjoin the state court action and to compel arbitration pursuant to the Federal Arbitration Act ("FAA"). The District Court enjoined Adams' lawsuit and ordered that he was obligated under the employment agreement to submit his claims to arbitration.

Adams appealed to the Ninth Circuit Court of Appeals. While his appeal was pending, the Ninth Circuit ruled in Craft v. Campbell Soup Co., 177 F.3d 1083 (9th Cir. 1999), that the FAA does not apply to contracts of employment. Consequently, it applied that holding to Adams' case and reversed the District Court. Circuit City appealed to the Supreme Court arguing that the Ninth Circuit's ruling contradicted the rulings of every other Court of Appeals that had spoken on the matter.

The Supreme Court reversed the Ninth Circuit, holding that the FAA exempts only contracts of employment for transportation workers, seaman, and railroad employees, and therefore, the mandatory arbitration provision in Adams' employment contract was valid and enforceable.

The FAA was enacted in 1925 in response to judicial sentiment hostile to enforcing arbitration agreements. Section 2 of the FAA makes enforceable written agreements to arbitrate "any maritime transaction or a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. Section 1, however, exempts from the Act "contracts of employment of seamen, railroad employees, or any other class of worker engaged in foreign or interstate commerce." 9 U.S.C. § 1.

In 1967, the Court held that federal law can preempt states' rights with respect to enforcing arbitration agreements because this was a vital issue of public policy. Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967). Amazingly, despite the Court's current states' rights leaning, the Court rejected the argument set forth in amicus curiae briefs from the attorneys general of 22 states that upholding the mandatory arbitration clause pursuant to the FAA would intrude upon a state's right to set its own employment laws. Thus, the fact that Adams brought his claims in state court and asserted only state causes of action was irrelevant.

The Court rejected the argument that an employment contract is not a "contract evidencing a transaction involving interstate commerce" because a "transaction" by definition only involves commercial contracts. Circuit City, 2001 U.S. LEXIS at *14. The Court also rejected the argument that the language "any other class of worker engaged in ... commerce" exempts all employment contracts from the FAA. Id. at *16. Following the maxim *ejusdem generis*, the Court found that such a broad reading of this phrase would render superfluous the inclusion of the specific language regarding seamen and railroad workers. Id. at *17-18. Finally, the Court also refused to construe "engaged in ... commerce" as it was understood on the date of its enactment, as this would subject the phrase to a variety of interpretations depending upon when a particular statute employing identical language was enacted. Id. at *19-22. Because the Court felt that the statutory language was clear and unambiguous, it determined that it was not necessary to decipher legislative intent.

Naturally, the decision has spawned a host of controversies. Perhaps the strongest criticism of the decision is that it forces an employee to arbitrate a claim in order to obtain employment.

Additionally, the Court found that enforcement of arbitration provisions can have tangible benefits. Arbitration permits parties to avoid the costs of litigation and "the accompanying burden to the Courts." Circuit City, 2001 U.S. LEXIS at *32. It also avoids difficult choice-of-law problems often presented by employment disputes. Id. Finally, the Court concluded that employees are not being forced to forgo their substantive state and federal rights, they are simply submitting to an arbitral, rather than a judicial, forum. Id. at *33.

Naturally, the decision has spawned a host of controversies. Perhaps the strongest criticism of the decision is that it *forces* an employee to arbitrate a claim in order to obtain employment. The opponents of Circuit City do not necessarily denounce arbitration in principle. Rather, they decry having arbitration required as a condition of employment. Justice Stevens, in his dissent, observed that "the potential disparity in bargaining power between individual employees and large employers was the source of organized labor's opposition to the Act, which it feared would require courts to enforce unfair employment

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contracts." Circuit City, 2001 U.S. LEXIS at *49. Not many employees are in the position to bargain for the terms of their employment contract. Thus, this is considered an unfair term, not subject to negotiation. As noted, the Majority dismissed this argument by asserting that the employee is not waiving his rights to bring a claim, he is simply agreeing to bring the claim in a particular forum.

Equally important are the terms of a mandatory arbitration provision. It is important for an employer to consider that even though a mandatory arbitration clause is legal, the provisions of that clause must still comport with due process and protect an employee's fundamental rights. Thus, an employer cannot incorporate provisions that would be unjust or unfair or serve to dissuade an employee from requesting arbitration. The California Supreme Court has provided a useful guide for any employer attempting to create a valid arbitration agreement: (1) the arbitration agreement may not limit statutorily imposed remedies, such as punitive damages and attorney fees; (2) adequate discovery must be allowed, which should include access to essential documents and witnesses; (3) the arbitrator must issue a written arbitration decision that reveals the essential findings and conclusions on which the award is based in order to allow for adequate judicial review; and (4) the employee should not be required to pay unreasonable costs and arbitration fees. Armendariz v. Foundation Health Psychare Services, 24 Cal.4th 83 (2000).

One area in which employers must be careful is the allocation of costs and fees. The Supreme Court has held that an agreement to arbitrate is not rendered invalid simply because there is no reference in the agreement to the allocation of costs between the employer and employee. Greentree Financial Corp. v. Randolph, 531 U.S. 79 (2000). Unfortunately, the Court refused to address precisely what showing an employee must make to challenge an arbitration provision because in that case, there was no evidence on the record to indicate how much, if any, of the cost would be born by the employee. Id. at 522-23. However, a party is entitled to raise the issue, and obtain necessary discovery, in a pre-arbitration judicial proceeding. Id. at 523. To avoid having to reach this issue and incur additional costs (such as litigating the issue to the Supreme Court) prior to commencing the arbitration, it would be wise to include an explicit and fair provision in the employment agreement. Indeed, litigating this issue defeats arbitration's most important benefits, namely the prompt, fair resolution of a case. Once discovery is invoked on an issue that is tangential to the employee's underlying complaint, the case begins to resemble one in the throes of litigation.

One area in which employers must be careful is the allocation of costs and fees.

What is considered fair is, of course, up to interpretation. The District of Columbia Circuit has explicitly stated that "an employee can never be required, as a condition of employment, to pay an arbitrator's compensation in order to secure the resolution of statutory claims under Title VII . . . ." Cole v. Burns International Security Services, et al., 105 F.3d 1465, 1468 (D.C. Cir. 1997). More recently, the D.C. Circuit upheld an arbitration award that allocated 12% of the arbitration costs to the employee (who was awarded $65,000 for her claims) and 88% of the costs to the employer. LaPrade v. Kidder, Peabody & Co., Inc., 2001 U.S. App. LEXIS 7381 (D.C. Cir. April 24, 2001). This decision was based in part on the determination that it was reasonable to conclude that the costs she was assessed were attributable to the arbitration of her non-statutory claims (i.e., forum fees).

The question of remedies also remains to be determined. Many state and federal discrimination statutes have fee shifting provisions providing that an employer is responsible for paying a successful employee's attorney's fees. Fee shifting provisions clearly remove one of the major obstacles to pursuing a valid claim, which is retaining a qualified attorney. However, if the employee has to bear some of the costs from the outset and his attorney is not assured of having her fees covered if they win, the burden on an employee to pursue his or her statutory rights becomes much more onerous. In addition, although many arbitration clauses contain provisions for attorney fees, they are sometimes capped. It is not yet clear whether such caps will be upheld by the courts, although it seems unlikely.

Another controversial issue involves damages. Punitive damages are usually meted out by a jury in a public forum for punishment of intolerable and unacceptable behavior. However, in a non-public, arbitration setting, a neutral arbitrator is less likely to be swayed by emotion or public outrage and award large punitive damages. Employers are advised not to attempt to place a cap on punitive damages in their arbitration agreement, however. In Armendariz, the court held that an arbitration agreement was unenforceable, in part, because it did not permit the full recovery of damages for employees, including punitive damages. 24 Cal.4th at 103, 121.

Certainly a concern for the employee is how the arbitrator will be selected. While a closed panel works better for employers, an open panel is preferred by employees. Employees are necessarily concerned when they must select from a pool of arbitrators, all of whom are chosen by the employer, since this does not present itself as much of a choice. Employees would prefer the option of selecting an arbitrator from a particular organization, such as the American Arbitration Association or JAMS/Endispute, where the employer has not pre-selected a smaller pool of arbitrators. However, it may be difficult for an unrepresented employee to investigate a particular arbitrator to ascertain his competence or neutrality.

A closed panel enables employers to get to know the arbitrators, to develop a history with them, and to be comfortable with their style. This can lend the appearance, at least to an employee, of partiality. Although arbitrators are purportedly neutral, the D.C. Circuit has warned that enforcement of neutrality can be problematic because "unlike a judge, an arbitrator is neither publicly chosen nor publicly accountable." Cole, 105 F.3d at 1476.

Care must also be taken to ensure that the arbitral system does not become too privatized. Judicial decisions can create binding precedent and assist a litigant in developing a case. Likewise, arbitral decisions should be in writing and available to the public. Distribution of such information can help employees "build a case of intentional misconduct or to establish a pattern or practice of discrimination by particular companies." Cole, 105 F.3d at 1477. Furthermore, written legal conclusions and findings of fact would permit meaningful review by a court. Indeed, as the Supreme Court once observed in a union arbitration setting:

> "[T]he factfinding process in arbitration usually is not equivalent to judicial factfinding. The record of

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Short Circuiting Employment Litigation: The Supreme Court Endorses Mandatory Arbitration Clauses

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the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable. And as this Court has recognized, arbitrators have no obligation to the court to give their reasons for an award. Indeed, it is the informality of arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution. This same characteristic, however, makes arbitration a less appropriate forum for final resolution of Title VII issues than the federal courts." Alexander v. Gardner-Denver Co., 415 U.S. 36, 57-58 (1974).

Although the Court has obviously altered its conclusion, its warnings should still be heeded.

Of course, an arbitration award can be subject to judicial review. Indeed, the FAA recognizes several bases for vacating an award, including:

"(1) where the award was procured by corruption, fraud, or undue means. (2) Where there was evidence of partiality or corruption in the arbitrators, or either of them. (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced. (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a).

Moreover, arbitration awards can be vacated if they are in "manifest disregard of the law." First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 942 (1995).

A significant issue currently pending before the Supreme Court is whether the EEOC can sue an employer in federal court when an employee has signed a mandatory arbitration agreement. EEOC v. Waffle House, Inc., 193 F.3d 805 (4th Cir. 1999) *cert. granted*, 69 U.S.L.W. 3628 (U.S. Mar. 26, 2001) (No. 99-1823). The Fourth Circuit held that the EEOC cannot be compelled to arbitrate its claims despite an agreement between the employer and employee. However, the EEOC was precluded from seeking "make-whole" relief for the employee in a judicial forum. In this way, the court sought to strike a balance between the right of the EEOC to advance the public good by remedying discrimination versus upholding an arbitration agreement between the employer and employee. Certiorari was granted because there is a split in the circuits. The Sixth Circuit held that an arbitration agreement does not affect the scope of the EEOC's reach (EEOC v. Frank's Nursery & Crafts, Inc., 177 F.3d 448 (6th Cir. 1999)), while the Second Circuit held that the EEOC was precluded from seeking purely monetary relief in federal court on behalf of the charging party, but not from seeking injunctive relief (EEOC v. Kidder, Peabody & Co., 156 F.3d 298 (2d Cir. 1998)).

A significant issue currently pending before the Supreme Court is whether the EEOC can sue an employer in federal court when an employee has signed a mandatory arbitration agreement.

Does the holding in Circuit City presage the inclusion of mandatory arbitration clauses in all contracts of employment? Probably not. Arbitration is not valuable to employers with few litigated employment cases. It can lead to an increase in claims filed, the arbitration costs can be high, and employers lose some of the advantages of litigation, including summary judgment and more exacting judicial review. One serious consequence that each employer must consider before electing to include an arbitration clause in an employment contact, is that such a clause effectively terminates an employer's at-will status. All states, except Montana, recognize at-will employment, which means than an employee can effectively be terminated for any non-discriminatory reason. However, if all employment actions are subject to arbitration, every termination would necessarily be an arbitrable decision. In addition, some matters such as allegations of trade secret theft are not amenable to arbitration. Only a court can issue an injunction enjoining use of stolen secrets.

For those who feel that Circuit City was wrongly decided, legislation is already brewing. H.R. 815 introduced on March 1, 2001, by Representative Robert E. Andrews (D) of New Jersey would amend Title 9 of the United States Code to provide employees the right to accept or reject the use of arbitration to resolve an employment dispute and prohibit enforcement of mandatory arbitration clauses without the employee's consent. Representative Edward Markey (D) of Massachusetts introduced H.R. 1489, entitled the Civil Rights Procedures Protection Act of 2001, which would amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment practices. Finally, there is reportedly a bill being proposed by Representative Dennis Kucinich (D) of Ohio called the FAA Correction Act of 2001, which would overturn Circuit City by altering the exemption language in the FAA. The bill is short and simple and deletes everything before "of seaman." In other words, all contracts of employment would be exempted from the FAA.

In the end, the Court's ruling in Circuit City will not change the workplace a great deal, as all the Circuits except the Ninth already had declared mandatory arbitration agreements enforceable. Many companies already had such provisions in their employment contracts, and it seems unlikely that the ruling will spawn a spate of new provisions. However, employers should be advised to draft the arbitration provisions carefully to avoid unwanted litigation, and employees should be encouraged to read the contracts carefully before signing. Although there may be nothing an employee can do to alter the contract, at the very least she should be aware of her rights. ■

THAT'S ON FIRST

By Susan E. Colman

Based upon current colloquialisms, I suspect that Dr. Seuss would have a pretty tough time trying to find Whoville. It seems that the pronoun "who" has gone the way of the mastodon or the saber-toothed tiger. Everyone is using "that" instead.

This is driving me nuts. Mind you, I beg you not to confuse me with one of those irritating language fascists who (yes, I said *who*) write to the Washington Post with their nitpicking observations of earth-shaking mistakes in grammar. I am normally quite tolerant of language mannerisms. When I hear someone say "irregardless" I may cringe a bit, but I silently take off the "ir" at the beginning and get on with my life.

But as long as I'm griping, the word "that" has also usurped the delicate use of "which"—have you noticed? Before we all go racing after our yellowed, dog-eared copy of Strunk & White (not a law firm), I know there are rules to be followed regarding the propriety of using *that* or *which* in a sentence. At this point, I really don't care about the rules as long as there's some variety which may capture my attention and make me listen.

Sports broadcasters and computer geeks have something in common with respect to language mutilation, as well. They tend to use nouns as verbs. For example, a football play is "defensed" rather than defended. In the computer world, software is now "architected" instead of written. Apart from being a rather stupid-sounding expression, it appears to imbue computer software with attributes which may very well be unintended or unattainable. Yes, there are people who are software architects. And, yes, they *write* software. Just thinking of this kind of mangling makes me itch!

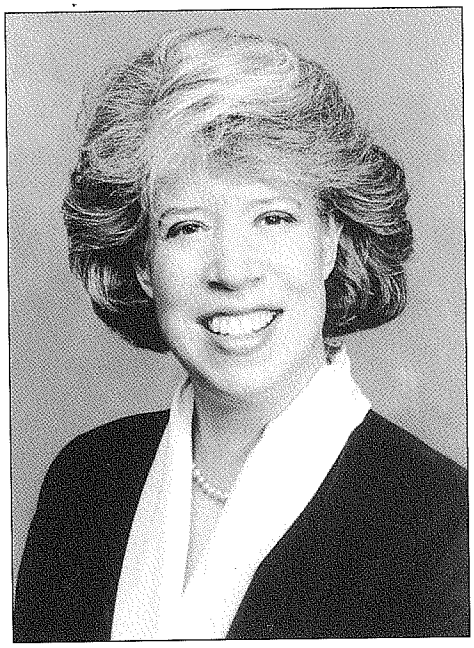
And if *that's* not enough, whatever happened to adverbs? I guess the meteor shower got them, too. I once heard a guy being interviewed saying: "I took it real personal." Yikes! Finally, I get really peeved at those who say "as far as" and never finish the idiom with "is concerned." I tend to do it for them, however. *See "irregardless" supra.*

I don't understand why we have gotten so lazy.

Languages are living, breathing, acrobatic organisms. And as lawyers, we use our language and our language skills towards the most compelling ends—to communicate, to persuade, to celebrate and to castigate, and occasionally to obfuscate. We hold in our brains unbelievable power to use our language to lay the foundation of our arguments, build the walls, insert windows and doors to allow for reality's breath of fresh flexibility and allow for dynamic future capabilities. Occasionally, we have enough left over to put some artwork on the walls. Those are the negotiations I strive for (yes, that *was* a dangling preposition—"who" wants to fight about it?).

To be sure, some language mannerisms have a higher aggravation coefficient than others. I know a woman who starts most of her sentences with the phrase: "I'll be honest with you. . . ." It makes me want to say: "No, please, lie to me; it's what I expect." But this example demonstrates how little we pay attention to how we are using our language. And that can develop into a real problem for us as lawyers.

It is time for us to pay attention to how we speak and how we write. There can be something truly elegant about the choice of words and the turn of a phrase, accompanied by nuance like a fine wine. We owe it to ourselves and our clients, as well as anyone else who listens to us or reads what we have written, to use our language well, be kind to it and release its power in ways which further its impact. ■



■ *Susan E. Colman*

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Balanced Hours
Project for Attorney Retention Publishes its Recommendations

On May 30, 2001, the Project for Attorney Retention presented its report and recommendations, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms* at a sold-out luncheon at the District of Columbia Bar.

The report states that a major cause of attrition at law firms is attorneys' desire to have balanced lives and the perception that law firms cannot provide the desired balance. Studies show that attorneys—both men and women—want to work fewer hours, and when they find firms where they can reduce their hours without committing career suicide, they stay with their firms.

Part-time work at most law firms is highly stigmatized, however, says the report. As a result, few attorneys seek balance through reduced hours. Part-time attorneys in Washington report that their work assignments have suffered and their partnership chances withered. Moreover, few firms honor part-time schedules and part-time attorneys often find themselves working full-time hours for part-time pay.

This failure of current part-time programs is particularly harmful to women because most women will become mothers and labor statistics show that fewer than 10% of mothers work more than 50 hours per week—meaning that as law firm work is currently structured with its long work weeks, women attorneys still have to choose between their careers and their families. The fact that 85% of law firm partners are men even though an ample supply of women has been in the pipeline for decades, is strong evidence of the disproportionate impact on women.

Recent figures show that male attorneys are feeling as much work/life conflict as female attorneys, and 70% of young male attorneys would be willing to trade money for fewer hours—but most are not willing to sacrifice their careers for the trade-off. The result is high attrition as men and women look for balance.

PAR's report sets forth an action plan for stemming attrition. First, it provides an easy six-part test that law firms can use to determine if they have an effective balanced hours policy that will reduce attrition or merely a shelf product. The test includes measuring how many attorneys work reduced hours, whether attorneys on reduced hours schedules consistently work more than their contracted hours, and how many attorneys working reduced hours have been promoted to partner.

Second, the report describes the key ingredients of an effective policy, and provides a model policy. At a minimum, an effective policy should follow the Principle of Proportionality: proportional pay, benefits, work assignments and promotion. An effective policy should also be available to all, not just mothers, and should allow schedules that are flexibly-tailored to meet attorneys' individual needs.

Third, the report recommends an implementation plan based on best practices already in use at law firms and accounting firms across the country. Keys to successful implementation include leadership from the top, training, and the appointment of a Balanced Hours Coordinator. Finally, the report responds to common myths about balanced hours work at law firms.

The full report and appendices are available at PAR's website, *www.pardc.org*. A hard copy of the report can be requested by sending an email to *FinalReport@pardc.org* with your name and mailing address. ■

Bringing About Change in Law Firms

So now PAR has identified the problems and suggested the solutions—how can all this talk be translated into action? How can meaningful changes be made in law firms? And what can you do to help?

On the organizational level, change will happen only when key individuals in the organization recognize the need for change or the benefits that can be derived from change, and champion the change. The challenge now is to make sure that law firm management gets the message about the need for change. You can help by discussing the Report within your firm, distributing copies to partners and other decision-makers, encouraging your firm to take the PAR usability test; and suggesting that the firm adopt PAR's recommendations. Other suggestions: be vocal about your needs for balance and for professional satisfaction and start a support group to provide safety in numbers; recommend that your firm hire a consultant to audit its part-time program and implement a balanced hours program; and create ways for your firm to celebrate its successes in making changes.

On the industry level, change can be prompted through firms' needs to be competitive and to keep up with current trends. Firms that have effective balanced hours programs will have an easier time attracting good legal talent and getting and keeping good clients—and make more money. If a firm does not have a good balanced hour program, recruits and clients are going to go down the street to one that does. PAR has jumpstarted the competitive spirit by publicizing firms' current part-time policies on its website and praising firms' good practices in its Report. This effort will be continued this summer with the creation of The Lists—lists of which firms have adopted best practices identified by PAR and an overall List of which firms have the best balanced hours programs. The Lists will be publicized at law schools just in time for the summer associate interviewing season. The Lists will also document the current trends among law firms with respect to balanced hour work. You can help by contributing your knowledge and experience about part-time work at D.C. firms to PAR's website (anonymously, of course); publicizing PAR's website Lists, asking your firm management if it knows what PAR is reporting about the firm, and discussing your firm's balanced hour program with recruits—even if they don't ask. ■

2001 WBA/WBAF Annual Awards Dinner

—continued from front page

sobering, exemplified the leadership that she brought to the WBA before she took the bench and that she brings to her scholarship. Among her achievements prior to joining the Court, Judge Ridgway served as Chair of the Foreign Claims Settlement Commission, where she presided over the Holocaust Survivors Claims Program, among others. In introducing her, Marna S. Tucker, also a past president of the WBA, told of Judge Ridgway's passion in addressing the claims of the holocaust survivors and finding a way to permit the justice system to recognize and redress those losses.

The Honorable Delissa A. Ridgway, a Past President of the WBA ('92–'93), graciously accepts the honor of being named Woman Lawyer of the Year.

Wilma Lewis challenged women leaders who seek justice to retain their compassion and their memories of the paths they have taken individually. This was the fourth time since 1996 that the WBA has bestowed the Torchbearer Award, which is presented "to an attorney who has blazed trails to open the path of opportunity to, and forever change the world for, women." Wilma Lewis, as U.S. Attorney for the District of Columbia from 1998 until April 2001, headed the largest U.S. Attorney's Office and created multiple novel initiatives, including a Civil Rights Task Force, as well as programs to reduce crime such as the Gang Prosecution and Intelligence Sections, the Drug-Related Task Force, and the Conditions of Release Enforcement Program. Ms. Lewis was joined at the dinner by her parents, who traveled from St. Thomas, Virgin Islands to attend. Judge Norma Holloway Johnson introduced Wilma Lewis, commenting on her years of service to the bar and in court.

Mary Kate Whalen says farewell

The WBA was honored to have The Honorable Elaine L. Chao, Secretary of Labor, give the keynote address. Secretary Chao spoke of the importance of women in the workforce, historically and currently, and renewed her commitment to move forward with appropriate policies on ergonomics as well as issues affecting women in the labor force. WBAF President Sandra Robinson introduced Ms. Chao.

The Honorary Committee comprised Her Excellency Ivonne A-Baki, Ambassador of Ecuador to the United States; Christiane Amanpour, Chief International Correspondent for CNN; The Right Honourable Kim Campbell, Former Prime Minister of Canada; Hillary Rodham Clinton, United States Senator and former First Lady; Her Excellency Arlette Conzemius, Ambassador of Luxembourg to the United States; Carolyn B. Lamm, partner at White & Case, LLP; Congresswoman Barbara Lee from California; The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada; Layli Miller, founder of the Tahiri Justice Center; The Honorable Patricia M. Wald, Judge on the International Criminal Tribunal for the Former Yugoslavia; and The Council of Women World Leaders based in Cambridge, Massachusetts. The Honorary Committee was introduced by dinner committee co-chairs Michelle Gabelmann and Karen Lockwood.

The Honorable Elaine Chao, Secretary of Labor

WBA President Mary Kate Whalen opened the event with a warm welcome, and she and Sandra Robinson reviewed the accomplishments of the WBA and WBAF in their dinner remarks. At the conclusion of the dinner, Ms. Whalen presented the crystal gavel to Deborah J. Israel, marking the beginning of Ms. Israel's term as the new President of the WBA. ■

The Honorable Norma Holloway Johnson introduces Wilma Lewis

Aren't these pictures terrific?

There are many more—perhaps featuring you! Come to the WBA office Monday through Thursday to peruse the collection and pick out your favorites. Ordering and pricing information is available at the office.

2001 Annual Awards Dinner Sponsors

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Book Review

LIVING YOUR BEST LIFE

BY BRAD HENDRIX

"What do You Really Want?"

Please note the question is not what your law firm or government agency wants. The question is not even what your spouse/partner or child wants. Please pause for a moment before continuing to read.

The above question is what is called a "Wisdom Access Question" or "WAQ." The question comes from Laura Berman Fortgang's new book, *Living Your Best Life: Ten Strategies for Getting from Where You Are to Where You're Meant to Be* (Tarcher/Putnan) (May 2001).

Fortgang is a certified coach. Coaching is a relatively new career field designed to work on helping individuals or organizations plan a future. Fortgang previously wrote a book focused mainly on career strategy titled, *Take Yourself to the Top*. In this book, the focus is on creating what Fortgang calls a "Life Blueprint." A Life Blueprint is a map of the life that you want to lead. *Living Your Best Life* gives you practical strategies to create this blueprint without requiring a stay in a monastery or the leaving of a profession.

Wisdom Access Questions comprise the first of ten steps. WAQ's are questions that force our mind to imagine alternative possibilities. These questions usually begin with the phrase "What...."

The next step is called "Train the Brain." Here, the focus is not on positive thinking, but on examining whether your beliefs are helping or hurting you. For example, Fortgang cites the belief, "I am not good enough." This belief is particularly insidious, according to Fortgang, since this belief has a habit of camouflaging itself very well.

Fortgang states that the way to work with this belief is to amass concrete evidence showing that it is erroneous. In a way, it is similar to George Bailey's realization of his worth to other people in the movie, *It's a Wonderful Life*.

It is clear that restructuring one's belief system is not a simple process. To her credit, Fortgang gives a specific exercise to work on this matter. First, take a piece of paper divided down the middle. On one side of the paper write the words "Defining Beliefs." On the other side of the paper, write the words "Expanding Beliefs." A defining belief is one that limits your potential. An expanding belief is one that empowers you to take action. The exercise is to monitor your thoughts for a day noting which beliefs are expanding beliefs and which are defining beliefs. Although this may strike some as too simple, language is remarkably powerful. By practicing the above exercise, I could see how my beliefs exert a powerful force in my everyday life.

The third step is to "Gain Perspective" on one's life. The importance of humor and gratitude is stressed here.

"Act On What You Feel and Not What You Think" is the fourth step. Fortgang shows us that our feelings can be powerful sources designed to help guide us . It was interesting to learn that it is our minor feelings rather than our strong emotions that provide guidance. In this step, Fortgang provides appropriate exercises to allow us to get in touch with these emotions.

The fifth step requires the "Making of a Simple Contract." A person objectively analyzes his or her present life circumstances, and then commits to changing the present to create a better future. Fortunately, Fortgang provides a good checklist to facilitate this process.

"Discovering Your Lucrative Purpose" is the sixth step. This step requires a person to examine the roles that each of us plays in other people's lives. What Do I Bring to Other People's Lives? would be a good summary of this point.

The seventh step is called "Making Yourself A Magnet." This step follows the framework that our internal state has a great effect on the external state of our lives. In this step, the focus is on paying attention to our energy, and the ways in which our interactions with other people can have major effects on our energy levels.

"Become a Master at Focusing," which is step eight, combines the use of meditation and the practice of examining your intentions in order to create a more peaceful life. Step nine is "Ask for Directions Before You Are Lost." This step is about using your intuition to help you in your life. Finally, the last step, called "Giving Up Needing to Know," involves the use of faith and trust to create positive action in one's life.

Fortgang's book concludes with tools that allow people to discover and work on creating a fulfilling life.

The book is well worth reading. It provides a much-needed compass to enable us to create the lives we want. ■

Small Gestures Mean A Lot to Clients, Increase Loyalty

BY TREY RYDER

Last week, when UPS delivered my book from Amazon.com, the package contained a surprise.

In a purple-and-green 6" × 9" envelope, I found ten one-cent stamps—and a personal note from my friend, Amazon founder Jeff Bezos. It read as follows:

Dear Friend,

From the start, one of our primary goals at Amazon.com has been to make the lives of our customers easier. For over five years, this sensibility has guided our growth, site design, and the addition of new features and services.

But recently, it struck me that despite all of our hard work there are still many inconveniences we haven't yet addressed.

We can't wash your dishes.

We can't pick up your dry cleaning.

We can't change the little light bulb in your refrigerator.

We can't make your tuna salad just the way you like it.

Then I realized there was one thing we could do that we've never done before—spare you the hassle of an extra trip to the post office! First-class postal rates went up a penny to 34 cents on January 7, so enclosed you'll find ten 1-cent stamps—a necessity for using up your old 33-centers. Sure, we're only talking 10 cents in value, but hopefully the time you'll save will be worth much more.

Sincerely,

/sig/ Jeff
Jeff Bezos

As it happens, I ran out of one-cent stamps today, so Jeff's stamps really came in handy.

What did this cost Jeff?

Ten cents for stamps, plus the cost to design and print the envelope and his note. In total, not much.

Since the stamps came to me with a book I ordered, Jeff paid no postage. And since I paid Amazon $4.48 to ship a small book, I expect I paid 5 or 10 cents for each stamp with a face value of one cent. My cynicism aside, Jeff's gesture was kind. What's more, no one else sent me stamps—or anything else, for that matter—so Jeff clearly stands out from the crowd.

Here's a story that shows how much little things can mean. I lost two hours of billable time each time I took my car for service (one hour each way). The service manager offered to pick up and deliver my car, saving me hundreds of dollars in billable time. A small gesture on the service manager's part, since the car jockey was working anyway. Yet a tremendous savings in time and money for me.

What can you do that will cost you little, yet prove both helpful and profitable to your clients?

1. Offer to serve as a primary referral source anytime your clients need other professionals, such as accountants, bankers, investment advisors and insurance brokers.
2. Offer your specialized knowledge in non-law related subjects.
3. Offer forms they might ordinarily request from the government or IRS.
4. Offer to answer clients' questions over the telephone.
5. Invite clients to roundtables or seminars.
6. Send one-cent stamps, as Amazon did.

Think of little things you can do to save your clients time and money. They'll appreciate it a lot. And you'll earn a client for life. ■

Trey Ryder is a law-firm consultant who specializes in Education-Based Marketing for attorneys. He offers lawyers three free articles by e-mail: "Marketing Secrets of Superstar Lawyers," "17 Fatal Marketing Mistakes Lawyers Make," and "7 Secrets of Dignified Marketing." Send your name and e-mail address to trey@treyryder.com and ask for his free e-mail packet of articles.

Actively Market to Referral Sources

I have long suggested that lawyers not depend solely on referrals for new clients. Not that you don't want referrals. Just that you don't want to rely on them exclusively.

One problem that causes referrals to dry up is the referrer's belief that you don't want new clients. If a referrer concludes you're too busy to accept new clients—or if he hears through the grapevine that you closed your practice—or that you now practice in a different area of law—he may send prospects to another lawyer.

You help your referral sources when you keep them informed about the specific services you provide and the type of clients you want to serve. Here are ways to market to referral sources:

Mail them (1) your educational handouts, (2) invitations to seminars, (3) newspaper articles in which you've been featured, (4) letters requesting referrals, (5) thank-you letters after receiving a referral, (6) outcome letters when the case has ended, (7) your firm newsletter, and (8) copies of your referral brochure inviting inquiries from prospects.

The more your referral sources know about you, the more they can help you. So keep them informed—and they'll keep sending you clients.

New Members

The WBA welcomes the following new members, approved by the Board of Directors. We encourage your active involvement in the WBA and look forward to seeing you at upcoming WBA events!

Margot F. Bester
Evelyne Bonhomme
Nancy K. Bowen
Carol Ann Dalton
Anne Depenbrock
Laurie Erdman
Mariam Findakly
Gaela Gehring-Flores
Allison George
Elizabeth Haile
Katherine J. Henry
Catherine L. Hess
Elizabeth A. Holt
George W. Jones, Jr.
Tara R. Kelly
Ashlie E. Kropp
Estee Levine
Kristi J. Livedalen
Harriette Lopp
Nancy J. Malir
Jill K. McDowell
Shaila Lakhani-Ohri
Deborah Schull
Annetia Smith
Christine S. Trafford

SPOTLIGHT ON ELLEN M. JAKOVIC

WBA President-Elect Ellen Jakovic was first introduced to the WBA by The Honorable Delissa A. Ridgway, then WBA President, who recruited Ellen to run for the WBA in the annual Lawyers Have Heart race. Since that time, Ellen has become active in the WBA, having served recently as Treasurer and Treasurer-Elect, as well as a Co-Chair of the Working Parents Forum for the past three years.

Ellen is Counsel with White & Case LLP, where she advises clients on the antitrust aspects of complex international mergers, acquisitions, and joint ventures. Ellen received her undergraduate degree from Harvard University and her J.D. from Harvard Law School. After graduating from Harvard, Ellen began practicing regulatory and commercial litigation in Washington, D.C., first with Miller & Chevalier and then with Shaw Pittman, before joining White & Case's antitrust practice in 1995. She has been working a reduced hours schedule at White & Case since April 2000.

Ellen is active in a number of educational and charitable organizations. She enjoys spending time with her family, which includes her husband, her 4 year old daughter, and her 2 year old son. Once an avid runner (6+ miles a day) and a varsity athlete in college (soccer and softball), Ellen remains hopeful that one day she will find enough "free" time to once again make sports and fitness a regular part of her routine.

I am committed to helping attorneys successfully balance family and professional responsibilities.

We asked Ellen the following sort of relevant questions:

Q: How do you tend to deal with challenging or difficult people or situations?

A: How I deal with challenging or difficult people or situations varies depending on the person or situation at issue. My approach is driven primarily by what my strategy or goal is with respect to the particular person or situation. I also find it often helps to try to understand the motivation behind the particular individual's behavior. In general, I try to treat others with respect, maintain my composure and professionalism, and never lose sight of what I want to take away from the encounter. In the professional context, especially, I try not to burn bridges; one never knows when a difficult client or an aggressive opposing counsel might be a source for new business.

Q: What was your biggest professional hurdle and how did you choose to address it?

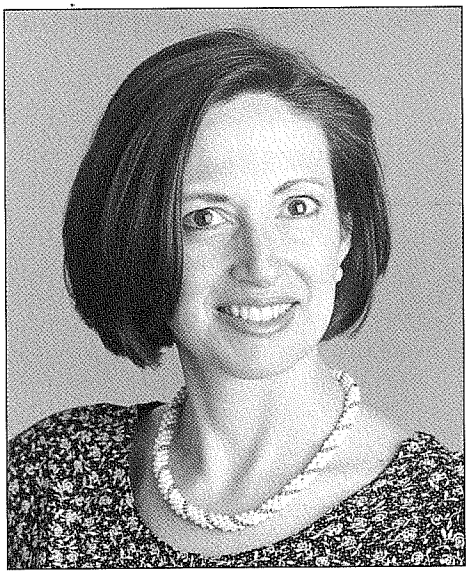
A: Without question, my biggest professional hurdle has been trying to balance my career and my family. It's a hurdle that I face every day of my working life. My current reduced hours arrangement with White & Case has been rewarding, in large part due to the support of the senior partners in my practice group. It has not come without sacrifices, however, both professional and personal. But the flexibility it affords me to be a greater part of my children's lives is well worth the tradeoffs.

Q: Do you have any advice for attorneys interested in an alternative work arrangement?

A: Yes. First of all, do your homework. Become knowledgeable about alternative work arrangements at other firms and companies and determine what arrangement best fits your needs and your legal practice. Recognize that successfully managing an alternative work arrangement often requires more discipline, energy and management skills than a full-time arrangement. Check out PAR's website.

Second, develop a fairly detailed proposal akin to a business plan to present to your firm. You essentially are marketing yourself and your proposed arrangement to your firm. You need to anticipate questions and concerns your firm will have and address them up front. Be realistic, and don't create expectations that you cannot meet. Remember periodically to assess how the arrangement is working for you and the firm. It is better to renegotiate than to suffer through an arrangement that is not working for you.

Finally, be confident and positive. You are a valuable contributor to your firm. Your firm management should be willing to consider a thoughtful, realistic proposal. As a former Co-Chair of the Working Parents Forum, I am committed to helping attorneys successfully balance family and professional responsibilities and I hope to pursue this goal as WBA President-Elect.



■ *Ellen Jakovic*

Q: Where do you want to be, professionally or personally, in five or ten years?

A: Cruising the Carribbean on my private luxury yacht. Seriously, this question is too deep for me to answer right now.

Q: What is your favorite thing to do in the summertime?

A: I can't pick just one favorite thing, but in general, I love to be outside and active. I spent my summers growing up swimming, boating and waterskiing on a lake in upstate New York and I still love visiting my family and spending time at our summer home there. I especially enjoy watching my children and their cousins share some of the same fun that my brothers and I did when we were young.

Q: What is on the side of your bathroom sink right now?

A: A pink plastic tumbler with two "Barbie" toothbrushes (yes, as in the Mattel fashion doll) and a tube of Colgate "Barbie" toothpaste. Can you tell that I have a four-year-old daughter? ■

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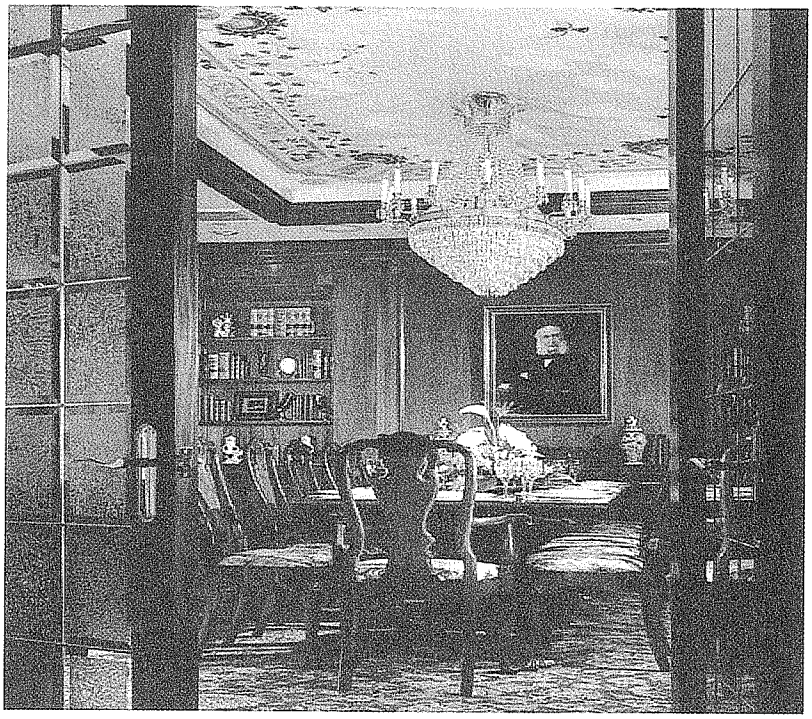

We are pleased to inform you an exciting partnership between the Women's Bar Association of the District of Columbia and the City Club of Washington. This affiliate program extends an invitation to Membership at City Club to the members of the WBA. This offer encourages enrollment in the Club by sharing with the WBA, half of the initiation fee appropriate to your category of Membership. This is an excellent opportunity to join a wonderful Club where business and social relationships flourish and to support your organization.

Benefits to Belonging:

- Privileges at more than 250 Premiere Business and Athletic Clubs, Country Clubs and Resorts Worldwide
- Private Dinning and Meeting Space for Business or Social Entertaining
- Women's Executive Council Breakfasts held Quarterly
- Monthly Business to Business Mixers
- Social Events including Theater Packages, Cooking classes, Theme Parties and more
- Dining Options Monday through Saturday

All WBA Members are invited to attend a Business to Business Networking Happy Hour

WBA

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