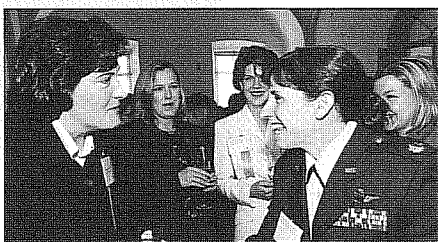


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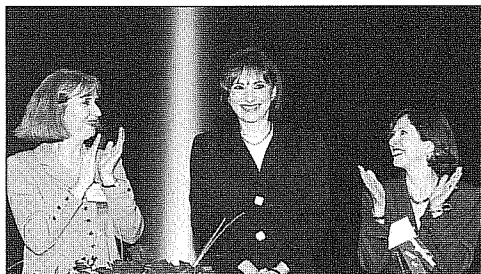
SUMMER 2002

Women's Bar Association of the District of Columbia

Women Leading the Nation Into A New World— The 2002 Annual Awards Dinner



■ Outgoing WBA President Deborah Israel (left) and Lieutenant Colonel Martha McSally. McSally is ranked as the top female Air Force pilot.



■ Hon. Paula J. Dobriansky (left) and Incoming WBA President Ellen Jakovic (right) cheer on WBA 2002 Woman Lawyer of the Year Carolyn Lamm (center).



■ On the dais: Hon. Paul L. Friedman, United States District Court for the District of Columbia and Hon. Nancy Pelosi, House Democratic Whip.



■ (L to R) WBA Past President Jane Golden Belford; Past Woman Lawyer of the Year Hon. Margaret A. Haywood, Senior Judge, Superior Court of the District of Columbia; Karen A. Greene; and WBA Past President and Past Woman Lawyer of the Year Hon. Joyce Hens Green, Senior District Judge, U.S. District Court for the District of Columbia.

Dinner coverage continued on page 12

Making the Business Case for Balanced Hours

BY ELLEN OSTROW, PH.D.

**"Work-family balance is a fact of life,
not an 'accommodation' for people with peculiar needs."**

"An Implementation Plan for Addressing Work-Life Issues in the Legal Profession."
Boston Bar Association, 2001 (available at www.bostonbar.org/wfcplan.htm)

HIGHLIGHTS

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The need for businesses to enable employees to balance their work and personal lives has not changed simply because the economy has slowed. If anything, the events of September 11 have been a reminder of the preciousness of our time with loved ones and the costs of squandering it.

Despite changes in the economy, certain realities remain:

- Women now constitute almost 30% of the American Bar and about 50% of law school entering classes.
- Most women attorneys will become mothers during the course of their careers.
- Current billable hours requirements are incompatible with normal family life and of questionable validity as measures of commitment or success.
- Research consistently indicates that work/life balance is associated with employee satisfaction, productivity and retention—for both women and men.

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WBA RAISING THE BAR

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PRESIDENT'S COLUMN

Title IX: Getting and Keeping Women in the Game

BY ELLEN M. JAKOVIC



A little over a month after the WBA celebrated its 85th Anniversary at the 2002 Annual Awards Dinner in May, Title IX, arguably among

the most significant pieces of civil rights legislation enacted during the past 50 years, turned 30. But despite the pivotal role Title IX has played in increasing opportunities and participation for women in the classroom and on the playing field, the law recently has come under attack as unnecessary legislation that allegedly has limited men's ability to participate in inter-collegiate sports. But more on that below.

What does Title IX have to do with the legal profession? Plenty! Title IX bars sex discrimination in all aspects of federally assisted education programs, not just athletics. Title IX has achieved unprecedented success in opening to women the doors of postsecondary, graduate, and professional institutions. As a result of Title IX, women now receive close to 50% of all law degrees, up from 7% in 1972, when the law was enacted.

But the promise of Title IX has not yet been fulfilled. While women now make up almost 30% of the legal profession, they represent only about 15% of federal judges and partners in law firms; about 10% of law school deans and general counsels; and about 5% of managing partners at large law firms. According to the ABA Commission on Women in the Profession's report, *The Unfinished Agenda: Women and the Legal Profession*, women continue to face significant obstacles to advancement and indeed are leaving the legal profession at alarming rates.

So what can women do in the face of such discouraging news? With your help, the WBA will continue to promote and advance women in the legal profession, as we have done for 85 years. Our committees and forums have been hard at work planning spectacular programs for the year that feature current legal

topics, career-building skills, networking, and professional development opportunities. This month, on Sunday, August 11, 2002, as part of the ABA Annual Meeting activities, the WBA is co-sponsoring a Summit titled *Keeping Her in Her Place: New Challenges to the Integration of Women in the Profession*, which will examine the disproportionate absence of women in the highest echelons of the legal profession and explore ways to effect positive and productive change. More information on the Summit and several other ABA-related programs is listed in the Calendar of Events in this issue. We invite you to get involved and to join us for these and all other WBA programs and events throughout the year.

Together, we can keep women in the game, both on the playing field and in the profession.

* * *

What exactly is Title IX and why all the controversy?

Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in any educational program or activity that is a recipient of federal funds: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance." Title IX applies to all educational opportunities and activities, although it has become best-known for its impact on sports.

Title IX was intended to get women in the game, literally as well as figuratively — to provide women with the same opportunities as men. That means not only equal opportunities to play, but scholarship dollars that reflect overall rates of participation in sports, and equal treatment in equipment and facilities.

Making Strides

There is no question that women's participation in high school and collegiate athletic programs has increased dramatically since enactment of Title IX. According to the National Women's Law Center's (NWLC)

—continued on next page

Report *The Battle for Gender Equity in Athletics: Title IX at Thirty* (June 2002), before Title IX, more than 300,000 high school girls played competitive sports; by 2001, that number had climbed to 2.78 million — more than an 800% increase. In 1972, fewer than 32,000 women competed in intercollegiate athletics; by 2000-01, 150,916 women played college sports, representing 42% of college athletes nationwide — more than a 400% increase.

Significant progress also has been made in increasing financial support for women athletes. According to the NWLC report, in 1972, women received only 2% of school athletic budgets, and scholarships for women were non-existent. In Division I schools today, women, who represent 53% of the student body and 41% of all athletes, receive 43% of all athletic scholarship dollars, 32% of recruiting dollars, and 36% of overall budgets. Impressive gains—but funding for women's athletics still lags behind that for men's teams.

Criticism and Condemnation

Despite these remarkable successes, critics of Title IX, including George Will in his recent *Newsweek* article titled "A Train Wreck Called Title IX," and Jessica Gavora, Washington Post and advisor to Attorney General John Ashcroft, in her book *Tilting the Playing Field: Schools, Sports, Sex and Title IX*, argue that Title IX has resulted in the elimination of men's "minor" collegiate sports (everything except football and basketball) and was never really necessary to begin with because "autonomous cultural change" (to quote Will) already was at work. Will and Gavora argue that women just aren't as interested in playing sports as men and that proponents of Title IX "seem to think that 'young girls aren't worthy of respect and admiration unless and until they act like young boys.'"

Talk like this leaves me shaking my head in disbelief. Having been a two-sport varsity athlete in college during the late seventies and early eighties, I was among the first group of women to benefit from the athletic opportunities that Title IX created. Although my alma mater, Harvard University, traditionally has been at the forefront of athletic opportunity for both men and women (in March 2002, Harvard was named to the top 20 honor roll in *U.S. News and World Report's* survey of Division I athletic programs), I highly doubt Harvard would have created 9 new varsity level teams for women, as it did in the mid-seventies to early-eighties, without the passage of Title IX. Notwithstanding, it was many years after my graduation before the

Women's Softball team had a decent field, with dugouts and a dirt infield, and traveled south for Spring Break training, as did the Men's Baseball team.

The issue that has received the most attention in the media, however, has been the claim that Title IX has resulted in the elimination of men's college teams, notably wrestling. Proponents of Title IX argue quite convincingly that the law does not require a reduction in opportunities for men and that demonstrating opportunities for male and female athletes in proportion to their representation in the student body is only one way of establishing compliance with Title IX. Some colleges unfortunately have chosen to eliminate certain men's teams rather than reallocate budgets from popular sports such as football and basketball or comply with one of Title IX's two other participation standards.

In her recent article in *The Washington Post*, "Title IX Opponents a Bunch of Sad Sacks" (June 24, 2002), Sally Jenkins cites as an example UCLA's 1995 decision to drop its men's swimming and gymnastic teams, which UCLA attributed to Title IX. Jenkins notes that the University saved \$266,490 by cutting these sports, while its football budget was over \$6.5 million. Notwithstanding that colleges have dropped some men's teams (as well as women's), according to the NWLC report, the overall number of men participating in intercollegiate sports has increased by about 18% since 1972, including an increase in men's participation in baseball, crew, football, lacrosse, squash, track, and volleyball.

Gender Stereotypes

The assertion that women just aren't as interested in sports as men is a dangerous, outmoded stereotype. Opponents of Title IX made this argument in 1972, when women were less than 15% of college athletes; today, women are 42% of college athletes and Title IX critics make the same argument. In *Cohen v. Brown University*, 101 F.3d 155, 178-79 (1st Cir. 1996), cert. denied, 520 U.S. 1186 (1997), finding that Brown University's athletic program discriminated against women, the First Circuit emphatically rejected arguments premised on women's alleged lack of interest in athletics:

"To assert that Title IX permits institutions to provide fewer athletics participation opportunities for women than for men, based upon the premise that women are less interested in sports than are men, is . . . to ignore the fact that Title IX was

enacted in order to remedy discrimination that results from stereotyped notions of women's interests and abilities. Interest and ability rarely develop in a vacuum; they evolve as a function of opportunity and experience. . . . [W]omen's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports."

It is not surprising, therefore, that some schools complain that they can't find as many women as men interested in playing sports. Despite Title IX, colleges still spend significantly less money recruiting women than men, less money on women's teams than men's teams, and less money on scholarships for women than men. With close to three million high school girls playing sports today, and only about 150,000 opportunities for women to compete on the intercollegiate level, it's hard to argue that there is not enough demand.

Perhaps most disturbing is the attitude that encouraging girls to pursue an interest in athletics somehow will denigrate their talents and force them to "act like boys." My 5 1/2-year-old daughter is no less a girl when she runs off the soccer field or out of the gym than when she puts on my make-up and wears my high heels — and, hopefully, she has gained confidence and learned to challenge herself.

Creating Opportunities

Participation in sports teaches many important values — teamwork, leadership, discipline, work ethics, self-esteem — lessons that are as vital to women as they are to men. Consider this statistic cited by Norma V. Cantu, U.S. Assistant Secretary for Civil Rights during the Clinton Administration: 80% of women who were identified as key leaders in their Fortune 500 companies had sports backgrounds. Athletic opportunity leads to career opportunity.

From soccer star Mia Hamm to Hewlett-Packard CEO Carly Fiorina, Title IX has ensured that girls and women have strong female role models. As a result of Title IX, young women in this country are studying hard, competing vigorously on the playing field, and preparing for careers as scientists, businesswomen, soccer players, and yes, even managing partners of law firms.

Let's make sure that they stay in the game.

Making the Case *(continued from page 1)*

- There has been a profound values shift with regard to work/life balance. Men, especially those in dual career marriages, want to participate actively in their families' lives. This cultural change appears to be quite stable.
- There are insufficient numbers of men in the new labor pool to meet the demand for new lawyers - and many of these men will choose employers based on the same criterion driving women: the availability of flexible schedules to achieve work/life balance. This is NOT just a "women's issue."
- It generally costs a law firm 150% of a lawyer's annual salary to recruit and train a replacement.
- The corporate world has successfully developed effective work/life balance initiatives in order to retain a diverse workforce. These same corporations will seek comparable diversity in choosing legal representation.
- If legal employers want to retain their most talented attorneys they will have to adopt effective balanced hour policies. Even in the current economic slowdown, a gifted woman attorney will find employment options that allow her the flexibility to be both lawyer and mother.

THE STRATEGY

The following is a strategy for establishing your value as an attorney to your firm or organization. It includes tactics for demonstrating the profitability of a balanced hours program which offers equal opportunities for advancement to women with family responsibilities as well as attorneys free of these commitments.

1. Clarify Your Priorities and Values

You're going to need to develop a valued expertise and to campaign on your own behalf. To do this effectively, you need to have a clear sense of the kind of work you love to do and the kind of life you want to be living. Look for a work setting with values compatible to your own. Without a vision, it's easy for external demands to define your focus and control your time.

2. Develop Expertise

Choose a practice area to which you can be committed. Doing work you love enables you to sustain interest and focus - the essential ingredients for success. Select a specialty that is manageable within the context of your other priorities as well as marketable.

3. Promote Your Expertise

Share your knowledge with lawyers in your organization. Have work successes published in your newsletter. Send clippings to colleagues to demonstrate you're on top of things. Demonstrate your value to the organization with a record of effective performance and be sure others know what you've accomplished.

4. Take Initiative

Go after the work you want; make a plan to develop and strengthen skills; offer to contribute to challenging projects; seek opportunities to meet people both within and outside your firm with whom you might be able to develop a mutually beneficial relationship.

5. Develop Excellent Communication Skills

Work on your written and verbal communication. Notice how the people you admire speak in meetings, to clients, superiors and subordinates. Request feedback from people you trust about how effectively you come across. You want to become your own best advocate.

6. Show that You Can Be a Good Team Player

Free agents can also be good team players. Volunteer for leadership roles on projects and in carefully selected committees. Be a good listener. Attend to group dynamics. Facilitate cooperation.

7. Develop Marketing Skills

Remember that every time you talk to people about what they do and about your own work, you have an opportunity to market your legal expertise. Share your knowledge by writing articles or speaking to your target market. If your firm doesn't teach marketing skills, acquire them through other forms of training and coaching.

8. Make Alliances; Find Mentors

Even without a formal mentoring program, you can take the initiative to develop your own personal advisory board. Cultivate relationships with people you admire, from whom you can learn and who want to play a role in facilitating your career development. Develop an alliance with a senior attorney in a position of influence who can be your advocate when you make your balanced hours proposal.

9. Seek Models and Best Practices for Balanced Hours

Examine model balanced hours policies and agreements in drafting your own. The Project for Attorney Retention (www.pardc.org); The Boston Bar Association (www.boston-bar.org/wfcplan.htm); and the ABA Commission on Women in the Profession (www.abanet.org/women) offer excellent models and suggestions. Contact other attorneys, within and outside of your organization, who have negotiated balanced hours schedules. If your firm or organization has a written policy, be sure to follow the parameters while tailoring it to your specific needs.

10. Be Flexible

It's important to find a schedule that fits with your own needs as well as those of your organization. Make sure your priorities are explicit so your firm knows what it can realistically expect of you.

11. Don't Settle

The Project for Attorney Retention has specified the criteria for effective balanced hours policies. (<http://www.pardc.org>). Proportional hours for proportional pay with proportional advancement should be built into the plan. There is no reason for you to be removed from partnership track—you'll be developing your skills and paying your dues—even if you're doing it at a bit slower pace.

12. Make the Business Case

Remember that it will cost your firm at least 150% of your salary to recruit someone to replace you. A new recruit will need time to get up to speed on your projects. All the relation-

ships you've cultivated with clients will be lost. Be subtle in your delivery of this message—but be sure to keep it in mind. Decide if you want fewer clients or fewer projects. More importantly, decide which work you want to continue to do. Clearly communicate your commitment to continuing on these projects and clarify how you plan to sustain your involvement. You'll need to stay connected, so be sure to include your technology needs in your proposal. This also communicates what you'll continue to contribute if you're retained. The best business case is in the product. Set realistic goals and work efficiently. Employees who change to balanced hours schedules often become more productive. It's imperative that your productivity be visible. Gender stereotypes lead people to underestimate the competence and commitment of women. You'll need to provide the evidence to dispel the assumptions.

13. Backlash

Be prepared to deal with backlash from attorneys who have not reduced their hours. In a perfect world, backlash would be decreased by a policy that is available to everyone and by proactive management decisions to staff cases appropriately to avoid overburdening attorneys on standard hours schedules with work you used to do. If you do encounter backlash, candid discussions may ease tensions. Remind colleagues that you are getting paid less than they are and, if applicable, will advance more slowly toward partnership. Severe backlash needs the intervention of management, however.

14. Include Non-Billable Time in Your Proposal

If you're going to advance in your firm, you'll need opportunities to stay in the loop, to participate on committees, for client development and pro bono work. Schedule these activities into your balanced hours proposal.

15. Periodically Re-evaluate

Your needs and those of your organization change over time. Update your agreement as needed, including planning your transition back to standard hours, if you decide to do that.

16. Beware of Schedule Creep

Unfortunately, until balanced hours policies receive consistent support from management, some partners will continue to ignore your schedule limits. Often, attorneys on balanced hours schedules find themselves working 100% hours for 60%–80% pay. Situations will surely arise that require you to work more hours than dictated by your schedule. Compensate for this by reducing work time in subsequent days or weeks. If a partner consistently refuses to respect the limits of your schedule, be bold in bringing this to the attention of management. Remember—balanced hours policies are not accommodations for the work-challenged. They should be mutually beneficial arrangements between lawyers and their managers. You gain flexibility and your firm retains your talent and increases its bottom line.

17. Stay Visible and Connected

You're a professional, so you know you'll be available to clients when true emergencies arise. Make sure colleagues and staff know under what circumstances you can be contacted in your "off" hours. Help the skeptics in your organization see that it

matters little to clients whether you're speaking to them from your office, a playground, a nursing home or the courthouse. Remember—no attorney is really available 24/7. What happens when an attorney is arguing a motion or taking a deposition? Have plans for emergency child care if you need to deal with a client emergency and arrange back-up coverage for clients so they'll feel important and well-served. If work is assigned to the first person seen, you'll need to make partners aware of you even when you're not there. As a coach who communicates with clients primarily via telephone and email, I know how much you can accomplish with these forms of connection.

18. Be Assertive In Getting Good Assignments

Actively and repeatedly request good work and complain if you don't get it. Denying you the opportunity to succeed by giving you meaningless assignments or refusing to work with you is discriminatory. Don't be afraid to make a fuss if this happens.

If your organization is unresponsive to your genuine efforts to work out mutually beneficial arrangements and to continue to contribute valuable work while developing professionally, then this is a culture with values incongruent with your own. Why stay in an organization that doesn't value equal opportunity, family care, and having a life? Find a better place to work and let the firm pay the price of replacing you.

* * *

Excerpted with permission from Ellen Ostrow's *Beyond the Billable Hour* newsletter.

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ABA Commission on Women Releases Report on Balancing Work and Family

Balanced Lives: Changing the Culture of the Legal Profession is a 62-page report released by the ABA Commission on Women in the Profession offering updated model procedures and policies on alternative work schedules and family leave. To download the report in PDF format visit the ABA Commission on Women in the Profession website, www.aba.net.org/women.

The Commission is currently working on a project addressing the issue of childcare. They encourage you to send materials for inclusion in the study, including: model policies and examples of benefits such as full-service on-site centers, back-up care, tax-deductible cafeteria plans, or other employee assistance plans related to childcare. Submit information to Commission Member and Past Woman Lawyer of the Year Brooksley Born, email: brooksley_born@aporter.com.

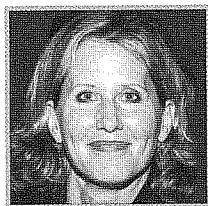
WBA WELCOMES NEW LEADERSHIP

New Board, New Co-Chairs Take the Reins

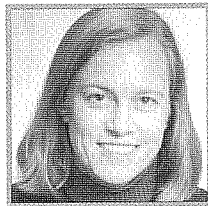
June 1st marked the changing of the guard for WBA leadership. The new board already has met several times since being introduced at the Annual Dinner this past May. Here's a brief look at the new Board of Directors:



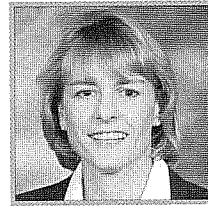
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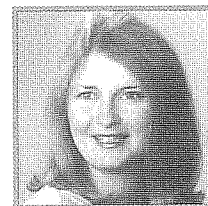
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WBA Second Annual Golf Classic Wednesday, October 2nd South Riding Golfer's Club South Riding, VA

Whether novice or pro, this "best ball" tournament promises to be loads of fun. Prizes for women's and men's longest drive, straightest drive, closest-to-the-pin and more!

"I have played in many industry tournaments and the WBA Classic is "luxurious" in comparison — almost every player comes away with a prize...and the registration gift bag is unbelievable!" —Paulette Chapman

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Call WBA at (202) 639-8880
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Sponsorships are available!
This event attracts over 100 professional women and men. Encourage your firm or favorite vendor to sponsor a hole, donate a contest prize or item for the gift bag. Contact Golf Classic co-chair Gracemarie Maddalena, (202) 466-8828.

Infertility and Contraception Coverage Under the Americans With Disabilities Act, Pregnancy Discrimination Act, and Title VII of the Civil Rights Act

BY RACHAEL A. AKOHONAE

How much time off should an employer give an employee who needs to take hormone injections to stimulate her ovaries? Should an insurance plan cover in vitro fertilization? What about artificial insemination? Case law under the Americans with Disabilities Act, the Pregnancy Discrimination Act, and Title VII of the Civil Rights Act has both limited and expanded protection for employees coping with infertility, pregnancy, and contraception. Here are some cases that have approached these issues and created the following general guidelines:

Infertility May Be A Disability Under The ADA

In 1998, the Supreme Court opened the door to claims that infertility is a disability under the Americans with Disabilities Act. In *Bragdon v. Abbott* the Supreme Court declared "reproduction" to be a major life activity. In *Bragdon*, the plaintiff who suffered from AIDS alleged that she was a "person with a disability" under the ADA because she was substantially limited in her ability to reproduce. The Court agreed and noted that "reproduction and the sexual dynamics surrounding it are central to the life process itself." While the court modestly avoided any further explanation of what "sexual dynamics" were, it is likely that the physical act of sex, the growth of the child in the uterus, and the birth itself are all major life activities.

Just last year, the Southern District of New York, interpreting *Bragdon*, explicitly held that infertility was a disability under the ADA. In *Saks v. Franklin Covey* an employee tried to become pregnant through a variety of invasive and expensive treatments, including intrauterine inseminations, hormone therapy, stable drugs, and in vitro fertilization. She visited specialists in infertility and reproductive endocrinology and suffered three miscar-

riages. Applying *Bragdon's* "clear-cut rule," the court found that the plaintiff was substantially limited in her ability to reproduce, and was a "person with a disability" within the meaning of the ADA. Further, the court quickly rejected the argument that the plaintiff was not covered because she could still engage in the act of sexual intercourse (unlike the HIV-positive plaintiff in *Bragdon*). The court found that *Bragdon* offered protection under the ADA to persons who were "substantially limited in their ability to reproduce, that is, to conceive and bear a child" and thus defendant's attempt to focus on the act of sex itself had missed the point.

Insurance Coverage for Infertility Is Not Mandatory

While *Saks* essentially expanded coverage under the ADA to employees coping with infertility, it refused to expand insurance coverage to those same employees, paying for expensive infertility treatments. *Saks* held that neither the ADA nor the Pregnancy Discrimination Act nor Title VII of the Civil Rights Act requires an employer to provide insurance coverage to an employee for infertility treatment. In *Saks*, the court found that the employer's plan offered the same insurance coverage to all its employees, and did not offer infertile employees less pregnancy or fertility-related coverage than it offers to fertile employees. Joining the Third, Seventh, and Eighth Circuits, the court found that insurance distinctions that apply equally to all insured employees do not discriminate on the basis of disability. The employer's plan similarly did not discriminate on the basis of sex or pregnancy because the plan did not treat male or female employees any differently. All employees who seek surgical impregnation as the answer to their infertility problems have to "foot the bill," explained the court.

However, Employers Must Provide Equal Coverage To Both Men And Women

Although an employer does not have to offer insurance coverage for infertility treatment, if an employer does so choose, it must provide equal coverages to male or female employees. The insurance cases that hold an employer does not have to provide coverage for infertility treatment are based on the premise that the insurance carrier treats similarly situated employees alike. That is, fertile and infertile, male and female, are all treated equally with respect to coverage. If an employer's plan treats such individuals differently, problems may arise.

For example, at least two district courts have found that the employer's failure to cover contraceptive prescription drugs may violate Title VII or the PDA. In *Erickson v. Bartell Drug Company*, the employer offered coverage for a wide range of prescription drugs. Coverage included infertility drugs, but did not include prescription contraceptives such as birth control pills, Norplant, or diaphragms. The federal district court for the Western District of Washington found that the plan discriminated against female employees by providing less complete coverage than that offered to male employees. In responding to the defendant's argument that the plan did not cover Viagra, and therefore offered less coverage for men in certain aspects, the court suggested that this too might violate a male employee's rights under Title VII.

Similarly, a Minnesota court denied an employer's motion to dismiss for failure to state a claim involving similar circumstances under Title VII. In *EEOC v. United Parcel Service, Inc.*, the employee's wife alleged she was discriminated against because of her sex

—continued on page 8

Infertility *(continued from page 7)*

when the employer failed to cover her prescription for an oral contraceptive that she took to treat her hormonal disorder. The court reasoned that the insurance plan "excludes oral contraceptives for any reason, including treatment for female hormonal disorders, while medically necessary treatments for male hormonal disorders" were not excluded. This, according to the court, was a sufficient basis to allege an intentional disparate treatment claim under Title VII.

Finally, federal and state legislation may create or expand insurance coverage for people coping with infertility. New York already forbids plans that cover hospital care or surgical and medical care but exclude coverage for medical conditions solely on the basis of infertility.

Reasonable Accommodations For An Employee May Be Appropriate

Outside of the context of insurance coverage, the door is still open for other types of claims an employee may bring under the ADA, PDA, or Title VII, such as a claim for failure to accommodate. Since *Bragdon* and *Saks* have held respectively that inability to procreate and infertility are disabilities under the ADA, employer and employee alike may have to delve into the complicated and sometimes confusing arena of reasonable accommodation. Many circuits have found that leaves of absence and flexible work schedules may be reasonable accommodations under the ADA. Thus, an employer who forbids or penalizes an employee for taking time off to receive fertility treatment or who simply fails to engage in the interactive process with an employee seeking an accommodation, may run afoul of the ADA.

For example, in *Laporta v. Wal-Mart Stores, Inc.*, the court found that the plaintiff stated a viable claim under the ADA when she alleged that her employer failed to reasonably accommodate her disability of infertility. The plaintiff underwent a series of unsuccessful fertility treatments and began to take medication to stimulate egg production in order to attempt in vitro fertilization. Her doctor told her that her eggs were "ripe," she requested the next day off . . . in order to undergo the medical procedure to harvest the eggs. Her employer told her that it had no one to cover her shift and refused the day off. The plaintiff did not report to work on the day of her procedure, as she had advised her employer, and when the plaintiff returned to work the following day, she was terminated. She eventually conceived and gave birth to a son two years later.

The defendant sought summary judgment arguing that the plaintiff was not substantially limited in the major life activity of reproduction because she was eventually successful. The defendant also argued that her request for leave on one day's notice was not reasonable. The court rejected defendant's summary judgment motion and found that the question whether plaintiff's condition of infertility, even as ameliorated, still substantially limited the major life activity of reproduction, and her "request for a single day off" were both appropriate for the jury.

Practical Summary

The following are a few main points extracted from those cases that practitioners may look to in interpreting infertility and conception issues:

- An insurance policy should provide or deny similar coverage to both males and females, fertile persons and infertile persons.
- An employer should treat a request by an employee for time off to treat infertility in the same manner it would consider a request for leave for any other illness or disability. If it's an employer's policy to allow employees to use sick leave for doctor or dentist appointments, the same policy should apply to employees seeking infertility treatment.
- Both employers and employees should communicate with each other about the employee's impairment to determine if the employee qualifies for a reasonable accommodation or whether the employee could benefit from a job modification.
- Keep abreast of new or changing legislation mandating insurance coverage for particular infertility or contraceptive treatments.



Rachael Akohona is an Associate in Wolf, Block's Employment Services Practice Group. As Deputy City Attorney for the City of San Francisco, she represented the City in labor and employment matters. She has also served on the Equal Employment Opportunity Commission, where she investigated and enforced federal anti-discrimination laws. Rachael can be reached at: rakohona@wolfblock.com. This article originally appeared in the June 2002 issue of *Metropolitan Corporate Counsel*. Reprinted with permission.



Committee and Forum Update

The new WBA Committee and Forum co-chairs have been approved by the WBA Board and are now planning activities and programs for the coming membership year. The Committees and Forums welcome your participation and involvement. Visit the WBA website: www.wbadc.org for a complete list of co-chairs and their contact information.

Solo/Small Practice Forum Referral List

WBA members interested in being listed on this Forum's referral list should email the Forum's Co-Chair, Regina DeMeo, at reginademeo@yahoo.com for an application form. The WBA Solo/Small Practice Forum Referral List is circulated among the Forum's members and posted on the WBA website: www.wbadc.org. The annual fee for being listed is \$25.

The Community Projects Committee Wants You

The Community Projects Committee is the WBA's link to our community. This year the Committee plans to continue to participate in the Help the Homeless Walk and Habitat for Humanity, but they also are looking for new projects. If you are involved in a community

organization that you think would be appropriate for the WBA to support, the Committee would like to hear about it. If you're not yet involved, but want to help organize a community project, this Committee is the place to turn. If you only have a few hours, but want to do something productive in the community, join your colleagues on a WBA-sponsored project. It's a great way to network, make friends, and contribute to our community with no fuss or organizational demands. To join the Committee or submit your ideas and suggestions contact Co-Chairs Kimberly Brown, at (202) 862-5000; email: knb@capdale.com; or Bonnie Pinzel, at (202) 752-5022; email: bjp@hotmail.com.

Save the date for the Help the Homeless Walk on November 23, 2002; bring your whole family for a walk on the mall.

Get Published!

What better way to gain visibility and sharpen your skills than to write a substantive article for *Raising the Bar*? Send your articles, editorials, and commentaries to *Raising the Bar* via email to: wba@wbadc.org.

MEMBERS ON THE MOVE

Sandra Robinson, a Partner at Jack H. Olender & Associates, is the recipient of the ABA Tort and Insurance Practice Section's "Pursuit of Justice" award. The award recognizes Robinson's many contributions to the pursuit of justice and helping individuals gain access to the courts. Robinson is a Past President of the Women's Bar Association Foundation.



■ Sandra Robinson

In other news, Robinson was also recently elected to the Executive Committee of the Association of Trial Lawyers of America (ATLA).

Alicia Batts has been elected Partner at Foley & Lardner.

Lois J. Schiffer has joined Baach Robinson & Lewis as a Partner.

She was formerly Senior VP for Public Policy at the National Audubon Society.

Lisa Dunner has moved to Sterne, Kessler, Goldstein & Fox, P.L.L.C. as a Partner. She was previously a Partner at McDermott, Will & Emery.

Alyza Lewin and her father Nathan Lewin have launched Lewin & Lewin, LLP, a law practice concentrating on litigation and government relations.



■ Lisa Dunner

At the D.C. Bar: **Shirley Higuchi**, Assistant Executive Director of the American Psychological Association, was elected President-Elect; **Christine Ladd**, Associate General Counsel at Fannie Mae, was elected Treasurer; **Martha "Marty" Rogers**, Shareholder at Ober, Kaler, Grimes & Shriver, P.C., was elected to the Board of Governors; and **Marna Tucker**, a Partner at Feldesman, Tucker, Leifer, Fidell & Bank, LLP, was elected to the ABA House of Delegates.

Kim Keenan Solomon of Jack H. Olender & Associates was voted Treasurer-Elect of the BADC; and WBA President-Elect **Paulette Chapman** of Koonz, McKenney, Johnson, DePaolis & Lightfoot, was elected to the BADC Board of Directors.

Hon. Fern Saddler has been nominated by President Bush for a position as Associate Judge of the Superior Court of the District of Columbia. Saddler currently is a Magistrate Judge of the Superior Court. Prior to her nomination, the WBA Board of Directors, with the help of the Judicial Endorsements Committee, submitted a strong letter of endorsement to the White House in support of Judge Saddler's candidacy.



■ Hon. Fern Saddler

CAREER CORNER

The following column features the career advice of Ann Israel, of Ann Israel & Associates. A New York legal recruiter since 1979, Ann Israel is president of the National Association of Legal Search Consultants and is the "Dear Abby" of the legal industry, answering career-related questions in *New York Lawyer*.

Can I Go Back Gracefully?

I am a fifth-year corporate associate who, up until one month ago, was working for one of the top firms in the city. I have impeccable credentials and was on a strong partnership track at my firm. Even so, I knew the chances of making partner at a large firm were not in my favor. I worked with a headhunter who placed me at my current firm, which is a small firm. The people are really great and so is the work but I am worried that I made a mistake and should have stayed at the other more prestigious firm to see if I would have made partner. Do you think I should get in touch with the partners at my old firm and see if they will take me back?

Ann Israel:

Whenever one of our placed candidates starts new employment, I worry about how they are going to handle those first few months of adjustment. Although everyone goes through some type of adjustment period, it is particularly difficult for attorneys leaving a large law firm environment for a mid-sized, branch office or boutique law firm or an in-house legal department.

Culture shock is the appropriate expression.

The large law firms expect their employees to put in long, grueling hours. In fact, the law firm becomes more of a home than the employee's actual domicile. Because of the amount of time spent at the firm's offices, there tends to be certain distractions and niceties within the confines of the firm itself. Cafeterias, dining rooms, health clubs, lounges—these are some of the perks that one might find within the walls of a mega-firm.

In addition, the support is unbelievable. Secretarial and paralegal staff around the clock, the latest technology in computer systems, telephones, copy machines, etc.

Then, one day you decide that you have had enough and it is time to make a change. When an offer is made, you are so excited that you accept without thinking much about what you are going to give up.

You give your notice, enjoy a farewell luncheon, pack up your office and start at your new firm.

And then reality sets in. None of your friends outside the legal profession recognize the name of your new firm. The support staff is gone by 6:30 p.m. You have to actually join a health club that is nowhere near your office if you want to continue working out. You have to order in Chinese food from the place up the street from the office if you want to work through the dinner hour. The computers have not been upgraded since they were installed five years ago.

This is what I was talking about when I said that I worry about my candidates when they start a new job that is a great departure from the environment of the previous employer.

It is not unusual that you are having second thoughts. Any kind of change is always difficult, at best. However, there is some light at the end of the tunnel. Usually after about a month or two, the memories of all those perks at the old firm start to fade and you begin to realize things such as how nice it is to know all the partners in the firm and/or to have a weekend all to yourself at home.

You need to try to hang in there for a while longer. A month is just not enough time to determine whether or not you have made a bad decision. I suspect that you will soon begin to understand just why you decided to make this move. In the meantime, you also need to give some thought to the final days at your last employer.

I am certain your farewell luncheon was quite extravagant and that those partners who did come by to wish you well were kind enough to say, "keep in touch." But, what does that really mean? If they were so passionate about you staying with the firm, they would have done more than throw you an obligatory good-bye lunch and toss out the standard "stay-in-touch" line. They would have sat you down and told you what a big mistake you were about to make. They would have made, in some way, a "counter-offer." Your future in the firm would have been discussed with you so as to make it as clear as possible. There would have been far more than just a send-off lunch.

I do know of rare instances where an attorney has gone back to his or her previous employer. But, almost to a one, that attorney had been frequently contacted by the lawyers at the old firm leading up to this return. It does not sound as if this is your situation.

And there are also times when an attorney makes a mistake by leaving the old firm. The grass really sometimes is not greener. But I do believe these are isolated situations and, fortunately, not the norm. You are going through an expected - albeit difficult - adjustment period.

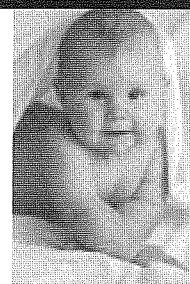
Once you get used to rolling up your shirt sleeves much more than you have been accustomed to, you will start feeling more at home. The fact that you characterize the people at the new firm as "really great" will soon come to mean something to you.

Take some time to remember why you initiated your job search and why you eventually accepted an offer from this particular firm. Get to know those really great people and find out why they joined this firm. I'll bet that many of them initially experienced the same type of misgivings that you are having at this time.

Don't try to work this out all by yourself. For example, you may be used to working at your desk during your lunch hour. During this adjustment period, don't even consider doing this. Seek out other associates at the firm and ask them to join you for lunch. If you isolate yourself, you will never give this firm the chance it deserves.

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Thinking of
having
a baby?



Are you a single professional woman, 35 or older? Interested in living in a caring, supportive environment with peers during your pregnancy and for a few months after giving birth? For more information, email your name, address, and telephone number to norihuckabay@cox.net

Kudos to Rebecca McNeill



Our hats are off to Rebecca McNeill of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., for signing up the most new members in the 2001-2002 membership year. Rebecca, now entering her second year as a Co-Chair of the WBA's Intellectual Property Forum, introduced a whopping 14 new members to the WBA! For her efforts, Rebecca will receive a complimentary upgrade to Sustaining Member status.

WBA Treasurer Marjorie Burnett introduced 7 new members to the WBA, followed closely by WBA President Ellen Jakovic, who introduced 5 new members. Others who contributed substantially to bringing in new members include: Celine Callahan, Elizabeth Tang, Christy Liverzani Prame, Lyn Rahilly, and Kathleen Sullivan. Each woman will receive a complimentary event registration for a WBA program of her choice.

WBA Members Review Racial/Ethnic and Gender Fairness in the DC Courts

Several WBA members have been appointed by the Honorable Annice Wagner, Chief Judge of the District of Columbia Court of Appeals, to serve on the Retrospective Review Advisory Committee of the DC Courts' Standing Committee on Fairness and Access. WBA members serving on the Committee include **Geraldine Gennet, George Jones, Joan Strand, Elizabeth Sarah "Sally" Gere, Ellen Jakovic, Kim Keenan Solomon, and Wilma Lewis.** The Retrospective Review Advisory Committee will assess the progress of the legal community in assuring racial, gender and ethnic fairness in the DC courts since the Task Forces on Gender and Racial and Ethnic Bias in the Courts issued their final report in 1992. The Committee will also organize an anniversary event highlighting the results of the 1992 report and the importance of these issues to our legal and judicial system. The event will be held on Friday, October 4, 2002, at the Ronald Reagan Building Ballroom. Look to the September/October 2002 issue of *Raising the Bar* for further details on the anniversary event.

WELCOME 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!

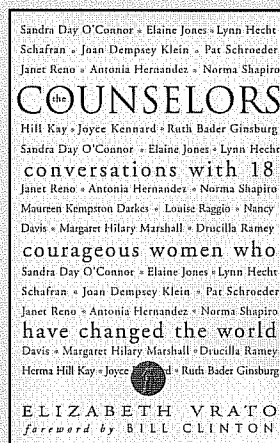
Vanessa L. Allen	Alison Lundergan
Robin Appleberry	Kathryn O'Brien
Julie A. Bell	William Perlstein
Mary Eva Candon	Suzanne Rigby
Alicia M. Choi	Rima Silenas
Carmina D'Aversa	Sarah Efrid Stephens
Laura Farhang	Kate Tapley
Elizabeth W. Fleming	Elizabeth Weiswasser
Linda Friedman	Leslie Meek Wileman
Alicia Lomba	Irene Ziebarth
Susan Longstreet	

NOW AVAILABLE THROUGH THE WBA

The Counselors

Enjoy profiles on Patricia Schroeder, Sandra Day O'Connor, Ruth Bader Ginsburg, Janet Reno, Patricia Wald, and more! When you order through the WBA, a percentage of the proceeds goes back to support WBA programs.

The Counselors by Elizabeth Vrato
240 pages; hard cover
\$24.95 plus tax (in D.C.) and
shipping (total price \$30)



To order, send check or credit card payment for \$30 to WBA, 1717 K Street, NW, Suite 503, Washington, DC 20036 or fax order with payment to (202) 639-8889.

Raising the Bar
is supported
by a grant from
the
**Women's Bar
Association
Foundation.**

Highlights from the 2002 Annual Awards Dinner

The 2002 WBA/WBAF Annual Awards Dinner was a tremendous success, with close to 1,000 members of the legal community in attendance. The evening began with the Presidents' Reception in honor of 2002 Woman Lawyer of the Year Carolyn Lamm. In the Dinner's tradition, this limited-invitation reception provided WBA President Deborah Israel and WBAF President Caroline Petro the opportunity to congratulate the Woman Lawyer of the Year, and to personally thank the Leadership and Benefactor sponsors of the event.

The room was buzzing with excitement as guests greeted members of the esteemed Honorary Committee, including the Honorable Jane Garvey, Administrator of the Federal Aviation Administration; Lt. Col. Martha McSally, fighter pilot for the United States Air Force; the Honorable Kathleen Abernathy, Commissioner of the Federal Communications Commission; Brigadier General Wilma Vaught, of the United States Air Force (retired), Nadine Strossen, President of the American Civil Liberties Union; and Reta Lewis, Vice President at the United States Chamber of Commerce. Other honored guests included Dianna Kempe, Incumbent President of the International Bar Association.

Along with WBA and WBAF leadership, many WBA Sustaining Members attended the Presidents' Reception – one of the great perks of being a Sustaining Member.

At dinner, guests enjoyed remarks from keynote speaker Under Secretary of State Paula Dobriansky. In talking about the new post-September 11th world, Dr. Dobriansky echoed the sentiments of President Bush in saying that "respect for women is one of the non-negotiable demands of human dignity on which America will stand firm."

Our special honored guest, the Honorable Nancy Pelosi, House Democratic Whip, shared a few insights with the audience on her first days in that position. She recalled attending her first meeting with President Bush as House Democratic Whip, a meeting of just the leaders from both the Senate and the House. As she sat there in this room full of men, Congresswoman Pelosi realized that it was the first time in the history of the United States that a woman had ever participated in such a meeting. She remembered saying to herself, "at last, we have a seat at the table!"

"Imagine the courage it took . . ." Congresswoman Pelosi remarked as she reflected on the work of WBA's founders Ellen Spencer Mussey and Emma Gillett in launching the WBA in 1917. She challenged the WBA to be steadfast in pursuit of its mission.

The evening progressed with Judge Paul Friedman delivering a thoughtful and touching introduction of the illustrious Carolyn Lamm, the 2002 Woman Lawyer of the Year. He touted Lamm's professional accomplishments, her voluntary bar service, her commitment to family, and her tenacity in demanding respect and equality as a woman lawyer. In accepting the award, Lamm thanked her parents, who were in the audience, as well as her husband and children, her law partners, and the WBA.

From the unwavering support demonstrated by the sponsors, to the inspiring messages delivered with wit and candor, to the elegant atmosphere of the National Building Museum, the evening was a huge success. If you are interested in hearing the speeches given by Dr. Dobriansky, Congresswoman Pelosi, Woman Lawyer of the Year Carolyn Lamm, and outgoing WBA President Deborah Israel, give a call to the WBA office at (202) 639-8880 to borrow the video. Additionally there are a limited number of the commemorative programs available upon request.



■ (L to R) Hon. Chief Judge Rufus G. King, III, Superior Court of the District of Columbia, Kathy Patterson, Councilmember for Ward 3, D.C. City Council, and Hon. Jane F. Garvey, Administrator, Federal Aviation Administration.



■ Hon. Noel Kramer, Superior Court of the District of Columbia (left) and incoming WBA President-Elect Paulette Chapman (right).



■ Brigadier General Wilma Vaught, United States Air Force (retired) and Lieutenant Colonel Martha McSally, United States Air Force.



■ The head table (L to R): Outgoing WBA President Deborah Israel, Hon. Paul L. Friedman, Hon. Nancy Pelosi, Woman Lawyer of the Year Carolyn Lamm, Incoming WBA President Ellen Jakovic, Hon. Paula J. Dobriansky, and Outgoing WBA Foundation President Caroline Petro.



■ (L to R): Deborah Israel, Hon. Kathleen Q. Abernathy, Commissioner, Federal Communications Commission, and WBA Communications Law Forum co-chair Susan Kimmel.



■ Top row (L to R): Elaine Lubin, Jennifer Duane, Norma Brown Hutcheson, Diane Brenneman, and Heidi Sorensen. Bottom row (L to R): Marjorie Burnett, Ann Bushmiller, Agnes Powell, Helen Hong, and Angela Fisher.

We Salute the Supporters of the 2002 Annual Dinner

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Mary Kate Whalen



■ Incoming WBA
President Ellen Jakovic.



■ First WBA Foundation
President Marjorie
O'Connell (left) and
Outgoing WBA
Foundation President
Caroline Petro (right).



■ (L to R): Dianna Kempe, President, International Bar
Association, WBA IP Law Forum co-chair Rebecca
McNeill, and Louis Duffy, Vice President (retired),
Martindale-Hubbell.

WILMER, CUTLER & PICKERING

is proud to salute

CAROLYN B. LAMM
2002 Woman Lawyer Of The Year

and congratulates

**The Women's Bar Association
of the District Of Columbia**

and

**The Women's Bar Association
Foundation**

on their 85th Anniversary

Washington - New York - Baltimore - Northern Virginia - London - Brussels - Berlin

WBA CALENDAR OF EVENTS

August

AUGUST 9

1:30pm - 5:30pm

ABA Section of Litigation

"Free Federal Friday"

Education Sessions

Cost: Free to government attorneys

Location: Renaissance Mayflower Hotel, 1127 Connecticut Ave, NW

For more information visit: www.abanet.org/litigation/wdc/government.html.

AUGUST 9

5:30pm - 7:30pm

ABA Section of Litigation Networking Reception

Cost: Free

Location: The Renaissance Mayflower Hotel, 1127 Connecticut Ave, NW

For more information visit: www.abanet.org/litigation/wdc/home.html.

AUGUST 9

5:30pm - 7:30pm

ABA Section of Science & Technology Law Committee on Opportunities for Women and Minorities

Networking Reception

Cost: Free

Location: Covington & Burling, 1201 Pennsylvania Ave, NW

Contact: Shawn Taylor Kaminski, Section Director, 312-988-5601 or

email: sciencetech@abanet.org.

AUGUST 10

12:30pm - 2:30pm

National Association of Women Lawyers 2002 Installation and Awards Luncheon honoring Supreme Court Justice Ruth Bader Ginsburg

Co-sponsored by WBA

Cost: \$85

Location: The Omni Shoreham Hotel, 2500 Calvert Street, NW

Contact: Jennifer Turgeon, 213-626-7300 or email: jturgeon@panskymarkle.com.

AUGUST 11

9:00am - 11:30am

Summit on Keeping Her in Her Place: New Challenges to the Integration of Women in the Profession

Co-sponsored by WBA

Cost: Free to ABA Annual Meeting registrants; others \$150.

Location: Marriott Wardman Park Hotel, 2660 Woodley Road, NW

Contact: ABA Service Center, 1-800-285-2221 or www.abanet.org/litigation/wdc.home.html.

AUGUST 11

Noon - 2:00pm

ABA Commission on Women in the Profession Margaret Brent Awards Luncheon

Cost: \$100

Location: Marriott Wardman Park Hotel, 2660 Woodley Road, NW

Contact: Jennifer Walter, 312-988-5715.

September

SEPTEMBER 14

Suited For Change's Professional Attire Donation Collection

Donate your dry-cleaned professional suits and accessories to women in transition.

Curbside collection 8:30am - 12:30pm at 1712 I Street, NW.

www.suitedforchange.org.

SEPTEMBER 19

WBA Fall Kick-Off Networking Reception

Homer Building Atrium

601 13th St NW (Metro: Red Line - Metro Center)

Free, but RSVP required.

6pm - 8pm

RSVP to the WBA office via email: wba@wbadc.org or phone:

(202) 639-8880.

October

OCTOBER 2

WBA Second Annual Golf Classic

South Riding Golf Club, South Riding, VA

\$105 individual/\$420 foursome

For more information visit www.wbadc.org or contact the WBA at

(202) 639-8880.

OCTOBER 15

WBA Foundation Grant Request Deadline

For more information visit www.wbadc.org or contact the WBA Foundation at (202) 639-8880.

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Email: INFO@shah-shah.com

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Katharine Boyce
Diane Brenneman
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Ann Bushmiller
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Paulette Chapman
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Linda Wellstein
Mary Kate Whalen
Stephanie Wickowski
Jinhee Wilde
Joanne Young
Irene Ziebarth



WBA Annual Fall Kick-Off Reception Thursday, September 19th

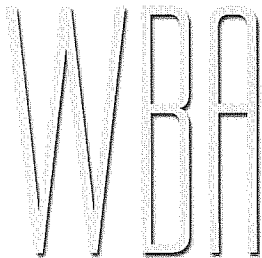
What a great opportunity to catch up with old pals,
meet new faces, and sign up for
WBA committee and forum activities.

Save the date!

6:00 pm — 8:00 pm
The Homer Building
601 13th Street, NW
(Metro Center)

It's Free!
Please R.S.V.P.
to WBA via
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