

RAISING THE BAR

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

2005-06, ISSUE 6

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THE 89TH ANNUAL WBA/WBAF AWARDS DINNER—"PATHWAYS TO POWER"

The WBA and the WBAF will host their Annual Dinner on Tuesday, May 16, 2006 at the historic National Building Museum. This year's reception and dinner, centered around the theme 'Pathways to Power,' will begin at 6:00 p.m., and those organizing and speaking at the event will focus on celebrating the many paths that women can take to obtain positions of power.

At the Dinner, the WBA is honored to bestow the 2006 Woman Lawyer of the Year Award to Judith A. Miller, Senior VP & General Counsel, Bechtel Group, Inc. Ms. Miller's recent appointment to the senior executive ranks of Bechtel, a leading global engineering, construction and project management firm based in San Francisco, California, caps an illustrious career that includes a partnership at Williams & Connolly LLP, a five-plus-year stint as General Counsel of the Department of Defense, and a clerkship at the Supreme Court of the United States. In recognition of her outstanding achievements, the National Law Journal named Ms. Miller one of the "50 Most Influential Women Lawyers in America" and Washingtonian Magazine listed her as one of "Washington's 100 Most Powerful Women."



Judith A. Miller

Joan C. Williams, recipient of the ABA's Margaret Brent Award for 2006 will speak at the event. Williams is a Distinguished Professor of Law at the University of California's Hastings College of Law, a prize-winning author and expert on work and family issues, and the author of *Unbending Gender: Why Family and Work Conflict and What to Do About It*. She is also the Co-Director of the Project on Attorney Retention. She and the Project on Attorney Retention have been instrumental in the development of the WBA's Initiative on Advancement and Retention of Women. (see article on Joan on page 5)

The members of this year's Honorary Committee includes:

AMY L. BESS, Managing Partner, Sonnenschein Nath & Rosenthal LLP, specializing in Labor and Employment and Corporate Diversity Counseling.

BARBARA B. BROWN, Managing Partner, Paul, Hastings, Janofsky & Walker LLP, specializing in Employment Law.

MAUREEN E. DWYER, Managing Partner, Pillsbury Winthrop Shaw Pittman LLP, specializing in Real Estate.

ANDREA BEAR FIELD, Managing Partner, Hunton & Williams LLP, specializing in Resources, Regulatory and Environmental Law.

ANN K. FORD, Managing Partner, DLA Piper Rudnic Gray Cary LLP, specializing in Trademark Law.

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A Publication of

**THE WOMEN'S BAR ASSOCIATION
OF THE DISTRICT OF COLUMBIA**

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Nancy Long

Executive Director

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Raising The Bar is published by the Women's Bar
Association of the District of Columbia.
Subscription rate is \$100 annually. Materials for
publication may be submitted to the Editor:
Raising The Bar, 1717 K Street, NW, Suite 503,
Washington, DC 20036.



PRESIDENT'S COLUMN

It has been a privilege to serve as your President. This year was unique in several ways. Our first woman Supreme Court Justice retired, and the WBA honored Justice Sandra Day O'Connor at our Star of the Bar Event, welcoming over 600 guests. We developed a new Public Relations Committee, appointed a new Editorial Board for this newsletter, and welcomed others to our leadership group.

With the tremendous support from the bar leadership and our Foundation, the WBA launched an unprecedented Initiative on the Advancement and Retention of Women. DC legal community leaders shared their perceptions and worries over the attrition of women from law practice, and the lack of women lawyers' advancement. On May 16, at the Annual Dinner, the WBA issues the release of our Final Report, "Creating Pathways to Success." It describes the consensus of the Initiative participants on the perceived stumbling blocks and the current strategies to address them. It also provides a RoadMap, pointing to major guideposts and the individual pragmatics for creating success for women and for their law firms. We hope you will help us distribute it nationwide to colleagues and clients,

Particular thanks go to the 30 law firm sponsors of the Initiative, and to the 30 speakers who volunteered several mornings to contribute their vision and concerns to the Initiative. Their response proved the foundation of the Initiative's success--it guaranteed that practice leaders--men and women--would have serious and forward-looking conversations to solve mutually identified problems.

I happily report that the Initiative has received national attention already. It was featured as the lead article in the New York Times Business Section on Sunday, March 19, and was the most e-mailed article in that issue. In addition, we were invited to discuss the Initiative at the March 3 Summit of the National Association of Women Lawyers and The National Conference of Women Bar Associations.

I salute the many talented and dedicated women in our Bar. The WBA Board of Directors has provided particularly enlightened leadership and guidance. Our committee and forums provided over 75 creative and meaningful programs. These programs have elicited and spread information that women in practice commonly need, making our members' professional lives easier and richer. The WBA and the WBA Foundation Boards have worked closely this year to maximize their impact on the profession and on progress for women and children. Thanks in particular go to the Honorable Diane Brenneman, President of the WBAF, and her Board for its fine work.

Please join us on Tuesday, May 16, 2006 for the 89th Annual WBA/WBAF Annual Awards Dinner. We will honor Judith A. Miller as 2006 Woman Lawyer of the Year, and welcome Joan Williams as a winner of the ABA Margaret Brent Award, an awardee for whom the WBA was the nominating organization.

The WBA is an extraordinary and unique organization that plays a vital role for women attorneys and women's issues. Membership is a terrific investment. Lend your talents and join the fun!

Karen Karen M. Lockwood
WBA President

SPONSORSHIP LIST FOR 2005-2006 INITIATIVE

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Garrett & Dunner LLP

Hogan & Hartson LLP

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Kenyon & Kenyon LLP

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LESSONS LEARNED AND A CHALLENGE

The fourth and final session of the WBA Initiative was held on Monday, April 3rd before a large audience at the Georgetown Law Center, Hart Auditorium. In a session entitled, "Leaders Address Best Practices and Their Importance," six managing and executive-level partners of DC firms presented their vision and some of the measures their firms use to address advancement and retention of women.

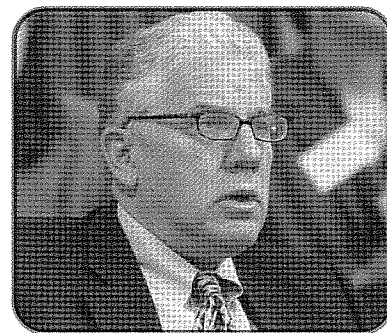
J. Warren Gorrell, Jr., Chair, Hogan & Hartson LLP, noted that attracting, developing and retaining women, who are one half of law school graduates, is key to the success of any law firm. Clients demand that women have the same opportunities for career advancement and satisfaction as men. Hogan is proud of its accomplishments: 24% of partners in the DC office of 450 attorneys are women; more than half of the associates in the DC office are women; and women occupy key senior management positions in the firm, including on the 5-member firm executive committee. Mr. Gorrell attributes Hogan's success to a culture of mutual respect, collegiality, diversity, and professional service.

Paul Smith, Managing Partner, Jenner & Block LLP, identified Jenner & Block's cutting edge retention policies, including balanced work hours, elimination of full time partnership requirements, and flexible work schedules. Despite these policies, the firm realizes that women do not leave firms because of the stereotypical work/family balance. Rather, women are leaving for in-house positions and due to a dearth of advancement opportunities. Jenner & Block's continuing retention efforts include mandatory diversity workshops and annual review of work assignments. Mr. Smith noted that part of the problem is the nature of law firms, and raised the question whether the time has come to reconsider the business model of law firm practice.

Carl Cooper, Chief Diversity Officer, Kirkpatrick & Lockhart Nicholson Graham LLP, noted that addresses issues of sexual orientation, race, ethnicity, disability, gender, religion, and military status. His position, was created in response to K&LNG's concern that, despite the fact that over 50% of law school are women or minorities, those ratios are not reflected in law firm management. K&LNG recently instituted a formal Balanced Hours Initiative that permits all associates and partners to establish a determined work schedule that is both manageable and professional. Associates are not required to provide a reason for a reduced schedule or a date by which they intend to return to full-time status. K&LNP associates also have an annual Associate Development Plan, which identifies the skills that the associate will work on with her



*Paul Smith, Jenner & Block LLP
addresses the audience*



*Jonathan Blank, Managing Partner,
Preston Gates, Ellis, Rouvelas Meeds
LLP listens to the presenters*

(continued on page 14)



WBA'S JOAN WILLIAMS WINS MARGARET BRENT AWARD

It came as no surprise when Joan Williams was chosen one of the recipients of the 2006 Margaret Brent Award.

The WBA nominated Williams - an energetic advocate for the advancement and retention of women lawyers, distinguished author and law professor, and national expert on work/family issues - for the award. "We knew we had a winner on our hands," said WBA President Karen Lockwood. "I'm so pleased we were able to share our admiration of Joan on a national level."

The Margaret Brent Award is given annually to five outstanding women lawyers in recognition of their contributions to the legal profession. Established fifteen years ago by the American Bar Association's Commission on Women in the Profession, the award is given to lawyers who have demonstrated professional excellence and paved the way for other women lawyers. Other recipients of the 2006 award are: Ellen Godbey Carson, director, Alston Hunt Floyd & Ing and community activist; Constance Slaughter-Harvey, civil rights attorney and activist; Peggy A. Quince, Supreme Court of Florida Justice; and Betty Roberts, former Oregon Supreme Court Justice.

Williams may be best known to WBA members as the co-director of the Project for Attorney Retention and the author of the award-winning book *Unbending Gender: Why Family and Work Conflict and What To Do About It* (Oxford University Press, 2000). She was formerly a professor of law at American University Washington College of Law. Last summer, she moved to San Francisco, where she is now Distinguished Professor of Law at UC Hastings College of the Law. She teaches property as well as courses related to gender, family and employment. She has also taught at Harvard University and the University of Virginia, and has lectured at Yale, Harvard, Columbia, Pennsylvania, Cornell, Duke and more than a dozen other law schools, and in Chile, Ecuador, Guatemala and Peru.

Williams is also the founder and director of the Center for WorkLife Law (www.worklifelaw.org), which is headquartered at Hastings. WorkLife Law is a non-profit research and advocacy organization that seeks to eliminate employment discrimination against employees who have caregiving responsibilities for family members, such as mothers and fathers of young children and adults with aging parents. She is a pioneer of the concept of "family responsibilities discrimination," an umbrella term for employment discrimination actionable under Title VII, the Family and Medical Leave Act, and various other state and federal statutes that share the characteristic of adverse action taken against employees based on stereotypes of how caregivers will or should act. Family responsibilities discrimination cases include termination of workers once they become pregnant, failure to promote mothers of young children based on assumptions of commitment to the job, and harassment of men who take leave to care for children or aging parents.

Georgetown CLE has extended a special registration fee to all WBA members for its Intensive Session in Trial Advocacy Skills held during the first week in June. Co-sponsored by the National Institute for Trial Advocacy (NITA), the leading trial advocacy training organization in the world, attendees benefit from the time-tested "learning by doing" model. The program closes with two days of "real" trials held at the United States District Court for the District of Columbia. Please visit www.georgetowncle.org for more information.



Joan Williams

Please join the Solo and Small Practice Forum for its monthly networking lunches at noon on the second Wednesday of every month. Location TBA.

Please contact Elaine Fitch (efitch@kcnlaw.com, 202.331.9260 for details.)

As part of her work with WorkLife Law, Williams has attained national recognition for her research on unexamined gender biases in employment. Also called “implicit bias” and “cognitive bias,” these biases influence the interactions between women and their supervisors, colleagues, and clients. They contribute to the glass ceiling and also the maternal wall, and can hamper women’s advancement if not recognized and addressed. Williams has applied the social psychology research of unexamined biases to employment discrimination cases, helping attorneys and judges to better resolve the legal issues presented in the cases, and has played a central role in organizing social scientists to document maternal wall bias.

Williams has shared her research and expertise with the WBA in its Initiative on Advancement and Retention. In addition, she has given over two hundred speeches and presentations in North and Latin America to groups as diverse as the National Employment Lawyers’ Association, the Denver Rotary Club, the American Philosophical Society, and the Modern Language Association. She has authored or co-authored four books and over fifty law review articles (including one of the most cited ever written), and her work is reprinted in casebooks on six different subjects. She has been quoted in numerous national publications, including the Washington Post, the New York Times, the Wall Street Journal, BusinessWeek, US News and World Report, the ABA Journal, and Oprah Magazine, and has been interviewed for the CBS Evening News, 60 Minutes, a PBS documentary, and NPR.

“Joan Williams is, I believe, the nation’s leader in facilitating the implementation and success of reduced-hours programs in law firms and corporate departments. Her work is making a significant difference in opening doors for women lawyers and in increasing advancement opportunities that might otherwise be unavailable to women. Joan is a remarkably effective agent of change in an area where change has been far too slow in coming.” James Sandman, Partner of Arnold & Porter LLP.

Please join us in honoring Joan Williams.



Committee and Forum Highlights

Committee and Forum Highlights

WELCOME NEW MEMBERS

Sharlet Abarr
Rebecca Anzidei
Lisa Banks
Johnine Barnes
Kate Bendick
Clara Martone-Boyce
Cynthia Calvert
Kathleen Cerveny
Tanisha Edmonds
Susan Flohr
Christina Franz
Daphne Frydman
Charlotte Grzebien
Holly Hunsberger
Perry Howell
Amy Kapp
Debra Katz
Jenny Kim
Mary Lake
Marie Lee
Shaniek Maynard
Linda Menghetti
Vicki Nielsen
Shaila Lakhani Ohri
Laurel Pepper
Jonathan Rusch
Victoria Rutherford
Aisha Salem
Chera Sayers
Karen Stempel
Anna Ursano
Lauren Walsh
Margaret Zwisler

JOIN THE WORKING PARENTS FORUM OF THE WOMEN'S BAR ASSOCIATION OF DC IN A LUNCHEON PRESENTATION

EDUCATING YOURSELF ABOUT YOUR CHILD'S EDUCATION

The Washington, DC metropolitan area offers an often bewildering array of educational options, from public schools, public charter schools, independent schools, parochial schools, schools with bilingual programs, schools for children with special needs, magnet schools, and on and on. How can you identify the best school for your child, and how do you get your child into that school? Join our panelists to discuss some of the basics you'll need to know to make an educated decision.

WHEN: Wednesday, May 24, 2006, 12:00noon until 1:30 pm

WHERE: Sterne Kessler Goldstein & Fox PLLC,
8th floor (use East Tower elevators)
1100 New York Ave., NW (Metro Center)

COST: \$10 for WBA members, \$20 for nonmembers

To pre-register online and to order a box lunch, go to www.wbadc.org and click on "Calendar of Events." For more information about this event, contact Tina Hsu at 202.772.2236 or hsuc@ghrdc.com.

IP LAW FORUM HOSTS PROGRAM ON TRADEMARKS IN CYBERSPACE

On March 29, 2006, the WBA Intellectual Property Law Forum co-hosted a luncheon presentation with the IP Law Section of the DC Bar at the offices of Sterne Kessler Goldstein & Fox PLLC. The program, entitled "Trademarks in Cyberspace: Are They Protected?" was presented by Roxanne A. Esch, Esq., an associate in the Trademark Practice Group in the Washington, DC office of Arent Fox PLLC.

In her presentation, Ms. Esch provided a comprehensive overview of the challenges associated with trademark protection in the context of cyberspace, including such issues as: registration of similar internet domain names, the purchase of trademarks as keywords or triggers for advertisements on internet search engines, the posting of parody or complaint websites, the use of metatags and other tactics to divert internet traffic, and jurisdiction of issues arising in cyberspace.

The IP Law Forum would like to thank Ms. Esch for her outstanding program, and Barbara Berschler, Esq., of the DC Bar IP Law Section for coordinating this event with the DC Bar. Requests for copies of the program materials, questions, and future programming ideas for the WBA IP Law Forum can be directed to Co-chairs Tracy Muller (tmuller@skgf.com) and Ashley Parker (ashley.parker@finnegan.com).



Committee and Forum Highlights

Many thanks to the supporters of The 89th Annual Awards dinner

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White & Case LLP
Winston & Strawn LLP

(continued from page 1)

CHERIE KISER, Managing Member, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., specializing in telecommunications law.

MARY ELLEN POWERS, Partner-In-Charge, Jones Day LLP, specializing in complex litigation.

PAMELA V. ROTHENBERG, Managing Member, Womble Carlyle Sandridge & Rice, PLLC, practicing with the Real Estate Technology Group; and

JUSTINE E. WILCOX, Managing Partner, Nixon Peabody LLP, specializing in Real Estate.

Approximately 900 people are expected to be in attendance, and WBA President Karen Lockwood, WBAF President Hon. Diane Brenneman, and Annual Dinner Planning Committee Chairs Jennifer Maree and Lorelie Masters invite you to attend as well. Please contact the WBA at (202) 639-8880 if you would like to sponsor the event or purchase tickets. All ticket purchases include a tax-deductible donation to the Women's Bar Association Foundation.

The National Building Parking is located at 401 F Street, NW and is conveniently located across from the Judiciary Square metro station. Parking is available at the Colonial Parking Gallery Place Parking Lot at 700 6th Street, NW for \$15.

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References and Vita on request - Visit at:



www.economic-analysis.com

CALENDAR OF EVENTS

Thursday, May 11, 2006

6:00pm until 9:00pm

Young Lawyers Forum Spring Happy Hour

Gordon Biersch
900 F Street, NW

Tuesday, May 16, 2006

6:00pm until 9:00pm

WBA/WBAF 89th Annual Awards Dinner

The National Building Museum
401 F St, NW

Tuesday, May 23, 2006

12:00noon until 1:30pm

Health Law Forum presents,
"How to Be a Great Healthcare Advocate for Yourself and Others"
Sterne Kessler Goldstein & Fox PLLC
1100 New York Ave., NW
\$8 for WBA members, \$15 for non-members

Register at www.wbadc.org

Wednesday, May 24, 2006

12:00noon until 1:30pm

Working Parents Forum presents,
"Educating Yourself About Your Child's Education"
Sterne Kessler Goldstein & Fox PLLC
1100 New York Ave., NW
\$10 for WBA members,
\$20 for nonmembers
Register at www.wbadc.org

Friday, June 2 until

Sunday, June 11, 2006

National Institute for Trial Advocacy and the DC Bar Litigation Section present, "28th Intensive Session in Trial Advocacy Skills"

Featuring Team Leaders
Joe R. Caldwell, Jr., Baker Botts L.L.P.;
Karen M. Lockwood, Howrey LLP;
Jeffery M. Senger, US Department of Justice.

Register at www.georgetowncle.org
or (202) 662-9890

WBA members receive a discounted rate. To obtain the discount code, contact the WBA office at (202) 639-8880 or wba@wbadc.org

INTERNATIONAL FORUM NEWS

If you were unable to attend our recent luncheon on the international trafficking of women and girls, we have some information we would like to pass along to you. First of all, the ABA's Central European and Eurasian Law Initiative has an interactive Human Trafficking Assessment Tool (HTAT) that measures a country's compliance with the UN Trafficking Protocol. The HTAT analyzes national anti-trafficking laws and government efforts to combat trafficking, references existing regional instruments to combat trafficking, highlights NGO best practices, and includes pertinent compliance and non-compliance examples from around the world. If you would like to learn more about human trafficking, you should check out this tool at <http://www.abanet.org/ceeli/publications/htat/home.html>.

Additionally, we wanted to tell you about a trafficking hotline run by the US Department of Health and Human Services. Again, if you want to learn more about trafficking, this is a good resource. The number is 888.373.7888.

Finally, if you would like to volunteer in a legal capacity or otherwise, you can contact any of the following organizations that provide service to and advocate for victims of trafficking:

- Polaris Project
- Break the Chain Campaign
- AYUDA
- Boat People SOS
- Salvation Army (Ronda_Bollwahn@usn.salvationarmy.org)

Our next event is on May 17th. We will be assisting the Washington Foreign Law Society in hosting its annual Diplomatic Reception. This is always a terrific event, and this year promises to be no exception. This year's reception is on Democratization in Latin America and the Caribbean, and will honor those nations holding legislative/parliamentary elections in 2006, including Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Haiti, Mexico, Nicaragua, Peru, and Saint Lucia. Each year, the event is held in the State Department's Diplomatic Reception Rooms, where the Secretary of State hosts visiting foreign dignitaries. If you have never been inside these rooms, they are quite a sight to behold and are full of beautiful art work and items of historical significance, such as the desk upon which the Treaty of Paris was signed in 1783. To register, go to www.wfls.org. We hope to see you there!

MEMBERS ON THE MOVE

Rachel Tumidolsky recently became a Senior Corporate Attorney at AARP Services, Inc., the for-profit subsidiary of AARP. Her work includes insurance products for AARP members, including Medicare supplemental and Part D products, privacy, and corporate governance.

Please join the Solo and Small Practice Forum for its monthly networking lunches at noon on the second Wednesday of every month. Location TBA.

Please contact Elaine Fitch (efitch@kcnlaw.com, 202.331.9260 for details.)

HOW DIFFERENCES BETWEEN THE SEXES AFFECT HEALTH

Differences between the sexes exist in the prevalence and severity of a broad range of diseases, disorders, and conditions. Sex-based biology is the field of scientific inquiry committed to identifying these biological and physiological differences between men and women. As such, sex-based biology has the potential to revolutionize the way we understand health and disease for both men and women. Unfortunately, most women are unaware of these differences.

The Society for Women's Health Research brought attention to sex differences in initiating the groundbreaking 2001 Institute of Medicine report, *Exploring the Biological Contribution to Human Health: Does Sex Matter?* The report underscored the need to better understand the importance of sex differences and translate that knowledge into improved medical practice and therapies.

Following are some vital facts about sex differences in health care:

HEART DISEASE - Heart disease kills 500,000 American women each year - over 50,000 more women than men - and strikes women, on average, 10 years later than men. Women are more likely than men to have a second heart attack within a year of the first one.

DEPRESSION - Women are up to three times more likely than men to suffer from depression in part because women's brains make less of the hormone serotonin.

OSTEOPOROSIS - Women comprise 80% of the population suffering from osteoporosis, which is attributable to a higher rate of lost bone mass.

SMOKING - Smoking has a more negative effect on cardiovascular health in women than men. Women are also less successful quitting smoking and have more severe withdrawal symptoms.

STDs - Women are two times more likely than men to contract a sexually transmitted disease.

ANESTHESIA - Women tend to wake up from anesthesia more quickly than men - an average of seven minutes for women and eleven minutes for men.

DRUG REACTIONS - Even common drugs like antihistamines and antibiotics can cause different reactions and side effects in women and men.

AUTOIMMUNE DISEASE - Three out of four people suffering from autoimmune diseases, such as multiple sclerosis, rheumatoid arthritis, and lupus, are women.

ALCOHOL - Women produce less of the gastric enzyme that breaks down ethanol in the stomach. Therefore, after consuming the same amount of alcohol, women have higher blood alcohol content than men, even allowing for size differences.

PAIN - Some pain medications (known as kappa-opiates) are far more effective in relieving pain in women than in men.

For more information, visit www.womenshealthresearch.org where you may purchase *The Savvy Woman Patient: How and Why Sex Differences Affect Your Health* and attend the Health Law Forum's May 23rd event "How to Be a Great Healthcare Advocate for Yourself and Others."

WBA MEMBERS RUNNING FOR DC BAR POSITIONS

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Antonia Ianiello, Board of
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Delegates

Lucy Thomson, WBA & WBAF Past
President, ABA House of Delegates

Marna Tucker, ABA House of
Delegates

Robert Weiner, ABA House of
Delegates

CHILD CARE TRENDS IN THE LEGAL INDUSTRY

By Piper Hutin

THE GROWING NEED FOR CHILD CARE

The make-up of the work force in America has changed dramatically in the last several decades. As we all know, ever increasing numbers of women have entered the work force, and it is now the norm to have two parents working outside of the home.

From 1975 to 1990, the number of employed women with children under the age of 18 rose by 59%, according to a US Department of Labor population survey. During the same period, the number of working women with children under age six skyrocketed from 4.8 million to 8.7 million, an 80% increase.

By the early 1990s, the gap in child care began to affect Corporate America's bottom line. Sporadic absenteeism jeopardized productivity. Corporations turned to their human resources departments and to the work/life industry for a solution.

As the numbers of working women continued to climb, organizations, including law firms, realized that a growing number of their workers were parents who needed quality care for their young children. While corporations tended to make the investment in establishing full-service centers for employees' children, the legal industry turned to back-up child care to serve employees when they experienced breakdowns in their primary child care arrangement, a solution that also provides a strong return on investment for employers in a field where productivity can be measured in billable hours.

THE SEARCH FOR BALANCE

Many employees continue to struggle with the never-ending tug-of-war between work and home, challenging their employers' ability to reach business goals. Many organizations are overcoming this challenge by revisiting the basics of effective work/life solutions.

The link between an organization's success and its employees' ability to balance the various demands of their lives has been proven by research time and time again. Simply put, an employee who is able to focus fully on his or her work while at work and concentrate on other things that are of personal importance while away from work can add more value and productivity to the organization. This link spurred the growth of programs such as flex time, enhanced maternity/family leave policies, and employer-sponsored child care and elder care programs. Employers benefit with increased productivity, higher retention rates, and more successful recruiting, particularly when the efforts result in the organization becoming an employer of choice.

BACK-UP CARE

The back-up care system has provided an answer that meets the needs both of employers and working parents. Back-up child care programs serve as safety nets for employees. When a nanny calls in sick or school closes for a snow day, the back-up center emerges as a trusted alternative. Studies show that parents experience a breakdown in child care five to seven times a year. These employees have primary child care-givers, but need a "plan B" for when those arrangements fall through. If the employee has no one to fill in for the day, that employee must stay home to care for their child, losing a day's work.



Child Care Trends

TANGIBLE BENEFITS FOR LAW FIRMS:

- Parents return to their firm after the birth of a child
- Parents stay focused professionally
- Quality of work remains high
- Improved productivity
- Sense of community and culture is fostered in the workplace
- Employees are increasingly committed to the firm
- Improved retention and turnover rates
- Law firms with on-site child care have reported seeing more resumes come in and reference the mention of the child care center in cover letters.
- Employer-sponsored child care gives employees the support they need to meet the client's expectation of flexibility and responsiveness.

Historically, back-up child care has been the premier choice for law firms for at least a decade. A recent National Association for Legal Career Professionals workplace questionnaire reported that 42.4% of responding firms said they offered use of a child care facility, of those, 91% said the benefit was for emergency use only and only 18.6% were located on-site.

While back-up child care continues to be the child care solution of choice for many law firms, today we are seeing an emerging trend of law firms eyeing full-service child care for a variety of factors, including recruitment and retention of female talent.

TRENDS TODAY – FULL-SERVICE CARE

Bright Horizons Family Solutions, the largest employer-sponsored child care provider in the country, with more than 80 law firms as clients, has noticed a substantial increase in the number of firms making inquiries about establishing full-service child care centers as opposed to back-up centers—bucking the long established trend. Several factors are at play here.

The National Association for Law Placement in Washington, DC recently reported that 52% of today's law students are women. This reality, of course, translates into more women joining law firms. At the same time, other corporate industries are several years ahead of law firms in offering full-time child care.

TANGIBLE BENEFITS FOR LAW FIRMS:

Morrison & Foerster LLP, one of the country's largest law firms with 1,000 lawyers and 19 offices worldwide wanted to retain and recruit leading talent in a highly competitive market. It wanted to provide a competitive set of benefits to help employees effectively balance their work and personal lives. To sustain a culture of career growth, teamwork and work/life balance, the firm made available several programs such as flexible work arrangements, maternity and parental leave and dependent care. It also wanted to provide its working parents with additional solutions, such as back-up child care. The return on investment was tremendous. In the first year alone, the firm calculated 421 saved employee days translating into a productivity savings of \$78,695. In fact, 81% of parents indicated that they would have missed work if they had not used the back-up center. By providing the child care benefit, Morrison & Foerster was able to successfully retain talent and key employees in an extremely competitive market.

Alston & Bird LLP, an international law firm with 700 lawyers, decided to take the next step from its generous and supportive paternal leave policy to establish a full-service child care center at its Atlanta headquarters. The firm wanted to make returning to work as easy as possible for parents. Alston & Bird's Managing Partner, Ben Johnson, has stated that the child care programs reinforce, with lawyers and employees, that the firm is committed to them as a whole person and not just as an employee. Anecdotally, Alston & Bird reports that they have retained associates who would have left if not for the support the child care facility has given them in trying to balance a legal career and a family.

According to Bright Horizons Family Solutions, many law firms in the Atlanta, Boston, New York and Washington, DC areas have inquired recently into the possibility of hosting on-site full-service employee sponsored child care centers. With employees demanding additional benefits to balance a productive work life with a quality home life, we will see this trend increase across the country.

THE NEW BATTLEGROUND IN GENDER DISCRIMINATION CLAIMS: FAMILY RESPONSIBILITIES DISCRIMINATION[1]

By Joan C. Williams, Cynthia Thomas Calvert and Consuela A. Pinto

The new battleground in employment law is "family responsibilities discrimination" (FRD). FRD cases involve personnel actions taken against high-performing employees simply because they have caregiving responsibilities for a family member. Typically, FRD cases involve pregnant women or new mothers, but they also include discrimination against men who take time off to care for family members because employers presume that such caring is "women's work." Some examples: a woman whose job is eliminated while she is on maternity leave, a man who receives negative performance evaluations and has extra work heaped on him in retaliation for taking time off to care for his elderly parents, and a woman who is not considered for promotion because her boss assumes she would not want to work the extra hours required by the new position because she has young children. The Center for WorkLife Law has found a growing potential for liability and recovery in this developing area. Indeed, since 2000, there has been a 300% increase in reported FRD cases (including reported settlements and court decisions), and this is consistent with the Equal Employment Opportunity Commission's recent report that pregnancy discrimination filings have increased. Plaintiff employees have prevailed in more than 330 cases, and at least 67 of those cases involved verdicts in excess of \$100,000. Each of us - as attorneys representing employees or employers and as employees - need to become aware of this growing employment law trend.

What is Family Responsibilities Discrimination?

Stereotyping is a key feature in most FRD cases. FRD occurs when an employee suffers an adverse action that affects the terms and conditions of her employment based on unexamined biases about how women with family caregiving responsibilities will or should act. FRD can be very subtle. For example, new mothers may miss out on opportunities for advancement because their supervisors do not mentor them or give them client contact on the assumption that they are not as committed to their jobs or reliable as they were before having children. Employers may also assume that mothers "should" be home with their children and may give them less challenging assignments that do not require long hours or travel. FRD can also be more blatant. Supervisors have downgraded or harassed employees who have become parents or taken family related leave, sometimes in an effort to make them quit. Some examples of conduct the courts have found to be discriminatory are:

- Refusing to hire women with preschool-aged children, even though men with preschool-aged children are hired (*Phillips v. Martin Marietta*, 400 U.S. 542 (1971));
- Failing to promote women with children, while promoting women without children and men with children (*Trezza v. Hartford, Inc.*, 1998 U.S. Dist. LEXIS 20206 (SDNY 1998));
- Putting mothers of young children on rotating shifts despite requests not to do so for childcare reasons where similar requests by males were honored (*Parker v. Delaware Dept. of Public Safety*, 11 F.Supp.2d 467 (D. Del. 1998));
- Treating women employees harshly and giving them unfounded critical evaluations after they became pregnant or

gave birth (*Sigmon v. Parker Chapin Flattau & Klimp*; 901 F. Supp. 667 (SDNY 1995); *New York City Transit Authority v. State Div. of Human Rights*, 78 NYS2d 207 (Ct.App. NY 1991));

- Refusing to give family leave to a male employee to take care of his newborn baby because the employer believed only women could be caregivers (*Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001));
- Failing to promote mothers based on an assumption that they won't work hard enough because of their family responsibilities (*Back v. Hastings on Hudson Union Free School District*, 365 F.3d 107 (2d Cir. 2004)).

What to do if ...

A. YOU REPRESENT AN EMPLOYEE WHO HAS BEEN SUBJECTED TO FRD:

(1) Determine the correct causes of action. While there is no federal statute that expressly protects workers from adverse employment actions based on their family caregiving responsibilities, there are several federal statutes that can be used to protect these workers. The most commonly used statutes are Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act (PDA). The Family and Medical Leave Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Equal Pay Act, and Title IX have also been successfully used to protect family caregivers in the workplace. State and local laws and common law causes of action also play a part.

(2) Be creative. For example, the PDA has also been used to combat discrimination that arose because a woman might become pregnant in the future. Where a supervisor interfered with a caregiver's ability to do his or her job, such as withholding resources needed by a salesper-



Gender Discrimination Claims

son to meet a quota, actions for tortious interference with business relations have been successful. In situations where women have been fired for taking maternity leave at companies that are too small to fall within the ambit of Title VII or state anti-discrimination laws, wrongful discharge actions have been brought.

(3) Be prepared to educate opposing counsel, judges, and juries about FRD.

B. YOU REPRESENT AN EMPLOYER:

(1) Train all managers and supervisors. Such training should:

- Inform supervisors that such comments as “I don’t see how you can be a good worker and a good mother,” “Don’t have a baby if you want to get ahead here,” and “men make better employees because they don’t take time off to have babies” may be unlawful.
- Emphasize that all personnel actions must be based on legitimate business needs and individual performance, not on stereotypes and biases.
- Discuss common biases (such as those discussed above) as well as less common biases such as the perception of men who take time off to care for family members as being slackers, not being team players, or being effeminate.
- Discuss gender-based biases in evaluations (e.g., a man is assertive, a woman is aggressive; attributing success to a man’s skill but to a woman’s luck).

(2) Adopt an anti-discrimination policy with respect to family responsibilities that includes a definition of FRD, a statement of zero tolerance, and directions for filing a complaint internally.

(3) Review the personnel policies and practices of your clients to make sure they do not discriminate against employees with caregiving responsibilities.

C. YOU THINK YOU HAVE BEEN SUBJECTED TO FRD

(1) Realize what is going on. One of the underpinnings of FRD studies is the recognition that women are caught in a clash of two social ideals: the ideal that good workers should be committed 110% to their employers and the ideal that we should care selflessly for our children and other family members. Workplace structures exacerbate the effects of this clash. Seeing the situation for what it is may help you to remove the personal elements so you can decide your next steps.

(2) Realistically assess the situation. Your performance up until the time you became perceived as a “caregiver” and during the time you have caregiving responsibilities is a critical factor. Did your performance change? Is your supervisor justified in finding fault with you? Look also at your situation chronologically; when did the discriminatory actions arise in relation to the time your supervisor became aware of your caregiving responsibilities?

(3) Address the situation within your workplace if you can.

(4) If you are unable to address the situation within your workplace or if these internal discussions have not resolved the situation, consider whether legal action is warranted. Remember that there are steps short of litigation such as a negotiated settlement or a mediation that might resolve the situation.

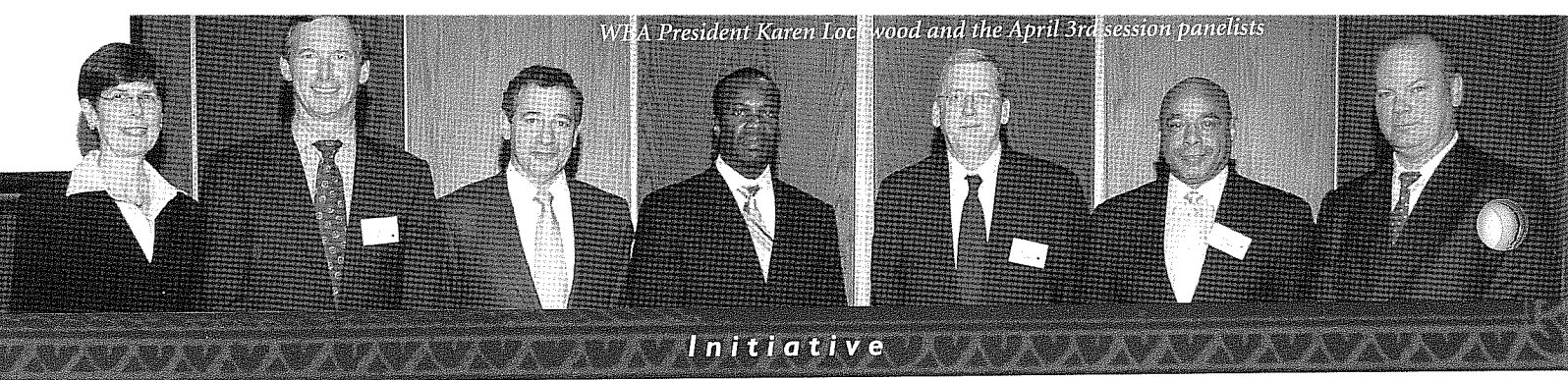
FRD has always existed, but its effects are only now coming to light. We all have a role to play in ending FRD, starting with spreading awareness about it. The result will be a fairer and more productive workplace for everyone.

FRD has always existed, but its effects are only now coming to light. We all have a role to play in ending FRD, starting with spreading awareness about it. The result will be a fairer and more productive workplace for everyone.

[1] Portions of this article originally appeared in the *Women Lawyer’s Journal*, National Association of Women Lawyers, vol. 91, no. 2 (Winter 2006).

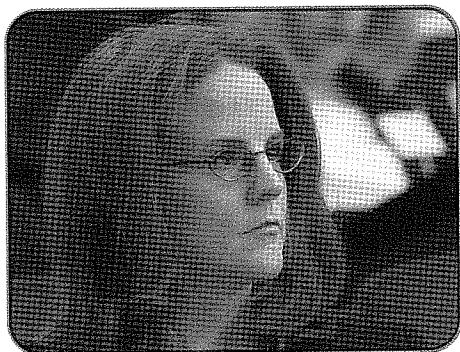
[2] Professor Joan C. Williams, prize-winning author and Distinguished Professor of Law at UC Hastings College of the Law, is the Director of the Center for WorkLife Law (WLL) and the Co-Director of the Project on Attorney Retention (PAR). Cynthia Thomas Calvert, an employment attorney, is the Deputy Director and General Counsel of WLL, as well as the Co-Director of PAR. Consuela A. Pinto is also an employment attorney and the Senior Counsel for WLL. WLL is a nonprofit research and advocacy organization affiliated with UC Hastings College of Law. WLL works with employees, employers, attorneys, legislators, journalists, and researchers to identify and prevent Family Responsibilities Discrimination. Its mission is to provide information to help shape the public conversation around changing families and their experiences in the workplace.

[3] For additional information regarding FRD, how to prevent it or how to address it if it happens to you, please visit WLL’s website at www.worklifelaw.org

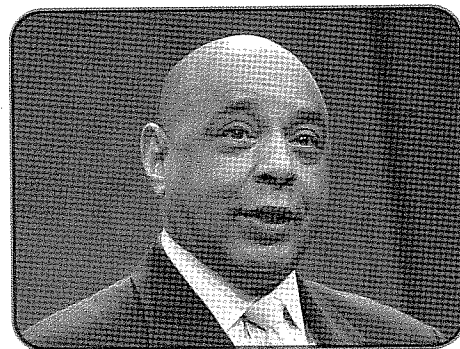


Initiative

(continued from page 3)



Bonnie Arthur, Hunton & Williams LLP listens to the presentations



Carl Cooper, Chief Diversity Officer, Kirkpatrick & Lockhart Nicholson Graham LLP presents his remarks



Rick Bernthal, Managing Partner, Latham & Watkins LLP presents his remarks

mentor. Associate assignments are expected to enhance this skill set throughout the year. Although the Balanced Hours Initiative is only four months old, and its impact is yet to be seen, 85 to 95% of the associates believe that the Balanced Hours Initiative is working.

Eric Bernthal, Managing Partner, Latham & Watkins LLP, emphasized that "tone at the top" is crucial, and focused on four main issues of importance to attracting and retaining women. First, management at law firms must "own" the issue in order to bring about change. Second, there must be an ongoing, honest dialogue within the firm. Third, results must reflect the stated goals. Fourth, young lawyers need to be flexible, as everyone's career has a unique shape and different demands. At Latham & Watkins, women hold leadership positions in all practice groups, and many attorneys with reduced-hours schedules are promoted to partner within the firm. Still, Mr. Bernthal acknowledged, attrition of women remains a problem. To address the issue, Latham & Watkins has a year-round mentoring program, and a work-life balance group, with professional staff, that helps attorneys with firm retention issues. Mr. Bernthal emphasized that the core aspect of retention is the individual relationship between an attorney and the attorney's supervising partner. Partners need to nurture those relationships, and use them to provide opportunities for advancement. In response to a question, he also emphasized that alternative (non-equity) partnership categories should not be viewed as places where women are "parked," as they may be the choice of women who wish to use that alternative to balance the partnership status with current personal obligations.

Melvin White, Partner, McDermott Will & Emery LLP, framed the issue by observing that law firms are well behind corporate America and the government in promoting and retaining women. He believes from his own personal experience that there is a general expectation that women and minorities will not stay at law firms. McDermott, Will & Emery recently introduced "McDermott University" to focus on development and retention of attorneys. The program includes: (1) Development of core skills - associates are trained on the core skills that are unique to their practice groups; (2) In-house training that focuses on those core skills; (3) Career planning - associates are required to have a career plan for their future; and (4) Mentoring - this is the only way for associates to succeed. The mentoring program is a 2-tiered system; the associate is paired with both a junior and a senior partner.

Jay Hebert, Vinson & Elkins LLP, Co-Administrative Partner, Washington DC, remarked that while "tone at the top" is necessary, it is not sufficient; buy-in from everyone is required. Partners "get the message" when they perceive that (1) the cost of losing an associate is around \$257,000; (2) the demographics of the law schools where the firm recruits are 50% women; and (3) women are general counsels or assistant general counsels at the firm's clients. Mr. Hebert recognized that while the gap has narrowed, there is still work to do. One of the unique things that Vinson & Elkins has done is to create a Women's Advisory Board made primarily of clients, which meets with the firm management committee and firm associates twice a year to discuss the firm's status. After each meeting, the Board gives the firm a list of things to work on before the next meeting. Mr. Hebert said that this Board has

Lauren Stiller Rikleen, Partner, Bowditch & Dewey LLP delivers her remarks



Initiative

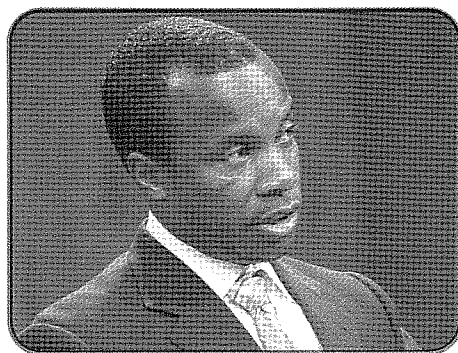
been a key factor in giving the Women's Initiative credibility with partners, associates, and clients.

Lauren Stiller Rikleen, Partner, Bowditch & Dewey, discussed her findings on significant barriers to a woman's success in the law, based on her extensive interviews for her book, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*. A critical impediment to women's promotion is that the assignment process is "steeped in mystery and riddled with discretion." Women are very involved in hiring, mentoring, pro bono, and other committees, but this work does not result in advancement and promotion. Women are excluded from the informal networks of business development. The long history of sports as a traditional marketing tool has negatively impacted women. Women earn less than their male counterparts, due to inequitable treatment in the bonus pool, exclusion from pitches, and exclusion from compensation decisions. Many women do not make the time to mentor because of other demands on their time, and may not themselves have been mentored. Many women reported that they received good assignments and reviews until they had children. Finally, women are not honest on their reasons for leaving a firm - no one wants to burn bridges or express real dissatisfaction. Ms. Rikleen asked, "Where do we go from here?" She suggests that a culture change must occur at all levels. Firms must reassess their values, and incorporate into their culture and reward systems the fact that teamwork, leadership, and good management skills are important.

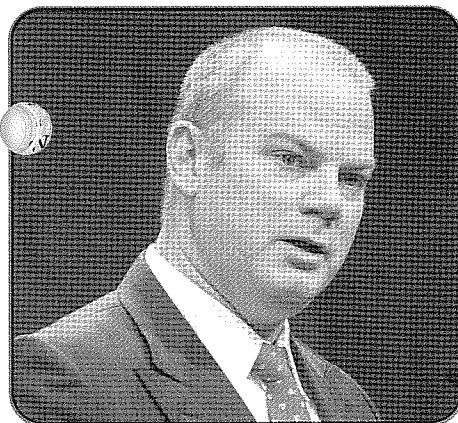
Final Report of the Initiative, is in publication and will be available from the WBA after May 16 for national distribution. Written and produced by the Reporter's Committee of the WBA, comprising Linda Chanow (Chair), Jamie Abrams, Cecily Baskir, Suzanne Garwood, Gwen Baker, Bonnie Arthur, with President Karen Lockwood, it is drawn from the substance of the Initiative exchange, and will detail the perceived challenges, the active strategies, and a "RoadMap" for creating pathways to success for women and for their law firms. Rebecca McNeill with Mae Mauk is producing a short video to summarize the Initiative and its basic themes.

The WBA deeply thanks all of the sponsors, volunteers and in-kind contributors to the Initiative: (1) the law firm sponsors listed on page 3 and the WBA Foundation; (2) the expert speakers, Brande Stellings of Catalyst, Prof. Joan Williams of Hastings College of Law, Dr. Ellen Ostrow of Lawyers Life Coach, Cynthia Calvert of the Project for Attorney Retention, and Lauren Stiller Rikleen of Bowditch & Dewey and ABA Commission on Women member; (3) the schools and firms that provided facilities and support, Georgetown University Law Center and George Washington University Law School, and Reliable Copy, Digital Evidence Group, Inc., and Viewpoint Communications Inc.

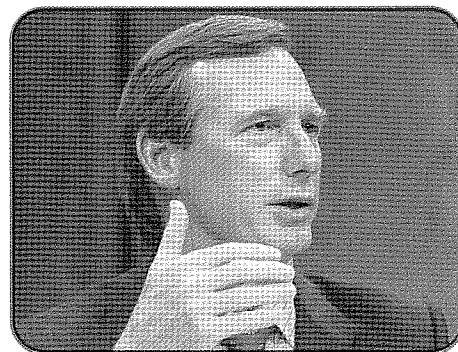
Please join the WBA on Tuesday, May 16th at the 89th Annual Awards Dinner when we unveil the Final Report of the WBA Initiative on the Advancement and Retention on Women. We will feature a video highlighting the results of the Initiative.



Melvin White, Partner, McDermott, Will & Emery LLP delivers his presentation



Jay Hebert, Managing Partner, Vinson & Elkins LLP addresses the audience



Karen Gorrell, Chair, Hogan & Hartson LLP answers questions of the audience.

Creating Pathways to Success, the 54-page



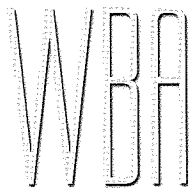
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