



L-R] NAWL President-Elect Ellen Pansky and President Liz Bransdorfer flank the midyear meeting honorees: NAWL member Stephanie Scharf Judge Margerie O. Rendell, 3rd Circuit Court

Justice Ginsburg to be Honored at NAWL Annual Meeting

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CRLP v. Bush and the Global Gag Rule

A View from the Bench - *How tough women lawyers lose a "natural" advantage*



Justice Sandra Day O'Connor (right) and Planning Committee member Selma Moidel Smith



***Justice Ruth Bader Ginsburg
to Receive Mansfield Award
at
NAWL's Annual Meeting
August 10, 2002***

Plan now to join us for a very special occasion. NAWL will present Supreme Court Justice Ruth Bader Ginsburg with the Arabella Babb Mansfield Award at the Annual Meeting Luncheon in Washington, D.C. The law firms of Dickstein Shapiro Morin & Oshinsky and Jenner & Block will also be honored for their continued support to NAWL and their dedication to our mission of equity and advancement for women in the profession.



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

August 10 - 12, 2002

NAWL is cosponsoring what we hope will be a milestone event and a serious assault on the glass ceiling.

The summit's organizers are inviting many of the most influential men and women in the profession to find ways to revamp the practices that underlying keep women from reaching the top echelons of the law.

Studies show that despite women's equal presence in law schools, only 15.6% of women become partners in law firms nationwide, and only 13.7% become counsels of Fortune 500 companies.

There is also evidence for a strong economic motive to overhaul current systems. Current practices foster a high rate of dissatisfaction among women lawyers and an expensive early exodus from the profession.

Join **Senator Hillary Rodham Clinton** and top leadership to formulate just how to make good in this century on the real promise the profession made when it opened its doors to women in the last century.

Summit Organizing Committee:

Former ABA Presidents Martha Barnett and Roberta Ramo; United States District Judges, The Honorable Nancy Atlas, The Honorable Ellen Segal Huvelle, and The Honorable Barbara Lynn; Margaret Brent Award Winner Laurel Bellows; and Carolyn Lamm, Roberta Liebenberg, Charisse R. Lillie, Sara D. Lipscomb, Barbara Mayden, Charna E. Sherman, Lee Stapleton Milford, Christina Tchen, D. Jean Veta, and Andrea Zopp

ABA Co-Sponsors:

The Section of Litigation, The Section of Business Law, The Commission on Women in the Profession, and The Commission on Racial and Ethnic Diversity in the Profession

Non-ABA Co-Sponsors:

The National Association of Women Lawyers, The National Conference of Women's Bar Associations, and the National Association of Law Placements

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About NAWL

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ARTICLES Book reviews or articles about current legal issues of general interest to women lawyers are accepted and may be edited based on the judgment of the editor. Editorial decisions are based upon potential interest to readers, timeliness, goals and objectives of the association and quality of writing. No material can be returned unless accompanied by a self-addressed, stamped envelope.

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GENDER & RACIAL BIAS



Panelist Professor Phoebe Haddon, Temple University and NAWL president-elect and program chair Ellen Pansky.



NAWL Philadelphia Midyear pro- grams generate insight and controversy on a continuing problem

On February 1, 2001, NAWL presented two interesting and thought-provoking programs at its Mid-Year Meeting. The first, entitled "Gender Bias in the Law Firm: Where Are We Now?," was moderated by **Jonathan Segal** of Wolf,

Block, Schorr & Solis-Cohen. Mr. Segal, counsels and consults with firms and clients in policy development addressing sexual and other unlawful harassment, discipline and terminations, drafting of employee handbooks and other labor

and employment issues. Panelist **Alan B. Epstein** of Spector, Gadon & Rosen PC, chair of his firm's employment law group, specializes in litigating employment rights, civil rights and constitutional torts in state and federal courts. Panelist **Alice W. Ballard**, a practitioner who has been representing plaintiffs in employment rights litigation for over 25 years, also serves as a law professor and author.

The panelists focused on the presence of women in the legal profession, currently consisting of 275,000 out of 980,000 lawyers practicing in the United States. The research projects published by numerous individuals were discussed with the audience, including the writings of Cynthia Fuchs Epstein and Diane L. Bridge. The continuing paucity of female partners and managers in the

private firm setting and possible reasons for this phenomenon were discussed and the panelists agreed that the “glass ceiling” is yet to be shattered.



NAWL's immediate past president Gail Sasnett and Stephanie Scharf, in animated discussion after Gender & Racial Bias CLE.

In addition to discussing the advancements and limitations on women in the legal profession, the panelists also explored more controversial topics, including the extent to which gender stereotypes serve to influence women to perpetuate traditional roles. The audience was challenged to rethink their perceptions and preconceptions.

The afternoon panel was entitled “Gender and Racial Stereotyping and Its Effect on Legal Performance.” The panel was moderated by NAWL board member Ellen A. Pansky and featured Professor Jody David Armour of the University

of Southern California Law School and Professor Phoebe Haddon of Temple University School of Law. Professors Armour and Haddon presented the results of numerous research projects, which have established the overriding influence of stereotyping in our culture, including racial stereotyping present in preschool children, of all races. Additionally,

Professor Armour explored the subtle and sometimes subconscious types of stereotyping which we all experience, including the ingrained belief that blacks are more “violent,” and more athletically accomplished, while women are seen as less competent and artistic, even when judged by members of their own group.

Professor Haddon shared some personal experiences,

implicating both racism and sexism in the legal profession. One of her topics, addressing a child's question of why boys walk on the outside and girls walk on the inside of the sidewalk, compared the concepts of enforcing female stereotypes of vulnerability against a recognition of the social reality of gender differences. She also recounted an experience in which she, despite wearing a prominent red dress in a sea of dark suits, was treated as if she was invisible.

There was a great deal of audience participation in both the panels and the audience evaluation of the presentations was high. For those who were unable to attend, copies of written materials disseminated at these programs may be obtained by contacting NAWL's executive offices.



(L-R) Los Angeles attorney Ernestine Forrest, NAWL vice president Zoe Sanders Nettles, president Liz Bransdorfer and Prof. Jody David Armour, U.S.C. School of Law.

Judge Marjorie O. Rendell and Stephanie Scharf Honored at Midyear Meeting

NAWL President **Elizabeth Bransdorfer** awarded the NAWL President's Award for Excellence to Third U.S. Circuit Court of Appeals Judge **Marjorie O. Rendell**. Rendell accepted the award at a luncheon at Davio's Restaurant February 1, 2002, the high point of NAWL's Midyear Meeting events in Philadelphia, Pennsylvania.

Judge Rendell, who was appointed to the Eastern District of Pennsylvania bench in 1994 before being elevated to the Court of Appeals in 1997, rose to a partnership at Duane Morris before becoming a bench officer.

Judge Rendell became Duane Morris's second woman partner while specializing in bankruptcy law and commercial litigation. She is a member of the Federal Judges Association, National Association of Women Judges, a Fellow of the American College of Bankruptcy and an inaugural member and Master of the Villanova University School of Law J. Willard O'Brien Inn of Court.

Judge Rendell was honored by her former partner and longtime

friend **Jane Dalton**, who described Rendell's dedication to her profession and to the larger community. Judge Rendell has worked tirelessly on the Avenue of the Arts project,



(L-R) NAWL Member Stephanie Scharf seen with past NAWL president and Illinois Circuit Judge Susan Fox Gillis and Judge Marjorie O. Rendell.

as well as on behalf of the Philadelphia Bar Association's Committee on Women in the Profession.

Judge Rendell emphasized the support she has been provided by her school teachers; her former partners; her parents; and her husband, former Philadelphia Mayor and Immediate Past Chair of the Democratic National Committee, Ed Rendell. She urged women to

surround themselves with people who will "will you to succeed."

She recalled with appreciation the assistance she provided David Sykes, by her former supervising attorney, who took the time to critique her work even after it had been filed with a court, to help her to progress and improve. She pointed out that mentors such as **Dave Sykes** and Jane Dalton assisted her in rising to her current position.

NAWL also presented its Outstanding Member Award to **Stephanie Scharf** of Jenner & Block. The award was presented by Past President and **Illinois Circuit Court Judge Susan Fox Gillis**, who worked with Ms. Scharf at Jenner & Block.

Scharf, who serves as chair of Jenner & Block's Products Liability and Mass Tort Defense Group and is a member of its Management Committee, has long been active in ABA programs and committees. Scharf provided invaluable assistance in planning NAWL's 2001 Annual Meeting in Chicago, and is serving on NAWL's Program Committee for the 2002 Annual Meeting in Washington, D.C.

The Global Gag Rule: a Primer

Endangering Women's Health, Free Speech and Democracy

by Julia L. Ernst
CRLP International Legislative Counsel,
and
Molly Diachok, CRLP Program Assistant

What is the Global Gag Rule?

On his first day in office (and the 28th anniversary of *Roe v. Wade*), President George W. Bush re-imposed the Global Gag Rule on the U.S. Agency for International Development (USAID) population program. This policy restricts foreign non-governmental organizations that receive USAID family planning and reproductive health assistance from using their own, non-U.S. funds for:

Providing legal abortions, even when a woman's physical or mental health is endangered by the pregnancy (the only exceptions are in cases of rape, incest or where the woman's life would be endangered if the fetus were carried to term);

Providing advice and information regarding the potential benefits and availability of abortion and from providing referrals to other health clinics;

Lobbying to legalize abortion, to liberalize restrictive abortion laws, to maintain current law and oppose new restrictions or to decriminalize abortion; and

Conducting public information campaigns regarding abortions.

These organizations must either give up greatly needed funds for family planning and other reproductive health services or give up their right to free speech, to participate in the democratic process in their countries and to provide legal medical services.

The U.S. government is forcing them into making an unconscionable choice – stop providing abortion services and talking publicly about the need for abortion law reform or the U.S. will cut off their funding.

January 22, 2002 marked the one-year anniversary of this violation of women's reproductive rights and the rights to freedom of speech and democratic participation.

The Global Gag Rule Endangers Women's Health and Lives

Annually, 20 million unsafe abortions are performed around the world. Over 500,000 women die each year due to pregnancy-related causes, 80,000 of them from unsafe abortion. About 7 million women suffer serious health problems due to childbirth and 50 million women endure adverse health consequences.

Most of these tragedies occur in developing countries. They could be virtually eliminated by the provision of appropriate health information and services and through law reform efforts to allow such information and services to reach the women who need them.

U.S. reproductive health assistance is generally directed to the largest, most sophisticated and most effective organizations engaged in women's reproductive health services and research within a particular country.

These organizations are best-suited to provide comprehensive reproductive health care, including safe abortion services in countries where they are legal.

They are also best-suited to offer expert advice to their governments on the severe public health concerns surrounding unsafe abor-

tion, particularly in countries where abortion is restricted or prohibited altogether.

Health services organizations whose survival relies on continued U.S. funding are forced, under the Global Gag Rule, to give up their abortion-related activities so they can maintain reproductive health services where they are desperately needed. Organizations that continue to offer these services to women and advice to their own governments on public health policy are now unable to receive U.S. assistance.

The director of a research organization in Nepal traveled to the United States in the fall of 2000 to explain the potential effects of the Global Gag Rule on his organization. They had recently conducted research on maternal health and mortality in his country.

Nepal has one of the highest maternal mortality rates in South Asia: More than 500 women in 100,000 die from pregnancy-related complications (as compared to 7 in 100,000 in the U.S.). This organization's research determined that half of these deaths are caused by unsafe abortion.

One in five women in prison in Nepal has been incarcerated for having an abortion, where it is prohibited under all circumstances. Despite these legal restrictions, many women still make the difficult decision to have an abortion, usually from unskilled providers, risking prison sentences, serious physical injury, sterility, chronic disability or even death.

Officials at the Nepalese Ministry of Health concluded that legalizing abortion should be the first step towards preventing the existing high level of maternal mortality and morbidity in their country.

The Ministry's advocacy plan to decriminalize abortion called for the formation of a network of non-governmental organizations to define advocacy strategies for the government.

However, the Global Gag Rule disqualifies organizations – such as the one that performed the maternal mortality research – from participating in this public awareness and lobbying strategy if they continue to receive U.S. funding.

Already, 17 organizations have made the difficult decision to keep providing abortion services to women who need them and to keep advocating for abortion law reform. Ironically,

the U.S. is cutting off funding to these organizations that is used largely for family planning services – the very programs that would reduce unwanted pregnancies and abortions.

Cuts in family planning funding mean higher rates of unintended pregnancy and higher rates of abortion.

By reducing funding to reproductive health care providers in under-served areas, the Global Gag Rule decreases women's ability to access pregnancy-related care, family planning and services for HIV/AIDS and other sexually transmissible infections. Cuts in family planning funding mean higher rates of unintended pregnancy and higher rates of abortion.

Many other organizations are making the difficult decision to retain their reproductive health programs funded by the United States and are being forced to give up their right to discuss solutions to severe public health problems in their countries, to provide legal medical services to their patients or even to inform their patients about their option to choose those services.

The Global Gag Rule Violates Women's Reproductive Rights

The Global Gag Rule violates fundamental principles of human rights law as recognized in numerous international instruments, including women's reproductive rights.

For example, this restriction violates the right to health, including reproductive health; the right to freely and responsibly determine

the number and spacing of one's children; and the right to reproductive self-determination.

During the International Conference on Population and Development in Cairo in 1994, governments – including the United States – adopted by consensus a landmark agreement that acknowledged reproductive rights as integral to human rights. This agreement provides that:

[R]eproductive rights ... rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so and the right to attain the highest standard of sexual and reproductive health. (ICPD Programme for Action, Paragraph 7.3)

The five-year review of this conference resulted in an expanded recognition of women's reproductive rights to include issues related to abortion. The resulting agreement states in relevant part:

All Governments and relevant intergovernmental and non-governmental organizations are urged... to deal with the health impact of unsafe abortion as a major public health concern... In circumstances where abortion is not against the law, such abortion should be safe. [I]n circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe and accessible. (ICPD+5 Key Actions Document, Paragraph 63)

The Global Gag Rule's restrictions on access to comprehensive reproductive health care, including abortion services, stand in sharp contrast to fundamental principles of international human rights law.

Obviously, the Global Gag Rule also runs contrary to the fundamental principles protecting women's reproductive rights in the United

States under the U.S. Constitution, as articulated in the landmark case *Roe v. Wade* and reaffirmed most recently in *Stenberg v. Carhart*.

The Global Gag Rule Violates the Rights to Free Speech & Democratic Participation

The Global Gag Rule runs counter to the U.S. Constitution's First Amendment principles of freedom of speech, freedom of association, freedom to petition the government for redress of grievances and freedom of peaceable assembly.ⁱⁱ It denies the right of foreign organizations to advocate about abortion law reform and to participate in their nations' democratic processes. Freedom of speech is a cherished right in this country and the Global Gag Rule would be deemed unconstitutional in the United States if directly applied to U.S. organizations.



The Global Gag Rule also violates internationally recognized human rights protecting the right of individuals and groups to speak freely and to participate in their countries' democracies.

With leadership by the United States, these rights have been enshrined in numerous and widely accepted international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), which the U.S. ratified in 1992. This treaty provides that:

Everyone shall have the right to hold opinions without interference...Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print (Article 19)

Under the restrictions of the Global Gag Rule, if a foreign organization refuses to compromise its rights to freedom of speech and

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Honoring California's

First Woman

Lawyer:

Clara Shortridge Foltz

by Selma Moidel Smith

On February 8, 2002, the women lawyers' event of the year—if not the decade—took place in Los Angeles. Seven hundred men and women of the bench and bar gathered for a gala luncheon to celebrate the renaming of the Criminal Courts Building in honor of California's first woman lawyer, Clara Shortridge Foltz.

Justice Sandra Day O'Connor, the first woman member of the Supreme Court of the United States, headed the list of speakers who presented a lively tribute to Foltz and also to leading women lawyers of today.

Speaking first were leaders of the sponsoring bar associations. Roland Coleman, president of the L.A. County Bar Association, welcomed the large audience, and Assistant U.S. Attorney Miriam Aroni Krinsky, president-elect, introduced the special guests. Melissa Widdifield, president of the Women Lawyers Association of Los Angeles, presented the woman lawyer who had made the day's events possible, County Supervisor Yvonne Brathwaite Burke. She related that Burke had won the Board's unanimous approval for renaming the courthouse in honor of Foltz.

Supervisor Burke gave further honor to women lawyers by recognizing a distinguished group of "firsts" who were present at the luncheon. Turning to the Honorees named in the printed program, she described each woman's unique "first" in practice, the judiciary, government, academia or the organized bar.

Central to the day's events were the two keynote speakers who concluded the luncheon program and then opened the renaming ceremony at the nearby courthouse.

Ronald M. George, Chief Justice of California,

recounted Foltz's struggles to become a lawyer, saying, "She was truly a woman of courage, dedication and foresight who viewed the profession that she expended so much effort to become a part of as a means of serving the public." He then introduced Justice Sandra Day O'Connor.

Justice O'Connor recalled Foltz's courage and determination in overcoming prejudice. "When she saw a wrong, she worked to correct it." She praised Foltz for opening the doors for all the women lawyers who followed her. (See listing of achievements in sidebar.) "This is the single most appropriate name that could be put on this building," she said.

The modern building now known as the Clara Shortridge Foltz Criminal Justice Center stands on the site of the courthouse where Foltz once worked as the county's first woman deputy district attorney. It houses the nation's largest district attorney's office and public

Highlights of Foltz's Career (1849-1934)

- First woman lawyer in California (after writing and promoting the bill to remove "white male" restriction from the law)
- First woman student at Hastings College of Law (after suing to gain admission)
- First woman lawyer to appear before California Supreme Court
- First woman to prosecute a murder case in California
- First woman to serve as a deputy district attorney in L.A. County
- First woman notary public in California (after drafting the law to permit women notaries public)
- First woman appointed to the State Board of Charities and Corrections
- First nationwide promoter of public defender idea—author of model bill adopted by majority of states, after which the nation's first public defender's office was opened in Los Angeles
- Author of California's first parole law
- Promoter of humane penal laws—forced removal of iron cages for prisoners in San Francisco courts
- Secured passage of California law permitting married women to serve as executors and administrators
- Secured passage of California constitutional amendment permitting women to engage in any lawful career
- Suffrage leader, chosen for first place on the California Honor Roll of the League of Women Voters

defender's office. The renaming is a tribute to this pioneering woman prosecutor who was also known as the "Mother of the Public Defender Movement."

Appropriately, the county officials who spoke at the courthouse ceremony included Presiding Judge James A. Bascue of the Los Angeles Superior Court, District Attorney Steve Cooley and Public Defender Michael P. Judge. Cooley's memorable salute was, "Welcome back, Clara. Thank you for inspiring us all."

One of those so inspired was Arthur Alarcon, Senior Judge of the U.S. Court of Appeals for the Ninth Circuit, who was an early promoter of the renaming. It was Alarcon who invited Justice O'Connor to speak at the day's events, and who conceived the idea of honoring "firsts" among present-day women lawyers. Judge Alarcon introduced Stanford Law Professor Barbara Allen Babcock to make a special presentation.

Professor Babcock was the first woman director of the Public Defender's Office in the District of Columbia. She is currently writing a biography of Foltz, due for publication in 2003. She related highlights of Foltz's life. "In 1878, when Clara Foltz became the first woman admitted to the California Bar, she was an obscure housewife in San Jose, deserted by her husband, determined to find a way to support her five young children. When she died in 1934, she was the famous First Woman Lawyer..." Babcock turned to the portrait of Foltz that was on display during the proceedings and announced that it was her gift to the County of Los Angeles. The portrait will hang in the newly-renamed building (see photo).

Present among the guests were a number of Foltz's descendants, including her great-grandson, Truman Toland, who painted the portrait in 1992. (He commented in private conversation that not even her family knew the full extent of her achievements). The family members were recognized and asked to stand by Supervisor Burke as part of her concluding remarks. Smiling warmly, Justice O'Connor noted that a young girl in the family had been omitted and Burke presented her as well. Then, with words of praise for all the participants, Burke brought the day's historic events to a close.

* * *

We should also note that Foltz was an active member of the National Association of Women Lawyers, having joined in 1914. She chaired the committee on Jurisprudence and Law Reform in 1926. She was unani-



mously elected Vice President for California, serving from 1927 to 1930. She was appointed to represent NAWL at the 1928 annual meeting of the American Bar Association, but was prevented from attending by the illness of her brother, U.S. Sen. Samuel Shortridge. She served as a member of NAWL's Executive Committee in 1930-31, and of its Advisory Committee from 1931 until her death in 1934.

The regard in which she was held may be seen in the names of those who served as her honorary pallbearers. They included Gov. Frank Merriam, California Chief Justice William Waste and five associate justices, four federal judges, prominent lawyers, and four leading women judges—Ida May Adams, Georgia Bullock, Oda Faulconer and Orfa Jean Shontz, all of whom were members of NAWL.

And yet to come: As a celebration of Foltz's life and work, the Los Angeles Superior Court and the County of Los Angeles have commissioned a work of commemorative art to be displayed at the Foltz Criminal Justice Center. The County Arts Commission is serving as artistic advisor. At this writing, three artists have been chosen as finalists and are scheduled to tour the site and gather more information about our subject. When the new work of art is installed, the rededication of the courthouse in honor of this extraordinary woman lawyer will be complete.

"A View from the Bench"

Excerpts of Justice Burke's Remarks at NAWL's August 2001 CLE program The Impact of Women on the Law



Justice Anne M. Burke
Appellate Court of Illinois,
First District

For me, law school and lawyering came late. I believe I came to a certain level of personal maturity in my adult life before I entered law school. I had a husband, four children, two houses and a dog. I also had a lot of life experience that I have come to believe was very healthy for me. All of these remained my filters as a law student, practicing attorney, advocate for juveniles, and member of the Appellate Court.

My view from the bench has been shaped by my background and my personal experiences. They did not begin the day I entered law

school or the day I was sworn in to the Appellate Court.

Myra Bradwell

Myra Bradwell, Illinois' first female lawyer, struggled her whole life for the opportunity to practice law. Denied the freedom to do so, she channeled her interests into founding *The Chicago Legal News*, the precursor to the *Chicago Daily Law Bulletin*.

The very courts she sought to practice before closed the door on her ability to practice law, but her impact upon the profession was enormous through her influence as a publisher. I can only imagine her pain and frustration in the face of so much overwhelming prejudice. She went on, none-the-less, to demonstrate not only steely courage, but also an unusual sympathy with others victimized by such repressive forces. She was never more provocative or effective than when she turned her attention in 1875 to one of Chicago's most controversial legal cases involving Mary Todd Lincoln.

Ten years after her hus-

band's tragic assassination, Mary Todd Lincoln was confined to a Batavia mental institution by her son Robert. Years of peculiar behavior and grief moved her family to have her committed.

The sanity trial of Mrs. Lincoln, heard here in Cook County, was a tragic public sensation. Following the testimony of a long line of witnesses, mostly male, her fate was sealed. Sealed, that is, before the entry of Myra Bradwell.

Bradwell was Mrs. Lincoln's neighbor on West Washington Boulevard. Her husband, circuit court Judge James Bradwell had done legal work for Mrs. Lincoln. Myra Bradwell felt certain that the former first lady had received meager justice at her sanity trial. She was determined to prove the court wrong.

To Robert Lincoln, Bradwell's intervention was an unwelcome "extraordinary" intrusion. He suggested that Mrs. Bradwell even curtail her frequent visits to his mother. "Mrs. Lincoln is as sane as I am," Bradwell was quoted as saying.

Enlisting support for Mrs. Lincoln in the Chicago press and taking advantage of Robert Lincoln's absence from Chicago during his summer vacation,

Myra Bradwell patched up a feud between the first lady and her Springfield sister, Lizzie Edwards, while at her urging, Judge Bradwell threatened a "warrant of habeas corpus" to the medical staff at the mental institution the Bradwells called "the prison

house.”

The mounting scrutiny of the Chicago press aided Bradwell in her quest. It was not Robert Lincoln’s finest hour.

Bradwell had grown accustomed during her life as being labeled as irrational and even “crazy” herself. Seeing Mrs. Lincoln subjected to such criticism was too much.

All through the fight, Myra Bradwell knew something that Robert Lincoln did not. Mary Todd Lincoln was, in fact, a most peculiar woman. But Bradwell knew the significance in distinguishing being “peculiar” from lunacy, eccentricity and male disapproved behavior, upon which Robert Lincoln and some medical experts focused.

Myra was relentless. Faced with ever-growing public criticism, the director of the mental institution soon rethought his diagnosis.

The court, too, rethought its judgment. “She is no more insane today than you or I,” Judge Davis, the jurist who originally ordered her commitment, declared in public.

On July 11, 1875, after a confinement of more than four months, Mary Todd Lincoln arrived in Chicago’s Union Station and changed trains for her trip to Springfield. Myra Bradwell had secured the first lady’s release and proved herself a sturdy neighbor, caring friend, and a tenacious advocate.

I mention this episode in the lives of Mrs. Lincoln and Myra Bradwell because it demonstrates something I feel very deeply about reflecting on women and the practice of the law.

It becomes clear in the actions of Bradwell and her remarkable legal thinking. Women bring a unique perspective to the practice of the law, a nurturing human awareness.



MYRA BRADWELL

Photo courtesy of the University of Illinois at Chicago, University Library Dept. of Special Collections

That awareness in Myra Bradwell permitted her the vision to recognize the injustice that confined Mrs. Lincoln. She knew how easy it was to label those who do not conform. She recognized its disastrous consequence on Mrs. Lincoln, because she knew the consequences that such judgments had already placed on her.

I believe that Myra Bradwell is not unique in this awareness. It is something that I trust we all bring to the profession of the law as women.

It is fair to assume that as lawyers, all of us have labored to be the best that we can be. Competency, ability, observation, the skill to absorb legal writing and the polish to apply all successfully to individual cases, is presumed.

Each one of us struggles with those details every day. We are bound together in the pursuit of that achievement with our brother lawyers. Striving for excellence is the glue of our profession.

The Life of the Legal Profession

But I also believe that there is a larger story to our lives as lawyers. It is that capacity within each of us to grow and stretch ourselves beyond the law. What sets people apart, I have found, is the persona shaped by the larger humanitarian components of our lives as women.

This humanitarian dimension to our lives is critically important to each of us as human beings and as lawyers. Perhaps you experience that when you teach someone to read or mentor them at a vulnerable period in their life.

Perhaps you are touched by it when you volunteer in your synagogue or church. Maybe you expand that component in your life playing the piano, singing in a chorus or, like one judge I know, by playing the

saxophone in the CBA orchestra (Judge Manning, please stand up).

Perhaps you've heard of the tap dancing judges who gather at the Union League for special lessons in fancy footwork? I am certain that when they sit on the bench, they do so with a comfortable persona, expanded by their interest and involvement outside the law.

In addition, I know that each of these judicial friends of mine has an advocacy in some activity outside the court in which they touch peoples' lives in critical ways. While enriching their character, it shapes their view of the world.

Professional Civility

Somewhere along the way, the pressure to succeed has superceded the *esprit de corps* that we once called common courtesy. Sadly, women are not immune from such conduct. I think women need to step back and think about who they are and how they are perceived.

I suspect for some, nurturing is perceived as a weakness and not a virtue within easy reach. But I am afraid it is essential for being a good lawyer or being a good judge. Instead, in my view, too many women are surrendering to conduct that leaves them ultimately appearing defensive in their relationships with colleagues.

Long before I became a lawyer, there were so many women who paved the way in our profession, extraordinary women who bore the brunt of gender injustice within the profession. These women, like Justice Mary Ann McMorro, Justice Jill McNulty, Justice Blanche

" women have traded their nurturing ... for more tough-skinned defensiveness that ensures that big chips sit on their shoulders ... "

Manning, Judge Helen McGillicuddy, and Esther Rothstein and many others, came fact to face with attitudes and obstacles that I, as an older new lawyer, never had to face even when I was the first and only woman on the Illinois Court of Claims.

Today, from my view from the bench, I think it is appropriate to ask ourselves as attorneys — "How do I act? What tone does my conduct set? What is the difference between being professional

and being human?"

Under the circumstances, something unexpected will always happen. How we react is important. For instance, opposing counsel is late. Do we whine? Do we trash the attorney to the court? Or do we respond with civility and reason and maybe go out and call them? Perhaps we are asked a question by the court that we were unprepared to answer.

How do we handle it? Do we become arrogant? Do we chastise the court? Our response must be professional. It must also be honest. It must also be civil. This is what separates the women from the men.

Women in the Law Today

When I was first appointed to the Appellate Court in 1995, there were only three women serving in the 1st District. Today, just over six years later there are nine. That is a significant statistic. Women are present on the bench in remarkable numbers. And I believe their influence as women is having an effect on the law. Women bring a unique experience with them to the bench. We bring a vision of life and humanity that enriches the life of the court and civilizes the effective practice of the law.

I note the civility of older women, seasoned professionals, who come before me in

Cont'd on page 30



MEMBER SPOTLIGHT

Meet Jane P. Wilson

NAWL member Jane P. Wilson is challenging a 23-year veteran of the Lake County Common Pleas Court, in Ohio. Clinicians suspect that Wilson may have been bitten by a long-dormant political virus, contracted as a child (see photo) from then Vice-President Richard M. Nixon. There may be a genetic explanation, however, as legend has it that her great-grandfather's hat was used to collect the ballots in the Electoral College for Calvin Coolidge. Gender has become a big issue in the county, because the only female judge is retiring and, Wilson says, it is possible that there will be no women elected officials in the Lake County Courts.

Wilson is well-qualified for the judicial post. She graduated from the University of Michigan Law School in 1984 and later becoming a partner in the law firm of McDonald, Hopkins, Burke, and Haber. She is currently a sole practitioner in Lake County, Ohio, specializing in workers' compensation law.

Wilson served for several years on the faculty of the National Institute for Trial Advocacy, including the Cleveland Courthouse Trial Academy.

Since 1998, she has been a member of the Lake County Bar Association's Mediation Committee and volunteers her services as a mediator for the Lake County Common Pleas Court.

Wilson is a former Adjunct Professor of Workers' Compensation Law at Cleveland Marshall College of Law, and is certified as a Specialist in the field of Workers' Compensation by the Ohio State Bar Association. She chaired the Law School Liaison Committees of both the Ohio Women's Bar Association as well as the Cleveland Bar Association's Commission on Women in the Law. In 1995, she won a landmark case regarding workers' compensation payments in the Supreme Court of the State of Ohio.

NOW Seeks Pro-Choice Republican Women for Justice Department

President Kathy Rodgers of NOW Legal Defense and Education Fund has asked for assistance in identifying women lawyers who may be candidates for appointment to non-civil service positions in the US Department of Justice. Kathy is heading up a task force comprised of numerous women's groups, the purpose of which is to develop a list of Republican pro-choice women lawyers at the middle-to upper-management level for the administration to consider for non-civil service appointments. Part of the purpose of developing the list is to demonstrate that there is a large number of women who fit these criteria.

Please send names, contact information, affiliations and any other information that you think might be helpful to Dina Bakst at NOW LDEF at: dbakst@nowldef.org; phone: (212) 413-7516.

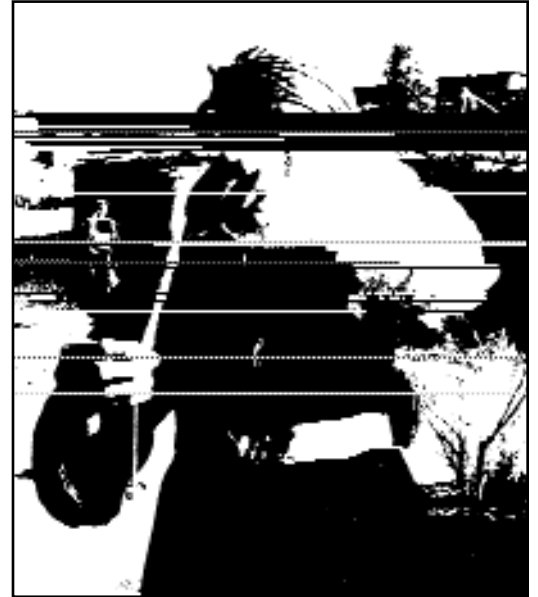
AFGHAN WOMEN: the Challenges Ahead

by Eva Herzer

"I couldn't hear. I couldn't see. I couldn't walk. It was as if the world no longer existed to me and I no longer existed to the world". This is how Faranooz Nazir described her life of the last five years, a time when Afghan women were forced to live under their burqas, a tent-like garment covering them from head to toe, with only a small mesh panel around the eyes, for limited vision and air. Nafir, like thousands of other Afghan women, was able to shed her burqa as anti-Taliban forces took control of her home area in the North of Afghanistan in November of this year. While the United States did not go to war in Afghanistan so that Afghan women could see the light of day again, the fall of the Taliban regime was a pivotal turning point in one of the darkest moments of women's history.

Although the military defeat of the Taliban has opened the door to the restoration of women's fundamental human rights in Afghanistan, Afghan women face huge obstacles in reclaiming the rights they were able to freely exercise pre-1996. Their largest obstacle is the fact that the Afghan victors in the "War on Terrorism" are the men who make up the Northern Alliance, a group whose treatment of women is only marginally better than that of the Taliban.

The Northern Alliance generally appears to have a reputation for brutality. Women in areas traditionally held by the Northern Alliance have rarely worked outside of the home or socialized in public. While the Northern Alliance did not codify its fundamen-



Photos courtesy of Dr. Lynn Amowitz,
Physicians for Human Rights,
www.phrusa.com

talist views on women, it practiced them in the name of custom. These customs have been questioned by few in the largely rural and rather isolated areas under Northern Alliance control. "Why would a woman want to leave her pots and children?" asked Wahid, a farmer interviewed in December by the *New York Times*. "It doesn't make sense."

Similarly, Bibi Asha, a mother of ten, told the *Times* "we will never take off our Burqas because this is tradition for us." Most of the women in Northern Alliance-held rural territories have lived very poor, illiterate, isolated and traditional lives far from the aspirations of the Soviet-era educated Afghan women who held parliamentary and ministerial posts in pre-Taliban Afghanistan.



These rural women and especially their husbands, who now make up the majority of the new government of Afghanistan, have little in common with the women who held more than half of all civil service jobs before 1996. Those women taught and studied in Afghan universities and made up nearly half of the Afghan professional population. It is therefore not surprising that Afghan women who seek to reclaim their rights are cautious, both about their personal safety and their assessment of women's chances to regain their status in public life.

Notwithstanding great difficulties, Afghan women, many of whom are highly successful professionals living in exile, have seized the moment and have organized themselves rapidly in November and December of 2001 to claim their place at the negotiations table for the future of Afghanistan. Three women managed to participate in the UN-sponsored Bonn talks in the first week of December, which led to the formation of an interim government for Afghanistan.

They lobbied for women's rights and the inclusion of women in the new government. These women tried to walk the tight rope between the restoration

of women's rights and what is realistic to achieve at a time when women have been virtually eliminated from public view and life.

Ms. Wali, an exile who currently is the director of Refugee Women and Development in Washington D.C., was a delegate to the Bonn talks. She had persuaded key players, including the former king of Afghanistan, to sign a statement two weeks before the Bonn talks to support the right of women to a full role in Afghanistan's future political life. In Bonn, she stressed the need for actions, not just words in support of women. She also recommended that the new government immediately address the most urgent problem of Afghan women: their extreme poverty and the number of widows who have no means to sustain themselves.

Afghan women's rights advocates are of course in a most difficult position. They are quickly branded as pro-Western because a distorted and politicized form of Islam continues to predominate among Afghan decision-makers. Afghan activists, however, counter this charge by pointing out that nothing in the Koran speaks against women's civic and professional participation in society. At the same time, they are realistic and do not expect the male powers-to-be to restore women's rights fully overnight, nor do they expect that all women will lift their veils immediately and take full roles in public life. Rather they advocate for women's right to choose their own life-styles. To avoid being ostracized, they align themselves with all the ethnic and religious groups that have been deprived of representation in Afghan public life.

Women's advocates also do find allies among some of the men in power. A regional governor, Ismail Khan, for example, repeatedly stressed his commitment to women. "I was in prison for three years, but you were in prison for

Afghan women's rights advocates are ... quickly branded pro-Western because a distorted and politicized form of Islam continues

Only a very small number of women were included in the interim government and women were excluded from the more powerful domains

six years under more difficult conditions," he recently said, while encouraging women to form a women's movement in Afghanistan.

Similarly, the new Afghan Minister for Justice, General Mohammed Qasim, pledged to investigate thousands of female abductions committed by the Taliban, who according to the Qasim regularly sold women as sex slaves to fund their regime.

The Bonn talks resulted in the Bonn Agreement for an interim 29-member government, which includes two women, both physicians, who will head the Ministry of Health and the Ministry of Women's Affairs. This government, which started operations on December 22, 2001, is to rule for a 6 month period, during which time a Loya Jirga, or grand council of Afghans, will convene to discuss and plan a more democratically elected transitional government for the following two years.

The transitional government will have to draft a constitution and prepare for a popular election of the next government. The Bonn Agreement, from the women's perspective, is notable on two accounts. First, the inclusion of a women's ministry, will provide a clear focal point for women's rights and will provide a channel for international funding. Second, the Agreement is notable for what it did not do for women. Only a very small number of women were included in the interim government and women were excluded from the more powerful domains of government, such as defense, finance, foreign and interior affairs.

While the Bonn Agreement is far from optimal for women, it might very well have ignored the issue of women altogether had it not been for the Afghan Women's Summit, which took place in Brussels during the week of the Bonn talks. The summit brought together almost 40 Afghan women from

Afghanistan, Pakistan, Iran, the U.S. and Europe to focus on the role of women in post-Taliban Afghanistan.

The summit was an excellent example of collaboration within the international women's movement. It was funded and hosted, at the request of Afghan women, by the Feminist Majority (US), Equality Now (US) and the European's Women's Lobby, in collaboration with the Gender Advisor to the U.N. Secretary General and the Executive Director of UNIFEM.

At the end of their 3-day meeting, the Afghan women issued The Brussels Proclamation, which addresses four main themes: Human rights, refugees, healthcare and education. It sets forth a list of demands, most central among them:

- * The right of women to vote.
- * Equal pay and access to education, employment and health care.
- * An emergency plan for reopening schools by March 2002 for girls and boys, with a new curriculum and training for teachers.
- * The inclusion of Afghan women lawyers in the development of the new constitution, which would include principles of non-discrimination.
- * The rebuilding of medical facilities, including provision for psychological counseling and maternal and child health care.
- * Central inclusion of women in the Loya Jirga.
- * The protection of women from forced marriages and sexual harassment.

While Afghan women discussed their needs and formulated their recommendations, women's rights activists from Belgium, Croatia, France, India, Italy, Jordan, Morocco, Netherlands, Pakistan, Palestine, Somalia, Tajikistan, Turkey, UK and the US met

in a parallel session to formulate strategies for the implementation of the Brussels Proclamation issued by the Afghan Women's Summit. The Declaration of Solidarity, devised by this group of activists, lawyers, artists and parliamentarians, included the following key points:

- * An advocacy campaign to ensure that funds allocated by the international community for the rebuilding of Afghanistan are conditioned on the participation of women in decision-making over the granting of the funds, the inclusion of NGOs among the recipients of such funds, and the use of the funds for the implementations of the priorities outlined in the Brussels Declaration.

- * A declaration to use March 8, 2002 as a day to mobilize worldwide for the implementation of the Brussels Proclamation.

- * The creation of an international task force of women's rights lawyers, with expertise in drafting legislation and constitutional law.

- * The development of political support for the Women's Ministry, created by the Bonn Agreement.

- * The need for a fund-raising campaign to support grassroots women's initiatives in Afghanistan, with a minimum of \$1 million over the next three years.

The full text of the Brussels Proclamation and the Solidarity Declaration can be found at <http://www.globalfundforwomen.org/4news/eventhighlight-brussels.html> and at <http://www.globalfundforwomen.org/4news/brussels-solidarity.html>

Immediately following the Afghan Women's Summit, Afghan women took their demands to the political halls of power. On December 6, 2001 they met with the European Parliament and a few days later with key members of the US Congress.

Progress for Afghan women will depend, in large part, on their ability to persuade the international community to condition its financial support for Afghanistan on the principles set forth in the Brussels proclamation.

The success of the interim government is closely linked to international funding. Of course, the interim Afghan government faces huge obstacles from within, including ethnic strife, political power struggles by traditional tribal leaders and fundamentalist forces, who oppose democratic development. Nevertheless, the success of this government will also depend on obtaining the funds needed to rebuild and economically develop a country destroyed by two decades of war.

If governmental and private funders take the Brussels Proclamation as their guideline, they will support a successful nation building effort and follow what has by now become conventional wisdom among those working on development issues:

The surest way to bring a poor nation into prosperity is to support its women. Supporting women's equal rights by providing for women's education, for their employment and land ownership, granting them micro credit and access to political decision making, all correlate highly with lifting a nation out of poverty.

Many development projects around the world have resulted in no decrease in the poverty level and monies have disappeared into bottomless pits. This seems to not be the case where support is focused on women because support for women usually translates into support for children and their immediate communities.

Unfortunately, this truth still eludes some key decision makers, including, surprisingly, Secretary General Kofi Annan. In his Nobel Peace Prize acceptance speech, Annan said that it would

Many development projects around the world have resulted in no decrease in the poverty level and monies have disappeared into bottomless pits.

be a mistake to force Afghanistan to make increased rights for women a condition of aid. Nevertheless, linking aid to women's rights is probably the only viable mechanism to gain human rights for Afghan women and successfully rebuild Afghanistan.

At this point, the future for Afghan women is very uncertain. They have come together to formulate their demands and have proposed guidelines for the future reintegration of women into Afghan society as full members. These women leaders wisely take an open view as to the goals of women and seek to make room both for a modern and a more traditional way of life for women, thereby sidestepping the debate over modernism versus religious fundamentalism.

An international process of collaboration within the women's movement is now in place. International aid will soon begin pouring into Afghanistan. The task for women's rights activists now is to lobby their countries, the UN and private funders in support of the Brussels Proclamation.

This is a task that is easy for us but still dangerous for Afghan women. "Many Taliban have shaved off their beards and changed their headdress, but not their minds," noted an Afghan activist in Brussels, "many of us are still afraid to show our faces or to speak out. We think they will start fighting again".



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Afghan women today have a real chance to succeed. Yet given the relatively small number of Afghan women's activists and the dangers they face from their mostly fundamentalist society, international support is pivotal to their success.

NAWL, in its first post-Taliban step of solidarity, joined an international campaign in December of 2001 to include women in any discussion of Afghanistan's political future. We joined in calling on the UN Security Council to support the reconstruction of Afghanistan, in consultation with Afghan women's organization and to undertake long-term initiatives for free and fair elections in Afghanistan with the participation of all people, including women, on the basis of equality.

The Feminist Majority's excellent web site (<http://www.feminist.org/afghan/intro.asp>) provides various quick ways to express your support. You can send email messages to key decision-makers, join an action team or donate funds to grassroots projects. Ultimately our support for women half way around the globe is not only for their benefit, but for our own because the terror we experienced on September 11 can not be prevented from reoccurring by simply destroying a terrorist leader or group. Rather the security we seek can only be achieved by actively supporting the development of democracies and the implementation of human rights at home and around the globe.

GETTING CLEAR:

Tell the Truth and Get Focused

by Susan Ann Koenig

So often in life when we are not getting what we want or accomplishing what we set out to do, we discover it is because we are not clear.

An important first step to creating a rich and satisfying life is getting clear. It is essential to end confusion or ignorance both about how things are and about how we want them to be.

When we lack clarity about our lives, it is difficult to focus our energies on needed changes. Until we know what it is that we want to be different, we are unlikely to begin planning the actions needed. Without our road map for our lives, we are more likely to end up off of our paths and lost on our way.

When we are clear, we see our future and all of its possibilities. We become free to dream, to create, to plan, to set goals. We are poised to begin bringing into our lives all that we hope for, and to let go of all that does not serve us. We bring our dreams into reality.

Consider various areas of your life to assess for the level of confusion and uncertainty in which you may be operating. Are you clear that you are practicing an area of the law that is satisfying to you? Do you know whether you have enough budgeted to meet your financial goals? Do you understand why you are spending your free time the way you do? Do you know how much time you spend in exercise each week?

If you feel muddled about certain areas of your life, your are at risk for remaining stuck.

How is it that we sometimes go for long periods of time without ever really seeing what is happening in our lives? Our humanness can explain much of it. Maybe we are afraid of what we will see if we take a close

look. Perhaps we are too busy to stop and look closely. Or it could be that we simply have not been paying attention.

Whatever the reason, now is the time to consider the importance of achieving clarity in all aspects your life.

Dr. Maria Nemeth, author and clinical psychologist who presents workshops on mastering life's energies, encourages us to look, to see, and to tell the truth about our lives.

These important steps, says Nemeth, enable us to gaining clarity about where we are and where we are headed.

During those times that we feel overwhelmed with life, and we know that something simply has to change, our suffering motivates us to take the action needed.

Try looking at some areas of your life by asking some of these questions:

Relationships - How do my beliefs about loyalty impact who I choose to spend my time with?

- Why do I fail to ask for what I want when I want it? What stops me?
- Are my childhood ideas about family roles impacting me today?
- Am I trying to fix or change the other person rather than looking inward?
- Having I really been giving time to those relationships I claim are important to me?

At work - How do my attitudes about the expectations of others impact my peace of mind?

- When was the last time I really let someone help me at work?
- Am I telling the truth about when my workload will be less demanding?

- Do I know how many hours a week I waste because I failed to plan or organize?

- What would I have to do if I wanted to increase my pay or reduce my work hours?

Time - How much time do I spend each week in activity that is designed more to meet the expectations of others than to bring my own dreams into reality?

- Why don't I think I deserve 2 hours a week for me alone? How about an hour a day?

- Who am I afraid will judge me if I start taking time for myself?

- How many times a week do I take just 5 minutes out of my work day just to breathe, stretch, and refocus?

- How many minutes per day do I spend responding to email that is not useful to me?

- *Money* - Is there anything important in my life that I am giving up for the sake of money?

- How much money do I really need to have an abundant life?

- When was the last time I really examined, in detail, where I spend my money?

- Do I know how much debt I owe? How much I have in savings?

- Do I know what my credit report looks like?

Creativity- How many years have I let go by without pursuing one of my life's passions?

- Am I afraid of being criticized if I express myself creatively?

- Why do I think play is a waste of time?

- How long have I been talking about taking a class just for fun? Why haven't I signed up yet?

- Would I enjoy spending time journaling? How about writing each day?

Health - Why do I claim I don't have time for my annual pap smear, a mammogram, or a trip to the dentist?-

- Am I allowing work to impair my

health? Why would I do that?

- Am I telling the truth about why I eat the way I do?

- Just how many servings of vegetables do I eat each day?

- What fun goal could I set that would result in my improved health?

Energy - Why do I choose to refuse to forgive someone who has hurt me? What does it cost me?

- What excuses or reasons do I give for not exercising? For exercising in excess?

- How many times a day do I make a statement of judgment or criticism?

- How many hours of sleep do I get each night? Is it enough?

- Do my eating habits boost my energy or lower it? How?

There is value in not only examining our behaviors, but also our thoughts, attitudes, emotions, and beliefs. Often they are blocking us from reaching our goals. Once we recognize them, we can shine the light on them and face them. Many of them will melt the instant they are brought out into the open.

Watch for some of the telltale signs of thoughts from Nemeths' "Monkey Mind Checklist" that interfere with our dreams becoming reality:

Blaming others. "I'd be partner by now if only George didn't have it out to keep me down." Recognizing that we have been giving someone else the power to make our dreams come true can be enlightening.

Making excuses. "I know I promised I would have this completed by the first of the month but a lot of unexpected things came up." We can always come up with an excuse why we have not kept a promise to ourselves or others, but perhaps the truth is that we have simply not made it a priority.

Being a martyr. "Unless you have an infant and a toddler, you have no idea how hard my mornings are." Our lives are challenging. Sometimes we find it's easy to complain about how hard life is rather than taking action to change our situation.

I've been working just as hard as she has but nobody seems to notice my accomplishments

Making comparisons. "I've been working just as hard as she has but nobody seems to notice my accomplishments like they do hers." When we give our energy away to negative thinking, it limits our ability to direct our focus to making the desired changes in our own lives.

Deflecting with humor. "One of these days when my children are grown and can support me I won't have to work 7 days a week to support them." Become aware of the number of times you joke about certain areas of your life. Your chuckles may give you insight into areas you have been avoiding examining.

Getting cranky. We all know what this one sounds like. A cantankerous mood is a sign that we want to change something in our lives. It is worth noticing.

Pay attention to your thoughts and words. Do you recognize some of these? If so, you are on the path to getting clear about how your own thinking has gotten in the way of your path to the life you want and deserve.

When we become willing to look, see, and tell the truth about our lives, says Nemeth, we can proceed to take authentic action to change it. Unless we get clear, however, we will remain forever in a fog without an ability to see the path that leads us to our dreams fulfilled.

Getting clear will help us to set the goals for an action plan that can bring our dearest hopes and sweetest dreams into reality.



Susan Ann Koenig is a lawyer in Omaha, Nebraska, where her general practice emphasizes family and juvenile issues. She is also an adjunct professor at Creighton University School of Law and at the University of Nebraska at Omaha School of Social Work.

WHITE HOUSE SENDS WOMEN BACK TO THE PAST

President George W. Bush's leadership ratings are high, but what is not as well-publicized are this administration's decisions to dismantle programs aimed at helping women and to bolster fundamentalist values in the guise of providing health care.

Shutting down the White House Office for Women's Initiatives & Outreach, established by the Clinton administration in 1995.

Curtailling the Department of Labor's "Equal Pay Matters" initiative. Established to fight discriminatory pay practices and train women for higher-paying jobs, this was another relic of the prior administration.

Proposed closing of 10 regional field offices of the Department of Labor's Women's Bureau (established in 1920).

Another disturbing sign that the Bush administration's political capital will be spent to set back women's hard-won advances, is proposed new federal regulation that would classify a fetus as a child. Health & Human Services Secretary Tommy Thompson says it is "the most expedient way to get prenatal care to pregnant women who lack health insurance."

It's time to start paying attention to the spin this administration puts on issues relevant to women.

NICKEL AND DIMED:

On (Not) Getting By in America

By Barbara Ehrenreich
Metropolitan Books, 2001

Edited by Amiram Elwork and Mark R. Siwik

At a recent bar association meeting, an attorney said that some large law firms were now giving potential new attorney-hires various employment tests to determine leadership, rainmaking ability, and so forth. I responded that my company, a national retail chain, gives so-called “honesty tests” to applicants. “Oh, that’s awful – to put attorneys in your department through that!” was the response. “No,”

I clarified, “we only give it to our retail store employees.”

The group seemed relieved, implying that while such a requirement would be unthinkable for the lawyer-class, it was at least understandable for other employees.

This “class bias” is part of the story that Barbara Ehrenreich seeks to explore in her new book, “Nickel and Dimed: On (Not) Getting By in America.” The author, a confirmed member of the chattering class, forsakes her middle-class lifestyle for four week-long forays into different minimum-wage jobs to see how one actually lives – as a waitress; cleaning maid; nursing home aide; and retail employee, and provides a witty but sad account. Ehrenreich concedes that she starts with many advantages over the typical minimum-wage worker, namely, that she is white; speaks English as a first language; has a car to start with; and is

without children. She also gives herself a \$1,300 start-up fund. As she notes, “In poverty, as in certain propositions in physics, starting conditions are everything.”

The result is a “you are there now” piece which transports the reader into a low-wage, limited life world that you may think you know, but don’t. Ehrenreich starts with the application process in these jobs – taking a urine drug screening test at an inconveniently located facility; interviewing with managers who can’t keep one applicant separate from the next; and completing an “opinion survey” (asking in an agree/disagree format your responses on such things as lateness, stealing, and illicit drug use).

The actual work process is even more disheartening. Although most people recognize the dignity in any work, whatever its status level in socioeconomic terms, the view from the bottom up is disconcerting. There is, for example, a hierarchy within a hierarchy (the minimum wage worker at the convenience store doesn’t want to deal with a minimum wage cleaning lady). There’s also the struggle to get through the day without guaranteed bathroom breaks and with junk food sustaining the worker during physically draining work days. As Ehrenreich notes, “My feet hurt after four hours of work, and I wear my com-

fortable old Reeboks, but a lot of women run around all day in thin-soled moccasins.”

Housing proves to be the greatest obstacle. The author notes that the proportion of income spent on even semi-decent housing is much higher than standard government reports – and even this doesn’t get you much. In her Minnesota stay, for example, the author temporarily stays in a “residential” motel, which is a step below the Key West trailer park she occupied. “Sometime around four in the morning it dawns on me that it’s not just that I’m a wimp. Poor women – perhaps especially single ones and even those who are just temporarily living among the poor for whatever reason – really do have more to fear than women who have houses with double locks and alarm systems and husbands or dogs. I must have known this theoretically or at least heard it stated, but now for the first time the lesson takes hold.”

The author trenchantly observes, “Expenditures on public housing have fallen since the 1980s, and the expansion of public rental subsidies came to a halt in the mid-1990s. At the same time, housing subsidies for home owners – who tend to be far more affluent than renters – have remained at their usual munificent levels. It did not escape my attention, as a temporarily low-income person, that the housing subsidy I normally receive in my real life – over \$20,000 a year in the form of a mortgage-interest deduction – would have allowed a truly low-income family to live in relative splendor.”

Ehrenreich evaluates her brief foray into this world, asking not only “how well I did at work but how well I did at life in general, which includes eating and having a place to stay. . . . My track record in the survival department is far less admirable than my performance as a jobholder. . . . Two jobs, or at least a

job and a half would be a necessity, and I had learned that I could not do two physically demanding jobs in the same day, at least not at any acceptable level of performance.” She further notes that some economic estimates have estimated a living wage of \$30,000 for a family of one adult and two children, implying a wage of \$14 per hour. “The shocking thing is that the majority of American workers, about 60 percent, earn less than \$14 an hour.”

As Ehrenreich concludes, “These experiences are not part of a sustainable lifestyle, even a lifestyle of chronic deprivation and relentless low-level punishment. They are, by almost any standard of subsistence, emergency situations. And that is how we should see the poverty of so many millions of low-wage Americans – as a state of emergency.” The book will not leave you with a stack of facts and figures to spout out or deep intellectual theories about the nature of poverty. It will, however, leave you with a glimpse of the low-wage life as actually lived.

Reviewed by Lorraine Koc, NAWL Member-at-Large and General Counsel for Deb Shops, Inc. since 1985. Lorraine attended the University of Pennsylvania BA/MA/JD

THE ESSENTIALS OF FLORIDA MENTAL HEALTH LAW

Stephen H. Behnke, Bruce J. Winick and Alina M. Perez
Published by W.W. Norton & Company, (c) 2000

Reviewed by Gail Sasnett-Stauffer,
Randy Patton and Rhonda Chung-de Cambre

This book is an addition to two other books published by the same firm, which focus on mental health laws of particular states (the others being California and Massachusetts). It represents a timely publication offering rational and understandable explanations of the various statutes and cases, which presently define the mental health legal framework in the State of Florida.

Florida is one of 45 states and also the District of Columbia, which has enacted some form of licensure or certification for professional counselors. Typically, this group of professionals includes mental health counselors, clinical social workers, and marriage and family therapists, all of whom have a scope of practice delineated primarily by state statutes.

Of course, every state licenses clinical psychologists, who usually hold a Ph.D. or Psy.D. degree, and psychiatrists, who have medical degrees plus additional specialization. The scope of practice for each of these professions differs from each other and from that of the licensed professional counselors.

Adding to the complexity of forensic practice in this area are ongoing changes due to "fine-tuning" of the licensure act or other statutes, such as the involuntary commitment law (the Baker Act) in Florida: court decisions; changes being forced upon

the entire mental health profession largely due to managed care providers; and the dynamics of a state with diverse cultural demographics and varying perceptions of what constitutes a mental condition.

The whole picture becomes somewhat hazy and fraught with gray areas for the mental health practitioners, who try to find a balance on a fine line between effective and ethical patient care, occasional conflicts between the law and professional ethics, the effects of cultural differences (including language) on the patient/practitioner relationship and the pressures of cost containment.

The book is organized into two parts. Part one presents an introduction to the law. This seems aimed more at the mental health practitioner than the attorney, but it contains an interesting discussion of the Tarasoff case and its Florida progeny. Briefly, Tarasoff is a California decision which imposes a duty to protect (not to warn, as the authors carefully distinguish) a third party whom a practitioner has reasonably determined may be a foreseeable victim of serious danger by her patient.

The California case essentially placed the perceived public safety issue on a higher level than therapist/patient confidentiality. Florida's statute enacted in response to Tarasoff elaborates a number of condition

which, if met, permit (but do not require) therapists to breach confidentiality for the purpose of warning a third party of danger from a patient. Subsequent court decisions have altered the landscape somewhat among the different classes of mental health practitioners in the state.

The remainder of part one provides an excellent discussion of the concepts of privacy (the right to decide how to live one's own life), confidentiality (the patient's right to have communications with the therapist kept within the bounds of the professional relationship), and testimonial privilege (the patient's right to prevent the therapist from revealing confidential communications in a legal proceedings).

The authors also take this opportunity to explain the mandatory reporting requirements which exist in Florida for three protected classes of people: children (under 18), the elderly infirm, and dependent adults with mental or physical disabilities which significantly impair their ability to perform activities of daily living.

The second part of the book is written in a question and answer format, which is a favorite of the reviewers. Essentially, these 200 questions and answers represent most of what you always wanted or needed to know about the mental health laws in Florida but were possibly afraid to ask. The questions cover the following topics:

- The legal system and process
- Involuntary hospitalization and treatment
- Criminal law
- Subpoenas and court orders
- Guardians and substitute decision-making
- Confidentiality, testimonial privilege, and mandatory reporting
- Record-keeping
- Professional liability
- Children and families

One appendix reprints Florida Statutes and regulations, and a second appendix provides sample forms and letters, including a subpoena duces tecum for deposition and an informed consent letter for a therapist's use with potential patients.

We enthusiastically recommend this book for your consideration. It is an easy and informative read. Jacket comments by Christopher Slobogin, J.D., Professor at the University of Florida Levin College of Law, summarize our impression " * ..If you practice forensic mental health in Florida, you should have this book."

freedom to petition its government, the organization is denied all U.S. family planning funding. In effect, the Global Gag Rule holds these basic human rights hostage by denying health care organizations vital resources for family planning and other reproductive health services.

Center for Reproductive Law and Policy (CRLP) v. Bush

The Global Gag Rule is government censorship of political speech that President Bush disagrees with: speech that promotes human rights law reform and public education regarding abortion. While organizations working to criminalize abortion or to increase restrictions on access to abortion are not censored by the U.S. government, groups like the Center for Reproductive Law and Policy (CRLP), a U.S.-based human rights organization and its foreign partners who support abortion rights as human rights are gagged.

In June 2001, CRLP and its individual human rights lawyers challenged the Global Gag Rule in court. *CRLP v. Bush* is the first lawsuit that focuses on the Global Gag Rule's limitations on free speech promoting law reform under international human rights standards.

This challenge is brought by a U.S. legal organization and individual human rights attorneys because the Global Gag Rule prevents them from both speaking freely and working with foreign organizations to lobby effectively for abortion law reform. CRLP seeks to establish that the U.S. government cannot restrict the speech of human rights advocates working in the United States or overseas.

CRLP charges that the global gag rule violates the U.S. Constitution's First Amendment guarantees of freedom of speech, freedom of peaceable assembly and association and freedom to petition the government for redress of grievances.

In addition, the global gag rule violates the Fifth Amendment, both under the due process clause because of its vagueness and under its equal protection component because it intentionally discriminates against CRLP, its attorneys and all other similarly situated persons

who need to associate with foreign organizations to maximize the effectiveness of abortion rights speech and advocacy.

The gag rule also violates the freedom of expression, political participation, political association and gender equality guarantees found in various international treaties signed and ratified by the United States, as well as other key international documents the United States has adopted.

These international human rights instruments include the United Nations Charter, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man.

CRLP v. Bush was dismissed by a federal judge in July 2001 and has been appealed to the U.S. Second Circuit Court of Appeals.

The Global Democracy Promotion Act

On February 15, 2001 Senator Barbara Boxer introduced the Global Democracy Promotion Act of 2001 (S. 367) in the Senate and several days later Congresswoman Nita Lowey introduced the same legislation in the House of Representatives (H.R. 755).

This bill would prohibit restrictions on foreign assistance based solely upon medical services, including counseling and referral, provided by foreign organizations with their own funds. It would also prevent the U.S. from imposing unconstitutional restrictions on legal lobbying and advocacy. In practical effect, it would eliminate the Global Gag Rule.

The Senate Foreign Relations Committee held hearings on the Global Gag Rule in July. Representatives from several overseas organizations testified about the damage the Global Gag Rule is causing to their programs.

Ironically, the Center for Reproductive Law and Policy represented one of the witnesses in federal court the day before the hearing to obtain assurances from the U.S. government that it would not cut off her organization's funding due to her testimony – otherwise she would have been banned even from speaking at a congressional hearing.

The Global Democracy Promotion Act has substantial support in Congress. Conservatives in the House of Representatives narrowly defeated the provision in an extremely close vote.

The Senate strongly supports the Global Democracy Promotion Act and included it in the Senate version of the 2001 Foreign Operations Appropriations Act. However, the language was ultimately stripped during conference committee due to pressure from anti-choice members.

Advocates urging the elimination of the Global Gag Rule are optimistic that the Global Democracy Promotion Act has a chance of passing in 2002. Last year, bi-partisan efforts to repeal the restriction came close to becoming a reality. If Congress passes this crucial legislation in 2002, President Bush will be forced to choose between signing the language to overturn the Global Gag Rule or vetoing the provision and once again unmasking his anti-choice extremism.

The American Bar Association Adopts Resolution Opposing the Global Gag Rule

On August 7, 2001 the American Bar Association (ABA) voted to adopt a resolution against the Global Gag Rule. The resolution's primary sponsor was the Section on Individual Rights and Responsibilities, which focuses on the protection of civil and human rights and the promotion of social justice issues. Eight other legal entities co-sponsored the resolution, including the Section on International Law and Practice and the Commission on Women in the Profession. The support of the American Bar Association and other legal and human rights organizations is extremely important in exposing the Global Gag Rule as a violation of individual rights and fundamental freedoms.

A Call to the United States to Live Up to its Values

In the post-September 11 world, Americans have renewed their commitment to protecting the freedoms that make this nation great: fundamental values that are embodied in our Constitution, such as the right to freedom of

speech and respect for individual self-determination. There could not be a more appropriate time for the United States, the leader of the free world, to lift the gag on free speech by suspending this undemocratic restriction. The global gag rule sets a lower standard for the rights to freedom of speech and freedom of association for our allies abroad than we enjoy in the United States.

Now more than ever, U.S. policy must strive to impress upon the world what we truly stand for. The gag on speech and the ability to participate in law reform is a direct affront to American values. We are exporting a policy that is contrary to the very values that we are now – more than ever – undertaking to defend.

The freedom-loving people of America must join together in demonstrating that the United States is committed to the universality of human rights and civil liberties – by calling for an immediate end to the global gag rule.

i The 1973 Helms Amendment to the Foreign Assistance Act already restricts U.S. funds from being used for these purposes.

ii First Amendment to the U.S. Constitution: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

Julia L. Ernst is the Center for Reproductive Law and Policy's DC-based International Legislative Counsel, works on U.S. foreign policy as it affects women's reproductive rights in other countries, and is a plaintiff in CRLP v. Bush.

Molly Diachok is the Center for Reproductive Law and Policy's Government Relations Program Assistant. For more information go to www.crlp.org.

court for oral arguments. I notice a special flavor in their briefs. I recognize a special sense of advocacy in what they say. I see women whose courtroom skill has been enhanced by effective living and life experience. Their perspective is unique. They are easy to relate to and easy to understand.

But I also see young women, and I know they bring another set of experiences with them which is refreshing and enthusiastic. We are successful and thriving in a profession that not too long ago was considered a "man's profession."

Just ask Myra Bradwell. My concerns for women in the profession come from observing what some women have had to give up in order to achieve success.

Sometimes with the need to over-compensate in a tough profession, with a long history of gender unwelcomeness, women have traded their nurturing skills for more tough-skinned defensiveness that ensures that big chips sit on their shoulders, and a natural gift gets abandoned.

The irony is, of course, that gift of nurturing has never been more needed in our profession. Just listen to the monologues of Leno or Letterman. Nurturing lawyer, sadly, has indeed become a national oxy-

moron. The dignified grace of Atticus Finch, the wise hero of *To Kill a Mockingbird*, seems to have been irrevocably lost to Sienfeld's fast-talking Johnnie Brown. How can this image be changed? How can this be altered?

I believe that women in the law can reshape the character of the profession. They can do so, with their natural gifts for nurturing. They can do so, by trading defensiveness for effectiveness; by swapping attitude for professional courtesy; and by injecting the life of the court with balance, clarity and reason.

This is what I see from the bench. This is what I see unfolding before me in oral arguments, and written transcripts. It is what I have learned from a house full of kids and barking dogs. It is what I have come to recognize in trying to make life fuller for the disabled. It is what I feel as a mother seeing both her daughters choose to practice law. And it is what I have come to believe makes us fully human, realistic and capable of high achievement.

I know that women are having a significant impact on the life of the law in our nation. I do see women bringing renewed civility and effective behavior to the courts. I hope that this will be behavior that is more frequently imitated by others in our profession. All of us can

train ourselves to be more nurturing through our engagement of others in need. There is no better way to strengthen those skills. Being a nurturing person disposes an individual to more effective listening. So remember that what you do outside the court, comes in with you to the court. If you are effective and generous outside the court, you will be effective and generous when you come into it. If you have honed your willingness to listen outside the court, you will bring that clarity with you when you come into court.

I make no excuses for being a nurturing person. The act of nurturing needs no defense. I shudder before the alternative and dread its loss when I experience it in the court, in the grocery store, on the highway or in families. All of us can help to bring its balancing grace into the world. It is as near as a kindly word and as close as a sympathetic heart.

As the bard reminds us, "earthly power / doth then show / likest god's, / when mercy seasons justice."

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