

Chair Column

By Carolyn Foley

In this issue, we profile three impressive WICL members (Judy Margolin, Rachel Sagan and Carol LoCicero), revisit Deborah Tannen’s study of the difference between how men and women communicate in light of the current democratic primary race, report on a proposal to modify the billable-hours model used by most law firms and summarize our plans for the coming year.

But first, before we move on, we pause to thank **Stephanie Abrutyn** for her outstanding service as the WICL co-chair for the past two years. Stephanie served as co-chair with **Patricia Clark** of Sabin Bermant & Gould, in 2006, and then with me, in 2007. Stephanie’s term was marked by innovation, particularly with regard to WICL’s November event in New York City. In 2006, Stephanie and Pat turned the event into a reception that provided a great networking opportunity for all WICL members attending the Fall PLI in New York City and then, in 2007, Stephanie came up with the idea of turning the November event into a luncheon. The luncheon was a stellar success: more than 50 people attended and had the opportunity to meet, catch-up and exchange cards. This luncheon also marked the first time a WICL event was sponsored by outside law-firms – another one of Stephanie’s ideas. Indeed, we’d like to thank those sponsors for making the event possible: **Thomas & LoCicero, Sonnenschein Nath & Rosenthal, Levine Sullivan Koch & Schulz** and, my own firm, **Davis Wright Tremaine**.

While I am sad to be losing Stephanie as co-chair, I am happy to announce that **Ashley Kissinger** will be taking her place. In case you don’t know Stephanie or Ashley, let me give you a bit of their background:

Stephanie Abrutyn has been Vice President and Senior Counsel in the litigation department of HBO since June 2005, where her responsibilities include advising on all aspects of programming and operations, including pre-broadcast review, as well as managing litigation. Before that, she was Senior Counsel for East Coast Media at the Tribune Company, where she vetted news copy and aggressively helped the news staff obtain access to the courts and other government agencies. (While at Tribune, she argued and won an important Freedom of Information Law appeal before the New York State Court of Appeals.) Before joining Tribune, Stephanie was counsel in the litigation and employment group at ABC News and she started her career at Baker & Hostetler in Washington, DC. She is currently on the board of directors of the Media Law Resource Center Institute and is co-editor of the Forum’s publication, *The Communications Lawyer*. She has been a speaker and lecturer at schools, panels and events too numerous to list. Outside of her law practice, Stephanie is an accomplished skier, a dedicated spin class member, and a knowledgeable oenophile, among numerous other hobbies.

Ashley Kissinger, our incoming co-chair, is a partner in Levine Sullivan Koch & Schulz, LLP; after 8 years in their Washington DC office she is now resident in its newly opened Denver office. Her practice includes the full uni-

ABA Forum - Women In
Communications Law

Committee Newsletter

Calendar of Events

Friday, February 15, 2008

WICL Meeting and Reception
5:00 – 6:30 p.m.

13th Annual Conference

ABA Forum on Communications
Law

Royal Room 4, Mizner Center
Boca Raton Resort & Club, Florida

Sunday, April 13, 2008

WICL Breakfast Meeting
Forum on Communications
Law/NAB/FCPA

“Representing Your Local
Broadcaster”

Las Vegas, Nevada

November 2008

WICL Meeting and Reception
New York, NY

ABA Forum
on Communications Law

Chair

Richard Goehler

Frost Brown Todd

Chair-Elect

Guylyn Cummins

Sheppard, Mullin, Richter
& Hampton, LLP

Immediate Past Chair

Jerry Birenz

Sabin, Bermant & Gould LLP

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verse of claims facing media clients, from defamation, invasion of privacy, reporter's privilege, access to proceedings and information and challenges to prior restraints. Since 2005 Ashley has been actively involved in efforts by both non-governmental organizations and the State Department to support the development of a free and independent media in the Persian Gulf. Ashley clerked for Judge Sam Sparks in the Western District of Texas before entering private

practice. My favorite story about Ashley is one I remember her sharing at one of the WICL dinners in New York: if you look closely in the opening scene of the *Texas Chainsaw Massacre: The Next Generation* (starring then un-known, Rene Zellweger & Matthew McConaughy) you'll see Ashley, featured as a special extra, going to the prom in a bright green dress! I am looking forward to working with Ashley and can already tell that she's got some great ideas for WICL.



Profile:

Judy Margolin, Esq.

By: Amber Husbands

When Judy Margolin's phone rings, she has no idea what question she'll be asked – and that's one of her favorite parts of her job. As counsel to the *Sports Illustrated/Golf*

Group at Time, Inc., Judy advises on editorial and business issues related to the Group's magazines, websites and special events. Judy's story shows that by taking the time to size up where you are and to plot out where you want to be, you can end up with your dream job.

Judy graduated from NYU law school in 1990. She began her legal career as a law clerk for Senior Judge Robert Merhige in Richmond, Virginia, a job she describes as a "once in a lifetime experience." Judy, a New York native who intended to remain in New York, ended up in Richmond after an advisor at NYU recommended that she look for interesting judges in smaller towns, and not just limit herself to New York. Judy's happy she didn't stay in New York for her clerkship. Richmond provided a rich experience for a recent law grad from New York.

After her clerkship, Judy went to Cleary Gottlieb in Washington, D.C. Although she

hadn't summered there, she chose Cleary because it is headquartered in New York and she knew that she would eventually want to return there. Judy spent five years at Cleary in D.C. working in the general litigation department. While at Cleary, she took a short leave of absence during her third year to work on the campaign of a friend who was running for Congress in Long Island, and also took a few months to work with the Washington Committee for Civil Rights. Ultimately, however, Judy concluded that was not happy as a litigator. Instead of remaining miserable, as many associates do, or leaving the law entirely, as many other associates do, Judy took stock of her situation and made a strategic plan. She went to a partner at Cleary and explained that she wasn't happy as a litigator, and was not planning to spend her career at a law firm. She wanted to go in-house sometime in the next few years, and thought she needed to get experience doing corporate work, so she moved to Cleary's New York office into the corporate group. After two years at Cleary in New York, Judy felt she was ready to look for an in-house position.

Judy found out about an in-house opportunity at Penguin Group (USA) through a job listing at NYU Law School. Even though her experience was mostly in products liability defense and bond offerings, Alex Gigante, the corporate counsel at Penguin, liked Judy's combination of litigation and corporate experience and thought

Judy Margolin, Esq. — (continued)

that she could learn what she needed to know about media work. She says she “started not knowing anything” – but that Alex and the other two lawyers at Penguin taught her everything she knows about media law. At Penguin, Judy performed prepublication review, managed rights, responded to claims, and did a significant amount of copyright work, including on a long-running dispute over the rights to Winnie the Pooh. Judy most enjoyed working with authors while vetting manuscripts, and liked the variety of issues that arose from copyright and other claims.

After a few years at Penguin, though, Judy decided it was time to move on. Although she really liked her job at Penguin, she was the most junior attorney in a department with little room for growth. In 2000, Judy joined Time, Inc. as associate counsel, advising *Money*, *SI Kids*, and Time Custom Publishing. Since she started with Time, she has been promoted three times and is now the Deputy General Counsel of Time, Inc. Currently, Judy provides legal advice and assistance to all of the magazines and websites in the *Sports Illustrated/Golf* Group, including SI.com, SIKids.com, GOLF.com, and FanNation.com. She advises the Group on all legal matters, including television, video and online projects, partnerships, licensing, events, acquisitions and joint ventures, rights management, claims/litigation and pre-publication review.

By advising on both the business and editorial side for all of the Group’s activities, Judy is exposed to a variety of topics. On the editorial side, she vets and closes her magazines and others in the Time, Inc. family, as well as advises on editorial claims and rights issues. One of the best parts of her job, she says, is helping the writers and editors put the magazine together. On the business side, she advises on various special events and parties including the *SI* swimsuit issue, Sportsman of the Year, and Club SI. Judy also really enjoys the business side, since there’s something new every week

and the issues are constantly evolving. For example, advising the websites was a small portion of her job when she started, and now she spends about two-thirds of her time on website-related issues.

Another benefit to working in the Time, Inc. legal department is the number of colleagues available to consult with on more complicated issues. While Judy works independently to advise the *Sports Illustrated/Golf* group, she can call on the network of other attorneys, some of whom specialize in, for example, M&A or employment, in order to assist the generalists in the department. It’s a nice support network for Judy, who can be asked to answer one of “600 different questions” at any time. Judy was recently asked to make a list of how many people she speaks with on a regular basis, and she was surprised to find herself able to list at least 100 people. Since the editorial and publishing sides don’t often communicate with each other, Judy is one of the few people at *SI/Golf* who knows almost everyone, and she wouldn’t have it any other way. “I didn’t want to be a lawyer who spent her whole life on one subpart of a regulation,” Judy says; “I wanted to be a generalist,” albeit one with an intellectual property focus.

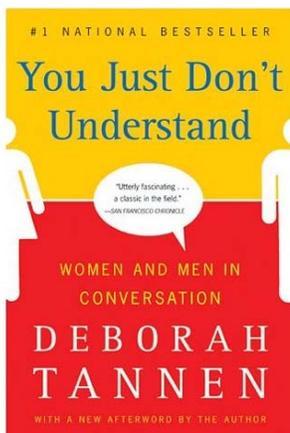
So how can lawyers end up with a job as satisfying as Judy’s? Judy’s advice for young lawyers, particularly women, is to remember that a law firm is not the only option. Too many young lawyers go to a firm and don’t like it, and feel that that’s the end of their career as a lawyer. That’s a shame, Judy says, because there are other opportunities out there – almost all of her friends from law school are still practicing law, but at places other than big law firms such as the government or in-house positions where they are much happier. There are other ways of being a lawyer, and being a successful lawyer, than just working in a law firm. Take Judy, for example – she was unhappy as a lawyer in a law firm, but she made sure to get relevant experience at her law firm

Judy Margolin, Esq. — (continued)

before going in-house. Judy notes that law firms give their associates great training, and that she learned a lot while she was at Cleary that allowed her to position herself to go in house. Judy also emphasizes the importance of placing yourself in a position to take advantage of in-house opportunities. While she didn't have media-specific experience, she made sure to get a strong background in both corporate and litigation work. You "have to be strategic," she says – you have to be at a firm where they're doing the kind of work that will propel you to the job that you want.

And it all worked out perfectly for Judy, who "can't think of a better job as a lawyer" than the one she has. Working with the editors and writers, for whom she has tremendous respect, is the highlight of her job. *Sports Illustrated* "is the highest quality product you can find in a magazine," Judy says; "it just happens to be about sports."

Amber Husbands is an associate in the Washington, D.C. office of Davis Wright Tremaine LLP.



Book Review:

"You Just Don't Understand: Women and Men in Conversation" by Deborah Tannen

By: Heather Kamins

The nation watches as two prominent attorneys argue the case of their lives. At its foundation, the contest between Barack Obama and Hillary Clinton for the Democratic Presidential nomination is little more than this – the attempt to evoke a favorable verdict based on the tools of evidence, persuasion and authority. The reaction of the public, like that of any jury, at times is swayed as much or more by the advocate's style as by his or her message. And Clinton, like any woman advocate, faces the unenviable task of portraying strength and authority without appearing callous, unapproachable or overly aggressive, and heaven forbid she would have a bad hair day.

Most women attorneys agree that they face unique challenges in a profession that is so frequently reliant on impressions, as a woman's

words, demeanor and appearance are judged more critically than her male counterparts. Certainly, juries, colleagues and clients study a male attorney's style, but women are measured twice, on how they present themselves as a professional and as a woman, with often conflicting criteria. Commonly, women law firm partners paradoxically are viewed both as indecisive and incompetent and as cantankerous and overcompensating. Juries have been known to disregard discussing the facts of a case in favor of critiquing a woman attorney's frizzy hair or pantsuit.

The public reaction to Clinton's campaign style and her performance in recent televised debates illustrates the catch-22 confronting all women leaders and advocates. The polls and pundits have forced Clinton, unlike her male opponent, to confront whether she is "likeable enough," whether she is too dependent on her husband and whether her showing emotion is a sign of weakness or of human connectedness. It is hard to imagine the same being asked of a male candidate.

As Deborah Tannen, a sociolinguist at Georgetown University, explains, "if they speak in ways expected of women they are seen as inadequate leaders. If they speak in ways expected of leaders, they are seen as inadequate

Book Review — (continued)

women.” Whether or not she ends up winning the nomination, Clinton’s recent foray onto center stage underscores the continued importance of examining and understanding how women’s style and speech are perceived.

Tannen’s classic book, “You Just Don’t Understand: Women and Men in Conversation,” offers further insight. The book is an instructive, thoughtful and accessible analysis of the complexities of communication between men and women. Hailed as a cultural phenomenon, “You Just Don’t Understand” was first published in 1990 and reprinted in 2001 with an updated Afterword from the author. The book enjoyed nearly four years on the *New York Times* bestseller list, including eight months in the number one spot. As we watch Clinton negotiate this minefield, we were inspired to revisit.

At its core, “You Just Don’t Understand” argues that male-female communication is cross-cultural, and thus is mutually alien to both parties involved. Tannen explains that miscommunication between women and men is both common and menacing, because the parties misinterpret stylistic differences – which stem from deeply engrained gender and cultural conditioning – as personal affronts or purposeful manipulations.

Tannen’s writing departs from much feminist scholarship and literature on gender and language, which generally lay the blame for the male-female communication impasse on men’s attempt to dominate women. Tannen believes that “the effect of dominance is not always the result of an intention to dominate.” Instead, she proposes a “no-fault approach” in which men’s and women’s distinct communication styles are equally valid and understandable. She states that her aim is to “explain why sincere attempts to communicate are so often confounded, and how we can prevent or relieve some of the frustration.”

It is most commonly women who attempt to alter their behavior to comport with the norms for men. Tannen observes that pretending that women and men are the same is detrimental to both parties. Women are hurt as they are systematically misunderstood, underestimated and thought to be insecure. Men also suffer, though, when with good intentions they speak to women as they would to men but their words are met with bafflement, or even ignite resentment and anger.

The result is that women and men clash in translation. Stylistic differences in how men and women use language lead to women’s perception that men are dominating, arrogant and inflexible, and men’s perceptions that women are weak and indecisive. These are often misperceptions based on the ways in which men and women approach communication.

Women use what Tannen terms “rapport-talk,” a way of utilizing language to establish human connection, signal solidarity and negotiate relationships. Conversely, man-speak is “report-talk,” a style of communication used to “preserve independence and negotiate and maintain status in a hierarchical social order. This is done by exhibiting knowledge and skill, and by holding center stage through verbal performance such as storytelling, joking or imparting information.”

Tannen highlights a few critical differences in the behavioral and communication patterns of men and women that give rise to the stereotypes that plague and confuse communication between the sexes.

First, women have long been castigated for talking too much. Yet, Tannen states, “study after study finds that it is men who talk more – at meetings, in mixed-group discussions, and in classrooms where girls or young women sit next to boys or young men.” To account for this disconnect, Tannen explains that women talk

Book Review — (continued)

more than men in private conversations. In public settings, however, men vie for higher status and speak much more than women to establish a “one-up” position, command attention, convey information and insist on agreement. According to Tannen, this behavioral pattern is established early in childhood as boys are taught to use speech to elicit attention and to establish their position in the group. Young girls, on the other hand, learn to use language to confirm and maintain intimacy.

Second, men and women differ in the ways they listen. Women show attentiveness through verbal and nonverbal cues. Conversely, many men avoid these cues to avoid appearing “one-down.” This difference leads to the commonly held stereotype that women often interrupt men. Tannen contends that it is well-established that it is actually men who interrupt women. To account for this discrepancy, Tannen explains that women and men interrupt each other for different purposes, which has led both genders to interpret an interruption as a hostile act. She explains that often what a man perceives as an interruption was actually intended by a woman to show agreement, to give support or to supply what she anticipates the speaker will say. But men tend to regard any interruption as a power move and do not distinguish between supportive and hostile verbal cues.

Third, women view conflict as a threat to connections that should be avoided at all costs. In contrast, for many men conflict is “the necessary means by which status is negotiated, so it is to be accepted and may even be sought, embraced, and enjoyed.” Women’s avoidance of conflict leads them to be perceived as weak or willy-nilly.

These stylistic differences and resulting misconceptions impact all relations between men and women, but notably threaten women who have achieved high status or positions of authority, as they are often perceived as not

behaving in ways appropriate to their positions.

Specifically, women are not supposed to boast or brag, which Tannen believes can lead to odd verbal behavior on the part of women. “Women are reluctant to display their achievements in public in order to be likeable, but regarded through the lens of status, they are systematically underestimated, and thought self-deprecating and insecure.” Tannen argues that this is distressing because women in authority find themselves in a double bind. If they speak like a woman, they are deemed an unfit leader. If they speak like a man, they become an inadequate woman.

Although this stylistic difference may seem to be an unbridgeable gender gap, Tannen optimistically pleads her confidence that “once people realize that their partners have different conversational styles, they are inclined to accept differences, without blaming themselves, their partners, or their relationships.”

Clinton’s style has resonated well with women, but whether she will be able to bridge the gender gap during this election cycle still remains to be seen. At least her hair looked great during last week’s debate.

Heather Kamins is an associate in the New York law firm Frankfurt Kurnit Klein & Selz, P.C.



Women on the Move

In November 2007, *Deborah Adler* joined Davis Wright Tremaine as an associate in its New York office.

Cynthia Counts, of Counts & Associates, a boutique media litigation firm, moved into new office space in midtown Atlanta and added a new associate, Ben Bartlett, this past year.

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Profile:

Rachel Sagan, Esq.

By: Alia Smith

Rachel Sagan set out to be a litigator. Instead, just six years after graduating from law school, she became the Vice President and General Counsel of one of the country's leading media companies, Freedom Communications, Inc., focusing on business transactions. She calls her quick ascent to the top a happy coincidence of "luck and timing," but after talking with Rachel even for a few minutes, it's clear that she is a woman who knows how to make things happen.

So how did a would-be litigator come to reach the top legal spot at a large media company? Rachel is a Midwesterner (she hails from Ohio), but spent her college years on Tobacco Road at Duke University. She headed back to the Midwest after college and graduated from the University of Michigan Law School in 1997. From there, Rachel made her way west to Northern California where she started her career practicing insurance litigation at Hancock, Rothert & Bunshoft. But she quickly became frustrated with litigation practice, finding herself frequently litigating over procedural matters, unable to really delve into the substance of things as much as she wished and to have the impact she thought she could. After less than two years, Rachel switched gears and began doing corporate and transactional work for Gibson, Dunn & Crutcher in its Orange County office in 1999.

Within two years of joining Gibson, Rachel went to work on an assignment for Freedom. Based in Irvine, California, Freedom is a national privately owned news, information and entertainment company of print publications, broadcast television stations and interactive

businesses. The company's portfolio includes more than 70 newspapers, magazines and other specialty publications, 8 television stations and websites to complement its print and broadcast properties. Most of its properties are in small to mid-size communities, with the notable exception of *The Orange County Register*, Freedom's flagship paper, which boasts a circulation of more than 300,000 and multiple Pulitzer Prizes. After only a few weeks working on the deal, the company's then-general counsel asked Rachel if she would consider joining its in-house legal staff. Rachel demurred, telling him, "I enjoy the sophisticated work that I am doing at Gibson Dunn." He smiled and told her he would ask her again a few months later. As promised, he did. Rachel agreed to join Freedom in January 2001 as Associate General Counsel (a newly-created position), and soon learned that major media companies like Freedom have plenty of "sophisticated work" of their own!

Rachel set out to prove herself at Freedom, convincing her constituents that she could handle a lot of responsibility. Though she was brought on to do deal-related work, she found herself also devoting significant time to making the legal department more integral to the company as a whole. She created tool kits and responsiveness guidelines, and she worked hard to position herself with other departments within the company as a partner to drive their business objectives. Then, less than two years after she began at Freedom, the General Counsel who had hired her and the CEO both left the Company.

Rachel asked the incoming CEO about the newly-vacant General Counsel position. He told her that he had heard good things about her, but that, considering her age, she was going to have to prove herself. He named her Acting General Counsel, and prove herself she did – again. Rachel continued to work on strengthening the internal and external relationships of the legal department, and in

Rachel Sagan, Esq. — (continued)

2003 she really got the opportunity to “prove” herself.

For more than a year, Freedom, which until then had been owned by a single family, embarked on an endeavor – managed and overseen by Rachel – to find ways for certain family members to liquidate their investment in the company. After a massive bidding process, Rachel facilitated the signing of a deal in October 2003 to bring on The Blackstone Group and Providence Equity Partners as equity investors, which together took a 40% equity interest in the company. When the deal was signed, the CEO pulled Rachel aside and proclaimed: “That’s it. You’ve proved yourself.” That month, at age 31, she was named Vice President and General Counsel.

Even after landing this coveted spot, Rachel has continued to prove herself and her department. Under her leadership, Freedom has grown and strengthened its portfolio through acquisitions, dispositions, partnerships and investments. She has built an in-house staff of two attorneys and a paralegal. She works closely with a network of outside lawyers who handle the company’s content-based litigation. And she strives to quantify the value she and her team bring, constantly identifying and assessing “the contributions and value of the Legal Department to the enterprise” – explaining to her company “clients” how she and her team work to “maximize value, minimize liability and help to grow the business.” And having the ammunition to prove oneself at a company like Freedom is no small feat given the current state of turmoil in the newspaper industry. As Jim Grossberg, senior member of the legal team at Levine Sullivan Koch & Schulz, L.L.P. that handles most of *The Orange County Register*’s First Amendment work, told me, “Rachel has faced enormous challenges” generated by a transforming newspaper industry.

Rachel says that her success as a lawyer is due in large part to treating her job like a business

venture, rather than as purely legal. “My success at Freedom has been largely due to customer focus and responsiveness. I keep selling my value. I make it a point to try to listen and to adjust my advice to the objectives of the people I am serving.”

This assessment is echoed by Grossberg: “Rachel is a highly accomplished lawyer, but being general counsel requires even more than that. It requires managing relationships. It requires a high level of skill at negotiating both on behalf of and within the company – often both at once. Rachel has an innate talent for doing that.” Being general counsel of a media company is especially tough, he says, because the legal landscape is so varied – a GC must deal not only with the corporate and litigation matters which are common to any business, but also with a whole system of laws unique to the news media, from content issues (defamation, access, subpoenas) to regulatory issues for broadcast properties, to Internet law. “I can only imagine it’s been an enormous challenge for her to juggle all those balls,” he says, but she has risen to the occasion with speed and grace. “I think she’s learned very quickly, because I can tell you that from my own interactions with her, you would think she’d been at the job a long time already.”

Despite her high-pressure job, Rachel isn’t all work. She has a “work hard, play hard” attitude toward life, ensuring that her outside pursuits are just as fulfilling (and challenging) as those at work. Rachel is an avid sports fan – she plays real sports (golf, tennis, soccer, softball, even surfing), she plays fantasy sports (baseball, football), and she attends all types of sporting events (Angels games, Dodgers games, Lakers games). She even takes a yearly pilgrimage to Durham to attend a Duke basketball game with the other “Cameron Crazyies.” (It is saying something that I like Rachel despite this. I attended Duke’s cross-town rival, the University of North Carolina, whose students and alumni

Rachel Sagan, Esq. — (continued)

not-so-affectionately refer to Duke's basketball coach as "devil rat spawn.") Rachel also makes time for at least one big international trip each year. In recent years she has been to Morocco, Peru (Machu Picchu), Easter Island, Chile and Argentina. Rachel fills these trips with hiking, biking, and general adventure-seeking, though she does admit to trying to build in *some* relaxation time when she can – you know, for skydiving, bungee-jumping and such. (OK, I made that last part up. But I wouldn't put it past her!)

Like many highly successful business leaders, Rachel also somehow finds time to give back to her community. She serves on the Business Advisory Board to the Orange County Child Abuse Prevention Center, a cause to which she

can apply some of her risk management skills. The Center focuses on offering programs to *prevent* child abuse rather than on dealing with its aftermath. One such program is Career Day in which career women in Orange County dedicate five hours to motivating and inspiring teenage moms to set goals and then to reach for them. With a background like hers, I imagine that finding ways to be motivating and inspiring is not a problem. After all, if my guess is right, she's doing it right now for a bunch of adult women with successful careers as lawyers who are reading this.....

Alia Smith is an attorney with Levine Sullivan Koch & Schulz, L.L.P., resident in its New York office.

Report: A New Approach to Billable Hours A Review of Deborah Epstein Henry's FACTS Billable Hour Proposal

By: Aimee Saginaw

Responding to a rash of articles citing "pervasive work/life balance dissatisfaction" among lawyers, Deborah Epstein Henry, founder and President of Flex-Time Lawyers, LLC, has proposed a novel methodology which she claims will enable both attorneys and law firm to meet billable hour demands while offering work/life choices. Henry's methodology, entitled FACTS, is predicated on the notion that each attorney work a set number of "Target Hours" (the "T" in FACTS), which would be scheduled based on law firm need and individual attorney preference.

Target Hours

Under Henry's plan, firms would internally publish their average billable and non-billable hours by category – grouping attorneys by department, years in the practice, and designation (*i.e.*, junior, mid-level, senior

associate, counsel, non-equity partner, and, where applicable, partner). Thus, for example, a

firm might internally publish its average billable and non-billable hours by department (*i.e.*, litigation, corporate, trusts & estates), and then further break these departmental numbers down to indicate average billable and non-billable hours by class/designation (*i.e.*, junior associates in litigation, senior associates in trusts & estates).

With these averages in mind, each attorney would, in conjunction with the firm, set his/her Target Hours for the upcoming billing cycle, taking into account the applicable firm-wide average along with the individual attorney's average billable and non-billable hours over the prior two years. To the extent an attorney wished to work fewer Target Hours than average, this would be worked out with supervisors and/or department chairs to ensure that both business and individual needs were met. Henry proposes that such attorneys should remain eligible for partnership (assuming they met the firm's criteria for advancement), but

Report — (continued)

with potential delays given the lighter work schedule.

To determine compensation, a salary range would be pre-set for each class, by department, based on the average Target Hours for that department. Individual compensation would then fall within that range and would be specifically based on the number of Target Hours each individual attorney worked, along with other factors such as quality of work, contribution to the firm, and business generation and would (along with Target Hours) be re-evaluated annually.

Once such Target Hours are determined, the second aspect of Henry's FACTS plan is triggered. Under this plan, lawyers who wish to further delineate their hours and schedules would also discuss, at their annual review, whether their Target Hours requirements would be satisfied on a Fixed, Annualized, Core, and/or Shared schedule (the remaining letters in the acronym FACTS).

Fixed Hours

Those attorneys who were willing to sacrifice quality of work in exchange for more control over their schedules could opt for a Fixed Hour schedule. Under this plan, lawyers would satisfy their Targets by performing tasks that are more predictable in nature and timing but less high profile or exciting, such as document reviews and/or discovery responses. Henry cautions that such work is not always available and that, accordingly, attorneys may choose to work Fixed Hours only temporarily and/or during certain periods, and might wish to later resume more challenging work.

Annualized Hours

Lawyers who desired more challenging work but wished to work fewer hours could opt for Annualized Hours. Under this scheme, an attorney would be staffed on high-profile cases

or matters (which could entail 24/7 availability), but would have breaks between such matters. Henry notes that such arrangements might work best in corporate departments, and that attorneys working Annualized Hours should track their Target Hours on a quarterly, rather than monthly, basis.

Core Hours

Attorneys working Core Hours fulfill their Target Hour requirements within a fixed core of hours during which they are expected to be working and/or available (whether in the office or via a telecommuting arrangement). Specific work schedules would be determined by individual attorneys, in consultation with department chairs and/or supervisors to ascertain firm/client demands. Henry notes that many attorneys are currently working under such arrangements unofficially, and that formalizing this process would reduce both claims of ad hoc treatment and the crises that sometimes arise when an attorney who has not disclosed a planned absence cannot be reached. She notes, however, that Core Hour schedules can only work if both firms and attorneys are willing to be flexible about Core and non-Core Hour availability.

Shared Hours

Under a Shared Hours arrangement, attorneys seeking fewer hours and more predictability, but who also desire challenging work, could share one position and its duties, with each member of the pair stepping into the other's shoes on a pre-set, rotating basis. Under this arrangement, one member of the pair might work Monday-Wednesday, with the other working Wednesday-Friday (and with both drawing 60% of their full-time salary). Such arrangements can avoid the typical pitfalls associated with part-time arrangements, because clients still enjoy predictable coverage and responsiveness, while attorneys obtain predictability in their

Report — (continued)

schedules. However, for such arrangements to work, both members of the pair must communicate well, both with one another and with clients.

Implementation and Written Policies

In order to successfully implement a FACTS plan, an employer must draft a written policy whose tone “does not suggest accommodation, but instead, stresses business need.” Such plans must be supported from the top and must be fully transparent. Henry suggests designating a firm point person to oversee all such arrangements, and training both lawyers and supervisors in how to meet demands and effectively delegate and supervise under such a system. She also specifically notes that any written policy should address eligibility, assignments, training, technology, compensation, benefits, bonuses, vacations, advancement, applicability to partners, emergency contact information, minimum number of days in the office (if any), the identity of the firm’s FACTS point person, the process for determining billable and non-billable Target Hours, when hours and schedules will be reviewed (*i.e.*, annually), the Core Hours range of options, and expectations

for responsiveness during non-Core Hours. In sum, Henry notes that the FACTS methodology enables firms to more effectively utilize attorneys while minimizing the stigma that traditionally attached to those working “alternative” schedules, resulting in the attraction and retention of high-quality, satisfied lawyers who produce good results for clients.

Epstein’s proposal and all its details are laid out on the Women and Work/Life Articles section of her Flex-Time Lawyers website, <http://www.flextimelawyers.com>; see also, Lisa Belkin, “Who’s Cuddly Now? Law Firms,” *New York Times*, January 24, 2008 at http://www.nytimes.com/2008/01/24/fashion/24WORK.html?_r=1&scp=2&sq=belkin&st=nyt&oref=slogin; Alex Williams, “The Falling Down Professions,” *New York Times*, January 6, 2008, at <http://www.nytimes.com/2008/01/06/fashion/06professions.html?scp=5&sq=Alex+Williams&st=nyt>; Lisa Belkin, “The Opt-Out Revolution,” *New York Times*, October 26, 2003, at <http://www.nytimes.com/2003/10/26/magazine/26WOMEN.html?ex=1382500800&en=02f8d75eb63908e0&ei=5007&partner=USERLAND>.

Aimee Saginaw is an associate at McLaughlin & Stern LLP

Women on the Move

(continued from page 6)

In June 2006, *Devereux Chatillon* was appointed General Counsel of Scholastic.

Stacey Dore has been named Counsel at Vinson & Elkins LLP.

Judy Endejan, after serving as General Counsel of Fisher Communications, Inc., a Northwest broadcast company, has returned to a private communications law practice as a shareholder at Graham & Dunn.

In January 2007, *Kai Falkenberg*, of Davis Wright Tremaine’s New York office, became Editorial Counsel for *Forbes*.

Alison Gooding joined the Dow Jones Company as counsel.

Jill Greenwald was promoted in April 2007 from Executive Counsel to Vice President in the Legal and Business Affairs Department at ABC, Inc.

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**Profile:***Carol LoCicero, Esq.*

*And For Her Next
Trick, Carol LoCicero
Will Juggle Eleven Balls
In The Air While
Hopping On One Foot
And Jumping Rope*

By Deanna K. Shullman

If you've ever watched a juggler perform, you've noticed the seeming effortless with which the balls float through the air. The juggler works in a coordinated rhythm, and the audience is mesmerized by the apparent simplicity of the routine. But juggling is not a simple trick. It requires great skill. Anthony Gatto and Michael Moschen are two of the world's most skillful jugglers. But my personal favorite is Carol LoCicero.

Carol is a highly skilled and proficient lawyer who worked her way through the ranks of one of the country's largest law firms to become the founder and a named partner of Thomas & LoCicero PL, a Florida media firm where Carol's reputation for providing excellent client service extends well beyond the sunshine state. As David Bralow, Carol's former partner and now Assistant General Counsel at Tribune Company puts it: "She's on my speed dial when Tribune Company trouble is brewing in Florida. Her uncommon good sense, special insight and her ability to tell it like it is (and me off) makes her invaluable as my lawyer and my friend."

Bralow's not alone in calling Carol his friend. Steve Andrews, an investigative reporter for WFLA-TV in Tampa and long-time client, says it's hard not to develop a friendship with Carol. "She is a very sharp attorney. No doubt about that. She's quick to give me a wrap on the knuckles when I need it," adds Andrews. "But she's also witty and fun to be around and takes the time to see how I am doing personally," says

Andrews, recounting that on a day when he became part of a news story, Carol called not to give him legal advice but just to see how he was doing.

Perhaps Carol's clients are so quick to call her their friends because she is simply a good person. She is community servant through participation in her church, on local boards of directors, bar activities, and pro bono work. And, most important, she's a committed wife and mother of two (plus a dog!).

When I started practicing law, many of my female classmates struggled to find positive female role models at their firms. Women that had reached partner status were few and some of those who had, unfortunately, were hesitant (or just too busy) to help their younger sisters. But I only had to look a few doors down from me to Carol's office where the balance of work and personal life always appears at even keel, and the door is always open. In the nine years I have known Carol, she has spent countless hours advising me on how to balance my own personal and work lives. At the end of each of these conversations, I have a renewed sense of direction or focus. And most of the time, the conversation concludes with "Thanks, Carol. You have this all figured out," to which she quickly gripes that I'm wrong. She doesn't have it all figured out, she says, and juggling isn't easy.

Born in Tampa, Carol grew up watching her grandmother work tirelessly to juggle the demands of work and family. Her grandmother first rolled cigars and then later served as a nurse's assistant at a time in history when women seldom worked outside the home. She credits her grandmother with showing her how to balance a busy home life with a career, though she didn't realize at the time that she was witnessing her grandmother's own juggling act.

After majoring in English as an undergraduate student, Carol went to law school and became

Carol LoCicero, Esq. — (continued)

the first lawyer in her family. She chose the law, she says, because she enjoys legal analysis and writing. She chose media law because she feels like the public benefits from the work she does for her clients and she feels passionate about the important role of the press in our society.

By the time Carol arrived at law school in the early 1980s, her law school class was nearly half women, and she doesn't remember much discussion at all of any uniqueness to her role as a *female* law student. The days when women lawyers stood out in class and graduated to few, if any, offers of employment were long gone as prior generations of female law students had paved the way toward making the presence of women in law schools quite the norm. More than twenty years later, law school enrollment for female students still hovers around the 50-percent mark.

But outside of law school, the role of women lawyers has changed in Carol's years in practice. "When I first came out of law school, female CEOs, in-house lawyers, and judges were uncommon, and their gender would often be noted anytime they were the topic of discussion," Carol notes. "Today, these women are referred to by their names, which says to me that their increased presence in these high level positions means their female gender no longer influences the content of the discussions about them."

Despite the increase in the number of women practicing law and managing corporations over the last couple of decades, Carol admits that today's women lawyers still struggle to find a happy home in the legal field. Carol thinks the biggest dilemma facing women lawyers (and the key to finding happiness in the law) is in finding the right balance between their career and personal lives. Though I have repeatedly asked Carol for the secret to finding this balance, she quickly warns me there is no secret recipe here that works for everyone. Carol is adamant that

finding balance is a personal experience driven by personal choices. But Carol does offer some straight-forward guidance in finding the perfect balance for you:

First, Carol says, know your priorities. For some women (and men too!), those priorities might be working and raising children. But for others, religious activities, caring for aging parents, sports, hobbies, or other interests might make the list as well.

Second, keep your main priorities the central focus. "I think a big mistake young lawyers make, especially females, is in thinking that they can do everything at full throttle," says Carol. "But lawyers who try to do everything excel in nothing." Instead, she says, once you've identified what's important, find a balance that enables you to balance your priorities without making yourself crazy. Carol advises lawyers to commit to spending the most time on your most important priorities, and less time on those things that aren't as important. This leads us to Carol's next point:

Third, be prepared to compromise in striking a balance between the priorities. And, Carol warns, don't view "compromise" as a negative thing. "If your child is having surgery in July, then you have to accept that you won't be put on the case set for trial then – no matter how much you'd love to work on that matter." Carol says the key to finding the right balance is in recognizing that things like losing out on working on a big case or accepting less compensation for less than full-time work are products of a lawyer's *choices*, and not a legal system designed to bring women down.

In fact, Carol sees a lot in today's legal system designed to bring *more* choices to women. Technology has made it easier for women to telecommute, rendering legal advice from just about anywhere faster than ever before. Contract-based legal work, reduced hour schedules, and work-at-home arrangements are just a few of the options that are making it easier

Carol LoCicero, Esq. — (continued)

for women to make the choices necessary to achieve a good balance between work and home life. “With so many choices out there,” says Carol, “women really have a lot of opportunities to juggle work and family in a way that works for them.”

And when you’re juggling, you’ve got to be prepared to make adjustments in order to keep all the balls off the ground. So finally, Carol advises, be flexible. Don’t expect that whatever plan you come up with to find the right balance will work forever, or even day to day, says Carol. “There will be times when work demands more of your attention than is ideal, and in those times, you will have to devote more time to work. I never felt that clients should feel any difference in the quality and timeliness of my services just because I choose to work a flexible schedule.” As long as you take advantage of the slower times at work to spend more time with your family or on your other priorities, the balance should all work out in the end. Carol thinks those women whose formulas for finding balance in their lives don’t offer any room for flexibility are setting themselves up for failure. “That’s unfortunate,” says Carol, “because then these women think the system has failed them when the reality is that the practice of law is subject to ebbs and flows that all lawyers experience and must be willing to tolerate.”

Achieving the right balance for Carol meant that she took a two-year sabbatical from her post as partner after the birth of her second child and returned to a more flexible schedule that allows her to spend more time with her young children than a traditional schedule would allow. “Carol’s sabbatical and reduced hour schedule were certainly discussed, but I can’t say either of these issues was ever hotly debated,” says Gregg Thomas, Carol’s mentor, friend, and the other half of the Thomas & LoCicero name. “To me, the issue was ‘what can we do to retain a great lawyer?’ The fact that she was a female or that she sought these accommodations to

spend more time with her family never entered into the equation.”

Others at the firm agree. Managing Partner Jim Lake, himself fresh off a sabbatical he took last fall to devote more time to teaching media law, says the firm’s commitment to retaining good quality lawyers runs deeply through Thomas & LoCicero’s firm culture. “Gender doesn’t even come up in these discussions,” says Lake. “If the lawyer is a valuable, committed member of our team, we will do what we can to accommodate the lawyer.”

Taking a look around “TLo” (as its lawyers affectionately call it), you can see that the gender divide closed up long ago. Four of the firm’s seven partners are women. Three of the four, myself included, either have reduced hour schedules or work a significant amount of time from home, or both. Carol credits her ability to manage her personal and professional lives to the rest of the team as well as the support of her family, friends, and others who step in to help when the inevitable conflict between her priorities arises. “You can’t be afraid to ask for help when you need it,” says Carol. “No one expects you to be a super hero.”

While Carol would gasp at the thought of being called a super hero and is far too humble to think herself a pioneer for future women lawyers, she is undoubtedly both of these things. David Bralow adds “Carol’s available, responsive and has great legal instinct. She makes balancing a schedule that allows her to spend her time at home look effortless. I don’t really know how she does it.” Carol is undoubtedly paving the way for future women lawyers to find their own success in the legal field outside the 8-6 mold. And though when you ask her how she does it, her first response is “it ain’t easy!,” I’m still mesmerized by the effortlessness with which the balls float through the air.

Deanna K. Shullman is a partner at Thomas & LoCicero PL in Ft. Lauderdale, Florida.



Women on the Move

(continued from page 11)

Allison Hoffman was named a Senior Vice President of ALM in 2007, where she has served as Vice President, General Counsel and Secretary since 2001.

In 2007, *Ashley Kissinger*, a partner formerly in Levine Sullivan Koch & Schulz's Washington, D.C. office, helped open the firm's new Denver office.

In March 2006, *Min Lee*, of Davis Wright Tremaine's New York office, joined Random House as assistant general counsel.

In February 2006, *Carol Jean LoCicero*, *Susan Tillotson Bunch*, *Rachel E. Fugate* and *Deanna K. Shullman* left Holland & Knight LLP to found Thomas & LoCicero PL. Carol, Susan and Rachel are resident in the firm's Tampa, Florida office; *Deanna* is resident in its South Florida office and, in January 2008 was promoted to partner of the firm.

Amanda Martin of Martin Everett, Gaskins, Hancock & Stevens, LLP, in North Carolina, has been elected as managing partner for 2008.

Laurie Michelson took over as the Practice Group Manager for the Media and Intellectual Property practice at Butzel Long in November 2007.

In September 2006, *Elisa Miller* joined Davis Wright Tremaine as an associate in its New York office.

As mentioned in last year's profile of her, *Lynn Oberlander* became General Counsel for The New Yorker in September 2006.

In November 2007, *Monica Pa* joined Davis Wright Tremaine as an associate in its New York office.

In June, 2006, *Laura Lee Prather* left the Austin office of Jackson Walker LLP to head-up the Austin, Texas office of Sedgwick, Detert, Moran, and Arnold, L.L.P.

In July, 2006, *Catherine Robb* left the firm of George & Brothers, L.L.P. and joined the newly-opened Austin, Texas branch of Sedgwick, Detert, Moran, and Arnold, L.L.P.

In March 2007, *Eva Saketkoo* joined Hearst as counsel. She came to Hearst from the U.S. Department of Justice, Fraud Section (Criminal Division) and before had been Senior Counsel in the Enforcement Division of the SEC.

Susan Seager, formerly of Davis Wright Tremaine's L.A. office, has joined the Fox Entertainment Group as Senior Counsel.

In April 2006, *Wendy Szymanski* joined Davis Wright Tremaine as an associate in its New York office.

Catherine Van Horn moved, in October 2007, from Nagin Gallop Figueredo to Genovese Joblove & Battista P.A., in Miami, Florida.

In January 2007, *Jeanette Melendez Bead* was promoted to partner at Levine Sullivan Koch & Schulz, L.L.P. She works in the firm's Washington, D.C. office.

Co-Chairs Plans for the 2008 Year

We are looking forward to working together to keep Women in Communications Law the growing and successful group that our predecessors have created. We will continue to host meetings and social gatherings in connection with: (1) ABA Forum on Communications Law Annual Conference – which is this year in Boca Raton, Florida, starting on February 14; (2) the ABA Forum’s April 13 program, “Representing Your Local Broadcaster,” in Las Vegas; and (3) the PLI on Communications Law in New York City in November. We hope to expand WICL’s role in between those meetings by further developing our website and fostering more networking activities around the country. We are also considering adding events at other times of the year when members of the media bar gather.

If you’ve been on our website lately, you will have seen that we have taken the directory (which was very out of date) down and are in the process of up-dating it. When the directory goes back up (which should be soon), please take the time to review it, make sure that you are listed and that your information is accurate. If you are not listed, need to update your contact information, fill in any missing information, or notice any other mistakes or omissions concerning other women in communications law, please email me or Ashley and let us know.

You’ll also notice that we’ve brought back the Women on the Move feature of this news letter. If we’ve missed something, please let us know, so we can include it next time.

As we discussed at our November luncheon meeting, we’d like to also start having regional WICL representatives who organize meetings and events on a more local basis. Please let us know if you would like to be a representative for your locality. We envision that local representatives, with our support, might organize luncheons or evening receptions for women in communications law. If there are times of the year when the local media bar has meetings or get together, the local representative might organize a local meeting for women in the communications bar around that event. Alternatively, local representatives may want to pick up on the discussion started in this newsletter by Aimee Saginaw about the alternative work/fee arrangements proposal floated by Deborah Epstein Henry. Please let us know if you would like to host/organize one such event or have any ideas for future events.

We have also decided that we would like to focus on a theme this year that we ask everyone to think about. The theme we’ve chosen is communication: many books have been written about how men and women communicate differently. We’d like to start a discussion about what that means for women practicing in communications law. We’ve started that theme in this news letter with the article by Heather Kamins in which she discusses how communications differences are impacting the democratic presidential primary and takes a look at Deborah Tannen’s book on communications differences between men and women.

Finally, as always, please let us know if you’d be willing to coordinate a mentoring effort and/or if you’d be willing to be a mentor.

We are looking forward to a great year –we hope you’ll join us. 

 Carolyn K. Foley, Esq. 
Davis Wright Tremaine
1633 Broadway
New York, NY 10019
carolynfoley@dwt.com

 Ashley I. Kissinger, Esq. 
Levine Sullivan Koch & Schulz
1888 Sherman Street, Suite 370
Denver, Colorado 80203
akissinger@lkslaw.com