Welcome to 2010 and all of the WICL festivities to come this year. This newsletter is being published on the heels of the 5th Annual ABA/FCBA Privacy & Data Security Symposium for Communications and Media Companies held in Washington, D.C. on March 11, 2010 -- a phenomenal program chaired by WICL member S. Jenell Trigg – hats off to you, Jenell! It is also being published on the eve of the annual Representing Your Local Broadcaster: The Scramble for Content and Delivery – “It’s Up in the Air” program, being held in Las Vegas on April 11, 2010. This year’s program is being chaired by WICL members Ann West Bobeck, Jane Mago and Guylyn Cummins. Look for detailed reports on both events in our Fall 2010 issue.

Both of these Forum programs are consistent with the WICL theme for the year: Reinventing Your Practice in the Modern Media Age, and WICL is striving to supplement the learning potential from these programs with our own helpful discussions that have the WICL flair. We’ve started the year with a bang with a tremendous panel discussion on Alternative Billing Arrangements at the ABA Forum on Communications Law 15th Annual Seminar in Key Largo. Panelists and WICL members Judy Mercier, a Partner in Holland & Knight’s Orlando office; Deveraux Chatillon, a Partner in Sonnenschein Nath & Rosenthal LLP’s New York office; and Cynthia Counts, Founding Partner of Counts & Associates, shared their unique perspectives on how they work in partnership with their clients, sharing risks and opportunities, as we all face the realities of a down economy. This groundbreaking session also marked the first time WICL had male participants on our panel. We applaud Jonathan Donnellan of The Hearst Corporation and Andy Mar of Microsoft Corporation for braving the estrogen-filled room and sharing their thoughts with our group. Many thanks also go to the generous sponsors of this event – Wiley Rein LLP and Counts & Associates. For a complete writeup of the panel discussion, see Judy Mercier’s article in this newsletter.

One of the most critical things we can do while Reinventing Our Practice in the Modern Media Age is to remember relationships and not lose sight of the importance of those relationships when drowning under a sea of those “Modern Media Age” emails, tweets, LinkedIn requests, Facebook messages, etc. One way to do that is pick up the phone and check on how fellow WICL members are doing or set up a personal visit when you are in their city. WICL continues to publish its member directory on-line and in print so that its members have a ready reference to their friends, colleagues and referral sources. In fact, one of the WICL initiatives for this year is to produce the directory in a geographic format so that members can look people up by where they practice. I’ve made a personal goal for myself this year to meet with a WICL member every time I go on a trip out of town – by doing so, I hope to have the opportunity to get to know my colleagues in the field of communications law better. It might be fun for others to try to do something similar.

Transitioning Into a New Decade

As we move into the decade of “Twenty Ten,” we are thankful to outgoing WICL Chair Ashley Kissingler, a Partner in Levine, Sullivan & Koch’s Denver office, for getting WICL poised and ready for this new decade. Ashley was responsible for bringing the 2009 WICL theme “Surviving the Dustbowl” to life. With Ashley at the helm, we kicked off a year of learning through presentations by Sara Holtz, Principal of ClientFocus, on Building Strong Client Relationships: More Important Now Than Ever; jump-started our traditional New York dinner and theater event, and re-instituted the WICL committee...continued on page 2
structure. As a result, WICL now has vibrant, energetic and hard-working newsletter, website, and networking event committees. The regional representative program is alive and thriving, as is the mentoring program that serves both accomplished and newer lawyers in their efforts to learn from others. We cannot thank Ashley enough for her tireless efforts and dedication to this organization. I could not have asked for a better co-mentor to learn from and to aspire to be like. I’m especially proud to announce at the time of the publication of this newsletter that Ashley recently gave birth to a new member of the WICL family, a son. Congratulations to you and your family, Ashley!

Although Ashley is irreplaceable, her departure is tempered by the arrival of an incredibly dedicated, dynamic and accomplished WICL member who has agreed to become the new WICL Co-Chair. I am pleased to announce the arrival of Kathleen Kirby, a partner at Wiley Rein LLP, as WICL’s new co-chair for 2010-2012. Kathy’s practice focuses on a wide variety of FCC regulatory, transactional, and First Amendment work. While she was an undergraduate at the University of Virginia, she became working at the college radio station, and the rest is history. Kathy has become a leading expert on cameras and microphones in the courtroom, and she is the chief legal advisor for the Radio-Television News Directors Association. We are extremely fortunate to have her expertise advocating for the communications industry! Kathy also is the mother of a beautiful daughter (a junior in high school) and a dedicated friend to many. She is one of the most genuine and caring people anyone could ever hope to meet and has the fantastic quality of making the most difficult problems or tasks come off with an air of ease and effortlessness. Furthermore, my relationship with Kathy is proof positive that the WICL mentoring program works, as Kathy became my assigned mentor last year, at my request. I continue to learn from Kathy daily, and, with her agreement to come on board as my WICL Co-Chair, we have taken the WICL mentor/mentee relationship to a whole new level. For more information about Kathy Kirby and her practice, read the profile on her in our February 2009 newsletter at: www.tinyurl.com/ABAWICL.

Exciting News Abounds

This newsletter could have never come to fruition were it not for the reinvigoration of the WICL committee structure and the work of newsletter committee chair Catherine Van Horn and her crew of volunteer committee members, including: Ann West Bobeck, Karen Chesley, Cynthia L. Counts, Guylyn Cummins, Erin Dozier, Sarah El Ebiary, Judith Endejan, Laura Handman, Tyra Hughley, Sheri Hunter, Kathleen Kirby, Katharine Larsen, Lindsay LaVine, Jane Maga, Judy Mercier, Suzanna Morales, Sinead Murphy, Trisha Rich, Natalie Roisman, Joan Stewart, and S. Jennell Trigg. Their work is reflected throughout this issue, as you can see from the number of bylines bearing their names.

In the pages of this newsletter, you will find Profiles on fabulous lawyers who have each made unique and significant contributions to the communications industry. Read on to learn more about your fellow WICL members and icons of the media bar: Lisa Washburn of The Tribune Company, Rosemary Harold from the Federal Communications Commission, and Susan Grogan Faller, a Partner in the Cincinnati office of Frost, Brown Todd, LLC. Thanks to WICL members Lindsay LaVine and Judy Endejan, and newcomer Christina Kube, an intern working with WICL member Ann West Bobeck at the National Association of Broadcasters, for writing these profiles and helping to bring the insight of these WICL legends to life.

In addition to the profiles, this issue of the newsletter includes a new feature that we hope to include on a regular basis (when appropriate): a Federal Legislative Report, in which we report on the latest media and communications law developments on Capitol Hill. This issue includes an article written by WICL member Lucy Dalglish on the proposed Federal Free Flow of Information Act and an article written by WICL member Tyra Hughley Smith on the proposed Federal Anti-SLAPP statute.

Please read on to learn about recent WICL events including the New York Networking Luncheon and the revitalized Dinner and Theater Night, written by Catherine Van Horn and Catherine Robb. And, if you are interested in serving on our networking event committee, please let us know – you can help plan the next networking luncheon or theater night to take place in conjunction with the Practising Law Institute’s next Communications Law Conference on November 11-12, 2010.

For those of you who could not attend the ABA Forum on Communications Law meeting in Key Largo in January, this newsletter also includes a synopsis of the Hot Issues in

---

<table>
<thead>
<tr>
<th>Table of Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notes From the Chair ..................................................1</td>
</tr>
<tr>
<td>Calendar of Events .......................................................1</td>
</tr>
<tr>
<td>WICL Mentoring Program Update .....................................4</td>
</tr>
<tr>
<td>Federal Legislative Report: Congress Moving at Snail’s Pace on Federal Free Flow Act .............................................</td>
</tr>
<tr>
<td>Federal Legislative Report: Congress Considering First Federal Anti-SLAPP Bill .................................................6</td>
</tr>
<tr>
<td>Critics, Commentators, and Cases Offer Few Glimpses at Sotomayor’s Position on Media Law .................................................7</td>
</tr>
<tr>
<td>Gender Discrimination in the Workplace ....................................9</td>
</tr>
<tr>
<td>Making the Practice of Law Work for Women .........................19</td>
</tr>
<tr>
<td>Psychology of Women’s Influence on Juries ..............................22</td>
</tr>
<tr>
<td>Report on Key Largo ABA Forum Meeting ..............................25</td>
</tr>
<tr>
<td>Hot Issues in Broadening Your Practice ................................26</td>
</tr>
<tr>
<td>WICL Panel Discussion on Alternative Billing .........................27</td>
</tr>
<tr>
<td>Moet Court Competition ..................................................28</td>
</tr>
<tr>
<td>Report From the Hinterlands ............................................29</td>
</tr>
<tr>
<td>New York Networking Lunch ...............................................30</td>
</tr>
<tr>
<td>New York Dinner and Theatre Night ...................................30</td>
</tr>
<tr>
<td>Heard Around Town ........................................................31</td>
</tr>
<tr>
<td>Profile: Rosemary Harold ...............................................32</td>
</tr>
<tr>
<td>Profile: Lisa Washburn ................................................35</td>
</tr>
<tr>
<td>Profile: Susan Grogan Faller ...........................................37</td>
</tr>
<tr>
<td>Women on the Move ......................................................38</td>
</tr>
<tr>
<td>Women in Leadership Positions ........................................39</td>
</tr>
<tr>
<td>WICL 2010 Mentoring Program Guidelines/Registration Form ..........................40</td>
</tr>
</tbody>
</table>
Broadening Your Practice panel, written by Kathleen Kirby; a report on the Second Annual First Amendment and Media Law Moot Court Competition: The Forum’s New Diversity Initiative, written by Jeanette Melendez Bead; and an overview of both the ABA Forum on Communications Law conference and the Media Advocacy Training workshop by Lindsay LaVine.

We are also fortunate that Mentoring Chair Martha Heller agreed to continue to coordinate our mentoring program for 2010-2011. She has written both a synopsis of the program and a report on what some of the participants have gotten out of it to date. As you can see above, I got a WICL co-chair! The mentoring guidelines and the registration form for the 2010-2011 program can be found at the end of this newsletter, and we encourage everyone to be a part of this wonderful initiative.

This newsletter also includes our regular features: Women on the Move and Women in Leadership Positions. The first notifies our readers about recent job changes and promotions of our membership and the second lists women who volunteer their time in leadership positions for the Federal Communications Bar Association, the Media Libel Resource Center, or the American Bar Association Forum on Communications Law. Our Calendar of Events notifies WICL members about upcoming activities for professionals in the communications bar, and the popular Heard Around Town column highlights interesting tidbits about our profession, especially those of interest to women. If you have contributions to any of these columns throughout the year, please feel free to send them our way for inclusion on-line and in our next issue of the WICL newsletter. And, a big thank you goes to Katherine Larsen, Catherine Van Horn, and Karen Chesley for keeping these columns current and vibrant.

In addition to the foregoing, WICL continues to encourage regional meetings of its members. The Report from the Hinterlands: Regional Meetings of WICL, written by Kathleen Kirby, explains the program and gives a sneak peek into upcoming meetings. The purpose of the regional representative meetings is to provide an opportunity for WICL members to get together in smaller group settings and talk about whatever issues they feel are pertinent to their practice and the industry at the time. They also provide an opportunity for WICL members to reach out to others in the communications industry who may not be members of WICL or the Forum on Communications Law. We strongly encourage our regional reps to cast a wide net for their meetings, so that the exchange of ideas can be as fruitful as possible. If you are interested in becoming a regional representative and hosting or coordinating a meeting in your area, please let us know. If you’ve already signed up to be a regional representative and have not planned a meeting yet, please do so before our November networking luncheon in New York so that we can learn from your experiences and perhaps recruit new members.

Finally, we are fortunate to have several highly relevant reprints in this issue of the WICL newsletter. The Texas State Bar Section on Litigation recently dedicated an entire issue of its Advocate magazine to Women and the Law, and it has graciously granted us the right to reprint some of the most pertinent articles for our readers: “Making the Practice of Law Work for Women” written by Karen Hirschman, “The Psychology of Women’s Influence on Juries” written by Lisa Blue and Robert B. Hirschhorn and “Gender Discrimination in the Workplace: We’ve Come a Long Way, Baby” written by Katie J. Colopy, Sandra K. Dielman and Michelle A. Morgan. In addition, Prof. Jane Kirtley of the Silha Center for the Study of Media Ethics and Law at the University of Minnesota willingly gave her permission for WICL to reprint the Silha Center Bulletin’s recent analysis of recently confirmed U.S. Supreme Court Justice Sonia Sotomayor’s previous rulings on media law issues, including her expressed support for the use of cameras in the U.S. Supreme Court. Thank you to all of the authors and publishers for allowing us to share these interesting and timely articles with our members.

Upcoming Fun: Meetings, Goals & Initiatives

In addition to the geographic WICL directory, another initiative we’d like to start this year is to create a mechanism for putting our WICL meetings and panel discussions online, so that members who cannot attend a meeting can still learn from the wisdom of panel discussions that occur. Stay tuned for more details on this initiative and how we can make it happen! If you have other ideas about what you’d like to see WICL doing, please don’t hesitate to let us know. In the meantime, continue to recruit practitioners in communications, telecommunications, broadcast, radio, media insurance, public relations, or other related industries to our group. It costs nothing to join, and we can all benefit from the shared knowledge. Please also feel free to share this newsletter with friends and to pull up past issues on the web at: www.tinyurl.com/ABAWICL. Thanks to everyone for being a part of this wonderful group -- we wish you a happy, healthy, peaceful and prosperous new decade, and we look forward to seeing you at upcoming WICL events.

Laura Lee Prather
Sedgwick, Detert, Moran & Arnold LLP
919 Congress Avenue, Suite 1250
Austin, Texas 78701
Telephone: (512) 481-8414
Facsimile: (512) 481-8444
laura.prather@sdma.com

Kathleen A. Kirby
Wiley Rein LLP
1776 K St. NW
Washington, DC 20006-2304
Telephone: (202) 719-3360
Facsimile: (202) 719-7049
kkirby@wileyrein.com
WICL Mentoring Program Update
By Martha Heller

The WICL Mentoring Program, which was revamped and relaunched in 2009, is running strong. More than 40 women are now participating. They come from cities across the country and represent a broad range of experience levels, from law students to senior executives and name partners in law firms. In June, we will shake the program up again, by giving current participants an opportunity to be matched with a new mentor or mentee, and by integrating new participants into the program. A number of additional women already have expressed an interest in signing up, so we are expecting to have an even larger and more diverse pool of participants this time around!

Here are just a couple of examples of recent participants’ experiences with the program:

Kathy Kirby, a partner at Wiley Rein LLP in Washington, D.C., is matched with Laura Lee Prather, a partner at Sedgwick, Detert, Moran & Arnold LLP in Austin, Texas. Kathy says that when she was first asked to be Laura’s “mentor,” she “laughed and wondered why in the world a woman of stellar reputation who boasts so many accomplishments, including championing the Texas shield law, would possibly want or need me as a mentor.” But, on further observation, she thinks that their story “illustrates that taking advantage of WICL’s program does not necessarily mean that the only benefit to be achieved is through a traditional experienced attorney/young attorney pairing.” It turns out that Kathy and Laura had admired each other’s work for years, but didn’t know each other well. Kathy says that she will be forever grateful that Laura reached out to her through the program “because I suspect I’ve made a lifelong friend. We’ve already discovered so much to share both personally and professionally, and we swap ideas and experiences about everything – from how to be managers/leaders in our respective law firms and practices to getting our daughters through the pre-teen years and thereafter with their self-image intact.” Kathy notes that Laura has even made a mark on her family – Kathy’s daughter has proclaimed Laura’s English toffee a new Christmas tradition! Laura and Kathy have now taken the “mentoring” relationship to a whole new level by serving together as WICL Committee Co-Chairs. Kathy summed up her experience with the program this way: “Without a doubt, the WICL program has been a unique and positive experience for me.”

S. Jenell Trigg, a member of Lerman Senter PLLC in Washington, D.C., is matched with Joan Stewart, special counsel at Wiley Rein. Jenell and Joan have gotten together for lunch twice during the past few months, most recently in January. As is typical when WICL mentors and mentees get together, that meeting included both professional and personal topics. On the professional level, they discussed the impact of recent FCC proceedings on their respective clients, as Jenell’s practice focuses on privacy issues and Joan represents television clients. On a personal level, they compared notes on their favorite Indian restaurants.

If you are interested in signing up for the Mentoring Program, more information and a sign-up sheet are included at the end of the Newsletter. You also may contact Martha Heller, the Mentoring Program Coordinator, at 202.719.3234 or mheller@wileyrein.com.

Martha Heller is a Partner at Wiley Rein LLP in Washington, D.C.

Federal Legislative Report: Congress Moving at Snail’s Pace on Federal Free Flow Act
By Lucy Dalglish

You need no further evidence that Congress works at a snail’s pace than to look at the progress of the federal Free Flow of Information Act (a.k.a. “the shield law”).

During the six years in which Congress has been considering the latest generation of attempts to enact a federal privilege protecting confidential sources, six additional states have gotten the job done. Today, 37 states and the District of Columbia have statutes or court rules that protect such sources, and at least two more states are considering bills that would do so. Moreover, the protections adopted at the state level are typically stronger or more comprehensive than the protections being considered by Congress.

Why have Texas, Connecticut, Utah, Washington, Hawaii and Maine adopted privileges that are much more protective of journalists and their sources than anything being considered by Congress while a less protective bill languishes in Congress? It’s probably because of the convoluted, tortuous procedural rules of the U.S. Senate.

Here’s why:

After passing a similar “Free Flow” bill in the 110th Congress, the House of Representatives passed the current version of the Free Flow of Information Act on March 31, 2009 (H.R. 985). The bill was passed by a voice vote under a suspension of the rules, which is a procedural device routinely used to pass non-controversial bills. The House version of the bill includes an “income” test that limits its protection to those who obtain a substantial part of their livelihood from journalistic activities.

The Senate is considering a different version of the law (S. 448) that finally passed its Judiciary Committee, after much debate, in December 2009. But the bill has been kept off the Senate floor since that time, in part by the debates over health care but primarily because the Democratic leadership is reluctant to pass a bill that includes protection for so-called “bloggers.”
The Democratic leadership, including both President Barack Obama and Attorney General Eric Holder, had previously expressed support for a federal shield law. But White House concerns about the inclusion of bloggers in the original Senate bill initially threatened to derail it. Several attempts were made in committee to remove non-traditional journalists from the bill’s protection, but these ultimately were defeated. Then, in a very unusual move, the Obama Administration publicly endorsed the bill while it was still under consideration by the Judiciary Committee. (Typically, the administration only issues such statements about bills that have actually made it onto the chamber floor). After quelling additional in-fighting and defeating further attempts to amend the bill, the Judiciary Committee ultimately voted to send the bill to the floor of the Senate in December 2009, leaving intact the bill’s broad description of those who would be covered by its protections.

Differences Between the Bills:

Because of this political wrangling, the version of the bill that was passed by the Senate Judiciary Committee is very different from the version of the bill passed by the full House. Although both would provide a qualified privilege to reporters and would apply in both criminal and civil contexts, the two proposals vary greatly on what information would fall under their purview and who could call on the shield for protection.

Information Protected: The Senate version of the bill protects only (i) the identities of confidential sources, and (ii) those records, communications, data, documents or information obtained under a promise of confidentiality. Media analysts estimate that only about 15 percent of all subpoenas served on journalists fit into this category. The House bill creates a much more expansive scheme, extending protection not just to confidential sources and information, but to all documents and information obtained during the newsgathering process.

Persons Protected: As discussed above, the Senate bill, after many amendments, currently takes a broad stance in defining who would be included in the protected class, covering anyone who engages in “the regular gathering, preparing, collecting, photographing, recording, writing, editing, reporting or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.” However, Senators Dick Durbin (D-Ill.) and Diane Feinstein (D-Calif.) have blocked the bill from being brought to the Senate floor for a vote and insist that they will continue to do so unless the class of covered persons is narrowed. By contrast, the House bill takes a more restrictive approach to who can claim the protection of the privilege, providing protection from federal subpoenas only to those whose “journalism” work is done “for a substantial portion of the person’s livelihood or for substantial financial gain.” In other words, part-time “bloggers” or those who blog without financial compensation would not be covered under the House version.

Exceptions: Both versions of the bill are rife with exceptions. The House legislation provides specific exceptions where disclosure is necessary to prevent an act of terrorism or imminent death or significant bodily harm; where disclosure is necessary to identify a person who has released certain categories of private business and medical information; and where the reporter witnesses criminal or tortious conduct. The exceptions in the proposed Senate legislation are broader. Rather than limiting the exceptions to instances in which disclosure is “necessary,” the Senate bill would permit disclosure where the sought-after information would assist in preventing an act of terrorism or other articulable harm to national security, or could prevent or mitigate death, kidnapping, or substantial bodily harm. However, like the House version, the Senate bill includes exceptions where a journalist witnesses allegedly criminal or tortious conduct.

To determine whether its exceptions apply, the Senate version contains a public interest balancing test, under which the public interest in the release of confidential source information would be balanced against the interest in allowing journalists to keep such information confidential. However, this balancing test does not apply in national security and terrorism cases. In criminal cases, the journalist bears the burden of demonstrating that the public interest in confidentiality is more important than the interest in disclosure, while in civil cases, the burden is on the subpoenaing party.

On-going efforts:

Lobbyists for media companies and non-profits have been continuously canvassing the Senate in an effort to persuade Senate Majority Leader Harry Reid (D-Nev.) that the bill has the 60 votes necessary to survive cloture. (Under convoluted Senate rules, a bill can be brought to the floor for a quick vote if it can survive a “cloture” vote. In other words, a bill’s sponsor has to have 60 votes to bring the bill to a quick vote on the Senate floor, after which only a simple majority is needed to actually pass it.) Ironically, although this bill has wide bipartisan support, it will never hit the Senate floor unless the media coalition can demonstrate to Senator Reid that he can schedule it for a quick, successful vote.

And that’s why six new states have enacted broad reporter’s privilege laws while a bill with a much more limited scope has yet to hit the Senate floor.

Lucy Dalglish is a staff attorney with the Reporters Committee for Freedom of the Press in Arlington, Virginia.
Federal Legislative Report:
Congress Considering First Federal Anti-SLAPP Bill
By Tyra Hughley Smith

For the first time, Congress is considering legislation intended to provide protection from meritless federal court lawsuits to citizens exercising, or attempting to exercise, their First Amendment right to criticize a person, company or project, or an arm of government. The Citizen Participation Act of 2009 (HR 4364), introduced in the House of Representatives by Rep. Steve Cohen (D-Tenn.) in mid-December 2009, is the first proposal to create a “anti-SLAPP” law applicable to federal court cases.

“SLAPP” lawsuits (or “Strategic Lawsuits Against Public Participation”) are lawsuits aimed at those who exercise their First Amendment rights to petition the government or speak out on matters of public interest, especially when such speech includes criticism of a person, company or unit of government. For example, in 2008, private developers sued a group of concerned citizens in Clarksville, Tennessee, for libel and invasion of privacy for running an ad in a local newspaper criticizing their elected officials for backing a redevelopment plan that included the use of eminent domain to obtain land for the developers. Swift v. Clarksville Public Rights Coalition, No. MC CC CV OD-08529 (dismissing lawsuit because “accusing a public official or public figure of using their political influence to obtain a benefit for others or themselves or favoring their supporters is not defamation”).

“A-SLAPP” legislation protects these individuals or companies from meritless suits, such as the Clarksville lawsuit, that are aimed at intimidating them into silence. Approximately 28 states have enacted anti-SLAPP legislation, including California, Illinois, Florida and New York. However, such protections typically cannot be invoked in federal court cases.

The proposed federal bill would create a qualified immunity from civil liability for petition activity relating to matters of public interest by, in effect, adopting the “actual malice” standard used in defamation cases: all such petition activity made without knowledge or reckless disregard of falsity would be protected. “Petition activity” for this purpose would include any statement made before or submitted to a government body, or activity encouraging others to make or submit such statements. The act also would protect speech or conduct connected with an “issue of public interest,” which includes any information or opinion related to health or safety; environmental, economic or community well-being; the government; a public figure; or a good, product or service in the marketplace.

The act would protect qualifying speech, conduct and petition activity by providing a set of procedural mechanisms intended to bring any lawsuit shown to be a SLAPP lawsuit to an expeditious resolution. First, the defendant (the person being “SLAPPed”) may bring a special motion to dismiss at an early stage in the proceedings if that person can show that the lawsuit arose from protected speech or petitioning activity. The plaintiff must then show that the claim is both legally and factually sufficient to sustain a favorable judgment. The hearing and the court’s ruling on the motion are expedited, and discovery is stayed until the motion is resolved. If the plaintiff loses, the lawsuit must be dismissed with prejudice. However, a losing defendant has a right to an immediate appeal.

Additionally, since only slightly more than half of the states have anti-SLAPP laws, the proposed federal legislation would provide federal removal jurisdiction over any case in which the defendant (i) asserts it as a defense, or (ii) can show that the action arose from an act in furtherance of the right of petition or free speech. However, the bill would not preempt or otherwise alter any existing state anti-SLAPP laws.

The proposed legislation also would protect anonymous speech. Where an anonymous speaker’s personal identifying information is sought through a subpoena or discovery order on the basis of speech, conduct or petitioning activity about a public issue, any other party to the lawsuit or the speaker may make a special motion to quash. If the plaintiff in the underlying case cannot demonstrate that the case has merit, the motion to quash must be granted.

Moreover, a party who prevails on a special motion to dismiss or quash under the proposed bill could recover the costs of litigation, including attorneys’ fees. Any such award, as well as any damages awarded under a state anti-SLAPP law that permits damages awards, would not be dischargeable in bankruptcy.

Finally, to protect against abuse, claims brought solely in the public interest and claims arising from advertising speech would be exempt from the protections of the statute, if enacted.

The bill has been assigned to the House Judiciary Committee for consideration.

Various organizations have praised the proposal for a federal anti-SLAPP law as a means of affording limited First Amendment immunity for protected activities in federal courts. Among others, the California Anti-SLAPP Project is sponsoring a new website called The Public Participation Project to collect signatures, list supporters, and provide tools for contacting Congress to support passage of the proposed federal anti-SLAPP bill. See http://anti-slapp.org, which also provides a link to the full text of the proposed legislation.

Tyra Hughley Smith is an attorney and an adjunct professor of law at the University of Southern California.
Supreme Court News
Critics, Commentators, and Cases Offer Few Glimpses at Sotomayor’s Position on Media Law

New Justice Expresses Support for Cameras in the U.S. Supreme Court

Examinations of the career of recently confirmed U.S. Supreme Court Justice Sonia Sotomayor provide mixed answers to the question of whether she will be a friend or foe to journalists and media organizations in her interpretation of the First Amendment and freedom of information laws.

Sotomayor, who replaces retiring Justice David H. Souter, was sworn in on August 8 after being confirmed by the Senate in a 68 to 31 vote. She served as a District Court judge in New York City for six years before becoming a judge for the 2nd Circuit U.S. Court of Appeals in 1998.

A report issued May 27, 2009 by the Reporters Committee for Freedom of the Press (RCFP) noted that despite Sotomayor’s vast experience as a judge, “it is surprising to see that no clear standard on First Amendment issues has emerged from her cases.” Given the small number of her judicial opinions concerning media law, the RCFP concluded that “it is difficult to know how she will decide the cases that concern journalists.” The RCFP’s extensive report on Sotomayor’s media law-related decisions can be found online at http://tinyurl.com/rcfpsotomayorreport.

In a May 28, 2009 report for the First Amendment Center, resident scholar Ronald K.L. Collins described Sotomayor as a jurist who is “more concerned with context than with concepts, more attentive to discerning facts than with announcing new doctrine, and one who is more focused on applying law than developing it.” Collins said Sotomayor’s record gives reason to be cautiously optimistic about her stance on First Amendment values, and predicted that although her “First Amendment legacy is unlikely to be significant ... she might surprise us.” Collins’ report can be found online at http://www.firstamendmentcenter.org/commentary.aspx?id=21637.

Journalists are likely to be encouraged by Sotomayor’s willingness to serve as what she described as a “new voice” in the Court’s ongoing discussion about allowing cameras in its courtroom for oral arguments. Her view sharply contrasts with that of Souter, who once told a House appropriations subcommittee that “the day you see a camera come into our courtroom, it’s going to roll over my dead body,” according to a March 30, 1996 report in The New York Times.

During a July 14, 2009 Senate confirmation hearing, Sotomayor responded to a question from Sen. Herb Kohl (D-Wis.) by saying she has had “positive experiences with cameras” in courtrooms.

The Supreme Court announced that part of Sotomayor’s oath-taking would be broadcast live from a Supreme Court conference room. An August 10 story in The National Law Journal said it was the first time an oath-taking had been broadcast live from the Court, although it was unclear from where the idea came. Previous oath-taking ceremonies have been broadcast, but they took place at the White House, not the Court.

In looking at her judicial record, media law experts praised Sotomayor’s 2005 decision involving a prior restraint against the media in United States v. Quattrone, 402 F.3d 304 (2d Cir. 2005). Sotomayor, writing for a three-judge panel, struck down a district court gag order prohibiting journalists from publishing the names of prospective or selected jurors discussed in open court during the criminal retrial of former Credit Suisse First Boston executive Frank Quattrone. (See “Gag Order on Juror Names Ruled Unconstitutional,” in the Winter 2005 issue of the Silha Bulletin.)

Jane Kirtley, director of the Silha Center and professor of media ethics and law at the University of Minnesota, lauded Sotomayor’s approach in Quattrone in a May 28, 2009 First Amendment Center report by resident scholar David L. Hudson Jr. “I would characterize this opinion as the textbook example or primer of how an appeals court should review a gag order, not only because I agreed with the outcome but also because her analytical process was just how an appeals court should do this,” Kirtley said. “She very clearly looked at the Nebraska Press case [Nebraska Press Ass’n v. Stuart, 427 U.S. 539 (1976)] and applied it very thoughtfully and set out in a very straightforward way how she did that.”

Hudson’s report can be found online at http://www.firstamendmentcenter.org/analysis.aspx?id=21629.


A few months later, however, at the request of Foster’s wife and the Justice Department, Sotomayor vacated her order to release the note after The Wall Street Journal published an authentic copy it received from a confidential source. In Dow Jones & Co. v. U.S. Dept. of Justice, 907 F.Supp. 79 (S.D.N.Y. 1995), Sotomayor wrote that her order had been mooted because the newspaper had already “obtained and published exactly what their Complaint had sought” through different means.

The Silha Center filed an amicus brief with the U.S. Supreme Court in another case stemming from the Foster suicide. See Brief for Silha Center for the Study of Media Ethics and Law as Amicus Curiae Supporting Respondent, Office of Independent

“[Sotomayor’s] First Amendment legacy is unlikely to be significant. Then again, she might surprise us.”

– Ronald K.L. Collins Scholar, First Amendment Center
Counsel v. Favish, 541 U.S. 157 (2004) (No. 02-954). In Favish, the Supreme Court prevented the release of death-scene photographs of Foster’s body under FOIA exemption 7(C). Exemption 7(C) protects disclosure of “information compiled for law enforcement purposes” that could constitute “an unwarranted invasion of personal privacy.” The brief is available online at http://www.silha.umn.edu/silharesources.html.

In two other FOIA rulings, Sotomayor invoked exemption 5, the work product exemption. In Tigue v. U.S. Dept. of Justice, 312 F.3d 70 (2d Cir. 2002), she affirmed a district court ruling that an internal memo written by an assistant U.S. Attorney detailing how the Internal Revenue Service (IRS) should conduct criminal tax investigations did not have to be released. In Wood v. FBI, 432 F.3d 78 (2d Cir. 2005), she found that the FBI and Justice Department were justified in withholding documents sought by the Journal Inquirer in Manchester, Conn., in the investigation of FBI special agents who had been accused of misrepresenting information on arrest warrant affidavits.

Sotomayor’s rulings on restrictions on freedom of expression by schools and employers led some commentators to observe that the judge is not an ideologue.

In Doninger v. Niehoff, 527 F.3d 41 (2d Cir. 2008), Sotomayor joined in a decision that upheld the authority of a Connecticut public high school to prevent a student from running for senior class secretary after calling school administrators “douchebags” on her personal blog. (See “2nd Circuit Rules School Can Punish Teen for Online Criticism of Administrators” in the Summer 2008 issue of the Silha Bulletin.) The court decided that a student could be disciplined for speech that occurs off school grounds if the expressive conduct “would foreseeably create a risk of substantial disruption within the school environment.”

Paul Smith, a former classmate of Sotomayor at Yale Law School, cited Doninger and Guiles ex rel. Guiles v. Marineau, 461 F.3d 320 (2d Cir. 2006), in which Sotomayor joined in a unanimous opinion that upheld the right of a 13-year-old Vermont middle school student to wear a T-shirt criticizing George W. Bush at school, to respond to critics who said she is a judge with a tendency to decide cases based on her personal ideology. In a May 31 report in Newsday of Long Island, N.Y., Smith said that the student speech cases demonstrate that Sotomayor “is a careful person who could go either way, but is focused on not just broad doctrine but how the doctrine applies to particular factual situations.”

According to a June 7 report in The Washington Post, Scott Moss, a University of Colorado law professor, pointed to Sotomayor’s dissent in Pappas v. Giuliani, 290 F.3d 143 (2d. Cir. 2002), as evidence that Sotomayor is not an ideologue. The majority in Pappas upheld the firing of a New York City police officer who anonymously distributed anti-black and anti-Semitic material on his own time. Sotomayor disagreed with her colleagues for entering “uncharted territory” in First Amendment decisions. She found the speech “patently offensive, hateful and insulting,” but she advised against glossing over settled constitutional freedoms because the court was “confronted with speech it does not like and because a government employer fears a potential public response that it alone precipitated.”

Moss said, “If she were really a judge who ruled on personal or ideological preference, Pappas is about the last guy you’d want to stretch the law for.”

– CARY SNYDER
SILHA RESEARCH ASSISTANT
GENDER DISCRIMINATION IN THE WORKPLACE: “WE’VE COME A LONG WAY, BABY”¹

BY KATIE J. COLOPY, SANDRA K. DIELMAN & MICHELLE A. MORGAN

I. The Sexes at Work
Since the enactment of Title VII of the Civil Rights Act of 1964 (“Title VII”),² the proportion of women working outside the home has steadily increased.³ In fact, women now comprise nearly half of the U.S. labor force.⁴ Despite the significance of these gains, allegations of workplace discrimination based on gender continue to be made with alarming regularity. In fact, approximately one-third of the 95,000+ charges of workplace discrimination filed in 2008 with the Equal Employment Opportunity Commission (“EEOC”) included a claim of some form of gender discrimination.⁵ The prevalence of such claims, and the fact that the percentage of gender discrimination charges compared to the total number of discrimination charges filed with the EEOC has remained largely unchanged since the 1960s⁶ raises the question of how Title VII’s prohibition on gender discrimination in determining terms and conditions of employment has impacted the workplace. Despite the statistics, there is no doubt that Title VII and its associated jurisprudence have changed American workplace practices and norms. This article explores the impact, evolution, and trajectory of Title VII as it relates to gender discrimination, specifically with respect to sexual harassment and sexual stereotyping.

II. From the Protected Sex to a Protected Class
Ironically, it was Congress’s reluctance to grant women equal rights that led to the inclusion of “sex” as a protected class under Title VII. Title VII’s primary purpose was to end racial discrimination; the suggestion to include the word “sex” was offered by Representative Howard Smith of Virginia as a last-ditch effort to sabotage the legislation.⁷ Smith believed that the predominately male Congress would not support a bill that would give women “their first equal job rights with men.”⁸ Indeed, even those Representatives who supported equal rights for African-Americans were “concerned about the revolutionary changes Smith’s amendment would bring to [their] male-dominated world.”⁹ For example, Representative Emanuel Celler of New York responded to Smith’s amendment with outrage:

Most of the early charges and cases involved allegations of blatant gender discrimination, such as a company policy that prohibited hiring women with a pre-school age child.

You know the French have a phrase for it when they speak of women and men. When they speak of the difference, they say “vive la difference.” I think the French are right. Imagine the upheaval that would result from adoption of blanket language requiring total equality. This is the entering wedge, an amendment of this sort. The list of foreseeable consequences... I will say to the committee, is unlimited.¹⁰

Even one of the female Congressional Representatives, Edith Green of Oregon, initially opposed the amendment, stating that, as a woman she was willing to endure additional years of inequality in order to see the Act pass.¹¹

Thankfully, there were those who believed that women had waited long enough for equality. Representative Martha Griffiths of Michigan cautioned her male colleagues that “a vote against [Smith’s] amendment today . . . is a vote against his wife, or his widow, or his daughter, or his sister.”¹² Ultimately, the amendment passed by a margin of 168-133. Title VII was enacted into law to include “sex” as a protected class, along with race, color, religion, and national origin.¹³

Although Title VII was primarily intended to prohibit racial discrimination, the importance of adding sex as a protected class was immediately apparent in the year after the law’s passage; fully one-third of the charges filed with the EEOC identified gender as the basis for the alleged discrimination in the workplace.¹⁴ Most of the early charges and cases involved allegations of blatant gender discrimination,¹⁵ such as a company policy that prohibited hiring women with a pre-school age child.¹⁶ Other cases challenged the “raft of women-only protective legislation” enacted during the first half of the twentieth century and the discriminatory company policies they supported.¹⁷

Rosenfeld v. Southern Pacific Co. is typical of the latter line of cases.¹⁸ In Rosenfeld, a female job applicant sued a railroad company under Title VII after she was rejected from a
position as an agent-telegrapher because of a company policy
reserving such jobs for men.29 The railroad argued not only
that women were physically incapable of executing the duties
of an agent-telegrapher, but also that protectionist state laws
regulating women’s hours and weight loads precluded the
hiring of a woman.20 In rejecting this argument, the Ninth
Circuit Court of Appeals reasoned that, under the EEOC’s
guidelines, generic characterizations of women as the “weaker
sex” were not a legitimate basis for an employment decision.21
The court went on to conclude that protectionist state labor
laws contravened Title VII’s general objectives “and could not
be invoked to block women workers from gaining jobs they
wanted and were able to perform.”22

III. Recognition of Sexual Harassment as a
Form of Discrimination

As noted above, courts and the EEOC initially focused their
attention on blatant forms of gender discrimination. In
fact, “[e]arly cases seeking Title VII protection for sexually
abusive conduct in the workplace were rejected on theories
that sexual advances were the inevitable result of the
gender-heterogeneous workplace.”23 Recognition of sexual
harassment as a cause of action occurred gradually, as courts
and the EEOC sought to address the insidious gender-based
discrimination that lingered after blatantly sexist and/or
paternalistic employment policies were struck down.

The genesis of sexual harassment as a viable claim under Title
VII was the EEOC’s issuance of controversial new guidelines
in 1980.24 The guidelines laid out the criteria that eventually
would give rise to the two types of sexual harassment
recognized today: quid pro quo harassment, in which an
employment benefit is conditioned on sexual favors, and the
more amorphous hostile work environment harassment.25
Six years later, in Meritor Savings Bank v. Vinson,26 the United
States Supreme Court held that Title VII “encompasses a cause
of action for sexual harassment resulting in the creation of a
hostile or abusive work environment.”

In Meritor, a former bank teller alleged that her supervisor had,
among other things, fondled her in front of other employees
and used his position to coerce her into having sexual
relations.27 After she was terminated, the teller sued for sexual
harassment.28 Because she had not been fired for refusing to
engage in a sexual relationship with her supervisor—she had,
in fact, participated in the relationship for over four years—the
quid pro quo form of sexual harassment did not apply.29 On
appeal, however, the D.C. Circuit Court of Appeals noted
that sexual harassment is not limited to quid pro quo conduct;
rather, it includes behavior that “while not affecting economic
benefits, creates a hostile or offensive working environment.”30
In upholding the appellate court’s ruling, the Supreme Court
cited both the EEOC’s guidelines and Congress’s intent “to
strike at the entire spectrum of disparate treatment of men
and women in employment.”31 The Court went on to broadly
define hostile environment sexual harassment as “unwelcome
decisions or statements based on sex,” which have the “purpose or
effect of unreasonably interfering with an individual’s work
performance or creating an intimidating, hostile or offensive
working environment.”32 The Court noted that “the trier of fact
must determine the existence of sexual harassment in light of
the record as a whole and the totality of circumstances,
such as the nature of the sexual advances and the context in
which the alleged incidents occurred: mere utterance of an
... epithet which engenders offensive feelings in an employee
would not affect the conditions of employment to a significant
degree to violate Title VII.”33

Seven years later, the Supreme Court further refined the legal
standards relating to hostile environment sexual harassment.
In Harris v. Forklift Systems,34 the Court held that an actionable
claim of hostile work environment sexual harassment
must involve conduct that is “considered both objectively
hostile or abusive (if a reasonable person would find it so)
and subjectively abusive (as experienced by the victim) to
prove that the conduct actually altered the conditions of the
victim’s employment.”35 Further, the Court directed the
trier of fact to evaluate the “totality of circumstances” as “no
single factor is essential or paramount to a finding of sexual
harassment.”36

A. Development of the “Equal Opportunity Harasser”
Defence

Although the Supreme Court refined the legal standards for
judges and juries to use when evaluating what is or is not
sexual harassment, questions continue to arise in sexual
harassment and sexual discrimination litigation as to what
constitutes unlawful conduct in this regard and what are
appropriate defenses to such claims. One such defense to
sexual harassment claims that courts have considered in
recent years is the “equal opportunity harasser” defense.

The “equal opportunity harasser” defense to sexual harassment
originated from the courts’ increasing emphasis on the fact that
Title VII does not prohibit all forms of workplace harassment,
only harassment based on a characteristic protected by Title
VII, such as race, national origin, sex, etc. In the context of
proving a claim of sexual harassment, that means proving
harassment directed at a particular gender in the workplace
as opposed to both genders, and proving harassment of a
person because of the person’s gender as opposed to general harassment of both genders. In *Oncale v. Sundowner Offshore Services, Inc.*, the Supreme Court reiterated the importance of the fundamental premise that the harassment must be gender based when it recognized that male-on-male harassment or female-on-female harassment is actionable under Title VII if the complainant can prove the harassment was in fact because of his/her “sex” or “gender.”

Following the Supreme Court’s emphasis in *Oncale* of the importance of proving that the harassment was because of the person’s gender, some federal courts began to articulate a doctrine based on the Court’s “because of sex” premise that is informally known as the ‘equal opportunity harasser’ defense—namely, that if a person harasses both genders in the workplace, the harassment does not violate Title VII because the harassment is not because of the gender of the harassed employee. In *Holman v. State of Indiana*, the Seventh Circuit Court of Appeals recognized this defense when it dismissed a suit by a married couple based on allegations that both had been sexually harassed by their male supervisor. The court noted that the crucial issue under Title VII “is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.” The court went on to remark:

> Both before and after *Oncale*, we have noted that because Title VII is premised on eliminating *discrimination*, inappropriate conduct that is inflicted on both sexes, or is inflicted regardless of sex, is outside the statute’s ambit. Title VII does not cover the “equal opportunity” or “bisexual” harasser, then, because such a person is not *discriminating* on the basis of sex. He is not treating one sex better (or worse) than the other; he is treating both sexes the same (albeit bad). The Fourth Circuit Court of Appeals also has recognized this “equal opportunity harasser” defense. In *Lach v. Wal-Mart Stores, Inc.*, the court found that a supervisor’s sexually inappropriate behavior toward a male employee was not based on the employee’s gender because the supervisor acted similarly in front of female employees. The court noted that the supervisor had an “unabashed taste for lewd humor” and that he “was just an indiscriminately vulgar and offensive supervisor, obnoxious to men and women alike.”

But indiscriminate vulgarity is not always a complete defense to a Title VII sexual harassment claim. An employee may be able to establish a viable sexual harassment claim with proof that the harasser specifically targeted the employee, or targeted the employee more aggressively or severely than other members of his or her sex. For example, in *Bowers v. Radiological Society of North America, Inc.*, the employer moved for summary judgment on the grounds that the allegedly harassing supervisor was equally crude and vulgar to men and women. The court denied the motion, reasoning that unlike other employees, who were only subjected to general sexual comments, the plaintiff was specifically targeted by the supervisor for a sexual relationship.

**B. Impact of Workplace Culture**

Should it make a difference in a sexual harassment case if the employee works in an environment where a certain level of crudeness is traditionally accepted as opposed to an environment where employees are more likely to behave and communicate in a professional manner? Several courts have faced that question as a result of the following dicta in the Supreme Court’s *Oncale* decision:

> In same-sex (as in all) harassment cases, that inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. A professional football player’s working environment is not severely or pervasively abusive, for example, if the coach smacks him on the buttocks as he heads onto the field – even if the same behavior would reasonably be experienced as abusive by the coach’s secretary (male or female) back at the office. . . . Common sense, and an appropriate sensitivity to the social context, will enable courts and juries to distinguish between simple teasing and roughhousing among members of the same sex, and conduct which a reasonable person in the plaintiff’s position would find severely hostile or abusive.

Various courts have interpreted *Oncale*’s “social context” language to preclude hostile work environment claims in workplaces where sexual vulgarity or crudeness is common. In *Gross v. Burggraf Construction Co.*, the Tenth Circuit Court of Appeals rejected the sexual harassment claim of a female truck driver in part based on the fact that the sexually-based profanity of which she complained was typical of the industry. The court observed: “In the real world of construction work, profanity and vulgarity are not perceived as hostile or abusive. Indelicate forms of expression are accepted or endured as normal human behavior.” The court stressed the importance of evaluating vulgarity in the context of a blue collar environment where crude language is commonly used...
Gender Discrimination continued

by male and female employees,” and concluded that “[s]peech that might be offensive or unacceptable in a prep school faculty meeting, or on the floor of Congress, is tolerated in other work environments.” Similarly, in Weston v. Commonwealth of Pennsylvania Department of Corrections, a federal district court found that sexually-charged behavior did not rise to the level of harassment where the statements and actions were made in the prison’s unique social context and workplace culture. The court remarked that it was difficult to imagine a more caustic environment, or one more likely to promote harsh or even “acidic banter” than a prison which “must foster offensive comments, jokes, and jibes.”

Not all courts, however, have concluded that a traditionally rough or rowdy workplace will insulate employers from a hostile work environment claim. In Williams v. GM Corp., the Sixth Circuit Court of Appeals rejected the employer’s “workplace culture” defense. The plaintiff in Williams alleged that she was subjected to unwelcome touching, sexual innuendo, and cursing while assigned to the midnight shift at a warehouse. In holding that the plaintiff had established a hostile work environment, the court noted that an evaluation of the “totality of the circumstances” in a workplace permeated with crudeness would not make the plaintiff’s claim legally deficient under Title VII:

We do not believe that a woman who chooses to work in the male-dominated trades relinquishes her right to be free from sexual harassment; indeed, we find this reasoning to be illogical, because it means that the more hostile the environment, and the more prevalent the sexism, the more difficult it is for a Title VII plaintiff to prove that sex-based conduct is sufficiently severe or pervasive to constitute a hostile work environment. Surely women working in the trades do not deserve less protection from the law than women working in a courthouse.

IV. The New Catch-22
Sex discrimination law has expanded to encompass not only sexual harassment as a separate cause of action, but also sexual stereotyping as evidence of disparate treatment. Over twenty years ago, the Supreme Court in Price Waterhouse v. Hopkins recognized sexual stereotyping as evidence of intentional sex discrimination in the context of the original Catch-22: requiring female employees to act like men, then penalizing them either for doing so or failing to do so. Yet, another Catch-22 is emerging: expecting female employees to act as primary family caregivers, then damning them if they do and if they don’t.

A. The Masculine/Feminine Conundrum
In Hopkins, a senior manager at Price Waterhouse claimed that her denial of partnership constituted sex discrimination. Arguing that some of the partners reacted negatively to her personality because she was a woman, Hopkins relied on evidence of partnership evaluations that reflected sex-based criticisms, such as those describing her as “macho,” suggesting that she “overcompensated for being a woman,” advising her to take “a course at charm school,” and recommending that to improve her chances for partnership, she should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”

In recognizing the existence of sexual stereotyping and its legal relevance in Title VII law, the Supreme Court stated:

We are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for “[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.” An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind.

While noting that a Title VII plaintiff “must show that the employer actually relied on her gender in making its decision,” the Court held that “[i]n making this showing, stereotyped remarks can certainly be evidence that gender played a part.

Furthermore, the use of gender stereotypes about feminine and masculine attributes can constitute evidence of sex discrimination regardless of how the gender of the decision-maker and that of the plaintiff line up. The notion that a female supervisor “was somehow incapable” of discriminating against a female subordinate because she “was herself a woman” was firmly rejected in Costa v. Desert Palace, Inc. In Desert Palace, the female plaintiff, who was the only woman in her bargaining unit and job position (operating forklifts and pallet jacks in defendant’s warehouse), claimed that she was subjected to sex discrimination when she was terminated following an escalating series of disciplinary actions. Arguing that she was penalized for failing to conform to stereotypical ideas about women (i.e., that women should not swear and that women did not need overtime because
they did not have a family to support]), the plaintiff presented evidence that she was characterized by defendant as "strong willed," "opinionated" and "confrontational," routinely denied overtime, singled out for discipline (including discipline for using profanity), and subjected to sex-based epithets. Some of the sex-based hostility allegedly directed at the female plaintiff came from her female supervisor in what the jury apparently perceived as an effort by the female supervisor to fit in with the male employees in a male-dominated work environment. In affirming liability for the employer, the court noted:

Finally, we detour briefly to address the suggestion that [plaintiff’s female supervisor] was somehow incapable of discriminating against [plaintiff] because [plaintiff’s female supervisor] was herself a woman. This argument was resoundingly rejected by a unanimous Supreme Court in Oncale, 523 U.S. at 80-81. In a society where historically discriminatory attitudes about women are firmly rooted in our national consciousness," \textit{Frontiero v. Richardson}, 411 U.S. 677, 684, 36 L. Ed. 2d 583, 93 S. Ct. 1764 (1973) (plurality opinion), we cannot discount that the jury perceived [plaintiff’s female supervisor], a former Army officer now placed in a supervisory position in a virtually male-only world, as demonstrating hostility toward [the female plaintiff] as a woman as a means of showing that [plaintiff’s female supervisor] was "one of the boys." . . . Life was not necessarily easy for [plaintiff’s female supervisor], but that was no excuse for visiting harsh discipline on [plaintiff].

B. The Caregiver/Breadwinner Dichotomy

While courts previously were occupied with untangling the masculine/feminine "double bind," they recently have been busy with unraveling the caregiver/breadwinner knot. The Supreme Court’s discussion of the domestic and economic roles of women has evolved significantly since its majority opinion almost forty years ago in \textit{Phillips v. Martin Marietta Corp.}. In \textit{Phillips}, the plaintiff challenged the employer’s hiring policy, under which job applications for women with preschool-age children were not accepted, but those for men were. In vacating summary judgment for the employer and remanding the case for fuller development of the record, the Court indicated that the employer could establish that such a policy constituted a bona fide occupational qualification ("BFOQ") reasonably necessary to the employer’s business operations by showing that "conflicting family obligations," namely, having preschool-age children, could be "demonstrably more relevant to job performance for a woman than for a man." In his concurring opinion, Justice Marshall expressed his fear that, in suggesting such a policy could be a BFOQ:

the Court has fallen into the trap of assuming that [Title VII] permits ancient canards about the proper role of women to be a basis for discrimination. Congress, however, sought just the opposite result. . . . When performance characteristics of an individual are involved, even when parental roles are concerned, employment opportunity may be limited only by employment criteria that are neutral as to the sex of the applicant.

In line with Justice Marshall’s concurrence in \textit{Phillips} is the Supreme Court’s 2003 opinion in \textit{Nevada Department of Human Resources v. Hibbs.} In \textit{Hibbs}, the Court recognized the "pervasive sex-role stereotype that caring for family members is women’s work," which, in conjunction with the "parallel" stereotype "presuming a lack of domestic responsibilities for men[,]" has "created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver, and fostered employers’ stereotypical views about women’s commitment to work and their value as employees.

Just as the 1980 EEOC guidelines heralded the recognition of hostile environment sexual harassment under Title VII, so, too, may the 2007 EEOC Enforcement Guidance regarding treatment of employees with family caretaking obligations presage the development of sex-based caregiver discrimination law. Acknowledging that federal EEO laws "do not prohibit discrimination against caregivers per se," the EEOC’s Enforcement Guidance recognizes that "there are circumstances in which discrimination against caregivers might constitute unlawful disparate treatment." Indeed, the EEOC points out that employment decisions grounded on sex-based stereotyping about caregiving responsibilities (including the care of not only a child, but also a parent or spouse), such as the perceptions that women are more committed to caregiving than to their jobs and are less competent than other workers—as well as the flip side: that men are poorly suited to caregiving, violate the federal antidiscrimination statutes. Further, the EEOC posits that sex-based harassment directed at caregivers that is sufficiently severe or pervasive to create a hostile work environment would also subject employers to liability under the EEO statutes.

A number of recent cases acknowledge and address the
caregiver/breadwinner Catch-22. In Chadwick v. WellPoint, Inc.,73 the First Circuit Court of Appeals cited Hibbs as confirming that “the assumption that a woman will perform her job less well due to her presumed family obligations is a form of sex stereotyping and that adverse job actions on that basis constitute sex discrimination.” The court reversed summary judgment for the employer where a material fact question existed as to whether its refusal to promote a female employee, who was the mother of an eleven-year-old son and six-year-old triplets, was based on a sex-based stereotype that women who were mothers, particularly of young children, neglected their jobs in favor of their presumed childcare responsibilities. The court stated that “an employer is not free to assume that a woman, because she is a woman, will necessarily be a poor worker because of family responsibilities. The essence of Title VII in this context is that women have the right to prove their mettle in the work arena without the burden of stereotypes regarding whether they can fulfill their responsibilities.”74 In concluding that the plaintiff “presented sufficient evidence of sex-based stereotyping to have her day in court,” the court relied on evidence that the decision-maker, when informing the plaintiff that she did not get the promotion, explained: “it was nothing you did or didn’t do. It was just that you’re going to school, you have the kids and you just have a lot on your plate right now.”75 Indeed, the court explained: “A reasonable jury could infer from [the decision-maker’s] explanation that [the plaintiff] wasn’t denied the promotion because of her work performance or her interview performance but because [the decision-maker] and others assumed that as a woman with four young children, [the plaintiff] would not give her all to her job.”76

C. Sexual Stereotyping as Evidence of Sex Discrimination

Some courts have held that evidence of an employer’s stereotyping of working mothers, standing alone, can be sufficient evidence of an impermissible, sex-based motive. In Bach v. Hastings on Hudson Free School District,77 the plaintiff alleged that she was denied tenure as a school psychologist because her employer presumed that, as a young mother, she would not be devoted to her job. In vacating summary judgment for the school principal and director, the Second Circuit Court of Appeals found that stereotyping about the qualities of mothers is a form of gender discrimination that can be determined in the absence of evidence about how an employer treated fathers.78 Accordingly, evidence that after plaintiff returned from maternity leave, her supervisors asked her how she planned to space her children, advised her to wait until her son was in kindergarten to have another child, and expressed concern about whether she would not work long hours upon receiving tenure was sufficient to create a fact question as to whether the plaintiff was discriminated against because of her sex.79

Other courts, however, have held that in order to state a discrimination claim based on her status as a woman with caregiver responsibilities. In Philipson v. University of Michigan Board of Regents,80 the plaintiff’s discrimination claim was based on her allegation that her job offer was rescinded because she was a woman with young children. In granting summary judgment for the employer, the court pointed to the lack of evidence showing that plaintiff was treated differently than males with young children, or males in general, and held that plaintiffs alleging such claims cannot prevail if there is no corresponding subclass of members of the opposite gender.81

While a finding of intentional sex discrimination under Title VII requires a showing that the employer actually relied on gender in taking the challenged employment action, evidence not only of stereotyped remarks about male and female deportment (as in Hopkins), but also of stereotyped questions or comments about male and female caregiving responsibilities can be presented to show that gender played a part. In Bruno v. City of Crown Point,82 the Seventh Circuit Court of Appeals reversed judgment for the plaintiff and remanded the case for entry of judgment in favor of the defendants on plaintiff’s sex discrimination claims, which challenged the city’s decision not to hire her for a paramedic position. The court found that family-oriented interview questions asked of plaintiff, but not of the seven male applicants (such as how her spouse would feel about her taking the job, whether she was planning to have more children, and what childcare arrangements she had in place for her son), although based on sex stereotypes—namely, that females are the primary care providers for children and that the wife’s career is secondary to the husband’s—were not sufficient to prove intentional discrimination in the absence of evidence showing that the employer actually relied on plaintiff’s gender.
in making the hiring decision. Similarly, in Williams v. City of Michigan, the district court entered judgment for the employer on plaintiff’s sex (and race) discrimination claim, which challenged the city’s decision not to hire her on the grounds that it was motivated by her gender and/or interracial marriage. The court found that family-oriented and work-life balance interview questions asked of plaintiff, but not of male applicants (such as questions regarding the effect of the job on her role as a mother and her child-bearing plans), were not enough to prove intentional discrimination:

Badges of discrimination mark the process that led to the rejection of [plaintiff’s] application ... [Plaintiff’s] burden, however, is not simply to prove that discriminatory questions were asked, but rather to show that she was denied the job as a result of race or gender. The court is persuaded that men were not asked questions about child-bearing and child care. The court is persuaded even more greatly, however, that no other applicant would have been hired with the sorry set of comments provided by [plaintiff’s] employer.

Moreover, in Wallace v. Methodist Hospital System, the Fifth Circuit Court of Appeals affirmed judgment for the employer on plaintiff’s sex discrimination claims, in which she asserted that she was terminated because she was pregnant three times in three years. The court found that the supervisor’s comment, made during a meeting in which she gave plaintiff a satisfactory evaluation, that plaintiff needed to choose between nursing and her family, while reflecting gender stereotypes, was not specifically related to an employment decision and, therefore, was not probative evidence of discriminatory intent.

In contrast to those cases where evidence of sex-based stereotypes was insufficient to prove intentional discrimination is Santiago-Ramos v. Centennial P.R. Wireless Corp, in which the First Circuit Court of Appeals reversed summary judgment for the employer based on its finding that a jury could reasonably rely upon comments made by various decision-makers about plaintiff’s ability to balance work and family responsibilities in concluding that plaintiff was terminated because of sex. Furthermore, in Lust v. Sealy, Inc., the Seventh Circuit Court of Appeals affirmed a jury verdict for plaintiff on her claim that she was passed over for a promotion because of her gender. The plaintiff’s supervisor admitted that he did not consider recommending plaintiff for the promotion because she had children, and he did not think she would want to relocate her family. In finding that plaintiff’s supervisor easily could have asked plaintiff whether she was willing to relocate, rather than assume she was not and thereby prevent her from obtaining a promotion that she would have “snapped up” had it been offered to her, the court stated: “Realism requires acknowledgment that the average mother is more sensitive than the average father to the possibility disruptive effect on children of moving to another city, but the antidiscrimination laws entitle individuals to be evaluated as individuals rather than as members of groups having certain characteristics.” Similarly, in Matthews v. Connecticut Light & Power Co., the district court denied summary judgment for the employer on plaintiff’s claim that she was terminated because of her pregnancy and her status as a mother. The court found that comments made to plaintiff by her supervisor expressing concern about plaintiff’s ability to perform her job as a mother with a young child, “while not as explicit as the remarks in Back, could be interpreted to reveal a similar discriminatory or improperly stereotypical sentiment, i.e., that a woman with a young child could not properly perform the duties required for her position.”

V. Let’s See How Far We’ve Come

Title VII laid the groundwork to set the wheels of workplace gender equality in motion. And, as this article has detailed, “we’ve come a long way, baby!” in terms of the evolution of gender discrimination law and its impact on employment opportunities and practices. Title VII has firmly established that both women and men have the right to equal treatment with respect to “compensation, terms, conditions, or privileges of employment,” regardless of gender. Courts have built upon the rudimentary foundations of Title VII and landmark Supreme Court decisions like Hopkins to rid workplaces of gender discrimination in a multitude of forms and continue to confront new issues of sexual harassment and gender stereotyping in the context of women’s continuously evolving domestic and economic roles. The Supreme Court aptly noted in Oncale that “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” While it was not initially one of the main purposes of Title VII to rid the workplace of gender discrimination, the once controversial “sex” amendment to Title VII has indeed made a significant impact in the workplace, and it will continue to impact the workplace in more ways than any legislator involved in the enactment of the law likely would have ever imagined. Such is progress.

Katie J. Colpy is a partner and co-chair of and Sandra K. Diehlman and Michelle A. Morgan are senior associates in the Labor and
Employment Practice at the Dallas office of Jones Day. Together, they have extensive experience representing corporate clients in litigation matters, with a focus on employment. Their practice includes defending employers in employment discrimination, wrongful discharge, breach of contract, benefits, wage and hour, and tort litigation involving individual, multi-plaintiff, class, and collective claims. 

1 The slogan “you’ve come a long way, baby” is borrowed from the Virginia Slims cigarette ad campaign in the late 1960s used to market the slim line of cigarettes to young professional women. WIKIPEDIA, VIRGINIA SLIMS, at http://en.wikipedia.org/wiki/Virginia_Slims.

2 42 U.S.C. § 2000e et seq.


4 Id. (noting that in 1970, 45% of women were in the labor force in 1970 while 59% of women were in the labor force in 2005).

5 EEOC, EEOC Charge Statistics: FY 1997-2008, at http://www.eeoc.gov/statscharges.html. The EEOC is the federal agency created to investigate alleged violations of Title VII. 42 U.S.C. § 2000e-5(a). A party claiming a violation of Title VII must first file an administrative charge with the EEOC before filing a lawsuit. 29 C.F.R. § 1601.6(a) (2005). The EEOC investigates the charge, and encourages conciliation. 29 C.F.R. § 1601.15 (2005). If conciliation fails and the administrative procedures are exhausted, the EEOC, the changing party, or another person aggrieved by the discriminatory practice, may file a lawsuit in federal court within a set time period. 42 U.S.C. § 2000e-5(f). Notably, the EEOC may also bring their own administrative charges of discrimination, known as Commissioner Charges. Anne Noel Occhialino & Daniel Vail, Why the EEOC (Still) Matters, 22 HOFSTRA L. & EMP. L.J. 671, 693 n. 198 (2005) (noting that Commissioner Charges, which may be filed by any member of the EEOC and requested by any person or organization, “recognize that some types and incidents of illegal discrimination will not be the subject of individual charges but, nonetheless, constitute serious violations of the laws that should be the subject of enforcement action”); 29 C.F.R. § 1601.6(a) (2005) (discussing Commissioner Charges).


7 BARBARA WHALEN & CHARLES WHALEN, THE LONGEST DEBATE: A LEGISLATIVE HISTORY OF THE 1964 CIVIL RIGHTS ACT 115-17 (Seven Locks Press 1985) (noting that protection against gender discrimination, which was not included in the Civil Rights Act of 1963, was added to the Civil Rights Act of 1964 as a last minute effort to stop the bill’s passage); Meriter Savings Bank v. Vinson, 477 U.S. 57 (1986) (noting “the prohibition of discrimination based on sex was added to Title VII at the last minute on the floor of the House of Representatives”); Daz v. Pan AM World Airways, Inc., 442 F.2d 385, 386 (5th Cir. 1971) (noting that language protecting gender was adopted one day before House’s passage of the law); Barnes v. Costle, 501 F.2d 983, 980-87 (D.C. Cir. 1977) (recognizing sex amendment as an attempt to block the bill).

8 Whalen & Whalen, supra n. 7, at 116.

9 Id.


11 Id. at 3223.

12 Id. at 3221 (“We have fought our way a long way even since the beginning of this century. Why should women be denied equality of opportunity?”).

13 42 U.S.C. § 2000e-2(a)(1) (noting that it is “an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin” (emphasis added).

14 EEOC History, supra n. 6 (noting that the EEOC was “surprised to find that fully one third of the charges (33.3 percent) filed in the first year alleged sex discrimination”).

15 EEOC History, supra n. 6.


17 Ruth Bader Ginsburg, Muller v. Oregon: One Hundred Years Later, 45 WILLAMETTE L. REV. 359, 366 (2009) (citing the following examples of paternalistic state laws: “maximum hours and minimum wage laws, health and safety regulations, laws barring women from night work, mandating break time for them, limiting the loads they could carry, and excluding them from certain occupations altogether”).

18 444 F.2d 1219 (9th Cir. 1971).

19 Id. at 1224.

20 Id. at 1226.

21 Id. at 1225 (noting that “[t]he premise of Title VII, the wisdom of which is not in question here, is that women are now to be on equal footing with men”).

22 Ginsburg, supra n. 17, at 366 (citing Rosenfeld, 444 F.2d at 1225-26).


24 29 C.F.R. § 1604.11(a) (1980).

25 Id. (“Harassment on the basis of sex is a violation of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”).
26. 477 U.S. 57 (1986). Although hostile work environment sexual harassment was recognized by both the EEOC and the Supreme Court by 1986, it took several years for this form of sexual harassment to become part of the American consciousness. Julie R. Grace et al., “Anita Hill’s Legacy,” TIME, October 19, 1992, available at http://www.time.com/printout/0.8816,976770, 00.html. In fact, it was not until the 1990 Senate confirmation hearings for Supreme Court Justice Clarence Thomas that most Americans came to fully appreciate the types of behavior that could give rise to a sexual harassment claim. Id. Thomas was accused of sexual harassment by Anita Hill, a law professor at the University of Oklahoma whom he had supervised during his tenure as head of the EEOC. Id. The highly publicized hearings led to a national discussion of sexual harassment and a 112 percent increase in the number of sexual harassment charges filed with the EEOC. Id.; Study Finds Sexual Harassment Awards From EEOC Doubled From 1992 to 1993, Daily Lab. Rep. (BNA) No. 100, at 9 (May 26, 1994) (citing study by the Center for Women in Government at the University of New York, Albany).

27. Meritor, 477 U.S. at 60.

29. Id., Vinson v. Taylor, 23 FEP Cases 37, 38-42, n.1 (D.C. 1980) (“If [respondent] and Taylor did engage in an intimate or sexual relationship during the time of [respondent’s] employment with [the bank], that relationship was a voluntary one having nothing to do with her continued employment at [the bank] or her advancement or promotions at that institution.”). Meritor, 477 U.S. at 62 (citing 29 C.F.R. § 1604.11(a) (1985)).

31. Id. at 64 (quoting Los Angeles Dept. of Water & Power v. Manhart, 435 U.S. 702, 707, n.13 (1978)).

33. Id.

34. 510 U.S. 17 (1993).

35. Id.

36. Harris, 510 U.S. at 21-22. Justice Scalia criticized the broad guidelines on the grounds that they provided fact finders with little guidance as to how to determine what is sexual harassment: “Abusive” does not seem to me a very clear standard — and I do not think clarity is at all increased by adding the adverb “objectively” or by appealing to a reasonable person’s notion of what the vague word means . . . . Today’s holding lets virtually unchecked juries decide whether sex-related conduct engaged in or committed by an employer is egregious enough to warrant an award of damages. Id. at 24 (Scalia, J. concurring).

37. See, e.g., Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982) (noting that sexual implications directed toward both men and women would equally offend both sexes and would fail under Title VII). See also Michael Newman & Shane Crase, Title VII’s “Equal Opportunity Harasser” Defense Produces Differing Outcomes Among the Federal Courts, 55-APR FED. LAW. 12, 12 (2008).

38. 523 U.S. 75 (1998). The Court went on to suggest three ways to prove the harassment was because of “sex,” including proof that the harassment occurred because (1) the harasser is gay or lesbian and motivated by sexual desire, (2) the victim is harassed in sufficiently gender specific terms such that it is clear that the alleged harasser is motivated by hostility to the presence of his/her own sex in the workplace, or (3) comparative evidence about how the alleged harasser treated members of the opposite sex in the workplace. Id.


40. 211 F.3d 399 (7th Cir. 2000), cert denied 531 U.S. 880 (2000) (noting that Ms. Holman alleged that the supervisor had, among other things, demanded sexual favors and made sexist comments; Mr. Holman alleged that he had been retaliated against after refusing the same supervisor’s sexual advances).

41. Id. at 403.

42. Id.

43. 240 F.3d 255 (4th Cir. 2001).

44. Id. at 257, 262; see also Donlow v. SBC Communications, Inc., No. 05-C-0348, 2006 WL 1479548, at *2 (E.D. Wis. May 25, 2006) (describing the harasser as “the quintessential equal opportunity harasser” who “reached out and touched ‘everybody’ with inappropriate sexual comments”).


46. Id. at 695; see also McHugh v. City of Chicago, No. 08 C 2245, 2001 WL 76524, at *4 (N.D. Ill. Jan. 26, 2001) (denying employer’s motion for summary judgment where both male and female employees were the subject of offensive graffiti, but the amount and content of the graffiti directed toward the female plaintiff was greater than that of the graffiti targeting male employees).

47. Oncale, 523 U.S. at 103.

49. 53 F.3d 1531 (10th Cir. 1995).

50. Id. at 1537.

51. Id. at 1538.


53. Id. at *2.

54. Id. The Third Circuit Court of Appeals reversed the district court’s dismissal of the hostile work environment claim on a 12(b) (6) motion based on the fact that the claim met the lenient standards of notice pleading. Wetson v. Pennsylvania, 251 F.3d 420, 429 (3rd Cir. 2001). However, the appellate court did not comment on the district court’s cultural environment analysis; instead it noted that while the plaintiff’s allegations were “not strong,” the allegations were “sufficient” to meet the standards for notice pleading. Id. 187 F.3d 553 (6th Cir. 1999).

55. Id. at 559 (noting, among other things, the following examples of sexual harassment: (1) a co-worker’s regular use of the “F-word”; (2) being called a “slut”; and (3) being asked by co-workers to rub and/or back up against them).

56. Id. at 564; see also Schrader v. Bridgeport Int’l Inc., 227 F.3d 179, 194 (4th Cir. 2000) (rejecting the idea that the prevailing rough, rugged, or blue-collar workplace culture can create an “inhospitable environment” exception to Title VII’s mandate).

57. 490 U.S. 228 (1989).

58. Id. at 235 (internal citations omitted).

59. Id. at 251 (internal citations omitted) (plurality opinion).
Gender Discrimination continued

60 Id. (emphasis in original). The Court remanded the case so that the lower courts could determine whether Price Waterhouse had proved by a preponderance of the evidence (the evidentiary standard held applicable by the Court) that it would have placed Hopkins’ partnership candidacy on hold “even if it had not permitted sex-linked evaluations to play a part in the decision-making process.” Id. at 253-55. With the enactment of the Civil Rights Act of 1991, the holding of Price Waterhouse was overruled in that the use of a prohibited characteristic, such as sex, even merely as “a motivating factor” in an employment action, became unlawful under Title VII. 42 U.S.C. § 2000e-2(m).

61 See Oncale, 523 U.S. 75 (1998) (sex discrimination consisting of same-sex sexual harassment is actionable under Title VII if the plaintiff can prove the harassment was because of his/her sex or gender).

62 209 F.3d 838, 862-63 (9th Cir. 2002) (en banc), aff'd, 539 U.S. 90 (2003).

63 Id. at 845-46, 861-62.

64 Id. at 862.

65 400 U.S. 542 (1971).

66 Id. at 497-98.

67 Id. at 498-99.

68 538 U.S. 721 (2003) (upholding the state’s liability for violating the FMLA by terminating a male employee for failing to return to work after being granted leave to care for his ailing wife).

69 Id. at 731, 736.


71 Id. at 6-7.

72 Id. at 28-31; see also Trezza v. Harford, Inc., No. 98-CIV-2205, 1998 WL 912101, at *4-5 (S.D.N.Y. Dec. 30, 1998) (dismissing hostile work environment claims under Title VII and New York law brought by a married mother of two because comments by her upper-level managers about her attempts to balance motherhood and her career, such as “I don’t see how you can do either job well,” were not sufficiently severe or pervasive).

73 561 F.3d 38 (1st Cir. 2009).

74 Id. at 46.

75 Id. at 46-48.

76 Id.

77 365 F.3d 107 (2d Cir. 2004).

78 Id. at 113, 121-22.

79 Id. at 115, 119-120, 129; see also Plaster v. Borton Auto., Inc., No. Civ. 02-3089, 2004 WL 2066770, at n.3 (D. Minn. Aug. 13, 2004) (denying summary judgment for employer on sexual harassment, discrimination and retaliation claims brought by a mother of four who claimed to have been terminated because she had a family, and recognizing that evidence of more favorable treatment of working fathers would not be needed to show sex discrimination against working mothers “where an employer’s objection to an employee’s parental duties is actually a veiled assertion that mothers, because they are women, are insufficiently devoted to work, or that work and motherhood are incompatible”).


81 Id. at *8-9.

82 950 F.2d 355 (7th Cir. 1991).

83 Id. at 361-62.


85 Id. at *13-19.

86 271 F.3d 212 (5th Cir. 2001).

87 Id. at 223-24.

88 217 F.3d 46 (1st Cir. 2000).

89 Id. at 55-57.

90 383 F.3d 580 (7th Cir. 2004).

91 Id. at 583-84.


93 Id. at *21-24.

94 Supra n. 1.


Making the Practice of Law Work for Women

By Karen Hirschman

Making the practice of law hospitable to lawyers with significant family responsibilities, particular working mothers, is an ongoing challenge faced by the legal profession. The demands of client work, administrative responsibilities, and the expectations we face in a 24/7 world are daunting to us all. When the needs and obligations of a family are added to the equation, maintaining balance seems, at times, impossible to achieve.

Fortunately, these issues have risen to the forefront of the profession and are receiving needed attention. Law firms, ever in search of the best talent to represent clients, are devoting resources to the exploration of solutions that will accommodate the needs of working mothers. These solutions often result in innovations that are beneficial to all lawyers, not just women or working mothers. For their part, young lawyers entering the profession have higher expectations that their firms will be open to flexible arrangements that will allow one’s career and family life to flourish. Clients who have adopted diversity as a core value are also becoming engaged in conversations with their outside counsel on how we can work together to develop creative approaches.

The active involvement of all these constituencies – lawyer, firm, and client – is essential to continued progress. Each has expectations and responsibilities, and each will be rewarded with success. This article will explore those relative roles and responsibilities, in light of the many best practices and innovative strategies now being developed that will, with time, continue to enhance the opportunities for our profession to evolve.

The traditional model for a practicing lawyer has been, and continues to be, one in which the demands of work take priority, at least in the amount of time devoted to work versus the responsibilities of home and family. The majority of successful lawyers, most of them men, continue to have the support of a full-time spouse at home who takes care of running the household and, when the time comes, raising children. The lawyer is then able to devote full-time (which in today’s world means the 60-plus hour work week) to honing skills, tending to client needs, and grooming the relationships that will maximize career opportunities. This model typically does not work for women. Although some women do have stay-at-home spouses, the percentage is quite small. For most women, this is not an option. Opening the doors of our profession to working mothers requires the development of a different model.

As more and more women have entered the profession, and as clients have begun to make diversity a priority, law firms have recognized the need to develop alternative career paths and to provide resources to lawyers whose family responsibilities do not fit within the traditional model. In order to be in a position to attract and retain the talent needed to remain competitive, law firms must be open to new approaches. As a result, many firms have adopted family-friendly policies, flexible work arrangements, and other strategies designed to address the needs of a changing workforce.

It is tempting to focus all the attention on the responsibilities of the law firms to effect change. Progress is not possible without the active participation of the predominant institutions in the legal profession. However, the practicing lawyer who desires change has an equally vital role to play in developing solutions that work. We are in a client service business. Lawyers who look only to their law firms for the solutions are abdicating their own responsibilities to play an active part in designing and implementing alternatives that will allow us to develop as lawyers and serve our clients effectively and seamlessly.

At the same time, the role of the client is key in this equation as well. Faced with the option of working with the lawyer who is available at all hours of the day and night, as well as weekends, it is at least on the surface an act of sacrifice to agree to work with the lawyer whose family demands at times take priority. Law firms are understandably reluctant to risk jeopardizing client relationships by asking their clients to accept less than what is perceived as full service. The lawyer who ignores these practical realities does so at her peril.

With this backdrop, let us now explore the issues from the perspective of these constituents, with the objective of identifying goals, rewards, and responsibilities each has in moving towards a model more suited to today’s marketplace.

The Law Firm

Why should law firms adopt changes to the traditional model of success that has worked for so many for so long? Two reasons – talent and clients. Firms cannot remain competitive if a significant percentage of the talent pool strikes them off the list.
at the outset. Law school graduates are very sophisticated sellers in today’s marketplace. They are looking ahead. The young women searching for a place to practice law will be examining her opportunities for advancement. If she cannot envision herself having a family at a law firm because it is unwilling to provide the resources and support needed to help the young mother succeed, she is quite likely to look elsewhere. And, she will rightfully be reluctant to align her future with a firm unless there are successful role models that will allow her to imagine her own success.

So what are the essential features of the system a law firm can and should have in place?

There is a wealth of information available to the law firm wishing to adopt family-friendly policies and practices. Many firms have done so over the past 5-10 years, and organizations like the Hastings School of Law’s Project for Attorney Retention (www.pcrad.org) publish guides describing best practices for flexible work arrangements, benefits, fair evaluation systems, and the like. The key is to provide resources and support mechanisms that recognize the challenges working mothers and fathers face. A successful program will include not only the traditional maternity (and paternity) leave benefits, but also options for the new parent to work on a part-time or reduced hours basis while adjusting to the demands of parenthood. Ideally these options should be automatic and available at the lawyer’s request without the need for approvals or special permission.

It is also very important to provide guidance and mentoring to women before and after maternity leave to ease the transition out of and back into the practice of law. Firms can supply checklists of information for the expectant mother, such as possible childcare arrangements, insurance needs, and the like. Other women who have had children while practicing law can be tapped to counsel the new mother – sometimes just having someone to talk to who has been through the experience can go a long way towards easing anxiety. Practice leaders should be involved to think through appropriate work assignments in the months leading up to maternity leave so that the lawyer can remain active in her practice as long as possible. It is important to minimize the disruption in the practice so the lawyer can continue to develop her skills while at the same time maintaining needed flexibility to deal with the demands of becoming a mother, especially if this is the first child.

Discussion should take place about whether and to what extent the lawyer wishes to continue to practice while on leave – this is an individual choice that will vary with the level of experience of the lawyer, the demands of her practice, the specific matters that are active before the lawyer goes on leave, etc. Firms can provide resources for the woman to remain connected with the office by setting up remote access to email if that is what the lawyer and the law firm decide. What is important here is that thoughtful attention be paid to these issues instead of making assumptions about what the working mother wishes to do. Balanced hours or flexible work arrangement policies that allows for alternatives to the full-time practice of law are key to the firm’s ability to retain talented lawyers even when the demands of caring for children or ailing parents make it difficult to practice law fulltime. In order to be successful, the policy should be objective and transparent so that it is evenly applied and not subject to the discretion of individual partners or practice group leaders. The best programs will allow variability in the arrangement to suit the needs of the individual lawyer given the particulars of her practice and client demands. A partner familiar with the lawyer’s practice should be tapped to assist in designing an arrangement that is realistic, and periodic reporting should take place to assess how well the arrangement is working. Many firms afford the option of flexible work arrangements to both men and women; gender neutral policies gain wider acceptance and recognize the reality that more and more men also value the opportunity to spend more time with their young families as well.

The optimal alternative career path should be open to all lawyers, not just young mothers. Programs and policies that are available only to women are susceptible to the dreaded “Mommy track” label and therefore likely to be perceived as a path for second-class citizens. Ideally, permission from the firm for a particular lawyer to pursue an alternative arrangement should be based upon performance and demonstrated ability to satisfy the needs of the practice and the client while working less than the “normal” schedule, rather than whether the particular reason for the arrangement is deemed worthy. Focus should be on the business case – is the proposed arrangement practical? Will the lawyer be able to respond to client demands in a timely manner? How will emergencies be handled? If the requesting lawyer addresses these issues in a professional and
thoughtful manner, agreeing to the arrangement will serve everyone’s needs.

Firms often worry that agreeing to such arrangements will “open the floodgates,” and that hordes of lawyers will want to work part-time. Experience shows this is an unfounded concern. Whether due to financial needs or concerns about future prospects, a fairly small percentage of lawyers actually take advantage of programs like this. Affording the opportunity to the talented lawyers who do, however, will pay long-term dividends.

In order for these programs to be successful, it is essential that the leadership of the firm be unequivocally and openly supportive. There are still few role models of the successful lawyer who works at less than the traditional full-time pace, and it is therefore natural for young lawyers to be skeptical that it is possible to do so. The strategic importance of these policies needs to be clearly and frequently communicated, and success stories should be celebrated. Unless the highest levels of the firm embrace the importance of providing these alternatives, lawyers may be more inclined to leave the firm rather than taking a risk on what might be viewed as an experimental arrangement with little upside.

The Lawyer

Practicing law while raising a family requires commitment, flexibility, and sacrifice – no doubt about it. The openness of the law firm to “doing things differently” is just part of the equation. The lawyer must take responsibility for her own career and for meeting client demands. It must also be recognized that there are trade-offs involved – lawyers who are unable, for whatever reason, to single-mindedly pursue their careers may advance at a slower pace. Taking time away from the practice to raise one’s family may affect skill development and delay the opportunity to first-chair a case going to trial or lead a significant deal. However, with persistence and dedication, the working mother can “have it all,” but perhaps not all at the same time.

A necessary ingredient to the successful pursuit of both career and motherhood requires, above all, the drive to make it work. For women who are the breadwinners of their families, the motivation may be financial. However, many professional women have choices – for those married to other professionals, working full-time at the practice of law, may not be necessary to make ends meet. For these women, fulfillment in the practice provides the impetus. The practice of law is a wonderful profession – it is intellectually stimulating, provides nearly endless variety, the privilege of working with interesting people, and the opportunity to serve others. The benefits of staying with the practice reap rewards long after one’s children are grown and out on their own.

Taking responsibility for one’s own career is an essential ingredient in simultaneously pursuing the paths of motherhood and lawyer. What does this mean? First and foremost, decide what you want and pursue it. Think through what you are able and willing to do to balance the practice with your family commitments, and communicate openly and directly with your firm and those you work with. They cannot meet your needs if they do not know what they are. Be your own advocate. Explain why the firm should accommodate your needs; be able to articulate how you will meet the demands of the practice and satisfy client needs. Those women who step forward and demonstrate a mature and thoughtful approach to these issues are often (rightfully) viewed as leaders with excellent prospects for advancement.

Taking responsibility also means recognizing that flexibility is a two-way street. Most successful part-time arrangements, for example, involve a willingness to work on something other than a rigid schedule. The practice of law doesn’t always lend itself to fixed, predictable hours. The lawyer who leaves the office at the appointed hour even though the brief is not finalized or the deal is about to close is doing herself, her firm, and her clients a disservice. These situations arise and the responsible professional will make arrangements to deal with family obligations so as to make sure the work gets done. If that requires working more than the anticipated part-time hours, of course, additional compensation should be paid.

Effective, timely communication is an essential ingredient here. Be sure you fully understand deadlines, expectations, etc., and let clients and others you are working with know what your other obligations are. Especially in this day and age of cell phones, blackberries, and remote access, often a work-around can be designed that will allow everyone’s needs to be met. The point is that the primary responsibility lies with the individual lawyer, not the law firm.
Karen Hirschman is a Partner at Vinson & Elkins LLP in Dallas.

The Client

Many corporations today explicitly articulate goals of diversity in their legal representation. Recognizing the power of bringing multiple points of view to the resolution of their legal problems, they expect and even demand that law firms will be able to staff their matters with a diverse team of professionals. Such demands, however, must be accompanied by a willingness to be flexible as well. Clients cannot expect law firms to retain working mothers while at the same time demanding 24/7 availability from each and every lawyer. They must be part of the solution as well.

What does this mean in practice? Again, communication is essential. Clients should be open to discussion about how a lawyer working remotely or on a part-time schedule can most effectively provide excellent service. Sometimes the solution might involve the designation of multiple contact persons, so that when one lawyer is not available due to family commitments, another lawyer can step in. Such arrangements require trust, creativity and an openness to doing things differently.

Clients can be extremely effective advocates for working mothers. They can be sure the firm knows how much they value the skills and experience of an individual lawyer, and encourage the firm to make accommodations to allow the lawyer to remain involved in their work while at the same time meeting family obligations. A simple but direct communication about these matters is sometimes all that is required to remove a perceived impediment to an alternative arrangement requested by a lawyer struggling to balance the demands of the practice and motherhood.

Making the practice of law more hospitable to working women will reap rewards for the law firm, the lawyer, and the client. Firms will be able to retain and develop the best talent and reduce the high costs of attrition. Working mothers will be able to maximize their opportunities to develop a thriving practice and, at the same time, be present and engaged in the lives of their children. Clients will experience less turnover in the teams that handle their legal matters, and meet their strategic objectives of increasing diversity in their legal representation. In order to achieve these goals, it is essential for all three constituents to work together to design, implement, and nurture the changes in the profession that will allow this evolution to take place.

Karen Hirschman is a Partner at Vinson & Elkins LLP in Dallas.

The Psychology of Women’s Influence on Juries
Lisa Blue, Ph. D., J.D.
Robert B. Hirschhorn, Esq.

INTRODUCTION

Prior to the O.J. Simpson case, the sexual assault trial of William Kennedy Smith was the highest profile case in American history. It took one month to pick the six jurors who would decide that historic case. The seated jury consisted of four women and two men. The jury chose as their Foreman a white male Vietnam Vet, but the driving force and de facto presiding juror was a strong, smart and sensitive woman named Lea Haller. Lea, who was the owner of a cosmetic company, would lead the jurors in daily exercise during the breaks, organize gourmet lunches for the jurors each day and help her fellow jurors with their personal, business and cosmetic issues. Lea was the glue that held this jury together. After a two week sensational trial1 that captivated the entire nation and launched the careers of such well known legal pundits as Nancy Grace, Greta Van Susteren, Roger Cossack and Jeff Toobin, the jury, with Lea Haller leading the charge, returned its astounding Not Guilty verdict in a mere 70 minutes.

The Kennedy Smith case illustrates the profound impact and influence that women have as jurors. Of course, the very existence of a predominantly female jury is relatively new in our legal system. For decades after women achieved the right to vote, many states continued to discourage women from participating in jury service. In 1947, the United States Supreme Court held in Fay v. New York;2 that New York women could be granted a special exemption from jury service if they chose, even though the option was denied to men. In 1961, the Court upheld a Florida statute that prevented women from serving on juries unless they registered with the clerk of the court, expressing their desire to be placed on the jury list.3 It was not until 1975, in Taylor v. Louisiana;4 that the Court finally struck down a Louisiana statute that prevented a woman from being seated as a juror unless she had previously filed in writing her desire for jury service.5

1 Yes, it took twice as long to pick the jury as it did to try the case.
DISCUSSION

While we do not believe that lawyers should use stereotypes such as gender when deciding which jurors they should strike, it is clear that woman bring to the courtroom a different set of life experiences than men. For example, more women have experienced some form of sexual harassment or discrimination than men. Women tend to be the primary care givers in the home. Often times, women have to juggle the rigors of working outside the home, taking care of the kids or other family members, running the house and generally making sure that the people in their lives are cared for. Because women generally are better listeners, have more patience and have a natural ability to multi-task, they make excellent jurors in many cases.

Women’s Gender-Based Experiences Influence Conduct and Decisions of Individual Jurors.

It has been our experience that women are often the most entrenched and sometimes the most vocal members of the jury. It is a mistake to assume that women who are homemakers, or elderly or women who have not had much formal education or who hold a menial job will be followers and not leaders during the deliberations. This is often not the case, especially when women on the jury outnumber men.

In years past, many married women were expected to put family before their careers. Today, women commonly make the conscious and deliberate choice to place their families first. Running a household, especially with young or multiple children is often harder but more rewarding than a 9 to 5 job. These women are truly running their own companies and hold every title and responsibility from CEO to housekeeper. Their success is measured by the quality of the family, not the size of a paycheck. On a jury, as at home, these women are quite comfortable taking charge. They are often very vocal and persistent. These “homemakers” tend to be the type of jurors who will volunteer to be the presiding juror and will actively inject themselves in the deliberations.

Older female jurors bring another important component to jury deliberations. Younger jurors think they know it all. But older jurors have lived and seen it all. As a result, older female jurors tend to have well defined beliefs but they are also more likely to be forgiving. During the course of their lifetimes, they have seen and experienced dramatic changes. These matronly jurors may not be the most vocal during deliberations but when they inject themselves, other jurors will listen. If the older juror is viewed as a mother or grandmother figure, the other jurors will often treat her with respect, protecting and agreeing with this juror.

Today, professional women are often as likely as men to dominate jury deliberations. Fifty years ago, however, jury research indicated that white, upper-class men dominated deliberations, probably because of the men’s elevated status in the community. Current research suggests that jurors with a professional background – be they male or female – possess skill sets that tend to enhance their jury room competence and that other jurors generally expect this to be the case. Professional women are not intimidated by the setting, the subject matter or the task at hand. They are accustomed to and feel comfortable with making difficult decisions. Such women may be cerebral, or more visceral, depending on their profession. In either case, these jurors will have a strong voice in the jury room and are often consensus builders.

Women Jurors May React Differently than Men on Specific Issues.

Perhaps not surprisingly, the differences between male and female jurors are more dramatic, and generally more predictable, with regard to certain specific issues. While male jurors will be judgmental of their peer group, female jurors are often very judgmental of all female lawyers, witnesses or parties. This is especially true in cases of divorce, will contests, discrimination claims and sexual assault. Women on the jury will scrutinize and notice everything a female lawyer, witness or party says and does, including what she wears. In addition, we have observed that women jurors appear to be particularly sensitive to the treatment of women by male attorneys in the courtroom. For example, we have observed on more than one occasion the apparent disapproval of female jurors who observed male attorneys at trial treating their female paralegals with disrespect.

That said, a woman juror is more likely than a man to be influenced by witnesses who are women and by other female jurors. This is so because people generally are most persuaded by those like themselves. Indeed, even though men are traditionally considered to be more persuasive because of their perceived higher credibility and expertise, women still have greater success at winning

7 Id.
over other women, according to a University of Alabama social psychologist. This is especially significant when there are several women on the jury, one of whom is a strong juror. The views and leadership of one strong woman juror are very likely to sway the other women on the jury, as demonstrated by the influence of Lea Haller on the William Kennedy Smith jury discussed at the start of this article. The affinity of women for other women is so strong that majority-female juries have been found to make larger awards to female, than to male, plaintiffs.

Women are also more likely to rely on and be persuaded by evidence that is emotional in nature. Perhaps because of their experience as mothers, women may feel more empathy toward witnesses who evoke sympathy. Researchers have documented that women are more likely than men to experience emotion while serving on a jury.

Another factor to consider during the presentation of evidence at trial is women’s belief that in general, they are better than men at reading a person’s body language and at identifying non-verbal behavior. Regardless of whether this is in fact true, women believe it, and thus may be more likely than men to be influenced by the non-verbal cues they perceive during a witness’s testimony at trial.

During jury deliberations, women also tend to behave differently than men on certain specific issues. Some of these differences are specific to the subject matter of the litigation. The William Kennedy Smith trial notwithstanding, studies have suggested that women are more likely than men to convict in cases such as sexual harassment or rape.

Other differences are restricted to specific types of evidence presented at trial. For example, women jurors are less likely to inject themselves into deliberations concerning scientific evidence at trial. Researchers believe that this finding may be linked to women’s perceived lack of scientific competence. Women jurors exhibited this reticence on scientific questions even when a majority of jurors were female.

When More Women Serve on a Jury, the Method of Deliberations May Change.

The impact of women jurors is most strongly felt as the number of women on the jury goes up; when the jury is predominantly female, the dynamics of jury deliberation can change entirely. For decades, when juries were predominantly male, psychologists found that women perceived men to be more influential during jury deliberations and that men were consistently more likely to ask questions and give answers. The jury foreperson was likely to be male. But when the majority of jurors are women, things change.

Women tend to get to know another quickly. When they serve together in large numbers on a jury, women tend to bond together more than men do. As observed by Barbara Lynn, a Federal Judge in Dallas, Texas, women jurors feel more comfortable than men in spending time together on breaks and during lunch.

During deliberations, women convey more emotion when they speak, and use more personal references and storytelling to make a point. Women generally speak in a more “tentative, exploratory, or conciliatory” manner than men, who are more “assertive and confrontational.” Noted linguist Deborah Tannen has observed that when men are present, women will try to accommodate them in conversation, though the opposite is not true.

Carol Gilligan’s well-known research, published in In a Different Voice (1993), explains that women tend to be better listeners than men, who generally would rather act autonomously. Deborah Tannen has made the same observation from a linguistic analysis.

When women speak with other women, the listener tends to repeat back the speaker’s key words, signaling that she has heard and understood the concept or message being discussed. Women jurors, then, are thought to be attentive and...

10 Guadagno, R., Letters to the Editor, SCIENCE AMERICAN MIND (Sept. 2009).
11 Hickerson, A. & Gastil, J., supra, at 17.
12 Id. at 15.
15 Salerno, J., Vargas, M. & Bottoms, B., supra.

16 Id.
17 Hickerson, A. & Gastil, J., supra, at 14.
18 Id.
19 Guadagno, R., supra.
20 Hickerson, A. & Gastil, J., supra, at 12.
24 Tannen, D., supra.
more likely to listen to the evidence and arguments presented at trial. When most of the jurors are women and those good listeners are encouraged to speak up during deliberations, it seems likely that the evidence presented at trial will receive a thorough review during deliberations.

The evidence is very important to female jurors. Majority-female juries tend to approach the evidence in a different way. In a study of all-women mock-juries, it was found that female juries are “evidence-driven,” while all-male juries are more “verdict-driven.”25 This means that an all-female jury will spend significant time reviewing the evidence to build a narrative story, as opposed to an all-male verdict-driven jury, that is more concerned with winning and silencing any dissenters.26 Women jurors thus hear the evidence at trial differently than men and process it differently during deliberations. Being aware of these differences is useful both for selecting and persuading women on the jury.

CONCLUSION

All jurors bring to the jury room the cumulative effect of their life experiences, but women jurors bring a unique set of tools that make them especially well equipped to make important decisions. Women tend to rely on intelligence, sensitivity and intuition more than men do. Serving on a jury provides women with a forum where their voices are equally important and their opinions count, regardless of the race, education or occupation of their fellow jurors.

As important as the observations and research discussed here may be, however, lawyers are cautioned not to forget that a woman’s individual life experiences and belief systems will be the most important factors in predicting what she will decide on a particular jury. For example, one widow’s grief over the loss of her own husband might prompt her to award someone else a huge sum of money as damages for loss of consortium. Another widow might settle on a more modest sum in the same case, thinking that she had recovered from her own loss without compensation, and so should the plaintiff. Beware: studies and stereotypes are no substitute for effective *voir dire*.


26 *Id.*, citing Marder, N., *supra*, at 602.

---

**Report From Key Largo:**

**Forum’s 15th Annual Meeting Draws Snowbirds**

*By Lindsay LaVine*

Approximately 200 attorneys and law students attended the Forum on Communication Law’s 15th Annual Conference at the Ocean Reef Club in Key Largo, Florida, from January 28-30, 2010. The weather was perfect, the key lime pie delicious, and the topics were both interesting and informative.

On Thursday, January 28, the Forum’s Training and Development committee hosted its 13th Annual Media Advocacy Workshop. Under the guidance of Co-Chairs Deanna Shullman of Thomas, LoCicero & Bralow and Thomas Curley of Levine Sullivan Koch & Schulz, 12 young attorneys and eight law students participated in the day-long workshop that allowed new and aspiring media attorneys to conduct a pre-publication review and argue both an access motion and a motion involving invasion of privacy issues, all while receiving on-the-spot feedback from deans of the media bar.

The final rounds of the Forum’s Second Annual First Amendment and Media Law Moot Court competition also were held on Thursday. Four teams had advanced from regional competition. Zinnia Faruque and Brooke Ericson from American University College won the competition. (*For more information on the Moot Court competition, please go to Page 28.*)

The substantive CLE sessions of the Conference on Friday and Saturday were attended by 193 lawyers and 17 law students. The Friday and Saturday sessions followed the Conference’s traditional format, offering a series of concurrent “Hot Issues” workshops, among which participants could choose, interspersed with plenary sessions attended by all. This year’s concurrent workshops included Hot Issues in Newsgathering, Libel and Privacy, the Internet, Entertainment, Ethics, Advertising and Promotions, FCC, Reporters Privilege/Subpoenas and Broadening Practice. (*For more information on the Hot Issues in Broadening Your Practice concurrent workshop, please go to Page 26.*)

Two particularly timely plenary sessions were held on Friday. The first, titled “Whither Journalism? Business Models for News Reporting in the Digital Age,” was moderated by
WICL member Barbara Wall, who is Vice President of Gannett Co., Inc. Panelists included Srinandan Kasi, Vice President, General Counsel and Secretary for the Associated Press; Caroline Little, CEO-North America for Guardian News & Media; Thomas Rubin, chief counsel for Intellectual Property strategy for Microsoft; Richard Tofel, General Manager of Pro Publica; and Patrick Maines, President of the Media Institute. The second, titled “Are Prior Restraints Alive: From General Noriega (20 Years Later) to Holden Caulfield and Wikileaks,” was moderated by New York Times Company Vice President and Assistant General Counsel George Freeman, and featured panelists James Chadwick of Sheppard, Mullin, Richter & Hampton; the Hon. Joseph Hatchett, a former judge on the U.S. Court of Appeals for the Eleventh Circuit, now with Akerman, Senterfitt; Stuart Pierson of Troutman Sanders; Stanley Pierre-Louis, Vice President and Associate General Counsel for Intellectual Property and Content Protection at Viacom, Inc.; and David Schulz of Levine Sullivan Koch & Schulz.

During lunch on Friday, attendees listened to guest speaker David Kaplan, Newsweek editor and author of “The Accidental President,” discuss events surrounding the election of George W. Bush. Per tradition, the afternoon was reserved for outdoor activities such as the golf and tennis tournaments. Winners of the golf tournament were Pat Carome of WilmerHale in Washington, D.C., Bob Lystad of Axis Pro in Kansas City, Missouri, and Denise Durkin of Baker Hostetler LLP in Orlando, Florida. Edward Fenno of Fenno Law Firm LLC in Charleston, South Carolina, and Brendan Healey of the Tribune Company in Chicago, Illinois, won the tennis tournament.

Later that afternoon, WICL held its annual reception and meeting, which included a discussion on Alternative Billing Arrangements – How to Make it Work for Outside & In House Counsel, by panelists Andy Mar, Senior Attorney with MSN Microsoft Corp.; Devereaux Chatillon, formerly Senior Vice President and General Counsel of Scholastic Inc., now a Partner at Sonnenschein Nath & Rosenthal; Jonathan Donnellan, Senior Counsel for Hearst Corp.; Cynthia Counts, Founding Partner of Counts & Associates; and Judy Mercier, a Partner at Holland & Knight. (For more information on the alternative billing arrangements panel, please go to Page 27.) Friday evening ended with the annual dinner in the Palm Court.

On Saturday, conference registrants revisited the O.J. Simpson trial during the morning plenary session, titled “Squeezed by ‘The Juice’: Access to the Courts Fifteen Years after People v. Simpson.” The lively session was moderated by WICL member Kelli Sager of Davis Wright Tremaine, and included panelists Christopher Darden, one of the prosecutors during the O.J. Simpson criminal trial, now with Darden & Associates; Jerrianne Hayslett, former Public Information Officer for the Los Angeles County Superior Court; Jim Newton, editor for the Los Angeles Times; and Lawrence Schiller, author of the book “American Tragedy: The Uncensored Story of the Simpson Defense.” (Kato Kaelin, America’s most famous houseguest, was scheduled to appear, but house-sitting duties and the surf in Malibu reportedly prevented him from attending.)

The annual Moot Court for Kids competition followed, as did the traditional Journalism Jeopardy luncheon. The afternoon was reserved for diving, snorkeling, swimming, sunbathing and other outdoor recreational activities. The closing reception on the Town Hall Terrace capped off another successful annual meeting.

Lindsay LaVine is a Partner with Mandell Menkes LLC in Chicago.

Key Largo Report: Breakout Session on Broadening Your Practice Was Both Popular and Productive
By Kathleen A. Kirby

The notion of “Broadening Your Practice” clearly struck a chord with attendees of the Annual Communications Law Conference in Key Largo, Florida in January, as the room was packed and the discussion engaging. Deftly facilitated by Bob Lystad, who manages media and entertainment claims at AXIS Media/Professional Insurance in Kansas City, Missouri, and Chip Babcock, renowned media litigator and a Partner at Jackson Walker in Dallas, Texas, this breakout session focused on ways for young lawyers to invent themselves—and more experienced practitioners to reinvent themselves—as our clients and their priorities change, and the economy fluctuates.

Bob opened by reporting on trends in claims: not surprisingly, an increase in defamation against non-traditional media, and a rise in intellectual property claims. Any number of participants emphasized the need for communications lawyers to become experts on trademark and intellectual property issues, including copyright in the Internet realm.
Perhaps an overriding theme of the discussion was that, in this online era, all clients are publishers, and communications lawyers can bring much to the table in serving clients whose primary business is outside the traditional media realm. Attorneys were encouraged to market their expertise within their own firms as a starter—clients with whom your firm already has relationships have websites and accompanying defamation and intellectual property concerns that inherently are media issues in which our bar already is well-versed.

Participants also cited opportunities in areas that might not immediately come to mind—commercial speech, mobile marketing, working for political consultants and committees (“their whole point is to defame people” and election lawyers don’t know how to do pre-publication review), advising information aggregators and bloggers, counseling clients with interactive websites about privacy issues, and even working for adult entertainment. Sometimes niche work, such as personal jurisdiction or particular types of activist work, can facilitate developing a reputation as the “go-to” lawyer for that work, often enough to fill a docket and establish a practice. One commenter emphasized that it is both rewarding and productive to put yourself in a position where you can demonstrate a “profound belief in the First Amendment,” and oftentimes that opportunity may come outside of traditional media cases.

In addition, practitioners were advised to be on the lookout for big cases that do not involve what we’re used to—a plaintiff suing the media—but have media components. Lawyers like us, who understand the media, are invaluable to legal teams looking to influence public perception.

From a broader perspective, contributors suggested that communications attorneys should be aggressive about marketing, be it speaking, writing, or attending conferences. Some stressed the need to educate clients to be certain that they don’t “pigeonhole you,” ascribing to you one area of expertise when you undoubtedly are more facile. Clients should also be educated about whether you and/or your firm can serve a broad geographic market. It helps for lawyers to remain nimble, nurture their contacts, and attract top talent to assist them with their work. Firms and lawyers should also be open to alternative fee arrangements as a way to attract new clients or expand work from existing clients.

In conclusion, Chip proclaimed that given the wealth of opportunities available and the range of expertise communications lawyers have, this bar should be “totally, fully occupied.”

Kathleen A. Kirby is a Partner with Wiley Rein LLP in Washington, D.C. and Co-Chair of the Women in Communications Law Committee.

Key Largo Report: In-House and Outside Counsel Share Success Stories on Alternative Fee Billing at WICL Meeting During Forum’s Annual Conference

By Judy Mercier

At the Women in Communications Law meeting held on Friday, January 29, 2010, during the Forum on Communication Law’s annual conference in Key Largo, Florida, a distinguished panel of in-house and outside counsel discussed their experiences and success stories with alternative fee billing. Included on the panel were Devereux Chatillon, a Partner at Sonnenschein Nath & Rosenthal LLP who formerly served as Senior Vice President and General Counsel for Scholastic Inc.; Cynthia Counts, Founding Partner of Counts & Associates, LLC; Jonathan Donnellan, Senior Counsel at Hearst Corporation; Andy Mar, Senior Attorney at Microsoft Corporation; and Judy Mercier, a Partner at Holland & Knight LLP.

The panel discussed various types of alternative billing arrangements and partnering agreements between law firms and clients. From the in-house perspective, alternative billing arrangements can provide some predictability for budgeting purposes. Microsoft has
The Second Annual First Amendment and Media Law Diversity Moot Court Competition: Another Successful Year
By Jeanette Melendez Bead

In January, the Forum on Communications Law hosted the Second Annual First Amendment and Media Law Diversity Moot Court Competition—a diversity initiative focused on exposing minority law students to the media bar and the practice of media law. I am delighted to report that the second competition, beginning with regional competitions in Washington, D.C. and Chicago and concluding with semifinal and final rounds in Key Largo, was a great success.

Here are the highlights:

Teams from six law schools competed in the second annual competition: American University College of Law, University of Illinois College of Law, Syracuse University College of Law, George Washington University Law School, Georgetown Law and Southern University Law Center.

The preliminary rounds were held in Chicago and Washington, D.C. on January 16. Tribune Co. attorneys Charles Sennet and Brendan Healey, and Paulette Dodson of the Sara Lee Corp. judged the Chicago competition. In Washington, D.C., competitors argued before Chuck Tobin of Holland & Knight, Lucy Dalglish of The Reporters Committee for Freedom of the Press and Kurt Wimmer of Covington & Burling. Four teams advanced to the semifinal rounds in Key Largo.

The semifinal rounds were held on January 28, the morning of the finals, and were judged by experienced members of the Forum: David Giles, Vice President/Deputy General Counsel, The E.W. Scripps Company; Nathan Siegel of Levine Sullivan Koch & Schulz; Sherrese Smith, Legal Advisor to the Federal
Communications Commission Chairman Julius Genachowski; S. Jenell Trigg of Lerman Senter PLLC; Steve Zansberg of Levine Sullivan Koch & Schulz; and Gary Bostwick of Jassy & Bostwick. In addition to serving as a judge for oral argument, Nathan Siegel, along with Tom Leatherbury of Vinson & Elkins, spearheaded the team that drafted the written materials related to the hypothetical.

The winning team of Zinnia Faruque and Brooke Ericson, from American University College of Law, competed in the final round against the George Washington University School of Law team of Crystal Cadogan and Monica Moran. The final oral argument – conducted before an audience of more than 75 media lawyers – was heard by an esteemed panel: Judge Julio M. Fuentes of the United States Court of Appeals for the Third Circuit; Judge Martha C. Warner of the Florida Fourth District Court of Appeal; and Judge Joseph W. Hatchett, former Chief Judge of the United States Court of Appeals for the Eleventh Circuit. Following oral argument, the judges offered feedback to the law student participants and then opened the floor to questions and discussion about effective appellate advocacy.

The semifinalists who also argued at Key Largo were: Maria Molina and Mario Flores of Syracuse University College of Law; and Brendan Loggins and Rebekah Childers of the University of Illinois College of Law. The students were excellent advocates, and the judges were very impressed with their performances.

The students reported that they enjoyed participating in the competition and attending the conference events. For some, participation in the competition sparked or confirmed their interest in media law.

The competition was made possible by the generous support of our lead sponsor, Scripps Howard Foundation, as well as the following law firms: Brown Rudnick; Davis Wright Tremaine; Jackson Walker; Levine Sullivan Koch & Schulz; Mandell Menkes; Sonnenschein Nath & Rosenthal; and Vinson & Elkins.

Stay tuned for more news about the competition in future issues of the WICL Newsletter.

Jeanette Melendez Bead is a Partner in the Washington, D.C. office of Levine Sullivan Koch & Schultz, L.L.P.

Report from the Hinterlands: Regional Meetings of WICL

With busy schedules and budget cuts, some of our fabulous women may miss the WICL meetings at the ABA Forum in mid-Winter, the NAB convention in Las Vegas in the Spring, and/or the PLI Communications Law seminar in the Fall. To provide additional networking and professional development opportunities for our members, WICL launched a new initiative, Regional Meetings, a little over a year ago. Under the leadership of our regional representatives, successful inaugural events were held in Washington, D.C., New York, New England, Chicago, and the Pacific Northwest. A second meeting was planned for the Chicago region on March 16, 2010 (look for a report in the next newsletter) and plans for meetings in other regions are in the works. Notices of the meetings will be distributed via the WICL listserv as dates are set.

Based on feedback from our members, most embrace the opportunity to get together with their local peers on a regular basis, whether for substantive discussions, or just to socialize. Regional Meetings also serve as a great platform to educate other women who work in communications law about the benefits of becoming a WICL member.

Please make sure you are signed up for the WICL listserv so that you receive notice of meetings in your region. If you would like to assist with meeting planning, contact your regional rep (listed below). If you would like to serve as a regional rep in your region, please contact WICL Committee Co-Chairs Laura Lee Prather (laura.prather@sdma.com) or Kathleen Kirby (kkirby@wileyrein.com).

The Regional Representatives, with their e-mail addresses, are:

Chicago: Debbie Berman Dberman@jenner.com
Cincinnati: Susan Grogan Faller sfaller@ftlaw.com
Denver: Ashley Kissinger akissinger@bsclaw.com
Detroit: Laurie Michelson Michelson@Butzel.com

The Committee also owes a special thanks to law firms Brown Rudnick and Holland & Knight for spearheading the significant task of grading the competition briefs.
In keeping with past tradition, the Women in Communications Law committee sponsored a dinner and theater night in New York City in conjunction with the annual Practicing Law Institute Communications Law Conference and Media Law Resource Center dinner and meetings in November 2009. On the night of November 12, WICL members and guests enjoyed dinner at Becco, followed by a revival of the musical “Hair” at the Hirschfeld Theater. Both the dinner and the musical were spirited, entertaining, and eye-opening, although for slightly different reasons. Dinner provided a great opportunity to spend time with fellow WICL members in a more intimate setting, where everyone was able to talk and share stories about her life and practice (and enjoy a wonderful dinner). The Broadway revival – a rock musical about the hippie counterculture of the ’60s – had great songs, including the well-known “Age of Aquarius,” and an on-stage dance party at the end of the show. Although none of the WICL members in attendance chose to join the dancers on stage, the musical exposed us (literally) to the great theater scene in New York and was a nice break from our busy day of work and meetings. Many thanks to Rachel Balaban and Susan Grogan Faller for organizing the event and to all who attended. We hope to have an even larger group next year and further reinvigorate this wonderful event.

Catherine L. Robb is Special Counsel in the Austin, Texas office of Sedgwick, Detert, Moran & Arnold, LLP.

Networking Lunch
By Catherine A. Van Horn

The following day, Friday, November 13, 2009, the Women in Communications Law Committee had an informal networking lunch at Natsumi on West 50th Street. Turn-out for the luncheon was excellent, with 29 women lawyers from a broad spectrum of communication law fields in attendance, including in-house counsel from television, newspaper and magazine law departments, as well as publishing houses; counsel for the Media Law Resource Center; and a cross-section of law firm partners and associates. And, while a large contingent of the attendees were New York-based, others came from locations as far-flung as San Diego, Seattle, Austin, Minneapolis, Chicago, Miami, and Raleigh, N.C., as well as closer East Coast cities such as Washington, D.C. and Philadelphia. In addition to enjoying sushi and other delectables, the luncheon – which has become an annual event – was an excellent opportunity for this diverse group of women to mingle and share experiences and ideas in an informal setting. It also marked the final public appearance of a pregnant Ashley Kissinger as Co-Chair of WICL. Ashley made a short presentation on the purpose and activities of WICL for the non-members in attendance, solicited committee and activity sign-ups from the members, and collected e-mail addresses from everyone. We wish her well in her new position as Co-Chair of the First Amendment and Media Litigation Committee of the ABA’s Litigation Section. Our thanks to luncheon committee co-chairs Carolyn K. Foley and Rachel G. Balaban for organizing this popular and pleasant luncheon, and to law firm sponsors Scarola Ellis; Levine Sullivan Koch & Schulz; Hogan & Hartson; Sonnenschein Nath & Rosenthal; Davis Wright Tremaine; Sedgwick, Detert, Moran & Arnold; and Sheppard Mullin Richter & Hampton.

Catherine A. Van Horn is Of Counsel to Genovese, Joblove & Battista P.A. in Miami and is Chair of the Newsletter Subcommittee of WICL.
**Heard Around Town**

*By Karen Chesley*

**Women on the Bench:** Two recent studies have shed light on the gender disparity among judges and shown why it matters that female judges are drastically outnumbered by their male counterparts. In the first study, the Center for Women in Government & Civil Society analyzed the gender of all state and federal judges. The results? Women account for just 26 percent of all judges, holding a total of 5,015 judgeships (compared to 74 percent for men). Two states, Montana and New Hampshire, have no female judges on the federal bench (although each state has seven federal judges), while Connecticut and New Jersey have the highest percentages of female judges, with 38 percent and 44 percent, respectively. The Center attributed this discrepancy not to a shortage of qualified female attorneys, but to “the lack of opportunity and access afforded to women.” The Center believes states should have a goal of meeting the “critical mass” point of 33 percent, at which, according to the Center, women will be able to exert “significant influence.” Such a goal may have meaning for both the profession and litigants, at least in certain types of cases. For example, a study of 556 federal appellate cases decided between 1999 and 2001 suggests that the dearth of female judges can affect the outcome of cases dealing with Title VII sex discrimination and sexual harassment claims. The study, published in the *Yale Law Journal*, also discovered that plaintiffs were twice as likely to prevail when a female judge was on the bench.

**Panel Discussion Features Women of the Supreme Court Bar:** On January 28, 2010, the Supreme Court Fellows Program Alumni Association and the First Amendment Center sponsored a panel discussion titled “Women Advocates of the Supreme Court Bar.” The panel, moderated by retired Supreme Court Justice Sandra Day O’Connor, featured Latham & Watkins’ Maureen Mahoney, Solicitor General Elena Kagan, and Georgetown Law Professor Wendy Williams. Among the highlights: Justice O’Connor noted there are still fewer female Supreme Court clerks than males – just 11 out of 38 clerks are women this term. Solicitor General Kagan stated that, while challenges remain for female appellate advocates, there has been a great deal of progress over the past few years. Since her appointment to Solicitor General last year, she says it has become ordinary to see both women and men at the counsels’ tables before the Court. However, the panelists agreed that, when women advocates do appear before the Court, they are more likely to be representing public interest groups and public law offices than private interests. Prof. Williams summed up the recent experience of the women of the Supreme Court bar by saying: “We’re doing better, but it’s still a rocky road.” Video of the panel discussion is available at: www.newseum.org/news/news.aspx?item=nn_OCON100128&style=f.

**ABA Academy to Help Young Attorneys Develop Leadership Skills:** On April 29-30, 2010, the ABA Commission on Women in the Profession and the ABA Young Lawyers Division will jointly host the fourth annual Women in Law Leadership Academy (WILL) at the Loews Philadelphia Hotel. The mission of WILL is to train female lawyers to gain leadership skills and achieve success. Attendees will hear concrete advice, learn best practices and have the opportunity to network with prominent lawyers in a variety of fields. Speakers include federal judges, corporate counsel, law firm partners, nonprofit attorneys and legal academics. Registration closes on April 9, 2010. For more information or to register, visit www.abanet.org/women/will.html. CLE credit will be offered.

**Make it Rain: Tips and a Sample Plan for Becoming a Female Rainmaker:** A recent survey of the top 200 law firms by the National Association of Women Lawyers (NAWL) revealed that 72 percent of responding firms have no women among their top five rainmakers. Nearly half of the firms had no women among the top 10 rainmakers. Those statistics prompted the ABA to host a panel titled “Generating Business... Different Styles, Different Approaches” during the Law Firm Marketing Strategies Conference in November 2009. Panelist Christine Baker, Senior Counsel of Litigation & Regulatory Affairs for Realogy Corporation, offered concrete advice on how to avoid common pitfalls. She encouraged attorneys to be responsive, communicative, and understanding, telling the audience some of the largest problems she sees relate to billing and an inability to deal with mistakes. Panelist Julia Corelli, a Partner at Pepper Hamilton LLP, encouraged women to create personal business development plans and to use them to measure their own progress. Any such plan should incorporate the wisdom of one’s competitors, she said, but women lawyers should not be afraid to carve their own path. “Be informed (about) what your competitors do, but plan your own path to success,” Corelli said. “You cannot just follow in another’s footsteps.” The panelists also promoted thoughtful participation in women’s initiatives and judicious use of formal and informal mentoring relationships. Course materials, including a list of panelists and sample forms for
Top Firms for Women Support Flexibility and Long-Term Development, But Disparity Remains: On December 11, 2009, Law360 announced the results of a survey of female partners at more than 200 firms employing at least 100 lawyers. The three firms with the highest percentage of female partners – McDonough Holland & Allen PC (34.75 percent), Davis Graham & Stubbs LLP (31.82 percent), and Hanson Bridgett LLP (30.67 percent) – attribute their success in promoting women to the consistent support they offer female attorneys during the course of the women’s careers. A key component to retaining female attorneys is making flexible options available for women, especially working mothers. For example, partners at Hanson Bridgett can create work schedules that allow them to bill fewer hours and include the ability to work from home. “It’s not difficult to succeed as a woman here,” said Sandra Rappaport, Chair of Recruiting at the firm and a mother of two. “I come home, we do homework, I put my kids to bed. And technology makes it that I can be totally responsible to my clients and manage their needs as well.” Similarly, at Davis Graham & Stubbs, Partner Patricia Peterson says the firm is “more conducive for women to go through the stages of their career while they’re having families.” Peterson, a member of the firm’s executive committee and a single parent, knew the firm would support her decision when she adopted a child 16 years ago. “It was somehow never a question in my mind that this was going to be possible,” she said. At leader McDonough Holland & Allen, scheduling flexibility is supplemented by a cooperative atmosphere that firm Executive Director Gerry Holt says attracts women. “[Y]ou don’t see the kind of ruthless competition (at McDonough) that you see at other firms,” Holt said. Despite these successes, the Law360 survey showed that women still lag behind men when it comes to promotion to partnership, constituting just 19 percent of partners among all of the firms surveyed. The culprits for such a disparity are familiar to many female attorneys: lack of mentoring opportunities, stereotyping, subtle bias in performance reviews, an inability to secure important assignments, and family burdens. Even so, women say firms are placing a greater emphasis on promoting them and encouraging diversity. “I don’t think it is any intentional type of bias,” said Bobbi Liebenberg, Chair of the ABA’s Commission on Women in the Profession and a senior partner at Fine Kaplan & Black RPC. “I think most firms are really working hard on these diversity issues.”

Profile:
Rosemary Harold
By Christina Kube

By putting aside her naturally shy attitude, and grabbing ahold of often unexpected opportunities, Rosemary Harold, Media Legal Advisor to FCC Commissioner Robert McDowell, has enjoyed a successful career as both a journalist and an attorney. And there is no telling where her future may take her next.

It may come as a surprise to those who know Rosemary that she is naturally shy, as it only takes a few moments to notice her inquisitive, assertive demeanor. Reflecting on her childhood, Rosemary notes that this demeanor was probably a product of several moves that her family made during her adolescent years. The daughter of a “corporate nomad,” she spent her first 12 years in four different towns in Iowa, followed by time in Minneapolis and Kansas City. “I had to learn, albeit unwillingly, to introduce myself and make my way into a new environment,” she says. While difficult at the time, Rosemary acknowledges the beneficial impact this nomadic existence later had on her career as both a journalist and an attorney.

Long before she had any curiosity about the law, Rosemary had a passion for journalism, an interest that was first sparked by her mother’s own enthusiasm for the profession. Rosemary quickly acted on this interest during high school, where she served as co-editor of her yearbook – a role she later replicated as editor-in-chief of her college yearbook. “I love yearbooks because they’re instant history. I really love the permanence of the book,” she fondly recalls.

After she graduated from high school, it was time for another move. This time, Rosemary headed off to Williamsburg, Virginia, to attend the College of William and Mary, where she concentrated on English and Theatre, tailoring her curriculum to a planned future as a drama critic. Rosemary developed her love for drawing

Karen Chesley is a law clerk for U.S. District Court Judge Juan R. Sanchez in Philadelphia.
and design while at William and Mary, primarily by working on theatre set designs and mastering the magazine layout principles used in yearbooks.

Her subsequent decision to pursue a Master’s Degree in journalism from the University of Missouri-Columbia wasn’t a difficult one. “I figured: I do school well, so I should keep doing it,” she says with a laugh. So, off she went to Missouri to pursue a career in journalism. On her first day of graduate school, she received an unexpected surprise in the form of a Communications Law course. “I really, unexpectedly, liked the class,” she said. Rosemary also recalled that that course, unlike many of the others she took that year, was taught using the infamous Socratic Method routinely used in law schools. “That really freaked people out,” she laughs. As she continued to take courses integrated with legal topics, and increasingly realized how well her brain worked with legal thinking, Rosemary questioned her journalism path. “I thought, oh my gosh, have I enrolled in the wrong graduate program?”

Despite her growing interest in the law, Rosemary decided to pursue a career in journalism first. “I thought [law school] was a too huge commitment of time and money unless I was sure it was what I wanted,” she says.

Rosemary wasted little time starting her career as a journalist, first working as a magazine editor for a state teachers association and then taking a position as the entertainment editor at the Austin American-Statesman in Texas. After a brief time in Austin, Rosemary moved back to Columbia, Missouri, where she became the education and entertainment reporter for the Columbia Daily Tribune. Mirroring her childhood, Rosemary uprooted herself again when she was offered a position working for the Miami Herald in Naples, Florida. Rosemary jokingly recalls the pros and cons of her time in Naples. “It was a very boring place to be for someone young, educated, and single,” she laughs. Yet it was a great place for a young reporter to be. Not only was the Miami Herald a “top ten” newspaper, but life in South Florida made for some interesting story assignments, from high-profile murders in Miami to brush fires in the Everglades.

The Miami Herald also gave Rosemary a unique opportunity to work as the paper’s Key West Bureau Chief. Rosemary says, “I loved Key West because of the history and the mix of people who live there.” In addition to exciting news on major drug busts – Rosemary noted that, at that time, it was not uncommon to write a story on a bust involving hundreds of pounds of cocaine – Key West also gave Rosemary a glimpse of some partisan divides at the community level. Rosemary valued this exposure to government and private sector interaction, saying, “It was a great source of education before law school.”

After her stint in the Keys, Rosemary decided to follow-up on her initial interest in the law. Reflecting on the decision to leave her career as a journalist, Rosemary comments, “It was a slow progression sparked by the initial interest in graduate school.”

So Rosemary uprooted herself one more time to attend the Georgetown University Law Center, thereby adding yet another location to the list of places she has called home. But, rather than entering Georgetown as a first-year day student, Rosemary decided to enroll in the evening program. She admits that this was a means by which she could “test drive” the rigors of law school before fully committing to the day program. She also had not completely disengaged herself from her journalism career, as she spent her daytime hours working for C-SPAN. “Before law school, I had no desire to ever come to Washington to cover Congress or the White House. So, [C-SPAN] was great because I learned about Congress and the legislative process,” she says. She also noted that the close proximity of C-SPAN’s office to Georgetown’s Law Center – only three blocks away – didn’t hurt much, either.

Contrary to her original plan, Rosemary decided to stay in the evening program at Georgetown Law after completing her first year of law school. Recalling that decision now, Rosemary stressed the benefits of attending class with students who were able to bring their outside, professional experiences into the discussions. “What I didn’t understand until I was in [law] school is that your law school experience is dependent upon your classmates more than [with] other schools. You really cherish the brain power of your classmates,” she says. Rosemary also valued the unique perspective that working during law school gave her, as she felt that she had a practical understanding of how the law and the real world interacted. Highlighting this interaction, Rosemary recalled a particular discussion of “works made for hire” during a copyright law class. Her professor asked why anyone would ever give the right to their work product to a corporation. “After a while, no one raised their hand, so I raised mine and said that you do it for rent and food,” she laughed.
The transition from journalist to prospective attorney wasn’t always an easy transition. One of the hardest changes for Rosemary was adapting to writing as an adversary for clients. “I was no longer writing as a disinterested, neutral arbiter. As a lawyer, I was speaking for one side, as opposed to trying to provide the ‘objective truth,’” she says. However, her journalism background also gave Rosemary certain advantages in figuring out how to craft good legal briefs. While many of her peers struggled with format or structure, Rosemary’s journalism background allowed her to create coherent, logical briefs that used the facts to tell the story. One thing Rosemary had little trouble adjusting to was life away from the daily deadlines of journalism. “The pace of law day to day can be less demanding,” Rosemary says.

Despite the challenges of the transition from journalism to law, Rosemary’s position as a summer associate at the firm now known as Wiley Rein LLP provided her with an opportunity to showcase her writing abilities and work ethic. Rosemary’s first assignment as a summer associate was to write a research memo on an antitrust issue, an area of the law that was completely unfamiliar to her. But she worked hard, and, in the end, turned in a useful product. “As a lawyer, if you have the basic skills, you can do anything, with enough time and hard work,” she reflects.

Rosemary’s hard work obviously was noticed, as she was asked to return to Wiley Rein as a junior associate after she finished law school. There, Rosemary set the pace among her peers, using her journalism training as a way to distinguish herself from other junior associates. She was grateful that so many of her journalism skills were transferable to legal work. “Some of the skills necessary for being a lawyer, such as interviewing and basic research, are never taught in law school,” she says. Having already mastered those skills before attending law school, Rosemary had an advantage over her fellow associates.

Rosemary’s journalism background may also have played a role in her being given an early opportunity to work with several partners within the firm, including Dick Wiley, on FCC policy matters and amicus briefs. Rosemary’s journalism background was particularly helpful with these matters. “For amicus briefs, you need to write something that brings to the Justices’ attention what no one else is saying,” she says. Rosemary remembers writing a particular brief making the argument that commercial speech deserved strict scrutiny protection. Focusing her research on the nature of journalism during the foundational years of the Constitution, Rosemary incorporated Benjamin Franklin’s ideas about America as a “marketplace of ideas” into her argument. Much to her pleasant surprise, the reference was included in a footnote of the Court’s opinion in that case, *City of Cincinnati v. Discovery Network*, 507 U.S. 410 (1993).

After spending 14 years at Wiley Rein, seven as a partner, Rosemary made the move to the government sector. “In some ways, the FCC chose me,” she says. Donna Gregg, a former partner at Wiley Rein who had worked with Rosemary, had recently acquired the position of Chief of the Media Bureau at the FCC, and she asked Rosemary to consider applying for the Deputy Chief position. Despite the pay cut, Rosemary decided to make the transition, recognizing the opportunity for increased responsibility and management. Although much of her time was spent wrestling with cable competition issues and the media ownership rules, Rosemary valued her time as Deputy Chief. “I know what it is like to work in the Bureaus, and it’s extremely valuable to know how things work from the ground up,” she says.

Rosemary decided to embrace the unexpected yet again when she was given the opportunity to move into her current position as Media Advisor to FCC Commissioner McDowell. Rosemary admits that it wasn’t something she was actively looking for, but she nonetheless decided to go for it. Looking back, it is a decision she is glad she made. Rosemary truly appreciates her time at the FCC, as it has provided her with a unique opportunity to work on cutting-edge projects while also learning about the regulatory aspects of the law. With the submission deadline for the Broadband Plan extended to mid-March, late February was a particularly busy time for Rosemary. She notes that the convergence between wireline and wireless platforms and how the FCC will grapple with such changes is particularly interesting. “The world is changing faster than the Commission can keep up with it,” she says.

When asked about how her previous career as a journalist has influenced her career as an attorney, Rosemary immediately references the importance of good writing, a skill that she now tries to impart to students at Catholic University’s Columbus School of Law, where she has been an adjunct professor since August 2007. “I really believe in writing good, plain English that people can understand,” she says. Comparing legal writing for laypersons to a “translation of foreign language,” Rosemary believes that a successful legal writer is someone who can understand the simplicity behind complex legal thoughts. Rosemary feels fortunate that journalism gave her this edge. Rosemary also notes
that her previous knowledge about the organization of media outlets has been useful from a policy perspective. “It matters less about the size of the organization as [about] the people who own and operate the outlet,” she says. Working for multiple newspapers solidified this understanding, as she was able to appreciate the time and work involved in newsgathering and production under differing circumstances.

Despite the combined demands of her work as an FCC Media Advisor and her position as an adjunct professor at Catholic University, Rosemary somehow has managed to balance the professional and personal aspects of her life pretty well. It helps that her husband also is an attorney. Rosemary also finds time to enjoy designing stained-glass windows and renovating the rooms in her row house on Capitol Hill, activities that likely stem from her early passion for set design. “I’ve probably repainted my living room four times. It drives my husband crazy,” she laughs. Rosemary doesn’t mind life in D.C., either. “I enjoy D.C. in a way I didn’t initially expect,” she says. “It has some of the best aspects of a big cosmopolitan city, and also an interesting cross section of people. Your next door neighbor could be a Member of Congress.” However, invoking her Midwest roots, she also notes that people in D.C. can too often get caught up in policy, partisan and legal debates.

Reflecting on her career thus far, Rosemary noted that her greatest advantage was a willingness to appreciate the value of the unexpected, even if it wasn’t part of the direct future she had planned. “It is important to have some career objective in mind, but always be flexible enough to act on unforeseen opportunities,” she says. “Opportunities can come based on a combination of your own talents, people you know, and being in the right place at the right time.”

When asked where her future might take her next, Rosemary wasn’t quite sure of anything other than her desire to remain in the legal field. “I always knew I wanted to do interesting work that would keep my brain entertained, and I always knew I wanted to work in the media,” she says. Judging from her success thus far, Rosemary seems to have a handle on both of those goals.

Christina Kube is an intern with the National Association of Broadcasters in Washington, D.C.

Profile: Lisa Washburn
By Lindsay LaVine

Pursue your interests. Trust your instincts. Create your own path. Follow your passion. These are just a few of the take-aways I had after meeting Lisa Washburn, senior counsel of the Tribune Company, for coffee and a chat in late February. As a former journalist, I wanted to learn more about her career path and how she got to where she is today.

Lisa grew up in the Midwest. She was born in Oak Park, Illinois and moved downstate with her family to Champaign, where she lived until she went to the University of Iowa. Initially an undeclared major, Lisa discovered her passion for radio after a friend introduced her to the campus station. Lisa knew then she had an interest in television and radio, but her career path did not solidify until after she took a class in American broadcast and mass media history. She majored in broadcasting and film and, upon graduation, embarked on a career in broadcast media.

Lisa worked in television and radio for several years after graduation, including a stint as a master control operator for WHO, a television station in Des Moines, Iowa. She also worked freelance for a local station in Champaign, Illinois, and for WEFT, a non-profit radio station in the area.

While public radio presented its share of challenges, such as funding and market size, Lisa found that she was not being intellectually stimulated there. So, after several years of working in broadcast, Lisa decided to attend law school at DePaul College of Law in Chicago, Illinois. Although she did not have a career path in mind on her first day of law school, Lisa knew shortly after that she wanted to stay in broadcast. However, DePaul did not have a curriculum for media law at that time, so Lisa fashioned her own independent study of sorts by taking classes she found interesting, such as Entertainment Law and Mass Media and the Law. She supplemented her coursework with externships with the Federal Trade Commission and Lawyers for the Creative Arts. During her second year of law school, Lisa studied in Ireland. She also took a semester off to intern in the legal department of the National Association of Broadcasters (NAB) in Washington, D.C.
Profile: Lisa Washburn continued

While at DePaul, Lisa was confronted by an advisor who questioned both her decision to take time off from school for the internship and her perceived resistance to the “lock-step” law firm career path the majority of her classmates had chosen. Despite such skepticism from law school faculty and staff, Lisa continued to follow her own path, a decision she believes has led her to where she is today.

As a 3L, Lisa worked as a law clerk at WTTW, a Chicago public television station. Connections she made at WTTW helped her find a clerkship at Schwartz, Woods & Miller, a small telecommunications boutique that represents local broadcasters in Washington, D.C. After she graduated from DePaul in 1993, Lisa began her fulltime legal career at Schwartz, Woods & Miller, where she was the only associate for the firm’s four partners. The position afforded her early client contact and autonomy, two benefits her colleagues at large firms did not have. Another perk was the lack of a billable hour requirement. While there, Lisa tackled issues involving the FCC, including the then-recently enacted Telecommunications Act of 1996, and telecommunications and compliance issues; represented local broadcasters; and counseled clients on intellectual property matters. She described her experience at the firm as both “unconventional” and “great,” and enjoyed the mentoring opportunities available to her.

Lisa had long been interested in returning to the Midwest and, in particular, working for Tribune Company. Over the years, Lisa would see job postings for positions with Tribune and would apply (three times, in fact), but she never got the job. Undeterred, Lisa decided the best way to return to the Midwest was to join a law firm that was based in Chicago. When she learned that Gardner, Carton & Douglas’ D.C. office was expanding its telecommunications practice, she applied, joining the firm in 1997. Then life threw her a surprise, as it has a tendency to do. Lisa received an out-of-the-blue telephone call from Chuck Sennet at Tribune Company two weeks after she started her new job for Gardner, Carton & Douglas. Chuck alerted her to a new position at Tribune Company and asked whether she would be interested. Lisa told him she could not even consider it – after all, what would her new employer think? Chuck told her that if she changed her mind, she knew where to find them. Shortly after that conversation, Lisa was at Kinko’s, faxing her resume to Tribune Company. Five months later, she was in Chicago, working for Tribune. It was June 1998. She has not looked back.

The transition from working in a law firm to working in-house presents its own challenges, as well as opportunities for growth and stretching. According to Lisa, you are hired for your expertise in a niche area, yet when you arrive in-house, you are often perceived as a generalist. Suddenly, the client is asking questions about leases, subpoenas and litigation. Working in-house also provides the opportunity to be involved in a variety of projects, and fosters internal collaboration and consultation with attorneys and others in the business. Tribune Company owns newspapers and television stations, has a strong online presence and is developing new technologies. Lisa said that, when working in-house for a company with such diverse holdings, you never know what you are going to find on any given day. Another benefit she sees to working in-house is the ability to develop relationships. As an attorney working in-house, she said, you have the opportunity to strategize with the business team during the development process as opposed to operating in “reactive” mode when you are presented with final plans for a project shortly before launch, as outside counsel.

At Tribune Company, Lisa’s primary tasks involve dealing with regulatory and operational issues, including cross ownership proceedings, the Children’s Television Act, indecency, fair use, copyright and website monetization; monitoring the FCC for changes that may potentially impact the company; amassing and retaining local public inspection files as required by the FCC; addressing broadcast and spectrum allocation issues; negotiating contracts; and overseeing the legalities of sweepstakes. Each day is different, driven by current projects or pending deadlines in the business unit. Lisa has been doing it for twelve years, and says that if she was not practicing communications law, she would not be practicing. She enjoys the people she has met over the years – the creative, the funny, and those “interested in fact-finding and the truth.” She also enjoys the work. “It’s entertainment. It’s not life, death or incarceration.” She finds the mix of regulatory and conceptual work appealing and enjoys helping her clients meet their goals. And while the schedule of an in-house lawyer can be just as demanding and rigorous as law firm practice, it affords her the opportunity to leave the office at a decent hour to spend time with her husband and 6-year-old son and to work from home.

Our afternoon coffee break was drawing to a close, so I asked Lisa for any words of wisdom or advice she might have for young lawyers. She advises them to follow their interests and passions,
and not be afraid to go their own way. She looks back on the advice she received in law school, discouraging her from taking time off to complete an internship in Washington, D.C. and chastening her for not following the “traditional” route of her classmates, and notes that her career trajectory was a direct path from her decision to go her own way. “Everyone is good at [law] school,” Lisa says. “Employers are looking for someone with commitment and passion. They want to work with people with a demonstrated interest” in the subject matter. For nearly 25 years, Lisa Washburn has worked in broadcasting, both on-air and behind the scenes. Her passion for broadcast is evident to everyone she meets, and her ability to effectively manage her personal and professional life gives young women a shining example that if you work hard, you can have it all.

Lindsay LaVine is a Partner with Mandell Menkes LLC in Chicago.

Profile: Susan Grogan Faller
by Judith A. Endejan

I have known Susan Grogan Faller for many years and have always been impressed with her upbeat, positive, smiling attitude and her support for other women in the law. When Susan was selected for this profile in the WICL Newsletter, I jumped at the chance to do it!

Susan has been an attorney with Frost Brown Todd LLC for 35 years in the firm’s Cincinnati, Ohio office. She leads the firm’s Media and First Amendment group, which includes approximately 20 members from the firm’s offices in Ohio, Kentucky, Indiana, Tennessee and West Virginia. About half of her practice is devoted to media-related counseling and litigation. The other half involves commercial litigation, primarily banking and business disputes.

Susan’s interest in media law arose after she wrote a paper on libel in law school and then was fostered during a libel trial (her first) very early in her career at Frost Brown Todd. She has enjoyed her media practice but, as a litigator who loves being in court, Susan regrets that so few media cases go to trial because most are resolved by motion. She especially recalls one memorable two-week trial with Frost Brown Todd media lawyer Richard Goehler involving a confidential source for a local TV station, which they won despite the inability to disclose the source. Over the years Susan has represented a variety of media clients, including Raycom Media, Emmis Communications, JES Publishing, America’s major networks and the BBC.

Susan has lived in Cincinnati all of her life. She went straight from undergrad at the University of Cincinnati, where she graduated with a B.A. in 1972, to the University of Michigan Law School, where she served as a Note Editor on the Law Review and received her J.D. with honors. Her friends had encouraged her to go to law school at a time when women occupied a distinct minority of law school populations. When Susan attended, she was one of 50 women in a graduating class of 350. Susan found that she joined the legal profession at a very exciting time for female attorneys. She is particularly pleased that women have risen from a distinct minority of the profession to the point where they comprise more than 50 percent of the students in most law schools.

After her first year of law school, Susan married Ken Faller, a classmate. They graduated from Michigan Law School together in 1975. After law school, Susan and her husband returned to Cincinnati, where they raised three daughters in addition to managing their dual legal careers. Susan is understandably proud of her three daughters. The oldest, Beth, is now working on her doctorate in education at Harvard. Her second daughter, Maura, will graduate from Ohio State University College of Veterinary Medicine this spring and is thinking about specializing in veterinary oncology or emergency medicine. Susan’s youngest, Julie, recently graduated from Stanford University, is currently working for an NGO in Washington, D.C., and has her sights set on getting a doctorate in political science.

Susan feels that she was able to balance her family life and career quite well during her career at Frost Brown Todd. However, she thinks it generally was easier to balance raising children and becoming an equity partner during the years when she did it than it is to do so today. She thinks that the increasing demand for more billable hours in addition to client origination requirements make it harder for young attorneys today to gain equity partnership, though she commends firms like Frost Brown Todd that offer lots of flexibility in their options for attorneys. Susan favors the more
creative, flexible arrangements that some firms have devised to allow attorneys to maintain balance between practice and home life, and she doesn’t buy into the concept that a single definition of equity partner is necessary for all.

Susan has been a ready participant in WICL events and has assumed other media leadership roles. She was the President of the MLRC Defense Counsel section and served as one of the early editors for the MLRC annual libel and privacy updates. She also was one of the early editors of the newsletter produced by the ABA Section of Litigation - Media Law Committee. Currently she serves as Chair of the Multilaw Consortiums International Media, Advertising and Entertainment Law Practice Group. The Multilaw association brings together law firms from across the globe and has allowed Susan to travel to speak on panels or to attend meetings in places such as China, Italy, Germany and Switzerland.

Susan’s passions outside of work include swimming, bicycling and boating, particularly at the family cottage in Leland, Michigan. She loves travel and is looking forward to traveling to Bangalore, India next summer to attend her daughter Beth’s wedding.

Susan experienced a significant personal loss last year when her husband, Ken, passed away suddenly after 35 years of marriage. Nonetheless, in my conversations with her she was her usual upbeat self, advising women lawyers to be mindful that time is precious. Her advice:

“Get the most out of every day.”
“Don’t be afraid to take risks.”

But above all, “think positive.” That’s Susan!

Judith A. Endejan is an attorney with Graham & Dunn in Seattle and a member of the WICL Newsletter subcommittee.

**Women On The Move**

*By Katharine Larsen*

Hazel-Ann Meyer has been promoted to Chief Compliance Officer of CBS Corporation.

Amber Husbands, formerly an Associate with Davis Wright Tremaine LLP, joined Discovery Communications, LLC, as the Director of Business Affairs and Programming Legal, in Silver Spring, Maryland.

Kathleen Kirby, a Partner at Wiley Rein LLP in Washington, D.C., is the new Co-Chair of the Women in Communications Law Committee of the ABA Forum on Communications Law and will serve from 2010 to 2012.

Rachel Brandenburger, formerly a Partner in the Brussels offices of Freshfields Bruckhaus Deringer, is now a Special Adviser on international matters in the Antitrust Division of the U.S. Department of Justice.

Katharine Larsen is an Associate in the Philadelphia office of Levine Sullivan Koch & Schultz, L.L.P.

**Join our Listserv**

The ABA Forum on Communications Law has a listserv of all of its members. WICL also has a separate listserv, where we sometimes (very infrequently) send messages to our members. Unlike the Forum listserv, the WICL listserv is “opt in” only. If you are not on the WICL listserv and would like to be, please let Laura Lee Prather know (laura.prather@sdma.com).
Women In Leadership In Communications Law

This column identifies women who are serving in leadership positions in communications law professional organizations such as the ABA Forum on Communications Law (the Forum) and the Media Law Resource Center (MLRC). Please send us any additional information you may have about women serving in such leadership positions so that we may update this column.

Stephanie Abrutyn  
Chair, Board of Trustees of MLRC Institute  
Co-Editor of the Forum’s Communications Lawyer

Jeanette Melendez Bead  
Chair of the Forum Moot Court Competition Committee

Landis Best  
Division Chair, ABA Section of Litigation

Robin Bierstedt  
Co-Chair of MLRC New Legal Developments Committee

Ann Bobeck  
Co-Chair of Federal Communications Bar Association’s Mass Media Practice Committee

Katherine Bolger  
Vice Chair of MLRC Entertainment Committee

Susan Buckley  
Member of the Forum Governing Committee

Alicia Wagner Calzada  
ABAC Law Student Division Liaison to the Forum

Guylyn Cummins  
Chair of the Forum  
Co-Chair of MLRC Membership Committee

Lucy Dalghish  
Member of the Forum Governing Committee

Monica Desai  
Member of Federal Communications Bar Association’s Executive Committee

Jennifer Dominitz  
Co-Chair of MLRC California Chapter

Erin Dozier  
Trustee of Federal Communications Bar Association Foundation

Johnita Due  
Member of the Forum Governing Committee

Kai Falkenberg  
Co-Chair of MLRC Prepublication/Prebroadcast Committee

Nancy Felsten  
Co-Chair of MLRC Advertising/Commercial Speech Committee

Rosemary Harold  
Chair of Federal Communications Bar Association’s Video Programming and Distribution Committee

Pilar Johnson  
Member of the Forum Governing Committee

Kathleen Kirby  
Co-Chair of MLRC Legislative Affairs Committee  
Co-Chair of Federal Communications Bar Association’s Mass Media Practice Committee  
Co-Chair of the Forum Women In Communications Law Committee

Ashley Kissinger  
Co-Chair of the First Amendment and Media Litigation Committee of the ABA Section of Litigation

Lindsay LaVine  
ABA Young Lawyers Division Liaison to the Forum

Jane Mago  
Trustee of Federal Communications Bar Association Foundation

Laurie Michelson  
Co-Chair of the Central Division of the Forum

Amy Mushahwar  
Co-Chair of Federal Communications Bar Association’s Privacy and Data Security Committee

Karole Morgan-Prager  
Member of MLRC Board of Directors

Barbara Morgenstern  
Co-Chair of the Central Division of the Forum

Laura Lee Prather  
Co-Chair of the Forum Women In Communications Law Committee

Elizabeth Ritvo  
Treasurer of MLRC Defense Counsel Section

Elisa Rivlin  
Member of MLRC Board of Directors

Natalie Roisman  
Trustee of Federal Communications Bar Association Foundation

Kelli Sager  
President of MLRC Defense Counsel Section  
Co-Chair of the Western Division of the Forum

Deanna Shullman  
Co-Chair of the Forum Training & Development Committee

Sherrese Smith  
Chair of the Forum Diversity Committee  
ABA Committee on Racial & Ethnic Diversity in the Profession Liaison to the Forum

Natalie Spears  
Co-Chair of Planning Committee, NAA/NAB/MLRC Media Law Conference 2010

Anne Swanson  
Chair of Federal Communications Bar Association’s Constitution and By-laws Committee

Jennifer Tatel  
Chair of Federal Communications Bar Association’s Continuing Legal Education Committee

S. Jenell Trigg  
Co-Chair of Federal Communications Bar Association’s Privacy and Data Security Committee

Corinna Ulrich  
Internet Coordinator of the Forum

Anita Wallgren  
Trustee of Federal Communications Bar Association Foundation

Susan Weiner  
Member of MLRC Board of Directors

Maya Windholz  
Member of the Forum Governing Committee

Nicole Wong  
Co-Chair of the Western Division of the Forum
**Women in Communications Law 2010-2011**

**Mentoring Program Guidelines**

The goal of the program is to match law students, junior and senior attorneys interested in communications law with more experienced mentors. Participants may serve as a mentor, mentee, or both.

The program will be conducted on an annual basis. Those interested in participating will be matched with a mentor or mentee from approximately June 2010 through June 2011. There can be many salutary reasons for changing up mentoring relationships, so the obligation extends no longer than one year. At the end of the year, participants can choose to continue their existing match, to sign up for a new match, or to stop participating in the program.

Mentors and mentees should plan to get together approximately once per quarter.

In addition to one-on-one meetings, mentors are encouraged to look for opportunities to invite mentees to bar association or other networking and/or educational events.

Whenever possible, mentors and mentees will be matched based on geographic area. In some instances, however, we may suggest matches between mentors and mentees located in different cities (in which case meetings may be held by phone).

To the extent possible, mentors and mentees also will be matched according to their practice area or other common interests noted on the sign-up form.

All discussions between mentors and mentees are confidential.

Thank you for your interest!

*We look forward to having you participate in the program.*

---

**MENTOR/MENTEE REGISTRATION FORM**

I am applying to be a Mentor ____ Mentee ____ Both ____ Today’s Date:__________

Name ____________________________________________________________

Organization _____________________________________________________________________________________________

Address _____________________________________________________________________________________________

Phone_________________Fax_________________Email _____________________________________________________

Years of Practice in Communications Law: ____ Practice Areas: _______________________________________________

Please list your law school, undergraduate and graduate education including school, degree, and graduation dates _________

____________________________________________________________________________________________________

____________________________________________________________________________________________________

What are your hobbies and interests? ______________________________________________________________________

____________________________________________________________________________________________________

____________________________________________________________________________________________________

____________________________________________________________________________________________________

Please list any other details that you think would help WICL match you with a compatible mentor/mentee

____________________________________________________________________________________________________

____________________________________________________________________________________________________

____________________________________________________________________________________________________

(For Mentors Only) Are you willing to mentor more than one mentee at a time? Yes ____ No ____

(For Mentees Only) Please list your primary goal(s) or reason(s) for participating in the mentorship program.

____________________________________________________________________________________________________

____________________________________________________________________________________________________

THANK YOU FOR PARTICIPATING IN WICL’S MENTORING PROGRAM!

PLEASE RETURN THIS FORM BY EMAIL, MAIL OR FAX TO:

Martha Heller, Wiley Rein LLP
1776 K Street, NW, Washington, DC  20006
Phone: (202) 719-3234  Fax: (202) 719-7049 E-mail: mheller@wileyrein.com