

INSIDE: Judge Roth Interview, Women's Initiatives, DirectWomen, Rikleen Book Review

Delaware Lawyer

A PUBLICATION OF THE
DELAWARE BAR FOUNDATION



VOLUME 24 ♦ NUMBER 3
\$3.00 ♦ FALL 2006

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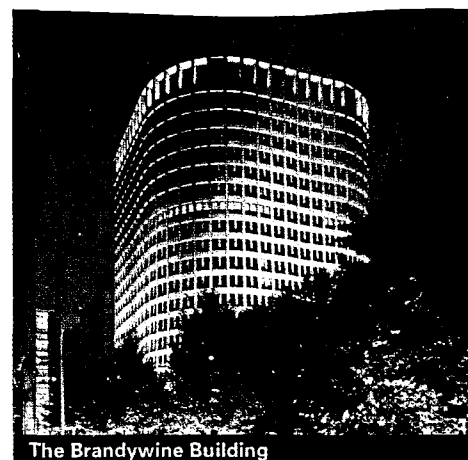
**WOMEN AND THE LAW
IN DELAWARE**



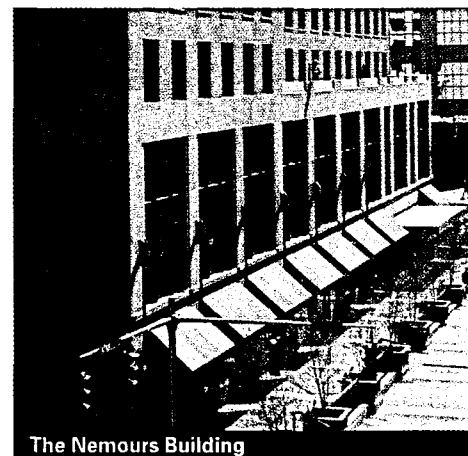
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Judge Jane Roth served as chair of the Conference Committee on Security and Facilities.



From left, Judge Aida Wasserstein, Shakuntla Bhaya, Mary Susan Much and Judge Jan R. Jurden at the 2006 Women and the Law Section retreat.

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is produced for the

Delaware Bar Foundation by:

Media Two, Inc.

22 W. Pennsylvania Ave., Ste. 305

Towson, MD 21204

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*Subscription orders and address changes
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EDITOR'S NOTE

Teresa A. Cheek

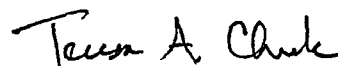
This issue is devoted to the topic of women in the law, particularly in private practice, a topic near to my heart. As a practitioner of employment law who has defended many sex discrimination charges and lawsuits, I take a professional as well as personal interest in the topic.

My volunteering to edit this issue coincided with an upsurge in interest in the media in the topic of the current status of female attorneys in the nation's firms. The publication of Lauren Stiller Rikleen's book, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law*, West/Legalworks (2006), doubtless played a role in the recent attention to this subject and to the subject of diversity more generally.

We are fortunate to be able to publish an excerpt from Rikleen's book in this issue, and I have written a review in an attempt to capture at least some small part of its wealth of thought-provoking information. I urge all readers who care about the practice of law to buy this book, read it and follow its advice.

We are also fortunate to have Betsy McGeever's interview of Judge Jane R. Roth, who has recently moved to senior status on the Third Circuit Court of Appeals and who generously shared her time and memories with us. We also have an interesting article about a new program called DirectWomen from Professor Amelia Boss, who is co-chairing a joint initiative by the American Bar Association's Business Law Section and the public interest organization Catalyst to place more women on the Boards of Directors of publicly held corporations. Finally, we have a lively article by Claire DeMatteis recounting the history, accomplishments and future plans of the Women and the Law Section of the Delaware State Bar Association.

I am extremely grateful for the time and efforts of all our contributors, and hope that our readers enjoy these articles as much as I have.


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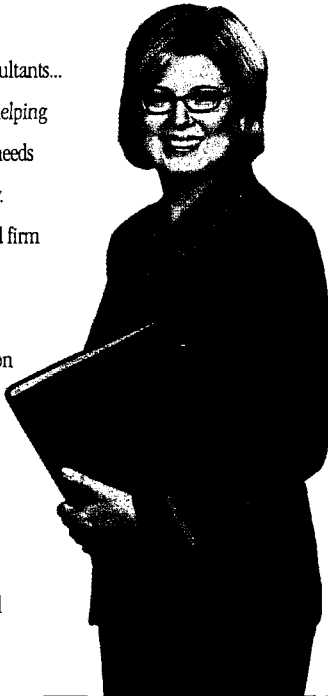
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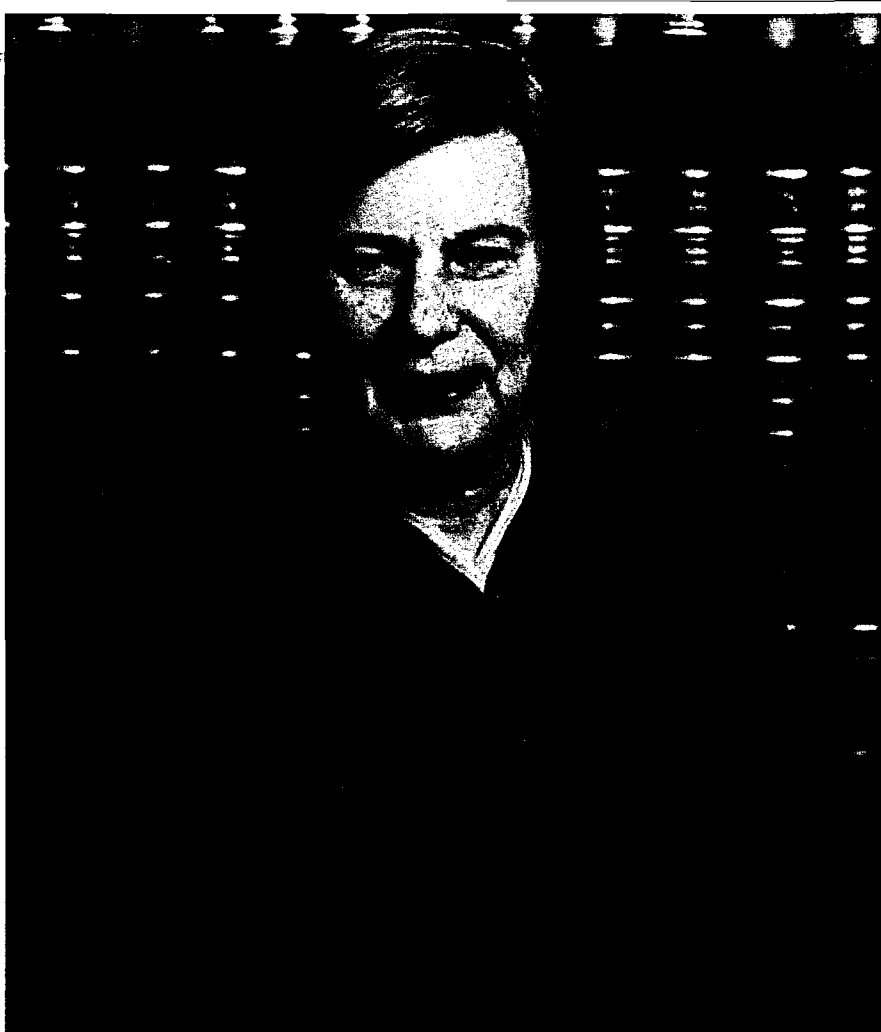
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Elizabeth M. McGeever
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An Interview with Judge



Roth talked with us about her experiences as one of the few female attorneys in private practice in Wilmington, her time on the bench and her plans for the future.

We had the pleasure of interviewing Judge Jane Richards Roth who, on June 1, 2006, took senior status on the bench of the Third Circuit Court of Appeals. Her chambers are filled with photos of her family, former law clerks and U.S. presidents; mementos from travels to places like China; awards for her service; and even crayons for her visiting grandchildren. Judge Roth talked with us for an hour about her experiences as one of the few female attorneys in private practice in Wilmington in the 1960s and 1970s, her time on the bench and her plans for the future.

Q: *Tell us what it was like growing up as the daughter of one of Delaware's leading lawyers.*

A: Growing up, I knew my father was a lawyer, but that was a very tangential part of my whole existence. A few times I was taken down to courthouses and I understood that a courtroom was a place where you behaved yourself, and I wasn't particularly interested in spending much time in it. I do remember when I was about 12 or 13 years old, my father came home one night for dinner and said an amazing thing had happened: A young woman

had come in to apply for a job as an attorney, and Richards, Layton & Finger certainly was not going to hire any women attorneys. Later, I became the first female attorney they hired.

Q: *Did your father encourage you one way or another to go to law school?*

A: My father never pushed me one way or another. I spent time in the Foreign Service — Teheran, Salisbury [in] southern Rhodesia, the Congo. Later, when I decided to go to law school, my parents encouraged me and helped me financially to do so.

Q: *Growing up, did you have dreams of becoming an attorney?*

A: No. I wanted to be President of the United States, and during World War II, I wanted to be a fighter pilot.

Q: *You went to Smith College. Was that a family tradition?*

A: I was the first of my family to go there, but my niece went there and she has a daughter who is presently there. I went there, I think, because when I went to summer camp, the counselors I admired the most had gone to Smith.

Q: *What did you study?*

A: I majored in the history of art and I spent my junior year in Paris, which probably was one of the best years of my life. I learned more and I think it gave me that initial desire to do more than just stick around Wilmington, Delaware, and do what was expected of me.

Q: *When did you first start thinking of going to law school?*

A: When I was in college, law school was something I briefly considered. But at that point, I wanted to see the world and that's why I joined the Foreign Service. I was a clerk typist with the Department of State, and I got tired of typing and when I came back, I took the LSATs and was accepted in various places, including Harvard and Stanford. I decided to go someplace where it snowed so that's why, after having spent a year in the tropics, I picked Harvard because it snowed there.

Q: *At Harvard, you were one of 25 women in a class of 500. Were the women supportive of each other?*

A: Basically we were, although we were divided in three sections and you didn't have much contact with students in other sections. But the women in my section, yes, we were. We did stick pretty well together. I am still friends with one of them, Stephanie Seymour, who is a judge in the Tenth Circuit. She's the one I've maintained contact with.

Q: *Do you know where the other women are?*

A: Elizabeth Dole is a senator. Elizabeth Holzman was involved in politics

in New York, but I don't think she is involved anymore. Others are mostly practicing law, I think. I was delighted to be one of 25 women because they say at Harvard that you are a nameless face in a sea of faces, but I wasn't a nameless face.

Q: *Was law school enjoyable?*

A: Sometimes, but it was also sometimes very dull and very hard work.

Q: *How did the professors treat the women?*

A: In my section I was treated very well, but in other sections, the women weren't. I never had those experiences.

**"The firm felt that,
as a woman,
I would understand
that field of law
(domestic relations)
better. I was not
happy doing
domestic relations."**

Q: *What were your plans on graduating?*

A: I was most interested in becoming a Deputy Attorney General like my brother.

I came back [to Wilmington] and started working for Richards, Layton & Finger, and shortly thereafter became engaged to Bill Roth. Because of his political career, I never applied to the AG's office.

Q: *You joined Richards, Layton & Finger right after law school. Did you consider other firms?*

A: No.

Q: *You were the ninth woman admitted to the Delaware Bar.*

A: Actually, I think I'm the 10th. For years I thought I was the ninth, but [they later found out] there was a woman who passed, but never practiced. They discovered that when celebrating the 75th anniversary of women in the Delaware Bar.

Q: *Did you and the other women get to know each other?*

A: When I joined the Delaware Bar in December 1965, no other women attended the Bar Association Meetings. Vince Thiesen always started the meetings [saying], "Gentlemen and Mrs. Roth." Of the other nine, the only three I knew were Roxana Arsht who,

at that time, had not yet started in the Family Court and was not active at all; Sybil Ward, who was much older than I was and basically did title searches in the Prothonotary's office; and Brett Sturtevant, who was a patent lawyer at the DuPont company. And so, really, I had no contact with them.

Q: *What was your practice starting out?*

A: Domestic relations. The firm felt that, as a woman, I would understand that field of law better. I was not happy doing domestic relations. Domestic problems should not be solved by the adversary system and, at least in those days, lawyers seemed to be making the situation worse rather than helping the parties at all and, in the process, charging fees that exacerbated the family problems. I was very uncomfortable doing that work. When Bill was

elected to the Senate, I decided maybe I should get a job in Washington and did look down there, and in the process also told Rodney Layton at Richards Layton & Finger that I wanted to do something else. He was doing medical malpractice work and asked if I would like to help him out. And I said, "Absolutely." That is how I got into that realm of litigation, and spent many years doing it. It really was great preparation for going on the bench because I had spent so much time in trial in courtrooms that I knew the rules of evidence, I knew procedure, I knew basically what was happening in a courtroom and the role that a judge should play in a smoothly operating courtroom.

Q: *Did you have a difficult time balancing your family life with your private practice career?*

A: I didn't stop to worry whether it was difficult or not. It was very busy, but fortunately I was able to keep all the balls in the air without dropping any. Frankly, being a lawyer, I felt, gave me flexibility that other working women did not have because I could — as long as I wasn't in court — I could take time off to run nursery school car pools, etc., and I would put the kids to bed and then sit down and work on a brief that I had due. And so I was able by doing things when I could and fitting them in, I was able to manage it all and do a little campaigning for Bill on the side and make some appearances for him.

Q: *What advice would you give women today who are trying to manage that juggling act that you carried off so well?*

A: Stick with it because it is a very rewarding profession, and being a mother is a very rewarding role, and if you work hard and organize, I think you can do it all.

Q: *What was your most memorable case while in private practice?*

A: I was thinking about that last night. I think it's *Colpo v. Sheeran*, which is not a medical malpractice case. Jesse Colpo had run against Frank Sheeran for president of the local Teamsters union and was accused in a union flyer of being a scab, so Colpo sued Sheeran for libel and slander — Sheeran and some other local officers. I represented Colpo in the trial. Sheeran was about to go off to prison for labor racketeering. One of the jurors, on the first day of trial after the lunch break, told the judge that he didn't know this was *the* Frank Sheeran and that he wasn't going to be on the jury, so we did lose one juror early on, but ultimately Jesse Colpo did win. He did not get very much damages. I think there was a question whether he could have beaten Frank Sheeran, whether they had maliciously called him a scab or not, but he did win, he did prevail and he did get some damages. And

I will always picture Frank Sheeran sitting back in the witness chair with a big diamond ring on his hand looking at us like maybe we were flies he would squash if we got in his way.

Q: *Do you remember who represented Sheeran?*

A: Yes, I do. Tommy Little.

Q: *In The Delaware Bar in the Twentieth Century, you said that you had to prove yourself to gain acceptance from your male colleagues. When and how did the process begin to change in the acceptance of women attorneys?*

“I had been in
specialized medical
malpractice defense
litigation, and
suddenly, I was not
in one special area
of the law, I was
looking at all areas
of the law.”

A: I would say after 1970, as more women began practicing, they were not quite the peculiar sight in the courtroom that I had been in my first years.

Q: *What barriers continue to exist today?*

A: I'm not aware of any. From what I can see in my removed position as a judge, lawyers are judged as individuals and not as men or women. [When I first started,] I was afraid if I made a mess of something, people wouldn't think it was because I individually wasn't any good, they would say it's because women shouldn't be lawyers in the first

place. And I felt a heavy burden that I didn't want to mess things up for those who might follow me.

Q: *Did you have any trials against women adversaries?*

A: No. Magistrate Judge Mary Pat Thyng was one of the first women attorneys to get involved in the medical malpractice area when she was working for Victor Battaglia and she and I worked very closely together for a number of years. Even though we're in the same building now, we don't see each other that often, but there is a strong bond there because we did work together for a number of years.

Q: *Who were plaintiffs' medical malpractice attorneys?*

A: Wag Berl had the majority of the cases, Tom Capano was in one case, John Bader and Bayard Marin.

Q: *You joined the Delaware District Court in 1985 when Judge Stapleton was appointed to the Third Circuit. Did you always want to be a judge?*

A: Not initially, but as I became more involved in litigation, I became more interested. Then when George [H.W.] Bush ... became Vice President, he invited me to Washington to talk about what I might do in the new Republican administration back in the early '80s, and after discussing some possibilities, he said to me, “What would you like to do most of all?” and I said, “I would like to be a judge.” And that's how it all got started.

Q: *What was the confirmation process like?*

A: Very smooth. And still for District Judges, it's usually pretty smooth. The Court of Appeals confirmation process in 1991 was also very smooth.

Q: *How was it transitioning from private practice to the bench?*

A: I thought it was very easy. I most enjoyed the fact that I had been in specialized medical malpractice defense litigation, and suddenly, I was not in one special area of the law, I was looking at all areas of the law, civil and criminal, and I realized that what I had learned

in law school began to make a lot more sense than it ever did before.

Q: *Who was Chief Judge at the time?*

A: Judge Murray Schwartz. He was a wonderful Chief Judge, and I hope to have lunch with him today.

Q: *You were appointed to the Third Circuit in July 1991 when Judge Seitz went on senior status. Did he offer you any "appellate" advice?*

A: I only sat with him once, which was too bad. I would've liked to more. Unfortunately, he got sick and had to be replaced on the panel several times. I think more of the days back in the late '80s when all judges had lunch together on Fridays — Wright and Seitz and Latchum were there — I learned a great deal about the art of judging and impartiality just listening to all of them at lunch.

Q: *You took senior status on June 1, 2006. Has your workload changed?*

A: I haven't had a change in the workload. I wouldn't expect it to. Panel assignments are scheduled through the fall of 2007, and because of being short of judges, I will stick with my panel commitments. After that I'm not sure whether I will cut down. I am also busy with committee work. I am chair of the Judicial Conference Committee on Space and Facilities. We prioritize where federal courts will be built in the country, the space and limitations of materials in building courts, and I have contacts with Congress about getting authorizations and appropriations for courthouses.

Q: *At some point you may have more free time. How would you like to spend it?*

A: Playing games with my grandsons. They are 2½, 5, 7 and 10. Two are my son Bud's kids, Bobbie and Charlie. Bud graduated from Widener Law and now works for the Department of Defense. Nicholas and William are my daughter Katy's, who is in her third year of residency as a family practice physician. William is named after Bill and has Bill's blue eyes.

Q: *Do you still have St. Bernards?*

A: I still have one St. Bernard, Wilhelm. ♦

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Women's Initiatives: Seeking



The path taken by many of the first wave of women partners bears a striking resemblance to the struggles of the O's in their X-filled world.

A woman who breaks down any barriers she has erected against other women is likely to find that, by contributing to another's success, she is enhancing her own. By finding opportunities to work together, learn from each other, and share experiences, women create a collective path to their individual success.

In *A Tale of "O,"* Harvard Business School Professor Rosabeth Moss Kanter uses X's and O's as a metaphor to describe the impact of discriminatory treatment and unequal representation.¹ In her tale, the O stands out in a workplace full of X's. Never out of the spotlight, the O feels burdened by an obligation to demonstrate continually the same level of competence as the more numerous X's and to set the example of the "good O." The O finds itself under ever-increasing pressure to overachieve as the sole O representative — even as the counterpart X's succeed simply by being average. As the O learns that success is more likely to come through conformity, it develops the qualities that will appeal to the other X's: "The O, of course, is sup-

posed to show its gratitude to the X's for letting it in — by siding with the X's on issues of interest to O's, by adopting the X's point of view, or by taking the lead in criticizing other O's, in putting down O characteristics and sometimes even in outdoing the X's in finding reasons to reject other O's."²

The path taken by many of the first wave of women partners bears a striking resemblance to the struggles of the O's in their X-filled world. Under scrutiny at all times, these legal pioneers succeeded in a male-dominated environment, often without any peer support or internal safety net. Their adaptive behaviors may be frustrating to their younger colleagues, but it demonstrates how vulnerable these women may feel, notwithstanding the level of success

they have achieved. Instead of being able to reach out, the women partners remain in isolation, even as their female colleagues long for their support.

Imagine the results if these types of self-protective behaviors could be changed and women understood the power that existed in their collaborative efforts. This is the essential wisdom found at the conclusion of *A Tale of "O,"* where Professor Kanter urges O's to share strategies and support, and urges X's to provide equal access to the resources, skills, and information needed to succeed. In the world of X's and O's, life improves considerably when more O's are successful in the world of X's.³

In a law firm environment, if the O's — that is, women partners — support each other and the other women trying to succeed, they will enhance their own opportunities. In doing so, they can step away from the solitary spotlight which creates a constant need to prove oneself, and join with their fellow O's on equal footing with the X's.

Many firms are beginning to support that journey through the creation of Women's Initiatives designed to provide women with the tools they need to succeed. Although Women's Initiatives range tremendously in scope and sophistication, they offer skill-building and related training opportunities, the development of business networks, and a safe environment for women to discuss issues of concern. And even as these Initiatives are a product of the energy and involvement of a firm's female lawyers, they cannot succeed without clear and visible senior management support.

Such Initiatives should be developed to maximize the involvement of women attorneys throughout the firm and break down resistance to the effort. Women attorneys may occasionally express a degree of discomfort with the idea of meeting separately, concerned with how this may be viewed by their male colleagues. As those who have been involved with the implementation of successful Initiatives know, however, as long as women constitute small

minorities of equity partnership and leadership positions, women need to seize every opportunity to develop skills and networks that can lead to greater success.

It is also important to ensure that the activities of the Initiative are the product of significant input. For example, some successful Women's Initiatives began by bringing in speakers of interest to meet with the women attorneys on a variety of topics ranging from client development, media relations, negotiation skills, and gender issues in the courts, to such issues as dressing for success.

After the Initiative has taken root

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and a critical mass of the firm's women are engaged, then the firm can develop programs that provide business development and related networking opportunities directly with women clients. Models range from panel discussions that are open to clients and business contacts, to retreats, or even spa days for key clients. At their best, these Initiatives serve to build a stronger internal network of women who will advocate for institutional changes and serve to support the external business development activities of women lawyers.⁴

In establishing Women's Initiatives,

however, it is essential to resist efforts to measure the success of the Initiative simply by tracking new clients or new business directly attributable to these efforts. This is a false measurement and would only undermine the reason for establishing such an Initiative in the first place — which is, to assist the firm's efforts to retain and promote women attorneys. The appropriate measure of a successful Women's Initiative is the rate of increase in women attorneys retained, as well as the rate of increase of women elevated to partnership and firm leadership positions. The purpose of a Women's Initiative is to focus on ways women can succeed in the firm. Accordingly, even though management support is a crucial component, it is women who must drive the agenda and identify the measures of success.

An author writing about gender-based differences in behavior observed the positive impacts of women helping other women in the workplace: "The most heartening part of seeing women rise in the power structure is not seeing them perform like powerful men, but like powerful women."⁵ She noted that as women's voices have been heard in the workplace, the result has been an increased emphasis on day care, flexible schedules, and the importance of addressing work-family issues.

In other words, critical mass matters. Toward that goal, women are becoming effective at joining forces to accelerate a change in low firm demographics. Bar associations

across the country are playing key roles. Significant efforts include the San Francisco Bar Association's "No Glass Ceiling" Initiative, the "Call to Action" of the Chicago Bar Association's Alliance for Women and the recent report of the Women's Bar Association of the District of Columbia.⁶

Throughout their careers, women have difficult decisions to make as they seek to address their myriad responsibilities. Fortunately, these decisions do not have to be made without guidance. This was clear in so many of the interviews I conducted for my book, *Ending the Gauntlet*, in which

women offered advice for one another. Even in a context in which there was a general belief that the institutional framework must change, interviewees shared their tips and advice with other women to help them succeed in the current environment.

One highly successful female partner urged women to ignore the external impediments to their success, and instead to charge forward with their own plan:

"I think that women themselves have got to own the issue. To the extent that women — and I don't care how young they are in the firm — define what is impeding them as somebody's attitude towards them, I think the game is over right there. I think every woman has got to go within and figure out what they really want to do — not what they think they can have — but what they really want to do and then look in their own minds for their beliefs about why they can't do it. And then go for it anyway. Because you find that a lot of the stuff just melts away once you have stopped empowering it in your own consciousness."

She then described how she applied this lesson to herself to enhance her opportunities as a rainmaker and a law firm leader. She attributed her success to something greater than her own self-confidence:

"It also had a lot to do with the choices I made day-to-day. If there was no limitation out there, I might choose A instead of B. If there was a limitation, I might never get to A. I think it made a lot of difference in my choices."

I had a lot of things in my head, and until I got conscious about them, I didn't realize how much I would avoid cognitive dissonance by not bringing these topics up with the senior leadership of the firm. Or I would avoid going to community events where I'd be intermixing with a lot of male CEOs that might make me nervous.

Once I got onto this, then I started making a lot of different choices. And I would talk to the partners that could help me with my aspirations.

And I would go to networking events where I would meet people out there that would be useful. So I just did some things differently than if I hadn't been as aware of what I was scared of internally."

Advice offered by women for other women ranged from the general to the specific. Many addressed the challenges relating to the decision to undertake a reduced-hours schedule and the difficulties of implementing such a schedule. Other suggestions ranged from the importance of developing a

Almost without exception, the advice women offered for each other included the need to develop a self-confident style and to recognize the importance of relationships.

self-confident demeanor to tips on style and presentation. Almost without exception, the advice women offered for each other included the need to develop a self-confident style and to recognize the importance of relationships. The power of relationships was highlighted by a New York partner who stated:

"I think that making friends, keeping connections, being loyal to people, just developing a positive network of people is probably the most positive thing you can do."

Several interviewees expressed their concern that women need to take additional measures to ensure a professional appearance. For example, a senior partner spoke of her efforts to

help the younger women understand that the way in which they present themselves has an impact on how well they are heard by others:

"We actually sat down with the women and said: 'Look, casual days haven't done you any big favors. How do you expect you are going to get ahead? How are people going to take you seriously? If you're going to make a good impression on the client, going to make a good impression on the judge, or a partner, you need to look professional and appropriate. People need to start thinking of you in that context.'"

She added that, because it is difficult for younger lawyers to hear their own partners critiquing their appearance, an outside consultant may be useful in these types of discussions. She then spoke of other behaviors where women undermine their own success and urged that they find a greater confidence level:

"I personally see a big difference in the way the male associates interact with me, and this is one of the other things we are telling the women associates: 'You never come by my office and just schmooze. When you report, a lot of times it is very impersonal. You do it by voicemail; you do it by an email. You are very efficient.' And they say, 'But I'm assuming I don't want to waste your time. You're a partner. You're important.' And I say, 'I know why you are doing that.' On the other hand, here is this young associate — he's a guy, he's in my office, he is enthusiastic. He is talking about this case: 'I've got this issue.' The image I have is, he cares. He takes his job seriously."

Her fundamental message was that women could make tremendous gains simply by showing up — getting out from behind their computer screens and finding opportunities for greater direct interaction with their senior colleagues. Finally, she urged that, in those interactions, women exude a greater degree of self-confidence:

"In terms of group dynamics, women associates frequently will come in and say: 'Well, gee, I don't know. Maybe I'm all wet about this.'"

You never hear the men come in and preface something like that."

Through their advice and attention, these women offer themselves as genuine role models, a critical relationship for younger lawyers. Once the role model designation begins to feel more comfortable, women can take note of their own power and work together to implement significant change. Women are at a critical point in their relatively short history as members of the legal profession. Senior women can leave behind a lasting legacy by joining their younger colleagues in creating true equality — not just parity — in the law. ♦

FOOTNOTES

1. ROSABETH MOSS KANTER WITH BARRY A. STEIN, *A TALE OF "O" — ON BEING DIFFERENT IN AN ORGANIZATION* (1980). See also, ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* (1993).

2. KANTER AND STEIN, *supra* note 1, at 123-124.

3. KANTER AND STEIN, *supra* note 1, at 216. It is important to note that women in the American workforce have a significant history of joining together to create social networks that served also to advance their interests in the workplace. See, e.g., PRISCILLA MUROLO, *THE COMMON GROUND OF WOMANHOOD: CLASS, GENDER, AND WORKING GIRLS' CLUBS, 1884-1928* (1997). As Susan Estrich wrote, "Getting more women to the table almost always builds the power of women in general, and the ones who got them there in particular." SUSAN ESTRICH, *SEX & POWER* 155 (2000).

4. The ABA Commission on Women in the Profession highlighted four key areas of focus for internal women's groups: (1) increasing opportunities for business development; (2) working to resolve work/life balance issues within the firm; (3) developing formal mentoring programs and coaching opportunities that can offer practical advice as women try to succeed to the partnership ranks; and (4) helping to get women promoted to leadership positions within the firm. ABA COMMISSION ON WOMEN IN THE PROFESSION, *EMPOWERMENT AND LEADERSHIP: TRIED AND TRUE METHODS FOR WOMEN LAWYERS* 24-25 (2003).

5. DEBORAH BLUM, *SEX ON THE BRAIN: THE BIOLOGICAL DIFFERENCES BETWEEN MEN AND WOMEN* 283 (1997).

6. WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, *CREATING PATHWAYS TO SUCCESS: ADVANCING AND RETAINING WOMEN IN TODAY'S LAW FIRM* (2006).

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Through the

Law firms have undoubtedly grown and their practices have become more sophisticated, but the same cannot be said of their management policies and infrastructures.

Lauren Stiller Rikleen's recently published book, *Ending the Gauntlet: Removing Barriers to Women's Success in the Law* (Thomason/Legalworks 2006), has received rave reviews. It is both gripping and disturbing. Rikleen speaks from personal experience as an attorney in private practice since 1988. Her source material also includes a wide range of books and articles about the legal profession, legal education, law firm management, work-life issues and gender bias (her book has a useful 18-page bibliography).

Rikleen has been studying the "glass ceiling" in law firms for several years; while she was serving as Boston Bar Association President in 1999, she established a Task Force on Professional Challenges and Family Needs, which published "Facing the Grail — Confronting the Costs of Work/Family Imbalance." Rikleen also interviewed many attorneys to obtain source material for her book. The liberal use of quotations from these interviews brings to life the issues she describes and is one of the most appealing and enjoyable aspects of the book.

Rikleen has been highly successful in her career as an environmental lawyer, but she found herself feeling "painfully lonely" at her firm. As demonstrated by the comments of the many attorneys

she interviewed to obtain material for her book, although Rikleen felt alone at her firm, her feelings have been and are widely shared.

Some readers may be surprised to hear that women's progress toward parity with men in terms of law firm ownership and leadership has been much slower than one might have expected based on the large number of women who have joined the profession in the past 40 years. Among those who were admitted to the bar in the 1970s, only 30 percent of the women are still in private practice, compared to 51 percent of the men. By 2001, law schools were graduating almost as many women as men, but a Catalyst study ("Women in Law: Making the Case" (2001)) found that in 2000 women represented only

15.6 percent of law firm partners and only 13.9 percent of equity partners. Women have tended to leave private practice at much higher rates than men; most of *Ending the Gauntlet* examines why, and the rest of the book offers solutions.

Rikleen pins much of the blame on "the short-sighted decisions and flawed management structures that currently permeate the profession." Law firms have undoubtedly grown and their practices have become more sophisticated, but the same cannot be said of their management policies and infrastructures. Most law firm managers are attorneys who have no experience or training in business management and little time for or interest in managing; most attempt to manage their firms while maintaining full-time practices. Moreover, most law firms are very loosely structured and there is little accountability for attorney retention, team-building, equitable work distribution and promotion. Associate training, compensation, access to information and assignments, and other factors important to success become a matter of chance rather than design, increasing the opportunities for bias to operate.

Rikleen also explores the effect of firms' demands that their attorneys work ever higher numbers of billable hours. The demand for high billable hours has been identified as one of the biggest impediments to women's success in private practice. Rikleen reports that a Yale Law School study estimated that a lawyer must spend 2,400 hours at the office to bill 1,800 hours, and must spend 3,000 hours to bill 2,200 hours. All attorneys in private practice face the issues of having little if any time to relax with their friends and families, to get proper amounts of rest and exercise, and to pursue civic and community activities or other interests. The pressure does not end when partnership finally arrives; indeed, partners often hoard their work to keep their own hours high. The problem is considerably worse for working mothers. Most male attorneys have stay-at-home spouses; most female attorneys do not. This puts women at an obvious disadvantage, because even if they hire nannies to care for their children, this

solution is less satisfactory than having a spouse available to do that and all other household jobs.

Women attorneys have a set of additional gender-related obstacles to negotiate in connection with distribution of work assignments, rainmaking, compensation, mentoring, pregnancy, parenthood and making partner.

Rikleen describes the ways in which gender stereotypes continue to affect the way work is distributed, resulting in the best assignments (those assigned by powerful partners and on challenging cases that will provide the best training experiences) going to male rather than female associates. Few law firms take

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a thoughtful or structured approach to the distribution of assignments, relying instead on an ad hoc process. Assignments are subject to the operation of assumptions about whether a woman attorney will want to travel, whether she can handle a tough or sexist client, and whether her pregnancy or motherhood will interfere with her work. As law professor Susan Estrich commented: "Unconscious discrimination is harder to recognize and more difficult to prove, which makes it a more insidious problem for women."¹ Interviewees commented that white, male partners gave the best assignments to those with whom they felt most comfortable — white, male associates.

Rikleen also writes that rainmaking tends to be a greater challenge for women than for men. Women do

not often see themselves as good at rainmaking. Rikleen suggests that:

"[T]he real problem is that the role models for success against which women are comparing their own skills are frequently men who generate business through their social networks and activities. Women perceive a world in which men are better able to draw on college friendships and sports activities to develop business. Interviewees expressed frustration with senior partners who would invite male associates to a variety of social events, golf outings, after-work drinks, even bachelor parties, which had the effect of solidifying relationships and opening doors for informal training and mentoring of these male colleagues."²

Rikleen also notes the comments of a law firm business development consultant, who observed that women are very good at establishing rapport with potential clients and "can become quite close to the target," but then sometimes feel that "they cannot ask for business from someone so close."³ This feeling may be justified; one woman lawyer Rikleen interviewed said that after she worked up her nerve and asked for work from a close longtime friend who was in-house counsel at a big corporation, she never heard from her friend again. Women may view their relationships in a more personal way than men, and may in fact take offense at being asked for business, unlike men, who are more likely to see their socializing and networking as a game, with getting new business as the goal. In a New York Bar Association survey, both male and female attorneys responded that they thought it was more difficult for women to bring in business because "they possess fewer contacts than men, have less time to devote to client development, and are not part of the networks in which business is generated."⁴ Another source of frustration women reported was realizing too late that their firms had underemphasized the importance of originating business.

The compensation system in effect at most firms also comes in for heavy fire in Rikleen's book. Surveys show a wage gap between male and female attorneys that increases over time. For example,

a 2005 Massachusetts Bar Association study showed that 32 percent of male attorneys — but only 12 percent of female attorneys — earned \$151,000 or more per year. Since 2000, starting salaries for associates have spiraled upward, resulting in hikes in billable hour demands and hourly rates. Partners are unhappy about having to pay salaries in the range of \$125,000 and up to new attorneys to remain competitive. Clients are unhappy with the hikes in hourly rates imposed to enable firms to pay these salaries. Associates are unhappy with the demand for billable hours that accompanies their higher salaries. Women, especially working mothers, are put at a disadvantage by the billable hour system, as described above. As they progress to partnership, the demand to originate business increases. If women are unsuccessful at rainmaking, they may find that their ability to bill hours also declines as their partners stop giving work to them and give it instead to associates.

Mentors, historically and currently, are fundamental to success in private practice. Rikleen reports on research showing that women are often excluded from the benefits of mentoring. This is because, according to one study, “men far outnumber women in firm partnerships, and because people are more likely to take under their wing young colleagues with whom they personally identify,”⁵ i.e., male associates. A good mentor acts as a protector, teacher, advisor and career strategist. Informal mentoring relationships are more effective than formal ones, but informal mentoring networks are rarely available to female associates. Rikleen observes that male partners sometimes shy away from mentoring female associates for fear that the relationship will be viewed as inappropriate and lead to charges of sexual harassment, but there are not enough female partners to go around.

Female lawyers who become pregnant face, as Rikleen puts it, “even rockier shoals.” Associates of both sexes identify the conflict between work and family as the greatest barrier to success in private practice. Gender stereotypes make having a family worse for women, however. Employers assume that men

with children will be more committed to their work so that they can earn more for their families, but that women with children will be less committed to their work so that they can spend more time with their families. Studies have found that women with children are also perceived as less competent. The ABA Commission on Women in the Profession noted that working mothers are in a lose-lose situation:

Those who seem willing to sacrifice family needs to workplace demands appear lacking as mothers. Those who want extended leaves or reduced schedules appear lacking as lawyers. Those mixed messages leave many women with high levels of stress, and the uncomfortable sense that,

Informal mentoring relationships are more effective than formal ones, but informal mentoring networks are rarely available to female associates.

whatever they are doing, they should be doing something else. “Good mothers” should be home; “good lawyers” should not.⁶

Working mothers who look to a “part-time” schedule to reconcile the demands of home and their practices are most likely to find anger and frustration instead. Even law firms that have adopted written reduced hours policies tend to apply them in an ad hoc and inconsistent manner. Attorneys who tried to work part-time schedules reported that even when they adjusted their schedules to meet the needs of their firms, they felt they were never doing enough. Most experienced “schedule creep”: in the face of work demands, they ended up working as many hours as “full-time” attorneys, but were still paid their “part-time” salary. Others reported

retaliation by partners whose work they turned down in their efforts to avoid schedule creep. Partners, viewing them as uncommitted or lacking a strong work ethic, stopped giving them work. Some women respond by returning to full-time status, while others simply leave their firms.

Women face more barriers at partnership time. As noted above, women’s representation at the partner level of law firms is low. The ABA Commission on Women in the Profession reported that men are two to three times as likely to make partner as women. The gender bias and stereotypes at play throughout the careers of female attorneys continue to operate when partnership decisions are made. One factor at work is called “leniency bias,” meaning that “objective rules are applied flexibly to in-group members, while out-groups find themselves treated ‘strictly by the book.’”⁷

Rikleen writes that associate attrition is endemic in large law firms but that few firms pay attention to the bottom-line impact of attrition or try to stop it. In 2005, Catalyst estimated that the cost of attrition is about \$315,000 per associate. The estimate did not include intangibles such as the sense of loss felt by associates’ colleagues when they depart, nor the loss of the business of clients who follow associates to other firms. Most women who leave do so because “they are dissatisfied with their job growth and advancement, lack of flexibility, sex bias and discrimination.”⁸ Many go to competing firms or start their own businesses.

Part 2 of Rikleen’s book has two chapters. The first chapter describes the perception of many women attorneys that their female colleagues do not support them. The second chapter describes the views of managing partners on issues affecting women attorneys in their firms.

Part 3 offers suggestions for “ending the gauntlet.” Rikleen argues that rapid changes in law firm dress codes and associate salaries show that law firms can change if they really want to. She argues that there is a strong business case for making changes, citing studies showing that while “law firms recruit

on the basis of their competitive compensation and opportunities for upward mobility, associates [both male and female] are seeking greater control over their work schedules and a more family-friendly environment.”⁹ Rikleén argues that what is needed is a change in law firm culture — a departure from outmoded traditions, dysfunctional management practices and outdated philosophies about marketing and compensation. From the top down, law firms must decide to adopt a more humane, egalitarian and enlightened culture and then pursue that culture in a systematic way. The firm should create a mission statement about inclusivity, distribute it both internally and externally, develop a strategic plan with goals, deadlines, and measurements, and provide a budget for implementation.

Rikleén also devotes chapters to the characteristics of effective firm leadership, how to conduct fair and effective attorney performance evaluations, alternatives to the billable hour system, how to help women lawyers generate new

business, how to use compensation to change the firm’s culture, how to improve mentoring policies and practices, how to evaluate the costs of associate attrition, how to develop and implement effective reduced hours policies, how to address the feelings of isolation that many women lawyers have, the power of clients to encourage change in the firms they retain, and the role of law schools in addressing work/life issues that students will face when they graduate.

In many ways, the picture Rikleén paints of law firm life is dismal and discouraging, but her views are balanced and her voice is honest. Firms that want to remain competitive will study her observations and heed her advice. ♦

FOOTNOTES

1. SUSAN ESTRICH, *SEX AND POWER* 10 (2000).
2. RIKLEÉN, *ENDING THE GAUNTLET: REMOVING BARRIERS TO WOMEN’S SUCCESS IN THE LAW* 77 (2006), citing Epstein, et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64

FORDHAM L. REV. 291, 332 (1995 RPT. TO THE ASSOC. B. CITY N.Y., COMM. WOMEN PROF.).

3. RIKLEÉN, *supra* note 2, at 77, quoting SILVIA L. COULTER, *THE WOMAN LAWYER’S RAINMAKING GAME: HOW TO BUILD A SUCCESSFUL LAW PRACTICE* 10-4 (2004).

4. RIKLEÉN, *supra* note 2, at 82, quoting Epstein at 339.

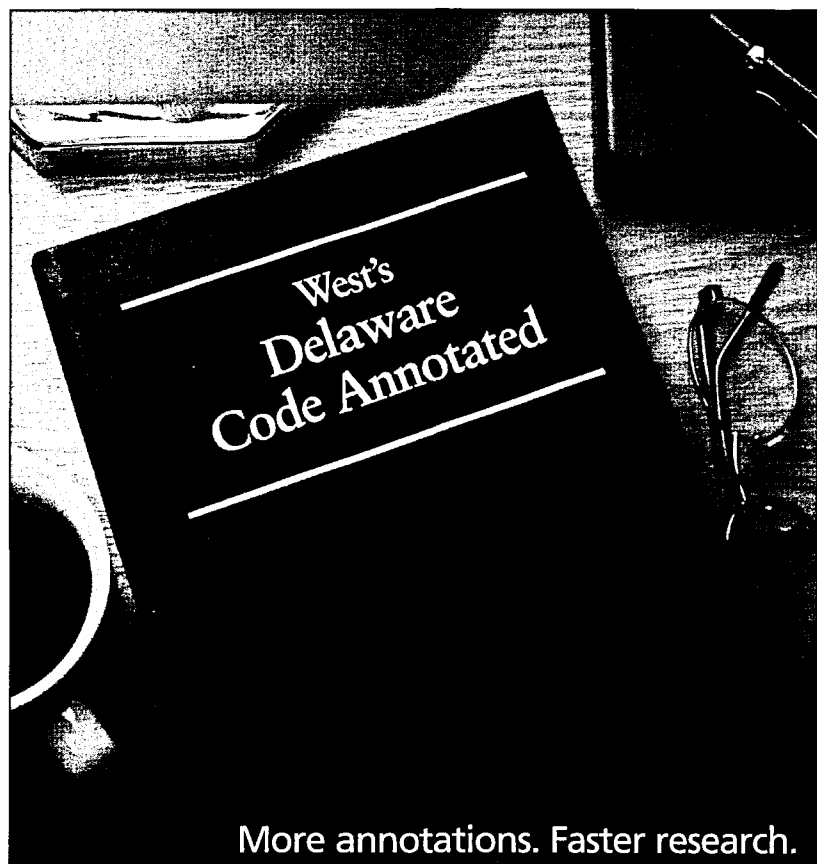
5. RIKLEÉN, *supra* note 2, at 105, quoting NOSSELL & WESTFALL, *PRESUMED EQUAL: WHAT AMERICA’S TOP LAWYERS REALLY THINK ABOUT THEIR FIRMS* xviii (1998).

6. RIKLEÉN, *supra* note 2, at 125, quoting ABA COMM’N ON WOMEN IN THE PROFESSION, *BALANCED LIVES: CHANGING THE CULTURE OF LEGAL PRACTICE* 17 (2001).

7. RIKLEÉN, *supra* note 2, at 158, quoting MINORITY CORP. COUNSEL ASSOC., *THE MYTH OF THE MERITOCRACY: A REPORT ON THE BRIDGES AND BARRIERS TO SUCCESS IN LARGE LAW FIRMS, 2003 MCCA PATHWAYS* 37, available at www.mcca.com.

8. RIKLEÉN, *supra* note 2, at 178, quoting Ellen R. Auster, *Professional Women’s Midcareer Satisfaction: Toward An Explanatory Framework*, *SEX ROLES: J. RESEARCH* (June 2001).

9. RIKLEÉN, *supra* note 2, at 276.



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Coming of The Women and the Law Section

In 1976, 14 of the 91 new lawyers sworn in were women. Life was about to change for women in the Delaware Bar.



Above: From left, Mimi Boudart, Helen Winslow and Judge Barbara Crowell at the 2006 Women and the Law Section retreat.

The year was 1900: Five men were admitted to the Delaware Bar, joining the ranks of this all-male group. From 1900 through 1922, women who wanted to practice law in Delaware were blocked by a Delaware Supreme Court ruling that held that the State Constitution required officials of the State, including lawyers, to be men.

The year was 1923: The State Constitution was amended to provide that no citizen could be disqualified from holding office in Delaware by virtue of sex. Sadly, Delaware was the last state in the nation to admit women to the Bar. From 1923, when the first two women were admitted to the Delaware Bar, until 1969, only 12 women were admitted to the elite club of Delaware lawyers, and only nine of those women were practicing law in Delaware at the time.

From 1970 to 1976, only 6 percent of the new admittees to the Delaware Bar were women: in raw numbers, that is 26 of 403 new admittees.

Then came the Class of 1976. In 1976, 14 of the 91 new lawyers sworn in were women. Two of the 14 were Mary

“Mimi” Boudart and Aida Waserstein. Life was about to change for women in the Delaware Bar.

In 1977, Boudart and Waserstein put out the call for female (and male) members of the Bar to join a new “Women’s Rights Committee” of the Delaware State Bar Association. In a 1998 interview for the 75th anniversary celebration of women being admitted to the Delaware Bar, Boudart said the first objective of this new committee was to “have a party!” Our social functions and goal of building a strong female support network motivated members of what would soon become the Women and the Law Section.

Fast forward to 1983: The Women’s Rights Committee applied to the Bar Association to become a full-fledged,

permanent section of the Delaware State Bar Association. The reasons for gaining such status included the need to more effectively address the impact of state laws on women, to improve legal services for women and to further the role of women in the Delaware legal community.¹ Section status was granted in 1983; we have not looked back since! By 1989, we had fought publicly, including supporting court challenges, to dismantle the all-male policies of Delaware's most prestigious private clubs. By the late 1980s, women finally were eligible to join the University and Whist Club, the Wilmington Club and the Rotary Club of Wilmington, and many of the first members of these previous male bastions were women attorneys. With that under our belt, the Women and the Law Section pursued a more ambitious, proactive agenda.

By all accounts, one of our crowning achievements has been developing model employment policies that nearly every Delaware-based law firm has adopted. We have to thank our colleagues in the Family Law Section for helping us draft, implement and update these detailed policies, which cover leave for pregnancy, childbirth, and related medical conditions; child care leave; family leave; and alternative work schedules for part-time, flex-time, compressed-time, reduced hours and job-sharing. These policies cover compensation, associate and partnership advancement, benefits, vacation, and travel. A copy of these model policies is available on the Delaware State Bar Association Web site, or upon request.

As we worked to level the playing field for women in the Delaware Bar, judges and attorneys alike realized we needed to establish some benchmarks. Just how diversified was the Delaware Bar, and how could we promote gender fairness among the legal profession? In 1993, the Women and the Law Section co-sponsored a full-day CLE program on "Diversity within the Legal Profession." In 1994, the Women and the Law Section took the lead in encouraging the Delaware Supreme Court and the Delaware State Bar Association to conduct a comprehensive

study of gender bias in the Delaware legal community. The Women and the Law Section formed a subcommittee to receive comments from Section members on their experiences and to prepare a written report for the Gender Fairness Task Force, as well as to provide public testimony at public hearings in 1994 and 1995. The Women and the Law Section also had a seat at the table at the Court-appointed Gender Fairness Task Force, which was chaired by Judge Susan C. Del Pesco and Stephen E. Herrmann, Esquire.

The Task Force studied gender fairness throughout the legal system, including gender fairness in employment of attorneys and court employees, interactions between individuals with-

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in the courtroom, and court practices and procedures, as well as gender fairness in criminal and family law. The findings were compiled in a 228-page report that included dozens of first-hand accounts from female attorneys of their experiences of being discriminated against because of their gender. Accounts included female attorneys being mistaken by judges as the client and asking female attorneys in chambers, "Where is your attorney?" We persevered, and learned along the way that the only way to truly change the dynamic was to promote, support and encourage more young women to go to law school and to seek partnership status in law firms while simultaneously pursuing our roles as mothers.

As I alluded to earlier, even as we

tackled the weighty issues of gender bias, alternative work schedules, and a pregnancy-partnership track, we did not forget how to have fun and throw a party! In the spring of 1993, we held the first of what would become a valued tradition, instituting the annual Women and the Law Section Retreat. Our retreats are required to be held in such relaxing environs as Rehoboth Beach, Del.; Maryland's Eastern Shore; and Cape May, N.J. With the fun comes serious work, strategy sessions, goal planning, and CLE-enhanced ethics credits.

In addition to the bonding and inspirational opportunities our annual retreats have provided, the Women and the Law Section established two other annual events. Every June we convene for our annual picnic, which for many years was held at the home of our greatest mentor, the late Roxana C. Arsht. To demonstrate our inclusiveness, spouses, children, and any other men are most welcome at this event. Indeed, Sam Arsht attended faithfully until his death. For the past 16 years, we have also thrown a party to welcome new admittees to the Delaware Bar, as we make new friends with the future generation of the Women and the Law Section. This annual event also demonstrates our commitment to mentoring the next generation of women attorneys in our state. Pass it on ... pass it forward.

Perhaps our grandest celebration was in 1998, to mark the milestone of the 75th anniversary of women being admitted to the Delaware Bar. U.S. Supreme Court Justice Sandra Day O'Connor deemed this diamond anniversary so important that she traveled to Delaware to be our keynote speaker and guest of honor.

Make no mistake, while we value the friendship and civility of a relaxed atmosphere, the Women and the Law Section has embarked on a series of high-profile initiatives that have had a fundamental impact on our community. As a result of a goal-setting session at our annual retreat in 1998, a group of Section members assembled a team of experts in the child care field to develop the criteria and a nomination form for an award for excellence in early child care and education. In 1999, we established

the annual Governor's Awards for Excellence in Early Care and Education. As we mark the eighth anniversary of these awards, we have raised and distributed more than \$100,000 to early care educators across our State. Then-Governor Tom Carper, and current Governor Ruth Ann Minner, agreed to be the leading sponsors of the awards to highlight their commitment to recognizing excellence in day care centers. Every year, we solicit financial support from the State's businesses, banks, and corporations to sponsor cash awards to winners. We partner with Family and Workplace Connection to review all the nominations and hold an annual banquet in Dover. Each year attendance at this banquet sets a new record, with more than 400 early care educators and their families attending.

The same subcommittee that created and continues to guide the annual Early Care and Education Awards also got to work legislatively. The State's child care licensing laws were based on the 1915 Boarding Act statute. We worked with the State Division of Child Care to update this outdated law — renaming it, of course and strengthening protections for providers and children alike. Governor Minner signed the bill into law in spring of 2000.

Our experience with the child care legislation focused us on the goal of becoming a valued voice and player in the Delaware General Assembly.

Beginning in December 1999, we began to dedicate one of our monthly lunches every year to meeting with State legislators. At our first such gathering, only two female legislators attended. Since then, as many as a dozen state legislators — male and female — have attended to share their agendas with us and listen to our perspectives and suggestions for the legislative session.

In addition to working with the legislative branch, we began making a concerted effort in the late 1990s to ensure that more women attorneys apply for and become judges. We have held a forum every year featuring a panel of female judges who discuss topics such as the experience needed to become a judge, how to learn the political process involved in

applying and getting confirmed, and how the Governor's Judicial Nominating system works. When we started, less than 10 percent of members of the bench were women; today, 30 percent of judges and commissioners are women.

In 1999, we launched one of our most focused policy initiatives, taking a public stand among the Bar, in the media, and legislatively on the issue of women in prison. Under the leadership of Judge Del Pesco, Judy Renzulli, and Betsy McGeever, the Section created a subcommittee to work with the governor's office, Corrections officials and the legislature to focus on three objectives:

1) Construct the first-ever, all-fe-

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male work release and drug treatment center. Before the Women and the Law Section focused attention on this issue, women shared a work release center with men, with a very limited number of placements available to them. We pointed out that co-ed work release centers were a disaster waiting to happen and that national studies demonstrated that co-ed drug treatment centers simply were not effective. Women need much different treatment than men.

2) Construct a chapel at Baylor Women's Correctional Center similar to the chapel at the Delaware Correctional Center for men.

3) Pursue the feasibility of creating a child care center at Women's Correctional Institute allowing female

inmates to keep their babies with them up to the age of 2. This initiative was based on the highly successful female prison child care center in New York.

To date, we have accomplished two of these three objectives. Six years of dogged determination and persistence have paid off with this year's opening of the Women's Work Release and Drug Treatment Center. Needless to say, this required the support of the Governor's office, corrections officials and legislators.

Under the leadership and continued unfailing efforts of Patricia Bartley Schwartz, the Women and the Law Section also founded the Roxana C. Arsht Scholarship in 1999. Why the need for this scholarship? Many new attorneys admitted to the Delaware Bar face financial debt exceeding \$100,000, facing monthly loan payments in excess of \$1,000. The scholarship provides financial assistance to a new attorney who chooses to practice in the non-profit or governmental sector in Delaware. It helps to pay off their loans so that attorneys who want to pursue a less-lucrative practice can afford to do so. Fundraising efforts to strengthen the Roxana C. Arsht Scholarship remain a central focus of the Women and the Law Section.

In addition, the Women and the Law Section has addressed the issue of domestic violence, joining forces with the Family Law Section and the Coalition Against Domestic Violence to update Delaware's domestic violence and sexual assault laws and ensure that there are more Hispanic translators for female victims of domestic violence in Sussex County. We also have worked on voting rights, by helping to register more women to vote and run for public office. We have joined Habitat for Humanity to create the first-ever "All-Women's Build" project to construct houses for low-income Delaware women.

The Women and the Law Section is by no means a lone voice promoting women's rights. We pride ourselves on our partnerships with Delaware Commission for Women, the Agenda for Women, the Trailblazer Committee, and Junior Achievement.

As a sign of how far female attorneys

have come in our legal profession, consider that in 1994 — just 12 years ago — an illustration in this magazine depicted a cartoon that the Women and the Law Section members found disturbing, to put it mildly. Many of you will remember it: a caricature of a female attorney blazing into the courtroom in her bathrobe and oversized slippers, brandishing a mop, barnstorming past the courtroom bar among a sea of male colleagues in dark suits and white shirts. The point was, I think, to demonstrate that women attorneys had made their mark and were a force to be reckoned with in Delaware. But in a robe and slippers? Needless to say, the Women and the Law Section did not take this editorialized cartoon cover sitting down. In the end, this magazine issued an apology and clarification.

It is indeed a mark of accomplishment that 12 years later, there are no mop, robe or slippers in sight!

So, as the Women and the Law Section celebrates its 30th anniversary,

and as we approach the 85th anniversary of women being admitted to the Delaware Bar, we have not quite approached middle age, but we are coming of age. We have grown from less than 1 percent of women admitted to the Delaware Bar to 51 percent. From a Section membership numbering 10 at its founding in 1977, we have grown to a membership of 166. We are recognized among the Bar; bench; state legislators; and business, community, and civil leaders as a force for change in our State.

One final note. The mission and purpose of the Women and the Law Section are to: 1) address the effect of laws upon women in Delaware and the delivery of legal services to them; and 2) further the role of women in the Delaware legal community. As we celebrate our official 30th anniversary in 2007, the Women and the Law Section will remain dedicated to issues and activities that advance our mission — from child care to juvenile and women's correctional standards

and conditions to domestic violence and enhanced civil rights laws. While many great women have led this charge, we have achieved success thanks in large part to the support, encouragement and leadership of several men — yes, men — including Delaware Supreme Court Justice Randy Holland, Josh Martin and U.S. Senator Joe Biden. However, in our 30-year history, we have had only a handful of male members. As you've learned from this article, we throw great parties and are at the forefront of issues that are essential to women and men alike. To join, e-mail Section Chair Mindy Clifton at: mclifton@hfdel.com, or call her at (302) 573-4800. You can also get more information by calling the Delaware State Bar Association at (302) 658-5279. ♦

FOOTNOTES

1. *The Delaware Bar in the Twentieth Century*, Wilmington, DE, Delaware State Bar Association, 1994, pp. 639-655

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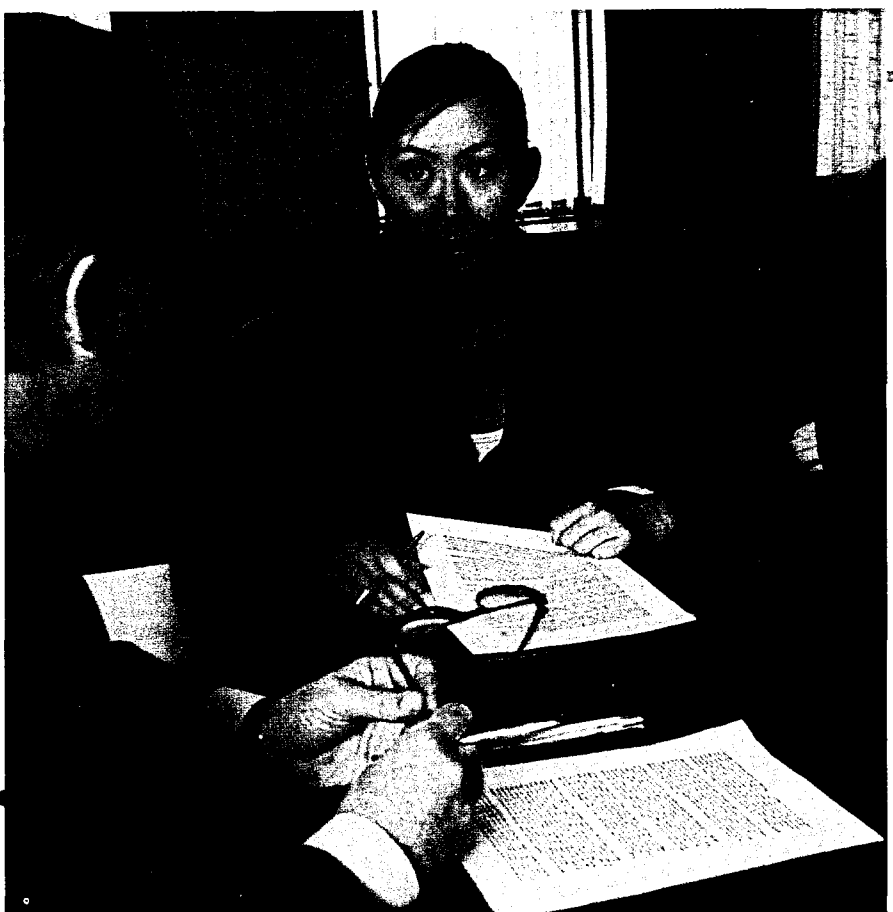
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DirectWomen

Bringing Qualified Experience into the Boardroom

Catalyst has been counting the number of women serving on the boards of the *Fortune 500* companies for more than 10 years, and its report shows slow progress and persistent challenges.

Matching supply with demand is the essence of the American marketplace. America's biggest companies are now demanding truly qualified and independent directors. Lacking is a connection between that demand and an important supply source: the thousands of American women lawyers experienced in addressing business challenges who are beginning to transition out of the active practice of law.

DirectWomen was created to help make that connection and enable women lawyers leaving the practice to prepare for service as independent directors. It is an initiative of the American Bar Association and its Section of Business Law, two entities that in the coming year will both be chaired by women. ABA President-Elect Karen Mathis and Business Law Chair-Elect Linda Hayman have joined together in this important effort.

A critical program partner in the DirectWomen initiative is Catalyst, the pre-eminent research and advisory organization working with corporations and firms to build inclusive environments and expand opportunities for women in the workplace. Catalyst has

been counting the number of women serving on the boards of the *Fortune 500* companies for more than 10 years, and its recently issued report¹ shows slow progress and persistent challenges.

First, the numbers. According to the Catalyst study, the number of women on the boards of *Fortune 500* companies has steadily increased over the past decade. While only 9.6 percent of all directors were women in 1995, the percentage had increased to 13.6 percent by 2003, and 14.7 percent by 2005. The rate of increase is much more disappointing: only about 0.5 percent per year, compared to a 10 percent increase in the total number of board seats over the past decade. Assuming that the number of women on boards

continues to rise at the current rate, most of us will not be around to see the day, 70 years from now, when women will finally achieve parity with men in terms of raw numbers in the boardrooms of America.

The statistics in the United States are in sharp contrast to those in Norway, the global leader in placing women on boards. With women accounting for 21 percent of all board positions,² the Norwegian government recently passed a law requiring that the number of women directors be increased to 40 percent in two years.³ Although the law went into effect only at the beginning of 2006, it has spurred the creation of new databases of women seeking board positions, and increased efforts by executive recruiting firms to meet the demand. The result is that, according to recent statistics, women now account for nearly 29 percent of directors in the largest Norwegian companies.⁴

Statistics in the United States vary by industry. Savings institutions have by far the greatest percentage of women directors (40.9 percent) followed by real estate (28.9 percent) and household and personal products (28 percent). Industries with the lowest percentage of women directors are furniture and textiles (10 percent) followed by computer software, transportation equipment and railroads (9.5 percent, 9.5 percent, and 9.1 percent, respectively).

When women do serve on boards, they often encounter two phenomena. The first is the "solo woman" phenomenon; the lack of a critical mass of women may serve to reduce their effectiveness as leaders. Second, women are underrepresented as chairs of the major board committees such as the audit, the compensation and the nominating or governance committee. The latter is particularly troubling. As the *Philadelphia Inquirer* has noted, "the key to getting more women on boards is getting more women on board nominating committees."

The need. Why is female representation on boards important? Statistics in a 2002 study⁵ revealed the following economic factors: using their own resources, women make up 47 percent of investors. Women purchase 81 percent of all products and services, buy 75 percent

of over-the-counter medications, make 81 percent of retail purchases and buy 82 percent of all groceries. They sign 80 percent of all checks written in the U.S. and account for 40 percent of all business travelers. Women influence 85 percent of all automobile purchases and 51 percent of all travel and electronic purchases. They head 40 percent of U.S. households with incomes over \$600,000 and own 66 percent of all home-based businesses. They have been the majority of voters in the U.S. since 1964. Given the power that women wield in day-to-day life, the perspective and insights they bring to board membership would

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seem to be critical.

Women, however, can potentially provide another needed commodity: independence. Corporate scandals leading to the Sarbanes-Oxley Act of 2002, new Securities and Exchange Commission regulations and the New York Stock Exchange (NYSE) recommendations have increased the need and demand for independent board directors. The NYSE, for example, has adopted a narrow definition of "independent director," and strongly recommends that the entire board be comprised of a majority of independent directors and that the nominating and compensation committees be composed entirely of independent directors. Sarbanes-Oxley requires the audit committees

of all publicly listed companies to be completely independent and to have at least one financial expert. Among existing women board members, 97 percent qualify as independent directors, as compared to only 84 percent of men who serve on boards.

Although the need for independent directors has increased, the pool of potential candidates has shrunk. Historically, boards preferred to look to sitting CEOs or to the upper levels of management (where there have been few women) to fill director vacancies.⁶ Recent studies, however, have found that fewer CEOs are serving on multiple boards and that CEOs are turning down invitations to serve because of time and expertise requirements.⁷ Thus, companies must look to a broader pool of candidates to fill director seats. Indeed, 54 percent of companies in a recent survey conducted by the National Association of Corporate Directors⁸ stated they "want more diverse professional experience."

The supply. A recent unpublished study by the American Bar Association estimates that there are approximately 12,226 female law firm partners currently aged 50 to 70 who will soon be leaving the active practice of law. Although the rate of retirement overall has been constant over the years, the larger numbers of women in the retirement-age pool combined with the fact that women are retiring or becoming inactive at higher rates than men means that over the next decade there will be a substantial pool of women from which qualified board applicants could be drawn.

This pool of women has two important characteristics. First, many of these women have acquired the skill and expertise that would enable them to be good contributing board members. Moreover, since these women will be leaving the practice of law, concerns about issues such as the attorney-client privilege, potential conflicts of interest, or the potential loss of clients (concerns which have lead some firms to adopt policies restricting their attorneys from serving on boards)⁹ are not present.

Do corporations really want lawyers, practicing or retired, male or female, on their boards? In a recent survey,

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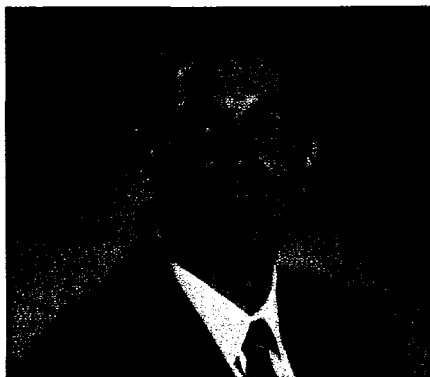
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corporate boards were asked to identify from a list of professions those which they would like to have on their boards: only 2 percent responded that they would like to have a lawyer on their board.

Why this negative response to lawyer board candidates? Although there may be many explanations (including the negative stereotype of the lawyer as the naysayer), perhaps the answer resulted from the phrasing of the question. If the survey had asked instead for the boards to identify qualities that it sought in a board member, there may have been a different response. Take, for example, the qualifications of the following individuals:

- Attorney A has been for several years the managing partner of a law firm with over 800 attorneys, 1,000 employees, and branches in 15 locations including 3 overseas.
- Attorney B spent many years of her professional life in the SEC, and has developed expertise in the operation of securities markets.
- Attorney C, whose area of expertise is financial services, has worked for years with a major client rolling out new financial products, undertaking such tasks as assuring compliance with applicable regulatory requirements.
- Attorney D has for years served as an advisor to the audit committees of several key boards.
- Attorney E has for 10 years served as counsel to several mining companies, representing them on a variety of issues including compliance with state and federal regulatory schemes.

In each of these instances, the attorney has acquired expertise and knowledge that could easily be brought to board service. It is not the mere fact that the person is a lawyer; it is that in her professional life, she has acquired the qualities, skills (e.g. in management, decision-making and problem-solving) and specialized expertise (in competition or in areas such as banking, public relations or marketing) that would serve boards seeking independent directors well. Moreover, changes in corporate governance and the increased focus on issues of board processes and regulatory and legal compliance place a premium on the skills that lawyers may bring to the table. The fact that



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women with those qualities and skills may be leaving the legal profession in great numbers over the next ten years gives corporate boards a great resource to achieve board diversity.

The challenge. Corporate boards have the need; the supply exists among the pool of talented women leaving the legal profession. And DirectWomen provides the connection.

In the spring of 2007, DirectWomen will sponsor its first DirectWomen Institute, an annual training program that will identify highly qualified applicants who are the best candidates for placement on the boards of publicly held companies, provide training and advice to position them for board nominations, and bring together experienced women directors to recognize their service and at the same time harness their expertise for the benefit of the trainees. The first class of trainees will be carefully selected from applications and nominations of senior women lawyers who have the qualifications needed for independent

board service.

DirectWomen Institute 2007 will be held March 28-30, 2007 at the Waldorf-Astoria Hotel in New York. The Institute will culminate with a luncheon on March 30, 2007 honoring several women and the companies on whose boards they served, as well as the first class of women to have been trained at the DirectWomen Institute 2007. For additional details or to nominate an individual for the DirectWomen Institute 2007, visit www.directwomen.org. ♦

FOOTNOTES

1. 2005 CATALYST CENSUS OF WOMEN BOARD DIRECTORS OF THE FORTUNE 500 (2005), available at <http://www.catalyst.org/files/full/2005%20WBD.pdf>. All statistics cited in this article are from the Catalyst report, unless indicated otherwise.
2. Phred Dvorak, *Breaking into the Board room: Women are Gaining Seats as Directors - But the Progress is Slow*, WALL STREET JOURNAL, Monday March 27, 2006.
3. Richard Bernstein, *Men Chase as Norway Ushers Women into the Boardroom*, NEW

YORK TIMES, Thursday January 12, 2006.

4. *Board Quotas Shake up the Sexual Status Quo*, FINANCIAL TIMES, June 12, 2006.
5. M. Heffernan, *Exhibit A: The Female CEO*, FAST COMPANY 61, 58-66 (2002), cited in Deborah E. Arfken, Stephanie L. Bellar, and Marilyn M. Helms, *The Ultimate Glass Ceiling Revisited: The Presence of Women on Corporate Boards*, 50 JOURNAL OF BUSINESS ETHICS 177 (2004).
6. Amy J. Hillman Albert A. Cannella, Jr. Ira C. Harris, *Women and Racial Minorities in the Boardroom: How Do Directors Differ?*, 28 JOURNAL OF MANAGEMENT 747-763 (2002).
7. According to a recent Spencer Stuart survey, active CEOs on average now serve on less than one outside corporate Board, down from an average of two in 1998.
8. 2005 Public Company Governance Survey of the National Association of Corporate Directors, or NACD, in response to a question concerning the reasons CEO candidates have given for declining board invitations, 79% cited concerns about time, and 38% mentioned company policies restricting their number of Board seats. <http://www.sec.gov/news/speech/spch111105cag.htm>
9. Susan Kostal, *Board to Pieces*, ABA JOURNAL, June 2006, at 12.

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Dear Bar Members:

The Delaware Bar Foundation is pleased to announce the launching of its Web site, DelawareBarFoundation.org. The Web site identifies all facets of the foundation's operations — from the IOLTA function, with the participation form letter and grant application package — to the grant allocations to the Delaware Supreme Court, and from the endowment's "Legacy of Giving" to the annual solicitation of the bar.

The Web site also contains links to the Delaware state courts and the state bar association as well as the principal legal service providers — Community Legal Aid Society, Legal Services Corporation of Delaware, and Delaware Volunteer Legal Services. In addition, through pdf files linked to an index, immediate Internet access is afforded free of charge to every article of every issue of *Delaware Lawyer* since its inception in 1982.

The foundation, now celebrating its 25th anniversary, views this service to the public and to the legal community as an important milestone in advancing the foundation's extended mission under its charter. By any measure, we have come a long way since those early days.

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