

Philadelphia Bar Association Women in the Profession Newsletter



Welcome to the inaugural issue of The Philadelphia Bar Association's Women in the Profession Newsletter. I am proud to present the first edition, which represents a compilation of empowering articles written by women who have achieved a high level of excellence in the legal profession. My goal for this first edition, and in future editions, is to present unique and relevant perspectives, advice and opinions. Additionally, we seek to explore creative solutions and provide a forum for both current and persistent issues impacting women in the profession today. Lastly, our hope is that you find value in the pragmatic presentation of the issues here and in the future.

I welcome your feedback and comments.

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2	Life Skills for Lawyers <i>JoAnne A. Epps</i>	15	Making an Appearance <i>Kathleen D. Wilkinson</i>
6	Judge Moss on Mentoring <i>Judge Sandra Mazer Moss</i>	18	What Your Mother Never Told You About Jury Selection <i>Maria Feeley</i>
8	Speak up: Finding Your Authentic Voice <i>Jane Leslie Dalton</i>	24	Shackled and Giving Birth in Pennsylvania Prisons <i>Kathleen Creamer</i>
11	What's Happening in America? <i>Sayde Ladov</i>		

1 *Opinions expressed in the newsletter represent those of the contributors. They do not represent the opinions of The Philadelphia Bar Association.*

Life Skills for Happy Lawyers

By JoAnne A. Epps



At this time of year my thoughts always turn to commencement, and the skills – not necessarily legal skills, but life skills – that our graduates will need to thrive in this profession. I worry particularly about our women graduates, who, if they are like women lawyers in general, are much more likely to leave the practice of law than their male counterparts. It is becoming increasingly apparent that as a profession we continue to present women with obstacles that make success more elusive than it is for men. To some extent this is simply a fact of life for women in the law. But that does not mean that it is impossible for women to thrive as lawyers. For here is another emerging truth about us: by cultivating a set of life skills that might collectively be called “passion,” we can and will thrive as committed, happy, and engaged lawyers. With that hope for our profession in mind, I offer these life skills to you here.

Confidence – Kathryn Ruemmler, who at 40 is one of the youngest lawyers ever to be appointed White House counsel, made waves as deputy director of the Enron Task Force by wearing four-inch pink stilettos to Ken Lay’s 2006 trial. In a room full of talented lawyers, she had the confidence to – quite literally – stand out. Her career has only gone up from there. Of course, you don’t have to have a bold sartorial style or even a great collection of footwear to express and inspire confidence (after all, men have been doing it in gray suits and black shoes for ages). What is important is that you know who you are, what you bring to the table, and that you can get the job done.

Ambition – Anna Fels, a psychiatrist who studies ambition in women, reports that the women she interviews “hate the word ambition when applied to their own lives. For these women ambition necessarily implies egotism, selfishness, self-aggrandizement, or the manipulative use of others for one’s own ends.” The women in our profession are no exception. But in law, perhaps more than in other professions, ambition is an indispensable asset regardless of where you practice. Without it, even the most talented and otherwise confident women can fail to thrive as lawyers, eventually dropping out

of practice or settling for less than they once hoped to achieve.

This is not how things have to be. It is time for every woman- in law and in every other occupation – to re-examine her relationship with ambition. For ambition is not a ruthless, self-centered drive to the top of whatever field you are in. Rather, as Dr. Fels and others report, ambition is the result of two “emotional engines” working together: mastery of a skill and recognition for one’s achievements. Properly balanced, mastery and recognition propel us toward our goals while strengthening our connections to those around us. Imagine doing something at which you excel; something that challenges, stimulates, and rewards you. Imagine enjoying the recognition of your peers and discovering new challenges as your mastery of that skill increases. These are the fruits of ambition, and they can be ours to enjoy.

Authenticity – Be yourself. In a profession that values conformity as much as ours,

this is both harder and easier than it sounds. It is also absolutely essential. U.S. Congresswoman Gabrielle Giffords, who was a dedicated public servant and a remarkable woman even before her own life changing events earlier this year, offered this thought to graduates from her alma mater in 2009: “You cannot authentically live anyone’s life but your own. That is the

The Center for Work-Life Policy reports that close to 40% of highly qualified women are “off-ramping” – that is, voluntarily leaving their careers for some period of time.

deal life offers us.” The flip side of that deal is that if you try to live inauthentically, pursuing goals and achievements that are not personally meaningful to you, you will likely end up exhausted, bitter, and cynical.

In fact, this is exactly what seems to be happening to many professional women in a variety of fields, not just law. The Center for Work-Life Policy reports that close to 40% of highly qualified women are “off-ramping” – that is, voluntarily leaving their careers for some period of time. Among women lawyers, the Center found that one of the biggest reasons for leaving was dissatisfaction with their jobs. This pattern is something that we must take seriously as a profession, but it is also something that we must take personally as professional women. There are plenty of

people with ideas for how firms can embrace and retain women lawyers. But only you can know why you became a lawyer, who you want to be as a lawyer, and how those dreams can inform your professional choices.

You may by now be sensing a common thread running throughout these thoughts, and you are correct. There are many different ways to be a lawyer, and just as many types of law to practice. There are even many ways to be successful as a lawyer. But there is only one way to thrive as a lawyer, and that is to bring whatever illuminates the rest of your life to your chosen profession as well.

Creativity – You, and every other lawyer reading this, have spent years learning how to “think like a lawyer.” There is a lot of value in that thought process and we have confronted significant social and legal problems by thinking in this way. But it is no longer enough. Now, more than ever, “thinking like a lawyer” must include the ability to think creatively. The good news is that creativity is a skill that can be developed by almost everyone, lawyers included. In fact, you may even be exercising it right now, for who knows what unex-

pected connections might arise from your attention here.

For that is all that creativity is – a focused curiosity, an openness to new connections. Rather than confronting a problem by asking the same questions and applying the same assumptions, a creative lawyer can look at the information available to her and ask questions for which she does not already know the answers – and these questions, coupled with a disciplined and observant mind, can often lead to unexpected solutions and new paths forward. Tim Hurson, who coaches Fortune 500 leaders in “productive thinking,” calls it the “shock of the possible” in his recent TED Talk. I call it “thinking like a creative lawyer.”

Resilience – Of course, no matter how confident, ambitious, authentic, and creative you are, failures and setbacks will happen to you. That, too, is part of the deal that life offers us. So in addition to all of the above, in order to thrive you must cultivate resilience. It will look different for each of us, but it will almost always involve a retreat to those things that provide comfort and nurturance, a willingness to learn from our defeats, and a return to our public lives with renewed purpose and vi-

sion. Resilient people have that elusive quality that transforms challenges into opportunities, and this is often how they do it.

In some ways, those whose resilience is particularly public or significant can serve as inspirations and reminders to the rest of us about what it is possible for us to be. Elizabeth Edwards shared, in her memoir titled *Resilience*, a passage from a paper by her son Wade: “The modern hero is a person who does something everyone thinks they could do if they were a little stronger, a little faster, a little smarter, or a little more generous. Heroes in ancient time were the links between humans and perfect beings, gods. Heroes in modern times are the link between who we are and who we could be.” While we do not need to aspire to heroism every day, the resilience necessary to rise above our own failures and setbacks can not only illuminate who we are but also show us, with renewed vision, who we can become.

Connect – The final element to thriving as a lawyer is connection. Ours is a consuming and sometimes isolating profession, and it can make some extraordinary demands upon us. If you want to thrive as a lawyer, I encourage you to build relation-

ships of mutual support. Make friends. Be a friend. For friendship, more than any other habit we can cultivate, encourages us in exercising all of the life skills discussed here. Our friends’ confidence in us bolsters our own; they share our dreams, remind us of who we are, inspire our creativity, and believe in us even in our darkest moments. Doing these same things for them ensures that no matter what challenges may lay ahead, we will be facing them in the company of trusted and loyal friends, and that together, we will thrive.

A final note – there is much that we cannot control in our world, or even in our profession, today. Biases, prejudices, and disadvantageous traditions remain even as unprecedented change sweeps away obstacles that were assumed to be unmovable. While we must all continue to work diligently at institutional reform, we must also pay attention to the here and now if we are to sustain ourselves along the way. My hope – for you, my colleagues, and our profession – is that together we will grow and thrive as such passionate lawyers that in hindsight, the world we will have created through our efforts will seem, joyously, inevitable. ■

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Judge Moss on Mentoring

By Judge Sandra Mazer Moss

At a recent Brandeis Networking Event, as I stood chatting, surrounded by eager young law students determined to make a lasting impression upon me (or at least one lasting until they could send in resumes!), I found myself slipping backward in time.

It was 1975 and it was me wearing that pasted on badge and pasted on smile determined to make that lasting impression. Who would be interested in mentoring me, a single mom evening student with grades on the lower end of the alphabet and two little kids tagging along wherever she went.

My first job, a judicial clerkship, had seemed too good to be true because it was too good to be true. Six weeks into it I discovered he wanted more from me than the job description required so I quit—unemployed failure now added to my resume.



Then my luck miraculously changed. A new civil motions judge was appointed and he was looking for a new clerk. After interviewing and candidly explaining why I abruptly left my first job, I hoped for the best. Would he contact the other judge? Would he decide it was too risky to alienate a colleague? What he did was seek advice from his best friend, Judge Judith Jamison, since the first judge had given me a less than stellar review. “If he’s right you’ll know in a week,” she quipped, “but if she’s right she’ll never work again. Hire her provisionally for thirty days.” Provisionally morphed into permanently that first week and I stayed for three years. (I know how to repay a debt.)

Judge Jamison became my mentor for the next 26 years. She took on my case with a vengeance from how I dressed (“no pant suits in court”), to how I wore my hair (“shoulder length—longer makes you look like a hippie!”), to my future career (“you’re smart and dedicated. You’re going to be a Judge”).

She introduced me to the world of politics (“Its public service and it gives you connections”), encouraged me to become a litigator (if you want to preside over a court

you better learn how to behave in one”), and even selected the year I would run for office (In 1983 there will be at least ten vacancies. I’m running for retention. I will help you”).

Even though it was only 1978 and I was just embarking on my legal career, she had faith in me. And her faith gave me faith in myself. On January 11, 1984, I was sworn in a Judge of the First Judicial District of Pennsylvania. The ceremony took place in Courtroom 653 City Hall (How Prophetic!) and Judge Jamison spoke on my behalf.

Judge Jamison taught me two fundamental principles of mentoring:

1. A mentor signs on for life.

Judge Jamison never stopped mentoring me whether I liked it or not (“You have too many knick-knacks on the bench. It’s undignified. Wear pant suits. Skirts are outdated. I like your last opinion, great reasoning”).

2. Being a mentee comes with duties and responsibilities.

“For every woman I pull up I expect her to pull up two more behind her” she always said.

I have tried to follow Judge Jamison’s example. I mentor my law clerks, helping to chart their careers, offering my shoulder to cry on and my smile to applaud a job well done. I have given marital advice, shopped for bat mitzvah dresses and cured

infertility. I am also committed to the Bar Association’s State Civil Section and the Women in the Profession Committee as well as the Brandeis

Law Society. To all I routinely give more advice than anyone ever really needs.

The most important duty of a mentee, however, I discovered all by myself. Mentees should always remember to thank their mentors. In 2001 Judge Anne Lazarus (another mentee) and I nominated Judge Jamison for the Bar Association’s prestigious Sandra Day O’Connor Award. Although she was gravely ill, we were able to bring to her bedside the large bouquet of flowers that accompanies the good news a candidate has won, and, of course, to tell

her how much we loved her, how greatly she influenced our lives and what a magnificent example she set not only for us but for women attorneys everywhere. ■

Judge Moss, a member of the First Judicial District of Philadelphia, Pennsylvania, is the Coordinating Judge of the Complex Litigation Center, supervising several judges handling complex Mass Torts, Class Actions, Major and Non Jury, and Products Liability cases.

Speak up: Finding Your Authentic Voice

By Jane Leslie Dalton



In leadership training and counseling and as a practicing lawyer, I am frequently asked how to speak up without being labeled as overly aggressive, bossy or other (even worse) epithets. As women, we walk a fine line between being perceived as too aggressive and shrill or too weak and whiny. In either circumstance, we are deemed ineffective.

How can you make oral presentations with authority? There are no easy answers. There is no one formula for success. And, different circumstances require different sensitivities and approaches. I do have several suggestions.

Remember, there is a difference between assertiveness and aggressiveness. As lawyers, we are required to be advocates on behalf of our clients. To be assertive is to stand firm in one's position and support it with appropriate authority and/or evidence;

to be aggressive is to force your position on others. Perceptions will vary, depending upon the circumstances and the perspectives of those present. While there may be a very few occasions where it is essential to be aggressive, learning to speak with authority is a key quality of a successful advocate.

Be yourself. To be genuine and authentic you have to know yourself, what style works for you and what does not. As a young associate, I worked with a partner who would glare at witnesses (and sometimes associates) at depositions and trials in a most intimidating manner. I knew that style would never work for me. On the other hand, if you see something that you can incorporate without changing your style, do so. For example, I tend to be direct and to the point, but I have learned that not everyone receives direct feedback well. As a result, I have learned to soften my presentation when circumstances require it.

Listen and observe. You can learn from listening to and observing your partners, associates, colleagues, clients and others. Whose styles resonate the most with you? Who are most persuasive. Who has habits that detract or distract from their presenta-

tions. If you conclude that certain colleagues are particularly effective speakers, consider asking them to help you improve your oral presentations. There are many additional benefits from becoming a good listener. Often we are so busy thinking of we want to say, that we fail to listen to others and miss important opportunities.

Plan, prepare and practice. Whether you are attending a meeting, taking a deposition or negotiating a business issue, plan, prepare and practice. Identify your goals and the messages that support your goals. You might write out one or more scenarios. At the very least, have a set of bullet points to keep your presentation focused. Practice your presentation. Record it or, if possible video-tape it. What oral or physical habits do you hear and see that detract from your message? Do you include several “um’s” in every sentence? Practice until you eliminate distractions.

Avoid negative thoughts and negative self-talk. Henry Ford once said, “If you think you can, or if you think you can’t, you are probably right.” Remember the “Little Train that Could” who kept repeating “I think I can, I think I can, I think I can”? Listen to your thinking. You will undoubt-

edly be surprised at the number of times you criticize yourself. We are so much harsher on ourselves than we are to others. When you listen to your self-talk and identify negativity, affirmatively reject the negative and replace it with a positive. For example, if you are thinking, “they will not listen to me,” replace that thought with: “What I have to say will be so well prepared and so compelling that they will listen to me.”

Have confidence in your ability to communicate. Do not begin with an apology, or by saying “I think” or “I feel.” Even if you feel uncertain under the circumstances, go for your goal. While your confidence will increase with preparation and experience, if you feel shaky, see yourself as confidently stating your position and fake it until you make it.

Be flexible, patient and kind to yourself as you learn. If your plan does not work, be flexible. If an objection to a question is sustained or an idea is rejected out of hand, do not be deterred. As a partner once said to me, there is the deposition that you prepared, the deposition that you took and the

deposition that you wish you took. You will learn and improve with experience.

Humor. Remember not to take yourself seriously. While humor often does not work in presentations, the ability to laugh at yourself as you progress makes life much more pleasant.

While your confidence will increase with preparation and experience, if you feel shaky, see yourself as confidently stating your position and fake it until you make it.

Take risks. Unless you are willing to take risks, you cannot grow and learn. Identify the next step to progress in your career and decide how best to get there.

Note your successes. We tend to remember our errors and forget our achievements. Keep a list of your successes, whether it is arguing a motion, presenting a legal theory to your team or taking a deposition, write down your successes. It will give you security as you progress in your career. ■

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What's Happening in America?

By Sayde Ladov



In recent years, we've heard a congressman shout "You lie" at our president during a formal address to Congress, seen a Congresswoman shot and a federal judge assassinated, watched a celebrity rapper rush the stage and grab the microphone from another singer accepting an award, and seen a tennis star lose a key match because she screamed obscenities at the line judge.

We all studied the First Amendment in school: Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press. James Madison said that free speech is one of the great bulwarks of liberty and without the free exchange of ideas, change might very well be suppressed.

As a Philadelphia lawyer, I'm as big a proponent of free speech as the next person

and I have said to new citizens when I attend naturalization ceremonies, the right to free speech in America is as fundamental as the air we breathe. The principal goal of our system of jurisprudence is to protect the minority opinion, no matter how disrespectful of authority it might appear to be.

People of a certain age will remember these slogans: "F... the Draft or F... the Flag" But what happens when free speech turns to something else? When it turns into incivility? When incivility incites rage and provokes hate?

I believe we are witnessing a decline in American civility that is decreasing dialogue and increasing hate.

Let me be clear: I am not talking about differences of opinion, passionate debate or vehement disagreements. I am talking about the current spate of incivility and hate talk that is choking our public discourse, fueling fears and diminishing our capacity to engage in civilized discourse with one another. Somewhere along the way, we as Americans have created a culture of rudeness and offensiveness. I think it's a slippery slope down that path because outrageous remarks, fueled by fear and pas-

sion, can often turn into hate speech.

Many of you know that I have just run for Judge of the Court of Common Pleas. As I walked the campaign trail the last several months, I spent a lot of time in churches and as a result, have perused the bible on more than one occasion to see how religion treats freedom of speech. Imagine my surprise when I learned that Jewish law prohibits you from speaking evil. A sage once said: I have found nothing wiser in life than silence. Hence the axiom: If you have nothing nice to say about someone, say nothing. Free speech creates no duty to listen, no duty to repeat, no obligation to understand; the only duty in most cases is not to silence the speaker. On the other hand, Talmudic law says silence the speaker when one disagrees with the king or takes the lord's name in vain.

On the other hand, consider the recent public dialogue on health-care reform or the budget for that matter. Our president attempts to tackle the decades-old issue of healthcare reform and proposes some ideas. What happens? Rather than engage in meaningful debate over the issues, extremists hurl insults and false charges, right down to the creation of Death Panels.

Town hall meetings are filled with angry, yelling protesters. The president is accused of being a socialist, and his citizenship, race and right to be president are called into question. The budget dialogue has degenerated so quickly, it can make your head spin. Newly minted candidate for the Republican Presidential nomination, Newt Gingrich said the following with regard to entitlement spending:

“President Obama is the most successful food stamp president in American history. I would like to be the most successful paycheck president in American history. We're at a crossroads. Down one road is a European centralized bureaucratic socialist welfare system in which politicians and bureaucrats define the future. Down the other road is a proud, solid, reaffirmation of American exceptionalism.”

Finally, witness the invective spewed by “The Donald” and Michelle Bachman resulting in the president releasing his long form birth certificate.

In my mind, these are not examples of free speech. They are hate speech.

In June 2008, a security guard was murdered at Washington D.C.'s Holocaust memorial Museum. This tragedy happened

two years after a popular commentator (Ann Coulter, by the way) publicly said America would better off if “the Jews” were “perfected” through conversion. The Holocaust Museum killer had similar views, also calling Jews “imperfect.” Another political commentator spent lots of air time raving about an abortion provider, calling him a “baby killer.” That physician, Dr. George Tiller, was later murdered while preaching at his Lutheran church.

Isn't this hate speech in its basest form?

Here is an example closer to home. A resolution recognizing October as Domestic Violence Awareness month was recently halted by a state representative who declared “it has a homosexual agenda.” On the same day, when the Pennsylvania House was about to vote on a bill increasing marriage license fees from \$3 to \$28 (the increased amount going to a fund for victims of domestic abuse), this same politician opposed the measure, calling it “a slap in the face to family values.”

Recently, it was reported that dialogue be-

tween two lawyers at a deposition became so heated that the federal judge hearing the case was caused to say that the lawyers had, “ratcheted the acrimony higher and the standards down.” In the face of all this, what do we do?

Some of you may brush this off saying, well, that's just her political beliefs. But I

Yes, it is absolutely OK to be passionate and express strong opinions. But we also know that the right to free speech comes with an equal responsibility to be fair and respectful.

don't think it's a question of political affiliation as there are plenty of wing nuts on the left. Witness progressive talk show host Ed Schultz calling Ann Coulter a “right wing slut.” He was suspended from his show without pay.

I think it's a question of our ability to elevate the conversation from spewing invectives and downright lies to making well-stated, factually based opinions.

Jefferson said: *The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a*

moment to prefer the latter.

Walter Lippman said: *A free press is not a privilege but an organic necessity in a great society. Without criticism and reliable and intelligent reporting, the government cannot govern. For there is no adequate way in which it can keep itself informed about what the people of the country are thinking and doing and wanting.*

Thus, I think it is incumbent on all of us to listen to each other so that we can have a true dialogue. A healthy difference of opinion is just that: well stated, well reasoned and below 90 decibels.

In this era of ranting politicians, rude celebrities and intolerant talking heads, at a time when we can bleat and tweet and poke and blog and blurt out our most intimate thoughts and opinions, sharing ourselves instantly with a mass audience through social media, let us all remember that free speech does come with a price. Yes, it is absolutely OK to be passionate and express strong opinions. But we also know that the right to free speech comes with an equal responsibility to be fair and respectful.

Remember that the Philadelphia Bar Asso-

ciation adopted a Code of Civility in 2000, which says in part:

Treat with civility, courtesy and respect judges, parties, court officers and staff, counsel and witnesses in oral and written communications.

We will treat witnesses and parties with fair consideration. We will not, absent good cause, attribute bad motives or improper conduct to counsel or the court.

We will maintain an appropriate demeanor in the courtroom.

We will not condone or indulge in offensive or abusive conduct directed to the court and its staff, counsel, parties, or witnesses, and will abstain from disparaging personal remarks or acrimony, and advise our clients to do the same.

We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

Learn it and live it so that when the question is asked: “What Has Happened to Civility in America?”, the answer may be: It’s back! ■

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From the Vice Chancellor: Making an Appearance

By Kathleen D. Wilkinson



I am often asked how I manage to have everything in balance, between my obligations to my family, my duties as a lawyer to my clients and my law firm, and my responsibilities as Vice Chancellor of the Philadelphia Bar Association. My simple answer is that it is a matter of setting priorities and making it “appear” to be in control, while maintaining a positive attitude at all times.

I attended law school at a time when law school classes were made up of one third women. There were few women lawyer role models who were partners in law firms, or judges, when I graduated. Even fewer women lawyers at that time were also balancing raising a young family. Part time work was not an option then. It was full time or no time.

I learned that I must work hard through law

school, and I continued to work hard as a young associate. I tried to achieve excellent results for the clients, networked within the firm and outside of the firm, and tried to expand business with existing clients who left for new companies. I was determined to succeed as a woman lawyer and wanted to become a partner in my law firm.

I gave birth to my first daughter, Lindsey, while I was “up for partner.” There was no set maternity policy for women associates as that time so I returned to work after a 6 week maternity leave, not wanting to jeopardize becoming a partner. After becoming a partner, I continued to work hard, while balancing being a new mother with my legal responsibilities, trying not to miss a beat. I made arrangements to have child care that could be seamless, but of course, this was not always the case.

Two years later my second daughter, Lauren, was born. I took an 8 week maternity leave as I did not want to relinquish my case handling and client responsibilities for too long, even though I was a partner.

One day, leaving the house one morning, with both young children asleep in their

rooms, with the babysitter believed to be still asleep in her room, my phone rang. My neighbor wanted me to know that even though I might think that my sitter had returned home the night before, she was not there and my neighbor did not want me to leave my house thinking someone would be taking care of the children. She explained that her babysitter drove my car home because my sitter was hung over and stayed at a bar. Snapping into action, I called one of my partners who lived nearby and his wife was able to watch two year old Lindsey for the day. While I had always planned to one day take my children to work, even before “Take Your Children to Work Day” was invented, I decided to take my infant Lauren with me to a deposition of an insurance broker. Everything went smoothly enough, with me asking complex insurance questions and the court reporter noting Lauren’s appearance for the record on the transcript. Opposing counsel brought to my attention that Lauren, unbeknownst to me, slipped down in her car seat/baby seat, and was lying on the floor on her back. I then noticed she had a diaper that clearly needed changing upon my close encounter with her. Not losing my cool, I acted as if nothing was amiss and changed her in the ladies room, without the

benefit of a changing table, and returned to complete the deposition. Today, while Lauren does not remember the event, it is her earliest encounter with the legal world.

Meanwhile, the Women in the Profession Committee of the Philadelphia Bar Association had just started. I decided to join the committee so I could find other women who were trying to learn how to juggle the many demands facing women lawyers. I was immediately drawn in, serving as the program chair, and soon becoming a co-chair of the Committee. Our Committee would work on programs on how to develop business, becoming partner, juggling a family, pay disparities, many of the same issues women lawyers still face today. We shared stories with one another and mentored each other. We volunteered to do pro bono work. It was very energizing to me to share our experiences and give back to the community.

The juggling and demands made upon me as a partner continued. If I had to leave early to take a child to the pediatrician’s office, I was “going to a meeting” and would make up my time later. Blackberries and cell phones were not born yet and it was hard to “appear” to be working if

one were not actually in the office. After a stressful morning of client demands, I could spend an hour or two out of the office at a bar function and come back and work twice as hard after having my batteries “recharged.”

With two young daughters who were now in elementary school, and having advanced to the equity partnership ranks, I was pregnant with my son while serving as a co-chair of the Committee. After taking three months of maternity leave, I returned as co-chair and soon after was encouraged to run for the Board of Governors for the Association.

As the children got older, the challenges became different. It was no longer about trying to take a day off to go on a class trip to see the Statue of Liberty, but it was about trying to leave work early enough to watch Lindsey play softball or Lauren play tennis. Soon it was about getting Michael to Little League.

After serving on the Board of Governors for three years, in 2004 I decided to run for

Assistant Secretary, a Cabinet position. Lindsey was in 9th grade, Lauren was in 6th grade, and Michael was in Kindergarten. By that point, we had three women Chancellors of the Association, one of whom had a daughter, and all of whom were partners in their firms. More women lawyers were holding positions on the Board of Governors and on the Cabinet. I continued to be energized by the bar association, loved working on my cases, and worked late and on weekends when necessary.

Just keep everything in perspective, and focus on the task at hand. Tomorrow will be another set of challenges and you may look back later and have a laugh or two along the way.

Client demands continued and I will never forget talking to clients on about big cases while touring colleges with Lindsey throughout New England. As long as I was responsive to clients, it did not matter where I was as long as I had my blackberry/cell phone with me and could immediately answer client questions.

Today, the demands continue. The other night I had just arrived at the annual meeting of an executive women leaders’ event with a young lawyer when I apologized to her as I wanted to make sure Lauren, now a

college student, was where she was supposed to be. When Lauren did not answer her cell phone and was not at home, I called her friend's cell phone, which Lauren immediately answered. The young lawyer I was with was amazed and said, "You always appear to be so organized and so responsive; I don't know how you do it." Her statement was such a wonderful compliment, and it is why I get involved in bar association activities because mentoring and learning from one another goes back and forth, regardless of how many years in practice.

Some days the priority is to get the report out to the client or to attend a deposition. Another day, it will be to attend that ball game or visit that college. Other days it will be to go out of town for a bar leadership retreat. Just keep everything in perspective, and focus on the task at hand. Tomorrow will be another set of challenges and you may look back later and have a laugh or two along the way. ■

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What Your Mother Never Told You About Jury Selection

By Maria Feeley



Recently, I was asked to serve as faculty on a CLE about effective jury selection where the anticipated attendees would include both male and female litigators. Men and women's goals certainly overlap when picking a jury. Depending on what the trial judge's policies and procedures will allow, both want to ask questions to obtain information from the venire that will allow them to select the best possible jury for the case. Both genders also seek to create a rapport and establish credibility and a level of trust with the potential jurors. After all, the jury forms its first impression of trial counsel during voir dire, and that first impression often follows counsel through trial impacting his or her ability to persuade the jury to render a decision in favor of his or her client. But, there is no one size fits all genders approach for reaching these goals. In fact, there are some very different considerations women litigators must keep in

mind when picking a jury.

Some people might be surprised to learn that gender bias continues to affect women lawyers, especially when the number of women graduating from law school currently exceeds the number of male graduates. Despite these numbers, which are seemingly demonstrative of “progress” for women in the legal profession, women litigators may nonetheless find themselves at a disadvantage vis-à-vis their male colleagues, especially during voir dire. Research confirms what I and many of my fellow female colleagues have long suspected: jurors react differently to women litigators than they do to our male counterparts. Although I certainly did not need a scientific study to inform me that potential jurors “tend to consider a male attorney more competent than a female attorney where the attorneys’ performances are identical,”¹ scientific studies provide quantitative data that lends credence to the personal narratives of women litigators like me.

Even in 2011, jurors’ perceptions of female trial lawyers are colored by gender stereotypes that continue to pervade our society. To overcome jurors’ conscious and uncon-

scious gender biases, women litigators must remain ever-mindful of the ways in which they present themselves to juries, especially during voir dire, when the jury forms its first impression of counsel.

While we cannot change each jurors’ pre-existing gender biases, we can mitigate the impact of such prejudice through our (1) physical presentation, (2) oral presentation, and (3) behavioral presentation.

The jury’s first impression of trial counsel, largely based on physical presentation, is critical as “jurors tie appearance to believability.”² While physical presentation during voir dire is important for both male and female litigators, it is especially complicated for women, as we have a myriad of additional factors to consider such as a larger selection of potential styles of clothing, shoes and hairstyles, make-up and accessories, and also because studies show that, in terms of jurors’ perceptions of female litigators, appearance trumps actual ability.³ Additionally, appearing too attractive can have negative ramifications for female lawyers. While studies show that people tend to assume attractive individuals are talented, kind, honest, and intelligent, qualities which may help build a good rapport with a jury, women lawyers who ap-

pear too attractive or sexual run the risk that that jurors will devalue their expertise and take them less seriously.⁴

To reduce that risk, some of my colleagues adhere to the traditional rule that women litigators should dress conservatively, without too much flare or flash, with muted colors and skirt suits. According to this school of thought, conservative clothing keeps the jury focused on what the woman litigator is saying, not on what she is wearing. Yet, other women reject this approach, choosing instead to dress in a way that makes them most comfortable—whether that means donning only designer clothes or sporting a ponytail.⁵ Rather than undermining their credibility, these women often win favor with jurors because their individual styles are seen as authentic, and jurors value sincerity. While the litigators I know cannot seem to agree on how women litigators should physically present themselves to a jury, we all agree that no matter what we wear in the courtroom, at least one juror will disapprove of it.⁶ Whatever “rule” you follow, consideration of physical presenta-

tion is an integral part of preparation for voir dire.

Another important consideration for women litigators during voir dire is oral presentation. After assessing physical appearance, potential jurors will confirm or deny their initial impression of counsel based on what the attorney has to say and how she says it. Oral presentation includes

both content and style. But, like physical presentation, oral presentation is complicated for women litigators because:

[s]ociety tends to react differently to ora-

tors based on an orator’s gender, for society generally has expectations of the proper method of presentation by each gender. Consequently, where an attorney uses a presentation style contrary to the jury’s expectations based on the attorney’s gender, the jury tends to have a negative perception of that attorney....⁷

This framework creates an inherent obstacle for women litigators because we have

already defied traditional gender-based expectations by entering a historically male-dominated profession. But, during voir dire, women litigators can use oral presentation to overcome jurors' negative perceptions of female attorneys by speaking confidently and accurately about technical aspects of the case and avoiding slips of the tongue.

Indeed, any successful lawyer must prepare thoroughly for a case, but "a female attorney has to be more prepared than her male adversary to overcome the presumption that he is more competent."⁸ Based on research supporting the "contrast effect," when a female litigator demonstrates her mastery of a traditionally or stereotypically male field, she may be viewed by jurors as more credible than her male adversary.⁹ However, the converse is true as well: when women litigators mispronounce a word or make a mistake, their errors are more detrimental to their credibility than when their male colleagues do the same.¹⁰

In addition to the content of the female litigator's oral presentation, her presentation style is also an important consideration. Like physical appearance, oral presentation style varies among female litigators. Some

try to adopt a "male" presentation style by using sarcasm or verbal aggression.¹¹ Although these tactics are generally powerful and effective tools for male litigators, use of a "male" style may negatively impact the jurors' perception of a female litigator. For example, jurors tend to view zealous male litigators as passionate advocates, whereas they see zealous female litigators as overly-emotional.¹² Women litigators who use an aggressive style risk being regarded as strident, but women litigators who are not aggressive enough may be viewed as weak.¹³ Thus, just like a female litigator's physical presentation, her oral presentation style is fraught with conflicting expectations and challenging choices.

While most experienced trial lawyers conduct themselves with decorum in court, a female litigator's behavioral presentation is particularly important because jurors pay close attention to how she interacts with her team, opposing counsel, and the judge. A female litigator's behavioral presentation may win her favor with the jury, but the opposite remains true as well. Generally, jurors "like respectful, polite behavior, and tend to devalue the attorney who is rude or hostile."¹⁴

Jurors are also influenced not only by how the woman litigator treats others, but also by how others interact with her. Receiving praise or approval from the judge (perhaps by a ruling in her favor) may increase her credibility with the jury. Although we are lucky enough to have fair, unbiased and highly regarded judges in our local courts, the same is not true in all jurisdictions. Because all judges are not immune from the affects of gender bias, some judges treat female litigators in a disrespectful or disparaging manner in court. Such treatment may range from the overt (e.g., referring to a female attorney as a “lawyerette”) to the subtle (e.g., addressing female lawyers by their first name, while addressing male attorneys by their surname), but all such treatment impacts the jury’s perception of the female litigator, either consciously or unconsciously. Similarly, when male litigators treat their female adversaries in a manner reflective of gender bias and the judge fails to intervene, the jurors may understand the court to be condoning such behavior.

Unlike physical appearance and oral presentation, the way that a female litigator is treated by others is often beyond her control. However, the way that she responds

to discrimination—gender or otherwise—is within her discretion. Sometimes women prefer direct confrontation in open court, while others would rather handle the matter privately. And some might choose simply to do nothing. While it is important for a female litigator to respond to biased treatment in a way that works best for her, finding the appropriate strategy is not always easy.

Just as there is no one-size fits all genders approach to voir dire, there is no one-size fits all women approach either. Each of us has a unique worldview that is shaped by the intersection of various aspects of our identities. Gender is only part of the equation. Thus, while it is clear that gender bias exists among jurors, this bias affects different women in different ways depending on other aspects of their actual or perceived identity.

It is important for women litigators to be aware of how gender bias can work against them during voir dire, but it is up to each individual woman to choose how to combat these obstacles in a way that works for her. Perhaps the real question we should be asking now is not how individual woman litigators can overcome jurors’ pre-

existing gender bias, but rather, how can we change society's view of women so that female litigators (and consequently, their clients) are no longer disadvantaged by gender bias. ■

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¹ Mary Stewart Nelson, The Effect of Attorney Gender on Jury Perception and Decision-Making, 28 LAW & PSYCHOL. REV. 177, 184 n.49 (2004).

² Jansen Voss, Note, The Science of Persuasion: An Exploration of Advocacy and the Science Behind the Art of Persuasion in the Courtroom, 29 LAW & PSYCHOL. REV. 301, 316 (2005).

³ Nelson, *supra* note 1, at 181-82.

⁴ Karen L. Hirschman & Ann T. Greeley, Trial Teams and the Power of Diversity, 35 LITIG. 23, 25 (2009).

⁵ See Maureen A. Howard, Beyond a Reasonable Doubt: One Size Does Not Fit All When it Comes to Courtroom Attire for Women, 45 GONZ. L. REV. 209, 216-19 (2009).

⁶ V. HALE STARR & MARK MCCORMICK, JURY SELECTION § 27.04, 27-28 (4th ed. 2010).

⁷ Nelson, *supra* note 1, at 185.

⁸ Nelson, *supra* note 1, at 185 n.52

⁹ Hirschman, *supra* note 4, at 25.

¹⁰ Nelson, *supra* note 1, at 185.

¹¹ *Id.* at 186.

¹² *Id.*

¹³ Hirschman, *supra* note 4, at 25.

¹⁴ Ann T. Greeley, The Challenges of Trial Team Diversity, 15 PRAC. LITIG. 3, 33 (2004).

Shackled and Giving Birth in Pennsylvania Prisons

By Kathleen Creamer



In July 2010, Pennsylvania Governor Edward Rendell signed into law the Healthy Birth for Incarcerated Women Act, making the Commonwealth the 10th state to outlaw the risky and inhumane practice of shackling incarcerated women during childbirth. Many were surprised to learn that such legislation was necessary, but the stories of women who experienced childbirth in shackles told us otherwise. In Philadelphia, for example, women were routinely handcuffed by an arm or a leg to their hospital bed during childbirth until Prison Commissioner Louis Giorla learned of and put a stop to the practice in 2008. Former Philadelphia inmate Tina Torres described her experience giving birth in shackles to Philadelphia Weekly: “I look at the scars on my legs, and I’m reminded of it every time...I could never have prepared myself for that. Even animals in captivity don’t have to give birth in chains.” “Giving Birth in PA Prisons,” Philadelphia Weekly, January 19, 2010.

Indeed, it is the voices of women who have experienced this barbaric practice that have spurred the movement both in Pennsylvania and throughout the country to stop the shackling of women during childbirth. In 2004, a woman named Shawanna Nelson filed suit in federal court after suffering injuries resulting from giving birth while incarcerated with both legs in shackles. At that time, only one state in the country, Illinois, had a law prohibiting this practice, and it was not widely known that correctional facilities across the country routinely restrained women during childbirth. Ms. Nelson asserted that her experiences constituted cruel and unusual punishment and thus violated her rights under the Eighth Amendment. The Eighth Circuit Court of Appeals, while initially ordering the dismissal of Ms. Nelson’s complaint, reheard the case en banc and concluded that the Eighth Amendment bars the shackling of a woman in labor absent clear evidence that she poses a security or flight risk. *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009)(en banc).

The Nelson case received national attention and helped to foster dialogue about state practices regarding incarcerated women in labor. The primary justification offered

for shackling by its proponents is the need to ensure security. Correctional organizations that have opposed legislation to prohibit shackling have argued that restraints guard against the possibility of pregnant women becoming violent or attempting to escape. Some have maintained that the safety of the public and of hospital and correctional staff requires that any inmate who leaves a correctional facility for medical care must be restrained at all times.

These arguments are belied, though, by the growing understanding about incarcerated women and their crimes, as well as the experiences of the states that have successfully banned shackling. The vast majority of women are incarcerated for non-violent crimes, and often the crimes they do commit arise from drug addiction and poverty. A 2008 bulletin from the Bureau of Justice Statistics found that women comprised less than 5% of sentenced violent offenders in state facilities. The very low likelihood of violence for most female inmates combined with the inherent compromise in physical strength

and ability women experience during childbirth make it difficult to support the argument that these women are likely to pose a security or flight risk that cannot be mitigated by the presence of the correctional officers that accompany them to the hospital. Further, what we know about incarcerated women has been borne out by the success of shackling bans in other jurisdictions. Indeed, there has been no reported increase in security incidents in Illinois or California, which have barred the practice of shackling laboring women for many years.

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Any arguments for the necessity of shackling, moreover, must be weighed against the cost of this practice to the mother and her child. On this point, there appears to be broad consensus in the medical community that shackling cannot be justified except in the most extreme circumstances. The American College of Obstetricians and Gynecologists (ACOG) issued a strong statement against this practice in 2007, stating that shackling during childbirth puts “the health and lives of the women and unborn children at risk.” Similarly, the American Medical Association (AMA) has issued a

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resolution recommending that “no restraints of any kind shall be used on an inmate who is in labor, delivering her baby or recuperating from delivery” unless there is evidence of an uncontrollable flight or security risk. The medical community’s objection to shackling is rooted in not only the degradation and humiliation it causes women, but also the very real medical threat posed by this practice. Shackling inhibits the physician’s ability to assess the medical condition of the mother and fetus, and can exacerbate the already intense pains of labor. A woman’s inability to move during labor can also increase the stress of labor and may decrease the flow of oxygen to the fetus. Particularly where any threat posed by the female can be controlled by the guards who are on staff, the medical risks to the mother and the child simply cannot be justified.

The dawning awareness of the dangers of shackling women during childbirth has led to increased action across the country. In Pennsylvania, the Healthy Birth for Incarcerated Women Act was passed with unanimous bipartisan support in the legislature, and was unopposed by the state and county corrections community. The Federal Bureau of Prisons and ten other states

in the country have banned shackling in all but the most extreme circumstances, and several other states, including Nevada, Massachusetts, and Rhode Island, currently have similar legislation pending. Another federal court in Tennessee recently recognized that the shackling of an incarcerated woman during childbirth violated the woman’s right to freedom from cruel and unusual punishment, noting that the Eighth Amendment standard of contemporary decency protecting women from this practice has now been established by prior judicial decisions as well as “medical publications, convention rules, social studies and standards.” *Villegas v. Metropolitan Government of Davidson County*, 2011 WL 1601480 (M.D.Tenn. 2011).

It is encouraging to see the growing national consensus that the shackling of incarcerated women during childbirth cannot be tolerated. But while states across the country move to protect incarcerated women during childbirth, many needs of these women and their children remain unaddressed. Women in prison are a fast-growing population, but given the generally nonviolent nature of their crimes, it is not clear that incarceration is the only way to address the offenses these women com-

mit. This is particularly true for women whose crimes arise from their drug addiction; these women are much more likely to receive the treatment they need in the community than in jail.

Further, the cost to children of incarcerating women cannot be ignored. Almost two-thirds of incarcerated women are mothers, and seventy-seven percent of those mothers were the primary caregivers for their children prior to incarceration. As a result, children whose mothers are incarcerated must suffer the devastating emotional and developmental impact of losing their primary caregiver. The separation of a mother from her newborn infant can be particularly devastating, as mother-child bonding in the first months of life is critical to forming healthy attachments. Children who do not have relatives to care for them may end up in the foster care system, where, because of harsh federal and state laws requiring termination of parental rights petitions to be filed after fifteen months, they risk losing their mothers forever.

While the movement to end the shackling of incarcerated women during childbirth continues, so much more needs to be done to ensure the well-being of these women

and their children. It is my hope that the dialogue that has begun with a growing awareness of the needs of incarcerated pregnant women will continue and expand to focus on the needs of all incarcerated women and their children. ■

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