ILLINOIS STATE BAR ASSOCIATION

NOVEMBER 2015 VOL 21 NO. 3

The Catalyst

The newsletter of the Illinois State Bar Association's Standing Committee on Women and the Law

Chair's column

BY EMILY N. MASALSKI

In June 2015, I met with fellow ISBA members Yolaine Dauphin and Tracy Douglas to discuss a possible joint CLE program highlighting the epidemic of sexual assaults on college campuses. We were on an expedited timeline and wanted to draw attention to the issue as soon as possible. For five months, the Planning Committee members and WATL members worked closely with Anne Brent, Founder of Porchlight Counseling Services and Diana Newton, Porchlight's Executive Director to put together the two day Symposium on College Sexual Assaults.

On November 5-6, 2015, our vision became a reality when over 28 sponsoring bar associations and organizations, over

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Spotlight interview with Judge Loza

BY ERIN WILSON

I met with fellow WATL committee member Judge Pamela Loza to ask her a few questions. Judge Loza is the supervising judge of the Child Support Division in Cook County. Previously, she was a trial judge in the Domestic Relations Division. Before Judge Loza was elected to the bench, she was a private attorney focusing primarily on criminal defense and family law.

Q. Tell us about your transition to the bench?

Ans.: I went to a judge school for about two weeks. We were warned the job would be tiring and they were right. Being a judge uses a lot of mental energy; people are throwing things at you constantly and you have to be able to synthesize the information and make decisions on the spot. Of course, it is easier if you practice in the field in which you are sitting, but that is not always the case. When you are a judge, you cannot take a side and you cannot be an advocate, which is difficult to learn to do. However, having the law as a guide helps when making decisions, as it takes the personalities out of the equation. You may not really like one side or the other, but the law is there to guide your decision.

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Chair's column

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250 attendees, and approximately 35 speakers joined together at the Symposium. Columbia College's Women in Film hosted the Thursday evening movie screening of The Hunting Ground. The Hunting Ground is a documentary about sexual assault on American college campuses and the rise of a new student movement relating to the failure of universities to address the problem. After the movie, NBC News Anchor Marion Brooks moderated a panel discussion featuring, Sofie Karasek, Co-founder of End Campus Rape; Olivia Ortiz, Title IX Complainant; Kaethe Morris Hoffer, Executive Director of Chicago Alliance Against Sexual Exploitation. For those of you who were unable to attend the moving screening, CNN Films will broadcast the film on **Sunday, November 22, at 8:00 p.m. EST** on CNN/U.S.

Thank you to Dr. Susan Kerns and Columbia College for the opportunity to collaborate with Columbia's Women in Film student organization. We are grateful for the Women in Film student volunteers - Mackenzie Willey, Gabby Papas, Erika Caldwell, Emily Costello; DePaul law student Anne Marie Knisely, and Kevin Pu (Northwestern University student). Symposium Coordinator Yolaine Dauphin is working on making the November 6 Symposium presentation recordings available to anyone who was unable to attend.

Here are a few photos from the two-day Symposium on College Sexual Assaults: ■

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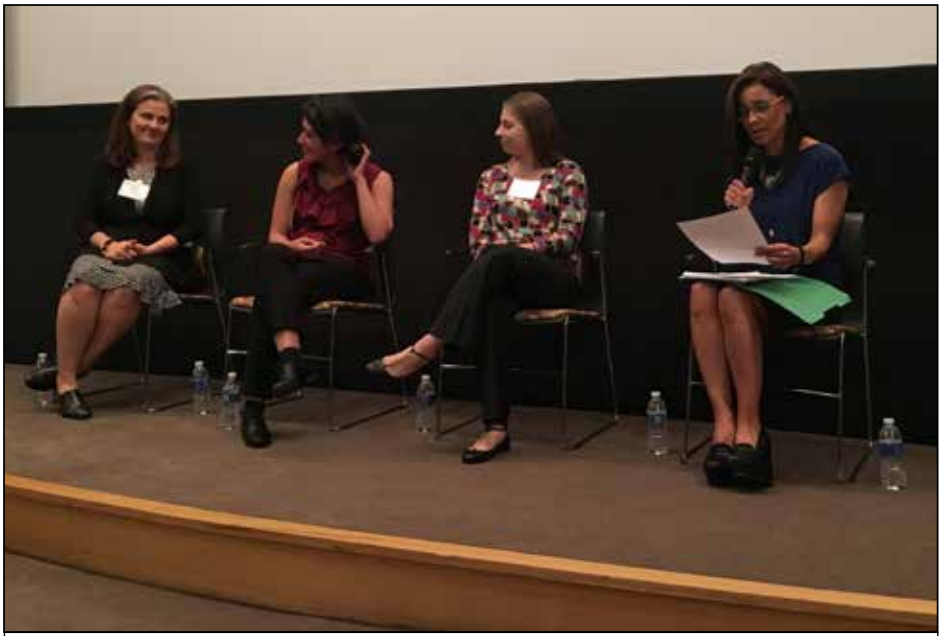

November 5 Panel featuring Kaethe Morris Hoffer, Executive Director of Chicago Alliance Against Sexual Exploitation; Olivia Ortiz, Title IX Complainant; Sofie Karasek, Co-Founder End Campus Rape; NBC News Anchor Marion Brooks.

The Catalyst

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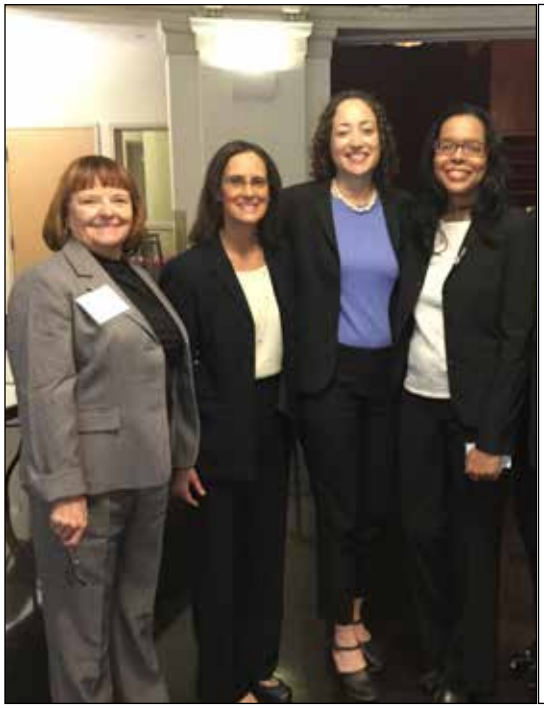
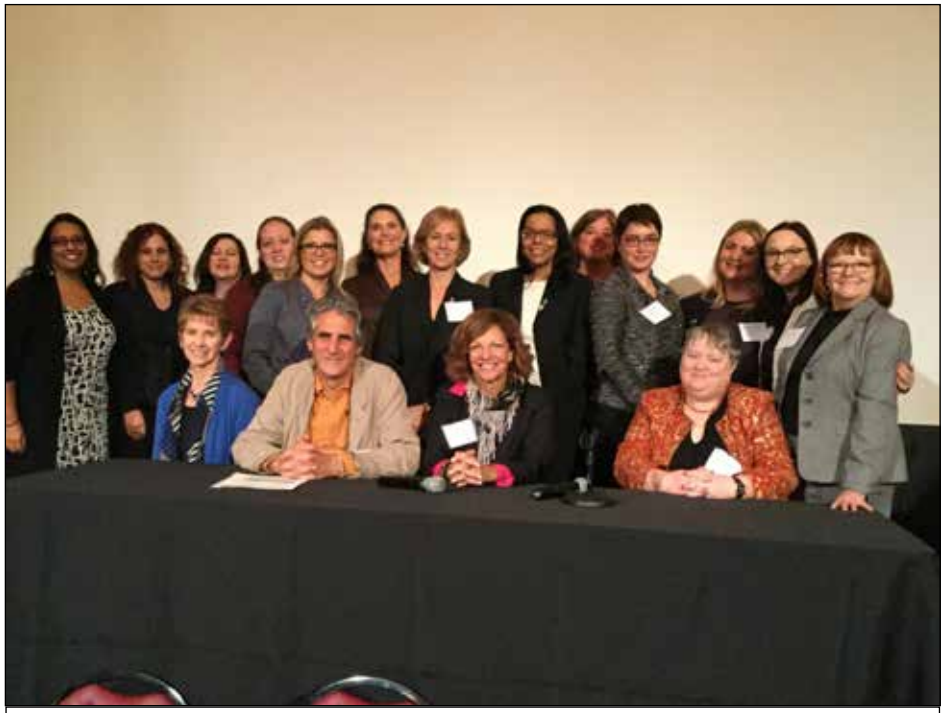


WATL member Mary Petruchius; Illinois General Lisa Madigan; Catherine Lhamon, Assistant Secretary, Office of Civil Rights; and Yolaine Dauphin, Secretary of the ISBA's Standing Committee on Racial and Ethnic Minorities and the Law.

Symposium Planning committee members Wiley Adams, Emily Masalski, Joy Airaudi, Amanda Garcia, Anne Marie Knisely.



Group photo of speakers and planning committee members.

Spotlight interview with Judge Loza

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Q. What is your role as supervising judge of the Child Support Division?

Ans.: Administrative work. I deal with personal issues, union, HR, vacation, discipline, FMLA, construction projects. I oversee not only the judges, but also the hearing officers, clerks, have meetings with the state's attorney, and the sheriffs. It is challenging, but I enjoy it.

Q. What new and exciting projects are you working on?

Ans.: Through the Chicago Volunteer Legal Services, we have expanded the child representative program for young attorneys, which has been a huge success. This provides a pro bono child rep for cases when both sides are pro se. It gives younger attorneys experience as a child rep, and assists the judges and litigants. We just received approval for there to be 30 child reps in the Parentage Division and 10 to 12 attorneys in the Domestic Division; this program may also expand to Markham. Judge Dickler just signed the order for this to be a permanent program. In addition, the new courtroom for Judge Coccoza was completed and it is very nice. It took two years for this project to receive approval and another six months to do, so with it finally being done is very exciting.

Q. What advice do you have for attorneys that want to transition to become a judge one day?

Ans.: Work your politics. Be active in your community. You have to be out there and be known. It is hard to do this without family support; go out there with your family, with your husband, with your kids, make it known that you have support and make yourself be known. Also, you have to have a good knowledge of the law. Being a litigator and doing trial work helps to get approved by the Bar Associations. Having worked as a state's attorney or public defender gives you the trial experience and training to think on your feet, but you also need to know how to plead. So overall I would say trial experience and writing skills are a key to being a success on the bench.

Q. How do you balance your personal and professional life, and what advice do you have for others struggling with this?

Ans.: When you're in private practice, it's hard. I can't say that I know how to be a young female professional with children and balance your career and your personal life. There is no balance if you want to succeed, really. The most important thing is to have family support. If you can even balance with your spouse so you at least get some time to yourself that is helpful. It is easy to tell someone to go to yoga for an hour a day or go to the gym, but in reality, this is very difficult. There is a lot of demands placed on young lawyers and the job is not forgiving. You just have to do what you can. If you can make it all work, kudos to you.

Q. Where do you see yourself in the next five years?

Ans.: Here (big smile).

Q. What advice you have for lawyers appearing in the courtroom?

Ans.: Civility. Do not interrupt each other. Do not think that the one to yell, or the one with the last word wins. Also, do not object to a reasonable continuance - life happens; people get sick, there are deaths in the family. Things happen and if you should do onto others as you would want done unto yourself. If someone needs continuance, it is okay to say, "for the record, my client does not agree, but I understand." It gets across the message and keeps you looking professional.

Q. This is your first year on Women in the Law, what do you hope to get out of the committee?

Ans.: Right now, I am really just getting to know the Committee - seeing what is going on and getting to know the members. Aside from the Equal Rights Amendment, I want to see what else we can do to help and encourage women. There are so few women equity partners in major law firms and I think that is a problem. I am really interested in the diversity issue because quite frankly, it can be improved within the ISBA, and I would like to see the ISBA tackle this issue. ■

Erin Wilson practices family law, and works at O'Connor Family Law, PC. This is her third year on WATL.

A tale of two communities: Bringing pro bono collaborative law to Illinois National Guard veterans

BY SANDRA CRAWFORD, J.D., CLII FELLOW

> It was the best of times, it was the worst of times, it was the age of wisdom, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair
>
> —Charles Dickens, A Tale of Two Cities (1859)

In time for Veterans Day 2015, the Collaborative Law Institute of Illinois and the Health & Disability Advocates of Warrior to Warrior have rolled out a pro bono program to assist veterans. The program will bring the Collaborative Practice model of divorce dispute resolution to Illinois Army National Guard Veterans and their families. The joint effort between these two distinct communities to create this pilot project was many months in the making and was spearheaded by the 2014-15 President of the Collaborative Law Institute of Illinois, Dr. Carroll Cradock. First a little about each community.

Illinois Warrior to Warrior (W2W) and the National Guard

Prior to the terrorist attacks on September 11, 2001, most National Guard personnel served "one weekend a month, two weeks a year." However, due to strains placed on the military after 9/11 and as a result of the wars in Iraq and Afghanistan, mobilization increased to 18 and then to 24 months. By the end of 2007 nearly 28% of the total U.S. forces in Iraq and Afghanistan consisted of mobilized personnel of the National Guard and other Reserve components. This from a fighting force which was originally conceived to be the "home guard" consisting of members who also had full-time civilian careers and community commitments. As one might imagine, as the strains of over a decade of war have taken their toll on the military at large, the strains on those who serve as part of the Guard have also grown exponentially.

The Illinois W2W helps bridge the gaps between military service for the Guard personnel and the return to civilian life. On its website (www.ilwarriortowarrior.org) are the following statics about the plight of the community it serves - 16% of the homeless population are veterans; 11% of Illinois veterans have disabilities stemming from military service; 300,000 returning veterans have Traumatic Brain Injuries and a full 50% have Post Traumatic Stress Syndrome of which over half of those go untreated. Illinois also has the 4th highest unemployment rate for veterans. It does not take much then to imagine the impact on families and children of returning Illinois National Guard personnel and the resulting increase in the breakdown of families and the resulting rate of divorce in that community. W2W recruits volunteer veterans from all branches and eras to serve as peer support for returning Illinois Army National Guard personnel and their families. These families are distinct from other military families as they do not typically live on military bases, where support services may more readily be accessible. A map of the Armory locations where services can be accessed through W2W is available on its site.

The Collaborative Law Institute of Illinois (CLII)

Since 1990 the Collaborative Law model of dispute resolution has been available to separating and divorcing families. It provides a non-court, private, multi-disciplinary approach to restructuring families impacted by divorce and separation. The Illinois Institute was founded in 2002 and its members, who come from three disciplines (law, mental health, and finance), are part of the International Academy of Collaborative Professionals (IACP - www.collaborativepractice.com). A worldwide organization with practitioners in 25 countries, IACP is the leader in education, standards and research for Collaborative professionals. In 2010 IACP issued a challenge to its members and statewide Practice Groups (of which CLII is one) to develop local pro bono programs. As a result of that challenge CLII formed its Community Outreach Committee which connected with and trained professionals in the local legal services community in the Collaborative Law model. Yearly, CLII provides scholarships to its Basic Collaborative Skills Training to those interested in bringing this model of dispute resolution to underserved and economically challenged communities. CLII Fellows (CLII lawyers, mental health professionals and financial professionals—members are called "Fellows") form volunteer regional interdisciplinary teams which will provide divorce-related services free of charge to families referred through W2W during the pilot phase of this new program for Illinois veterans.

The CLII/W2W collaborative venture is one program, among many others around the country, which honors the IACP 2010 Pro Bono Challenge and which holds out hope that, through the availability of Collaborative Law professional volunteers, the veterans and their families might find some peace. It is the hope that through this joint venture the worst of times for returning veteran families can be turned around—that their "season of Darkness" and "winter of despair," as so eloquently described by Dickens, might be ended through the practice wisdom around divorce, families, and restructuring after divorce which the volunteer Fellows of CLII are standing ready to share. For more about this pilot program please go to www.Collablawil.org. ■

Sandra practices and teaches Collaborative Law and Mediation. She currently sits on the ISBA's Alternative Dispute Resolution Section Council and on its Delivery of Legal Services Committee. She is a Past President and a Fellow of the Collaborative Law Institute of Illinois and a member of the International Academy of Collaborative Professionals, where she serves on the Trainer Development Committee. Sandra can be reached at www.lawcrawford.com.

SUFFRAGETTE: Women's fight for the right to vote

BY MEG O'SULLIVAN

The movie Suffragette, directed by Sarah Gavron and written by Abi Morgan, leaves one realizing that the fight for the right to vote for women is far from over. It is still a battle being fought around the world. In the final credits, it is startling to realize that almost 100 years later, there are countries such as Saudi Arabia where women are still fighting for the right to vote. This movie focuses on the British suffragette movement around 1912-1913 and the "deeds not words" of the Suffragettes who sought to gain the world's attention in their pursuit of a woman's right to vote.

The story focuses around the fictional character Maud Watts (played by actress Carey Mulligan), a laundry worker in the East End of London who is drawn into the fight by her co-worker Violet (played by Anne-Marie Duff). Maud and Violet work for a sadistic man named Taylor (played by Geoff Bell) who had sexually and psychologically abused Maud. Early on in the movie, Maud is asked to testify before a government committee and we learn about her difficult past which included her mother carrying her on her back while she worked at the laundry. We also learn that she went to work at the laundry at the age of seven and is subjected every day to the dangerous conditions present at the laundry all for a meager sum. After testifying, Maud realizes that the right to vote is her only way to escape this world. Maud's husband Sonny (played by Ben Whishaw) is unsympathetic to Maud and throws her out of the house. Maud's husband bars any contact between Maud and her six-year-old son George (played by Adam Michael Dodd). Shortly thereafter, Sonny gives up his parental rights. Losing the only joy in her life, Maud is devastated by the loss of her son with no legal recourse to fight this adoption.

After losing her son, Maud is soon embroiled in the fight for the right to vote at the prodding of suffragette pharmacist Edith Ellyn (played by Helena Bonham Carter) and upper-class activist Alice Haughton (played by Romola Garai). Maud is spurred to civil disobedience while attending secret speeches given by real historical figures like Emmeline Pankhurst (played by Meryl Streep in a cameo role). These women freedom fighters commit "deeds" of bombing mailboxes and using dynamite to blow up the vacant summer home of the Chancellor of the Exchequer, and future prime minister, Lloyd George. As a result of their "deeds", the women are subjected to government surveillance, imprisonment and torture, including forced feeding, while fighting for their rights.

The movie captures the economic and labor concerns of the working class women which motivated them to unite together for the right to vote. As a mother of five children, I can see how difficult it must have been for these women to put themselves and their families at risk for the greater good. These women sacrificed themselves for the future generations of women who came after them. The conditions that the working women in the East End of London faced every day at work and at home felt like an imprisonment. The movie clearly portrays how the working class women of East London saw the right to vote as crucial to creating a hope for a better life where their voice could be heard. It is always easier to accept life the way it is and the Suffragettes provided that equality does not come naturally and is worth the fight. The movie reminds us that equality is still being fought for everyday – equal rights for women, gays, bi-sexuals, transgender and racial equality.

I recently read a Washington Post Article dated November 1, 2015 by Dawn Teele, entitled "What the movie 'Suffragette' doesn't tell you about the how women won the right to vote". In this article, Ms. Teele points out that the Suffragettes were the militant wing who brought much needed media attention to the fight for the right to vote which helped bring together the middle and working class members of the early movement. Ms. Teele opined that it was not the civil disobedience of the Suffragettes, but rather the Suffra*gists* led by activist Catherine Marshall who knew that the success of the movement depended on support from elected leaders such as Labour Party leader Arthur Henderson. Ms. Toole concluded that it was Arthur Henderson's threat of defection from the Labour Party at the end of World War I which resulted in the inclusion of women's suffrage on the electoral reform bill.

While I appreciate Ms. Teele's article concerning the fact that the Suffragists' activism forced the hand of the British government to give women the right to vote, I believe the movie does a fine job portraying the working class women's struggle for the right to vote through civil disobedience. Their strong voices mattered along with thousands of others who have paved the way for women like myself to be afforded educational and career opportunities that these women could only dream about.

Movie is PG-13, Running Time: 1hour 46 minutes. Now Playing with Limited Release in Theaters. ■

Meg O'Sullivan is in private practice employed Of-Counsel with the law firm of Michael T. Huguelet P.C. in Orland Park, IL. Her primary areas of practice are real estate, probate administration including guardianship matters, estate planning and municipal prosecution. She resides in Chicago with her husband Dan Reidy and their 5 children. She is a member of the ISBA Women and the Law Committee.

Maternity leave in the media: How revised parental leave policies measure up

BY JESSICA C. MARSHALL

The issue of maternity leave is something that has affected women in the United States for decades. More recently, we, as a country, have begun to view parental leave as an issue that affects men in addition to women. Perhaps that is part of the reason why maternity leave and paternity leave have taken the spotlight in major headlines lately, as it has transgressed from a "women's issue" to a joint gender issue. Even in heterosexual family structures, we as a country are seeing more and more "stay-at-home" fathers than ever before. It is a welcome change, and it appears that many large corporations agree, causing them to re-vamp their paternity and maternity leave policies to afford their employees much more than what is required under current law in the United States.

This past summer, numerous large companies unveiled modified maternity and paternity leave policies, some of which have been so generous and liberal that they have attracted media attention. Netflix was one of the larger companies to jump on board the family leave bandwagon, offering employees "unlimited" maternity or paternity leave for the first year after adopting or birthing a child. The employees have the option of returning to work part-time, or not at all, or returning, and then taking additional time off, all during the first year of their child's life. The employee's full benefits and salaries will be paid during their leave time.

A lot of employers and others in the business world might wonder what the benefit is to Netflix for offering such a liberal family leave policy. It appears from multiple media outlets that Netflix has always had an "unlimited" time-off for sick days and paid vacations, so this was an expansion to that policy, which evidently must work for the company. They are used to such a policy being in place and must assume that their employees will not abuse it. It also benefits the company indirectly, and the reasons for same are two-fold. First and foremost, Netflix hires whom they believe to be the most talented individuals in their field, and they have an interest in retaining these talented individuals even after their addition of a new family member. The company operates under the belief that allowing a liberal paternity and maternity policy will help them to retain their already talented staff. Secondly, it goes without saying that employees will perform much better when they don't have to worry about what is happening at home. Being able to have peace of mind regarding returning home at their leisure to spend time with their child almost could be used to "ween" them back to work, at their own pace.

While Netflix's policy may sound like a dream for any new parent, there are certainly some concerns. Having a set number of days for a paternity or maternity leave period gives the employee definition. When a company says that an employee has twelve (12) weeks of paid leave, the employee knows exactly what is expected of them, and they are entitled to take what is granted to them, usually, guilt-free. When you have a policy that is open-ended, such as "unlimited" leave for a year, there is a fine line between what is allowed and what is expected. Will employees then take less time than they would be entitled to under a "fixed" amount of time policy, due to fear of repercussions? Will employees look at how long other employees are taking and feel a need to "measure up"? Some companies look at sick days and personal days taken when they are evaluating whether or not an employee will be afforded a certain promotion or pay increase. While it is not necessarily the legal or ethical thing to do, the prospect of an employer considering how much time was taken for maternity or paternity leave versus how much time off other employees have taken may hinder employees from taking the amount of time they may have enjoyed, for fear of direct or indirect repercussions. The "unlimited" parental leave policy sounds amazing on paper, but when it comes to reality, many employees may be afraid to exercise it to the full extent allowed.

In addition to Netflix, other companies have announced modified maternity and paternity policies with in the past few years. Specifically, Google has announced that they will offer eighteen (18) weeks of parental leave rather than the former twelve (12) weeks, and that mothers are leaving after maternity leave at half the rate they used to, upon belief, as a result of the new policy. The United States Navy has bumped up their maternity leave policy to eighteen (18) weeks as well. President Obama recently expanded parental leave for federal employees in January of 2015, granting them six (6) weeks of paid leave.

Hearing about all of these private companies' maternity and paternity leave policies may lead one to wonder what is actually required under the Family Medical Leave Act (or "FMLA"), 29 U.S.C. § 28, in terms of a "maternity" or "paternity" leave. The FMLA applies to the following: all public agencies, all public and private elementary and secondary schools, and companies with fifty (50) or more employees must provide an "eligible" employee with at least twelve (12) unpaid weeks of time off each year for the birth of a new child, placement of an adopted child, to care for an immediate family member (spouse, child or parent) with a serious health condition or to take medical leave when the employee is unable to work because of a serious health condition. None

of this time off is required to be paid leave. Additionally, employees are eligible for leave if:

(1) They have worked for the company for at least twelve (12) months
(2) Have worked at least 1,250 hours in the past twelve (12) months and
(3) Work at a location where the company employs 50 or more employees within 75 miles.

In the event that a pregnant woman has pregnancy complications prior to delivery that require time off, that time frame is counted against the twelve (12) weeks she is otherwise entitled under FMLA.

While some argue that maternity and/or paternity leave under the FMLA is "unfair" since it does not require paid time off, it is a double-edged sword, just as it is with the technology companies that have expanded their maternity and paternity leave policies in the recent past. First and foremost, we must ask, as employees, does the rolling out of new and improved family leave policies put men (and perhaps more often, women) at risk of not being hired when they are at a "child –bearing age"? This is a serious concern for people who plan to have families that are currently in the work force or that are interviewing for employment opportunities. We have to question what would happen if the government forced companies to pay for paternity and maternity leave time. Employers would probably be a lot more cautious about whom they hire, for fear that they would have to pay time off at some point for family leave, regardless of the legality of same. As a female in the workforce, this is a frightening thought. In the event that the government does choose to revise the current FMLA policy, it would need to go hand in hand with putting in place protections to ensure that we are not in fact opening the door to another form of age (or gender) discrimination in its wake.

There are definitely good arguments to be made on both sides of the equation regarding revision of the FMLA and paternity and maternity policies in our country. Many other countries have had revised maternity and paternity leave policies that have worked out very well for the families and employers involved. While it is discouraging that the United States is behind the curve on implementing such policies, the bright side of it is that we can look at how other countries have addressed this issue, what has worked for them, and what has not, and treat it as a learning experience. The bottom line in this situation is that children in our country deserve to have the best parents possible, which includes adequate family bonding time after placement or birth. This is an issue that definitely needs to be examined in the near future, but only after careful consideration of the implications of revising it, so as to protect from harm or other discrimination the same parties that the revision would intend to help. ■

Jessica C. Marshall is the Senior Associate Attorney at the law firm of Anderson & Boback in Chicago, Illinois. Jessica practices family law and is a member of the ISBA Women and the Law Committee.

Myths about the ERA debunked

BY CINDY G. BUYS

This October, a post on ISBA listserv sparked spirited debate. There were over 70 comments made in the span of a week—all about the Equal Rights Amendment (ERA), which states in relevant part: "Equality of rights shall not be denied or abridged by the United States or any state on account of sex." That conversation inspired the following collection of common misperceptions about the ERA and recent efforts to restart the ratification process.

1. Aren't the sexes equal?

Constitutionally speaking, no.

To quote Justice Antonin Scalia, "Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't. Nobody ever thought that's what it meant."[1] More troubling, 72% of Americans mistakenly believe there is a constitutional guarantee that women and men must be treated equally.[2] While some federal legislation has tackled discrimination, the U.S. Constitution lacks an affirmative declaration of equality between the sexes. And the legislation that does exist is not comprehensive and leaves significant gaps in coverage.[3] These gaps help explain why women still make only 77 cents for every dollar earned by a man for the same work.

If read plainly, the 14th amendment would seem to encompass gender discrimination as it mandates no "state shall deprive . . . any person within its jurisdiction equal protection of the laws," but that is not how it has been applied historically. Despite decades of challenges, the U.S. Supreme Court did not treat sex-based classifications as even quasi-suspect until the 1971 case *Reed v. Reed*, striking down estate administration laws that preferred men. Justice Ruth Bader Ginsberg spent most of her career trying to get the Supreme Court to see gender in the 14th Amendment, but this goal remains unfinished business.[4]

2. Didn't the ERA die?

The ERA was initially introduced into Congress in 1923. In 1972, it passed both houses of Congress and was sent to the state legislatures for ratification, but fell three states short of ratification prior to the Congressionally-imposed deadline.[5]

There are many unresolved constitutional questions regarding the process for adoption of the ERA. Currently, Congress has before it two options regarding the ERA. The first option proposes to re-start the amendment process anew.[6] The second and easier option is a resolution to remove the time limit on the original amendment.[7] This second option is commonly called the "three state strategy" because 35 states have ratified and 38 states are required. S.J. Res. 15, which would re-start the process, has 35 co-sponsors as of November 1, 2015, including Senators Durbin and Kirk. H.J.Res. 51 or the "three-state strategy" has 162 co-sponsors including nine from Illinois.

The 27th Amendment to the U.S. Constitution (congressional raises) was ratified in 1992, more than 200 years after it was first introduced. The so-called Madison Amendment's path to ratification is the inspiration for the three-state strategy. Proponents maintain that the time limit Congress added to the process is either unconstitutional because it is an additional burden that is not found in Article V of the U.S. Constitution, or the time limit can be amended again by Congress.[8]

At the state government level, Arizona, Florida, Missouri, Nevada, North Carolina and Virginia have pending bills for ratification. In 2014, the Illinois Senate passed a resolution of ratification; however, the Illinois House failed to take up the measure before the legislative session expired.[9] There are plans to reintroduce the proposal next legislative session.

3. Isn't the ERA just symbolic?

Symbols can be powerful as shorthand for complex ideas. The ERA is not just symbolic, but would be law, conveying enforceable rights. As Jessica Neuwirth concludes in her book, *Equal Means Equal*, "law is a formal expression of public policy that plays a critical role in advancing social norms . . . an Equal Rights Amendment will promote public understanding that all men and women are created free and equal in dignity and in rights, and should be treated as such."

Enactment of the ERA will make discrimination based on sex more difficult. Currently, the Supreme Court reviews classifications based on sex or gender under "intermediate scrutiny" rather than "strict scrutiny" as is used for classifications based on race, ethnicity or alienage. The intermediate standard was first introduced in 1976 with *Craig v. Boren*.[10] That case struck down a law that allowed women, but not men, to purchase 3.2% alcohol beer. The Supreme Court found this gender distinction to be unfair. In subsequent application, intermediate scrutiny has proven to be an elusive test, heavily influenced by a court's sense of proper gender roles.[11]

It is possible that if the ERA were passed, the Supreme Court would apply strict scrutiny to sex or gender-based classifications. Strict scrutiny is a more predictable standard than intermediate scrutiny.[12] The government must show a compelling interest and the law must be narrowly tailored to achieve that compelling government interest, a more difficult burden to meet.

4. Isn't this just more partisan politics?

While the ERA seems to be more

popular with Democratic legislators at present, there was a period when the ERA was embraced by leaders in both parties. In fact, the first presidents to support the ERA were republicans—Eisenhower, Nixon and Ford. Locally, ERA supporters include State Senate Minority Leader Christine Radogno, Senator Mark Kirk, and the late Judy Barr Topinka. In the 70s, social conservatives opposed the ERA as a threat to the traditional role of women. But many of the concerns they raised, such as integration of the armed forces and same-sex marriage, have come to pass without the ERA.

5. Rauner will just veto to it.

A joint resolution does not require the Governor's approval. However, a supermajority of 3/5 of both houses is required by Article 14, Section 4 of the Illinois Constitution.

6. The ERA will burden businesses.

Illinois has already enshrined the ERA in its state constitution. Article 1, Section 18 of the Illinois Constitution reads "equal protection of the law shall not be denied or abridged on account of sex by the state or local government and school districts." Therefore, the ERA already is the law in Illinois. The only issue is whether to make it the law for our country. According to the Illinois Legislative Research Unit, Section 18 resulted in changes to marital law, criminal law, and juvenile law after the Illinois Constitution of 1970 was adopted.[13]

The active clause of the ERA is only 24 words. There is no new program proposed. There are no implementing regulations required. There is no appropriation necessary. There is no new agency created. Instead, existing laws and future laws must be gender neutral or be justified under a higher standard of review when sexes are differentiated. Again, the ERA is already state law.

7. How is the ERA different from the Civil Rights Act and similar legislation?

The Civil Rights Act of 1964 was landmark legislation prohibiting discrimination on the basis of race, color, religion, sex, and national origin in programs and activities receiving federal financial assistance. The drafters sought to eradicate Jim Crow laws. Originally, gender was added as an attempt to torpedo the bill. With that pedigree, it took years for the Civil Rights Act to be applied to women. In addition, several of the Titles had limited enforcement mechanisms. For example, the EEOC was established about ten years later to address employment discrimination under Title VII. Moreover, the U.S. Supreme Court has interpreted Title VII of the Civil Rights Act in a way that has left women without protection from sex discrimination in many instances, most prominently in its holding that the Civil Rights Act often does not require employers to accommodate pregnancy.

Putting aside the specifics of the Civil Rights Act, it has the inherent weakness of any statute—it can be limited, amended, not renewed, etc. One has only to consider what is happening to the Voting Rights Act to see that progress made by statute can be temporary.

8. Why should women get special treatment?

The Equal Rights Amendment would cement gender equality into our legal foundation. This is not Women's Rights, but legal gender equality. Gender discrimination hurts men too. For example, under the Immigration and Nationality Act, it is easier for a mother than a father to confer U.S. citizenship on a child born out of wedlock. The Supreme Court upheld this discrimination against men in *Nguyen v. INS* (2001).

Conclusion

The ERA requires that our sons and daughter be equal under the law. As for what specifically the ERA might accomplish, it is not a panacea, but a tool. The amendment would reshape the framework for gender equality and serve as a seawall against the ebb and flow of politics.

The ERA makes manifest the American promise that we are all equal under the law.

Cindy G. Buys is a Professor of Law at Southern Illinois University School of Law. She is a member of the ISBA Women and the Law Committee and of the International and Immigration Law Section Council. Many thanks to Amy Jo Conroy for her invaluable assistance with this article.

1. *The Originalist*, California Lawyer, January 2011. See also, Jennifer Senior, *In conversation: Antonin Scalia*, N.Y. Mag., October 7, 2013, available at http://nymag.com/news/features/antonin-scalia-2013-10/ (accessed 11/6/15). Supreme Court observers speculate that Justices Alito, Thomas and Roberts share Scalia's analysis. See, Ian Millhiser, *Scalia Says Constitution does not prevent gender discrimination*, Think Progress, September 20, 2010, available at http://thinkprogress.org/politics/2010/119769/scalia-women/ (accessed 11/6/15).

2. Jessica Neuwirth, Equal Means Equal: Why the Time for an Equal Rights Amendment is Now, The New Press (2015).

3. *Id.*

4. Irin Carmon and Shana Knzhinik, Notorious RBG, Dey St. (2015), 50.

5. Five states also subsequently voted to rescind their resolutions of ratification.

6. S.J. Res. 16/H.J. Res. 52.

7. S.J. Res. 15/H.J. Res. 51.

8. Allison L. Held, Sheryl L. Herndon, and Danielle M. Stager, *The Equal Rights Amendment: Why the Era Remains Legally Viable and Properly Before the States*, 3 Wm. & Mary J. Women & L. 113 (1997), *available at* http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1271&context=wmjowl (accessed 5/10/15); and Thomas H. Neale, *The Proposed Equal Rights Amendment: Contemporary Ratification Issues*, Congressional Research Service (May 9, 2013), available at https://www.fas.org/sgp/crs/misc/R42979.pdf (accessed 5/10/15).

9. HJRCA7, 98th Gen. Assem. (Illinois 2015); HJRCA1, 93th Gen. Assem. (Illinois 2003).

10. 429 U.S. 190 (1976).

11. John E. Nowak and Ronald D. Rotunda Constitutional Law (8th Ed), West (2010), 999.

12. Lisa Baldez, Lee Epstein and Andrew D. Martin, *Does the U.S. Constitution Need an Equal Rights Amendment?* J. Legal Studies, 35:1 (2006) 243-283, *available at* http://sites.dartmouth.edu/lisabaldez/files/2012/11/ERA.pdf (accessed 5/11/15).

13. Illinois Legislative Research Unit, 1970 Illinois Constitution Annotated for Legislators (4th Ed.) 2015, 26-7, available at *http://www.ilga.gov/commission/lru/ILConstitution.pdf* (last accessed 11/6/2015).

Getting to know Dean Jennifer Rosato Perea, Dean of DePaul University College of Law

INTERVIEW BY KELLY THAMES

Kelly: You were appointed Dean of DePaul University College of Law in July 2015. Congratulations! Thank you for taking the time to do this interview with me. The Women & the Law Committee of the ISBA is always very interested to hear from successful female leaders in our legal community. Tell us about your legal career.

JRP: My career has had a lot of twists and turns, always leading to where I was meant to be along the way. Before my last year of college, I wanted to be a social worker or teacher. I came to law school to be an advocate for children's rights. Then during law school I knew I wanted to be a law professor someday, since it was a great combination of my love for the law and for teaching. I became a law professor, with a focus on family and children and the law, and was drawn to administration as a more impactful way to help students. I realized that I could make more of a difference in the law school and in legal education by being a dean, and that my personality and skill set was well-suited to be a dean. I was acting dean in the year that Drexel University's law school was launched, then had six wonderful years at Northern Illinois University College of Law before coming to DePaul University College of Law. I am thrilled to be DePaul's Dean, which is a perfect fit between DePaul's identity and strengths, and my experience and passion.

Kelly: What has been your personal key to success?

JRP: It's hard to think of just one key to success; there are different keys to different doors at different times. Overall, my "master keys" have been simple and constant: to work harder than most, to always do my best work, to remain positive and persevere no matter what resistance I might encounter, and to build strong relationships over time, always.

Kelly: What were the biggest inspirations for your career?

JRP: The biggest inspirations for my career have been the students whom I have had over the years (whether teaching preschoolers while I was in high school and college, or the last 25 years in law school). My students inspire me every day: with their hopefulness and promise, with their aspirations, and with their earnestness. As a first-generation college and law student, I appreciate the importance of education and can identify with my students' struggles. As an educator, I think about the best ways to engage and inspire my students, and give them the knowledge and skills that they need to succeed. As an administrator, I think about how we can create a learning environment that is student-centered and encourages the students' professional development and success in their careers.

Kelly: What has been your greatest success to date?

JRP: My greatest success is when I can help bring out the best in everyone who works with me – their best attitudes and their best work. Those individual successes translate to institutional positive change: most recently, to help launch a new law school at Drexel University, and to help NIU Law be recognized as one of the most underrated law schools in the country and a best value law school. My greatest success personally, so far, has been to be appointed as DePaul's Dean.

Kelly: In 2012, you published an article, "Reflections of a Reluctant Pioneer", an article in which you discuss being one of four Latina deans in the United States. Has that number increased since you wrote that article?

JRP: Unfortunately that number has decreased since then. I think I am now one of only two Latina deans in the United States, the same number as in 2009 when I became a permanent dean. When I was acting dean in 2006, I believe I was the first Latina dean in the country – still hard to believe!

Kelly: As one of the Latina pioneers, is there a successful woman that inspired you?

JRP: There really has not been one successful woman who has inspired me, but a compilation of many. I have been inspired by the accomplishments of women who have come before me, both nationally (such as Justice Sotomayor and Justice O'Connor), as well as in the organizations that I have been part of. I have been inspired by women along the way who persevere in the face of adversity or bias; by women who are comfortable with the choices they have made as a leader, mother, and partner (whatever those choices might be); by women (and men) who are clear in their personal and professional visions and then find the way to make those visions reality.

Kelly: In that article, you discussed a challenge minority leaders often face, which you say is the presumption of incompetence. Specifically, you discussed the way that this presumption presents itself in

your life through feminization and sexualization. How has this presumption manifested itself and how do you overcome this presumption?

JRP: This presumption manifests itself in subtle ways, often hard to describe but still ever present. It might be a comment directed to how I am dressed, about my age, or a question about my husband or daughter – which would not be relevant in a professional context. I am often given advice or guidance or asked questions that seem patronizing and would not be directed to a male with the same level of experience that I have. I overcome this presumption by just doing the best job I can every day and proving myself as an expert in what I do-- I embrace the opportunity and savor the moments when I feel like I have gained someone's confidence.

Kelly: Prior to joining DePaul, you served as Dean at Northern Illinois University College of Law for six years. You served as Acting Dean for Drexel University Thomas R. Kline School of Law during its inaugural year and then as Senior Associate Dean for Student Affairs. You also served as Associate Dean for Student Affairs at Brooklyn Law School. Did your management style come to you naturally or have you developed your own management style?

JRP: I think a little of both. Earlier on I am sure I was less authentic and reflective about my management style – and now I have tried to continue to develop my style based on what I do naturally, as well as building on strengths and improving in areas I wish to improve. When I started at DePaul a few months ago, I shared with them an "Owner's Manual" to Dean Jenn, a PowerPoint that includes aspects of my management style which my staff regularly refer to even now. One of my colleagues in the past called me (as a compliment) an "undeanly" dean – in reflection I think what she meant by that is that I have an informal and warm demeanor, and like to keep the work environment positive; at the same time, I am very structured and organized in my work, and have high expectations for everyone (including me) with a focus on meeting goals that we set in advance.

Kelly: What do you think needs to be done to encourage women and minority law professors to take on more positions of leadership?

JRP: I think there needs to be much more proactive succession planning for leadership, which means not only identifying and encouraging new leaders, but also giving them the experiences and feedback they need to grow into leadership positions with strong skills and confidence. It would be also terrific to have more successful women and minority leaders out there so that those coming through the leadership ranks can identify with someone who is more like them and they feel the leadership aspiration is achievable – without losing their identities or being absent from their loved ones. For me, one of the greatest challenges has been the isolation of being the only one like me around.

Kelly: What is your vision for Latinas in the legal world?

JRP: My vision is that it should not be "eventful" for Latina leaders to be well-represented in every aspect of the legal world: as law partners, as directors of influential profit and nonprofit corporations, as corporate counsel of Fortune 500 companies and major universities, as judges and justices at the highest levels in state and federal courts, and of course in legal education as deans and higher education as provosts and presidents. The pipeline is not very strong for that vision to become reality anytime soon – but hopefully in my lifetime.

Kelly: What is your vision for DePaul University College of Law?

JRP: My vision for DePaul College of Law is for it to achieve its great potential by capitalizing on its distinctions, remaining dynamic and forward-looking, and strengthening its dedication to the University and Chicago communities. DePaul has been known as Chicago's law school for a long time, and I want to continue that hundred-year tradition and take it up a notch –Chicago's law school with a national luster. ■

Kelly Thames is a family law practitioner at Chicago Family Law Group, LLC in Chicago, IL. She was appointed to the ISBA Standing Committee on Women & the Law in 2014. Kelly may be reached at kthames@familylawchicago.com .

Upcoming CLE programs

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December

Tuesday, 12/01/15- Teleseminar—Ethics in Claims and Settlements.

Wednesday, 12/02/15- Teleseminar—Drafting Trust Distribution Clauses: Health, Education & Maintenance.

Thursday, 12/03/15- Teleseminar—Tax Traps in Business Formations.

Friday, 12/04/15- CRO, SPRINGFIELD and LIVE WEBCAST (am, pm webcast sessions)—Get Ready—It's Coming: Major Changes to Family Law Effective January 1, 2016. Presented by the ISBA Family Law Section Council. 8:15-5:15 pm (am webcast 8:15-1:00; pm webcast 1:45-5:15)

Tuesday, 12/08/15- Teleseminar—Planning with Single Member LLCs, Part 1.

Wednesday, 12/09/15- Teleseminar—Planning with Single Member LLCs, Part 2.

Thursday, 12/10/15- Teleseminar—Estate & Tax Planning for Estates under the $10 Million Exemption Amount.

Friday, 12/11/15- Midyear Meeting; Sheraton Chicago—An American Prosecutor's Story: The Holocaust and the Dachau War Crimes Trial. Master Series presented by the ISBA. 1:30-3:45 pm.

Tuesday, 12/15/15- Teleseminar—Drafting and Reviewing Commercial Leases, Part 1.

Wednesday, 12/16/15- Teleseminar—Drafting and Reviewing Commercial Leases, Part 2.

Thursday, 12/17/15- Teleseminar—Ethics & Conflicts with Clients, Part 1.

Friday, 12/18/15- Teleseminar—Ethics & Conflicts with Clients, Part 2.

Monday, 12/21/15- Teleseminar—Drafting Stock Purchase Agreements.

January

Wednesday, 01/27/16- Live Webcast—Legislative Changes Affecting Juvenile Court Practitioners 2016. Presented by the Child Law Section Council. 12:00-1:00 pm.

February

Friday, 2/05/16—CRO—Federal Tax Conference 2016. Presented by the Federal Tax Section Council. ALL DAY.

Friday, 2/05/16—Bloomington Normal Marriott Conference Center—Hot Topics in Agricultural Law 2016. Presented by the Agricultural Law Section Council. ALL DAY.

Monday, 2/15/16—CRO and Fairview Heights—Workers' Compensation 2016 Update. Presented by the Workers' Compensation Section. 9:00 am – 4:00 pm.

Friday, 2/19/16—CRO and Live Webcast—Master Series—will not be archived. The Complete UCC. Presented by the ISBA. ALL DAY.

Monday, 2/22/16 to Friday, 2/26/2016—CRO—Master Series—will not be archived. 40 Hour Mediation/Arbitration Master Series. 8:30-5:45 Daily.

March

Friday, 3/11/16—Bloomington, Holiday Inn and Suites—Solo and Small Firm Practice Institute Series. Presented by the ISBA. ALL DAY.

Friday, 3/18/16—CRO and LIVE WEBCAST (am and pm options)—Trial Practice Series: Trial of a Sexual Orientation and Harassment Case. Presented by the Labor and Employment Section Council. ALL DAY.

June

Thursday and Friday, 6/16/16 and 6/17/16—ANNUAL MEETING—Solo and Small Firm Practice Institute. A Closer Look—TECHNOLOGY FOCUS. Presented by the ISBA. Half Day Thursday. Full Day Friday.

Friday, 6/17/16—ANNUAL MEETING—Solo and Small Firm Practice Institute. A Closer Look—NEW ATTORNEY FOCUS. Presented by the ISBA. Full Day. ■