

# From the Editor's Desk

by Susan Fox



## Parting Shots from the Outgoing Editor

Throughout the year I have been gathering snippets of information that I thought might someday be worth including in the *FAWL Journal*. Some are humorous, some are quite serious. In my closing column as editor, I would like to share these with you.

### Don't Call Me "Honey"

Women lawyers who are offended by being called "honey," "dear," "sweetheart," "babe," or "little lady" can do more than just get mad. Now, they can get sanctions.

In *Mullaney v. Aude*, 730 A.2d 759 (M.D. App. June 3, 1999), a male attorney (Harris) made a crude remark about his female opposing counsel (Green) during a break in a deposition. When the deposition resumed, the following dialogue occurred:

Green: You got a problem with me?

Harris: No, I don't have any problem with you, babe.

Green: Babe? You called me babe? What generation are you from?

Harris: At least I didn't call you a bimbo.

The evidence showed that Harris

used the term "babe" to refer to Green throughout the litigation, even when calling Green's office, asking "Is the babe in?"

Green sought and obtained sanctions totaling \$1,500, which was upheld on appeal. Harris argued that the term "babe" was a term of endearment "because it is a nickname for 'Babe' Ruth, a towering athletic figure and an American folk hero, and 'Babe' Didrickson, an outstanding and multi-talented female athletic..."

Referring to the dictionary definition of "babe," the court found that "all of the dictionary definitions of the word 'babe' are gender biased and derogatory." Citing *Maryland 1989 Gender Bias Commission Report*, the court found that female attorneys are demeaned when they are addressed informally by names like "hon," "dear," "sweetheart," "honey," or "little lady." The court further observed that the diminutive and derogatory names are used to put an adversary off balance, make her defensive, or cause her to feel inadequate, angry, or distracted. Although throwing one's adversary off balance may be a legitimate discovery tactic, the court found it is not legitimate to do so by the use of "gender-based

insults." (Source: *The Women's Advocate Newsletter*, ABA Section of Litigation, Winter 2000).

### The Dress Code Chronicles

A judge in King County, Washington criticized two women lawyers—a public defender and a prosecutor—for wearing pants suits and instructed them not to return in the future unless properly attired in skirts or dresses. The judge rescinded the order several days later after the order caused a commotion, but defended the right to require particular attire for the courtroom to keep the standards from slipping.

A similar incident in Maine led Susan V. Wallace, a sole practitioner from Brunswick, Maine, to make the following comments about dress codes for women lawyers:

At the 'New Lawyer' Seminar the Maine Bar gives, our two (and only) female state superior court judges offered these words of advice when asked by a young female lawyer, what advice they would give for female members of the Bar. I quote: 'Well, if you want to win, you'd better wear a dress.' I was, of course, wearing pants that day, and in the front row, and got a very hard stare indeed. Truthfully, I almost burst out laughing at how ridiculous it was, but they were dead serious. You could have heard a pin drop in the room—which by the way was populated by many bright, young, and rapt female faces, whom I then envisioned stampeding to the local mall to grab those 1980's blue suits off the rack....

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I am 41 years old, and sick of trudging around in nylons, carrying shoes in a bag to go to court to stand behind a huge table in crawling and torn nylons and uncomfortable heels. How is this different from the suffragette's being jailed and force-fed for wearing pantaloons?

SUSAN V. WALLACE, LAWYER IN MAINE



to court to stand behind a huge table (everything, of course, scaled to male size—I've never heard anyone raise that issue on behalf of us petite female attorneys) in crawling and torn nylons and uncomfortable heels. How is this different from the suffragette's being jailed and force-fed for wearing pantaloons? I suggest that a nationwide survey be conducted of female attorneys, especially trial lawyers, to ask their opinion on this. We have the right to be heard on what we wear, especially now that there are very professional pants suit options with sensible shoes available for professional women." (Source: *Prospectives For and About Women Lawyers*, Winter 2000).

Similar incidents have occurred in Florida, with women lawyers having been thrown out of court for wearing skirts too short, split skirts (skorts), and pants suits. Yet, female judges and even justices wear slacks under their robes (if they wish) while performing official duties. When will women lawyers have the same comfortable clothing options?

### Judicial Nominations of Women Held Back

A study by Citizen's For Independent Court reveals that the current Congress has delayed confirmation of women and minorities for federal judicial positions far longer than white male nominees. On the average, the Senate acted on male nominees in 184 days, but took 249 days to act on female nominees. Eighty six percent of white male nominees were confirmed while sixty-five percent of women and minority nominees were confirmed. The Presidents of the ABA, the National Bar Association, and the National Association of Women Judges have urged the Senate to treat women and minority applicants fairly. (Source: *IRR News Report*, ABA Section of Individual Rights and Responsibilities, Winter 2000).

### Is the E.R.A. Really Dead?

The Equal Rights Amendment died in 1982 after a ratification battle that lasted ten years. ERA opponents won the battle by parading horrible consequences such as co-ed bathrooms, women in the military, same-sex marriage, and repeal of

spousal support laws.

Now, unisex bathrooms are common in college dorms, women are a major factor in the armed forces, and alimony laws are gender neutral. Same sex marriage is close to becoming legal in New Hampshire and Hawaii.

In 1998 and 1999, at least five states, including Florida, considered equal rights initiatives. Florida passed Amendment 9, and Iowa added a similar gender protection clause to its State Constitution. Several other states have now called for further debate on the federal ERA: Missouri, Virginia, and Illinois. Legislation receiving the ERA has been introduced in the US Congress by Representative Carolyn Maloney, D-N.Y., who states, "Passage of the ERA is the only way to guarantee women won't be subject to inferior treatment. To say you don't need it is like saying you don't need the First Amendment." (Source: *ABA Journal*, August 1999).

In Florida, as in other states passing such amendments, the primary initial reaction to the amendment is by males seeking rescind other legal protections for females. In Florida, Amendment 9 is a key basis for the Governor's "One Florida" initiative.

### Soon, A Majority?

"The American Bar Association Section of Legal Education and Admissions to the Bar reports that if current trends hold true, for the first time in history, this fall, women will outnumber men among incoming law school students. According to James P. White, ABA Consultant on Legal Education, "Women represented 48.7 percent of the first year class in 1999-2000, and the trends in recent years have shown men's enrollment dropping marginally while women's enrollment has increased slightly each year." Of the 43,152 first year law students in 1999, there were 21,008 women, up from 20,319 in 1998." (Source: *NCWBA Newsletter*, April 2000).

### Who Wants to Be Martha Stewart?

At every turn, where some of us (like me) find joy, fulfillment, and real solvency from our efforts in the workplace, we're told our real energies should be elsewhere, that we should pay more attention to the mooshy stuff. One woman writes "Martha

Stewart and her like are always there to help, of course, demanding that we devote ourselves to crocheting our own placemats rather than running our businesses." (Source: Susanna Rodell, "Ode to Ambition" on the Internet).

### Are You a Queen Bee or a Worker Bee?

"If you're trying to balance family life, you'll never get the flexibility working for someone else that you will get at your own firm," said Lori Cianciulli, of the Beverly, Mass., firm Cianciulli & Ouellette and president of the Massachusetts Association of Women Lawyers. "Firms don't recognize people who are good worker bees, keeping the clients happy and staying with the firm, as much as they do those who bring in the clients. It all comes down to who's bringing in the money—this is a production field." (Source: *Denise Magnell*, *American Lawyer Media*, April 6, 2000).

A recent Colorado Women's Bar study found that 31% of female lawyers were single—almost twice the proportion of single male lawyers. A recent London study found that roughly 90% of male lawyers were parents, vs. roughly 40% of the women.

The difference in their personal choices has helped create a lamentable "generation gap" between older and younger female lawyers, says Susanne Nossel, co-author with Elizabeth Westfall of "Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms."

"The remarks of junior associates often reflected a keen awareness that the women who have achieved the greatest success in their firms did so at considerable personal cost," the authors observed in the book's introduction. "In some instances, women associates described female partners in terms that seemed harsh and cruel, such as 'barracudas' or 'men in women's clothing.'" (Source: *Article by Michael D. Goldhaber*, *The National Law Journal*, May 19, 1999).

I hope they weren't talking about me!

I enjoyed these bits and pieces of news about our unique way of life. I hope you did, too. I have also enjoyed being your editor and would like to thank all of you for your support in making this an outstanding publication. ■