



# Embracing the Squirm Factor

*Picture two 22-year-old college graduates from the same school with the same degree, both getting their first job offers. One takes the offered starting salary of \$45,000, the other negotiates a slightly higher starting salary of \$50,000.*

Now, even if these two workers receive the exact same three percent annual raises, by the time they're both 60, the gap between their salaries will have widened to more than \$15,374 per year. The worker who asked for more will have earned an extra \$361,000 over the last 38 years, all because of that first negotiation.

Now, guess which of these workers is most likely to be a woman. Statistically, it's the one who *didn't* ask for more money.

Lower pay is just one of many results of women being reluctant to step outside their comfort zone. It can also mean fewer promotions, staying in jobs we hate, failing to start the businesses we dream about, not asking for the work schedule we want, and many, many other pitfalls.

Women who want to make things happen need to do one thing: Get comfortable being uncomfortable. If you're not at least a little bit uncomfortable, you're not taking any risks. And if you're not taking risks, you're not growing.

In this issue of *Straightline*, we'll discuss how a group of Chicago grad students helped us understand the biological roots of risk aversion and what women at different stages of their life can—and should—do to overcome their fear of being uncomfortable.

But first, *are* women less daring than men? Most studies on the subject have found that women, in general, are more uncomfortable with risk than men are. Perhaps not surprisingly then, the hormone linked to such adventurousness is testosterone, according to a 2009 study of graduate students at the University of Chicago.

In the Chicago study, both male and female students played a computer game that gave them the option of either accepting a guaranteed monetary award or choosing a lottery with a higher potential payout. Higher levels of testosterone in the

participants were associated with a greater appetite for risk in women (who, of course, typically have lower levels of testosterone than men). In fact, when male and female subjects had similar levels of testosterone, the gender difference in risk aversion disappeared.

The effect carried over into the students' career choices after graduation: Students who were high in testosterone chose more "thrill-seeking" careers in finance, such as investment banking or trading (36 percent of the female students vs. 57 percent of the male students).

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## BOLD MOVES AT ANY AGE

Whether you've just graduated from college or you're within earshot of retirement, it's not too late to inject some discomfort into your life (in keeping with our theme, however, feel free to write your own script):

**20s:** You're just getting started, and chances are you don't have children yet, so now's the time to set the stage for the rest of your career by getting in the habit of asking for what you want and living courageously.

**30s & 40s:** Depending on your family situation, you may be looking for more flexibility in your schedule or you may be full-bore into your career. Either way, this isn't the time to sell yourself short. By now, you've developed some expertise in your chosen field, and hopefully you've developed the confidence you need to pursue your passions and ask for what you want.

**50s & 60s:** Think you're on the downward slope? Think again. Many women, liberated from the job of caregiving, find that they're pursuing their careers with renewed vigor once they hit 50. It's not unheard of for us to work into our 70s and even 80s, so you probably have another decade or two to live uncomfortably. Make it count.

## Welcome to Straightline

*Straightline* is a publication from Andrews Kurth for women, by women. We will give you the bottom line on women's issues, be on the front line for timely substantive legal topics, and serve as the hotline for firm news. We'll introduce you to fresh faces at Andrews Kurth, provide a pipeline of topical legal updates, and promise to infuse some fun features, facts and resources along the way. So join us for what promises to be Straight Talk on women's issues. No lawyer-speak. No double talk. Just the most direct line between you and our women lawyers.

## DOs AND DON'Ts

Of course, too much risk-taking can be foolish. But a complete unwillingness to step outside your comfort zone can lead to stagnation and obsolescence. So how can women turn their natural risk aversion—which did such a good job of nurturing and protecting us when our species was in its infancy—into a willingness to make bold moves that will help us grow, advance and meet our potential?

And, just as importantly, how can we combat gender stereotypes that cause a woman to be judged harshly (and often penalized) when she takes tough negotiating stances or advocates for what she wants? How can women get past the fear that, by asking for what they want, they'll be deemed "unlikable"?

The key, experts say, is for women to chart a path that feels genuine to them, yet still produces results. Because risk-taking can produce such anxiety in women, if they try to act in a way that doesn't feel authentic, their discomfort level will be so high that they're likely to abandon the effort altogether.

In negotiations, it is best to take a cooperative approach, one that seeks to get both sides what they want, rather than

*"Squirm Factor" continued on page 2*



*Email your holiday tradition in 500 words or less to straightline@andrewskurth.com by Oct. 1st. Read details on the back of this issue's insert.*

## Sidelines

**Gail Merel** has been elected to the American College of Commercial Finance Lawyers—the first partner at the firm to receive this honor. ACCFL is limited to preeminent individuals in the field of commercial finance law who have contributed significantly to the education of others in the field. Gail also co-chaired the national Working Group on Legal Opinions (WGLO) Spring Seminar in New York City on May 10–11. She participated in meetings of the WGLO Steering Committee and Law Firm Advisory Board, and also served as Reporter for a breakout session on “ABA Guidelines and Principles.” Gail continues to serve as Editor-in-Chief of the Handbooks for these semi-annual legal opinion seminars.

Andrews Kurth women lawyers recognized in the 2010 *Chambers USA Guide* include:

- **Kay Lynn Brumbaugh**, Antitrust (Texas)
- **Robin Russell**, Bankruptcy/Restructuring (Texas)
- **Shemin Proctor**, Energy: Oil & Gas (Regulatory & Litigation) (Nationwide)
- **Lisa M. Shelton**, Environmental (Texas)

**Ebon Swofford** and **Christine York** presented a two-hour course on medical-legal and medical-ethical issues to fourth-year medical students at Baylor College of Medicine regarding informed consent laws, patient confidentiality, HIPAA-related issues, reporting of suspected child abuse, and voluntary disclosure of medical errors, and involving advance directives, living wills and surrogate decision-makers.

**Bonnie McMurtry** spoke at the 2010 Wind, Solar and Renewables Conference, sponsored by the University of Texas on February 3. She was on a panel entitled “Legal Issues Related to Wind, Solar and Geothermal Development.”

**Dr. Fei-Fei Chao** (1955–2009). Andrews Kurth is pleased to announce the founding of the Andrews Kurth Intellectual Property scholarships in memory of our partner Fei-Fei Chao. Starting in the 2010–2011 academic year, three scholarship recipients will receive four years of study with the Graduate Institute of Intellectual Property at National Chengchi University (NCCU) in Taipei City, Taiwan. The recipients will be determined by the Director of the Graduate Institute of Intellectual Property, which creates and fosters human resources on the research, planning, management, operation and utilization of intellectual property at the senior level.

Andrews Kurth was a sponsor of the *Energy Law Journal* and Energy Bar Association’s reception honoring the Federal Energy Regulatory Commission’s Administrative Law Judges. **Jennifer Spina** and **Lisa Purdy** were in attendance at the event held on April 28.

The Houston office hosted its first community service event as part of Andrews Kurth’s inaugural AK Advantage Training Series. The luncheon consisted of panel discussions regarding best practices for community involvement. Andrews Kurth lawyers **Diana Hudson**, **Callie Parker**, Jonathan Day, David Denechaud and Kevin Hardman shared their own success stories about giving back to the community. The attorney panel was followed by a panel consisting of community leaders Deborah Cannon (Houston Zoo, President and CEO), Eddy De Los Santos (Child Advocates, Board Member), Bill Eckert (Houston Volunteer Lawyers Program, Legal Clinics Coordinator), Amy Ragan (Houston Food Bank, Chief Development Officer) and Pattie Dale Tye (Humana, Inc., President and Dallas/Fort Worth Operations). Each community representative discussed the value of volunteering.

The DC office participated in the Greater DC Cares’ Servathon on Saturday, April 24. Servathon is the largest community service event of the Greater DC Cares organization, which has been the leading and largest coordinator of volunteerism in the region for 20 years. This year’s Servathon brought together over 4,000 volunteers who worked on 100 different projects and collected \$160,000 in donations that will provide critical services to the region.

**Tamaron Houston** moderated the Dallas Association of Young Lawyers (DAYL) event “Diversity of Thought: Moving Beyond Issues of Black and White and into

*continued on page 3*

## Squirm Factor

*Continued from page 1*



an “I win/you lose” approach. Even if the other side becomes combative or bullying, by maintaining a cooperative stance and learning what the other side’s concerns and desires are, it can both disarm the other negotiator and achieve a result that gives both sides a win.

One caveat: Don’t start negotiations with an eye toward what the other side wants. Know what your best-case scenario is and make that your target. Trust that the other side is capable of advocating for themselves. By adjusting your target to what you think the other side will consider fair, you’ve downgraded your expectations before the negotiations have even begun.

But what if you have something bigger in mind than a one-time negotiation? If you’re looking to make a wholesale career change, start a new business, or take some other brave step into the great unknown, keep these tips in mind:

- **Trust your gut:** Like any smart woman, you’ve done your homework and you know all the relevant data. But whether to take a leap—or not—is almost always a visceral decision. If your reservations are more about self-doubt and “what-if” scenarios taken from disaster movies, push them aside and jump.
- **Let’s say you fail:** So what? So have lots of people. The difference between those who ultimately succeed and those who don’t is that the successful ones learn from their losses, adapt their strategies, and improve their chances of winning next time.
- **Don’t be an army of one:** Get advice from the countless women (and men) who have gone before you. Join a women’s business support network in your city. Enlist the aid of your friends, family and professional connections. You’re probably not the only person who wants to see you succeed.
- **Just do it:** Don’t spend your life navel-gazing. If you have a solid plan, move forward. If you’ve determined it won’t work, abort the mission. But don’t stay (or keep others around you) in limbo while you wait for the perfect time to jump.

If we’re lucky, we have about eight decades on this planet. Would you rather follow the path of least resistance and do what’s expected of you? Or do you prefer the path that, despite its hairpin curves and perilous drop-offs, offers a far bigger reward?

Choosing the latter—deliberately embracing the moves that make you squirm—can mean the difference between sleepwalking through life and living your dreams. ■

## Spotlight: National Association of Women Lawyers (NAWL)

*Promoting women lawyers and women’s legal rights*

You may be familiar with the National Association of Women Lawyers (NAWL). It is the leading national voluntary legal professional organization devoted to promoting the interests and progress of women lawyers and women’s legal rights. What you may not know is that it was founded more than 110 years ago, long before most local and national bar associations admitted women.

Today NAWL serves as an educational forum and speaks out on issues that affect women and women lawyers. NAWL participates in individual court cases by writing or joining amicus curiae briefs addressing issues of interest to women and their families, such as the glass ceiling, pay equity, and balancing work and family. And it provides networking and leadership opportunities for women lawyers at all levels.

Through its many programs and networks, NAWL provides the tools for women in the profession to advance,

prosper and enrich the profession. With offerings for every stage of a lawyer’s career, programs include “From Backpack to Brief,” “Taking Charge of Your Career,” “Ready to on Ramp,” the annual General Counsel Institute, and others focusing on negotiating and networking skills.

NAWL also publishes the *Women Lawyers Journal* (WLJ) quarterly and the *National Directory of Women-Owned Law Firms and Women Lawyers*, an annual directory designed to assist in-house counsel with locating women lawyers and referring legal work.

Andrews Kurth is proud to support NAWL as a member firm. This year **Kathleen Wu** (Dallas) served as the keynote speaker for NAWL’s Mid-Year Meeting, **Michele Schwartz** (Dallas) served as a panelist at the NAWL Annual Meeting, and **Meredith Mouer** (Houston) is leading the firm’s involvement in the NAWL Mentor Program. [www.nawl.org](http://www.nawl.org). ■

## Government Investigations

*Top Five Lessons Learned*

*by Dena Palermo, Partner, Andrews Kurth LLP*



2009 continued the escalation of civil and criminal enforcement actions undertaken by the Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”). Just looking at cases under the Foreign Corrupt Practices Act (“FCPA”), the DOJ is currently pursuing more than 100 investigations. All indications are that the government’s increased focus on foreign bribery, among other activities, will continue into the next decade. Government officials have made statements in recent months reinforcing the government’s commitment to continued aggressive enforcement of the anti-corruption laws.

Because the stakes are high, when a company learns that it is the focus of any government investigation, or facts are discovered that require the company to start its own internal investigation, the general counsel and/or chief compliance officer must be ready to respond quickly and navigate a series of complex issues that will arise very early in the investigation. Based on years of conducting corporate investigations, the following are five of the most important issues a company must consider when faced with a government or internal investigation.

### 1. WHO SHOULD OVERSEE AND CONDUCT THE INVESTIGATION

The first issue counsel will face is determining who should oversee the investigation. Counsel should immediately alert the Board of Directors and/or the Audit Committee of a pending government investigation, along with a recommendation on who should oversee and conduct the investigation. The nature of the allegations, as well as the type and history of the company, should help determine who is best suited for this role. Management (including the general counsel), the Board or its committees, or outside counsel may be in the best position to direct a particular investigation. Determining who should oversee the investigation may elicit the following considerations:

**A. In-house Counsel:** In-house counsel can conduct a prompt, effective investigation and is in a strong position to

*“Lessons Learned” continued on back page*

# Top of the Line

Feast your eyes on these Fall finds



## Indoor

### 1. PERSONALIZED PLAID PLATES

Lemontree Paperie, \$26

Go mad for plaid and grace your table with classic style using these 10" personalized melamine plates from woman-owned Boatman Geller. For 10% off enter **BGPLATES** at checkout. [www.lemontreepaperie.com](http://www.lemontreepaperie.com)

### 2. CAST IRON APPLE POT

Terrain, \$120

Bright red apple pot made from chemical-free enameled cast iron heats and distributes evenly, making cooking more efficient. Safe for stovetop, oven and dishwasher. For free ground shipping enter **ANDREWSKURTH** at checkout. [www.shopterrain.com](http://www.shopterrain.com)

### 3. HIBISCUS STAY ON COASTERS

Dimmalimm, \$24 (Set of 6)

All-in-one coaster and wine glass taggers are designed by a mother/daughter team from Iceland and made with sustainable fabrics in Los Angeles. Slip these on before you fill your guests' glasses this holiday season. Enter **STRAIGHTLINE10** for 20% off. [www.dimmalimm.us](http://www.dimmalimm.us)

### 4. WOOD GRAIN PITCHER

Terrain, \$58

Go with the grain this fall. The handmade wood grain pitcher is made in a small, family-owned factory in Italy that has been making ceramic dinnerware for generations. For free ground shipping enter **ANDREWSKURTH**. [www.shopterrain.com](http://www.shopterrain.com)

### 5. HONEY FLIGHT FOR CHEESE

Bee Raw Honey, \$45

Anyone with an adventuresome palate will enjoy this new flight of single floral variety honeys selected for flavorful pairings with cheese. Includes blueberry, buckwheat, sourwood and sweet yellow honeys in an American oak block. [www.beeraw.com](http://www.beeraw.com)

## Outdoor

### 6. CAST IRON FIRE BOWL

Design Within Reach, \$375

Gather round this simple, elegant fire bowl to warm yourself on cool fall evenings. Optional stainless grill top can be purchased separately. Don't forget to bring the s'mores. [www.dwr.com](http://www.dwr.com)

### 7. BEEKMAN BUG REPELLANT BAR

Beekman 1802, \$14.75

Made with goat milk and naturally scented with citronella, eucalyptus and other essential oils, this chemical-free bar helps keep bugs away. Each bar is cut into ten smaller squares. Rub the square on pulse points for protection, or use in the shower before longer exposures. [www.shop.beekman1802.com](http://www.shop.beekman1802.com)

### 8. ST. PIERRE CHAMPIONSHIP SERIES BOCCE BALL SET

Bocce Life, \$118.99

Novices and experts alike will enjoy the professional quality tournament bocce set for 2- to 4-player competition. Comes in a handsome pine-stained wood box for carrying. Enter code **BOCCE** for \$5 off. [www.boccelife.com](http://www.boccelife.com)

### 9. PLAID 5TH AVENUE THROW

Pendleton, \$128

Gather around the fire pit and wrap yourself in this luxurious featherweight throw made of 100% superfine merino wool. Add a monogram to personalize. That's a warming trend you can support. [www.pendleton-usa.com](http://www.pendleton-usa.com)

### 10. THE ORIGINAL MONOGRAM CLOG

The Pink Monogram, \$150 adult, \$100 child

Fall into fashion with a new pair of made-to-order clogs. Pick your color, size, font, trim, heel and monogram. Also available in children's sizes. [www.thepinkmonogram.com](http://www.thepinkmonogram.com)

## Sidelines continued from page 2

the Gray." The event focused on the effects that the global recession and other current events have had on diversity initiatives. The event was attended by local judges, solo practitioners, in-house counsel and other large firm attorneys. **Prisca LeCroy**, **Kathleen Tarbox** and David Ortigoza also participated in the discussions. Andrews Kurth was a silver sponsor of the event.

**Diana Hudson** was a member of the faculty for the Leadership Boot Camp at The University of Texas School of Law on April 9. The boot camp was designed to train women third-year law students and judicial clerks in communications, self-promotion and networking skills.

**Lisa Shelton**, David Whittlesey, Marc Katz and Roscoe Howard presented "Legal Issues Surrounding the Use of Social Media" for Dell's in-house legal department. This CLE presentation was designed to educate Dell's legal team on issues such as privacy, e-discovery complications, labor & employment risks and threats to IP.

**Kathleen Wu** authored the article "Four Things Every Female Law Grad Needs to Learn" in the May 31 edition of *Texas Lawyer*, and the article has been reprinted and referenced by numerous publications, including *The Wall Street Journal's* Law Blog, the *ABA Journal* and The Legal Broadcast Network. Kathleen also moderated a recent panel titled "How Can Women in Law Firms and Legal Departments Help Each Other Advance?" The panel discussion took place during the 2010 Hastings Leadership Academy for Women, an executive education program designed for women law firm partners.

**Kay Lynn Brumbaugh** was inducted as a Life Fellow of the Class of 2010 Fellows of the Dallas Bar Foundation on March 31. The Fellows of the Dallas Bar Foundation was chartered in 1991 to recognize Dallas attorneys who have distinguished themselves in their legal careers with significant contributions to the legal and civic communities of Dallas and to support the charitable mission of the Dallas Bar Foundation.

**Andrews Kurth** employees and family members participated in the 22nd Annual Race Against Violence, benefiting the Houston Area Women's Center on March 6. This year's race was the most successful to date. All of our participants represented Team AK very well and many finished at the top of their divisions! The Center helps individuals affected by domestic violence in their efforts to move forward with their lives.



The **World Law Group** has released the first edition of *WLG Merger Control Basics 2010*, providing "at a glance" information on merger control rules in 53 jurisdictions worldwide. Antitrust partners **Kay Lynn Brumbaugh** and Jerry Beane assisted in preparing the USA entry. Andrews Kurth is an active member of the World Law Group, a 50-firm network of leading, independent law firms with more than 11,000 lawyers in 60 countries on six continents and offices in 170 cities, including virtually all major commercial centers. For a complimentary copy of *WLG Merger Control Basics 2010*, please email [ashleynelly@andrewskurth.com](mailto:ashleynelly@andrewskurth.com).

**Monica Blacker**, **Kay Lynn Brumbaugh**, **Amy Hancock**, **Donna Kim**, **Meredith Mouer**, **DeLaina Mulcahy**, **Grace O'Malley**, **Darla Roden**, **Lynne Uniman** and **Suzanne Wellen** have volunteered to serve as members of the National Association of Women Lawyers Mentor Program. In 2007, NAWL instated the national Mentor Program to foster social and professional advancement of women lawyers through guidance and support of senior attorneys from a variety of legal fields in order to promote the social, political and professional empowerment of women.

# Lessons Learned

*Continued from page 2*

quickly obtain facts and findings because of familiarity with personnel, systems and issues. Accordingly, in-house counsel may be best suited to manage employment law violations, internal personnel policies and self-dealing by corporate individuals.

**B. Outside Counsel:** When the government initiates an investigation or an investigation is made public, it is essential to retain outside counsel. It is appropriate to engage outside counsel when the investigation reaches senior management, and/or directors want to keep their distance from company management.

When selecting outside counsel, the company must consider whether it should retain its usual outside counsel or whether independent counsel is necessary. In an appropriate case, the company may decide to retain independent counsel with no prior ties to the company to increase credibility during the investigation.

**C. Scope of Representation:** Lawyers conducting internal investigations are under close government scrutiny. Therefore, it is vital that counsel should only represent the interests of the corporation and not those of the individual employee, officer or director. Representing other interests reduces credibility and harms the corporation. One or more independent lawyers should be contacted and kept on standby to represent individual employees, officers and/or directors as the need for individual representation arises.

## 2. DETERMINE WHETHER TO SELF-REPORT

In matters where the company initiates the investigation, the company will have to decide whether to self-report the investigation to the government. This will depend upon a variety of factors including whether the problem is systemic, whether illegal conduct is involved, whether there is a chance that the government will discover the conduct absent disclosure, or if there is a possibility that the government will initiate an industry-wide investigation.

Early self-reporting will earn the company substantial credit with the government, which should result in a lesser penalty at the resolution stage.

## 3. SCOPE OF THE INVESTIGATION

The investigation should be thorough and probing to satisfy the government as well as discharge the board's and management's duty of care. The SEC and DOJ assess how well the company investigated the following: (1) the nature of the misconduct: how it arose, where it arose, and the duration; (2) the harm the misconduct caused; and (3) how and by whom the misconduct was detected.

*Counsel should be given unlimited access to quickly identify and interview witnesses with knowledge of facts that may be relevant to the investigation.*

The SEC will determine if the company conducted a thorough review when deciding whether to bring an enforcement action. The DOJ will assess whether the company intentionally impeded the investigation while purporting to cooperate.

## 4. GATHERING INFORMATION AND PRESERVING DOCUMENTS

Losing or destroying information can have dire consequences because the government may become suspicious of the company. To avoid civil or criminal liability, the company should gather documents and interview witnesses quickly to gather and preserve information critical to the investigation.

**A. Data Retention:** One of the first steps counsel must take is to suspend automatic destruction of paper and electronic documents and issue a written directive to those who may possess relevant documents to preserve them. Counsel should be given unlimited access to collect and preserve electronic data and hard copy documents as quickly as possible.

Counsel should also take the following steps to ensure preservation of relevant data:

- Retain an expert fluent in all types of media and operating systems and work with the IT department to discuss preserving electronic documents;
- Collect data quickly and carefully monitor and document the process;
- Preserve back-up tapes;
- Preserve data of departing employees;
- Consider making forensic copies of the hard drives of those employees at the core of the investigation; and
- Designate a point person as decision-maker to be notified when relevant documents are to be destroyed or to answer employees' questions.



**B. Interviews of Employees:** Counsel should be given unlimited access to quickly identify and interview witnesses with knowledge of facts that may be relevant to the investigation. It is essential that employees receive appropriate warnings at the outset of the interview process.

**i. General Warnings:** If the company remains neutral in a government investigation and does not require employees to submit to a government interview as a condition of continued employment, employees have discretion whether to talk to the government. The company may inform employees that it expects them to cooperate. Then, employees have a duty to comply with the government's or company's own investigation and may be compelled to be interviewed or face termination. Counsel may instruct the employees that they can hire their own counsel, and the company may or may not pay for it.

**ii. Upjohn Warning:** To preserve the company's privilege, attorneys should give Upjohn warnings at the outset of an interview. The warning must state:

- The attorney represents the company (or the board, audit committee, etc.), not the employee;
- Anything the employee reports will be shared with the company;
- The interview is privileged but the privilege belongs to the company and can be waived by the company, including by disclosure to the government;
- Interviewers are seeking information from the employee necessary to enable counsel to provide legal advice to the company; and
- The substance of the interview should be kept confidential.

**iii. Zar Warning:** Because employees sometimes intentionally give false information during the internal interview, counsel should consider giving Zar warnings to the employees. Zar warnings state that information provided during the interview may be turned over to the government, and that the employees may be subject to obstruction of justice charges if they provide untruthful information.

**C. Privilege Issues:** Counsel should be mindful that privileges belong to the company. In most cases, a privilege will not be waived when information (such as investigative reports) is shared with management, unless the Audit Committee is conducting the investigation, in which case the privilege may belong solely to the Audit Committee as opposed to the company. Courts afford varying degrees of privilege based on the circumstances of each case. The following privileges commonly arise during investigations:

- Attorney-Client Privilege (protects communications between counsel and the client);
- Work Product Doctrine (protects mental impressions of the attorneys created while working in anticipation of litigation, unless those seeking the work product show a substantial need);
- Self-Critical Privilege (protects self-evaluating documents or documents created during the internal investigation if these criteria are met: 1} the information results from self-critical analysis performed by the party seeking protection; 2} the public has a strong interest in preserving the free flow of the type of information sought; and 3} the information is of the type whose flow would be curtailed if discovery were allowed); and
- Audit Committee Issue (Communications between counsel and the board or audit committees are probably privileged, but the law is not settled on this question. Therefore, counsel must satisfy privilege requirements by segregating and labeling any portions of board or committee notes that summarize privileged communications as "Privileged and Confidential."). Counsel's communication with lower-level employees may not be protected by the attorney-client privilege. Depending on state law, this privilege may be limited to senior management

and employees that advise senior management on final decisions and may exclude employees who only supply information.

- Documents shared with witnesses during an interview might become discoverable;
- Request employee confidentiality during or after the interview; and
- Have at least two persons present at the interview in case the interviewee later claims the attorney misunderstood facts.

**D. Use of Experts:** When selecting an expert, counsel should consider the type of expert to employ, including accounting, forensic, private investigation or business-specific experts. Any expert engaged should be independent of the company to increase credibility to the government.

## 5. REMEDIATION MEASURES COUNT

The government will consider the company's past commitment to compliance; specifically, what controls were in place at the time of the investigation. The SEC and DOJ will also examine the company's remediation measures undertaken during the investigation to correct problems detected. In assessing both past and current practices, the government will pay particular attention to what management has done and said with respect to compliance. The tone at the top counts. Remediation steps to consider include stopping a potential violation if it has not already occurred; recommending and implementing enhanced controls or other remedial measures to ensure that ongoing or systemic problems cease; retraining or training employees company-wide or in at-risk groups to prevent future violations; disciplining employees involved in the incident; and reminding all employees of the company's code of conduct and code of ethics, including the company's anti-bribery policies.

The government has a full array of sanctions from which to choose, including injunctions, disgorgement, penalties, receivers, appointment of monitors, cease and desist orders, non-prosecution agreements, deferred prosecution agreements, criminal indictments and trials. Ultimately, the government's determination will depend on how it views the company's response to a potential violation of the law by its employees or agents. Early self-reporting combined with an extensive investigation, as well as immediate and appropriate remediation, can help convince the government that a lesser sanction is appropriate, or no sanction at all.

All general counsels and chief compliance officers should have a written checklist of action items conforming to what the government currently considers to be best practices that should be immediately undertaken when a potential violation is uncovered. ■

## Straightline

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# (Re)Learning the Lost Art of Mingling

Technology may be king these days, but personal relationships—the kind built face-to-face—remain the backbone of most business dealings.

Trouble is, with so many of us relying on e-mail, texting, Twitter and Facebook for our social lives, our interpersonal skills may have gotten a little rusty. But an ability to connect with others can be a major check in the plus column when we're being considered for promotions, jobs and other business opportunities. It's in our best interests, then, to learn (or re-learn) the lost art of mingling.

*If you find yourself spending most of your time planning what you're going to say next, you're not listening; you're just waiting to talk.*

The first and most important step is to toss out your mom's first rule: Don't talk to strangers. After all, unless we happen to be friends already with everybody, if we want to get ahead, we're going to need to talk to someone we don't already know.

Unfortunately, for many women, that can be just enough outside our comfort zone to make us hesitant to jump in. Here, then, are a few tips to make connecting with strangers a little more pleasant.

**Know thyself.** If you're heading off to a cocktail party or other event where you'll have to introduce yourself to others, be ready to explain what you do and your connection to the event or organization. Whether you're one of the event organizers, a college friend of the honoree, or a potential new member, your introduction should serve as a conversation opening to those you meet. Likewise, be able to explain, succinctly, what your job is. You would be surprised at how many people are unable to explain what they do for a living. If you're trying to develop business, that kind of first impression doesn't inspire much confidence.

**Know your host.** Learn a little something about the organization and/or person who is hosting the event. If it's a one-on-one dinner with a customer or potential customer, learn more than a little. Read the organization's newsletter (usually available online), its website, the latest news about it, who the leaders and important players are, and what issues they're concerned about. This will give you the intel you need to start conversations, ask educated questions, and learn how you might be able to play a role in helping them.

**Know what's going on.** Read your local newspaper, including the sections that bore you. Once you've read that, peruse one of the national papers' websites. If you're attending an industry-specific event, search for news or trade publications about that industry. Even if you're not a sports fan, scan the headlines. Know who's playing in any major upcoming events. You don't have to memorize batting averages, but if your city is hosting the Super Bowl, you should be able to talk about it. What big movies have just come out? What major company has just filed for bankruptcy? Arm yourself with the "small talk" you need to make big connections. (Be forewarned: You may actually find yourself liking the subjects you're feigning interest in.)

**Seek to know others.** Your quest should be to make a handful of new friends. Of course, not everybody you meet at the event will be in a position to help you professionally, but immediately dismissing anyone "unimportant" a) makes you icky and b) opens up the possibility that the person you treated dismissively is the favorite nephew of or treasured secretary to the person you're really looking to butter up. Treating everyone respectfully earns you major brownie points and pays off in ways big and small.

Your job is to learn about others, what they do, and what their needs and concerns are. Even if you're not in the market for their business, you may be in a position to refer them to someone else who can help them.

Connecting with others means listening more than you talk and actually being present with the person you're talking to. If you find yourself spending most of your time planning what you're going to say next, you're not listening; you're just waiting to talk.

**Have a follow-up plan.** You don't need to develop deep relationships with everybody you meet at every event, but if you've made a connection you'd like to pursue, by all means, don't let your 10-minute cocktail party visit be the extent of your relationship. Develop a plan to follow up with your new friend and implement the plan immediately. These things have a tendency to fall to the bottom of our to-do lists, so do it first thing the morning after your event (or right after lunch, if it was a mid-day event). Drop a quick "so great to meet you" e-mail, maybe referencing the event's speaker or whatever non-work subject the two of you found in common. This isn't a sales call, just a chance to stay fresh in the person's mind.

Follow it up the next week with a hand-written note. The next week, take them to lunch.

A good attitude and a little prep work can go a long way in turning a work function into a prime relationship-building opportunity. To put you in the proper frame of mind before you head off to your event, remember the words of Maya Angelou:

*"I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."*

## Book Nook

From conquering fears and savvy socializing to the power of negotiation, Book Nook's featured titles will take you out of your comfort zone. Plus, Jane Mount's artful book portraiture gives your beloved collection of covers new shelf life.



### Your Ideal Bookshelf

What does your bookshelf say about you? Artist Jane Mount would tell you that it says a lot. "We show off our books on shelves like merit badges," says Mount, who has been painting colorful gouache-and-ink bookshelf portraiture for the past couple of years. "We're proud of the ideas we've ingested to make us who we are, and we hope to connect with others." The "ideal bookshelves" often comprise all-time favorite tomes from a genre or a particular period of life. She offers two sizes: 8" x 10" (5–15 books) and 9" x 12" (10–20 books). She will paint your bookshelf or you can gift one to a friend. Now that's an ideal gift for the person who has everything. [www.idealbookshelf.typepad.com](http://www.idealbookshelf.typepad.com)



### The 10 Laws of Career Reinvention

*Essential Survival Skills for Any Economy*  
by Pamela Mitchell

### Ask For It

*How Women Can Use the Power of Negotiation to Get What They Really Want*  
by Linda Babcock and Sara Laschever

### How to Instantly Connect with Anyone

*96 All-New Little Tricks for Big Success in Relationships*  
by Leil Lowndes

### How to Work a Room, Revised Edition

*Your Essential Guide to Savvy Socializing*  
by Susan RoAne

### Impact!

*What Every Woman Needs to Know to Go From Invisible to Invincible*  
by Nancy D. Solomon

### Smart Women Take Risks

*Six Steps for Conquering Your Fears and Making the Leap to Success*  
by Helene Lerner

### You Unstuck

*Mastering the New Rules of Risk-Taking at Work and in Life*  
by Libby Gill

# Fall Out of Your Routine

*Who says you have to wait until New Year's to do something new? Take a tip from school kids—with their crisp, new uniforms, sharpened pencils and binders unsullied by doodles—and try something new this fall.*

**Strap on your tool belt:** Admit it, you don't know how to fix a leaky toilet or change a blown fuse. Neither do we. While some home repairs are best left to professionals, there are lots of odd jobs around the home that can be done with just a few tools and a little know-how. Call your local home improvement center to see if they offer a home maintenance class, or enlist a retired neighborhood handyman for some lessons. Your confidence will skyrocket, and you'll save some dinero in the process.

**Check out your region's best fair, fest or palooza:** Fall means festivals, and just about every region of the country has its own quirky event highlighting the region's best food, wine, beer, music and art. There are Moose Festivals, Oktoberfests, Apple Fests, Cheese Fests, Harvest Fests, Chili Cook-Offs—basically, anything that can be fried, fermented, filleted or feted in any way has an autumn celebration in its honor. If you've already been to yours too many times to count, chances are there's another

one within two hours of your home. Take a weekend road trip and check it out.

**Learn something with your kids:** They're going back to school, so why don't you? Re-learn algebra with them, start a backyard compost (which is equal parts science and labor), or audit your home's energy efficiency and implement a family-wide energy savings plan.

**Try the latest exercise craze:** If you're still doing the same workout you've been doing for years (kudos, by the way, for just working out), now's the time to try something new. Kettlebells, Hoop Dancing, Karve, Zumbalates, Qi Gong—there seems to be a new workout every week. You may find a new passion, and stronger abs, in the process.

**Audit your bills:** Are you getting the best deal on your cell phone, credit cards, car insurance, electricity or any of the other bills that come every month? If you haven't tried to find a better deal—whether from your current vendor or a competitor—you could be paying way more than you need to. Even if you don't have the wherewithal to check up on all of them, check up on one. You might just save enough to pay for your new Kettlebells! ■



## Fresh Faces

*With much excitement, we welcome the following women lawyers to the firm.*

### Lateral Hires



**Nathelie Ashby (Houston)**

has joined our Public Law section as an Associate. She regularly represents cities, school districts, charter schools and water districts in municipal finance transactions. Nathelie also represents municipal utility districts as general counsel and assists in representation of investment banking firms as underwriters' counsel. Nathelie received her J.D. from The University of Texas School of Law in 2006 and her B.S. from Texas State University in 2000.



**Luciane Juliani (Washington, DC)**

has joined our Business Transactions section as a Foreign Associate. Her practice focuses on domestic and international business transactions and general corporate matters. She also advises financial institutions in structured finance matters in the United States, Latin America and the Caribbean. Luciane received her degree from the Faculdade Moraes Jr. University Law School in Rio de Janeiro, and her LLM degree from George Washington University Law School.

### First Year Hire



**Katie Kane (Dallas)**

has joined our Corporate section as an Associate. Katie received her J.D., *magna cum laude*, from Southern Methodist University Dedman School of Law in 2009, where she was Order of the Coif and Editor in Chief of the *Journal of Air Law and Commerce*. She earned her B.A., *magna cum laude*, from The University of Texas in 2005.

## Site Seeing Some Favorite Online Stops

### 3floz.com

One-stop shop created by Alexi and Kate for all your favorite TSA-friendly beauty products to make traveling easier.

### Carecalendar.org

Organize meals and other help for families during a time of illness or life-changing event, such as the birth of a baby or death of a family member.

### Giiv.com

Give gifts via text message. Sender selects a gift from favorite retailers and enters the recipient's cell phone number with a personal message. The recipient receives a text message with a gift code to redeem in store or online.



### Groupon.com

Site features a daily deal on the best stuff to do, see, eat and buy in a variety of cities across the U.S.

### Productsnob.com

Finally, a blog that provides candid, honest product reviews. ProductSnob goes beyond reviewing just beauty products, it explores everything from the latest fashion to the hottest new baby, home and wedding trends. It even has guest bloggers and regular top 10 lists. Best of all, this blog is written by Ashley Nelly, Director of Marketing Operations for Andrews Kurth.



## Submit Your Tradition

*Share A Holiday Favorite*

Traditions aren't just what we do, they are who we are. Big or small, no matter what holiday you celebrate, give us a peek inside your favorite holiday.

*Email your tradition in 500 words or less to [straightline@andrewskurth.com](mailto:straightline@andrewskurth.com) by October 1, 2010.*

We will publish a sampling of the submissions in the next issue of *Straightline*, and post the rest online. It will be a holiday package to make your season bright.