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ARTICLES

Women in the Legal Profession in the Middle East

By Khadija S. Ali – October 24, 2012

The legal profession in the Middle East has progressed significantly in recent years and now faces many of the challenges relating to the retention of female practitioners as do the more developed jurisdictions of the world. As a female practitioner in the Gulf region today, and having previously practiced in Europe, in my view the challenges faced are not unique to the region.

Globally we see that there is a discrepancy between the number of women who graduate from law school and those who end up in top positions, be they in the private sector, public sector, working in-house, within the judiciary, or even academia. It is a commonly held opinion among many women themselves that they have to work harder to prove themselves and to achieve the same degree of success as their male counterparts. This often leads to high-caliber female lawyers opting to leave the profession rather than hit the glass ceiling. However, there is an increasing realization that a profession with a disproportionately higher number of men lacks the vital characteristics that women bring to all spheres of life. This, I believe, is more apparent in the Gulf region where the local population is small and therefore it is acknowledged that resolving the issue of retention benefits both the profession and society at large.

Having practiced in London before moving to the region, I was well accustomed to the pressures and demands of my career and had developed a fairly robust attitude toward my work. Having said that, it was going to be the first time that I would practice outside of Europe, and I was concerned about potential added layers of complexity to being a woman in a male-dominated profession, and in what I perceived to be a male-dominated environment. However, I have found that settling into working life in the region has been relatively easy, and there are, in fact, efforts to highlight the value that women bring to their work. There is a large expatriate community in the region, and although it is, of course, important to be aware of social norms and to have respect for cultural differences, gender-related issues in the workplace do not appear to be a problem. Additionally, in a place where family values are held in high regard, it is not uncommon for women with children to be accommodated into working life. Further, the benefits for both men and women practicing law in the region include the fact that talented lawyers are valued and can be given more challenging work than they may otherwise come across at their level. Finally, given that there are ongoing legal developments in the region, it is a good place to gain a lot of experience in a short time.

Statistically, there are still far fewer female members of the profession than there are male. While it would be encouraging to see more women in the workplace, there is clearly a movement in the right direction as evidenced in particular by the appointment of local female judges to sit in the United Arab Emirates courts in recent years. It is also encouraging to see events being held to promote female participation in the profession. A recent seminar held by the courts of the

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Dubai International Financial Centre on the topic of women in the law debated the challenges faced by women across the profession and discussed the experiences of both female lawyers and judges in the region. Ideas were shared concerning career choices within the profession, flexible working hours, identifying strong female mentors, and seeking the right opportunities. The message that came across loud and clear from the female lawyers and judges present at the seminar was that women do have a choice. There are women who choose to pursue their career to top positions, and there are those who are equally content choosing not to. There are women who choose to work toward partnership in private practice, and there others who choose to work in just as demanding positions in house. There are women who choose to work part-time, and there are others who choose to leave the profession to raise a family. Women have the power to determine their own future.

It is clear that education and dialogue have been important factors in such a bold message being advanced. The level of education of the local population in the Gulf region is comparatively high. Women, for the most part, have also openly raised issues faced in advancing their career choices and have not shied away from voicing their needs. If you don't ask, you don't get. Women with the right credentials have generally found their employers and colleagues receptive and supportive to their needs to allow them to carry out their roles effectively. There is still room for improvement and a need to consider whether institutional barriers—such as working hours and years to progression—prevent the right female candidates from getting to the top. However, again, these issues are not unique to the region.

At the end of the day, the opportunities are here for women with the right skills and credentials who decide to commit to the region and to the profession. And the best advice to those women who do is to make it your own and bring to your roles those qualities that only women can. Do a good job and you will find the support to allow you to flourish.

Keywords: litigation, minority trial lawyer, Europe, Middle East, Persian Gulf region

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Was Dharun Ravi a Hater?

By Kenneth E. Sharperson – October 24, 2012

On the heels of the death of Rutgers University student Tyler Clementi, New Jersey lawmakers now have a chance to see how the state's hate-crimes statute, which was amended to include, inter alia, sexual preference, will be applied in an actual court proceeding. The case has caused a national awareness on the issues of anti-gay bullying and teen suicide. The flip side, however, is that the hate-crime law has been subjected to scrutiny because the potential punishment that will be meted out in the case is considered by some to be extremely harsh.

Anyone watching or listening to the news should be familiar with the story. Just three weeks into their freshman year at Rutgers, Clementi asked Ravi for privacy to use their dorm room for an encounter with an individual identified by the court only as M. B., a 30-year old male. Clementi met M. B. on an Internet dating website. On the day of the encounter, Ravi briefly met M.B. and immediately sent text messages to his friends describing M.B. as "creepy." Ravi told police he left his webcam on to monitor the visitor because he was concerned about theft of his computer equipment. Ravi left the room and went to the room of a friend where he watched Clementi and M.B. embracing. Ravi then sent out Twitter messages and text messages about Clementi "kissing a dude." Clementi saw Ravi's Twitter feed and complained to the resident assistant and two other officials, and requested a room change. Clementi also texted a friend that he thought that he was spied on by his roommate.

Two days later, Ravi "challenged" his friends to watch another encounter via iChat, but the webcam did not work. M.B. testified that he covered the camera the second time he met with Clementi. A day or so later, Clementi used his cell phone to post a message to Facebook that he was "jumping off the gw bridge sorry." Five minutes later, Ravi sent an apology to Clementi. Clementi's body was found days later.

A jury convicted Ravi on all 15 charges including invasion of privacy and anti-gay intimidation, and he faces up to 10 years in prison. Nationally, there has been both support and criticism of the verdict. On the one hand, activists in the gay community laud the verdict as supporting a tough stance on bullying of gays. Critics, however, believe that the statute is vaguely written and subjects Ravi to harsh punishment on the presumption that Clementi felt intimidated by Ravi even though Clementi did not express that he ever felt intimidated by Ravi.

The actual hate-crimes law describes intimidation as "conduct" and "circumstances" that can be perceived as biased. The invasion-of-privacy charge subjects the culprit to probation, but if the enhanced factor of bias is added, and takes into consideration the culprit's frame of mind, the law presumes that the culprit should be imprisoned.

This is where the controversy arises. In this case, the jury seemed to agree with the defense's arguments that Ravi did not set up the webcam because he hated gays or worked to intimidate Clement because he was gay. However, they convicted Ravi because the statute provides that

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absent a defendant's "purposeful" and "knowing" actions of bias intention, the defendant can be convicted if the victim reasonably feels fear or becomes intimidated.

Thus, Ravi was convicted because the jury believed that Clementi perceived that Ravi's actions were out of hatred and bias of gays. Critics of the verdict find this troubling because there is no way to know without his testimony what Clementi thought or perceived. Further, even though the verdict is troubling to some and a deemed a victory for others, it is clear that certain behaviors that would have been tolerated 20–30 years ago now subject young adults to criminal punishment. The "boys will be boys" mind-set will no longer justify immature behavior.

A news program on National Public Radio reported that many parents of college-aged students were upset with the verdict because they realize the stupid things college-age kids do and thought the verdict was very harsh. Certainly, this is a cautionary tale to all students, especially in the era of Facebook and Twitter, that cyber-bullying and harassment may subject them to criminal charges.

I am not sure if Ravi was a "hater," but I do know that if such law is available in Florida, one would think that George Zimmerman will certainly be subject to the enhanced charges of bias intimidation. As the great Robert Nesta Marley once said, only "time will tell."

Keywords: litigation, minority trial lawyer, Clementi, bullying, teen suicide, bias intimidation

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Supreme Court Issues Decision in Arizona Immigration Case

By Karen Munoz – October 24, 2012

The Supreme Court's term this session has been one of the most politically significant in recent years. From the challenge to President Obama's health-care reforms to the court extending constitutional protection to the plea-bargaining stage, the decision will surely impact an immeasurable amount of people in the United States.

One such decision affecting a vast group of people is the U.S. Supreme Court's recent ruling in *Arizona v. United States*, 132 S.Ct. 2492, No. 11–182 (June 25, 2012) on the controversial Arizona immigration law, SB 1070. Much controversy surrounds the Court's decision to strike down much of the law while upholding the "show me your papers" provision.

Chief Justice Roberts and Justice Kennedy joined the three liberal members of the court— Justice Kagan recused herself from the case—in striking down the provisions requiring all Arizona citizens to carry registration papers proving they are legally in the state; prohibiting those without papers to look for and work in the state; and allowing police to stop anyone they suspect of being deportable.

The majority held that these provisions undermined the federal government's exclusive prerogative to set immigration policy. Justice Kennedy's written opinion acknowledged that Arizona may have "understandable frustrations" with illegal immigration but ultimately held that the state could not enact legislation that encroached on the federal government's authority. *Arizona v. United States*, at 132 S. Ct. at 2510.

However, the controversial "show me your papers" provision—which requires Arizona police officers to attempt to verify the immigration status of any person they stop in the course of a routine police stop that they suspect of being an illegal immigrant—was upheld 8–0. Although the justices did state that they may be open to hearing further challenges to it, Justice Kennedy noted that without the benefit of a definitive interpretation of its provisions from state courts or a more accurate idea of how it will be enforced, it would be inappropriate for the court to make a conclusive decision. *Id*, p. 2509. Challenges may, of course, be more likely to come, not from the government, but from individuals on equal-protection and due-process grounds.

However, the most noteworthy aspect of the decision may be Justice Scalia's dissent, in which he cites immigration laws from the first 100 years of the republic, when slavery was in full force, and openly criticizes President Obama's recent decision to exempt over one million illegal immigrants under the age of 30 from deportation.

The increasingly politicized nature of Supreme Court decisions in recent years has been well-documented, and Scalia's stinging dissent is a typical example. Some critics have suggested that Justice Scalia's decision to go outside the record and cite a statement by the president was improper. Criticism of the president's performance in office, on a hot political topic such as

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immigration—and in an election year—seems irrelevant to an adjudication of the legal questions presented to the court. It would have been possible for Justice Scalia to articulate his point without critical reference to President Obama's immigration-enforcement policies.

Indeed, Judge Richard Posner of the Seventh Circuit recently criticized this portion of Justice Scalia's dissent, calling his criticism "fighting words" that could be quoted in election ads. He also noted that the Obama administration's announcement exempting certain immigrants under 30 from deportation was made two months after oral argument was heard in the case, making it "rather a belated development to figure in an opinion in the case."

Posner thus brands that Justice Scalia's statement implying illegal immigrants were invading Arizona, sponging off the state, and endangering its citizens as "sufficiently inflammatory to call for a citation to some reputable source of such hyperbole," and observes that "Justice Scalia cites nothing to support it." Such unsupported generalizations about illegal immigrants also seem unnecessarily political in the context of the Supreme Court's consideration of fundamental constitutional questions.

Justice Scalia is a brilliant jurist who has had arguably a greater impact on the jurisprudence of the Supreme Court than any other judge in the last 25 years. However, engaging in the kind of inflammatory rhetoric that he recently did—although he is not the only one who has done so—threatens to undermine his great legacy and erode citizens' trust in the court.

Keywords: litigation, minority trial lawyer, Arizona v. United States, immigration, Scalia, Posner

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Voter ID Laws and the 2012 Election

By Brian L. Josias – October 24, 2012

According to George Mason University's U.S. Elections Project, a mere 61.6 percent of the voting-eligible population voted in the in the 2008 presidential election. As is typical, the turnout numbers for the 2010 congressional election, in which the Republican party scored major gains in both the House of Representatives and the Senate, were much lower: just 41 percent of the voting-eligible population. Despite these fairly low turnout numbers, within the past two years, Alabama, Kansas, Mississippi, New Hampshire, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin have passed new laws governing voting procedures that could disenfranchise thousands of otherwise eligible citizens. Most of the laws passed by these states require that prospective voters provide government-issued photo identification prior to casting a ballot. Other states, such as Florida, enacted new restrictions on the ability of third-party voter-registration groups, such as Rock the Vote, to register new voters. And some states, such as Ohio, have taken steps to limit or eliminate early voting.

Perhaps the most controversial and widespread controversy concerns voter ID laws passed in many states. Proponents of the new voter ID laws claim that the identification requirements are necessary to contain and limit voter fraud. Opponents assert that voter fraud is virtually a nonexistent problem and note that there have been only 10 confirmed cases, nationwide, of voter fraud or impersonation since 2000. Critics of voter ID laws note that the legislatures of all but one of the states that have enacted these new laws are controlled by the Republican party and argue that, in reality, the new laws are designed to reduce turnout among minority groups and the underprivileged, groups that historically favor the Democratic party. And while advocates of the new laws claim that almost all eligible voters already possess the identification required by the new laws, a Brennan Center for Justice <u>study</u> has shown that 11 percent of Americans do not possess the necessary ID. With the presidential election just around the corner, court battles over the legitimacy of the voter ID laws have intensified, and the media have increasingly turned attention to the problem.

One of the sharpest battles over the new voter ID laws has unfolded in the battleground state of Pennsylvania. In March 2012, Pennsylvania Governor Tom Corbett signed HB 943 into law, requiring eligible voters to present photo identification (or verification of their identification within six days of voting) to submit a ballot. Specifically, the new law provides that, to vote, a registered voter must present voting officials with one of eight forms of government-issued photo identification, and the identification must contain an expiration date. Although some of the forms of acceptable identification are available to the public without charge, a recent article by University of Pittsburgh School of Law's Lawrence Frolik suggests that there are few locations where citizens can obtain the free forms of identification and many requirements to obtain one.

In June, State Representative Mike Turzai bragged to the Republic State Committee that the new voter ID law would "allow Governor Romney to win the state of Pennsylvania." However, a month prior to Representative Turzai's boast, the American Civil Liberties Union (ACLU) and

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others filed suit seeking an injunction to block the enforcement of the law. The ACLU's lawsuit claimed that the new law violated the Pennsylvania Constitution by burdening the fundamental right to vote, violating equal protection, and imposing additional qualifications on the right to vote.

On August 15, 2012, the trial court refused to grant the plaintiffs' request for injunctive relief and held that the law did not violate the Pennsylvania Constitution and did not unconstitutionally interfere with the right to vote. The judge presiding held that the new law was not subject to "strict scrutiny" and cited to the 2008 U.S. Supreme Court case, *Crawford v. Marion County Election Board*, for precedential support. Somewhat tellingly, the court acknowledged that the new ID requirements place "a somewhat heavier burden on certain individuals" including "the elderly and infirm persons." However, the court held that these burdens were not substantial enough to justify striking down the law. The plaintiffs have appealed the decision to the Pennsylvania Supreme Court, and the Justice Department is conducting an investigation of the legality of the voter ID law under section 2 of the Voting Rights Act. However, with the 2012 election rapidly approaching, time for a meaningful decision is quickly running out.

Court battles in other states have led to different results, often due to Department of Justice intervention in one of the nine states where voting regulations are subject to additional scrutiny under the Voting Rights Act. For example, after the Department of Justice originally ruled in March 2012 that a new Texas voter ID law violated the Voting Rights Act, a panel of three federal judges affirmed the Department of Justice's original decision and struck down the law. *See Teaxs v. Holder*, D.D.C, Aug. 30, 2012. Likewise, on August 28, 2012, U.S. District Judge Robert Hinkle entered a permanent injunction striking down Florida's rule that regulated organizations that conduct voter-registration drives. Prior to Judge Hinkle entering a temporary injunction barring enforcement of the law in May 2012, registration of new Democratic voters had proceeded at a substantially slower pace than in prior years. Although the *Florida Times-Union* has reported that registration numbers have increased substantially since the law was struck down, the deadline for voter registration for the presidential election in Florida was October 6, 2012.

Given that polls continue to show a very tight race between President Obama and Governor Romney and with analysts predicting that the outcome could easily ride on the results from a small handful of swing states, there is a strong likelihood that new voter registration and ID laws will have a dramatic impact on the 2012 presidential election. It is perhaps equally likely that the ultimate result of the election could be decided not in the voting booth, but in the courtroom.

Keywords: litigation, minority trial lawyer, voter ID, disenfranchisement, Voting Rights Act, Obama, Romney

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ASK A MENTOR

How Can I Get a Speaking Engagement in My Area of Law?

October 24, 2012

Dear Ask a Mentor,

How can I get speaking engagement in my area of law?

Recognition as an accomplished public speaker in a well-defined specialty is one of the legal profession's most rewarding accomplishments. While the status that accompanies well-publicized seminars and client presentations is its own reward, those who appear in such forums on a regular basis also know that the challenge to remain current in the substantive law of your practice, and to communicate *effectively* to diverse audiences, together remain a significant hurdle each and every time a lawyer addresses the audience.

How then not only to set one's foot in the door, but to rise with both feet firmly planted at the podium? For many, the introduction to public speaking has *followed published articles and commentary*. Self-knowledge of one's own legal acumen is important, but more widespread recognition of your expertise is often the single most important forerunner to the opportunity to speak before an audience of peers or clients. Companies that sponsor continuing legal education (CLE) seminars, for example, routinely request and vet a potential speaker's curriculum vitae before retaining his or her services. The ability to list any number of published articles, especially those that have been peer-reviewed, is often the final persuasive point leading to retention on a CLE panel. Once selected, and assuming an excellent presentation follows, many speakers are routinely invited back again and again by the agency or company that originally retained them.

Another option is more closely held among lawyers who speak frequently at seminars and CLE presentations. Each such engagement begins with a phone call or email advising of the date and the topic, and asking if the recipient attorney is interested in speaking. Very often, if the recipient is unable to accommodate the responsible agency, he or she will be asked to recommend someone who would be qualified to address the same substantive field. For those seeking the opportunity for public speaking in their specialty, it is often good practice to meet the panel members at various seminars and inform them of your desire to participate on a future panel. Most of us remember how difficult it was to secure that first golden opportunity, and are willing to nominate the next generation of experts if given the chance to do so.

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Working with an existing organization permits you to take advantage of its member or mailing lists. The trick is identifying the organization that will best suit your needs.

You must consider whether you want to speak to other lawyers, to referral sources other than lawyers, or directly to potential clients. If to other lawyers, then join appropriate sections of your local or state bar association or the American Bar Association. If to other referral sources or clients, you must work to identify industry or civic organizations that fit with your area of law. For example, if you wish to speak on topics of elder law or trusts-and-estates topics, you might consider your local AARP chapter.

Next, you must identify the person who is responsible for putting together programs for that organization. It may be as simple as introducing yourself and asking for the opportunity. You may be required to "pay your dues" by assisting in the assembly and promotion of programs.

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NEWS & DEVELOPMENTS

Justice Ginsberg: Supreme Court Will Review DOMA in 2012

In a talk at the University of Colorado in Boulder about the changing legal profession, Justice Ruth Bader Ginsberg <u>suggested</u> that the Supreme Court may be reviewing the Defense of Marriage Act (DOMA) soon.

Ginsberg mostly talked about entering the legal profession at a time when there were few female lawyers and even fewer female judges. She expressed her prediction for DOMA after she was asked a student-submitted question about the Equal Protection Clause and whether the Supreme Court would consider applying it to sexual orientation.

After reminding the audience that she could not talk about matters that would come to the Court, Ginsberg said "I think it's most likely that we will have that issue before the court toward the end of the current term."

DOMA was passed by Congress in 1996 and signed by President Bill Clinton following a Hawaii Supreme Court ruling in 1993 that made it appear as though Hawaii intended to legalize gay marriage. It defines marriage, for the purposes of federal law, as "only a legal union between one man and one woman as husband and wife."

The law has been declared unconstitutional by a New York federal judge and went to oral arguments in front of the Second Circuit on September 27.

Many states have banned gay marriage, and eight states have approved it. Massachusetts was the first to approve gay marriage in 2004, and Connecticut, New York, Iowa, New Hampshire, Vermont, Maryland, and Washington state have since followed. The Maryland and Washington laws are not yet in effect.

In February 2011, President Barack Obama and Attorney General Eric Holder directed the Department of Justice to no longer defend the act.

— Joseph M. Hanna, Goldberg Segalla, Buffalo, New York

Diversity Nonprofit Urges ABA to Amend Model Rules

The Institute for Inclusion in the Legal Profession (IILP) recently <u>sent</u> a letter to ABA president Laurel Bellows urging the organization to amend the Model Rules of Professional Conduct to incorporate an obligation to promote diversity and inclusion within the legal profession.

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IILP wrote, "[t]he legal profession continues to lag behind other professions in terms of diversity. Given the importance of our justice system, and the roles and responsibilities that lawyers and judges bear, it is critical for our profession to affirmatively address diversity in the Model Rules of Professional Conduct."

The ABA has not commented on the merits of the proposal, but has announced that the proposal will "work its way through the ABA's legislative process."

The ABA's Model Rules of Professional Conduct provide recommendations for the ethical practice of law, including suggestions for the lawyer-client relationship, advertising, and the structure and responsibility of firms. Corresponding state rules often resemble the ABA Model Rules, and those state rules are binding. Therefore, IILP argues, the ABA's adoption of a diversity rule would create a "ripple effect" throughout the country.

When assessing the proposal, the ABA will need to consider the details of the rule. These details include what the rule will say, what the rule is trying to accomplish, and whether sanctions will attach to the rule.

IILP has asked that the ABA's Standing Committee on Ethics and Professional Responsibility develop a resolution in time for consideration in 2013.

—Joseph M. Hanna, Goldberg Segalla, Buffalo, New York

CA Law Sends Gay-Conversion Therapies to 'Dustbin of Quackery'

California Governor Jerry Brown <u>signed</u> SB 1172—placing a ban on gay-conversion therapy for patients under 18—<u>into law</u> on September 29, 2012. The law is the first of its kind and will take effect on January 1, 2013.

The law aims to protect lesbian, gay, bisexual, and transgender minors from the "reparative therapies" administered by mental-health professionals with the purpose of altering sexual orientation or gender identity. These "reparative therapies" involve a number of techniques, including counseling, shock therapy, and even exorcism.

Gov. Brown stated "This bill bans non-scientific 'therapies' that have driven young people to depression and suicide. These practices have no basis in science or medicine and they now will be relegated to the dustbin of quackery."

A spokesman for the National Association for Research and Therapy of Homosexuality has already promised to file a "major lawsuit" within the week to challenge the law. The Pacific Justice Institute also intends to file a separate lawsuit grounded in First Amendment claims.

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Ultimately, the legal battle is likely to focus on the questions of whether reparative therapy constitutes child abuse, and if the ban itself is unconstitutional.

—Joseph M. Hanna, Goldberg Segalla, Buffalo, New York

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