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SDNY Chief Judge Colleen McMahon Takes on Sexual Harassment

By **Colleen McMahon** | December 12, 2017

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In accepting the William Nelson Cromwell Award Monday night, Chief Judge Colleen McMahon of the U.S. District Court for the Southern District of New York made an impassioned speech about sexual harassment. At the 103rd annual dinner of the New York County Lawyers Association, she urged men and women to ensure that the continuing scandals do not lead to a different type of discrimination against women. Chief Judge Janet Difiore also received the award. Here is Judge McMahon's speech in its entirety:

As a number of speakers have observed, we are here tonight to honor Outstanding Women in the Legal Profession, at a time when women in the workplace are very much in the headlines—not for what we have done, but for what has been done to entirely too many of us.

That is the elephant in the room at tonight's celebration.

And I have something serious I need to say about it.

It is a very good thing that the workplace's dirty little secret has finally been subjected to a healthy dose of Justice Louis Brandeis' strongest disinfectant.

Because now that we have let the sunshine in, we can finally address the nefarious and way too prevalent scourge of sexual harassment in the workplace.

But a corollary development is largely being ignored.


It is the re-emergence of a very offensive "defensive" practice that today bears the moniker of a prominent politician, but that used to be known as the "Graham Rule."

The Graham Rule says that a man should make sure he is never alone in a room with any woman other than his wife for any reason—including perfectly legitimate business reasons.

That way, he can avoid both the temptation to engage in inappropriate behavior and any chance that he might be the victim of an unwarranted accusation.

As revelation cascades upon revelation, some perfectly sensible men, concerned that there may be difference of opinion between men and women over what constitutes unacceptable behavior in the workplace, have wondered aloud in my presence whether something like the Graham Rule might not be a salutary and effective prophylactic.

That scares me to death.

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Because I remember a time when entirely too many women, in our profession and every other, were denied opportunities for mentoring, for

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networking, for assignment to the best deals and the most exciting

challenging cases—all because someone was, or claimed to be, living by the Graham Rule.

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The generation of women whom Janet DiFiore and I represent—on whose behalf we accept the William Nelson Cromwell Award—fought to get the Graham Rule recognized for what it was: a way of keeping women in our place.

Which, by the way, was second place.

The Graham Rule does not belong in the 21st century workplace, because it is both illegal and immoral.

It is illegal because it violates the law to treat women and men differently at work in any respect. That includes refusing to meet with or mentor colleagues of one gender but not another, or cutting colleagues of one gender off from opportunities, even in the name of propriety.

And it is immoral because it puts the onus for controlling inappropriate behavior on the wrong person.

Women in this room, especially young women, you dare not let this pernicious form of discrimination creep back, in the guise of making your workplace safer.

For if you do, you will discover that women can be victimized because of their gender in many ways, not all of which involve sexual misconduct, but all of which are detrimental to your chance of becoming an outstanding member of our profession.

Men in this room, you cannot allow this sort of thinking to return to your law firm, your corporation, your government office.

For if you do, it will also return to the places where your friends, your sisters, your wives and your daughters work. And those women—the women you love, the women for whom you are ambitious—will be the losers.

My career is a testament to the lack of necessity for any Graham Rule in the workplace.

I was fortunate to be mentored by a group of great men.

Those men—Marty London, Arthur Liman, Lew Kaplan, Bob Smith—had no problem having dinner or a drink with me, or meeting with me privately to deal with confidential client matters, or working together until the wee hours of the morning when necessary, or allowing me to accompany them on business trips—all the things they did with my male colleagues.

And never once—never once—did any of them say or do anything that made me uncomfortable.

If they were following a rule, it was the rule that some of us at Paul Weiss used to call the Liman Rule, because we heard Arthur say it over and over again to his clients.

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It went like this: Don't do anything you wouldn't want your mother to read about on the front page of The New York Times.

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business dealings.

But the rule works equally well in the context of interpersonal relations in the workplace.

I know what would have made my mother cringe if she learned about it in the morning news.

And I am reasonably certain that no one, including the worst predators who have been outed over the past few months, would have wanted his mother to open the newspaper or turn on the TV and read or hear about the behavior that has been publicly revealed in recent weeks.

So if the men who are worried about what behaviors might cross which lines in the brave new workplace would just ask themselves WWMS—What Would Mom Say—when dealing with their subordinates, then Ala Glazer Murphy and Katie Sica and all of our daughters and granddaughters will not need to fight anew a battle I thought the women of my generation had won, for us and for them.

What's good for the gander is good for the goose, by the way.

The same simple rule applies to the still too small but growing number of women who hold the reins of authority in their workplaces.

We, too, must treat our subordinates with the respect they deserve, and do nothing to take advantage of our power or their status.

So when your clients come to you in these fraught times for advice about how to avoid sexual harassment in the workplace, or as you update your in-house training for employees, don't suggest adopting the Graham Rule.

Instead, follow the Liman Rule ... or the Mom Rule ... or The New York Times Rule ... whatever name works for you.

Because if people actually follow that rule, we won't need any other rule.

And we can all—women and men alike—stop worrying about what ought to be obvious, and focus on becoming the best possible advocates, advisers and adjudicators, for our clients, for the courts, for the government and for the rule of law in our beloved country.

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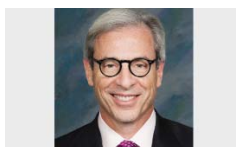
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