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Voting Rights Act

Post-*Shelby County*

By Sarah Kellogg

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Volume 28 No. 4
www.dcbar.org

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Washington Lawyer is published by the D.C. Bar for distribution to its membership; $5.05 of each member's dues is applied toward a subscription. Changes of address must be in writing.

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Washington Lawyer (ISSN 0890-8761) is published monthly except July/August, which is a combined issue, by the District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. Periodicals postage paid at Washington, DC., and additional offices. POSTMASTER: Send address changes to Washington Lawyer, D.C. Bar Member Service Center, 1101 K Street NW, Suite 200, Washington, DC 20005-4210.

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letters

Same-Sex Marriage and Balance

In her November cover story, "The State of Same-Sex Marriage After *Windsor*," Anna Stolley Persky does a good job of balancing both the federal and state view of this complex legal topic, a difficult task indeed.

Gay marriage advocates continue to praise the changing tide of public opinion—same-sex marriage is legal in 13 states and the District of Columbia. On the other hand, traditional marriage advocates note that several states continue to ban same-sex marriage.

Now the U.S. Supreme Court has weighed in. This summer, the Court ruled in *United States v. Windsor* that legally married same-sex couples are entitled to federal benefits. Now, it is time for the lower courts to sort through the cases that are sure to follow as a result of this decision.

I am excited to see how this plays out over the next decade.

—Geoffrey Jacobs
Dover, Delaware

Reviewers Explore Cops, Criminals

Each month, I enjoy reading the "Books in the Law" section of *Washington Lawyer*. I find most of the selections to be fair, entertaining, and intriguing. November's issue was no exception—one review dealt with extreme cops; the other, extreme criminals. Both reviews were comprehensive and well-written, not to mention timely and topical.

Ronald Goldfarb's review of Radley Balko's *Rise of the Warrior Cop: The Militarization of America's Police Forces* explored the frightening and heartbreaking stories of police departments employing sometimes over-the-top tactics—SWAT teams, DEA agents—in arresting everyday citizens. While I agree that fighting crime needs to be a priority for police departments nationwide, I am left to ponder if jeopardizing the safety of innocent bystanders is a trade-off we must face in fighting crime today.

Patrick Anderson's review of *Whitey: The Life of America's Most Notorious Mob Boss* was equally compelling. As a Boston native, I have heard countless stories of Whitey Bulger and his criminal dealings. Now here is a criminal whose arrest warrants all of the aggressive tactics the police can muster.

Keep up the good work, *Washington Lawyer*.

—Maurice DePloma
Boston, Massachusetts

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from the president

By Andrea Ferster

Tips on Navigating Law School, Career

Patrice Gilbert Photography

"Here is a dime. Take it, call your mother, and tell her there is serious doubt about you ever becoming a lawyer."

—Prof. Charles Kingsfield, *The Paper Chase*

In September, I had the privilege of speaking to a group of first-year law students at American University Washington College of Law, along with Renee Raymond, a supervising attorney at the Public Defender Service for the District of Columbia. Renee and I were asked to address two topics: our advice for navigating law school and our thoughts on how best to prepare for a fulfilling career in law.

In preparing for the first topic, I followed my own advice to the students and reached out to my lawyer friends and colleagues for help. I ended up getting thoughts from lawyers in a variety of practice settings, including law school deans and the presidents of our voluntary bar associations. In writing this distillation of the wisdom I received, I also borrowed liberally from Renee's wise remarks. Here is a collation of the top 10 pieces of advice for navigating law school:

1. *Always ask for help, whether it is about legal writing or personal issues*. Problems don't go away by ignoring them.

2. *Be nice to everyone.* Civility is even more important when you are practicing law. An adversarial system does not require being angry or aggressive.

3. *Behave yourselves*. No DUIs or speeding or parking tickets. Lawyers are held to a higher standard than others. Any of these things could be a problem when your character and fitness are examined during the bar admission process.

4. *Keep your electronic footprint clean*. Scrub your Facebook page. No sexting or twerking. These days, anything can and might be recorded.

5. *Don't drink too much*. Alcoholism is a serious problem in the legal profession. It can destroy careers and lives. Back to advice No. 1: Ask for help if you think your drinking might be a problem, or if someone close to you is bothered by your drinking.

6. *Get out of the library*. This town is about who you know. There are so many wonderful opportunities to meet people right now through externships or by joining a law society or a voluntary bar association. You can even be a subscriber member of one of the D.C. Bar's 20 sections, which cover a variety of practice areas and allow you to get notice of and discounts to section events and programs.

7. *Find a mentor*. Some of our voluntary bar associations, such as the Washington Bar Association, have mentoring programs for law students. The Washington Council of Lawyers has a pizza night to get law students interested in public interest careers.

8. *Take a clinic course.* Or participate in the D.C. Law Students in Court program if the clinics are full. It's the best training for how to be a lawyer.

9. *Remember the things that give you joy*. Whether it's reading, dancing, playing sports, or listening to music, keep doing it.

10. *Just show up.* In law school, there's a lot of pressure to perform to a certain level, and it feels like success is measured by accomplishments: getting the highest grades or honors or securing the prestigious summer job. But in the practice of law, the outcome is less important than standing with your client and being responsible about your obligations.

Which leads me to the next topic: how best to prepare for a fulfilling career in law. I know there's a lot of doom and gloom about the employment situation. But let me suggest that today is the best time to be a lawyer for the right reason: to make a difference in the lives of people in the community.

Without question, the legal job market is changing and some sectors are contracting, with vendors and e-discovery firms taking over work that associates in law firms used to do. But one thing has not changed: Here in the District, our neighbors need lawyers more than ever.

And yet most of our neighbors lack meaningful access to the justice system. A 2008 study by the District of Columbia Access to Justice Commission reported that approximately 98 percent of both petitioners and respondents in domestic violence cases, 98 percent of respondents in paternity and child support cases, and 97 percent of tenants in landlord and tenant court cases appeared without a lawyer.

For most people, going to court without a lawyer is like flying on a plane without a pilot. And the consequences can be just as disastrous for a victim of domestic violence who needs a civil protection order, for a person facing the loss of his or her home, job, or benefits, or for someone who needs child support.

There is a real need in our community for old-fashioned lawyers representing real people with real problems that affect their homes, their families, and their jobs.

On that note, here are some thoughts on getting ready for the practice of law.

First, take advantage of the many opportunities to get valuable experiences that will prepare you for the practice of law. The District has many outstanding legal services providers: Bread for the City, Washington Legal Clinic for the Homeless, Legal Aid Society of the District of Columbia, Children's Law Center, and the D.C. Bar's own Pro Bono Program, to name a few. Or you can volunteer to assist pro se litigants at one of the many court-based resource centers.

Take risks. All things worth doing are a little scary.

If you decide to hang out your own shingle, the D.C. Bar has a wonderful basic training program for members on how to start, build, and manage an independent law practice. The program is free and covers everything you need to know about the business of law, from ethics to technology to marketing your law practice.

Wherever your path leads, don't worry. If you do what you want and like to do, as opposed to what you think you are supposed to do, it's going to be OK.

Welcome to the study of law. I look forward to welcoming you as new members of the bar very soon.

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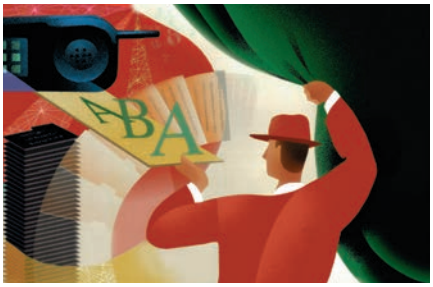
bar happenings

By Kathryn Alfisi



Mick Wiggins

FCBA Holds 27th Annual Chairman's Dinner

On December 5 the Federal Communications Bar Association (FCBA) will hold its 27th Annual Chairman's Dinner, featuring remarks from the chair of the Federal Communications Commission.

The evening will begin with a reception at 6 p.m. at the Washington Hilton, 1919 Connecticut Avenue NW, followed by dinner and remarks at 7:30.

FCBA is a volunteer organization of attorneys, engineers, consultants, economists, government officials, and law students involved in the study, development, interpretation, and practice of communications and information technology law and policy.

For more information, contact the FCBA at 202-293-4000 or fcba@fcba.org, or visit www.fcba.org.

December Classes Include Lobbying Guide, Intro to Benefit Corporation

In December the D.C. Bar Continuing Legal Education (CLE) Program will offer a course on federal lobbying and, in a separate program, introduce attorneys to the benefit corporation as a new type of business entity in the District of Columbia.

Since the enactment of the Honest Leadership and Open Government Act, the disclosures that must be made about federal lobbying activities have become more complex. Enforcement of the lobbying rules and related gift and travel restrictions also is rising, making it critical for attorneys to know how to counsel their clients on compliance.

The course "Federal Lobbying 2013: A Guide to Regulation and Compliance" on December 10 will cover the laws and rules governing lobbying of the federal government and of federal officials. It is useful for anyone who counsels or represents clients on public policy issues, whose clients engage in such matters, or whose clients seek government contracts and grants.

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Andrew M. Siff

Andrew M. Siff of Siff & Associates, PLLC will explain who has to register as a lobbyist and how these individuals and their employers can meet the resulting compliance obligations. Siff also will discuss the lobbying registration process, the quarterly and semi-annual reports that must be submitted, and what must be tracked to fulfill reporting obligations.

The course takes place from 6 to 9:15 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Environment, Energy and Natural Resources Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

On December 12 the CLE Program will teach attorneys what they need to know about the Benefit Corporation Act of 2011, which took effect on May 1, authorizing the creation of benefit corporations in the District.

By attending the course "New Form of Business Incorporation in the District of Columbia: The Benefit Corporation," attorneys will learn how this new corporate entity differs from a traditional corporation and what it means for their clients, whether it is appropriate for their clients, and how to advise the social entrepreneur in using this innovative choice of entity.

Laura E. Jordan, founder and principal of The Capital Law Firm, PLLC who formed the first ever benefit corporation in the United States, will serve as faculty.

The course takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Family Law Section; Law Practice Management Section; and Real Estate, Housing and Land Use Section.

Both courses will be held at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

For more information, contact the CLE Program at 202-626-3488 or visit www.dcbar.org/cle.

Women's Bar Hosts 2013 Holiday Tea

The Communications Law Forum of the Women's Bar Association of the District of Columbia (WBADC) will hold its annual Holiday Tea on December 17, featuring Commissioner Jessica Rosenworcel of the Federal Communications Commission (FCC) as guest speaker.

Prior to being named FCC commissioner in May 2012, Rosenworcel served as senior communications counsel for the U.S. Senate Committee on Commerce, Science, and Transportation. Previously, Rosenworcel was legal advisor to former FCC commissioner Michael J. Copps. She also served as legal counsel to the chief of the Wireline Competition Bureau and as attorney-advisor in the Policy Division of the Common Carrier Bureau of the FCC.

The Holiday Tea takes place from 3 to 5 p.m. in the Crystal Room at the Willard InterContinental, 1401 Pennsylvania Avenue NW.

For more information, contact the WBADC at 202-639-8880 or admin@wbadc.org, or visit www.wbadc.org.

CLE Program Offers Two Criminal Law Practice Courses in December

The D.C. Bar Continuing Legal Education (CLE) Program has lined up two courses in December that deal with criminal law and practice.

"Criminal Defense of Noncitizens: Immigration Consequences of Criminal Activities and Convictions" on December 5 focuses on what defense attorneys need to know about immigration law to advise their clients of the possible consequences of certain criminal activities and convictions.

Faculty will provide an overview of the U.S. Supreme Court's decision in *Padilla v. Kentucky* and will explain what defense counsel must do to comply with the Court's mandate. Possible post-conviction forms of relief to avoid deportation also will be discussed.

Attendees will learn how the government cooperates with immigration authorities to identify noncitizens who may be subject to deportation because of their criminal record, what elements are necessary to establish a conviction for immigration purposes, and what crimes can result in a noncitizen's deportation.

Anna Marie Gallagher, a shareholder at Maggio & Kattar, P.C.; Nina Ginsberg, founding partner at DiMuroGinsberg PC; and Nadine Wettstein of the Immigration Program of the Maryland Office of the Public Defender will serve as faculty.

The course takes place from 5:30 to 8:45 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Criminal Law and Individual Rights Section; Family Law Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

On December 11 the CLE Program will help attorneys stay current with important decisions that came out of the U.S. Supreme Court and the D.C. Court of Appeals this year.

"Criminal Law Highlights 2013" will cover issues ranging from *Miranda* rights and the Fourth Amendment to the duties of defense counsel advising a client on a guilty plea. Both defense attorneys and prosecutors should not miss this opportunity to get practical, relevant advice on the latest legal developments.

Faculty includes Samia Fam and Christopher Kemmitt of the Appellate Division of the Public Defender Service for the District of Columbia and Chrisellen R. Kolb and Elizabeth Trosman of the Appellate Division of the U.S. Attorney's Office for the District of Columbia.

The course takes place from 2 to 5:15 p.m. and is cosponsored by the D.C. Bar Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; and Litigation Section.

Both courses will be held at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

For more information, contact the CLE Program at 202-626-3488 or visit www.dcbar.org/cle.

Washington Council of Lawyers Celebrates Pro Bono Service

The Washington Council of Lawyers (WCL) will honor the work of pro bono attorneys during its annual awards ceremony on December 4.

Courtesy of the Children's Law Center

Judith Sandalow

Courtesy of Arnold & Porter LLP

Lawrence Schneider

This year WCL will present its Law Firm Pro Bono Award to Fried, Frank, Harris, Shriver & Jacobson LLP; its Presidents' Award to Children's Law Center Executive Director Judith Sandalow; and its Legacy Award to Lawrence Schneider, a partner at Arnold & Porter LLP. Paul M. Smith, a partner at Jenner & Block LLP, will be the keynote speaker.

The event takes place at 6:30 p.m. in the Garden Room at Arnold & Porter LLP, 555 12th Street NW. To register or for more information, visit www.wclawyers.org.

Pro Bono Program Trains Attorneys on Public Benefits and Bankruptcy

In December the D.C. Bar Pro Bono Program will hold two separate training sessions on public benefits and bankruptcy.

The free, seven-part Public Benefits Training Series continues on December 4, from 12 to 3 p.m., with a session on the Social Security Administration's two disability programs—the Social Security Disability Insurance (SSDI) and the Supplemental Security Income (SSI).

Erin Loubier of Whitman-Walker

DCBAR

ANNUAL JUDICIAL EVALUATIONS

Dear Colleague:

We urge you to participate in the annual evaluation of selected judges serving on the D.C. Court of Appeals and the Superior Court of the District of Columbia. Your voice truly matters in this process.

Completed evaluations are an important tool for the Chief Judges and the D.C. Commission on Judicial Disabilities and Tenure to use in maintaining and improving the administration of justice in the District of Columbia.

You are eligible to participate if:

- You appeared before one or more judges scheduled for evaluation (see http://www.dcbar.org/judicial_evaluations.cfm); **and**
- Your appearance(s) took place between July 1, 2011 and June 30, 2013.

If you do not receive an invitation from Research USA, an independent vendor administering the survey, and you are eligible to participate, please request a link to the survey directly from Research USA at dcbarjudicialevaluation@researchusainc.com.

Evaluations are due by 10 p.m. Eastern time on January 12, 2014.

Thank you for your participation.

Mary Ann Snow, Chair, D.C. Bar Judicial Evaluation Committee

Health, Scott McNeilly of the Washington Legal Clinic for the Homeless, and Lucy Newton of the Legal Aid Society of the District of Columbia will be on hand to discuss eligibility, benefits, and application tips.

The training returns on December 17 with a session on unemployment insurance benefits at 12 to 2 p.m. This session will provide an overview of eligibility and benefits under the District of Columbia's unemployment insurance system and how it interacts with other public benefits such as the Temporary Assistance for Needy Families, food stamps, Medicaid, and SSI/SSDI.

Drake Hagner of Legal Aid, Tonya Love of AFL-CIO's Claimant Advocacy Program, and Heather Wydra of Whitman-Walker Health will serve as faculty for this program.

The training is presented in collaboration with Bread for the City, D.C. Hunger Solutions, Legal Aid, Legal Counsel for the Elderly, Washington Legal Clinic for the Homeless, and Whitman-Walker Health.

On December 10 and 12 the D.C. Bar Pro Bono Program will present the course "Bankruptcy Training for Pro Bono Attorneys."

The training aims to prepare volunteer attorneys to provide legal representation to chapter 7 debtors through the D.C. Bar Pro Bono Program Bankruptcy Clinic. Topics include client interview procedures, case screening and evaluation, prebankruptcy remedies, overview of chapter 7 and chapter 13 of the Federal Bankruptcy Code, automatic stay, completion of schedules, exemptions, discharge provisions, and conflicts of interest.

No particular expertise is required to participate in the training, but attendees must agree to accept two pro bono referrals from the D.C. Bar Pro Bono Program Bankruptcy Clinic within 12 months of completing the training. Volunteers from firms that represent major banks, credit card companies, and other common creditors should contact the Pro Bono Program for more information before registering.

To volunteer, attorneys must be admitted to practice before the highest court of any state and must be willing to file a certificate stating that they are providing representation without compensation.

The training takes place from 9 a.m. to 4 p.m. on both days and is cosponsored by the Archdiocesan Legal Network, Legal Counsel for the Elderly, and the D.C. Bar Antitrust and Consumer Law Section, Corporation, Finance and Securities Law Section, and Litigation Section.

Both trainings will be held at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

For more information on any of the training sessions, contact the Pro Bono Program at 202-737-4700, ext. 3293.

CLE Courses Explore Various Ethics Issues

The D.C. Bar Continuing Legal Education (CLE) Program will offer several courses in December that explore some of the important ethics issues confronting lawyers.

Each year D.C. Bar legal ethics counsel receive nearly 2,000 inquiries from lawyers seeking clarifications on the practical application of the ethics rules in the District. The course "Answers to Frequently Asked Questions About the D.C. Rules of Professional Conduct" on December 5 will highlight the unique aspects of the D.C. ethics rules in matters involving confidentiality, conflicts, cash (trust accounts), consent, and competence.

D.C. Bar legal ethics counsel Saul Jay Singer and Hope C. Todd will serve as faculty.

The course takes place from 9:30 to 11:45 a.m. and is cosponsored by all sections of the D.C. Bar.

All attorneys need to understand and appreciate the elements and limits of the attorney–client privilege, and know how to preserve the privilege and challenge its assertion. The course "Attorney–Client Privilege: Ethics Update" on December 9 will explore the intricacies of the privilege in a practical context, as well as examine the exceptions to the privilege and concepts of waiver.

Singer will be joined by Thomas E. Spahn, a partner at McGuireWoods LLP, to discuss the attorney–client privilege and its relationship to the legal ethics rules governing confidentiality and client confidences.

The course takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

On December 18 the CLE Program will explore the ethical issues raised by evolving technology in "Lawyers in the Cloud: Ethics Implications."

Ethics rules governing attorney competence, confidentiality, supervisory duties over nonlawyers, and more are implicated by the use of the cloud, and this class will cover issues that apply to both government and private practitioners.

Faculty will address questions such as what steps can attorneys take to protect client confidences when using the cloud; can they freely use public Wi-Fi, Facebook, and texts to communicate with clients; and how should they manage current client relationships and deal with potential clients when using the cloud, including cloud-based social media. The course also will discuss how cloud computing is used in legal practice and the legal ethics pitfalls it poses.

Singer and Mindy L. Rattan, of counsel at McKenna Long & Aldridge LLP, will serve as faculty.

The course takes place from 6 to 8:15 p.m. and is cosponsored by all sections of the D.C. Bar.

On December 30 Jack Marshall of ProEthics, Ltd. will lead the course "The Legal Ethics Spectrum: 51 Shades of Gray," which aims to help attorneys hone their ethical problem-solving skills and to catch up with new legal developments in the District of Columbia and elsewhere.

Marshall will discuss the increasing clash between business realities and professional ideals, client contact with adverse parties, the duty to protect new secrets of former clients, conflicting loyalties, transactional ethics dilemmas, out-of-jurisdiction practice, technology traps, and ethical billing conundrums.

The course takes place from 1:30 to 4:45 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Intellectual Property Law Section; International Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Real Estate, Housing and Land Use Section; and Tort Law Section.

All courses will be held at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

For more information, contact the CLE Program at 202-626-3488 or visit www.dcbar.org/cle.

Reach D.C. Bar staff writer Kathryn Alfisi at kalfisi@dcbar.org.

Continuing Legal Education

The D.C. Bar Continuing Legal Education Program is a leading provider of high quality and cost-effective CLE courses, offering credit for all states including Virginia, Pennsylvania, New York, New Jersey and Illinois. Below is a list of our upcoming courses ■

JANUARY

7 So Little Time, So Much Paper®: Effective Time Management Techniques for Lawyers
9 Update on Same-Sex Marriage and Domestic Partnerships 2014
13 Disciplinary Year in Review: DC, MD and VA
14 Developments in Class Action Litigation 2014
15 Objection! Objection! Making and Responding to Objections
16 Introduction to Health Law and the Affordable Care Act Series, Part 1: Introduction to the U.S. Health Care System
23 Lawyers Supervising Associates, Summer Hires, and Others: Ethics Issues and Best Practices
23 Introduction to Health Law and the Affordable Care Act Series, Part 2: The New Insurance Marketplace
24 Effective Writing for Lawyers Workshop
28 Introduction to Export Controls
29 Introduction to Department of Defense Security Clearance Cases
30 Introduction to Health Law and the Affordable Care Act Series (ACA), Part 3: Medicaid Under the Affordable Care Act

FEBRUARY

3 ABCs of the National Labor Relations Board Series, Part 1: Practice and Procedure Before the National Labor Relations Board
3 Ethics Issues Facing Corporate Counsel
4 LLCs in the District of Columbia and Other Business Entities 2014
5 Essential Trial Skills Series, Part 1: Jury Selection
6 Introduction to Health Law and the Affordable Care Act (ACA) Series Part 4: Medicare Under the Affordable Care Act
10 ABCs of the National Labor Relations Board Series, Part 2: Unfair Labor Practices
11 Export Controls and Economic Sanctions 2014: Recent Developments and Current Issues
12 Essential Trial Skills Series, Part 2: Opening Statements and Closing Arguments
13 Introduction to Health Law and the Affordable Care Act (ACA) Series Part 5: Compliance Issues and Health Data Privacy Under the Affordable Care Act
18 Drafting Operating Agreements for LLCs and Other Business Entities 2014
19 Essential Trial Skills Series, Part 3: Witness Preparation and Direct Examination
20 Statute Drafting Workshop: D.C. Council Case Study
21 Top Ten Tips for Trying an Automobile Accident Case: What You Need to Know in the District of Columbia, Maryland, and Virginia
24 ABCs of the National Labor Relations Board Series, Part 3: Union Organizing
25 U.S. Economic Sanctions and the Office of Foreign Assets Control: An Introduction
26 Essential Trial Skills Series, Part 4: Cross-Examination
27 For Lawyers Who Lobby (and their Firms): Legal Ethics and Unauthorized Practice Update
28 Effective Writing for Lawyers Workshop

Classes Qualify for MCLE Credit in ALL States

To REGISTER ONLINE or for more course information,
please visit us at www.dcbar.org/cle, or call the D.C. Bar CLE Program at 202-626-3488.

bar counsel

By Gene Shipp

Add 'Stubborn' to the Human Condition List

Mick Wiggins

It was five years ago that we wrote a column on the human condition. We said that the human condition never changes, but we now know that our ability to observe the human condition leads us to new discoveries or definitions of those conditions. OK, how would we define the human condition at the Office of Bar Counsel? We know that we have Rules of Professional Conduct and that attorneys violate these rules. We also know that most attorneys do not wake up in the morning and say, "Today, I am going to violate Rule 1.1 by becoming incompetent." Some human condition generally causes the misconduct. (We are not talking about the alcoholic, drug abuser, or mentally ill lawyer in this article.)

It has been a hobby of mine to categorize the "Traps of the Practice" or the human condition that often seems to underlie the conduct. We have been covering these traps in the mandatory course for new admittees for many years. Since these traps are the driving force in professional misconduct, we take this opportunity to reprise the column with our new observations.

The traps of the practice include the difficult client; too much zeal; last-minute situations; it was an old friend, not a "real client," and/or I was just helping; my intentions were good; self-help to clients' money; I didn't know or no one taught me that rule; it wasn't the practice of law; self-justification after the conduct has occurred; I have been around and I know what I am doing; not paying attention or too busy; *just plain stubborn (the new one);* and the deadly avoidance syndrome.

Many of these are self-evident or self-proving when it comes to a disciplinary hearing. A short review might awaken our self-preservation monitoring system to avoid the bad consequences of a disciplinary inquiry.

1. *The difficult client.* We all have had this client or will at some point in our legal careers. This client is such a pain that we often give in and use bad judgment in making decisions just to please him or her. Feel free to tell this client that Bar Counsel is looming just around the corner and is ready to urge the court to snatch your license. Remember that old slogan from a few years back, "Just Say No?" It is the right thing to do.

2. *Too much zeal.* Often a young lawyer or one who has become too invested in a client's case falls into this category. In zealously representing a client, this attorney skids past the ethics stop sign and lives to regret it.

3. *Last-minute situations.* The pressure to get the job done at the last minute and without embarrassment often leads to bad judgment or defensive lies, which are easily detectable. Please, just admit that you need more time, don't give in to last-minute pressure, and be candid about your situation.

4. *It was an old friend, not a 'real client,' and/or I was just helping.* This is where attorneys get out of their comfort zone by entering into unfamiliar legal territory. It often begins with giving just a little legal advice and ends with a failure to establish a proper attorney–client relationship. You know the scenario, the little question asked at a wedding by a distant cousin who knows you are a lawyer. It always starts with the question, "You're a lawyer, aren't you?" Do not get sucked into this type of unintended relationship.

5. *My intentions were good.* This is the human condition where we become so invested in the righteousness of our client's case that we cannot understand why anyone could possibly disagree. We often forget that there are two sides in every matter. In this situation, we really push the ethics envelope to assist our client's case. The ability to see the entire field is not just a tactical nicety, it protects you from bad judgment.

6. *Self-help to clients' money.* This is the easiest lawyer in the world to prosecute, and we don't even feel bad doing it. Greed and a sense of entitlement are just a couple of the characteristics of this type of lawyer.

7. *I didn't know or no one taught me that rule.* Unfortunately, some of the fault here lies with the law schools as well as the lawyer. We are amazed how many lawyers don't understand trust accounts or the obligation to protect Rule 1.6 secrets because these topics were never taught. That is one of the benefits of the mandatory course for new admittees. Our office gets a chance to provide caution in all of the areas we have identified as deficits from a law school education.

We once wrote the deans of all the local law schools and asked if we could send one of our lawyers for a one-hour chat in each professional responsibility class. One school responded that it would forward the request to the faculty. End of story. Even after first writing this column five years ago, we still have not heard from the law schools.

8. *It wasn't the practice of law.* Some lawyers don't understand that the rules apply in their personal lives as well as their professional lives. (*See* Rule XI Section 2(a)).

9. *Self-justification after the conduct has occurred.* When lawyers violate the rules, they often engage in self-justification and sometimes get creative in their attempts to backtrack. The best policy is to deal with the violation, why it happened, and why it will not happen again. The discipline system is much kinder to that approach. It is an old D.C. saying that it is never the crime but always the cover up.

10. *I have been around and I know what I am doing.* This is the unfortunate refrain we hear from older attorneys. The rules and the law change, but the attorneys do not. Some believe that what they were taught 40 years ago in law school is still the state of the ethics rules. Attorneys should remain current and regularly review the rules.

11. *Not paying attention or too busy.*

Neglect of an entrusted legal matter has been the number one violation for the past 35 years. At least 50 percent of our cases involve neglect. The golden rule, do unto others as you would do unto yourself, is a great way to view your work on your client's case.

12. *Just plain stubborn.* This is our latest addition. The lawyer who will not return the client's file even though it is the client's property. The lawyer who is so insulted by the client's views on the case that he or she ignores the client's legitimate wishes. The lawyers who decide it is their way or the highway over areas where reasonable people could disagree and then refuse to refund any of the fees. Stubborn or unreasonable positions result in complaints. Complaints result in investigations, which cause loss of law practice time, anxiety, and often can be avoided by good client relations.

13. *The deadly avoidance syndrome.* We often write on this subject. We will not repeat that article. (*See,* as one example, *Avoiding Avoidance,* Wash. Law., Oct. 2006, at 12.)

Remember that it is not necessarily a bad person who gets into ethics trouble. It is often an attorney who is not paying attention or reacts badly under stress.

Finally, the ultimate indicator of needing ethical advice is the feeling that your parents would not be especially proud of the decision that you are about to make.

P.S. If you disagree with this list, we are not changing it, g.

Gene Shipp serves as bar counsel for the District of Columbia.

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE DONNA BARNES DUNCAN. Bar No. 329144. September 25, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Duncan by consent.

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE AMAKO N. K. AHAGHOTU. Bar No. 352237. September 12, 2013. The D.C. Court of Appeals disbarred Ahaghotu for reckless misappropriation, in addition to other rule violations. The violations stemmed from Ahaghotu's handling of his escrow account and his representation of a client in a personal injury matter. Specifically, Ahaghotu violated Rule 1.15(a) (commingling, failure to maintain adequate escrow records, and misappropriation); D.C. Bar R. XI, § 19(f); former Rule 1.17(a) (whose prescriptions are now found at Rule 1.15(b)) (improperly designated escrow account); and Rule 1.3(c) and former Rule 1.15(b) (now redesignated as Rule 1.15(c)) (delayed disbursement of client funds).

Reciprocal Matters

IN RE HAROLD L. BOYD III. Bar No. 481736. September 26, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Boyd for 60 days with fitness, effective immediately. In Maryland, Boyd agreed that sufficient evidence could be produced to sustain allegations that he had failed to file his personal income taxes on a timely basis for calendar years 2004 through 2009, resulting in significant tax liabilities.

IN RE MARK H. FRIEDMAN. Bar No. 384444. September 26, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Friedman, effective immediately. In Maryland, Friedman admitted to knowingly misappropriating client funds held in escrow.

IN RE ROSS D. HECHT. Bar No. 439909. September 26, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Hecht for six months with fitness, effective immediately. In Maryland, Hecht admitted that he failed to hold an unearned fee in trust and also agreed that sufficient evidence could be produced to sustain allegations that he failed to respond to Maryland Bar Counsel's requests for information and failed to communicate with his clients.

IN RE REBECCA L. MARQUEZ. Bar No. 444762. September 26, 2013. In a reciprocal matter from Virginia, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Marquez for five years, effective immediately. In addition, because Marquez is also subject to a disability suspension under D.C. Bar R. XI, § 13(e), prior to reinstatement Marquez must demonstrate that her disability has ended and that she is fit to resume the practice of law.

IN RE HENRY D. MCGLADE. Bar No. 379954. September 26, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and indefinitely suspended McGlade, effective immediately, with the right to seek reinstatement after five years or upon his reinstatement to the bar of Maryland, whichever is first. In Maryland, McGlade admitted that he failed to respond to Maryland Bar Counsel's requests for information and that he engaged in the unauthorized practice of law while suspended.

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE JAMES M. CUTSHAW. Bar No. 437386. September 17, 2013. Cutshaw was suspended on an interim basis based upon an interim suspension imposed in Louisiana.

IN RE ROBERT S. FASTOV. Bar No. 56333. September 13, 2013. Fastov was suspended on an interim basis pursuant to D.C. Bar R. XI, § 9(g), pending final action on the Board on Professional Responsibility's July 31, 2013, recommendation of an 18-month suspension with fitness.

IN RE ROSEMARY FOSTER. Bar No. 207332. September 18, 2013. Foster was suspended on an interim basis based upon discipline imposed in Oregon.

IN RE SCOTT B. GILLY. Bar No. 442356. September 17, 2013. Gilly was suspended on an interim basis based upon discipline imposed in the U.S. District Court for the Southern District of New York.

IN RE DARYL J. HUDSON III. Bar No. 292045. September 17, 2013. Hudson was suspended on an interim basis based upon his conviction of a serious crime in the U.S. District Court for the District of New Mexico.

IN RE STEPHEN T. YELVERTON. Bar No. 264044. September 17, 2013. Yelverton was suspended on an interim basis pursuant to D.C. Bar R. XI, § 9(g), pending final action on the Board on Professional Responsibility's July 31, 2013, recommendation of a 90-day suspension with fitness.

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legal beat

By Kathryn Alfisi and Thai Phi Le

News and Notes on the D.C. Bar Legal Community

First Go Formal for Justice Gala Raises $55,000 for Bar Foundation

The D.C. Bar Foundation's Young Lawyers Network Leadership Council's first Go Formal for Justice gala on October 19 brought out more than 350 attendees and raised more than $55,000 for the foundation.

"We're grateful to the Public Welfare Foundation for providing a seed grant to help launch this inaugural young lawyers event supporting D.C. legal services, and to all of our event sponsors," said Bar Foundation Executive Director Katia Garrett.

The black-tie event, held at Mayer Brown LLP, featured a performance by two-time Battle of the Law Firm Bands winner Sutherland Comfort, a photo booth by Tim Coburn Photography, a silent auction, and a live auction of a platinum record of Bruce Springsteen's *Born in the U.S.A.* and lunch with *Scandal* inspiration Judy Smith.

"Funding for legal aid programs has taken a hard hit the past several years. Courtney [Weiner] and her Leadership Council colleagues are spotlighting the issue among their peers. This is the leadership we need to make sure that our community thrives in the years ahead," said Marc Fleischaker, president of the foundation's board of directors and chair emeritus at Arent Fox LLP.

Go Formal for Justice was one of the events held during National Pro Bono Week, along with the Go Casual for Justice fundraiser at 80 law firms that also benefited the foundation.

The D.C. Bar Foundation is the leading private funder of civil legal services in the District of Columbia. Created in 1977, the foundation administers grants to nonprofits that provide legal services to low-income District residents.—*K.A.*

Tim Coburn Photography

Courtney Weiner of Lewis Baach PLLC joins her father, former D.C. Bar Foundation president and Arnold & Porter LLP partner Rob Weiner, at the Go Formal for Justice Gala on October 19 at Mayer Brown LLP. The younger Weiner, a member of the foundation's Young Lawyers Network Leadership Council that hosted the gala, chaired the event.

Bar Seeks Nominees for 2014 Rosenberg, Marshall Awards

The D.C. Bar is calling for nominations for its 2014 Beatrice Rosenberg Award for Excellence in Government Service and its 2014 Thurgood Marshall Award. Both awards will be presented at the Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting in the spring.

The Rosenberg Award is presented annually to a D.C. Bar member whose career exemplifies the highest order of public service. The Bar established the award in honor of Beatrice "Bea" Rosenberg, who dedicated 35 years of her career to government service and performed with distinction at the U.S. Department of Justice and the U.S. Equal Employment Opportunity Commission. She also served as a member of the Board on Professional Responsibility.

In keeping with the exceptional accomplishments of Ms. Rosenberg, nominees should have demonstrated outstanding professional judgment throughout long-term government careers, worked intentionally to share their expertise as mentors to younger government lawyers, and devoted significant personal energies to public or community service. Nominees must be current or former employees of any local, state, or federal government agency.

The Bar established the Thurgood Marshall Award in 1993, which is presented biennially and alternates with the presentation of the William J. Brennan Jr. Award. Candidates for the Marshall Award must be members of the D.C. Bar who have demonstrated exceptional achievement in the pursuit of equal justice and equal opportunity for all Americans.

Information for both awards can be found at www.dcbar.org.

Nominations for both the 2014 Rosenberg and Marshall awards may be submitted electronically by e-mail attachment to rosenbergaward@dcbar.org or marshallaward@dcbar.org, respectively, or in a hard-copy format to Katherine A. Mazzaferri, Chief Executive Officer, District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005. Electronic submissions are encouraged.

The deadline for submissions is Friday, January 24.

To inquire about the awards, please e-mail rosenbergaward@dcbar.org or marshallaward@dcbar.org.

Former Bar President Higuchi Receives Make a Difference Award

Epstein Becker Green, P.C. celebrated Diversity Awareness Month by presenting its first ever Make a Difference Award to Shirley Ann Higuchi, chair of the board of directors of the Heart Mountain Wyoming Foundation, on October 3.

Higuchi previously worked in the firm's health care and life sciences practice and served as president of the D.C. Bar from 2003 to 2004.

At the Heart Mountain Wyoming Foundation, Higuchi works to preserve the site and memories of Heart Mountain Relocation Center, one of the internment camps during World War II, so future generations will not forget the experiences of thousands of Japanese Americans illegally imprisoned at the camp.

"Her heartfelt commitment and dedication in bringing about awareness of such an important issue, which impacts not only Japanese Americans but all of

us, in general, exemplifies what the award is all about," said Carrie Valiant, chair of Epstein's diversity and professional development committee.

Throughout the evening, guests gave remarks not only on Higuchi's notable legal career, but also her devotion to honoring her parents' lives through her work with the foundation. Among those who spoke at the event were Edward C. Clifton, associate justice at the Superior Court of Rhode Island; Anna Blackburne-Rigsby, associate judge at the D.C. Court of Appeals; and Stuart Gerson, a member at Epstein.

Higuchi's parents met at the internment camp. As the story goes, her father grew up on a farm in San Jose, California, while her mother was a city girl from San Francisco. The two had classes together while at Heart Mountain, and they later recognized each other when they both attended the University of California, Berkeley.

"[When I was] a kid, when my mother used to speak of Heart Mountain, she used to make it sound like it was a fun place to be. It was a camp. And then she reminded me, 'This is where I met dad.' I used to have this vision that Heart Mountain was this place of love. Heart. Mountain," said Higuchi in an ABC documentary shown at the event. In reality, it was where 14,000 people of Japanese descent were forcibly relocated during the war.

As her mother got older, she began quietly working to help create an interpretive center where people could reflect on that time of the nation's history and honor the memory of former internees.

"My mother never talked about her involvement like she never talked about being in the camps," said Higuchi in the documentary. "It was very much later that I realized that she was writing checks and sending money to Wyoming to dream of having something built there." Higuchi's mother died of pancreatic cancer before she could see her dream fulfilled. Higuchi stepped in, and the Heart Mountain Interpretive Center opened in August 2011.

In addition to honoring Higuchi's work, the cocktail reception, held at the Fairmont Hotel, also kicked off Diversity Awareness Month and celebrated the collaboration between the National Consortium on Racial and Ethnic Fairness in the Courts (NCREFC) and the Heart Mountain Wyoming Foundation.

NCREFC's annual meeting in June 2014 will be held at the site of the former Heart Mountain Relocation Center and will mark the first time NCREFC has collaborated with another group for the event.—*T.L.*

Grants for Change

Tim Coburn Photography & Courtesy of D.C. Bar Foundation.

D.C. Bar Foundation Executive Director Katia Garrett takes part in the foundation's fall reception celebrating its beneficiaries. The reception was held at Alston & Bird LLP and also featured remarks by Bar Foundation Advisory Committee member Dennis O. Garris, Bar Foundation Board President Marc L. Fleischaker, and Bar Foundation Young Lawyers Network Leadership Council cochair Emily Seymour Costin.—***K.A.***

2014 D.C. Bar Elections Open for Nominations

The D.C. Bar is accepting nominations from members wishing to be candidates in the 2014 Bar elections. The deadline for receipt of nominations is January 6.

The D.C. Bar Nominations Committee is charged with nominating individuals for the positions of D.C. Bar president-elect, secretary, and treasurer; five members of the D.C. Bar's Board of Governors; and three vacancies in the American Bar Association (ABA) House of Delegates. All candidates must be active members of the D.C. Bar, and all candidates for ABA House positions must also be ABA members.

Individuals interested in being considered for any of these positions should submit their résumés and a cover letter stating the position for which they would like to be considered, as well as a description of work or volunteer experiences that provide relevant skills for the position(s) sought. Nominations that do not include a description of relevant experience will not be considered. Leadership experience with other D.C. Bar committees, voluntary bar associations, or the Bar's sections is highly desirable. Nomination materials may be e-mailed to executive.office@dcbar.org or mailed to the D.C. Bar Nominations Committee, Attention: Katherine A. Mazzaferri, Chief Executive Officer, 1101 K Street NW, Suite 200, Washington, DC 20005-4210.

The D.C. Bar's New Web Site Is Coming Soon

The D.C. Bar's Web site is getting a new look! During this process, the Bar will continue to deliver newsworthy content to keep our members informed and engaged. The Bar's Web site will remain available at www.dcbar.org. However, your bookmarked links may no longer work as we transition to our new Web site. In the meantime, stay connected through our social media channels—Facebook, LinkedIn, and Twitter. We appreciate your patience.

D.C. Bar Leadership Academy Seeks Applicants for 2014 Class

The D.C. Bar is now accepting applications from Bar members interested in participating in the D.C. Bar Leadership Academy in 2014. The Bar is looking for approximately 25 Bar members from diverse backgrounds, practice settings, and practice areas to join the academy.

Launched earlier this year, the Leadership Academy aims to identify, inspire,

Marvell Gay

Womble Carlyle Sandridge & Rice LLP managing partner Pam Rothenberg (left) shows to a guest one of the works on display at the firm when it hosted the exhibit "The Collective," a collaboration with Honfleur Gallery, in October.

and educate Bar members to be leaders of the Bar and to encourage them to use their leadership skills in professional settings, local bar associations, and community organizations. Sixteen attorneys from the inaugural class graduated in April.

The 2014 class will be held over three full-day sessions at the D.C. Bar headquarters starting March 7. The program also includes a half-day session at the D.C. Bar Pro Bono Program's Advice and Referral Clinic.

The academy's curriculum includes an overview of the D.C. Bar, including its mission and strategic plan, and covers topics such as leadership styles, communication skills and styles, influence and persuasion, teamwork and consensus building, how to conduct effective meetings, problem solving and strategic thinking, civility and professionalism, and leadership skills in action.

Attendance at all sessions is mandatory, and participants are expected to attend each session in its entirety.

The deadline to apply is December 6. For more information, e-mail leadershipacademy@dcbar.org or visit the Bar's Web site at www.dcbar.org and search "Leadership Academy."

Bar Sections Announce Steering Committee Openings

The D.C. Bar sections are seeking members interested in steering committee positions for all of the Bar's sections. Members wishing to be considered should submit a Candidate Interest Form and résumé to the Sections Office by 5 p.m. Eastern Time on Thursday, February 6. All section members will be notified by e-mail or postal mail about the availability of Candidate Interest Forms, which can be found online by choosing the "Elections" option under the "Sections" tab at www.dcbar.org.

Nearly all steering committee vacancies are for three-year terms. Each section has two, three, or four available positions. A list of vacancies also is available online.

The sections' nominating committees will review all Candidate Interest Forms to find the best qualified, diverse candidates. Two to three candidates will be nominated for each position. Previous leadership experience with voluntary bar associations or with the Bar's sections is highly desirable.

The elections will take place in the spring of 2014, and the results will be announced in June. The winning candidates will assume their new steering committee roles on July 1.

Womble Carlyle Turns Office Into Gallery to Showcase Local Artists

In October Womble Carlyle Sandridge & Rice LLP transformed its offices in Washington, D.C., into a temporary art gallery to showcase the works of emerging local artists, thanks to a partnership with Honfleur Gallery, a contemporary art space in Anacostia.

The art exhibit, titled "The Collective," featured the works of 10 photographers, five sculptors, and one visual artist. Among the contributing artists was a local high school student whose photograph was submitted by Critical Exposure, a nonprofit that teaches the youth the power of photography.

Womble Carlyle moved into its D.C. office in 2011 and the new space served as the inspiration for the art collection.

"We ended up with this awesome space and I wanted to do something that would keep the enthusiasm and excitement about it alive," said Pam Rothenberg, managing partner at the firm. Rothenberg said the collaboration was the firm's way of supporting both the creative economy and the entrepreneurial community of the District.

After some crowdsourcing in the office about how best to continue to celebrate the space, the idea of using it as an art gallery won. The firm then turned to Duane Gautier, chief executive officer and president of Arch Development Corporation, to help make the idea a reality.

"It was an extremely easy process; this was the first law firm we've curated an art show for and hopefully we'll be doing more," said Gautier, whose firm counts Honfleur as one of its projects.

The sculptures were done by members of the Washington Sculptors Group, which Honfleur had worked with previously. The photographs were chosen by jury process after a call for artists, both amateurs and professional, was put out.

"The Collective" ran from October 16 to 25, but plans are under way to stage another exhibit.—*K.A.*

Bar Evaluation Committee Invites Performance Feedback on Judges

The D.C. Bar Judicial Evaluation Committee (JEC) is conducting its 2013–2014 performance evaluation of judges who preside over the D.C. Court of Appeals and the D.C. Superior Court. (See full feature on page 18.)

Attorneys who have appeared before one or more of the judges listed below during the period between July 1, 2011, and June 30, 2013, will be asked to provide feedback. The survey is conducted online only, and all responses and comments will remain anonymous. Evaluations are due by 10 p.m. EST on January 12.

The following Court of Appeals judges will be evaluated this year: Corinne A. Beckwith, Catharine F. Easterly, Michael W. Farrell, John M. Ferren, Theodore R.

Newman Jr., William C. Pryor, Frank E. Schwelb, and John A. Terry.

The following Superior Court judges will be evaluated this year: Mary Ellen Abrecht, John H. Bayly Jr., Leonard Braman, Harold L. Cushenberry Jr., Danya A. Dayson, Jennifer A. DiToro, Herbert B. Dixon Jr., Frederick D. Dorsey, Stephanie Duncan-Peters, Natalia Combs Greene, Brian Holeman, Craig Iscoe, William Jackson, John Ramsey Johnson, Ann O'Regan Keary, Peter A. Krauthamer, Judith Macalusco, John F. McCabe Jr., Robert E. Morin, John M. Mott, Michael L. Rankin, J. Michael Ryan, Fern Flanagan Saddler, Lee F. Satterfield, Frederick H. Weisberg, Ronald P. Wertheim, Yvonne Michelle Williams, Peter H. Wolf, and Joan Zeldon.

Judges are evaluated in their 2nd, 6th, 10th, and 13th year of service. Additionally, senior judges are evaluated during the second year of their four-year terms, and once during their two-year terms.

Each evaluated judge will receive a copy of his or her survey results, and the chief judge of each court will receive the results for all judges from his court. Evaluation results of senior judges and judges in their 6th, 10th, and 13th year of service also will be sent to the D.C. Commission on Judicial Disabilities and Tenure.

The JEC has retained Research USA, an independent vendor, to administer the survey and tabulate the final results. Attorneys who do not receive an invitation from Research USA, and believe they are eligible to participate, may request a link to the survey directly from Research USA at dcbarjudicialevaluation@researchusainc.com.—*K.A.*

D.C. Council Votes to Delay Election of Attorney General

On October 1 the Council of the District of Columbia voted 7–6 to delay the election of the District's attorney general until 2018. District residents previously had voted in 2010 to change the position from a mayor-appointed role to an elected one, starting in 2014.

As the election drew closer, concerns grew among some D.C. officials about the transition and restructuring plans for the Office of the Attorney General. Among the questions raised were what duties would be assumed by the newly elected attorney general and what responsibilities would fall under the mayor's authority. Plans were in place to transfer the chain of command from general counsel offices to agency directors. In addition, no qualified candidates have made official statements of interest to run for the position.

The move to delay the elections for four more years has been met with both criticism and support. Those in favor of postponing the elections believe additional time is needed to clarify the new role of the District's top attorney.

Critics include D.C. solo practitioner Paul Zukerberg, who has filed a lawsuit against the D.C. Council and the D.C. Board of Elections, arguing that the council does not have the authority to delay the election after a majority of residents approved it in a 2010 referendum. Zukerberg, who is represented by Reed Smith LLP attorneys Gary Thompson and Marc Kaufman on a pro bono basis, seeks to keep the election on the April primary ballot. A preliminary injunction hearing took place on November 7 in U.S. District Court.

While the D.C. Council has voted to delay the election, the Board of Elections continues to prepare for one because the law has not been made final. In the District, laws require a 30-day congressional review period.

"The Council had the legal authority to postpone the election," Attorney General Irvin B. Nathan said. "While we regret that it did so in light of the referendum vote, we are confident that the District, which has had an appointed chief legal officer since the 19th century, will be able to operate effectively with an appointed attorney general for another few years."—*T.L.*

continued on page 19

A Friend of Families

Courtesy of the D.C. Bar Sections

The D.C. Bar Family Law Section honored Jennifer A. DiToro, an associate judge at the Superior Court of the District of Columba, at its annual Family Law Judicial Reception on October 29 at Arnold & Porter LLP. Judge DiToro was recognized for her compassionate service to families and children. Pictured from left to right are Shelia Kadagathur, Christopher M. Locey, Judge DiToro, Sara Scott, Tanya M. Jones Bosier, and Allison Miles-Lee.—***T.L.***

New Bar Members Must Complete Practice Course

New members of the District of Columbia Bar are reminded that they have 12 months from the date of admission to complete the required course on the D.C. Rules of Professional Conduct and District of Columbia practice offered by the D.C. Bar Continuing Legal Education Program.

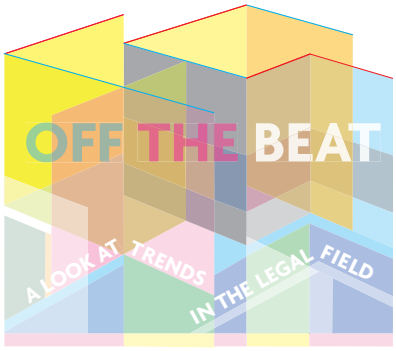
D.C. Bar members who have been inactive, retired, or voluntarily resigned for five years or more also are required to complete the course if they are seeking to switch or be reinstated to active member status. In addition, members who have been suspended for five years or more for nonpayment of dues or late fees are required to take the course to be reinstated.

New members who do not complete the mandatory course requirement within 12 months of admission receive a noncompliance notice and a final 60-day window in which to comply. After that date, the Bar administratively suspends individuals who have not completed the course and forwards their names to the clerks of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, and to the Office of Bar Counsel.

Suspensions become a permanent part of members' records. To be reinstated, one must complete the course and pay a $50 fee.

The preregistration fee is $219; the onsite fee is $279. The final class for 2013 is December 10. Dates for 2014 are January 11, February 4, March 8, April 8, May 17, and June 10. Advanced registration is encouraged.

For more information or to register online, visit www.dcbar.org, keyword: "mandatory course."



Bar Renews Call for Attorney Participation in Judicial Survey

For years the D.C. Bar Judicial Evaluation Committee (JEC) has worked hard to increase attorney participation in its annual judicial survey, and this year will be no different. The main challenge for the JEC remains the same: how to get more attorneys involved in the process of evaluating judges in the District of Columbia to strengthen District's merit system of placing judges on the bench.

This year's survey will evaluate the performance of 37 judges—29 from the D.C. Superior Court and 8 from the D.C. Court of Appeals—who are in their 2nd, 6th, 10th, and 13th year of service, as well as senior judges in the second year of their four-year terms and in the first year of their two-year terms.

The JEC is calling on attorneys who have appeared before one or more of the selected judges during the period between July 1, 2011, and June 30, 2013, to provide feedback.

To determine who will be e-mailed a survey, the JEC relies on the D.C. Courts' clerk's office to obtain data on attorneys who have appeared before the selected judges in the previous year. The online survey, which opened at the end of November, will be available until mid-January.

The chief judge of each court will receive the survey results for all judges from his court, and evaluations of judges seeking additional terms or senior status will be considered by the D.C. Commission on Judicial Disabilities and Tenure in its judicial evaluation process. The evaluated judges will receive copies of their survey results.

The JEC has exerted various efforts to draw more respondents following a decline in attorney response in previous survey cycles. In the 2011–2012 survey, for instance, less than 10 percent of attorneys who appeared before judges in the D.C. Superior Court and D.C. Court of Appeals provided feedback. The number slightly rose to 14.3 percent in the 2012–2013 survey.

While there is a sign of improvement, the JEC still would like to see a better response, and it has taken several steps to achieve that goal, from reaching out to "institutional litigants" to rewriting the survey language.

Better Data, Fair Process

Aside from formulating the survey questions, the JEC makes sure that the survey process is appropriate and fair. This year the committee added more than one comment section on the survey.

The JEC also has tapped James Whitehead of the Public Defender Service for the District of Columbia and Mary Ann Snow of the U.S. Attorney's Office for the District of Columbia to help improve outreach.

"We thought that if we could get more institutional litigants [on the JEC] . . . we could ask them to [reach out to] their members and make sure they have the information they need and the encouragement they may need to respond to this very important survey," said Snow, who chairs the committee.

In addition, the JEC contacted Betty Ballester, president of the D.C. Superior Court Trial Lawyers Association, in an effort to reach out to defense attorneys appointed under the Criminal Justice Act.

The JEC also reworked the survey itself, doing away with some of the language in the instructions in an attempt "to convey that the survey is not onerous to complete and hopefully encourage greater participation," according to Snow.

Recognizing that time is precious to attorneys, the JEC has stressed that the survey is very user-friendly and should only take about 10 minutes for respondents to complete.

"They're not going to be evaluating all 37 judges who are being evaluated. They may have only appeared before a handful, or maybe even just one judge," said Snow.

The survey serves an important purpose: The District does not elect individuals to the bench but instead uses a merit system in selecting and reappointing judges, and the survey is part of that selection process.

"It's very important to the judge, to our judicial community, and to the D.C. Bar members who practice before these judges. The better the data the JEC can obtain from the D.C. Bar membership who appear before these judges, the more fair the process will be to the individual judges and the judiciary as a whole," said Snow.

Evaluating Performance and Fitness

The D.C. Commission on Judicial Disabilities and Tenure also looks at the JEC surveys during its evaluation of judges seeking to serve an additional term or seeking to take senior status.

"These evaluations are an important part of the commission conducting its investigation. The fewer responses there are, the less valid the evaluations may be, particularly if there is someone who had a particularly difficult time with one of the judges," said Snow.

Commissioners also conduct interviews with court personnel who have worked closely with the selected judges, with the appropriate chief judge, and with the judges themselves. Additionally, the commission solicits comments from the legal community and the general public on the qualifications of the judges being evaluated.

Judges who are determined to be "well qualified" are automatically appointed to a 15-year term. If a judge is determined to be "qualified," the president of the United States has the ability to renominate the judge, subject to U.S. Senate approval. Judges who are determined to be "unqualified" are ineligible for reappointment or any future appointment to the D.C. Courts.

Finally, the commission writes an evaluation report on a judge's performance and fitness for reappointment, and then sends the report to the president at least 60 days before the expiration of the judge's term.

In the case of judges seeking senior status, the chief judge appoints the requesting judge if there is a favorable recommendation from the commission. A judge who does not receive a favorable recommendation is deemed ineligible for appointment as a senior judge.

Evaluations are due by 10 p.m. EST on January 12. All survey responses and comments will remain anonymous.—*K.A.*

PART Event Looks at Role of Corporations in Fight for Access

Each year the D.C. Bar Pro Bono Partnership (PART) Luncheon serves as a celebration of the legal community's efforts to promote pro bono work, as well as a reminder that thousands of District of Columbia residents continue to face significant access to justice issues. On October 23 the program examined new approaches to tackling the demand for pro bono legal services.

Held at Arnold & Porter LLP, the event recognized the more than 100 District law firms and government agencies that provide pro bono legal services through the PART network.

Over the past year, the partnership has worked to improve the delivery of civil legal services, said James Sandman, chair of the D.C. Bar Pro Bono Committee and president of the Legal Services Corporation. The Pro Bono Committee appointed a working group to assess the needs of partnership members, reinstituted quarterly meetings, created an advisory group that holds planned partnership events, and launched a listserv to open the flow of communication and share ideas.

Chief Judge Eric T. Washington of the D.C. Court of Appeals spoke about the court's efforts to involve local law schools by hosting a roundtable with the deans to discuss how they can play a greater role in addressing the District's access to justice gap. Currently, each school has agreed to appoint a representative to serve on a committee working with the D.C. Access to Justice Commission to optimize their collaborations.

"Despite our best efforts, however . . . our task remains a daunting one because we continue to see an increase in poverty, a growing disparity in income, and a real lack of affordable housing here in the District of Columbia," Judge Washington said. More people continue to need help as they navigate the system, he added.

According to keynote speaker Ivan Fong, senior vice president of legal affairs and general counsel of 3M Company, one of the solutions may come from the corporate world. "I believe that we can reinvigorate and expand the pool of pro bono lawyers with the untapped resources of the corporations and government agencies in our community," he said, focusing on the role of corporate in-house counsel. "Poverty, hunger, and the unmet needs for legal assistance exist in every county in America. Corporations can bring enormous resources to help improve the lives of those around them."

Fong outlined what he believed were important aspects to a successful corporate pro bono program, including top-down leadership and a commitment from the general counsel, an active pro bono committee with a strong chair, efforts tackling systemic reform, and a recognition of outstanding pro bono work.

When audience members—many working in legal services—spoke about the struggle to get corporations involved in their mission, Fong noted that there may be initial resistance, but he believes that there is large interest at many businesses to help. Often, he said, it takes a little nudging, peer pressure, and continued visible commitment to provide businesses the tools to do the work.

"Despite the crisis in funding for civil legal aid and the deepening effect of the great recession and our slow recovery, I think there's a real opportunity for corporate law departments and others to join the efforts to help respond to this crisis and to meet the real and growing gap in legal services today," Fong said.—*T.L.*

Chris Zarconi of Chris Zarconi Photography

Carter Phillips (left), a partner and chair of the executive committee at Sidley Austin LLP, presents Dr. David Wessel (right), executive vice president and chief medical officer of Hospital and Specialty Services at Children's National Medical Center, with a donation of $250,000 on October 3 at the Newseum.

Sidley Austin Makes Donation to Children's Medical Center

To celebrate its 50th anniversary in the District of Columbia, Sidley Austin LLP donated $250,000 to the Children's National Medical Center, which will spend the funds on its Children's Ball and the D.C. Lawyers Care for Children Endowment Fund for Critical Care Medicine.

"We view our support of the community and our charitable partners as not only a responsibility, but our moral obligation. This donation is our way of giving back and supporting Children's National and all of the important and beneficial work the physicians and health care professionals there do," managing partner Mark Hopson said.

Carter Phillips, chair of the firm's executive committee, said that Sidley has a long tradition of giving back to communities.

"Over the past 50 years, Sidley has developed deep roots in D.C., and we are delighted to observe our 50th anniversary by supporting the incredible programs and services provided by Children's National Medical Center," he said.

Sidley is one of the city's largest law firms with nearly 290 lawyers and other professionals. It has more than 1,700 lawyers working in 19 offices worldwide.—*K.A.*

Reach Kathryn Alfisi and Thai Phi Le at kalfisi@dcbar.org or tle@dcbar.org, respectively.

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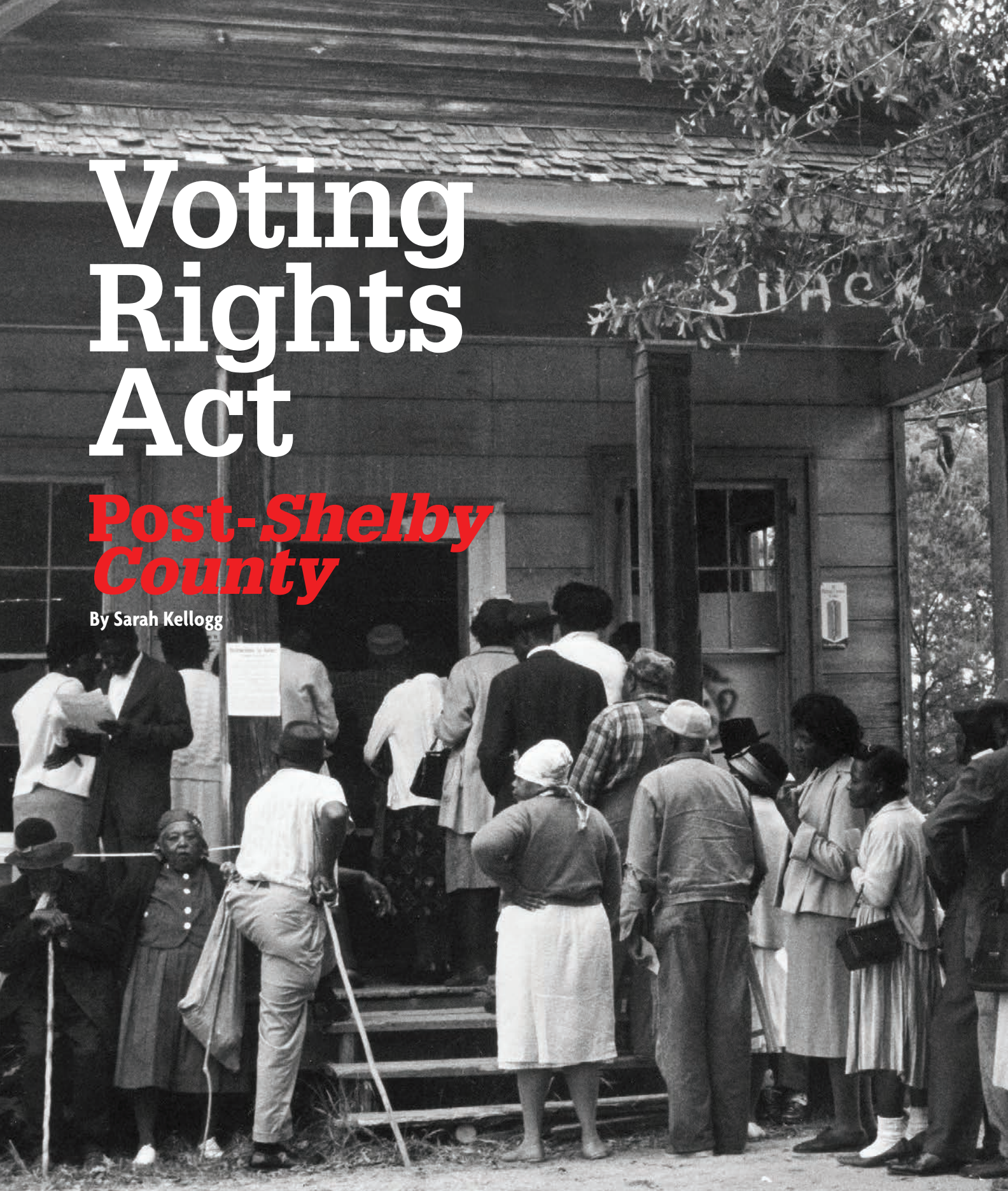
Voting Rights Act

Post-*Shelby County*

By Sarah Kellogg



1966: A group of voters lines up outside the polling station in Peachtree, Alabama, a year after the Voting Rights Act was passed.

All photographs courtesy of MPI/Getty Images

Chief Justice John Roberts

In the days after the U.S. Supreme Court issued its decision in *Shelby County v. Holder*, gutting a critical section of the once-inviolate Voting Rights Act of 1965 (VRA), there was a groundswell of grievances and accolades. After all, the justices had toppled the status quo on voting rights in America and declared Jim Crow at the ballot box dead.

Civil rights groups could no longer rely on the VRA's preclearance requirement to police the voting regulations of states and local governments that had been singled out for past discriminatory behavior. Post-*Shelby County*, every state could freely write and enact its own voting regulations without obtaining prior approval from the U.S. Department of Justice (DOJ) or the federal courts.

The Court's decision immediately appeared to widen the already growing gulf between the right and the left on civil rights and voting. Critics blasted Chief Justice John Roberts and the conservative majority for tossing aside their cherished affection for strict constructionism in favor of political axe grinding. Conservatives derided Democrats and progressives for giving life support to a view of racial history and politics that they claim died long ago.

Under the barrage of attacks, there was a sense that the future of civil rights and voting was being determined not by a common vision of the Constitution or law but by profoundly dissimilar world views.

"*Shelby County* is a decision where the majority and the dissent see different political worlds," says John "Jack" Hardin Young, counsel at Sandler, Reiff, Young & Lamb, P.C. and former special counsel to the Democratic National Committee. "It's a troubling part of where our judicial system is heading. From *Bush v. Gore* to *Shelby County*, the Court's majority and minority have fundamental differences on the underlying facts, which in turn are used to justify the constitutional outcomes."

The months since the decision have been marked by resignation and rebellion. Governors in Texas and North Carolina—and their state legislatures—have energetically rallied the troops to push through significant changes to voter identification and registration laws, and this time without the DOJ looking over their shoulders. In Texas, Gov. Rick Perry drove the adoption of a new map for congressional and state legislative districts to replace the one held up by the federal courts. Perry and other governors were certain the DOJ had overstepped its authority, and they welcomed the Court's new view of the VRA and states rights.

"The Voting Rights Act was very important legislation at the time," says

"I think there is a danger that the Court is on a mission to eliminate any provision in the law that addresses racial discrimination, except those keyed to intentional discrimination. A lot of these laws are not very obvious in their discrimination, and they tend to burden voting but not prevent it."

Paul Smith, a partner at Jenner & Block LLP

President Lyndon B. Johnson discusses the Voting Rights Act with the Rev. Martin Luther King Jr. The act, part of President Johnson's Great Society program, increased the number of black voters in the South.

Charles R. Spies, who leads Clark Hill PLC's national political law practice. "Certain concepts behind it remain important, but they should be adapted to meet the current conditions and reflect analysis and data that is accurate for today."

Still smarting from the Court's decision, U.S. Attorney General Eric Holder announced in July that the Obama administration was employing a new strategy to protect voting rights, namely, using other sections of the VRA as a basis for its lawsuits. Holder took aim at Texas and North Carolina. He also used the bully pulpit of his office to affirm the necessity of preclearance for certain jurisdictions.

"My colleagues and I are determined to use every tool at our disposal to stand against discrimination wherever it is found," Holder told the National Urban League in July. "But let me be very clear: these remaining tools are no substitute for legislation that must fill the void left by the Supreme Court's decision. This issue transcends partisanship, and we must work together. We cannot allow the slow unraveling of the progress that so many, throughout history, have sacrificed so much to achieve."

Amid the turmoil, some believe the Court might have inadvertently handed civil rights and voting rights advocates an opportunity. They argue that the current disarray can be used to broaden the public's understanding of voting rights issues and to unite activists who feel the VRA desperately needed to be modernized to reflect the forms of discrimination being used today.

"People tend to have important conversations when things are really broken," says Rob Richie, executive director of FairVote, a Maryland-based organization that advocates for voting rights protections. "We all start to ambulance chase on a major level when things have gone wrong, but I'm optimistic about the changes that could happen out of this environment. When change eventually comes, it often can happen relatively quickly when we're at a point of crisis."

What Remains of the VRA

If there is a crisis, it stems from the unmistakable signal the Supreme Court sent with its decision in *Shelby County*. The Court determined that Section 4 of the VRA was unconstitutional. In tossing out the provision, it eliminated one of the federal government's most effective tools over nearly 50 years in curbing efforts to limit the voting rights of racial and ethnic minorities.

"It's the only logical conclusion that the Court could come to," says Ilya Shapiro, a senior fellow in constitutional studies at Cato Institute, a free-market think tank based in Washington, D.C. "The coverage formula is clearly outdated and didn't correspond to the facts on the ground."

Section 4 outlined the formula used to determine whether an entity was covered by the law's preclearance requirements due to its history of discriminatory practices. The Court objected to the formula because it did not reflect "current conditions" but rather often seemed to rely on behavior from decades ago. The VRA's preclearance rules applied to nine states—Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia—and a myriad of counties and municipalities in California, Florida, Michigan, New York, North Carolina, and South Dakota.

"Regardless of how one looks at that record," the Court's majority commented, "no one can fairly say that it shows anything approaching the 'pervasive,' 'flagrant, 'widespread,' and 'rampant' discrimination that clearly distinguished the covered jurisdictions from the rest of the Nation in 1965." The majority opinion was written by Chief Justice Roberts and was joined by Justices Samuel A. Alito, Anthony M. Kennedy, Antonin Scalia, and Clarence Thomas.

The majority rapped Congress over the knuckles for not using more up-to-date information in assessing the coverage formula during the VRA's last renewal in 2006. (Members of Congress claim they did.) The majority noted: "Congress could have updated the coverage formula at that time, but did not do so." It added that Congress's "failure to act" left the Court no choice but to toss out Section 4. "The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance," the Court said.

The Court had signaled its concerns about the formula in

2009 in *Northwest Austin Municipal Utility District Number One v. Holder*. In that case the justices upheld the VRA, but questioned congressional thinking for singling out states with a spotty formula. "The statute's coverage formula is based on data that is now more than 35 years old, and there is considerable evidence that it fails to account for current political conditions," the chief justice, writing for the majority, said in questioning the formula's constitutionality.

In *Shelby County*, the Court left untouched Section 5 of the VRA, even though it works in tandem with Section 4. Section 5 requires formula-covered states and local governments to preclear voting law changes. The Court noted that it was dispensing a "no holding" on the section's constitutionality, which some have interpreted as an omen for future challenges. The majority did not mention Section 3 either, even though that provision allows the government to file suit to have a new state or local entity put under Section 5's preclearance regime. Section 3 is often referred to as the "bail-in mechanism."

"I think there is a danger that the Court is on a mission to eliminate any provision in the law that addresses racial discrimination, except those keyed to intentional discrimination," notes Paul Smith, a partner at Jenner & Block LLP. "A lot of these laws are not very obvious in their discrimination, and they tend to burden voting but not prevent it."

In its decision, the Court did tout the bounty of Section 2, noting that it was "in no way" affected by the ruling. Section 2, the heart of the VRA to its Section 5's hammer, forbids discrimination in voting and applies to every state and local government nationwide. It is the section that conservatives most frequently point to as a post-*Shelby County* remedy for civil rights activists concerned about discriminatory practices in voting.

Justice Ruth Bader Ginsburg issued a fiery defense of the VRA in her dissent, questioning the Court's standing to second-guess Congress on what constitutes effective tools for ensuring equality in the electoral process. "For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made," Ginsburg wrote.

Ginsburg noted that over time, the VRA's focus had evolved from "first-generation barriers to ballot access," such as poll taxes and literacy tests, to "second-generation barriers" like racial gerrymandering and changes in voting times and locations of polling places. These new barriers are likely more difficult to police because they can be easily disguised as partisan politics, which is not unconstitutional, of course.

Ginsburg pointed out that the U.S. House of Representatives and Senate had held hearings, tallied up a voluminous legislative record, and studied the question for months if not years before adopting the legislation. She said the Court should have deferred to elected officials because they have a better understanding of the electoral process.

"[T]he court errs egregiously by overriding Congress's decision," concluded Ginsburg, who was joined by Justices Stephen G. Breyer, Elena Kagan, and Sonia Sotomayor.

States Take Swift Action

Within two days of the *Shelby County* decision, the Court issued orders vacating two federal court rulings that had denied preclearance to Texas's tough new voter ID rules and the state's latest map of congressional and state legislative districts based on the 2010 Census. In addition to Texas, four other states—Florida, Georgia, Mississippi, and North Carolina—signaled their intentions to revive legislation from the preclearance discard pile.

"I think the decision's impact was felt almost immediately," says Bruce V. Spiva of the Spiva Law Firm PLLC. "States were off and running with laws that the Department of Justice and the courts had considered discriminatory just days before."

The two vacated decisions were a clear sign of what was to come. In *State of Texas v. Holder*, the U.S. District Court for the District of Columbia denied preclearance to

"I believe if showing a voter ID is good enough and fair enough for our own president in Illinois, it's good enough for the people in North Carolina. I think it is obviously influenced by national politics since the Justice Department ignores similar laws in other blue states."

North Carolina Gov. Pat McCrory

Texas's voter ID law, agreeing with Holder who had earlier rejected preclearance. The law mandated that voters show one of five forms of government-issued IDs or an election identification certificate (EIC) to vote. Opponents had argued that the requirement was onerous, noting that the EIC was difficult to obtain from the Texas Department of Public Safety because its offices are not accessible in every Texas county.

The second case, *State of Texas v. United States*, saw a three-judge district court panel deny preclearance to Texas's redistricting plans. The lower court concluded that the plans were enacted with a discriminatory purpose.

In August, the DOJ took another shot at Texas and filed two separate challenges to block the laws. One complaint challenged the redistricting maps, arguing that the redrawn districts would intentionally discriminate against Latino and African American voters in Texas. A second complaint took on Texas's photo ID mandate as discriminatory in both purpose and effect. The complaints asked courts in Texas to subject the state to a preclearance regime similar to the one required by Section 5 of the VRA.

That same month, North Carolina Gov. Pat McCrory signed a sweeping ballot access law, making his state the first to pass a restrictive new voting measure after the Court gutted the VRA. Chief among its many provisions is a tough new voter ID requirement.

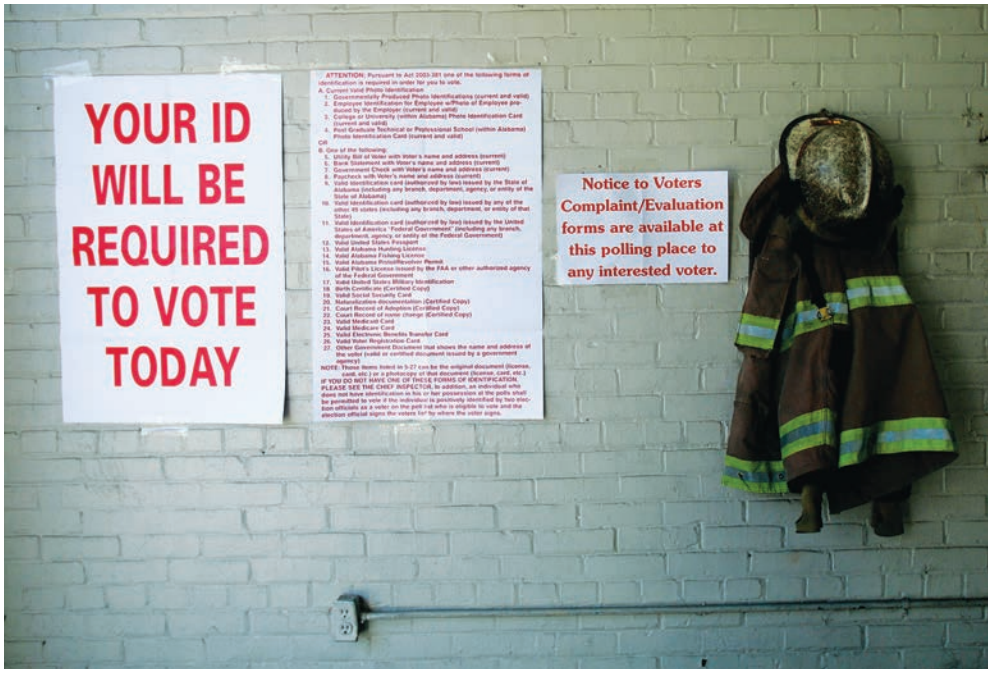
"I believe if showing a voter ID is good enough and fair enough for our own president in Illinois, it's good enough for the people in North Carolina," said McCrory. "I think it is obviously influenced by national politics since the Justice Department ignores similar laws in other blue states."

The argument did not stop the DOJ from filing suit and challenging portions of the state's new voting requirements in *United States v. State of North Carolina*.

"I call upon state leaders across the country to pause before they enact measures similar to those at issue in this case," Holder said in announcing the DOJ's lawsuit against North Carolina in September. "I ask them to think about their solemn duty as lawmakers. And I urge them to consider that, whatever role each of us happens to play—for the times we are honored to serve in public office—we occupy positions of public trust, and must be faithful stewards of this democracy. We must be guided not by short-term partisan goals, but by the historic obligations that have been entrusted to us."

The law's provisions include reducing the number of early voting days, eliminating same-day registration during early voting periods, imposing a photo ID requirement for in-person voting, and prohibiting the counting of provisional ballots that are mistakenly cast in the wrong precinct but in the right county.

"The Justice Department expects to show that the clear and intended effects of these changes would contract the electorate and result in unequal access to participation in the political process on account of race," said Holder. "By restricting access and ease of voter participation, this new law would shrink, rather than expand, access to the franchise. And it is especially troubling that the law would significantly narrow the early voting window that enabled hundreds of thousands of North Carolinians, including a disproportionally large numbers of minority voters, to cast ballots during the last election cycle."



While Holder is unyielding in his support of the VRA, some have suggested that his aggressive approach is creating enemies in the states and could endanger efforts to win congressional support for legislation to repair the gaping hole left by the Court in its *Shelby County* decision.

"I think the Holder Justice Department maneuverings have created bad blood to make it very difficult for Congress to address this issue," says Spies, who served as chief financial officer and counsel for Gov. Mitt Romney's 2008 presidential cam-

> "The biggest problem in the promotion of voting rights is that most people side with Justice Ginsburg that there are second-generation voting burdens that affect minorities. The question is: What is the most effective tool that will attack these burdens on the fundamental right to vote? Unfortunately, second-generation barriers can disguise themselves as political issues. The Court's conservative majority has not seen through this rhetoric."
>
> **Attorney John "Jack" Hardin Young**

paign. "Had the Department of Justice not interjected itself, I think there might have been a bipartisan attempt to modernize the Voting Rights Act, but the Holder–Obama Justice Department has created a toxic atmosphere."

In Search of Remedies

For Holder and the DOJ, the way forward is one marked by small steps with occasional great strides. It is a complicated, piecemeal approach, a far cry from the elegance of Section 5. The first good news for the DOJ came in September when a three-judge federal panel ruled that it could intervene in the Texas redistricting case, despite complaints from Texas that the challenge wasn't timely or appropriate.

The DOJ is using Section 3 of the VRA to rebuild the preclearance regime and bring Texas back into preclearance status, hoping the court will find evidence of intentional discrimination and shift the state under the preclearance umbrella. These types of Section 3 bail-in provisions, designed to cover "pockets of discrimination," have rarely been pursued because Section 5 was a more expeditious route, but post-*Shelby County* all bets are off for the DOJ and civil rights litigators, experts say.

A successful result in the courts under Section 3 would require Texas to seek preclearance and likely squash its redistricting and ballot-access provisions. "[P]art of what I think is very attractive about this as an alternative focus, rather than fixing the formula in Section 4, is it certainly addresses the constitutional problems because it makes coverage tied to findings of violations, recent violations, actual findings of violations," Rick Pildes, a professor at New York University School of Law, told a Brookings Institution symposium in July on the *Shelby County* decision.

The advantage of the Section 3 approach is it does not single out a state or local government based on allegedly outdated discriminatory behavior. Instead it would address "current conditions" or contemporary constitutional violations. Section 3 has limitations that could slow enforcement, though. Bail-in litigation will take time because there is little precedent, and it will require the DOJ to forcefully move forward on many fronts at once.

Many believe that Holder is breaking new ground with these Section 3 challenges, which could prove to be a legitimate path forward. "The Department of Justice is justified in its approach to the Texas ID case, and will begin to write the next chapter on what will be necessary post-*Shelby County* to prevent impediments to voting," notes Young, a national and international expert on election law issues.

Others believe the DOJ could use Section 2 to challenge questionable practices in the states. It is the one section in the VRA that was lauded by the justices because it broadly covers the nation, and its supporters say it is robust enough to handle former Section 5 cases.

"No one has been able to explain why Section 2 has been more than adequate for the non-covered jurisdictions, but now it is somewhat inadequate in the covered jurisdictions," says Michael A. Carvin, a partner at Jones Day. "If Section 2 is good, it's good enough. We need a uniform system. I don't think we need to strengthen the existing laws that apply now. Section 2 has been universally hailed as a voting rights remedy."

But civil rights attorneys say Section 2 is problematic. It is not an easy legal fix for Section 4 and Section 5. It shifts the burden of proof for showing intentional discrimination from states and local jurisdictions to plaintiffs, and complaints are usually only filed after a regulation has gone into effect.

"It totally shifts the burden and responsibility," says Spiva. "I think there's a huge difference between saying you can't change your current procedures without first getting DOJ or the district court to preclear [them], and doing whatever you want and

coming back after years of litigation and saying we made a mistake and [are] trying to undo the law."

For some, that shifting burden is one of the true victories of *Shelby County*. "Section 5 was also unprecedented in the way it violated fundamental American principles of due process: it shifted the burden of proof of wrongdoing from the government to the covered jurisdiction," said Hans A. von Spakovsky, senior legal fellow at The Heritage Foundation, in his testimony before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights in July. "Unlike all other federal statutes that require the government to prove a violation of federal law, covered jurisdictions were put in the position of having to prove a negative—that a voting change was not intentionally discriminatory or did not have a discriminatory effect. While such a reversal of basic due process may have been constitutional given the extraordinary circumstances present in 1965, it cannot be justified today."

The DOJ will have to pick and choose its battles as it makes its way forward, whether using Section 3 or Section 2. The Brennan Center for Justice, a nonpartisan public policy and law institute, reported that more than 80 bills have been introduced in state legislatures in 2013 to restrict, clarify, or redefine the right to vote in more than 30 states. The proposed laws would impose new voter ID requirements, reduce early voting opportunities, make it harder for students to vote, and add additional voter registration regulations.

In 2013 eight states—Arkansas, Indiana, Montana, Nebraska, North Carolina, North Dakota, Tennessee, and Virginia—adopted new laws that would constrain voting rights, according to the Brennan Center. Six of the states added new photo ID requirements. Two states approved modifications in the period for voting, and three states adopted changes or referendum that would affect voter registration rules.

"We keep going on this endless cycle of complaining about voting issues," says Carvin. "This is just another replay of that same old song, and I'm not sure when it will stop."

Various Paths for Congress

There is no doubt that a particularly partisan issue like voting rights would likely cloud an already contentious and crowded legislative landscape, which means congressional action is difficult to foresee on this subject. Still, there is a bipartisan effort to find a solution sooner rather than later, and it is led by members of Congress who have championed the issue for years if not decades, some of them as Freedom Riders.

"It is my belief that the Voting Rights Act is needed now more than ever before," U.S. Rep. John Lewis (D–Ga.), a civil rights pioneer, told the Senate Judiciary Committee during its July hearing on *Shelby County*. "The burden cannot be on those citizens whose rights were, or will be, violated; it is the duty of Congress to restore the life and soul to the Voting Rights Act. And we must do it on our watch, at this time."

The most obvious option for Congress is to rework the Section 4 formula, which is what Chief Justice Roberts suggested. Lawmakers would have a great amount of latitude in crafting a new formula and in filling the hole left by the Court's decision. Of course, the route to an acceptable patch is the thorniest one politically because it would demand that some members of Congress call out their own local governments for discriminatory behavior. That's generally a nonstarter in Congress.

"It's going to be very difficult to get people to vote for a new statute," says Smith, who chairs the appellate and Supreme Court practice at Jenner & Block. "They voted unanimously for renewal because they didn't have a good way to avoid it. Now they're all saying they don't want to overrule the Supreme Court, but it's a more complicated matter than that."

Congress could also adopt a strategy to include in the Section 4 coverage formula every governmental jurisdiction in the United States instead of picking winners and losers. That would deal with the Court's concerns about singling out government entities for unequal treatment, and Congress could simply order every state and local government to preclear election law changes with the DOJ. Of course, such a plan would put an extreme burden on states and DOJ officials who would have to comb through the tsunami of filings annually.

Heather Gerken, a Yale University Law School professor, has suggested that Congress could create an opt-in process that would allow the DOJ to investigate new ballot-access rules proposed by states or local governments after a complaint is filed. In this way, a civil rights group, a community activist, or an elected official could save the DOJ from having to review every new rule proposed every year at every level of government.

Gerken says a new entity similar to the U.S. Equal Employment Opportunity Commission, which reviews discrimination complaints in the workplace, could adjudicate proposed regulations and determine whether they need preclearance. To increase transparency, all state and local voting regulations could be submitted to a national database open to the public for review.

"It really does enable you to sort the wheat from the chaff, so you only target things that matter to people, that someone has recognized that matters," Gerken said during the Brookings symposium in July.

Congress could also choose to employ the Elections Clause in Article I, Section 4, of the Constitution to bolster its control over ballot-access measures. The clause has the rare benefit of having been vetted by Justice Scalia, who wrote in *Arizona v. Inter Tribal Council of Arizona* that the clause "is paramount, and may be exercised at any time, and to any extent which [Congress] deems expedient." The 7–2 decision struck down a law that would have required voters to provide proof of citizenship. The reasoning? A state cannot impose a rule that is more restrictive than the federal law governing ballot access. In this case, the federal law was the National Voter Registration Act, or the so-called "motor voter law."

By using the Election Clause, Congress could exercise its right to set voter registration guidelines for all federal elections, prompting most state and local officials to follow its lead. It also could address the concerns of civil rights groups about efforts to toughen voter ID requirements.

"In the last 10 years, the major battles at the big national level, and I grant you that that's been my primary focus, but the big battles have been over voter identification and the times and places that you can access the ballot. That is clearly within the Election Clause power that Congress has," said Samuel Issacharoff, the Bonnie and Richard Reiss Professor of Constitutional Law at New York University School of Law, at the same Brookings forum. "That's a place where Congress can act with tremendous latitude even beyond the rational relations test identified in *Shelby County*."

Finally, one idea that has gained little traction is the proposal to approve a constitutional amendment guaranteeing the right to vote. While many embrace the spirit of the idea, everyone concedes it would be nearly impossible to usher an amendment through Congress and win state ratification as well.

Introduced in May by U.S. Reps. Mark Pocan (D–Wis.) and Keith Ellison (D–Minn.), the Right to Vote Amendment

would secure for every American citizen an affirmative right to vote in the Constitution, as well as give Congress the power to enforce and implement the amendment. But despite seemingly widespread support for the idea of equality in voting, the bill likely will remain a casualty of the politics around the issue of voting rights.

Political Tricks or Veiled Discrimination?

With *Shelby County*, the Court seemed to wipe clean the slate of racial discrimination at the ballot box, permanently assigning Jim Crow tactics to the past. In doing so, the majority opinion recounted some promising gains for minorities since the VRA was enacted—the numbers of African American officeholders, high levels of minority voter registration, and the historic election of an African American president in 2008 and 2012—as proof of the success of minority voters at the polls. It is hard to argue with the successes, but then critics of the Court say the good news belies the problems underneath the surface, and the constant onslaught of voting restrictions.

For that reason, it's possible the battle over ballot access will come down to whether these new rules coming out of the states qualify as enthusiastic partisan politics or a veiled attempt at racial discrimination to limit minority voting. It's apparent that where people line up will depend on their politics, to no one's great surprise.

"The biggest problem in the promotion of voting rights is that most people side with Justice Ginsburg that there are second-generation voting burdens that affect minorities," says Young. "The question is: What is the most effective tool that will attack these burdens on the fundamental right to vote? Unfortunately, second-generation barriers can disguise themselves as political issues. The Court's conservative majority has not seen through this rhetoric."

But not everyone sides with Justice Ginsburg. They note that the political game has a long and storied history of using electoral sleight-of-hand to advantage one party or another.

That doesn't necessarily constitute a discriminatory activity targeting racial minorities, they say. In some cases, it's just the brass knuckles of politics and campaigns in the 21st century.

"Dirty tricks are an unfortunate part of campaigns and have been back to the time of our Founding Fathers," says Spies. "I see no evidence of a racial basis in dirty tricks. Plenty of stupid or dishonest staffers have sent out e-mails or missives about inaccurate voting locations or election dates. It's unfortunate but a reality of politics."

What is clear is that the debate will go forward as the DOJ wrestles with the states over what constitutes discriminatory activities at the polls, as Congress ponders what it should or can do, as civil rights activists consider ways to rejuvenate the VRA for another 50 years, and as the Supreme Court keeps a watchful eye on everyone.

"The decision has raised questions that in some ways should have been asked for a while," says FairVote's Richie. "What can be a more universal approach to the protection of voting rights? Where is there a bright line between areas that deserve stricter scrutiny and those that don't? We shouldn't just simply give our elected officials a pass on this. We tend to say it's just politics. There's more at stake here than just politics, and the public should know it."

Sarah Kellogg last wrote about surveillance and the use of drones in the July/August 2013 issue of Washington Lawyer.

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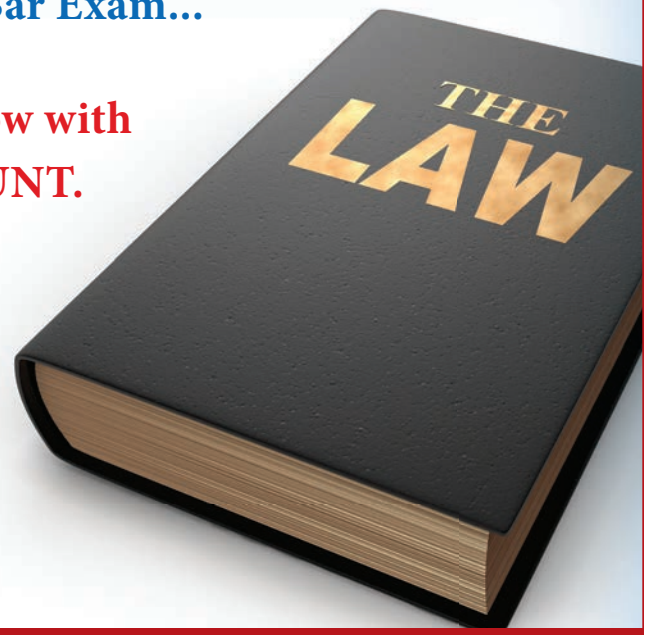

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Taking the Stand

New Rules and Consequences

Federal Rules of Civil Procedure Changes Would Address Imbalances in Discovery Costs

By Gwen W. D'Souza

Galileo once said: "All truths are easy to understand once they are discovered; the point is to discover them." Discovery is a civil litigator's toolbox to find the truth. Most litigators wonder if they have asked too little of an opposing party, but few wonder if they have asked too much.

On August 15, 2013, the notice and comment period began for the proposed amendments to the Federal Rules of Civil Procedure. The amendments regarding discovery will have far-reaching consequences, if implemented. We, as members of the bench and bar, have been asked:

- Would you like to be permitted to depose 5 witnesses? Or should the rule continue to provide for a limit of 10 witnesses?
- Would you like to be limited to 6 hours of deposition? Or would you prefer the limiting provision remain at 7 hours?
- Should the limitation be 15 interrogatories? Or would you prefer the rule to continue to provide for 25 interrogatories?
- Would you like to be limited to 25 requests for admission of facts? Or would you prefer the current provision of unlimited admissions of facts?
- Shall we define discoverable material by considering the cost of production?

"Taking the Stand" appears periodically in Washington Lawyer *as a forum for D.C. Bar members to address issues of importance to them and that would be of interest to others. The opinions expressed are the author's own.*

Illustration by James Endicott / Illustration Source

The proposed changes are purportedly designed to address perceived imbalances in discovery costs. If the proposed rules restricting discovery were implemented, however, it is doubtful it would be cost-effective. First of all, the greatest increase in costs has been in the discovery of electronically stored information, but these proposed changes will affect even the more efficient areas of discovery.

Second, it appears the proposed changes may have an inequitable result. The Federal Rules of Civil Procedure provide that the denial of a request for leave to seek additional discovery could result in an order requiring payment of costs and fees by the losing party, and, as a result, many parties may become too terrified to proceed with a request for more information. While this chilling effect may decrease costs in the short run, it will not promote fairness in the long run.

Third, adopting a new definition for discoverable material, which includes consideration of costs of production, will only exacerbate the problem. Since 2006, Federal Rule of Civil Procedure 26(b)(2)(C)(iii) permits the court to limit discovery when "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." The proposed changes redefine the scope of discoverable information and would require a requesting party to discuss the cost of production of the discovery before filing a motion to compel. This change will broaden the scope of sanctions available under the civil rules. A party could be sanctioned for requesting electronic evidence and not properly weighing the cost of production. Compliance will be difficult because the requested party will be expected to determine whether the cost of production of discovery is proportional to the benefit derived from the anticipated production.

Generally, the cheapest forms of discovery are interrogatories, in which a party may ask written questions, and requests for admissions, but the Rules Committee is considering limiting the use of them. By limiting the number of interrogatories from 25 to 15, as proposed, it is no longer possible to ask important questions such as why a party failed to admit a request for admission, what is the contact information for witnesses who were relied upon in responding, and what documents were reviewed when answering. Without access to this type of information, a party loses the ability to ask for details about who knew what happened, when the person(s) became aware, and how is or are the person(s) responsible or not responsible for a series of wrongful acts. This is particularly problematic in cases with multiple defendants and multiple allegations of wrongdoing. This type of amendment, without more, will probably result in more discovery disputes about the scope of individual requests.

Written requests for information are normally followed with a deposition in which oral questions are asked of a party or a witness. The proposed rules change the number of permitted depositions from 10 to five. As many persons who have sat on a jury know, corroboratory testimony is near essential in making a claim, and inconsistent testimony is very helpful in proving a defense. Restrictions on access to critical facts diminish a party's opportunity to obtain critical information on the typical subjects of discovery such as official policies or institutional standards, facts about alleged wrongdoing, grounds for purported defenses, and perhaps the opinions of multiple medical and economic expert witnesses, during the time period established by the court.

Lastly, the proposed changes also call for the shortening of deposition time from seven hours to six, which will result in a loss of a significant opportunity to ask questions and receive information from an opposing party and important witnesses. Time is necessary to provide and receive information, particularly in cases where the underlying events occurred several years previously, to address a witness who is stalling when providing answers, to refresh a witnesses' memory based on numerous old documents, to provide for a translation by an interpreter, to deal with an opposing attorney who may waste time by making meaningless objections, or to make appropriate objections about the failure to produce relevant documents prior to the time of deposition. Shortening the time for a deposition is unfair in the event a lengthy deposition is truly necessary because of reasons outside the control of the deposing party.

All persons who have been injured—whether it be by airplane crash, defective products, employment discrimination, police brutality, prisoner's rights violations, stock fraud, or voting rights violations—will be severely limited when pursuing a claim in federal court. Even federal entities such as the U.S. Department of Justice will be limited in enforcing violations on behalf of members of the public. Every defendant accused of wrongdoing will have a limited ability to access information critical to the defense of a case during discovery.

The policy implications of these changes are drastic. How much justice is to be sacrificed for expediency? Will there actually be a more efficient system, or just more unrepresented parties raising violations of the Constitution and federal statute? Don't these written discovery changes disfavor the party with the burden of proof? Won't the shortening of depositions disfavor a defendant who usually takes only one or two depositions? Just what discovery can be limited without resulting in trial by ambush? Doesn't the exchange of information facilitate a reasonable settlement? Why are domestic relations cases entitled to more discovery than violations of the U.S. Constitution and federal statute? How likely will the government permit further discovery when the defendant is a governmental entity? In time, will state courts follow suit in adopting similar changes? By redefining discoverable information, will more parties be sanctioned? Are we allowing federal courts that govern matters of national importance to become more like arbitration proceedings?

Any amendment to the Federal Rules of Civil Procedure must be positive in promoting the rule of law. I personally oppose these changes because our system of justice requires a search for the truth. The federal common law and the Federal Rules of Civil Procedure require a plaintiff to make a showing of a genuine dispute of material fact before a case may move beyond the summary judgment stage. Conversely, a defendant must show an absence of a dispute of material fact based on evidence obtained during discovery. To restrict access to information for either party, on matters not otherwise privileged, is to restrict access to justice. Parties must understand the facts of a case even to reach a reasonable settlement. Parties need requests for admission to narrow the issues at the summary judgment stage.

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LEGENDS IN THE LAW

A Conversation With Abbe Lowell

Interview by Kathryn Alfisi

Abbe Lowell is one of the country's leading white collar defense and trial attorneys. A graduate of Columbia College and Columbia Law School, Lowell got his start at the U.S. Department of Justice where he eventually became special assistant to the attorney general. He was a founding and managing partner at Brand & Lowell, and he also has been a partner at Manatt, Phelps & Phillips, LLP and at McDermott Will & Emery LLP.

Some of his most notable clients have included former Nevada governor Jim Gibbons; former U.S. senator Robert Torricelli; former U.S. Reps. Gary Condit, Walter Fauntroy, and Charlie Wilson; and lobbyist Jack Abramoff. Today, Lowell is a partner at Chadbourne & Parke LLP where he heads the firm's litigation department and serves as chair of its white collar defense, regulatory investigations, and litigation group. *Washington Lawyer* recently sat down with Lowell to discuss his life in the law.

Where did you grow up?

I was born in the Bronx, and then moved to the suburbs in Long Island. It was a fairly typical childhood for that era in that many people started out in the city and wound up in the suburbs. The story my dad told about where we wound up living is that he got on the Long Island Express Way and stopped when he could afford the mortgage. My dad was a World War II veteran; my mom was unconventional for that era in that she was not a stay-at-home mom, she ran the office of a medical doctor. I have an older sister. I was educated in public schools; neither of my parents went to college.

Was it important for your parents that you attend college?

I think for that generation it was the unspoken assumption that you'd go to college. In a lot of immigrant communities, it's the idea that your children will go a step further than the generation before.

Why did you decide to attend Columbia?

The reason I went to Columbia for college is partly because I wanted to go to the best school I could get into, and Columbia was and is one of the best schools you could get into. I'm still very active in Columbia; I interview people who want to go there and I do other things to support the college and the law school.

The second reason I went to Columbia was that there was a premium on me going to school in New York—I had been awarded a scholarship and that was very important to my being able to go to college. I loved New York, but I wasn't wedded to the city as the only place to go to school. I did apply to other Ivy League and non-Ivy League schools and was accepted by some and not by others.

Also, Columbia has a unique program called the core curriculum where all first-year students take a bunch of required courses, and it is very oriented on the arts, sciences, and humanities and that was very appealing to me.

How did your interest in the civil rights movement steer you toward a career in law?

My foundation for understanding lawyers was the civil rights movement leading into the anti-war movement, both of which had serious and profound effects on

Periodically *Washington Lawyer* features a conversation with a senior member of the District of Columbia Bar reflecting on his or her career as a lawyer. The "Legends in the Law" are selected by the District of Columbia Bar's Publications Committee on the basis of their prominence in their profession and their individual impact on the law and the legal profession in the District of Columbia. For past interviews, visit www.dcbar.org/legends.

Photographs by Patrice Gilbert

me. I can't really say why they did affect me; it's not obvious or intuitive why they were important to me at the time (I was 12 and 13 years old). My father was a war veteran and a very strong supporter of government, without question, as well as military efforts. The people who led those movements were lawyers, and that was one of the foundations for me thinking about the law.

I had a run-in with a teacher when I was 12 or 13. We were talking about current events and I took a very strong (and probably disrespectful) anti-war position that he was not appreciative of. I did my first anti-war protest, which I helped coordinate, when I was 14 years old.

The career trajectory from the age of 15 on was that I wanted to be a lawyer. It was the vehicle to create social change, political change, and equal the power between the government and the individual. The only time I went off track was [when I followed the] core curriculum at Columbia. It was such a life-changing event for me, especially the literature program, that I gave serious thought to studying literature (e.g., taking a fellowship to study in England) and not going to law school.

What was your time at college and law school like?

College was an awakening to me; it taught me how to read and write, which are skills I should have been better at by then. It was also an awakening to the world of literature and to New York and all it had to offer. As I had been in high school, I became very politically involved in college. I became the youngest person elected to the new university senate.

Law school was a whole different intellectual enterprise than college; it was more focused and disciplined, more regimented, and at first more stress and pressure. But, I liked law school in a whole different way, except for the first semester until I could figure out the system or the way to understand classes and professors.

While in law school, did you know what type of law you wanted to practice and where you wanted to go?

By then I knew that lawyering for me meant big category litigator, subset something to do with the government, subset trial law. I had no interest in law other than those categories. I knew I was going to be a litigator and either be in or fighting the government.

I remember sometime during the third year of law school, the professor took a hand tally of who was going to do what after graduating, and there were very few who were leaving New York, going to Washington, and/or wanting to be part of the government. I wanted to do that—go into government, be in D.C., and avoid the routine New York law firm route.

What did you do after graduating from law school?

I went straight to the Justice Department. I applied the normal way, but I had been very active in politics and one of the things I had done was to work for the Carter presidential campaign. I met him and his family and was, in fact, one of the advance people who got to travel with his family during his campaign and got to attend inaugural events. As soon as I finished law school, I was excited to be a part of the administration. I came out of law school, joined the Justice Department, and worked my way up with a combination of hard work and luck, which is the formula, I think, for everything I've ever done—certainly as much luck as anything else.

I worked on a project at the Justice Department and got recognized by the deputy attorney general and the attorney general, who knew who I was anyway because of the Carter connection, and so I was chosen when there was an opportunity to join the front office. At the end of that time, I went to the U.S. Attorney's Office in D.C. where the attorney at that time was Chuck Ruff, who had been chief of staff to the deputy attorney general when I was there. He had encouraged me to come to the office, to start the process of learning to be a trial lawyer. So if you count that time, I was in the Justice Department from 1977 to 1981, about five years.

Was this an important period in your life?

That was an absolutely important period in my life on many levels. For one, it cemented the notion that I would have a legal career that interacted with the government. It also provided me with the experience and credentials I needed to pursue that practice; having a combination of policy and trial work allowed me to start the process of learning how to be a trial lawyer. Finally, it created my relationship with Washington, D.C., where I stayed. Before that, I imagined I would return to New York, but my time here showed a better practice, and also I had started a family here.

Why did you stay in Washington?

There was a combination of professional and personal reasons for staying in Washington. On the professional side, being in Washington confirmed that it was the place to be if you wanted to have the practice that I wanted to have. That practice included the interaction between government and the law and individuals and trying to do things that might affect public policy. If that was your focus and your passion, there was no better place to do it than Washington, D.C. Also, by that time I had established a family and Washington was a very approachable place for that.

Did you find it difficult to manage family time when you had a busy legal career?

These issues keep coming up in the legal profession for anyone. I bridged that part of the trajectory in which it was not quite the traditional one person stays at home all the time, but by the same token, you have to have a good understanding with your spouse or partner, you have to figure out what's going to work in your house, and it's always going to be a struggle. It became more of a struggle when I started my own law firm and when my first marriage was ending because of my desire to be an important part of my children's lives.

And you do little things. When you get to the end of an intensive trial, you don't just get up the next day and go back to your office. You take more time off. My children also have traveled with me to places and trials and events. Before the days of iPhones and FaceTime, I did this thing where my child and I would have two copies of the same book so that when I was out of the city, I could still read to them at bedtime. Now I have an 11-year-old and it's different in that even when I am on the road, I can be in touch with her in many different ways than I could when my older children were young.

How far did you rise at the Justice Department and when did you decide to leave?

I ended as a special assistant to the attorney general at the Justice Department. I started off as a line attorney doing litigation, and then became special assistant to the deputy attorney general, and then special assistant to the attorney general. After that, I went to be special assistant U.S. attorney at the U.S. Attorney's

Office and did that for a while until some people in personnel found out I was using up a political slot that the new administration wanted to have back. Finally, I left to figure out what I was going to do with the rest of my legal career.

It was a very difficult period. First of all, I was neither fish nor fowl. I was a little too senior to be a junior associate, and I wasn't senior enough to be a partner. My experience at large law firms had been very little. I had worked at a district attorney's office during the summer when I was in law school, and I spent a summer working at a firm while I was working on the Carter campaign. Also, that struggle whether to be in New York or Washington was playing itself out at that point in time. So there were a lot of difficulties in figuring out what to do next and taking that concept of why I wanted to be a lawyer to its next place. Ultimately, I went to work for a firm for a short period of time, but I don't think it was a great match for either of us. Then, without a lot of wisdom and knowledge, I started my own law firm at a ridiculously young age with all of the risks and none of the security.

What made you decide to start your own law firm?

Having law firms say to me, "I'd love you to work for us, but you'll have to start as a two- or three-year associate," when I felt like my experience level was more than that. Wanting to still be in charge of the type of law I practiced and seeing that there weren't a lot of options that seemed better. And partially a complete and utter lack of understanding of what starting a law firm would entail. If I had known then all the things I had to learn thereafter, it might have been a different decision. On some levels it was a completely ridiculous decision to make as a 31-year-old with a mortgage and a child.

Was it successful?

Like all starting ventures, it had its ups and downs, but its trajectory was mostly good. I started this firm with a really terrific man and attorney named Stan Brand who was leaving the House of Representatives as the general counsel. We started it with a couple of other people, but it turned into mostly his and my law firm. He had the same goals as I did—dealing with law as it interfaces with the government, being in the world of litigation, trying to be involved in hot topics. Case by case, slowly but surely, we cobbled together a practice that realized those goals.

It was not a straight line, it was not an upward trajectory all the time, but from 1983 to 1999 it worked, it succeeded. We had a high of 12 attorneys at one point. We were doing some really terrific things in both litigation and working with the House of Representatives, being hired by local governments, having private cases that paid the bills. I think Stan

said it was like being one of those early settlers who went and staked out a claim in the Yukon during the frontier era and seeing if you could mine it for any gold or silver.

It wasn't the most trodden path. Like that day in law school when most of the people in my class were going to New York law firms, very few were going to D.C., and fewer were going into the government. Very few people enter the government, then start their own law firm at 31 years old, and then use that law firm to go in and out of government. It's been the farthest thing from a straight line that you can think of, but it's been adventurous and rewarding. There are very few things in my professional life I would change even with all the hindsight; the difficulties and adventures are a part of it.

Do you think that sentiment is something that younger lawyers can learn from?

I think that in some ways it was easier for me and my colleagues to take risks than it is today. The financial burdens have gotten harder, and I think the mindset of people, both as to why they become lawyers and as to those kinds of pressures, in some ways dictates the choices they make or the choices that they think they had. I thought I had the choice, and I think young lawyers today feel more constrained.

One of my great memories is the conversation I had with my mom and dad when I chose to go to the Justice Department as opposed to the firm in New York that had offered me a job after law school. When I started at the Justice Department, my salary was $17,056 and law firms were offering me three and a half, four times that amount. And my parents just couldn't understand that, it made no sense to them. I felt like I had more choices and I could take more risks. I think people today, because of the finances, because of the competition within the law, the overabundance of lawyers, the cutting back at law firms, the redefining of the legal industry, don't feel like they have those choices.

How did you build your client base when you had your own firm?

One way was we all came to the firm with some degree of contacts. I had left the firm I was at and I brought with me a couple of matters, and luckily our first endeavors were successful. And so consequently those clients, like the City of Alexandria, Virginia, gave us more work. Stan had left the House of Representatives with a contract to work with the House on certain issues, and we did a good enough job that they gave us additional work. Our first two pieces of private litigation were very successful for our clients, and those clients beget other clients for us. Then you had the old, traditional standby of going around and begging people for work. The third is you have friends and contacts and you capitalize on conflicts; somebody is representing a company and they need somebody to represent the individual. And the fourth way is that ingredient I keep coming back to, which you can't really quantify, and that's just luck.

When and why did you leave the firm?

In 1998 the Clinton–Lewinsky scandal happened. I got calls from leadership in the House of Representatives that there was likely to be an impeachment, and if so, they would like to find a lawyer who litigated and understood the government. So I was involved in that from the summer of 1998 through the spring of 1999, and I took sort of a leave from the firm to do that.

I had actually taken a leave from the firm prior to that. I mentioned that one of the reasons I wanted to have my own firm was that I wanted an opportunity not only to define my practice but to use the firm as a vehicle to do other things. In 1994 and 1995 I left the United States and worked for the newly formed United Nations High Commissioner for Human Rights, which was an office that had not existed when the United Nations was first formed. This was right after the civil war in Rwanda in which there was a tremendous need for resources, and the UN was really being taxed and they didn't have enough staff. I worked in Geneva but I took trips to Rwanda, Burundi, Tanzania, and then wound up working on issues concerning the former Yugoslavia.

When the impeachment was over, I realized that our firm had pretty much done what it could do as a 10-person firm. Stan had succeeded in lots of terrific ways and become the general counsel to Minor League Baseball; he was teaching, he was doing his type of legal work. The firm was working well as a platform for him, and I wanted to see if there was a firm that could do that for me more than our firm could do.

How would you describe the Clinton impeachment trial experience?

It was so amazingly important because it will probably be the only time in my life when the opportunity to be a single sentence in a single footnote of something that is history [comes up]. That did, and does still, feel big to me. The work involved was very challenging. It was trying to figure out this thing called impeachment, which is a misunderstood and not well-defined thing in American law and constitutional law. It was dealing with what was the profound politics of the event because that was a political impeachment; it was not a constitutional impeachment. It was trying to deal with what was, in effect, the number of bosses I had; theoretically every Democratic member of Congress was a boss of mine. It was trying to figure out where the interests of Congress, which was my client, stood—either the same or different from the president of the United States. It was figuring out the whole public part of it; it was performing on a grand stage. It was all that, plus relentless hours. It was very hard, very interesting, rewarding, and troubling.

I'm still troubled by it to this day that the House of Representatives impeached the president of the United States. It was a tragedy. Luckily, I'm sure history will recall it for what it was—a political and not a constitutional event. Remember, there have only been two presidents in the history of America who have been impeached: President [Andrew] Johnson and President Clinton. President Nixon was never impeached, he resigned before that happened. My view is that a president who deserves it will never actually be impeached. [Impeachment] will only be used as a political tool because if the president really deserved it, the people of the United States would demand that person's resignation, which they never did with Clinton and they did with Nixon.

Was that the first time you had to deal with the media's glare?

Actually, it was not. One of the things that's interesting, or annoying, or fun about the practice of law is that it always has a public element to it. When I was at the Justice Department, for example, I remember that on one of the cases I worked, I was to provide advice to the attorney general concerning whether we should sue the state of South Carolina over voting rights. I wrote a memo and

opined on what I thought, somebody leaked the memo, and it became a big deal at the time. A senator from South Carolina called the attorney general and me together for a meeting.

The first case we did when we started our law firm was representing the City of Alexandria, Virginia, which was suing the Federal Aviation Administration to stop the change of flight paths over National Airport. It was a huge media issue locally.

So I was tested by fire in terms of the confluence of law, politics, and media right from the beginning. By the time I got to the impeachment and was sitting in a hearing room, addressing the committee with 50 people around snapping photos constantly and I could see my face on the television screen, that's about as intense as it gets. When I tried the John Edwards case last summer, I would walk into the courthouse every day and there'd be seven satellite trucks and 42 people with cameras and people with boom microphones yelling at me, but that's not a strange event for me anymore.

What's your strategy for dealing with the media?

I am a big believer in that there's not one formula for any situation in anything, so you deal with it differently depending on the situation. During impeachment, it was very important that the point of view that this was not an impeachable offense be understood by the public, and so the media part of it was very important. In fact, it was the court of public opinion that informed the acquittal of President Clinton in the Senate, and consequently you needed to deal with the media. When you're dealing with what 12 people in a jury box are going to think, if they have been picked in a proper way so that they don't have any media understanding, then what's going on outside the courtroom matters much less. I could have been part of an effort to convince the country that John Edwards was not the bad guy that he thought he was, but if the 12 people on the jury thought that he was a bad guy, then that's not much of a victory. So sometimes you tune it out, sometimes you channel it. Sometimes you try to make it your friend, sometimes it's good when it's your enemy.

What did you do after you left the firm you started?

After that, I searched for someplace other than my own firm that would allow me to do what it was I wanted to do. I

went to Manatt, Phelps & Phillips, then I came to Chadbourne, then I left to go to McDermott Will & Emery, and then I came back to Chadbourne. So that's not been a straight line either. This is because I've had to formulate what I could do at a firm and what a firm could do with my practice and try to make the right match, which is why I call it the search for the Holy Grail. It's not really good to pick your career path by trial and error, but I think I made a good match finally.

You've had some pretty unpopular clients. How do you feel about that?

Every criminal defense attorney faces the issue that some segment of the population believes a client to be very bad and not worthy of representation, of an acquittal, of rights, whatever. I'm not unique in that way at all. The second part is that I have a strong feeling that the people in the center of the public eye, captains of business, high-level officials, actually have it worse in some ways than average people facing charges. As an example, public officials and captains of industry have less ability to not address the public part of their case, maybe can't avoid going to a grand jury, and can't take the Fifth Amendment. They don't have the opportunity of a prosecutor deciding that the case is not a strong case and deciding they're going to drop it because the public eye is looking at them and [the prosecutors] don't feel like they can drop the case against a high-profile person.

As to some of the people I represented who have been vilified or distained, I think it's always important to understand that it's a dangerous slope to allow public opinion to determine the outcome of legal matters because that's when people rush the jail, grab the guy out of the cell, and hang him up on the closest tree. Our rights require a whole lot more than that. Finally, I'd like to think that the efforts on the part of some of these clients have proven them right, whether you're talking about John Edwards, who may not get the award for husband of the year but who certainly didn't violate the federal criminal laws, or former congressman Gary Condit, who also may not get the husband of the year award but everybody now realizes he had nothing to do with the disappearance of Chandra Levy. That's part of the effort, to separate public opinion from the reality of the facts in the law. But I'm not unique and I'm not noble for representing unpopular people. Every day, in hundreds of courtrooms in America, criminal defense attorneys do it and it's in part what makes America great.

You've written about what you see as prosecutorial misconduct. Can you talk about that?

I think that from the time I was at the Justice Department to today, the system has changed. I think there is less accountability and more delegation to the line attorneys in the prosecutorial work, and I think there is less oversight of them. For example, in the John Edwards case, how do you have a holdover U.S. attorney from the opposite party who was a political opponent of the defendant drive the investigation and make the decision on the case? And not being able to move it up the chain at the Justice Department because this Justice Department, filled with Democratic appointees, wasn't going to be the one that would quash the indictment of the Democratic nominee for president of the United States. I remember clearly sitting in the office of the deputy attorney general and the attorney general where cases and their merits were discussed and prosecutors were told, "You cannot bring that case." I don't think that happens as much anymore. People in America have no idea how much of their tax money was used to prosecute John Edwards or Roger Clemens at a time when there's not a lot of tax dollars to use. They should be outraged.

You also have represented high-profile entertainers. Isn't that a stretch from representing politicians?

It makes a lot of sense when you think about it. [Hip-hop mogul] Sean Combs was fighting the Federal Election Commission. He had done this wonderful thing by trying to register people to vote and people said he was violating the Federal Election Campaign Act. I fight the [FEC] all the time as part of my practice, and an entertainment lawyer friend of mine knew Mr. Combs had an issue in Washington, D.C., so that's how that

came about. I also represented actor Steven Segal. Again, it's not off the charts if you think about it. He was involved in litigation with an investigation involving a former business partner of his. It was out of New York and it had to do with allegations of this guy potentially being involved in organized crime, and there was civil litigation as well between Steven Segal and this guy. I know a lot of lawyers on the West Coast, particularly in entertainment. It's not as random as it might look like if you didn't know the backstory.

There are obvious similarities between people who are that high-profile in entertainment, elected officials, and captains of Wall Street. They're at the top of the game, they're used to having total control of the situation around them, they're at least achievers if not overachievers, and now they're thrust into a position where they don't know what the rules are and how they work. They're in a situation where they cannot be in control, and that's the same whether you're talking about the head of a hedge fund, the head of a studio, a person who goes on stage, or a person who is on the floor of the Senate. But they also have different personalities, like going into Steven Segal's house and having him sort of jamming with 27 people on guitars or seeing his Buddhist temple on his front lawn.

What are the pluses and minuses of having a high-profile client?

On one side it's disadvantageous to be high-profile because people who make the charging decisions feel like they have less room to decline the case. President Clinton went into a grand jury when he was under investigation; there's not a private citizen similarly situated whose lawyer would let them go before a grand jury in a similar case. The president of the United States had no choice but to do it.

It's an advantage after the person is sued or charged. These are people of intelligence, ability, means, and resources, so they can bring those attributes to the litigation equation. These are accomplished people and they're very talented. For example, in the case of Senator Edwards, he had been a trial lawyer of great note in his own area. Plus, they're people who know how to talk publically and they're not shy about saying they have good ideas. So it's more challenging than representing a person who is not like this and is more willing to let you lead. My joke is that being a surgeon is a preferable profession because they anesthetize the patient, we don't. Imagine being the doctor who is operating on someone who is telling you what cut to make, what to clamp, and how to proceed. Senator Edwards and I joke that during the course of our representation together, he probably had 15 or 16 ideas every day and one or two of them were pretty good. On the other side you have a very thoughtful, resourceful, intelligent, capable person teaming up with you to come up with good strategy. Two brains are always better than one.

What are some of the cases you handled that really stand out to you?

There are cases that stand out to me because they were incredibly difficult and the results that we were able to achieve made it feel like we did something different than somebody else may have been able to. I represented a trial attorney in Mississippi in his first case who was charged with bribing three judges. It was a very difficult case that lasted more than three months during the summer, and by the end of that case he was both acquitted and had hung counts. That was very difficult to achieve and under bad odds, so I feel like that's an example of a case that you can feel good about because you can see how your hard work did something.

I represented a man who was and still is my friend who was a real estate developer in the South and one of the pillars of his community. He was a great family man, a community-minded person, a sweet man. He got caught up in the savings and loan era and a project he was working on went bad, the bank failed, and he was blamed for all of that. This was outside of where he lived and people didn't know this was happening to him. I was able to be involved in trying the case and he was totally acquitted and was able to go on with his life, and people in his community aren't even aware that this happened to him. It's one of my most satisfying cases because it affected a real person with a real family who had the right things going for him.

When I am being glib and somebody asks me what I or other defense attorneys do for a living, my answer is "We keep families together," and that is something that criminal defense attorneys especially have to deal with. And how can I tell you that being involved in the impeachment of the president of the United States wasn't a memorable or significant event? It certainly was both of those things.

So on one hand you have the most public-oriented representation a person could have, and on the other is probably the quietest I ever had, and they're both equally satisfying to me for different reasons.

What are your interests outside of the legal profession?

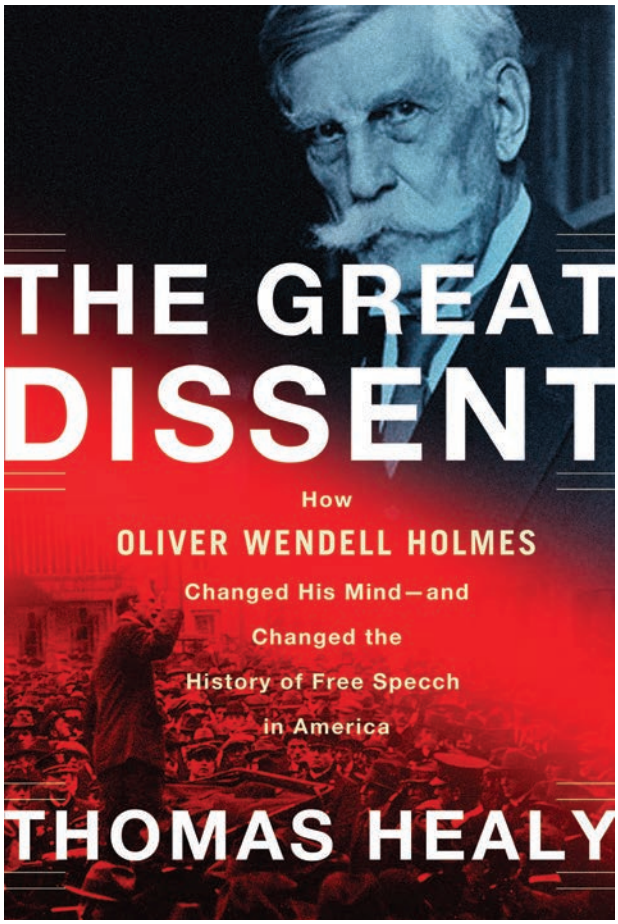
My family has always been the most important priority and I have devoted a lot of my time to raising my kids. I have been their soccer coach, I'd drive them to their recitals, and I tried to be there for them in all possible ways. I don't think I'm unique in that regard.

Then I do a lot of other things and I have my passions like everyone. I've been very active in the Shakespeare Theater in Washington, D.C., and I'm on its development committee and on the board of trustees. I've been vice president and general counsel for the Jewish Community Center of Greater Washington and very active in Jewish causes in the community. I love the theater and performing arts, and I participate in sports. I also teach. I've taught virtually every year for the last 20 years, either at Georgetown or Columbia. So I try to do a lot outside of this office.

What would you like to see happen in the future?

I'm playing a larger role in the direction of my law firm. Last fall, I took over as head of litigation and became more involved in management issues, and I like that. I think helping this firm get to its next spot, wherever that is, is an important priority. I like having cases that stretch my mental muscles; I don't need as many (for example, quite as many trials) of them as before, so I'm happy to find fewer that actually do that. I am sure there will be another stint of some public-oriented service, as in going back to the United Nations, becoming a special counsel to a government organization, not a full-time job but like I've done it, which is having the platform of private practice allow me to do something else. Also, I'd like to teach as long as I'm capable of teaching. And most important, I want to be there for my kids at all their ages (now 32 to 11) to help them be all that they can and want to be.

Reach D.C. Bar staff writer Kathryn Alfisi at kalfisi@dcbar.org.



The Great Dissent: How Oliver Wendell Holmes Changed His Mind—and Changed the History of Free Speech in America
By Thomas Healy
Metropolitan Books, 2013

REVIEW BY JAMES SRODES

If you want to test the cherished myth of constitutionally protected free speech in America, you might ask Lawrence Summers how far it actually protects us. Summers lost his post as Harvard president and more recently withdrew his name from consideration for the chairmanship of the Federal Reserve, all for a stupidly phrased rhetorical remark about the paucity of women in the hard sciences. Alternatively, you might ask the unprecedented number of whistleblowers being prosecuted by the federal government.

Or you might read this provocative new biography of Oliver Wendell Holmes Jr., the U.S. Supreme Court justice whose dissent in a free speech case 94 years ago supposedly enshrined the "clear and present danger" standard to limit government's power to punish what we say to each other.

This timely biography is a good starting place to reconsider just what we think we know about our interlocked freedoms to speak in public and in private. There is growing public alarm at the recent rise of twin threats to free discourse, the most visible of which is an increasingly intolerant public climate that demands retribution for speech deemed to be offensive to one special interest or another. However, more threatening are the unprecedented efforts by government to punish those who disclose inconvenient truths about official matters, as well as to shut down longstanding open source agency records that have enabled both journalists and citizens to see the public's business with some transparency.

What this book leads one to conclude is that the Founders purposely put the First Amendment barrier to abridging public discourse at the top of the Bill of Rights because it appeared even then to be one civil liberty in need of protection. And in studying the evolution of Holmes's attitudes toward what government can do and must not do to stifle public utterances, the reader may well conclude that protected rights to speech

and privacy have been under almost constant challenge by authorities from the day they were enshrined.

Author Thomas Healy is both a professor at Seton Hall University School of Law and former Supreme Court correspondent for *The Baltimore Sun*. Thus, the book is a graceful read and a solidly researched accounting of the landmark cases that moved the iconic Holmes over a period of a few months from a hardline view of government's power to punish speech to a more liberal position. The storyline moves briskly with considerable suspense about whether or not Holmes would break with the Court's hard stance against radical pronouncements.

The time is 1919 and the relief that America felt at the end of World War I was short-lived. An economic recession was exacerbated by the demobilization of four million men into the ranks of the jobless. There were race riots across the country, and radical terrorists, many of them foreign anarchists who were concentrated in the immigrant workforce, conducted a wave of bombing attacks against government officials.

The docket facing the Supreme Court when it convened early in 1919 had a number of cases where antiwar protestors of various persuasions had been prosecuted under the 1917 Espionage Act, which originally was intended to thwart sabotage and attempts to block the draft of civilians into the military.

The Court's majority upheld the government's power to impose penalties on the protestors, and Holmes was very firmly in the majority in its rulings. He even wrote the majority decision in the case against Socialist Party presidential candidate Eugene Debs, upholding the latter's 10-year jail sentence for advocating draft resistance.

But by the time of the Court's autumn term, Holmes had been subjected to fairly hefty lobbying on the free speech issue by friends far more progressive in viewpoint than he, most especially his Court colleague Justice Louis Brandeis, who gets scant credit in this book.

The author gives more weight to the arguments made to the 78-year-old (and easily flattered) jurist by his young, ambitious acolytes such as Felix Frankfurter, Walter Lippmann, and the British socialist, economist, and chameleon-like Harold Laski. But in truth, it was Holmes's friends on various lower courts—Learned Hand and Benjamin Cardozo—and Harvard law professor Zechariah Chafee Jr. who moved him most. In the end, however, Holmes did not move all that much.

A cautious criticism is that the author engages in what might be called wishful history. Viewed in hindsight, the so-called "great dissent" of the book's title is pretty thin gruel. In trying to link Holmes to the historic groundings of our speech and privacy rights, he asserts that Abraham Lincoln exercised "a policy of restraint" on prosecuting opponents of the Civil War. Yet Lincoln's secretary of war, Edwin Stanton, jailed hundreds of editors and public critics while his generals seized offending newspapers and tried suspect civilians before military courts.

Abrams v. United States was on its facts an ill-founded case from the start. The defendants were Russian radicals who distributed two pamphlets (one in Yiddish) that opposed not the Great War itself, but President Woodrow Wilson's subsequent dispatch of U.S. troops to Russia as part of an Allied effort to overturn the Bolshevik revolution.

The Court's majority upheld their conviction (and ultimate deportations) using Holmes's earlier formulation that the government had the power to penalize public utterances that present a "clear and present danger" to the war effort or to national security.

In his now hallowed dissent (joined by Brandeis), Holmes reaffirmed his votes in *Debs v. United States* and in earlier suppression cases, but he complained that "nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate endanger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so." Rather, Holmes amended the "clear and present danger" standard to include the qualification that whatever danger a public utterance poses, it must "threaten immediate interference with the lawful and pressing purposes of the law" before the government should prosecute.

Healy argues that while Holmes did not shift the Court's attitudes at the time, he did impel the free speech issue into the center of our national debate over civil liberties.

But however central freedom of speech may be in America, Healy also acknowledges that it is hardly unassailable or set in stone. The prosecutions of suspected communists during the McCarthy Era, and the suppression of protest groups during the Vietnam War show that officials will always be tempted to set inconvenient civil liberties aside during times of crisis.

In the end, even as mild and qualified as Holmes's "great dissent" may have been, it was still a dissent. And dissent often is the only weapon we have when governments yield to the temptation to coerce what we think and what we say.

James Srodes's latest book is On Dupont Circle, Franklin and Eleanor Roosevelt and the Progressives Who Shaped Our World.

Taking the Stand

continued from page 30

Parties for years have needed 25 or more interrogatories so that they can clearly communicate the issues and the facts in the case with each other. Parties need witnesses and witness testimony to present facts, and not just allegations. Parties and their attorneys should not be deprived of access to critical facts prior to summary judgment or trial.

Other amendments to the federal rules also have been proposed, including shortening the time for service of process on defendants from 120 days to 60 days, and abrogating the post-*Zubulake* trend in awarding minor sanctions in cases of negligent spoliation of electronic discovery. While these other proposed amendments are important, they will not have the potential effect of bottle-necking the court system with a burgeoning docket of motions for leave for additional discovery by plaintiffs and further delaying trial times in civil cases.

A redline version of the proposed changes can be viewed online.[1]

Additionally, according to the federal judiciary's Web site,[2] members of the bench, bar, and public can submit a comment to the Judicial Conference Advisory Committees on Bankruptcy and Civil Rules through February 15. These comments will be made public.

Whether you practice in federal or local courts, please do comment on these proposals based on your personal experience in conducting discovery and what you consider to be necessary for a fair judicial system.

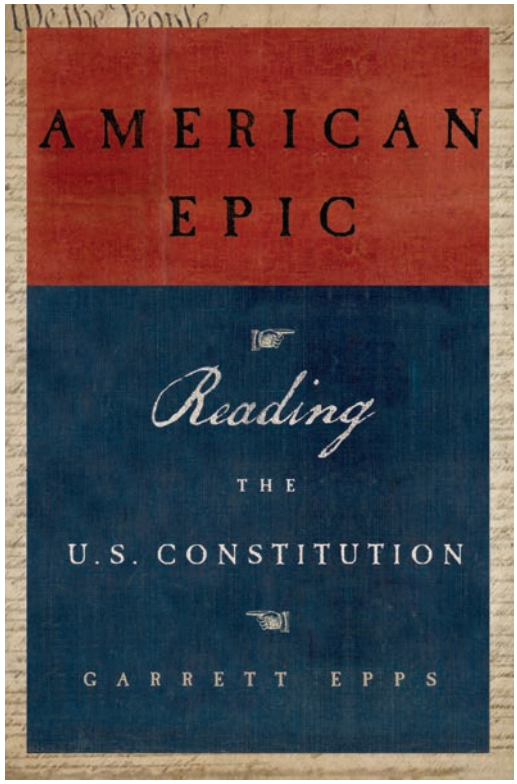
Gwen W. D'Souza is an attorney with D'Souza Law Office, LLC.

Notes

[1] The Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy and Civil Procedure is available at http://1.usa.gov/1d3FiqX.

[2] To submit comments, visit http://1.usa.gov/NMYM2L.

American Epic: Reading the U.S. Constitution
By Garrett Epps
Oxford University Press, 2013



REVIEW BY RONALD GOLDFARB

Carefully and creatively reading and analyzing the 7,500 words of the U.S. Constitution (and its amendments) is the idea of *American Epic* by University of Baltimore law professor Garrett Epps. He points out that while our Constitution is 226 years old and is "ceaselessly venerated, admired, and invoked," it is "all too seldom . . . read." The meaning of our Constitution, "the central document of American history and politics," is a "national obsession," Epps states. While it is of special interest to lawyers, it is also the property of all citizens, "a tool kit of our politics and a testament of our history."

Scholars, jurisprudence experts, historians, romantics and skeptics, and philosophers and pretenders all resort to the words of our Constitution, ironically using the same words as authority for all sorts of brilliant and bizarre, liberal and conservative, and other varied conclusions. "[P]roduced by a committee of lawyers," as American novelist E. L. Doctorow described the Constitution, the document has "high rhetoric, many literary tropes, and even a trace of, if not wit, at least irony," Epps notes. The Constitution "has its moments of metaphor, even of grace." All the more interesting, Epps states, because while the authors "were" not academics concerned with consistency and elegance," about half were lawyers and most were "practical men of affairs."

Epps is uniquely qualified to provide this unusual guide to our Constitution, coming from a background as a former journalist at *The Washington Post*, the author of several books (among them *Democracy Reborn: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America* and *To an Unknown God: Religious Freedom on Trial)*, and as law professor. *American Epic* is, according to Epps, not meant to analyze what the Constitution means—"many parts . . . have no clear, definite, single meaning." Indeed, some parts are self-contradictory, some are profound, some repulsive. Epps' approach (a goal sometimes ignored) is to analyze the words of the Constitution through untraditional lens.

He begins by describing the four ways he believes the Constitution should be analyzed. First, scriptural: To read the Constitution not as a fundamentalist document that does not recognize that parts of its text are confusing or ambiguous, wrong or meaningless. The Constitution wasn't written by God but by pragmatic and learned men who wrote "for the moment, not to foretell and control the future." Instead, one should read it using all the resources employed by readers of scripture, traditions such as "poetic inspiration, divine allegory, and historical understanding."

Second, statutory: The Constitution can be read as law according to lawyers' training and methods of statutory construction using the text itself, legislative history, and the historical context from which the document derived. Some well-known phrases—state's rights, jury of one's peers, wall of separation between church and state—are not in the Constitution, though they can be gleaned from it. Yet without the specific words, the text supports the ideas.

Finally, lyric and epic: Epps uses analysis of the etymology of words and the history of language to understand the intent and meaning of the Constitution. He compares the Constitution to Walt Whitman's poetry collection *Leaves of Grass*, which he thinks uniquely depicts the nation in words. One must read the whole of any text, Epps says, and consider its various elements: invocation, elegy, psalm, and commandment. For example, he posits, the words of the Fifth Amendment draw "on formulas from the common law, like an epic poet using well-worn tropes, to generate some of the most intriguing textual riddles in the entire Constitution."

While the Constitution is a blueprint of our form of government, to use more literary terms Epps suggests it also should be viewed as a poem or symphony, a harmonious composition—indeed an epic poem with "evocations of complex cultural ideas." He reminds readers that with all the talk about "We the People," the Founding Fathers were white men of wealth and prominence who met of their own accord (in the eleventh year of our country's independence) in strict secrecy. The people of the "States" were asked after the fact to approve the Constitution. And an overwhelming number of states today were not states then. Epps calls the drafting of the Constitution "an inspired act of ventriloquism . . . it was more than pretense. It was aspirational." But attributing its authorship to "We the People" was "a deceptive claim of authorship."

Nonetheless, Epps the romantic scholar rather than the constitutional professor calls the Preamble epic, active, national, even if hypocritical. The Declaration of Independence claimed all men are created equal, but we know that only meant men, and white men at that. He calls the three-fifths vote language a disgraceful product of deference to southern states' power, reflected elsewhere in the Constitution, as in the Electoral College provision and again in Article IV's Fugitive Slave Clause. Still, Epps sees the Preamble as poetic, creating an energy that brought a nation to life.

In developing his literary approach to Articles I and II, the legislative and executive powers, Epps refers to Charles Dickens' *A Tale of Two Cities*. And while his analysis of the Articles follows traditional legal scholarly ways, his references to Homer's *Iliad* and to Whitman's *Leaves of Grass* are fresh and interesting. The nearly 100 pages of *Leaves of Grass* and 140 lines from the *Iliad* demonstrate to Epps that America is composed of two divergent cities: one of commerce and one of war, one of peace and one of war.

As Whitman drew his poetic inspiration from Homer, the Constitution's authors also drew their inspiration from antiquated sources, especially in designing a presidency that is both powerful and protective, restrained in exercising his pow-

ers. The executive the Founders envisioned had ambivalent power. He (there was and is yet no she) was an "inkblot onto which generations of Americans have projected their hopes and fears. There is no Homeric catalogue of presidential powers; at the same time, there is no Levitical set of prohibitions." From biblical times to now, "Western culture has been of two minds about powerful rulers. We crave the king's strong protective arm, but we fear his heavy hand," Epps writes.

Epps refers to poet Wallace Stevens' *Thirteen Ways of Looking at a Blackbird* in his analysis of Article II (executive power), which he argues is "like a modern poem, suggestive and imprecise." While the "beauty of Article I is largely in inflection, what is said," Epps states, "Article II arises from innuendo." The vice president has no assigned duty except to preside over the Senate, yet the modern veep is a very busy man with a varied, influential portfolio. The president is viewed as "less a portrait than a set of dots to be connected as need and imagination dictate." How modern a vision, as 21st-century readers will recognize.

Epps' analysis of the judicial power (Article III) begins with the Hebrew Bible telling that Solomon, the greatest king of Israel, was a judge, not a warrior or lawgiver. Our judiciary was created to be independent and strong, though subject to congressional controls (inferior courts, funding, and executive appointments). The judicial power has a "mysterious" provision (what is "good behavior") and room for later definition (how to blend with congressional powers of purse, confirmation, and jurisdiction). Language goes only so far, but it allows elasticity to explain. Even punctuation governs some constitutional provisions: In Article IV and in the Second Amendment, the use of a semicolon affects content. Resort needs to be made to grammar as well as history.

More so than the Articles, the Bill of Rights (the first 10 amendments, though James Madison originally proposed 13) lends itself to Epps' literary approach. The Bill of Rights has "a kind of divine status." It is a "mixed bag: some clear rules, some guidelines, some statements of principles. Ambiguous in its scope and vague in its sweep." "There are traces of poetry here among the commandments," Epps writes, using the biblical reference (commandment) to the legalistic one (bill). It is "our Decalogue and our sacred covenant with ourselves," he states.

The First Amendment is "foundational," Epps writes, much as the first commandment is of religion. Its 45 words cover "an astonishing amount of ground." Its language is part prohibitory ("Congress shall make no law . . .") and part "enduring puzzles of constitutional interpretation (what "abridgment" or "exercise" or "establishment" means).

Where else would a reader be asked to view the Second Amendment ("one of the most puzzling conundrums in the entire Constitution") with a Dickinsonian (Emily, that is) eye? Epps would have us consider what is not said along with what is said, as we do with "the studied ambiguity of poetry."

Epps asks that *American Epic* be viewed as "a conversation among author, reader, and text," inviting readers to look at the Constitution, which sometimes may seem "distant as the stars," the way he does—"not as a learn'd astronomer but as a reader capable of wonder and confusion." He urges readers to come to the conversation "with a dictionary, some imagination, a good memory, and some artistic sense," as novelist Vladimir Nabokov once suggested. Humbly, Epps comes to this conversation not as teacher but as "a companion on the open road."

Ronald Goldfarb is a Washington, D.C., and Miami attorney, author, and literary agent. Reach him by e-mail at rlglawlit@gmail.com.

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attorney briefs

By Thai Phi Le

Honors and Appointments

Virginia "Ginny" Diamond, special counsel at Ashcraft & Gerel, LLP, has been appointed general counsel for the Virginia AFL-CIO… Fried, Frank, Harris, Shriver & Jacobson LLP partner **Dixie Johnson** has been named chair of the American Bar Association's Business Law Section… Georgetown University Law Center Professors **Viet Dinh** and **Lisa Heinzerling** have been appointed public members of the Administrative Conference of the United States… The International Renewable Energy Agency has appointed **Jerome Ackerman** to a panel of six arbitrators to serve in cases of work-related disputes between staff members and the agency that remain unresolved after exhaustion of local resolution procedures… The ABA Tort Trial and Insurance Practice Section presented **Jack Olender** of Jack H. Olender & Associates, PC with its Pursuit of Justice Award. The Trial Lawyers Association of Washington, DC also honored him as a Legend of the Law… **Deborah S. Froling**, a partner at Arent Fox LLP, has begun serving as president of the National Association of Women Lawyers… **Suzanne Rich Folsom**, executive vice president, general counsel, and chief compliance officer at ACADEMI LLC, has been recognized by *InsideCounsel* magazine as one of the top 100 female in-house attorneys who make up "The Next Generation General Counsel"… Due to the efforts of Folsom and **ACADEMI LLC** independent board member and governance committee cochair Jack Quinn, former White House counsel to President Clinton, the training and security solutions provider has been named the 2013 Washington Legal Department of the Year for Corporate Compliance by *The National Law Journal*… **John Giordano** has been named assistant commissioner for compliance and enforcement at the New Jersey Department of Environmental Protection by Gov. Chris Christie…

Catherine M. Reese, family law attorney and owner of Reese Law Office, has been appointed by the Fairfax Bar Association board to serve as a member of the FBA's Judicial Nominations Committee. Reese also was elected chair of the Rules Subcommittee of the Standing Committee on Lawyer Discipline of the Virginia State Bar… The National Association of Corporate Directors has named **John F. Olson**, founding partner at Gibson, Dunn & Crutcher LLP, to the NACD Directorship 100: Hall of Fame, which recognizes top corporate directors and governance leaders who have significantly influenced boardroom practices and performance… **Todd C. Nichols**, a partner at Cogdill Nichols Rein Wartelle Andrews Vail in Everett, Washington, will serve as president-elect of the Washington State Association for Justice… **Neil A. G. McPhie**, managing partner at Tully Rinckey PLLC, has been named to the *Virginia Lawyers Weekly* 2013 class of "Leaders in the Law"… The Southern Center for Human Rights has presented **David W. DeBruin**, managing partner of Jenner & Block LLP, with the 2013 Frederick Douglass Equal Justice Award for his leadership and commitment to pro bono capital defense work… The National Legal Aid & Defender Association has presented **Hogan Lovells** with its 2013 Beacon of Justice Award for devoting considerable time and resources to delivering on the mandate of *Gideon v. Wainwright*… **Jan E. Simonsen**, a member of Carr Maloney P.C., was named the 2013 Lawyer of the Year by the D.C. Defense Lawyers' Association… **Lee E. Goodman**, a shareholder at LeClairRyan, was nominated by President Obama to serve as a commissioner on the Federal Election Commission and has been unanimously confirmed by the U.S. Senate.

On the Move

Tamara Jezic has joined Yacub Law Offices, LLC as associate in its immigration and personal injury practice and will be based at its Woodbridge, Virginia, office… **Pratik A. Shah** has joined Akin Gump Strauss Hauer & Feld LLP as cohead of its Supreme Court practice and as partner in its national appellate practice… **Joshua B. Brady** has joined Williams Mullen as associate in its intellectual property practice. **D. Margeaux Thomas** has been added to the firm's financial services litigation practice… **Lee H. Rosebush** has joined BakerHostetler LLP as counsel, focusing his practice on FDA, regulatory, compliance, and enforcement issues pertaining to pharmaceuticals, biologics, and medical devices… **Robert L. Ruben** has joined Duane Morris LLP as partner in its corporate practice group, working out of the firm's Baltimore and Washington, D.C., offices... **Klint Alexander** has been added as of counsel to the global business team at Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, serving out of the firm's Washington,

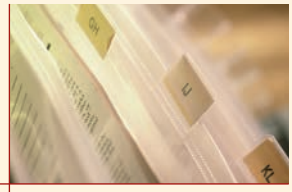
continued on page 46

Seth A. Mailhot has joined Michael Best & Friedrich LLP as partner in the firm's transactional practice group and as leader of its FDA regulatory practice.

E-health lawyer Alexis Gilroy has joined Jones Day as partner in the firm's health care and life sciences practice.

Charles F. "Chuck" Connolly has joined Akin Gump Strauss Hauer & Feld LLP as partner in the firm's litigation practice.

docket



Note: Unless otherwise indicated, all D.C. Bar events are held in the D.C. Bar Conference Center at 1101 K Street NW, first floor. For more information, visit www.dcbar.org or call the Sections Office at 202-626-3463 or the CLE Office at 202-626-3488. CLE courses are sponsored by the D.C. Bar Continuing Legal Education Program. All events are subject to change.

DECEMBER 2

BG Group PLC v. Republic of Argentina: The Oral Argument Before the Supreme Court Today
12:30–2 p.m. Sponsored by the International Dispute Resolution Committee of the International Law Section and cosponsored by the Howard M. Holtzmann Research Center for the Study of International Arbitration and Conciliation at the American Society of International Law and the Washington Foreign Law Society, in cooperation with the International Arbitration Committee of the ABA Section of International Law and the International Committee of the ABA Section of Dispute Resolution.

ERISA Basics, Part 4: Fiduciary Responsibility and Participant Rights
6–9:15 p.m. CLE course cosponsored by the Courts, Lawyers and the Administration of Justice Section; Health Law Section; Labor and Employment Law Section; and Taxation Section.

DECEMBER 3

Recent Developments in Patent-Eligible Subject Matter Law for Computer-Implemented Inventions
11:30 a.m.–2:30 p.m. Sponsored by the Patent Committee of the Intellectual Property Law Section. D.C. Bar Boardroom, 1101 K Street NW, second floor.

Complying With Antitrust Enforcement Orders, Decrees, and Agreements: DOJ, FTC, and Practitioner Views
12–1:30 p.m. Sponsored by the Consumer Law Committee of the Antitrust and Consumer Law Section and cosponsored by the Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Law Practice Management Section; and Litigation Section. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 920 Massachusetts Avenue NW, suite 900, room A-C.

Estate Planning, Part 4: Estate Planning for Family Businesses
12–2 p.m. Sponsored by the Estate Planning Committee of the Taxation Section.

Basics of Filing and Litigating Freedom of Information Act Requests 2013
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation Section; and Litigation Section.

DECEMBER 4

Update From the HHS Office of the Inspector General
11:30 a.m.–1:30 p.m. Sponsored by the New Practitioners Committee of the Health Law Section and cosponsored by the Administrative Law and Agency Practice Section; Courts, Lawyers and the Administration of Justice Section; Law Practice Management Section; and Litigation Section.

Exempt Organizations, Part 2: Legislative Update: Tax Reform, Extenders, and the Budget Conference
12–1:30 p.m. Sponsored by the Exempt Organizations Committee of the Taxation Section.

Public Benefits Training: Social Security Disability Benefits (SSDI/SSI) and IDA
12–3 p.m. Presented by the D.C. Bar Pro Bono Program in collaboration with Bread for the City, D.C. Hunger Solutions, Legal Aid Society of the District of Columbia, Legal Counsel for the Elderly, Washington Legal Clinic for the Homeless, and Whitman-Walker Health.

Copyright and Trademark Law Year in Review 2013
6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Government Contracts and Litigation Section; and Intellectual Property Law Section.

DECEMBER 5

Answers to Frequently Asked Questions About the D.C. Rules of Professional Conduct
9:30–11:45 a.m. CLE course cosponsored by all sections of the District of Columbia Bar.

Legends of Environmental Law: A Conversation With John Cruden
12–1:30 p.m. Sponsored by the Environment, Energy and Natural Resources Section and cosponsored by the Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; Courts, Lawyers and the Administration of Justice Section; and Law Practice Management Section; the Environmental Law Institute; and the American Bar Association's Section of Environment, Energy and Resources.

Lunch and Learn Series: Public Speaking for Lawyers
12–2 p.m. Sponsored by the District of Columbia Bar Practice Management Advisory Service. Contact Daniel M. Mills, assistant director of the Practice Management Advisory Service, at 202-626-1312, or dmills@dcbar.org.

DECEMBER 6

Annual Primer on Nonprofit Law in the District of Columbia 2013
9 a.m.–5 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; District of Columbia Affairs Section; Family Law Section; Government Contracts and Litigation Section; Labor and Employment Law Section; Litigation Section; and Real Estate, Housing and Land Use Section.

Attorney Briefs

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D.C., Nashville, and London offices... Antitrust litigator **Jay L. Levine** has joined Porter Wright Morris & Arthur LLP as partner in its litigation department… **John R. Alison**, **Steven M. Anzalone**, **Paul C. Goulet**, and **Thomas L. Jarvis** have joined Winston & Strawn LLP as partner in the firm's intellectual property practice… **Andrea L. Ciota** has joined Potomac Law Group, PLLC as of counsel in the firm's corporate practice… **Larry J. Goldberg** has joined ADA One, LLC as partner and will focus his consulting practice on health care compliance issues… Katz, Marshall & Banks LLP has added **Susan L. Burke** as of counsel at the firm… **Joyce J. Gorman**, who advises financial institutions in developing financial and derivative products in the primary and secondary markets, has joined Ballard Spahr LLP's public finance department as of counsel… **Michael A. Stosser** has joined the energy group at Sutherland, Asbill & Brennan LLP in New York… **Derek A. Cohen** has joined the New York office of Goodwin Procter LLP as partner in its securities litigation and white collar defense group… Kilpatrick Townsend & Stockton LLP has added **Marianna Toma** and **Tyechia White** as associate. Toma joined the firm's mergers and acquisitions and securities team in the corporate, finance, and real estate department, while White joined the insurance team in the litigation department… **Daniel W. Hardwick** has joined the real estate practice at Cozen O'Connor as partner… **Susan Spaeth** has been named managing partner at Kilpatrick Townsend & Stockton LLP… Litigator **William Alden McDaniel Jr.** has joined Ballard Spahr LLP as partner in the firm's Baltimore office… **Peter Karanjia** has returned to Davis Wright Tremaine LLP as partner in the firm's communications, media, intellectual property and technology group, and as cochair of its appellate practice group… **William S. "Bill" Dudzinsky Jr., Michael A. Hepburn,** and **Paul R. Lang** have joined Sutherland Asbill & Brennan LLP as partner. **Andrea Gehman** and **Meredith O'Leary** have joined the firm as senior attorney and counsel, respectively… Thompson Coburn LLP has welcomed partner **Ray Stewart** to the firm's management committee… **Qian Huang** has joined Pillsbury Winthrop Shaw Pittman LLP as partner in the firm's intellectual property practice… **Lisa Ledbetter** has joined Jones Day as partner in the firm's financial institutions litigation and regulation practice… **Helgi Walker** has joined Gibson, Dunn & Crutcher LLP as partner, focusing on appellate, regulatory, and complex litigation matters… Hunton & Williams LLP has promoted **Kristina Van Horn** to counsel in the firm's competition group… **Jed Ross** has joined Goldblatt Martin Pozen LLP as an associate.

Company Changes

Stinson Morrison Hecker LLP and Leonard, Street and Deinard will merge and operate as **Stinson Leonard Street LLP** beginning January 1.

Author! Author!

Atinuke Diver, a 2013 Ms. JD Writer-in-Residence, has contributed an essay, "Running Into Glass Doors," to *Talking Taboo: American Christian Women Get Frank About Faith*, published by White Cloud Press… University of Arizona James E. Rogers College of Law Professor **David A. Gantz** has written *Liberalizing International Trade After Doha: Multilateral, Plurilateral, Regional, and Unilateral Initiatives*, published by Cambridge University Press… **Deborah Bouchoux** has developed an app for her book *Cite-Checker: Your Guide to Using the Bluebook*, which explains and provides examples of *Bluebook* citation rules… **James R. Barney**, a partner at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, has released his second novel, *The Joshua Stone*, published by HarperCollins Publishers… **William Josephson**, a retired partner at Fried, Frank, Harris, Shriver & Jacobson, LLP, has written "Amend the Internal Revenue Code to Stop Charities' Fundraisers Abuse of Charitable Deductions," which appeared in the July 2013 issue of the *Exempt Organization Tax Review*.

D.C. Bar members in good standing are welcome to submit announcements for this column. When making a submission, please include name, position, organization, and address. Please e-mail submissions to D.C. Bar staff writer Thai Phi Le at tle@dcbar.org.

Bar Counsel

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Disciplinary Actions Taken by Other Jurisdictions

In accordance with D.C. Bar Rule XI, § 11(c), the D.C. Court of Appeals has ordered public notice of the following nonsuspensory and nonprobationary disciplinary sanctions imposed on D.C. attorneys by other jurisdictions. To obtain copies of these decisions, visit www.dcbar.org/discipline and search by individual names.

IN RE WAYNE RICHARD HARTKE. Bar No. 200378. On March 11, 2010, the Virginia State Bar Disciplinary Board reprimanded Hartke.

IN RE WAYNE RICHARD HARTKE. Bar No. 200378. On October 7, 2011, the Virginia State Bar Disciplinary Board reprimanded Hartke.

Informal Admonitions Issued by the Office of Bar Counsel

IN RE GREGG D. BARON. Bar No. 445511. September 5, 2013. Bar Counsel issued Baron an informal admonition. While serving as appointed trial counsel in a criminal matter, Baron failed to provide competent representation and revealed a client secret in his motion to withdraw. Rules 1.1(a) and 1.6(a)(1).

IN RE IFEOLU FABAYO. Bar No. 982634. September 4, 2013. Bar Counsel issued Fabayo an informal admonition. While retained to represent a client in a personal injury matter, Fabayo failed to keep, preserve, and produce to Bar Counsel complete records of the client's settlement funds. Rule 1.15(a) and D.C. Bar R. § XI, 19(f), and the counterpart provisions of the Maryland Rules of Professional Conduct as made applicable by D.C. Rule 8.5(b)(2)(ii).

The Office of Bar Counsel compiled the foregoing summaries of disciplinary actions. Informal Admonitions issued by Bar Counsel and Reports and Recommendations issued by the Board on Professional Responsibility are posted on the D.C. Bar Web site at www.dcbar.org/discipline. Most board recommendations as to discipline are not final until considered by the court. Court opinions are printed in the Atlantic Reporter *and also are available online for decisions issued since August 1998. To obtain a copy of a recent slip opinion, visit www.dccourts.gov/internet/opinionlocator.jsf.*

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IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

CYNTHIA L. TURPIN-MIRANDA, Plaintiff :Judge Solomon
vs. : No. 1073 of 2013, G.D.
JOSE DIEGO MIRANDA, Defendant,

NOTICE

Your are hereby notified that you have been sued in Court by CYNTHIA L. TURPIN-MIRANDA, on June 5, 2013, in order to obtain a divorce from the bonds of matrimony.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. Your are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HAVING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NOT FEE.

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legal spectator

By Jacob A. Stein

Will and Last Testament With Music in the Mix

With the exception of "Easter Parade" and "White Christmas," Irving Berlin's songs are rarely played. Berlin (1888–1989) was one of the few popular songwriters in the 20s, 30s, and 40s who wrote both the words and music. George M. Cohan (1878–1942) was another and so was Cole Porter (1891–1964).

I thought of this as I read an old clipping that appeared in a 1916 *New York Times* column reporting on a conversation between Berlin and Wilson Mizner (1876–1933). Mizner told Berlin a story about a will that the former thought would make a good lyric for Berlin. A penniless Chicago lawyer, so it seems, devised in his will and last testament that those who survive him shall receive wonderful, priceless things such as the sunshine and flowers in the springtime. Berlin said it sounded good and he would look into it. Berlin found that there was a lawyer, Charles Lounsbury, whose will it was.

Berlin used the will as the lyrics along with the music. He named it "When I Leave the World Behind:"

I'll leave the sunshine to the flowers,
I'll leave the springtime to the trees;

And to the old folks, I'll leave the mem'ries
Of a baby upon their knees.

I'll leave the nighttime to the dreamers,
I'll leave the songbirds to the blind;

I'll leave the moon above
To those in love
When I leave the world behind.

Al Jolson (1886–1950) recorded the song. It was a big hit. Pull it up on YouTube where you can see Jolson sing the song.

Cohan, in the early days of the 20th century, was the Prince of the Theatre, the Yankee Doodle Dandy. Cohan wrote his own songs, the words and music. He also wrote musical comedies and straight plays.

One day while in a sullen mood, probably because the Actors Union was demanding a contract, Cohan sat down at his piano (he played by ear) and put words to a song titled "Life's a Funny Proposition After All:"

Life's a very funny proposition after all,
Imagination, jealousy, hypocrisy and all.
Three meals a day, a whole lot to say;
When you haven't got the coin you're always in the way.
Ev'rybody's fighting as we wend our way along,
Ev'ry fellow claims the other fellow's in the wrong;
Hurried and worried until we're buried and there's no curtain call.
Life's a very funny proposition after all.

Again, you might hear Cohan singing his song on YouTube.

Now back to Mizner. In the 1930s, he wrote plays in New York and screenplays in Hollywood. His brother, Addison, was the architect who gave that special Spanish touch to the houses and buildings in Boca Raton, Florida. There are three biographies of Wilson Mizner recounting the ups and downs of a life displaying all his questionable talents.

Mizner's wisecracks can be found in *Bartlett's Familiar Quotations* and other quotation books. Here are samples:

- Stealing from one is plagiarism, stealing from many is research.
- I want a priest, a rabbi, and a Protestant minister. I want to hedge my bets.
- You can't be a rascal for 40 years and then cop a plea the last minute. God keeps better books than that.

Porter was another songwriter whose songs were his own words and music. He graduated from Yale and entered Harvard Law School. He quickly understood that he was not the type to be a lawyer. He made the right choice. His songs had a winning style that satirized the upper class, songs such as "You're the Top."

Lawyers and judges have not had much success writing songs, but they have had some success in writing poetry. Judge Wendell Stafford, a local judge, liked to write poetry. Judge Stafford was appointed in 1904 to the Supreme Court of the District, later the federal court. He served here for 27 years. He wrote several books of poems. Here is one of the best:

The Courthouse

This is that theater the muse loves best.
All dramas ever dreamed are acted here.
The roles are one in earnest, none in jest.
Hero and dupe and villain all appear.
Here falsehood skulks behind an honest mask.
And witless truth lets fall a saving word,
As the blind goddess tends her patient task
And in the hush the shears of fate are heard.
Here the slow-shod avengers keep their dates;
Here innocence uncoils her snow-white bloom;
From here the untrapped swindle walks elate,
And stolid murder goes to meet his doom.

There must be a lawyer around here who can sit down at the piano and play by ear, just as Berlin, Cohan, and Porter did.

Reach Jacob A. Stein at jstein@steinmitchell.com.

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