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Washington Lawyer

THE OFFICIAL MAGAZINE OF THE DISTRICT OF COLUMBIA BAR

THE UNCERTAIN FUTURE:

Turbulence and
Change in the
Legal Profession

By Sarah Kellogg

PRACTICE 360°
Returns
May 6



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Rick Rome
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The Uncertain Future

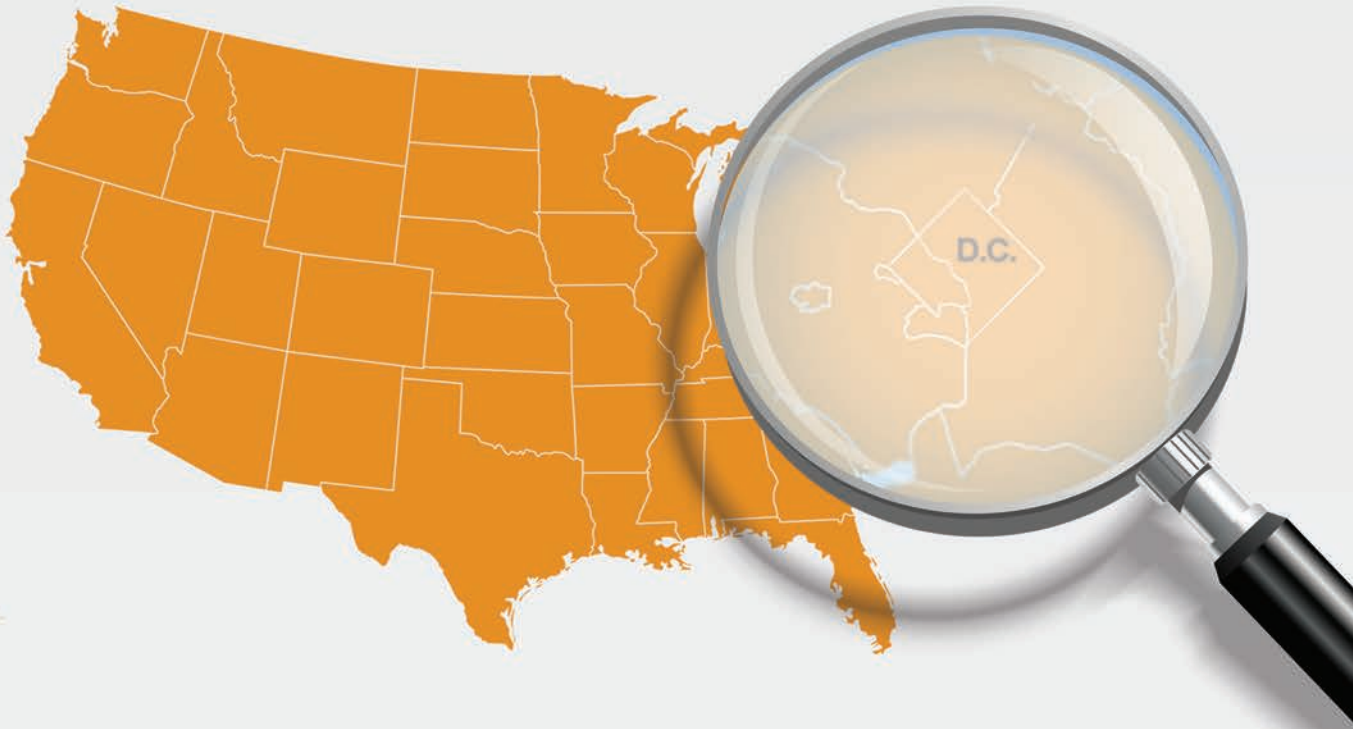
Computers and robots, blurred international boundaries, and changing economic forces are altering the legal profession as we know it, as *Sarah Kellogg* writes.

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Practice 360° Returns on May 6

The D.C. Bar Practice Management Advisory Service will bring back this popular event known as “A Day for Lawyers & Law Firms” offering a full range of free programming, practical techniques, and essential resources. *Washington Lawyer* presents a preview of this year’s event.

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New Member Reception

Friday, May 13, 2016
6 to 8 p.m.

District of Columbia Bar
1101 K Street NW, Suite 200
(light hors d'oeuvres and beverages)

New D.C. Bar members—whether you waived in or passed the D.C. Bar exam—are invited to attend this complimentary New Member Reception on Friday, May 13, at 6 p.m. at the D.C. Bar headquarters. Network with fellow new members of the Bar as well as with Bar leadership, including members of the Board of Governors and the Sections Council, volunteer Bar leaders, representatives from the Membership Benefits Program, and directors of the D.C. Bar.

*For more information and to RSVP,
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*Note that this event occurs on the evening prior to the May 14th Mandatory Course.
If you are registered or planning to register for that course, please consider attending the
New Member Reception as well!*

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EDITORIAL OFFICE

The District of Columbia Bar, 1101 K Street NW, Suite 200,
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The District of Columbia Bar, 1101 K Street NW, Suite 200,
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202-737-4700; toll free 1-877-33DCBAR
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Letters



A Uniform Definition for 'Excessive Force'

In her January cover story "Policing the Police," Anna Stolley Perisky provides an in-depth view of the police and the communities they serve. In exploring the use of excessive force, Ms. Perisky writes that "there is no consensus on what constitutes excessive force." It's no wonder then that conflicts exist between the police force and the surrounding communities when there appears to be no standard application for using too much force. We can't fall back on the old maxim, "I'll know it when I see it." People are being harmed.

There needs to be clear cut, uniform guidelines in place, whether you are serv-

ing and protecting in New York City or Fargo, North Dakota. I'm probably the last person to advocate for more government interference, but this might be one area where the U.S. Department of Justice needs to mandate a national standard. I would support that.

—Richard Riley
Miami, Florida

Slow Justice for the Underserved

David O'Boyle's article "The Judge Is (Still) Not In" talks about how judges from D.C. Superior Court endure long waiting periods for U.S. Senate confirmation. Politics aside, this is a critical delay because the cases that are often adjudicated in Superior Court (and many of the local courts in any number of jurisdictions) far too often have a great impact on the lives of the underserved members of that community.

As a children's advocate, I see firsthand the impact these legal proceedings can have on families and their children. Their lives are interrupted, placed on hold, and left in limbo until these legal matters can be resolved. Even a few extra days of uncertainty is a real hardship for these clients.

—Melanie Townsend
Boston, Massachusetts

Let Us Hear From You

Washington Lawyer welcomes your letters. Submissions should be directed to Washington Lawyer, District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. Submissions are also accepted by e-mail at editorial@dcbbar.org. Letters may be edited for clarity and space.

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from the president

By Tim Webster

It took over 20 years of practice for me to realize that the most important skill a lawyer can have is not analytical acumen, oral advocacy, or legal writing, but rather resiliency. The ability to stretch without giving, to bounce back. I used the word “skill” rather than “trait” to connote something learned rather than something hardwired, although certainly some lawyers have personality traits that are more conducive to resiliency than others.

Resiliency is critical because law is a tough profession. Multiple studies evidence that lawyers as a group have rates of depression, substance abuse, and even suicide far above national averages. Causation is difficult to pin down and probably varies from lawyer to lawyer. But the sheer number of stress-triggers in our profession is impossible to miss. From the always-on, always-connected nature of modern legal practice to significant business and client pressures to unrelenting court and other external deadlines, we face a lot of slings and arrows every day. Perhaps dissatisfaction with the profession, as much as the economy, is to blame for the drastic dip in first-year law school enrollment last fall to the smallest number since 1973.

Resiliency is not a panacea, but elasticity provides benefits across a spectrum of activities. Recognizing that resiliency is not exclusively innate and can be learned is the linchpin to becoming more resilient. Resiliency training has worked for the U.S. Army, so why not the legal profession?

The U.S. Army? Isn't resiliency training a little touchy-feely for an organization whose motto is “Army Strong?” The Army instituted a Comprehensive Soldier and Family Fitness program “designed to build resilience and enhance performance of the Army Family—Soldiers, their Families, and Army Civilians.”¹ The idea, in part, was to address some of the systemic issues facing troops in light of difficult deployments before they manifested as mental health or substance abuse problems. Since 2009, the University of Pennsylva-

Learning to Be an Elastic Lawyer

nia's Penn Resilience Program has trained more than 30,000 Army Master Resilience Trainers, who themselves serve to train others. Much of the U.S. Army has now had such training.

The developers of the Master Resilience Training describe it as having four modules with the goal of fostering what they describe as the essence of resiliency:

(a) self-awareness—identifying one's thoughts, emotions, and behaviors, and patterns in each that are counterproductive; (b) self-regulation—the ability to regulate impulses, thinking, emotions, and behaviors to achieve goals, as well as the willingness and ability to express emotions; (c) optimism—noticing the goodness in self and others, identifying what is controllable, remaining wedded to reality, and challenging counterproductive beliefs; (d) mental agility—thinking flexibly and accurately, perspective taking, and willingness to try new strategies; (e) character strengths—identifying the top strengths in oneself and others, relying on one's strengths to overcome challenges and meet goals, and cultivating a strength approach in one's unit; and (f) connection—building strong relationships through positive and effective communication, empathy, willingness to ask for help, and willingness to offer help.²

The training draws from principles of cognitive behavioral therapy to teach techniques for identifying and avoiding counterproductive thought processes and developing core competencies—including my personal favorite—minimizing catastrophic thinking. Catastrophizing is well known to all of us who carry the worry gene: it's the lightning-quick mental process of spinning minor problems into epic disasters. The rest of the program focuses on identifying character strengths and strengthening relationships between

soldiers and their families.

Surprisingly, perhaps, resiliency training works. Four years into the program, a study showed that the trained group had significantly fewer occurrences of mental health and substance abuse problems than a control group that did not receive training. Again, causation is tough to pin down. The researchers surmise that the benefits of resiliency training are indirect rather than direct. Nonetheless, the bottom line is plain as black and white.

I don't know of any law firm, government agency, or other body of lawyers that provides resiliency training to its lawyers, although certainly many employers have adopted various health and wellness programs and provide in-house and outside mental health and substance abuse resources when needed. The Army's Master Resilience Training is a 10-day course. I'd be catastrophizing if I had to spend that much time on any training! But that's training for the trainers, not the subjects. Given the existing data comparing our profession with others, it seems that we ought to think more seriously about enhancing lawyer resiliency.

Sometimes, though, resiliency is not enough, and it's good to have a backstop. The D.C. Bar has one, the Lawyer Assistance Program (LAP). It was established as a Bar program in the 1980s, partly in recognition of the connection between mental health and substance abuse and malpractice and ethical violations. LAP's counselors, who are licensed clinical social workers, offer comprehensive assessments, short-term counseling sessions, and referral services for D.C. Bar members, judges serving on D.C. courts, and D.C. law students. For more information, visit www.dcbar.org, keyword: LAP.

Reach Tim Webster at twebster@dcbar.org.

Notes

- ¹ See http://www.acsim.army.mil/readyarmy/ra_csf.htm.
- ² See Reivich, Seligman, and McBride, “Master Resilience Training in the U.S. Army,” *American Psychologist* (Jan. 2011) at 25.



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bar happenings

By Jeffery Leon



Mick Wiggins

Practice 360° Returns, Offers Attorneys Free Programming

The D.C. Bar Practice Management Advisory Service (PMAS) is inviting attorneys to sign up for its second Practice 360°: A Day for Lawyers & Law Firms, featuring several programs covering new technology tools, business development techniques, and marketing strategies and a Continuing Legal Education course on data security.

Practice 360° takes place on May 6 from 9 a.m. to 4:30 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. William R. “Billy” Martin, a principal at Miles & Stockbridge, P.C., is the keynote speaker for this year’s event.

The inaugural Practice 360° drew nearly 200 attendees and explored a wide range of topics, including the latest tech trends in the legal industry, the basics of tax preparation and malpractice insurance, and defining and maintaining professional boundaries.

To register and for more information, contact the PMAS attorneys Dan Mills or Rochelle Washington at 202-626-1317, or visit www.dcbar.org/practice360. For expanded coverage on this event, see our advertisement on page 7 and our feature coverage beginning on page 26.



DuPont Photographers

William R. “Billy” Martin

2016 Judicial Reception Honors Judges, Bar Foundation’s Scoutt Prize Winner

Judges, practitioners, and others active in the legal profession are invited to attend the 2016 D.C. Bar Judicial Reception on April 21, an event honoring judges from the federal and local courts in the District of Columbia, with special recognition given to those who have retired or taken senior status in the past year.

During the reception, the D.C. Bar Foundation also will present its 2016 Jerrold Scoutt Prize to Jennifer L. Berger, a supervising attorney at the Legal Counsel of the Elderly. Berger will be honored for her exceptional service in advocating for elderly citizens facing challenges in housing.

The Scoutt Prize, named in honor of Jerrold Scoutt Jr., a founding partner at Zuckert, Scoutt & Rasenberger LLP, is awarded annually to an attorney employed full-time with a legal services provider in the Washington metropolitan area.

The Judicial Reception will be held from 6 to 8 p.m. at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW. It is open to D.C. Bar members and guests of the D.C. Bar Foundation.

For more information or to register, visit www.dcbar.org/marketplace.

Bar to Welcome New President, Present Awards at Celebration

The 2016 Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting will be held on a new date—Wednesday, June 15—at the Mayflower Hotel’s Grand Ballroom, 1127 Connecticut Avenue NW.

The evening will open with the D.C. Bar Pro Bono Center’s Presidents’ Reception at 6 p.m., followed by dinner and the awards presen-

tation at 7:30. Incoming president Annamaria Steward, associate dean of students at the University of the District of Columbia David A. Clarke School of Law, will be honored at the Presidents’ Reception, which will be held in the East Ballroom of the Mayflower Hotel. Proceeds from the reception will benefit the D.C. Bar Pro Bono Center.

The evening’s festivities will also include the swearing-in ceremony for Steward; the announcement of the 2016 Bar election results; and the presentation of awards to Bar sections, committees, projects, and individuals who served the Bar and its community.

For more information about the dinner, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or annualdinner@dcbar.org. To learn more about the Presidents’ Reception, contact Kathy Downey at 202-588-1857 or kmdowney@erols.com. For more information on the Celebration of Leadership, visit www.dcbar.org, keywords: Celebration of Leadership.

New CLE Course Guides Government Lawyers on Balancing Ethical Duties

When faced with an ethical dilemma, government attorneys must balance the duties they owe to their clients, their employer, the tribunal, and the public. But not all ethics issues that government lawyers may run into in their practice are covered by the D.C. Rules of Professional Conduct.

On April 18 join the D.C. Bar Continuing Legal Education (CLE) Program for the course “Walking the Tightrope: Maintaining Competency & Compliance With the Ethics Rules for Governmental Lawyers” to learn the common ethical pitfalls and how to avoid them.

This class will cover conflicts of interest, reporting duties, the duty of confidentiality and attorney-client privilege issues, candor to the tribunal, responsibilities of supervisory lawyers, the duty to provide competent representation, and use



Courtesy of Mr. Jack Olander

Annamaria Steward

of social media.

Faculty includes Tracy L. Kepler, associate solicitor in the Office of the General Counsel at the U.S. Patent and Trademark Office, and D.C. Bar Legal Ethics Counsel Hope C. Todd.

The course, offered both as an in-person presentation and as a live Webinar, takes place from 1 to 3:10 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Antitrust and Consumer Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; District of Columbia Affairs Section; Environment, Energy and Natural Resources Section; Family Law Section; Health Law Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

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

ABA Special Program to Examine Emerging Issues in Digital Currency

Digital currencies like Bitcoin and blockchain technology present a new frontier with broad implications in finance, security, and the law. On April 1 the American Bar Association (ABA) will host a special program to explore the complex legal issues around digital currencies.

“2016 Digital Currency and Blockchain Technology National Institute” features experts from the world of cybercrime prevention, finance, and technology who will provide in-depth analysis of the emerging legal issues and the latest developments.

Sessions will cover how digital currencies work, blockchain innovations and opportunities, consumer protection and state licensing, recent law enforcement actions, what the future might hold, and much more.

Panelists include John Beccia, general counsel and chief compliance officer at Circle Internet Financial Limited; Patrick Murck, a fellow at the Berkman Center for Internet & Society at Harvard University and special counsel at Pillsbury Winthrop Shaw Pittman LLP; Serrin Turner, cybercrime coordinator at the U.S. Attorney’s Office for the Southern District of New York; and Varun Gupta, chief legal and compliance officer at Bitfury.

The program takes place from 9 a.m. to 4:30 p.m. at the ABA, 1050 Connecticut Avenue NW, suite 400.

For more information and to register, visit www.americanbar.org.

Probate Resource Center Sets Training for Attorney Volunteers

On April 8 the D.C. Bar Pro Bono Center will hold a training session for attorney volunteers for its Probate Resource Center at the D.C. Superior Court.

The Probate Resource Center is a walk-in clinic that provides free legal information to unrepresented parties who need assistance with issues in large estate administration. The center is staffed by attorney volunteers who counsel individuals on the probate process, help prepare petitions for probate and other standard probate forms, and provide information on property distribution.

The training will provide an overview of the Probate Resource Center’s structure and the role of attorney volunteers, as well as the opening and administration of decedents’ estates.

Trainees must commit to volunteering at the Probate Resource Center at least four times within one year of completing the training. No particular expertise is required, and an experienced probate practitioner will be onsite to assist volunteers.

The training takes place from 12 to 2 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. To register, visit www.dcbar.org/pro-bono.

CLE Series Reviews Basic Estate Plans for Various Types of Clients

In April the D.C. Bar Continuing Legal Education (CLE) Program will offer a three-part series on estate planning, providing introductory knowledge for attorneys handling estate matters.

Part one, “Planning for Estates Under \$5.45 Million,” takes place on April 6 from 6 to 9:15 p.m.

This session will focus on the basic will and estate plan for a client with an estate valued at less than the federal applicable exclusion amount of \$5.45 million.

Faculty will review assets that may be disposed of by will, factors to consider when making bequests, estate and inheritance tax at the state level, collecting information from the client, collateral estate planning, and more.

Catherine Mary Rafferty of the Law Offices of Catherine Mary Rafferty and Julia O’Brien of Furey, Doolan & Abell, LLP will lead this session.

The series continues on April 13 with “Planning for Estates Over \$5.45 Million,” focusing on the will and estate plans for a married couple with a combined taxable estate valued at over the federal applicable exclusion amount.

Attendees will learn the importance of focusing on both probate and non-probate assets in estate planning; the impact of the current state of federal estate tax law; estate taxes in the District of Columbia, Maryland, and Virginia; and how unlimited marital deduction and federal applicable credit amount work together to save estate taxes in the estate of the last spouse to die in states that still have an estate tax.

The session takes place from 5:30 to 8:45 p.m. with Molly B. F. Walls of McArthur Franklin PLLC as faculty.

The last session, “Senior Surviving Spouse Planning,” takes place on April 20 from 5:30 to 8:45 p.m. It will explore the will and estate plan for the senior surviving spouse, with surviving children and grandchildren, who has an estate in excess of the federal applicable credit amount equivalent and who may be contemplating remarriage.

Calvin H. Cobb III, a partner at Craighill, Mayfield, Fenwick, Cromelin & Cobb, L.L.P., will discuss the provisions that might be included in the will, as well as gifting strategies using generation-skipping, “Crummey,” qualified personal residence, and charitable trusts.

All three sessions will be held at the D.C. Bar Conference Center, 1101 K

Street NW, first floor. The series is cosponsored by the D.C. Bar Estates, Trusts, and Probate Law Section; Family Law Section; and Taxation Section.

For more information and to register, contact

the CLE Program at 202-626-3488 or visit www.dcbar.org/cle.

CLC to Train Pro Bono Attorneys on Housing Conditions Litigation

Housing code violations can be a major cause of concern for families in the District of Columbia, and hazards such as mold, pest infestation, and other unsafe conditions are a threat particularly to low-income children, resulting in repeated emergency room visits.

On April 12 the Children’s Law Center (CLC) will offer a “Housing Con-



Catherine Mary Rafferty **Molly B. F. Walls**

John Keith

Michael Carpenter of Michael Carpenter Photography

ditions Pro Bono Training” to prepare attorneys to handle affirmative housing conditions litigation, working with families to get access to safe housing and to improve children’s health. The half-day training session will be led by experienced attorneys from CLC.

Through its medical-legal partnership with the Children’s National Medical Center, Mary’s Center, and Unity Health Care, CLC pursues affirmative housing conditions litigation to give tenant families a forum to address these issues head on.

The training takes place from 9:30 a.m. to 12 p.m. at Skadden, Arps, Slate, Meagher & Flom, LLP, 1440 New York Avenue NW. To register, visit www.childrenslawcenter.org.

Georgetown Law Hosts Conference Marking FSIA’s 40th Anniversary

On April 25 the Center on Transnational Business and the Law at Georgetown University Law Center is hosting a conference to commemorate the 40th anniversary of the Foreign Sovereign Immunities Act (FSIA) of 1976, the law that establishes the limitations on initiating a lawsuit against a foreign state or its agencies.

“The Foreign Sovereign Immunities Act at Forty: U.S. and International Perspectives” will assess the United States’ experience with FSIA and consider the role of foreign sovereign immunity in a changing world. The conference will draw scholars, judges, and attorneys, both from the United States and abroad, to discuss FSIA’s origins, expectations, and surprises; sovereign immunity in international law and practice; critical issues such as enforcement, human rights, and terrorism; and the international management of sovereign debt and the Argentine debt case.

Chief Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit will deliver the keynote presentation.

The conference takes place from 8:30 a.m. to 5:30 p.m. at the Gewirz Student Center at Georgetown Law, 600 New Jersey Avenue NW. It is cosponsored by the American Branch of the International Law Association, the American Society of International Law, the American Bar Association’s Section of International Law, and the International Law Institute.

For more information, visit www.law.georgetown.edu.



Diane Wood

SAVE THE DATE WBA FOUNDATION ANNUAL GRANT AWARDS

On April 14 the Women’s Bar Association Foundation (WBAF) will host its seventh annual Grant Awards Reception, honoring its 2016 grantees. The event brings together supporters of the WBAF’s mission to assist nonprofits serving the legal needs of women and girls in the Washington metropolitan area.

The reception takes place from 6 to 8 p.m. at Sterne, Kessler, Goldstein & Fox P.L.L.C., 1100 New York Avenue NW, sixth floor. For more information, visit www.wbadc.org.

CLE’s Ethics Guide on Law Firms, Lawyers Who Lobby Returns in April

On April 18 the D.C. Bar Continuing Legal Education (CLE) Program will offer the course “For Lawyers Who Lobby (and Their Firms): Legal Ethics and Unauthorized Practice Update,” also available as a live Webinar.

Lawyers are subject to the D.C. Rules of Professional Conduct, but how those rules apply to lawyers who lobby is not always easy to understand. Additionally, the applicability of conflict of interest rules, confidentiality, and other ethics considerations are particularly thorny issues.

This class will use hypothetical scenarios to explore important issues for lawyer-lobbyists, including when is lobbying governed by the ethics rules, what are the ethical implications for law firms with nonlawyers engaged in lobbying, and how do conflict of interest ethics rules apply to lobbying matters?

Thomas B. Mason, a partner at Harris, Wiltshire & Grannis LLP, and Andrew M. Siff, principal at Siff & Associates, PLLC, will serve as faculty.

The course takes place from 6 to 8:15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It 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; Government Contracts and Litigation Section; Labor



Thomas B. Mason

and Employment Law Section; and Law Practice Management Section.

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

Boost Your Emotional Intelligence, Become a Better Lawyer

Enhanced emotional intelligence can make you a more effective communicator and a better leader. It also reduces stress, creates resilience, and helps you avoid conflict. Studies have shown that lawyers with enhanced emotional intelligence quotient have improved client relations, can recover more quickly from setbacks, and lead happier, more balanced lives.

This spring, the D.C. Bar will offer a six-session series to help participants develop and sharpen their emotional intelligence skill set and become better lawyers. The series features a mix of lectures and group exercises designed to help attorneys understand their own emotions and the emotions of others, use their emotional intelligence skills to interact better with clients and colleagues, learn how to solve problems collaboratively, and find ways to manage stress and build up their resilience.

“Emotional Intelligence Skills for Lawyers” will be led by Michelle Cotter Richards, associate certified coach with the International Coach Federation, and Denise Perme, manager of the D.C. Bar Lawyer Assistance Program (LAP).

This off-the-record brown bag program is sponsored by the D.C. Bar Practice Management Advisory Service, the D.C. Bar Sections Office, and the LAP.

As *Washington Lawyer* went to press, the initial six-session series was at capacity. However, a waitlist has been established for those who are interested in taking the series at a later date to be determined. To reserve a spot on the waitlist, e-mail sectionsregistration@dcbar.org. Enrollment for this series is limited, and attendance at all sessions is highly recommended.

For an expanded look at this topic, see the article “Using Your Emotional Intelligence to Become a Better Lawyer,” appearing in the March 2016 issue of *Washington Lawyer* and also on the Bar’s Web site at www.dcbar.org.

Mix and Mingle at Bar’s New Member Reception

Have you recently joined the D.C. Bar and are looking for a fun way to network with other members? New D.C.

Bar members—whether you waived in or passed the D.C. exam—are invited to attend a complimentary New Member Reception on May 13.

Guests will network with fellow new Bar members, members of the Bar's Board of Governors and other volunteer Bar leaders, representatives from the Membership Benefits Program, and directors from the D.C. Bar itself.

The reception will be held from 6 to 8 p.m. at the D.C. Bar headquarters, 1101 K Street NW, second floor. Light hors d'oeuvres and beverages will be provided. Guests are asked to RSVP at memberbenefits@dcbar.org. (See our advertisement on page 4).

Bar Leaders Prepare to Lobby Congress During ABA Day 2016

From April 19 to 21 the American Bar Association (ABA) will host ABA Day 2016, its "lobby day" in Washington.

Leaders of the ABA and state, local, and specialty bars will gather in the nation's capital to advocate for issues that impact the legal profession and the administration of justice. Attendees will join ABA President Paulette Brown and House of Delegates Chair Patricia Lee Refo during their Capitol Hill visits.

To kick off the event, the ABA will hold its Justice Awards Reception and Dinner on April 19, honoring members of Congress supportive of the ABA's cause. The reception and dinner takes place from 6:15 to 9 p.m. at the Smithsonian National Museum of the American Indian, Fourth Street and Independence Avenue SW.

ABA Day will be held at The Liaison Capitol Hill, 415 New Jersey Avenue NW.

To register and for more information, visit www.ambar.org/ABADay.

Women's Bar Hosts Two Career Improvement Programs in April

In April the Women's Bar Association of the District of Columbia (WBADC) will be holding two career exploration programs for attorneys.

The WBADC's Energy and Environmental Forum will host "Exploring and Finding Careers in Environmental Sustainability" on April 7, a panel discussion on the opportunities and challenges in this exciting field.

Featured speakers Shannon Broome, a managing partner at Katten, Muchin, Rosenman LLP; Sarah Jensen, energy technology program specialist at the U.S. Department of Energy; and Kathryn B. Thomson, general counsel at the

U.S. Department of Transportation, will talk about their paths in the sustainability field, career highlights, and current and future opportunities. Helen Serasio, special counsel at the Federal Transit Administration, will serve as moderator.

The program takes place from 6 to 8 p.m. at Kirkland & Ellis, LLP, 655 15th Street NW, suite 1200.

On April 11 the WBADC's Mentoring Committee and Young Lawyers Committee will set up a "job application station" to help attorneys tune up their law job portfolio.

Attendees will get a professionally taken headshot, receive feedback on their résumés and cover letters from law firm hiring staff and recruiters, and network with peers.

The program will be held from 6 to 8 p.m. at Wilkinson Barker Knauer LLP, 1800 M Street NW, suite 800N.

To register for either event, visit www.wbadc.org.

Course Explores Impact of Revised Federal Civil Rules on E-Discovery

On April 27 the D.C. Bar Continuing Legal Education (CLE) Program will explore the effects on discovery and pre-trial practice of the latest amendments to the Federal Rules of Civil Procedure.

The course, "Applying the New Federal Rules and Related E-Discovery Technology in Your Practice," features Judge John M. Facciola, a retired magistrate judge of the U.S. District Court for the District of Columbia, and Judge Paul W. Grimm of U.S. District Court for the District of Maryland. Both judges will discuss the new standards for "relevant" and "proportional" discovery and how they may apply to your practice.

Additionally, nationally recognized e-discovery expert Craig Ball will explain the technology changes that go hand-in-hand with the new amendments. Theodore C. Hirt, former chair of the D.C. Bar CLE Committee, and Wendy Butler Curtis of Orrick, Herington & Sutcliffe LLP, will provide the practitioner perspective.

The course takes place from 9 a.m. to 4:30 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by all sections of the D.C. Bar.

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

EBA 'Energizer' Program Offers Advice on Mediating an Energy Case

On April 12 the Energy Bar Association (EBA) will hold a panel discussion on mediating an energy case and resolving energy disputes, featuring as speakers the chief administrators of alternative dispute resolution programs in prime federal forums.

The program will explore what type of dispute is deemed appropriate for mediation in a particular forum, when to conduct mediation during litigation, identifying the right mediator, private mediation, and the impact of administered mediation on the litigation schedule.

Panelists include Claudia L. Bernard, chief circuit mediator at the U.S. Court of Appeals for the Ninth Circuit; Deborah M. Osborne, director of the Dispute Resolution Division at the Federal Energy Regulatory Commission; and Amy E. Wind, chief circuit mediator at the D.C. Circuit.

The program takes place from 12 to 2 p.m. at Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW. Attendees must register by April 7.

For more information, visit www.ebanet.org.

Pro Bono Center Training Prepares Attorneys to Handle Asylum Cases

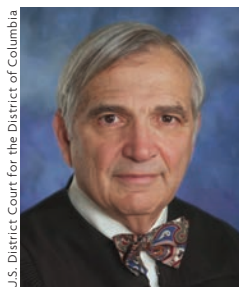
The D.C. Bar Pro Bono Center is offering a training session on April 22 for pro bono attorneys interested in representing asylum seekers.

Asylum is a form of protection for people fleeing persecution in their home countries due to their race, religion, nationality, political opinion, or membership in a particular social group. This advanced training is open to attorneys, paralegals, and law students and will be led by experienced immigration practitioners, an immigration judge, and a member of the Board of Immigration Appeals.

Topics will include asylum based on social groups, including gender and LGBT status; bars to asylum and the one-year filing deadline; and alternative forms of fear-based immigration relief.

The training takes place from 9 a.m. to 4:30 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. To register, visit www.dcbar.org/pro-bono.

Reach D.C. Bar staff writer Jeffery Leon at JLeon@dcbar.org. Follow him on Twitter at [@JLeonDCBar](https://twitter.com/JLeonDCBar).



John M. Facciola

U.S. District Court for the District of Columbia

disciplinary counsel

By Gene Shipp



Mick Higgins

The world is changing so very fast that you can be easily stunned by the new thinking, new systems, and new approaches to the practice of law. Here are some random thoughts on what I saw and learned at the National Organization of Bar Counsel and American Bar Association mid-year meetings.

ABA Adopts New Rules. The ABA, in a contentious debate (for the ABA), adopted Model Regulatory Objectives for the Provision of Legal Services. Words like “regulatory objectives” turn the heads of regulators (but we are a funny group). It is clear these objectives are dear to my heart, but they developed a lot of controversy before the ABA House of Delegates. The objectives include:

- Protection of the public;
- Advancement of the administration of justice and rule of law;
- Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems;
- Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections;
- Delivery of affordable and accessible legal services;
- Efficient, competent, and ethical delivery of legal services;
- Protection of privileged and confidential information;
- Independence of professional judgment;
- Accessible civil remedies for negligence and breach of other duties owed, disci-

What I Learned From the ABA, NOBC Meetings

plinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs; and

- Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

The ABA Resolution urges each jurisdiction’s highest court (in our case, the D.C. Court of Appeals) to be guided by these objectives. (The Conference of Chief Justices passed its own resolution recommending courts consider the ABA Objectives before the ABA!)

Now why were these contentious? It seems that the practice of law as we knew it years ago now has nonlawyers nibbling at the fringes. From paralegals to online legal services, the landscape is changing. Some feel this resolution and report invite such nonlawyer legal providers to the table. It is clear to me that these folks are already at the table. A number of states now regulate or will soon regulate paralegals. One of the realities of our legal world is that so very much of the need for legal services goes unmet by our present structure and pricing, and at the same time recent law graduates cannot find jobs. The provision of legal services is one of the concerns that needs to be addressed. The regulatory objectives provide a framework and good start.

Judicial Reports of Misconduct. Judicial reports of misconduct were discussed at our meetings. It seems that judges are very reluctant to report ethical concerns they observe or sense from the bench. It is very important that a citizen who has an attorney who is failing to perform within the rules or has an impairment be brought to the attention of our office and/or the professionals at the D.C. Bar Lawyer Assistance Program. The public and the profession are not served by our turning our heads away from ethical failures. I was reminded to reach out to our bench and to make sure they know we are only a phone call away and are trained to handle these situations.

Job Changes. Attorneys who are chang-

ETHICS WEBINARS IN APRIL

The D.C. Bar Continuing Legal Education Program is offering three Ethics Webinars in April. Visit www.dcbbar.org/cle for complete course descriptions and to register today!

April 14: A Lawyer’s Ethical Duties to Disclose Metadata, Digital Evidence in the Cloud, and More.

April 18: Walking the Tight-Rope: Maintaining Competency and Compliance With the Ethics Rules for Government Lawyers.

April 18: For Lawyers Who Lobby (and Their Firms): Legal Ethics and Unauthorized Practice Update.

ing job situations are a concern for different reasons. A law degree permits dozens of different styles of practice. A government attorney, firm attorney, or public interest attorney leaving their practice for solo private practice has a significant ethical learning curve. We have seen more of these instances where education in the basics is critical. Here, I mention Dan Mills and Rochelle Washington as the D.C. Bar’s answer. Their “Basic Training” on starting and growing a law office, which has graduated 2,500 attorneys so far, is the key. With any change in your professional environment, learning is critical to serve the client and avoid our office.

Online Reviews. Online reviews are a hot area in discipline—and a new one for me. Now the client leaves your office and posts an unhappy comment on your service. Some attorneys are offended by the client’s views and respond by defending their honor, ending with a violation of Rule 1.6 (Confidences and Secrets). A period of reflection is important before any response. I recently read a hotel’s response to a bad review in which the hotel said they were sorry for the disappointment and hoped the person would give them a second chance. Could be a lesson in such a response.

Money Laundering. Money laundering is now a major concern as the use of

continued on page 46

POSITIVE MOMENTUM

CELEBRATION OF SERVICE

Law Students in Court
Celebration of Service
Annual Tribute
and Reception

4.28.2016

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Celebration of Service Award
MICHELE ROBERTS

Executive Director
National Basketball Players
Association

First woman to head a major
professional sports union in
North America.

Primary advocate for all players
and lead negotiator in all
collective bargaining activities.

Renowned trial lawyer and
member of Skadden's Litigation
Group.

Eight years at the DC Public
Defender Service. Chief of the
Trial Division, serving as counsel
in more than 40 jury trials.



Distinguished Alumni Award
MARC MORIAL

President & CEO
The National Urban League
LSIC Civil Division alumni,
Georgetown Law, 1983

Primary catalyst for change in the
transformation of the nation's largest
historic civil rights organization.

Two-term mayor of New Orleans
and President of the bi-partisan
U.S. Conference of Mayors.

Popular chief executive with a
broad multi-racial coalition. Led
New Orleans' 1990's renaissance.

Winner of the Louisiana State Bar
Association's Pro Bono Publico
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steady presence in the courts—and
throughout the community—
serves as a vital check on a system
that favors people with counsel
and resources over those without.

#CELEBRATEREFORM

LAW STUDENTS
IN COURT

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

D.C. Bar Nominations Committee Announces Candidates for Bar Office

The D.C. Bar Nominations Committee has selected H. Guy Collier, a partner at McDermott Will & Emery LLP, and Patrick McGlone, senior vice president, general counsel, and chief compliance officer at Ullico Inc., as candidates for D.C. Bar president-elect for the 2016–2017 term. The president-elect serves for one year before becoming president and continues in office a third year as immediate past president.

Collier is a past chair of the D.C. Bar Pro Bono Committee and former member of the Bar's Board of Governors. He also served on the Health Law Section's first steering committee. He serves as cochair of the emeritus board of the Children's Law Center and on the board of trustees of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. In addition, he is past president of the University of Richmond Law School Association.

A graduate of the University of Virginia, Johns Hopkins University, and University of Richmond School of Law, Collier focuses his practice on transactional and related regulatory issues for health industry clients, as well as corporate compliance issues.

McGlone has previously served in numerous capacities for the Bar, including as secretary, as well as on the Regulations/Rules/Board Procedures, Nominations, Publications, and Screening committees. He is currently treasurer of the D.C. Bar Foundation board of directors, vice president of the Council for Court Excellence, and a fellow of the American Bar Association (ABA).

McGlone is a graduate of Fordham College and The George Washington University Law School. At Ullico, he is

charged with overseeing the company's litigation matters, focusing on insurance, commercial and employment law, ERISA, and compliance issues.

The Nominations Committee also announced the selection of candidates for other Bar positions. Nominated for secretary are David W. Arrojo of the U.S. House of Representatives, Committee on Ethics, and Adam M. Chud of Goodwin Procter LLP, and for treasurer are Shuchi Batra of the U.S. General

Services Administration and Megan Lacchini of the Legal Services Corporation.

The following are candidates for five vacancies on the Bar's Board of Governors for three-year terms: Jessica E. Adler,

Law Office of Jessica E. Adler; Arturo Caraballo, Arnold & Porter LLP; Erica J. Dominitz, Kilpatrick Townsend & Stockton LLP; Karen E. Evans, The Cochran Firm; Theodore A. Howard, Wiley Rein LLP; Annette K. Kwok, Venable LLP; Richard J. Marks, DLA Piper LLP; Anne M. Scott, Littler Mendelson, P.C.; Lindsey R. Vaala, Vinson & Elkins LLP; and Christopher P. Zubowicz, U.S. Department of Justice.

The Nominations Committee also announced the following candidates for three open seats in the ABA House of Delegates: Wynter P. Allen, Alden Law Group PLLC; John (Jack) C. Keeney Jr., Association of Zoos and Aquariums; Laura A. Possessky, Gura & Possessky PLLC; and Lucy L. Thomson, Livingstons PLLC.

Ballots and instructions for voting, by mail or online, will be distributed to all active Bar members on April 25. The deadline to vote is May 20.

Results of the election will be announced on the Bar's Web site and during the 2016 Celebration of Leader-

ship, which includes the Bar's Awards Dinner and Annual Meeting, on June 15 at the Mayflower Hotel, 1127 Connecticut Avenue NW.

Bar Sections' Steering Committee Elections Open Online on April 25

Online voting in the 2016 D.C. Bar section steering committee elections will take place between April 25 and May 20. Voting will primarily be conducted on the Bar's Web site, with paper ballots available on request.

Section members in good standing can access their ballots by logging into the Bar's Web site during the spring voting period to cast their ballots. Individuals who wish to receive a paper ballot must submit a request no later than April 15 online at www.dcbbar.org (keywords: Sections Elections) or by e-mail to section-ballot@dcbbar.org.

Online voting will be available to all eligible voters throughout the election period, but paper ballots will not be generated unless a specific request is submitted.

Justice Alito Says 8-Member Bench Not a First in High Court's History

U.S. Supreme Court Justice Samuel A. Alito Jr. said the Court will "deal" with an eight-member bench as the Obama administration and the U.S. Senate prepare to head into a contentious battle over nominating a replacement for the late Justice Antonin Scalia.

In his remarks to the graduating class of Georgetown University Law Center on February 23, Alito said there had been other instances throughout the Court's history where an even number of justices constituted a full roster. "Somehow they must have been more agreeable in those days," Alito said.

Alito pointed out that there is no provision in the Constitution that specifies the size of the Court, which has gone from a low of five justices to a high of ten. In fact, under the Judiciary Act of 1789 that created the Supreme Court,



Courtesy of Ullico Inc.

Patrick McGlone

Courtesy of McDermott Will & Emery LLP

H. Guy Collier

the number of justices was set at six. The Judiciary Act of 1869 established the current size of the bench at nine, only fluctuating if a justice retires or dies.

Alito said news of Justice Scalia's death on February 13 has been a great shock to the justices. "We just started back in business hearing arguments, so we will see what develops," Alito said.

In discussing his judicial philosophy, Alito said the Constitution contains provisions that are very specific and others that are less so. What's important, Alito said, is the principle behind the provisions.

Alito cited the Fourth Amendment prohibiting unreasonable searches and seizures. "[The Fourth Amendment] did that in 1791, and that's what it does now. But the types of cases that present Fourth Amendment problems have changed enormously," he said.

Alito also discussed the 2014 case *National Labor Relations Board v. Noel Canning* concerning presidential recess appointments. In deciding that case, "all of us applied what we took to be the original meaning of a recess appointment," Alito said. "Nobody argued that this term had evolved . . . into something different. Now we disagreed about what the original meaning was, but I think we were all originalists on the case."

Alito gave the graduates a behind-the-scenes insight into the Supreme Court



Bill Petros/Georgetown University Law Center

U.S. Supreme Court Justice Samuel A. Alito Jr. spoke to the graduating class at Georgetown University Law Center on February 23. The conversation, moderated by Georgetown Law Dean William Treanor, touched on subjects ranging from Alito's own nomination and confirmation, his judicial philosophy, and the relationships between the justices.—D.O.

JOINING THE BENCH



Anita Jarman, D.C. Courts

New D.C. Superior Court Magistrate Judges Rahkel Bouchet, Diane Stewart Lepley (pictured), and Shana Frost Matini were sworn in and installed during an afternoon ceremony at the H. Carl Moultrie Courthouse on February 12. The judges were appointed in November to fill the vacancies created by recent retirements at the court. Bouchet and Lepley were sworn in by D.C. Superior Court Chief Judge Lee F. Satterfield, while Matini was sworn in by retired Judge Richard A. Levie. Lepley's brother Jeffrey Groves Stewart (right) took part in the ceremony.—D.O.

and the relationships between the justices. When asked how the justices maintain close professional and personal relationships despite sharp disagreements on the Court, Alito said they separate their opinions about the law from their personal interactions. To reinforce professional and personal bonds, the justices shake hands before taking the bench and before a conference. In addition, the justices have lunch together on each day of oral arguments, a tradition that Justice Sandra Day O'Connor pushed for during her tenure.

"I have never thought in all my years as a judge or justice of any of my colleagues—even when I have disagreed with them—as doing anything other than what they thought was the right thing to do," said Alito. "I respected them in that way, and I hope that they feel the same way about me."—D.O.

Hispanic Bar Seminar Examines Social Media Potential and Pitfalls

Facebook, Twitter, and LinkedIn are a whole new world when it comes to communication, presenting new ways to connect, network, and reach people. But social media also poses pitfalls for attorneys, who risk running afoul of ethics and confidentiality rules when posting content and interacting online.

This was the topic of a panel discussion held by the Hispanic Bar Association of the District of Columbia on February 25, covering the D.C. Rules of Professional Conduct and how they apply to social media, as well as the rules of engaging and communicating online ethically.

The seminar, "Ethical Risks When Using Online Social Media," featured as panelists Dolores Dorsainvil, assistant disciplinary counsel at the D.C.

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Michal Rotenh

The Benjamin Banneker Academic High School showcased its students' science projects during the school's 2016 Science Fair on February 19, an annual event that the D.C. Bar Intellectual Property Law Section has supported since 1996.

Office of Disciplinary Counsel; Linda V. Priebe, a partner at Culhane Meadows PLLC and former deputy general counsel and agency ethics official at the White House Office of National Drug Control Policy; and Daniel Schumack of Schumack Ryals PLLC.

Dorsainvil and Schumack kicked off the discussion with a presentation on the benefits and risks of social media use. While a strong online presence can provide numerous benefits for tech-savvy attorneys, including opportunities for marketing and networking, instant updates on events, and ease of communication with clients, caution is needed when utilizing social media. The panelists said social media use can give rise to ethics problems such as unintended attorney-client relationships, conflicts of interest, scams, puffery, and advertising rule violations.

Citing the 2012 report of the American Bar Association's Commission on Ethics 20/20 on the transformation of the practice of law, Dorsainvil said lawyers need to stay current with technology, but also must consider the Rules of Professional Conduct in their jurisdiction.

The two attorneys provided tips on how legal professionals can best communicate with clients and others on LinkedIn, blogs, Twitter, and other networking sites while being mindful of the ethics rules.

Priebe covered additional ethics concerns and the rules of conduct in regard to YouTube videos, real-time electronic communication, Facebook likes, disclaimers in blogs, and more. She discussed online policies for law firms and how best to manage their social media accounts, including through comment moderation, terms of use, and social

media training for attorneys.

According to Priebe, among the top 10 social media mistakes that law firms make are not having a social media policy

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 non-payment 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 Disciplinary Counsel.

Suspensions become a permanent part of members' records. To be reinstated, one must complete the course and pay a \$60 fee.

The preregistration fee is \$229; the onsite fee is \$289. Courses will be held April 12, May 14, June 7, and July 9. Advanced registration is encouraged.

For more information or to register online, visit www.dcbbar.org, keywords: Mandatory Course.

on record, failing to stay up to date on news, and not consistently viewing and moderating public comments and visitor activity on their social media pages.

The panelists concluded that social networks are here to stay, and while technology can make new things possible, for attorneys they may not always be ethical.

The seminar was held at Arnold & Porter LLP and moderated by Ari Meltzer of Wiley Rein LLP.—*J.L.*

IP Law Section Members Serve as Judges at Banneker Science Fair

On February 19 six volunteers from the D.C. Bar Intellectual Property Law Section served as judges at Benjamin Banneker Academic High School's 2016 Science Fair, which showcased student projects in 15 categories, including animal sciences, biochemistry, medicine and health sciences, and more.

The Intellectual Property Law Section has sponsored the annual fair since 1996.

The students began working on their projects last November, with each submission going through multiple rounds of review before being included in this year's fair. Local professionals from science, technology, engineering, and math fields also were in attendance to evaluate the science projects.

"The Science Fair is such a great opportunity for our students to interact with STEM professionals from the area and exposes our students to career opportunities," says Banneker science teacher Kate Mansfield. "The fair would not have been a success without the time volunteered by our wonderful judges."

Located in Washington, D.C., Banneker High School is a magnet school that attracts local students who excel in math, science, and technology, with a college acceptance rate of 100 percent.—*J.L.*

Bloomberg Law Program Explores U.S., E.U. Data Security Challenges

On February 3 Bloomberg Law hosted a panel discussion to explore developments in data protection and privacy while offering an outlook on global cybersecurity in 2016.

The event, "2016 Outlook on Privacy & Data Security," gathered attorneys and experts at Bloomberg Government's offices in Washington, D.C., to discuss the latest risks and trends in cybersecurity in both the United States and the European Union.

A discussion focused on EU issues featured attorneys Carol A. F. Umhoefer

and Giangiacomo Olivi, both partners at DLA Piper with legal experience in France and Italy, respectively. The panelists explored data breaches, cybercrime, and the controversial E.U.–U.S. Privacy Shield, the replacement for the Safe Harbor framework that seeks to protect personal information of EU citizens when data is passed on to the United States. The Privacy Shield agreement includes commitments from U.S. government agencies that access to personal data will be subject to clear conditions, limitations, and oversight, but it still faces scrutiny and skepticism in Europe.

The program's U.S. panel was comprised of Omar Cruz, chief of cyber threat and information sharing for the U.S. Department of Homeland Security's United States Computer Emergency Readiness Team; James H. Koenig, of counsel in the Litigation Department at Paul Hastings LLP; and John Kropf, corporate privacy executive of Northrop Grumman Corporation. Among the topics the panelists explored were plans for post-Safe Harbor security, information sharing, and efforts to combat cyberattacks on the United States, as well as potential legal issues.—J.L.

GW Team Claims Victory in 2016 Moot Court Competition

On March 4 The George Washington (GW) University Law School students John Lockwood and Sophia Park bested a team from Georgetown University Law Center to win the 2016 D.C. Cup Moot Court Competition.

Teams from six area law schools competed for the D.C. Cup, which was created by the D.C. Bar District of Columbia Affairs Section. Students prepared and filed briefs and competed in oral arguments before volunteer judges through three rounds over two separate days.

D.C. Court of Appeals Senior Judge Inez Smith Reid; Loren AliKhan, deputy solicitor general for the Civil and Administrative Appeals Section of the D.C. Office of the Attorney General; and D.C. Attorney General Karl A. Racine served as judges for the final round of oral arguments.

"It was an absolute honor to argue before such highly intelligent and accomplished members of our legal community," Park said. "... Knowing we were going to do so motivated us to think as creatively about our issues as we could."

Lockwood also was awarded the Best Oral Argument, and both Lockwood and

Park received the award for Best Brief.

"I have always had an interest in appellate practice, and the D.C. Cup seemed like a perfect opportunity to put what I had learned to the test," Lockwood said. "Sophia and I knew that the other D.C. law schools would not make it easy, but we wanted to show the legal community the high level of advocacy produced at GW."

Les Machado, a partner at LeClair-Ryan, authored the central issue around which the cases were based—whether an individual who had been terminated by her employer could sue another individual for causing her termination. "It was wonderful watching these incredibly talented folks bring the problem to life and flesh it out in a way that I never would have envisioned," Machado said.

Teams from American University Washington College of Law, The Catholic University of America Columbus School of Law, Howard University School of Law, and the University of the District of Columbia David A. Clarke School of Law also participated.—D.O.

Reach Jeffery Leon at jleon@dcbar.org. You can also follow Jeffery on Twitter at [@JLeonDCBar](https://twitter.com/JLeonDCBar).

Are you a D.C. Bar Member that has something to say about your practice area or the legal profession?



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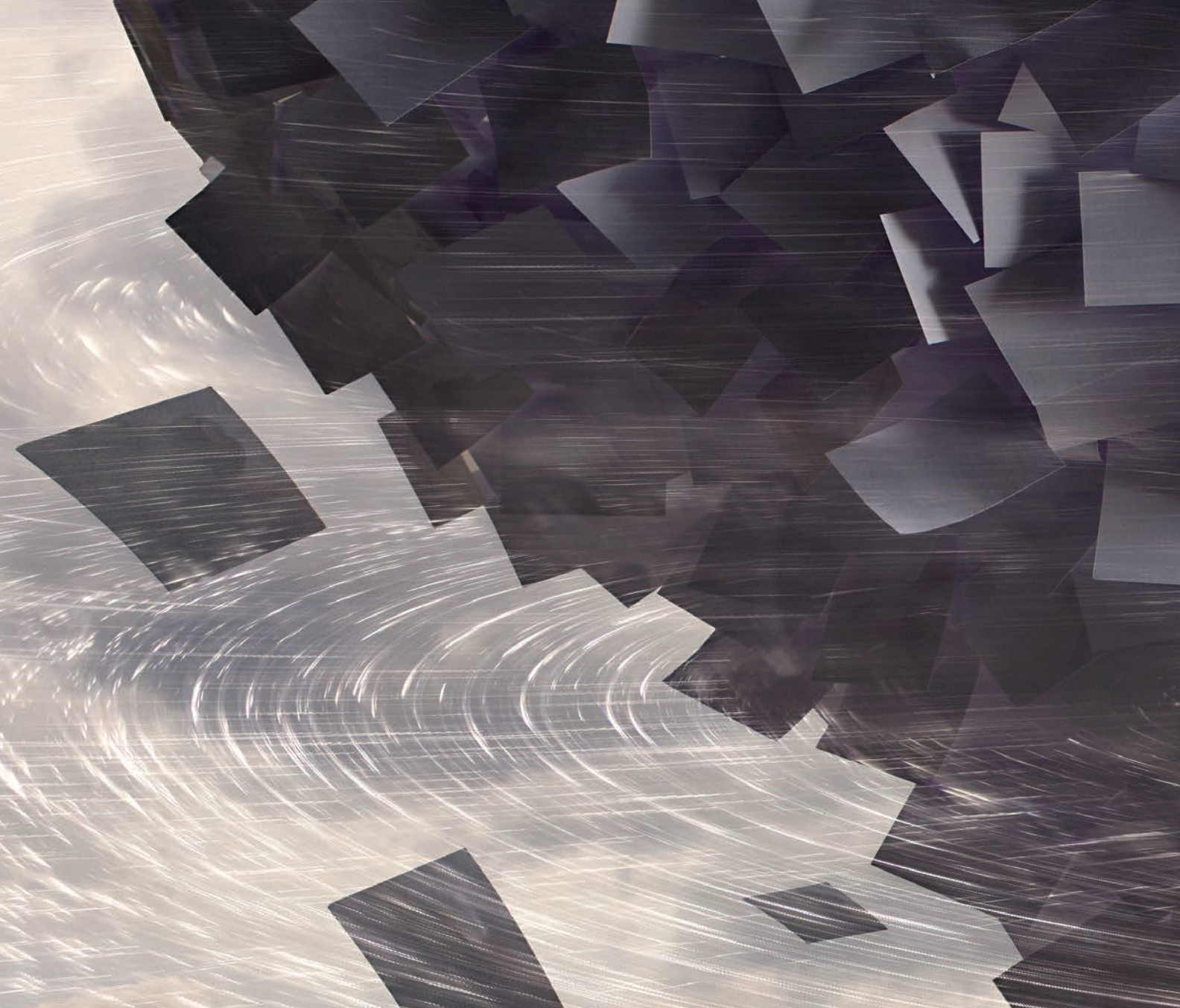
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THE UNCERTAIN FUTURE

Turbulence and Change in the Legal Profession



By Sarah Kellogg

The legal profession is experiencing an era of turbulence and transformation. Some have an aversion to change, others worry about losing ground, and still others are concerned that the headlong rush to remake the profession will cause a shift from the practice of law to the business of law, with the profession losing its moral and cultural footing along the way.

The leading edge of that future is already visible: paper pushing and data management long practiced by lawyers are making way for computers and robots, international boundaries are more legally porous than ever, and economic forces are refashioning law practices. Consumer trends such as do-it-yourself legal services and legal smartphone apps are now ubiquitous. And clients are playing a larger role in managing their legal portfolios.

These changes are significant, even revolutionary, and they will be magnified exponentially in the years to come. The transformation of the profession will be remarkably agnostic when it comes to law firms, experts say, applying equal pressure to solo practitioners

as well as to the largest global firms. The responsibility for accommodating all this radical change will fall most heavily on the individual attorney, who must be nimble, savvy, and swift in responding to these fast-moving currents.

“In my mind, uncertainty is the hallmark of the future for law firms,” says James G. Leipold, executive director of the National Association for Law Placement (NALP). “It’s hard to predict what the profession will look like in 10 years because there are so many forces at work. We know it will look very different from what it does now.”

The roll call of disruptive factors greeting the profession has proved transformative for other industries, too. Entertainment, media, medicine, and accounting have come face to face with globalization, technology, and the push for economic sustainability, with varying results. The revolution may have only begun in the legal industry, but the combination of these

forces will reshape it for years ahead.

“Technology is going to have a profound effect on our profession,” says Tanina Rostain, professor of law and co-director of the Center for the Study of the Legal Profession at Georgetown University Law Center. “The lawyers who are going to be in a good position and will do fine in the future are the lawyers who understand the technology and its limits, and [who] understand where they can add the value that technology cannot provide.”

A highly mobile, globally interconnected, and seamlessly agile society will demand the same of its attorneys and law firms. Advanced technologies have already transformed the practice of law and soon will impact even more its delivery. Whether that transformation will continue to bring significant opportunities and challenges will depend on how fast lawyers and law firms embrace innovation.

The transition from bespoke services tailored to the client to an automated system

of professional work is prompting structural changes in law firms. Some argue the practice of law is departing from the advisory business model and shifting to a depersonalized system of delivering services, driving corporate clients to seek out “deals” from law firms and redefine the attorney-client relationship as a transactional one.

“We’ve got a shift in the nature of legal work with globalization and technology,” says Erin Troy Clinton, founding partner and president of Troy Clinton Law Group, PLLC. “Law firms combined over the years because they thought clients wanted a one-stop shop, but that’s not the case anymore. Clients are much more willing to parse out the work based on various attorneys’ expertise and [try] to make the most of shrinking budgets and global challenges. That’s having a very large impact on the legal environment.”

Finally, the unknowable effects of globalization promise to be far reaching, going beyond mere geography and establishing

Law Schools at a Crossroads

Legal education in the United States faces an uncertain future. Despite fierce complaints about outrageous levels of student debt and declining law school admissions, there has been no profession-wide drive to reform ongoing and critical structural problems.

To be sure, one of the reasons for these problems is academic fragmentation. Institutions in the top tier of U.S. law schools face a much different reality than those in the bottom half, where graduates post lower bar test scores and pass rates, and have less access to legal jobs with livable salaries.

“We’re hobbled by this one-size-fits-all model of legal education, which is increasingly out of touch with the diversity in legal tasks that lawyers are facing,” says Deborah L. Rhode, a professor at Stanford Law School and author of *The Trouble With Lawyers*. “We’ve got debt levels that are staggering right now. There just aren’t enough well-paying jobs for our many, many graduates.”

While no one knows exactly what the future holds for law schools, there is a consensus on these: There will have to be fewer law schools and fewer traditional law students; the three-year model needs to be morphed to include one or two years of training at certain law schools; federal borrowing rules must change to reduce financial incentives for excessive borrowing; and the profession has to be restructured to open up new avenues for the delivery of legal services and the training of legal professionals.

“Whatever happens over the next 20 or 30 years, law schools are still going to exist, but they are going to look very different than they do today,” says Kyle McEntee, cofounder and executive director of Law School Transparency, a group advocating for law school reforms. “What we will need to do is

change the business model for the American law school. I actually think we are positioned right now to really make changes because the profession is so concerned about law schools.”

The American Bar Association Task Force on Financing Legal Education documented those concerns in its June 2015 report. It examined data on enrollments, student debt, grant and loan funding, and law school expenses.

The task force concluded the data was distressing. Between the 2009–10 and the 2014–15 academic years, private law school enrollment declined by 30 percent, and public law school enrollment slipped 18 percent.

Student borrowing has grown significantly. Using inflation-adjusted numbers, the average debt for private law school students jumped from \$102,000 in the 2005–06 academic year to \$127,000 in 2012–13. Public law school students’ borrowing rose from \$66,000 to \$88,000 during the same period.

Meanwhile, the job market for law school graduates remains indifferent. Sixty-three percent of public law school graduates in 2013 landed a permanent, full-time job that required passing the bar. The employment rate for private law school graduates was 57 percent that same year.

Many believe law schools must first break free of the traditional three-year model for all law students and begin training legal specialists with one- and two-year programs to better serve consumer needs in the future. The dependence on traditional bricks-and-mortar facilities and conventional academic curriculum must be transformed to accommodate the evolving needs of the profession in the future, experts say.

“I think there needs to be a real rethinking of the structure of legal education,” says Rhode. “The current plight has been a real wakeup call to the profession, but I don’t think the circumstances are dire enough yet to create real change in the system. We’re still only seeing changes at the margins.”

a system for disparate human beings to speak about, process, and resolve differences across space and time. All of these factors have the power to make the world seem both much bigger and smaller, which explains the opportunity and anxiety.

A Snapshot in Time

Eight years after the 2008 recession began, the legal industry is still grappling with economic instability. The result? Revenues and profits in 2015 and 2016 were projected to remain modest in comparison to the prosperous pre-2008 period, according to one of the organizations that annually take the pulse of the legal profession in the United States.

“We expect overall industry revenue and profitability growth rates in both 2015 and 2016 to be in line with the low single-digit growth rates of 2010–13, with continued dispersion and volatility,” noted Citi Private Bank and Hildebrandt Consulting in their “2016 Client Advisory” released in December.

In March 2015, the District of Columbia Bar, as part of its strategic planning process, asked its members to weigh in on the state of the profession, and feedback in a combination of surveys and focus groups made it clear that Washington, D.C., is not insulated from the instability being felt across the country. One in four survey participants said they had changed their area of professional practice within the past five years, and for 20 percent of that group, it wasn’t by choice.

But there was a decided and optimistic interest among D.C. Bar members in figuring out ways to address their concerns about globalization and technology. They were curious about how to leverage technology and the Internet to provide legal services, and they wanted to explore the implications of online legal services competing with traditional legal work.

Moreover, Bar members showed great interest in initiatives to strategically address the proliferation of nontraditional legal services providers and the impact of increasing globalization on the legal profession. Members also suggested that the D.C. Court of Appeals consider entering into reciprocal agreements with foreign countries so that lawyers admitted in one jurisdiction could be admitted in another.

“There’s no doubt the profession has changed significantly in the last 25 years,” says Tim Webster, president of the D.C. Bar and a partner at Sidley Austin LLP. “The law has become nationalized. There are lawyers who work in D.C., Chicago, and Los Angeles, people who practice

around the country. The same kind of thing is occurring internationally. We need to find ways to address those trends.”

Altman Weil’s 2015 *Law Firms in Transition Survey*, now in its seventh year, painted a similar picture, especially on the increasingly thorny decision by corporate legal departments to in-source work and use legal tech solutions to reduce the need for outside lawyers. “Sixty-seven percent of law firms say they are currently losing business to corporate law departments that are in-sourcing legal work,” the survey found.

Much of the reason for that shift is the cost of doing business with outside counsel. After years of saddling corporate clients with substantial fees, companies began to balk at paying for billable hours, especially when it looked like they were paying to train associates on behalf of the law firm.

“I think there’s always going to be a need for lawyers and law firms, especially for banks or other companies to get advice from the outside,” says Suzanne Garwood, associate general counsel for JPMorgan Chase & Co. “If there’s anything law firms need to work on [it] is their cost structure. They need to take a look at the billable hour.”

The billable hour concept is embedded deeply in the financial *raison d’être* of law firms and has been a fundamental building block of their financial system. As the law firm structure begins to change, however, experts believe the billable hour may become an artifact of the past.

The Tech Revolution Is Here

In the future, lawyers are not going to become a tribe of law school-educated programmers, but it wouldn’t hurt them to know how to apply data analytics and mobile applications to the practice of law. The opportunity of these groundbreaking technologies lies in getting rid of the costly work of document management to assign greater value to the firm’s expertise and the attorney’s intellect.

The goal of much of this technological adaptation is to decrease costs, increase convenience, and improve access to justice—an admirable objective in anybody’s book. Experts say computer-assisted document reviews are less expensive, more efficient, and more accurate. Many believe the profession will be less fixated on forms and more passionate about knowledge management in the future. The focus will be on designing legal tech systems, working across disciplines, and creating legal processes for clients rather than memorizing law.

“We’re already seeing the beginning of the applications of artificial intelligence in



“We know the world is about data. Lawyers need to be able to find data, they need to know how to use it and manipulate it.”

—Tanina Rostain
Georgetown University Law Center

the law,” says Leipold. “ROSS [a computer program] at the University of Toronto is built on the IBM Watson platform, and they’re developing sophisticated document assembly processes for machines. They’ve designed software with a 200- or 300-question tree. Once someone answers the questions, the machine can draft the document. It still needs a lawyer to review it, but it is not nearly as much drafting time. Once the question tree is complete, it can be used over and over again.”

A new generation of online legal solutions has been created in the last few years, but the giants still dominate the market. Thomson Reuters’ Westlaw and CLEAR and LexisNexis’ Lexis Advance, Nexis, and Quicklaw command the legal research and legal management market. Rivals to each other, they also have attracted a number of rising competitors such as Fastcase and PACER.

LegalZoom is the granddaddy of consumer-based sites for legal advice and document creation, providing simple contracts and documents for online clients. But even it has upstart competitors nipping at its heels, such as Rocket Lawyer, LawDepot, and Nolo.

To differentiate themselves, legal sites have taken on a variety of roles. Clio focuses on law firm management system, the Depose app allows users to draft and edit depositions, DocketLaw calculates court deadlines, Axiom provides lawyer placement services, and Legal OnRamp is a place for legal professionals to share information and discuss trends. Exigent and Pangea3, the latter also owned by Thomson Reuters, provide global legal process outsourcing options.

Online solutions also are available for lawyers to access a network of qualified legal professionals and firms around the globe with which to develop collaborative relationships. Meritas, wireLawyer, UpCounsel, and Priori Legal are examples of this so-called marketplace of legal services that are gaining traction.

What is remarkable about these projects being considered by tech companies, law firms, and law schools is their variety. Some address the needs of firms, others are focused on lawyers, and still others are targeted at the legal interests of clients. A few groundbreaking examples illustrate the dizzying effects of technology on the practice of law.

The Canadian province of British Columbia has created the first of that country’s online tribunal to resolve small claims disputes and condo conflicts of up to \$10,000. The Civil Resolution Tribunal

(CRT), also available as a mobile app, is in beta testing now and will launch later in 2016. Officials are offering CRT as a voluntary means of resolving disputes, but they expect it to become mandatory for certain cases. The system’s built-in process includes party negotiations, a mediation-type phase, and an adjudication that has the same force as a court ruling.

Another project—designed by two law professors and a data scientist and consultant—is applying machine learning and artificial intelligence techniques to predict the outcomes of cases before the U.S. Supreme Court. So far the computer model has an accuracy rate of 70 percent, which is considered remarkably high for these kinds of predictive projects.

The widespread adoption of data analytics will be a game changer. Over and over again, legal technologists have forecasted the revolutionizing effects of data analytics and artificial intelligence in discovery, document review, and in teasing out legal strategies. “We know the world is about data,” says Rostain of Georgetown Law. “Lawyers need to be able to find data, they need to know how to use it and manipulate it. We’re teaching students how to get data off the Internet now and use it in ways that help and support the practice of law.”

These kinds of legal tools are having a broad effect on the profession as they hand more control over legal matters to clients. A sampling of online legal sites, games, and mobile apps discussed below are just the tip of the iceberg when it comes to opportunities for attorneys and clients.

Designed for trial lawyers, The Juror Rater mobile app helps attorneys to select a jury by rating the probable bias of prospective jurors toward the criminal prosecution or civil defense by evaluating key factors. The \$25 app is available for tablets.

Shake, another mobile app, allows users to create five types of contracts by walking them through a series of questions. It follows the TurboTax process of guiding users to create, sign, and send freelance, nondisclosure, buy-sell, loan, and rental and lending agreements. The contracts are stripped of “unnecessary” legal language and written in simple English.

Even the American Civil Liberties Union of the Nation’s Capital (ACLU-DC) has gotten into the business of app production. Its Mobile Justice DC app, for instance, enables users to record suspect or violent encounters with law enforcement, file an incident report, and send those reports to the ACLU-DC for review.

And then there’s Estate Quest, a video

game that teaches basic estate planning concepts to consumers. While the game isn’t intended at this stage to provide legal advice, the goal is to help players prepare to meet with an attorney. “The player is a detective presented with different case files about individuals who failed to prepare estate planning for their families before their death,” according to the game’s description online. “The player uses a time machine to time travel to different dates showing scenes in the case. Each scene is interactive with animated elements and clues for the player to discover. The clues reveal what should have been written into an estate plan to prevent the negative consequences.”

If that doesn’t feel like a brave new world, imagine the last time anyone considered estate planning the stuff of games.

A Shrinking World, a Crowded Market

While technology is transforming the legal landscape, globalization also is making an impact. U.S. law firms have “gone global” to respond to client demands and the flow of capital, as well as to access new markets. With the profit magnetism of Dubai, Shanghai, Singapore, Tokyo, and many other world capitals, Big Law firms have established outposts and expanded their networks to better serve international clients.

“The world is shrinking and firms are setting up branch offices to service their corporate clients,” says Sanford K. Ain, principal and cofounder of Ain & Bank P.C. “The law practice is becoming completely one in terms of other countries. Globalization of the legal profession is dramatic and dynamic and will continue. As time goes on, I expect that we’ll be dealing with other countries much the way we deal with other states.”

The 2016 Client Advisory forecasts that the “global legal market is becoming extremely competitive and, in some markets, over-crowded. The most successful global firms will be those where the goal is to service clients with global needs and to diversify the firm’s practice profile.”

Much of the globalization of the legal industry is focused on two types of law firms: the “global Goliaths” and the “global elites.” Both are comprised of large firms serving their multinational clients’ cross-border, multijurisdictional legal transactions. The global Goliaths are law firms with record numbers of attorneys and offices. The global elites are those firms known for their bespoke services that operate domestically or in adjacent markets.

“The fact we’ve become more global



“Globalization of the legal profession is dramatic and dynamic and will continue. As time goes on, I expect that we’ll be dealing with other countries much the way we deal with other states.”

—Sanford K. Ain, *Ain & Bank P.C.*

really has given lawyers . . . incredible opportunities,” says Brigida Benitez, a partner at Steptoe & Johnson LLP and immediate past president of the D.C. Bar. “We now can be here and have an exciting practice that touches on issues and factors all around the world.”

Many observers believe globalization will continue into the future, especially as firms respond to the need for comparative legal knowledge and the growing number of transnational transactions. The barriers to international businesses continue to fall, and law firms play a critical role in helping international companies to compete globally.

“In terms of the legal profession, I think it’s increasingly difficult if not impossible to rely on expats to handle your overseas offices,” says William Sudow, cofounder of Sudow Kohlhagen LLP who has worked his entire career on overseas transactions. “You really need to have folks who are local lawyers and fluent in the local language as well as English. It’s evolved to the point where large international law firms, in order to thrive overseas, need to have a good network of local lawyers who are partners or who have collaborative relationships.”

Moreover, international treaties have changed the complexion of the global legal practice, and will likely continue to break down barriers in the way international law firms and their services are defined and structured.

“Globalization is now part of the frame of reference in which the U.S. legal profession operates and one cannot talk about lawyers and globalization without considering the impact of international trade agreements on any given issue,” wrote Laurel S. Terry in “From GATS to APEC: The Impact of Trade Agreements on Legal Services,” which appeared in the *Akron Law Review* in 2010. “While these agreements may not ultimately apply, they reflect the globalized world in which we now live and are an integral part of the regulatory landscape that must be considered.”

The D.C. Bar has joined other state bars in looking at the effects of globalization in terms of the size, makeup, and jurisdictions of local law firms. The Bar’s Global Legal Practice Task Force, chaired by Darrell Mottley, a principal shareholder at Banner & Witcoff, Ltd. and a former D.C. Bar president, is expected to release its recommendations in the coming months. There also have been efforts locally, nationally, and internationally to harmonize professional rules between countries to reduce conflicts across international jurisdictions.

“The [Bar’s] Board of Governors set up the Global Legal Practice Task Force to study how globalization is impacting the law practice,” says Mottley. “Between alternative business structures and law firms trading on the stock market, there are many things out there we probably don’t know about yet.”

A New Business Model

After the recession, law firms around the globe were looking for ways to stay afloat. Some closed their doors, others cut back with massive layoffs. The turbulence of the economic collapse caused even some of the most successful firms to pare back by cutting interns, associates, and support staff.

In medium and large law firms, there is still tremendous pressure from corporate clients to bring down the cost of their overall legal spending. That means they’re leaning on law firms to provide value.

Altman Weil’s *Law Firms in Transition Survey* documents how the legal profession is changing, and also identifies emerging forces defining its future. One of those changes is the move by corporate legal departments to in-source work and to adopt legal technology solutions to reduce the need for outside lawyers.

“Sixty-seven percent of law firms say they are currently losing business to corporate law departments that are in-sourcing legal work,” the survey states. “[M]any firms are engaging in a variety of changes in response to post-recession market forces. But the majority of change efforts can be characterized as limited, tactical and reactive. Law firms appear to be gambling that a measured approach to change will hold them in good stead among peer firms taking the same incremental approach.”

The Center for the Study of the Legal

Profession at Georgetown Law and Thomson Reuters Peer Monitor, in their 2016 *Report on the State of the Legal Market*, suggest that U.S. firms have been slow to react to the current situation because they aren't convinced the problem exists. "To date, however, very few firms have been willing to engage *proactively* in the consideration or implementation of the kinds of operational changes that would be required to respond effectively to the changed expectations of their clients," the report states.

That isn't the case worldwide. The United Kingdom, Australia, Hong Kong, and some Canadian provinces began to look for ways to handle legal case backlogs while also teeing up new clients from non-traditional sources. Officials focused their efforts on deregulating their legal sectors, opening up ownership of law firms, and allowing the provision of certain low-level services by nonlawyers.

"The reason they adopted the change in the law was they thought they'd have lower costs for consumers with a lot more competition and with creative business structures," says Mottley. "We're waiting to see if that happens."

Since 2007 the UK has allowed non-lawyers to enter the legal services market in a bid to address the unmet legal needs of lower-income individuals. The UK's welcoming attitude to nonlawyer services has opened doors for the Big Four U.S. accounting firms—Deloitte LLP, PricewaterhouseCoopers (PwC), Ernst & Young, and KPMG LLP—to offer legal services, as well as for law firms to seek external equity investments by raising investment capital or going public on the stock market.

The Co-operative Group, the UK's largest mutual business, has added legal services to its menu of offerings, which already include retail food operations, appliance sales, and financial and even funeral services.

"Obviously, law firms have to compete in a global marketplace where legal services are provided in a variety of settings and at a variety of price points," says Leopold of the NALP. "I think there's a strong movement toward deregulation. We have seen the Legal Services Act in the UK derail the law in a lot of ways. Law firms can raise outside capital on the stock market. They can be owned by nonlawyers. And alternative business structures allow the Big Four accounting firms to provide legal services in the UK."

The future might include Walmart or Safeway offering legal services at a window in its stores right next to the grocery and pharmacy. Or large accounting or consult-

"In terms of the legal profession, I think it's increasingly difficult if not impossible to rely on expats to handle your overseas offices. You really need to have folks who are local lawyers and fluent in the local language as well as English."

—William Sudow
Sudow Koblhagen LLP

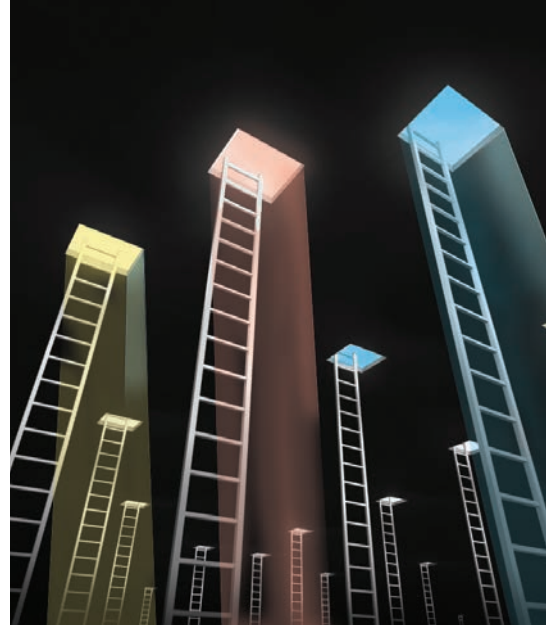
ing firms such as Deloitte or PwC offering new lines of business to their longstanding clients. In February 2016, PwC, the world's largest accounting firm, announced that it was on track to reach 100 million pounds in revenue by 2018 in the UK (about \$142.8 million today). Following at a distance, but still growing, are consulting giants Ernst & Young and KPMG.

In 2015 the American Bar Association's House of Delegates adopted a resolution that provides states a framework for the regulation of nontraditional legal services providers. Known as Resolution 105, it acknowledges that some states may decide to allow nonlawyers to provide certain types of legal services.

The District of Columbia permits nonlawyer ownership of law firms, subject to certain restrictions. Under D.C. Rule of Professional Conduct 5.4(b), nonlawyer owners must perform professional services that assist the firm in providing legal services, and that the sole purpose of the firm must be the provision of legal services to clients.

Washington state allows nonlawyers to be licensed to provide legal services to clients in certain practice areas and to own a minority interest in a law firm. Legal technicians, also known as limited license legal technicians or LLLTs, are trained and licensed to advise and assist people going through divorce, child custody, and other family law issues. In Georgia, where nonlawyer ownership or investment is not permitted, a law firm is allowed to work and share legal fees with a firm in another jurisdiction that allows nonlawyer partnership or passive investment in a firm.

Opponents fear that licensing programs will give birth to a two-tiered system where nonlawyers serve the poor and lawyers are accessible only to the wealthy.



One feature of the past that most clients and many lawyers would like to see listed as extinct is the billable hour. The enormous cost of litigation has been a deterrent for many clients, and more and more of them, even corporations, want to work on a flat rate.

"I don't think that the billable hour encourages the right behavior," says Garwood of JPMorgan Chase. "If you think about it, you're a first-year [associate] and your mission in life is to work as many hours as you can. Whereas your client's mission is to get really good work with as few hours as possible. There is a huge disconnect."

The billable hour concept makes it easy to think of legal services as a product. "Legal services have become a bit of a commodity," says Clinton of Troy Clinton Law Group. "It used to be about relationships. It's far less so now. I do think clients are looking at legal services as a commodity, one that they can shop around for."

The billable hour system, with its corrosive effects, are likely to change for most law firms in the future, except possibly for some of the very largest. Outsourcing, data analytics, online tools, and broader tech solutions will make it difficult to convince price-conscious clients to accept what they consider an antiquated way to pay for services.

"The pressure to generate revenue adversely impacts people's quality of life and health," says Ain. "A more moderate culture and a more moderate approach to the way people practice law would be an improvement. We need to start treating it more like a profession" and less like a bottom-line business.

Now the Good News

The future appears to hold great promise for the legal profession. It's just too early

to tell. After all, it's not mindless optimism that drives one to believe a problem can be turned into a virtue, and observers say challenges like globalization and rapid change in technology open new doors as fast as they close old ones.

"I think the future is even more integrated with more cross-border transactions," says Sudow. "I think there will end up being at least two or three or four languages used in international transactions. I believe we'll be able to figure out how to manage it."

The challenge for the profession, its leaders, and its foot soldiers is to be more creative and visionary in considering what to do next. This won't be a journey for the fainthearted or the nonaligned.

Sure, there are some who are predicting the demise of professions, including law, medicine, and engineering, because they are under attack from the forces of technology and culture. Or that the centuries-old social compact between the professions and the public is beginning to fray due to a series of challenges with no easy answers.

"The end of the professional era is characterized by four trends: the move from bespoke service; the bypassing of traditional gatekeepers; a shift from a reactive to a proactive approach to professional work; and the more-for-less challenge," wrote Richard Susskind and Daniel Susskind in *The Future of the Professions: How Technology Will Transform the Work of Human Experts*.

Yet, these changes also are expected to bring new opportunities for law firms and lawyers. Taking steps now to build a more global firm, to restructure from an antiquated billing system, and to adopt technology to its fullest capacity will pay off in years to come.

The question for people considering a legal career—or those already in it and hoping for a long one—is how will society interface with law in the future? Will robots be able to handle both basic and complex legal transactions and counsel? Will lawyers, if not law firms, be the knowledge keepers?

Uncertainty in the current business climate may not subside soon, but there will be lawyers taking risks and rolling the dice on the future of the profession. "For students going to law school, it's still a great profession and you get a great education, but you have to have some kind of risk tolerance. You're just entering a profession experiencing profound change."

Sarah Kellogg is a regular contributor to Washington Lawyer.

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SC Foreign legal consultant (not a member of SC Bar)

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PRACTICE 360°: Putting Together the **Pieces** Successful Law

**By David O'Boyle
and Jeffery Leon**

As the practice of law changes, attorneys increasingly are required to be nimble in responding to client demands and market shifts. To remain competitive, lawyers and law firms alike must adapt to evolving technology, be familiar with new products and tools, learn legal strategies, and improve their overall skills sets.

On May 6 the D.C. Bar Practice Management Advisory Service (PMAS) will host an event to help D.C. Bar members enhance their practices and prepare for these changes. For the second consecutive year, PMAS will present Practice 360° | A Day for Lawyers & Law Firms, offering a full range of free programming on essential techniques and resources for a successful law practice. The day's lineup also will include a Continuing Legal Education (CLE) Program session for a fee.

"Attorneys are busy people, and Practice 360° allows lawyers to maximize their time by attending this daylong educational event," says PMAS Senior Staff

Attorney Rochelle D. Washington. "We are providing a unique opportunity for lawyers to attend multiple programs of interest, network with fellow members, explore a variety of legal vendors and services in our exhibit hall, and explore the many benefits available to them by being a member of the D.C. Bar."

Through seminars, lunch sessions, product demonstrations, and networking opportunities, Bar members will discover new technology tools, personal and business techniques, ethical marketing strategies, and a variety of other skills needed to enhance their law practice and thrive in a changing legal landscape.

"Our presenters are experienced and experts in their areas, and many present all over the country at expensive events," says Dan Mills, assistant director of PMAS. "Our daylong program is free—with the exception of the CLE session—and full of valuable information."

Washington Lawyer spoke with some of the speakers and vendors for a preview of this year's Practice 360°.



of a Practice

Judge Herbert B. Dixon Jr. has served on the D.C. Superior Court since 1985. During his tenure, he has headed initiatives to integrate advanced technology into his courtroom, overseeing the implementation of the Superior Court's first high-technology courtroom. Throughout his career, Judge Dixon has observed and embraced technological advances in the practice of law. He returns to Practice 360° with a presentation on technology in the courtroom and the use of iPads in the practice of law, giving attorneys an overview of how technology can enhance their practice and performance in the courtroom.

I love the topic of technology in the practice of law. My undergraduate major was electrical engineering. Within five years of joining the D.C. Superior Court bench, the Superior Court of Delaware became the first court in the nation to implement an electronic filing project. That was a momentous occasion for me. Suddenly, my passion for technology could be married with my passion for the practice of law. From that point, I have embraced e-discovery, courtroom technology, ethics related to these technological advances, and many other aspects of technology and law.

I implemented the first technology-enhanced courtroom at D.C. Superior Court. The advanced technology is useful for lawyers and enhances their courtroom presence. One example is the annotation monitor allowing attorneys to display various items digitally. Let's say an attorney needs to highlight events on the image of a map. He or she can display that map on a screen and draw on it, or have a witness draw on it, using his or her fingers and creating a visual for the jury.



Judge Herbert B. Dixon Jr.
D.C. Superior Court
EXPERTISE: Technology in the Courtroom

Attorneys also have access to document cameras allowing them to take an item as small as a penny and enlarge it to the full breadth of a six-foot monitor. Additionally, iPads are a huge development for lawyers. Much of the software attorneys purchase for use on their personal computers can be bought for the iPad at a fraction of the cost.

The use of technology in the courtroom is not a novelty. Jurors expect it. Just think about what you see on television. Not only do you have [broadcast journalists] delivering news, but there are often banners scrolling below providing additional updates. Jurors are used to multitasking, and they will look for attorneys to present information in that fashion.

Technology has drastically altered the practice of law. I remember during the early days of e-filing, I filed orders from my home and from different states. I even filed an order from Bamako, Mali, on the west coast of Africa. Technology has touched nearly every aspect of the practice of law. Gone are the days of dusty bankers' boxes filled with paper. E-discovery allows an attorney to access documents from anywhere in the world, if they have an Internet connection. Attorneys can interface with clients over the Internet. Forms can be completed after a client answers a series of questions on a computer.

Technology will continue to advance, and the practice of law will continue to evolve alongside these advancements. It is up to the legal profession to embrace these advancements and enhance its practice using technology. This effort will guide the evolution of the legal profession to ensure that technology is developed and used effectively.

My presentation at Practice 360° will involve technology in the courtroom, including attorneys' use of laptop computers, iPads, and other tablets. I also will discuss the equipment attorneys will find in technology-enhanced courtrooms as well as the use of the iPad in the practice of law. There are some excellent tools lawyers should consider using during a trial that can be very helpful to the finder of fact, be it a jury or judge.

Practice 360° A Day for Lawyers & Law Firms

WHEN: May 6, 2016; 9 a.m. to 4:30 p.m.

WHAT: Practice 360° | A Day for Lawyers & Law Firms offers more than a dozen programs and one Continuing Legal Education (CLE) Program course designed to give lawyers the practical information they need for a more complete practice. There also will be an exhibit hall showcasing a variety of vendor products.

WHERE: D.C. Bar Headquarters, 1101 K Street NW, First Floor.

WHO: A broad range of speakers from accounting, business, the courts, cybersecurity, digital marketing, and other areas sharing practical techniques and expertise to help attorneys enhance their practice.

HOW: Register online at www.dcb.org/practice360. All programming (except for the CLE course) is free for D.C. Bar members.

For a full list of Practice 360° programs or to watch video of some of this year's presenters, visit www.dcb.org/practice360.



Ed Walters
Fastcase
EXPERTISE: Legal Research

Returning to Practice 360° in 2016 is Fastcase, the case research service that provides a smarter, faster, and more powerful way to conduct legal research. Fastcase brings a massive law library to your fingertips and is available free of charge to active D.C. Bar members. Fastcase Chief Executive Officer Ed Walters shares more about this service.

The big idea behind Fastcase is to make better sense of the law. Traditionally, when you run legal research, you get a big, long list of results. Some of it may be important; some of it may be worthless. But you can't find what's important without reading through the worthless junk. The idea behind Fastcase is to build smarter tools, tools that bring the most relevant topics to the top so you don't miss anything. We use science such as citation analysis and data visualization, tools that help people locate things they wouldn't otherwise find.

My cofounder, Phil Rosenthal, and I left our law firm in 1999 to start Fastcase with the idea that we could democratize the law and make legal research smarter, easier to understand, and more powerful for people. And now here we are in 2016 with a system that allows hundreds of thousands of lawyers to conduct better research, which, in turn, allows them to conduct better research for their clients.

When doing research, I believe lawyers often wonder, "Did I find it? Did I miss something? What is out there that I didn't get?" One of the benefits of Fastcase is that you can feel confident you found everything that is important. For example, there's a Fastcase tool called Forecite, which reads all of the cases in your search results and also looks for cited cases that *aren't* in your search results. If there's a big case that you otherwise would have missed, Forecite finds it, identifies it, and points it out.

Here's an example: Let's say that you ran a search on school desegregation. You would find all of these cases citing *Brown v. Board of Education*. But you know what you don't find? *Brown v. Board of Education*. That case never used the word "desegregation." It wasn't a common term in 1954, so if you went through the cases and read those search results, you would see time and time again that *Brown* is cited but not listed. Forecite skips that step entirely, and instead of finding it, let's say, five hours later, you find it five seconds later, because we automatically say that *Brown* is a case you're about to miss.

The 21st century practice of law is about efficiency, and that's where tech really comes into play. If you can use science to find the winning cases right away instead of doing it in a brute force

way, your clients will love it, not to mention the researcher doing the work. If you could draft a complaint in four hours instead of 40 hours, you would use it every time.

I think Practice 360° is the definitive tech event for lawyers in the District of Columbia. If you want to make your practice technology-enabled for the 21st century, Practice 360° is the best way to do that. If you already have a tech-enabled practice, Practice 360° will make it better. I was super impressed with Practice 360° last year, and I can't wait to participate in this year's event.

Heather Batzel
Batzel Law PLLC

EXPERTISE: Business Entities and Startups

Heather Batzel of Batzel Law PLLC advises startups and small companies on launching and growing their businesses. Part of starting and growing any business, from lean tech startups to law firms, is considering the form of business entity and options for limiting liability and taxation.

When people think about forming a business entity, usually they are thinking in terms of limiting liability and taxation. Understanding how different business entities accomplish those goals is important. There is no one business entity or answer that best fits everyone's needs, so it is important to understand the various attributes of each entity to make an informed decision.

As a general matter, when an individual or individuals conduct business, a sole proprietorship or partnership exists automatically under the law. There is no limit to liability in such cases; that individual is his or her business, and the law does not look at the business as separate from the individual. Therefore, any business liability or debt, including that of a partner, is directly attributable to the individual owner of the business. When an individual registers a business, he or she is separating the business from the individual, essentially telling authorities and the public that this business is separate. Corporations, limited liability companies, and other types of entities with limited liability abide by these rules. This is just one of the factors to consider when choosing a form of business.

Of course, there are nuances, both specific to lawyers and the types of liabilities they can and cannot disclaim, and with respect to the steps required after filing as an entity to secure the benefit of limited liability.

Attorneys looking to form their own business entities can go directly to Title 29 (Business Organizations) of the District of Columbia Official Code. The Code is organized by entity type,



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making it easy to locate the authority for each. Much of the Code is fairly straightforward, and I encourage attorneys to read up on it.

While the process of forming an entity is relatively simple to navigate, it is vital that an attorney understands the requirements following the initial formation. There are certain entity-specific requirements that must be met. For instance, a corporation must have bylaws. A limited liability company, depending on the jurisdiction, may be required to have an operating agreement. Some entities may require certain meeting requirements. There are a number of governance and housekeeping matters attorneys must familiarize themselves with to remain eligible for the entities' benefits.

Attendees of my Practice 360° session will walk away knowing the criteria they should evaluate when determining which business entity is right for them and their practices. I will share resources to investigate the relevant statutes. I will also cover the requirements attorneys must follow after forming a business entity to remain in compliance with the law.



Tasha "TC" Cooper
UpwardAction LLC

EXPERTISE: Social Media and Digital Marketing

Social Media has transformed the way we interact, learn, and work with each other. It's an integral part of our daily lives. It's important for attorneys to utilize social media to build and maintain an online presence that is influential and attracts clients. Tasha "TC" Cooper, chief executive officer of UpwardAction LLC, offers some insight on social networking and digital marketing.

UpwardAction started as a training company. I love social media. I fell in love with it 10 years ago when I discovered how useful it can be for business owners to communicate with their clients, find clients, share expertise, and so on. I started helping lawyers use social media in their practices because I'm a lawyer, and the lawyers in my world were constantly asking me how to use social media without running afoul of the professional rules of conduct and how to make time for it in their busy lives. As a result of these conversations, I saw the need and opportunity to help lawyers leverage social media without being afraid to use these tools. At UpwardAction, we'll create a social media marketing strategy, a content development program, and a process to help lawyers implement these concepts in the most

effective and efficient way possible.

We are in an age now where people live a lot of their lives online. Looking for new information? Google it. Ask on Twitter, Facebook, or LinkedIn. People look for answers to questions on social media because a lot of people think they can solve their own problems if they have enough information, even complex problems they have no business trying to solve. This is why social media and social marketing is so important. Lawyers have to be thoughtful, take time to build an online profile, and invest in developing an influential brand. This is so that when people are looking for information, they find something that gets them started and brings them to the expert counsel needed to solve their problems.

Personal marketing and branding is important because people hire people. It's not just your pedigree or your experience that will have a potential client choose you over another lawyer. It is that the person knows you're credible, you're competent, and you're the best in your field. To hire you, it's important that people get to know, like, and trust you. Social media marketing allows you, as an attorney, to be who you are, knowing that your ideal client is going to be attracted to you. Social media provides an opportunity to "show up and show out," as I like to say, because you get to do just that. You get to provide value in a way that represents who you are and who clients will get to know when they hire you. When you do a really good job of building a strong personal brand online and leveraging social marketing tools, by the time you have a conversation with a client, they're more than halfway there in getting to know you. Then, hiring you becomes more a matter of you actually being the person who that prospective client thinks you are based on what they've read about you, what they've seen, and what they know—and all before they even have a conversation with you. This is the power of personal branding and social media marketing.

The lawyers who participate in D.C. Bar programs are fantastic. There's nothing more rewarding as a facilitator than to work with a group of lawyers, have people implement what you have shown them, and then send you messages to let you know they have done it and gotten results. I'm very excited for Practice 360°.



Sharon Nelson & John W. Simek
Sensei Enterprises, Inc.
EXPERTISE: Cybersecurity and Data Protection

When embracing technology, law firms need to be aware of how best to manage sensitive information. Capable cybersecurity is increasingly needed for attorneys and firms handling important information

on their cases and clients, even for simple tasks such as sending an e-mail. Sensei Enterprises is geared toward helping law firms stay secure. Sensei is an information technology firm with considerable legal experience—one of its founders, Sharon Nelson, is an attorney and a former president of the Virginia State Bar. John W. Simek, vice president of Sensei, explains more about what his company can offer to attorneys. Both Nelson and Simek will be presenting at Practice 360°.

My partner, Sharon Nelson, and I founded Sensei Enterprises in 1997. Initially, it was a part-time effort, and then in 1999 we went full-time. Our company handles projects involving digital forensics (including data recovery), information security, and information technology. With Sharon being a lawyer, we realized there was a big gap between lawyers and technology, and noticed that the two don't always tend to go well together. We help to bridge that gap. Sensei has a large base in the legal profession. We know the legal software being used, we know what the rules are, and what the ethical requirements are for lawyers, so we're kind of uniquely positioned to deal with the legal sector. I've been in law and technology for decades, so it has been a good mix.

Security has always been important for attorneys. They're entrusted with the client's confidential data, and they need to protect that data. As technology changes, more and more threats arise. One of the biggest threats we are seeing today is ransomware, where someone clicks on a link or opens a bad e-mail attachment and then suddenly their data is encrypted with a key and being held hostage. You have to pay a hacker to get the decryption key and to get back your data. So how do you prevent that? How do you engineer your backup so you can recover from a virus or malware infection? There are now 20 states that have adopted changes in the [legal ethics] rules for attorneys and law firms to increase their technical competency and cybersecurity, and more clients are now asking attorneys, "What do you have in place to protect my information? How secure are you?" It's higher up on the radar now for legal professionals.

For Practice 360° this year, we'll be doing a session concentrating on encryption and how it can help lawyers in particular to protect their clients' confidential information. Not only when they communicate through e-mail but also when they are storing it on their computers, on their mobile devices—any of that. Encryption really is your friend, and if you have good strong encryption protecting your case and client data, it's safe.

Kim Bey
Kim Bey & Associates, CPAs
EXPERTISE: Accounting and Taxes

Any professional needs sound, smart tax and accounting advice, and attorneys are no exception. Attorneys need to know the requirements of the tax code and the strategies that can help them to keep as much of their hard-earned money as legally possible. Kim Bey is a certified public accountant and proactive tax planner who advises her clients in tax and accounting matters. Bey returns to Practice 360° to discuss the tax strategies attorneys can benefit from and the big tax mistakes attorneys make and how to avoid them.

I started Bey & Associates, CPAs with the goal of helping my clients keep more of their hard-earned money and also giving them peace of mind knowing that their taxes are prepared accurately and filed timely. Small business owners work so hard for their money, and I want help them to maximize their deductions so they pay the least amount of taxes legally possible.

Most taxpayers are not tax experts, so they often are not familiar with all of the deductions available to them. If you don't know

about a certain type of deduction that you could qualify for, then you miss out on the ability to save that money. It's important to educate clients about the different rules for various tax deductions.

The most common mistake I see attorneys make is a failure to plan. It's under-



standable. You set up your practice, start networking, take in clients, and do great legal work. That takes up so much time and energy that you don't plan your taxes with the attention and care needed to reap the benefits of all the available deductions. By April 15, you scramble to put together your receipts and tax documents. People often miss a lot of deductions, and sometimes, in the worst cases, file incorrect returns, which can lead to penalties. That's not a good way to handle your taxes.

There are many deductions out there for attorneys to take advantage of. For instance, you may be able to write off your child's braces and summer camps as business expenses. You may be able to qualify for home office deductions and deductions for medical expenses. Of course, you must be familiar with the rules to take those deductions, which is where a qualified tax professional can be a valuable resource.

Without proper recordkeeping and proper tax planning, an attorney can find themselves owing the Internal Revenue Service hundreds of thousands of dollars. You don't have to live that way. It's as simple as knowing the rules and respecting them. When you're in total compliance with good recordkeeping, you have nothing to worry about.

I also advise clients on retirement plans. There is no plan that suits everyone

perfectly, and there are many considerations to take into account when selecting a plan. If you have a law firm with multiple employees, your choice may be determined not only by the amount of contribution desired, but also by other factors such as the complexity of administration, features and benefits that may be made available under the plan, and funding responsibility.

I'm going to discuss these tax strategies, retirement plan basics, and more with attorneys at Practice 360°. My goal



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is for attendees to walk away with at least one idea that can put more money into their pocket, because with that money they can invest in their practice, they can invest in their families, or they can take a great vacation. I believe in paying taxes, but why pay more than you have to?

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Filling out the interest form does not guarantee an organized lunch for all practice areas. Interested parties will be notified should registration open for your desired specialization.



Budget Committee Proposed 2016-2017 Budget

The D.C. Bar Budget Committee, chaired by President-Elect Annamaria Steward, has approved a proposed budget for the Bar's fiscal year that begins July 1, 2016, subject to the public hearing described below. The Bar's strategic plan guided the development of the operating budget proposals.¹

The proposed expenditure budget for dues-funded activities is \$30 million. Personnel expense makes up 61.9 percent of the budget. A 3 percent pool for staff salary adjustments was recommended by the Bar's salary planning consultant. The proposed dues budget reflects the addition of one full-time position. This position is for an assistant executive attorney (AEA) to provide assistance to members of the Hearing Committees and the Board on Professional Responsibility. The AEA conducts legal research for members, helps process motions, and provides drafting assistance.

The dues budget also includes enterprise-wide initiatives for the implementation of the strategic plan as well as the continuation of technology investments, including the implementation of a new customer relations management system.

In addition to planned expenses, the proposed operating budget will transfer funds to replenish the Clients' Security Fund. The replenishment is estimated at \$248,500.

The proposed budget would increase annual dues by \$15 (or 5.3 percent), from \$280 to \$295 for active members. Dues for judicial members would remain the same at \$142 and for inactive members would increase from \$145 to \$163.² This increase is lower than the average increase since inception.

Certain activities are required to be funded by sources other than Bar membership dues. Those activities include the Continuing Legal Education (CLE) Program, Sections, and the D.C. Bar Pro Bono Center. The CLE Program is funded primarily by course registrations; the publication of the *District of Columbia Practice Manual* is supported by direct sales; the Sections programs and activities are supported by separate Section dues and event fees; and the D.C. Bar Pro Bono Center is funded entirely by pri-

FY16-17 PROPOSED OPERATING BUDGET						
DUES-FUNDED ACTIVITIES	FUNDING SOURCE			ACTIVE MEMBER DUES	INACTIVE MEMBER DUES	JUDICIAL MEMBER DUES
	TOTAL	DUES	IN-KIND ¹			
Expenses, By Division						
Professional Responsibility	\$9,127,681	\$8,069,447	\$1,058,234	\$83.91	\$46.36	\$40.39
Executive Office	3,277,635	2,467,635	810,000	25.66	14.18	12.35
Programs Division	4,505,688	4,505,688		46.83	25.80	22.55
Operations ²	13,081,243	13,081,243		136.02	75.15	65.47
Total Expenses	\$29,992,247	\$28,124,013	\$1,868,234	\$292.42	\$161.57	\$140.76
Funding of Reserves						
Clients' Security Fund	\$248,500	\$248,500		\$2.58	\$1.43	\$1.24
Building Fund ²				0.00	0.00	0.00
Undesignated Reserves				0.00	0.00	0.00
Total Funding of Reserves	\$248,500	\$248,500		\$2.58	\$1.43	\$1.24
TOTAL	\$30,238,751	\$28,372,512	\$1,868,234	\$295.00	\$163.00	\$142.00
NON-DUES-FUNDED ACTIVITIES		REVENUE	EXPENSE	TRANSFERS	SURPLUS (DEFICIT)	
Pro Bono Center		\$2,886,750	\$3,064,470	\$21,000	\$(156,720)	
Continuing Legal Education		2,619,836	2,609,261	0	10,575	
Sections		1,410,800	1,701,562	57,061	(233,701)	
<i>Practice Manual</i> , Royalties & Other		238,000	117,510	(78,061)	42,429	
Total Budget		\$7,155,386	\$7,492,803	\$0	\$(337,417)	

¹ "In-Kind" includes contributed legal services, as well as office space contributed by the D.C. Court of Appeals for the Disciplinary Counsel and Executive Attorney's offices.

² Operations expenses are lessened by the internal service cost recovery.

ivate donations. The suggested voluntary contribution for the D.C. Bar Pro Bono Center is \$125. The combined proposed budget of \$7.5 million for nondues programs in fiscal year 2016-17 will result in a net excess of expense over revenue in the amount of \$337,417, which will be covered through the use of the accumulated net assets of the nondues programs.

A public hearing to answer member questions on the proposed budget will be held at 1 p.m. on April 12 at the Bar's headquarters at 1101 K Street NW, in the Presidents' Room. After receiving and considering public comments, the Budget Committee will recommend a final pro-

posed budget to the Bar's Board of Governors for approval at its April meeting.

Additional and supporting budget information is summarized in the table above, and copies of the proposed budget documents are available for review at the Bar's headquarters during regular business hours.

Notes

1 The strategic plan can be viewed at www.dcbar.org, keywords: Strategic Plan. On June 9, 2015, the Board of Governors approved a set of priorities and objectives proposed by the Strategic Planning Committee charged with developing the Bar's new five-year strategic plan.

2 The current dues ceiling approved by the D.C. Court of Appeals for active members is \$380.

Pro Bono Center Report



Every year thousands of District of Columbia residents are in need of legal help but unable to afford a lawyer. In 1982 the D.C. Bar created an independent, nonprofit organization to increase access to justice for low-income District residents through pro bono service by Bar members. Today, the D.C. Bar Pro Bono Center is the largest provider of pro bono legal services in the District and transforms lives by providing free legal assistance to individuals, nonprofit organizations, and small businesses through its lawyer volunteers.

We are proud to serve thousands of our neighbors every year with the invaluable help of our dedicated volunteers, organizational partners, and generous donors. Every volunteer hour and every contributed dollar helps to narrow the access to justice gap. I am pleased to share some highlights from the past year.

Full Representation Clinics

Each day individuals across our city face the loss of their homes, custody of their children, or access to public benefits without any legal representation. Through our Advocacy & Justice Clinic, the Pro Bono Center assists individuals and families in critical need of legal representation. For more than 20 years, our pro bono volunteers have accepted cases for full representation in family, housing, public benefits, consumer, and personal injury defense matters. Last year we placed 321 cases with our law firm and government agency partners. Additionally, our Bankruptcy Clinic matched 42 individuals with pro bono attorneys in filing Chapter 7 bankruptcy petitions.

Court-Based Resource Centers, Pro Se Clinics, and Neighborhood Clinics

Nearly 35,000 eviction cases are filed annually in the Landlord and Tenant Branch of the D.C. Superior Court. Approximately 90 percent of landlords are represented by counsel in these cases, compared with only 5 percent of tenants. Since 2004, the Pro Bono Center has operated the Landlord Tenant Resource Center to provide unrepresented tenants and landlords the opportunity to meet with a lawyer just steps away from the courtroom where their cases will be heard. Volunteers

assisted 4,711 customers last year.

Through our three other court-based resource centers, volunteers assist individuals in navigating probate court, addressing consumer issues such as debt collection and contractor disputes, and redeeming their family homes after tax sale foreclosures. Volunteers also help pro se litigants with divorce and custody matters understand proceedings in family court. Last year, our resource centers and clinics connected 6,134 pro se litigants with attorney volunteers.

On the second Saturday of every month, people line up early for an opportunity to meet with a lawyer volunteer at our walk-in Advice & Referral Clinic at Bread for the City's Shaw and Anacostia locations. Since 1997, we have enabled individuals with any civil legal matter governed by D.C. or federal law to meet with a lawyer. In just one short meeting, an elderly couple considering bankruptcy, a father seeking custody of his child, or a worker denied unemployment benefits can consult a lawyer volunteer for free legal information and referral to help solve their legal problem. More than 1,300 individuals visited the clinic last year. A quarterly clinic held in Columbia Heights and expanded to Chinatown last year assisted an additional 100 individuals seeking help with immigration matters.

Support for Nonprofits and Small Businesses

To preserve and strengthen the safety net organizations that deliver services to District residents living in poverty, our Nonprofit Legal Assistance Program connects these nonprofits with pro bono counsel. In 2015 we matched 64 nonprofit organizations with pro bono lawyers for help with matters ranging from updating their bylaws to leasing and developing property to build a community health center. We also trained 1,181 nonprofit managers in legal topics and helped countless more to identify and avoid legal problems through our online resource center at www.lawhelp.org/dc/ced.

Many nonprofits lack the resources to educate their board members about their duties and responsibilities. In 2015 the Pro Bono Center and the Center for Nonprofit Advancement organized an intensive

one-day "boot camp" for nonprofit board members to enhance their skills as directors. More than a hundred participants learned about governance, financial oversight, CEO compensation and evaluation, risk assessment and insurance, and strategic planning.

Small businesses are an economic life force in many struggling neighborhoods. Our Small Business Legal Assistance Program provided 459 small business owners and aspiring entrepreneurs the opportunity to speak with a lawyer for brief advice at our monthly walk-in clinics across the District. The program also trained 485 individuals in hiring and firing employees, employment discrimination, employee benefits, and other topics to help companies comply with the law.

The Road Ahead

For the first time in two decades, the D.C. Bar Pro Bono Center conducted an extensive strategic planning process in 2015 to assess our services and to create a road map for the future. With the help of our clients and more than a thousand stakeholders including those from law firms, government agencies, other legal services providers, and the D.C. Superior Court, we learned what we were doing right and where we could improve the delivery of our services. Three priorities for the future direction of the Pro Bono Center emerged from the process: (1) promoting an increase of pro bono services in the District; (2) providing innovative pro bono leadership; and (3) ensuring long-term financial sustainability and resilience. For more details about our strategic plan, visit www.dcb.org/pro-bono and click on "Strategic Assessment."

Funded by Voluntary Contributions

The D.C. Pro Bono Center receives no funding from mandatory Bar membership dues and is supported entirely by voluntary contributions. We are deeply grateful to our loyal and generous donors, and to our individual volunteers and law firm and government agency partners for helping us to deliver vital legal services to the community. We are pleased to recognize our most generous financial contributors in the following pages. Thanks to all of you for making the work of the D.C. Bar Pro Bono Center possible!

continued on page 38

In 2015, the D.C. Bar Pro Bono Center Transformed Lives with a wide range of legal services



FULL REPRESENTATION CLINICS

Pro bono attorneys helped individuals and families avoid eviction and homelessness; ensure safe, affordable housing; file for bankruptcy protection; make end-of-life plans; defend against personal injury claims and debt collection; preserve parent-child relationships and access vital public benefits.

387 SERVED



SATURDAY NEIGHBORHOOD CLINICS

Provided individuals the opportunity to meet with a volunteer lawyer for free legal information, brief advice and referral on any civil legal matter governed by D.C. or federal law in Shaw and Anacostia, and immigration matters in Columbia Heights and Chinatown.

1,432 SERVED

The D.C. Bar Pro Bono Center is supported entirely by **voluntary contributions**, not D.C. Bar membership dues.

GET INVOLVED!

Visit www.dcbbar.org/pro-bono
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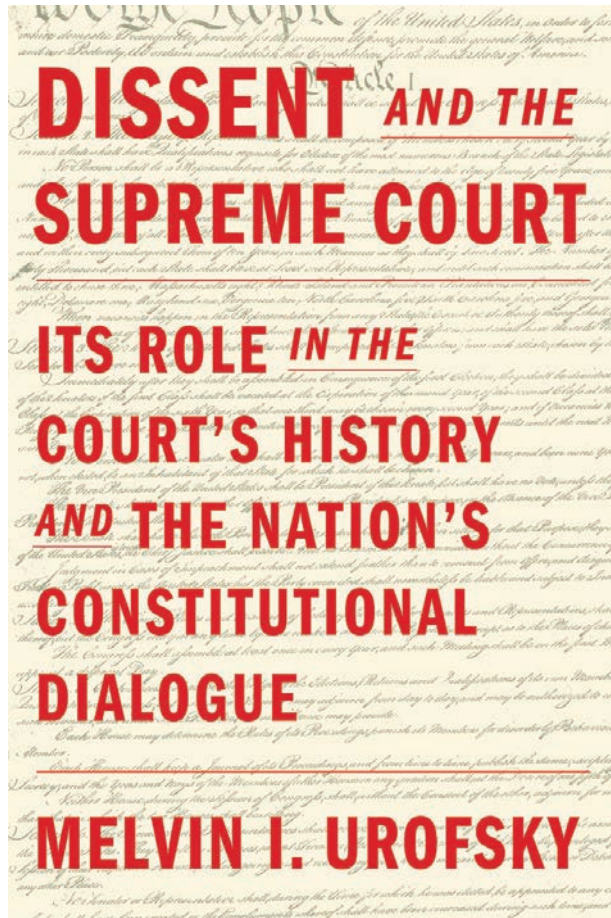
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Dissent and the Supreme Court: Its Role in the Court's History and the Nation's Constitutional Dialogue

By Melvin I. Urofsky
Pantheon, 2015

REVIEW BY RONALD GOLDFARB

"[F]or the most part we cannot tell at the time whether or not a dissent will succeed in its call to future generations."

Historian Melvin I. Urofsky, whose brilliant book on Justice Louis Brandeis I reviewed for *Washington Lawyer* (September 2009 issue), here writes about the fascinating history of U.S. Supreme Court dissents and their role in jurisprudence, "a long and honored one not only in the history of the Court but in that of the United States as well." Urofsky examines the interesting role of Supreme Court dissenting opinions in constitutional dialogue, including the evolution of national law in our history, through this one lens, on such contentious subjects as race relations, women's rights, and other social, economic, and cultural questions as times and the values with them change.

Not only have dissents proved influential as some have replaced majority opinions on

profoundly important subjects—"separate but equal" in *Plessy v. Ferguson* and *Brown v. Board of Education*, for example—but they also have had influences within the Court. As Urofsky shows, sometimes dissenting opinions are circulated among the justices, and in the process minds are changed and the proposed dissent becomes the majority opinion.

"Sometimes the separate opinion has an immediate impact. A draft dissent may win over sufficient votes to become the majority view. At other times, it may lead the majority to accept some of its points, and thus modify the holding," Urofsky writes. In other cases, it takes years for a dissent to lead to a change in the law, as in *Whitney v. California* where decades later Justice Brandeis' opinion, initially "a concurrence that is in fact a dissent," led to important First Amendment law regarding freedom of speech.

Historically, the prevailing judicial perspective was that opinions of the High Court should project one voice. Until 1925, the justices might note that they dissented but would not write a

Since four out of every five recent Supreme Court decisions now include one or more dissenting opinions, analyzing the various roles of dissent is an interesting and important undertaking.

dissenting opinion. “[F]or nearly 150 years, the members of the Court did stress institutional harmony and often denigrated dissents,” writes Urofsky.

By 1940, dissenting opinions have become common. Urofsky quotes the late Justice Robert Jackson in stating that the vast preponderance of dissents are soon forgotten and play “little part in the constitutional dialogue.” Others, those that Urofsky explores in interesting vignettes, become “canonical or prophetic” and influential years after they were written.

Since four out of every five recent Supreme Court decisions now include one or more dissenting opinions, analyzing the various roles of dissent is an interesting and important undertaking. Urofsky cites numerous quotes by justices and scholars on the subject, providing insights into the process.

As Urofsky explains the dissenting process, there are features that Court watchers may not realize. Dissents may persuade tentative majority justices to change their votes, making a new majority. Or a dissent may result in the tentative majority modifying its opinion to take the dissenter’s views into consideration. Not every dissent changes the law in later years for later generations. They do more commonly play into the calibration of Court negotiations over upcoming decisions.

Urofsky’s expertise as a historian and student of the Court brings depth and richness to his treatment of this fascinating subject. He explains the behind-the-scenes work of the Supreme Court and tells many stories of those dissents that “have been markers on the road from the past to the present and the future.”

Urofsky also describes the role of dissents in lower federal appellate courts and in state and foreign courts, introducing that chapter with a nice review of our two (federal and state) court systems. There is reluctance, Urofsky reports, to dissent in lower federal courts, though not a complete bar. Dissents in those courts are directed to the trial courts, the state legislatures, and also to the U.S. Supreme Court, which hears some cases appealed from state supreme courts.

Dissents interest the academic community, too, and as Urofsky notes, “Students read *Abrams* [clear and present danger test and the First Amendment] not for the majority opinion but for Holmes’s dissent, just as they read *Olmstead* [wiretapping and the Fourth Amendment] for the

Brandeis dissent.”

Urofsky provides many stories of major cases through the years where dissents were notable: Justice Hugo Black’s dissents in the sit-in cases that were swept aside by the 1964 Civil Rights Act, and Justice William Brennan’s dissents in the Sunday closing law cases that were adopted by the Court in 1963. He speculates about evolving subjects such as capital punishment, affirmative action, and privacy, where current dissents might well become majority positions. Dissents, Urofsky concludes, are part of the common law tradition, the dialogue of the law.

The historic cases Urofsky writes about also are notable for how different their tone was from today’s versions—“the judicial dissent as body slam,” as Slate’s Supreme Court reporter Dahlia Lithwick called it—where “soaring rates of written dissents, nasty and personal attacks and scathing remarks . . . bespeak a new toxicity in Supreme Court discourse.”

A good example of Urofsky’s interesting analysis of politics and the personal attitudes of the justices is evidence of the profound jurisprudential remark that the law is what the judges say it is. An experience I had as a young lawyer arguing my first appeal before the U.S. Supreme Court is an example. Seven years earlier the Court had ruled 5–4 that there was no jury trial guaranteed in certain contempt of court cases. I argued that under the Constitution’s right to a jury trial, there should be. In the interim, there had been two personnel changes on the Court, and in my case it ruled 5–4 that such a right was guaranteed by the Constitution, the same Constitution that governed its opposite ruling seven years earlier. A dissent (and a pointed footnote) had become the majority opinion and remains so. Two new justices made the difference. To play on Justice Jackson’s wry comment, the Supreme Court is neither final nor infallible. “We are not final because we are infallible, but we are infallible only because we are final,” Jackson famously said.

Urofsky’s book describes this phenomenon in its many variations, provides examples of cases making his point, and is a good read for those who find the workings of the Court of special interest.

The profound dissents, the ones students learn about and that Professor Urofsky describes, are those written for posterity and that eventually prevail. Urofsky quotes the late Chief Justice Charles Ev-

ans Hughes that those profound dissents are an “appeal to the brooding spirit of the law, to the intelligence of a future day.”

To conclude this review, the late Associate Justice Benjamin Cardozo, loquacious and aphoristic always, once noted:

The voice of the majority may be that of force triumphant, content with the plaudits of the hour and recking little of the morrow. The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years. Read some of the great dissents . . . and feel after the cooling time of the better part of a century, the glow and fire of a faith that was content to bide its hour. The prophet and martyrs do not see the hooting throng. Their eyes are fixed on the eternities.

Ronald Goldfarb is a Washington, D.C., (and Miami-based) attorney, author, and literary agent. Visit www.ronaldgoldfarb.com or e-mail rlglawlit@gmail.com.

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Since 1957

The Court and the World: American Law and the New Global Realities

By Stephen Breyer
Alfred A. Knopf, 2015

REVIEW BY JAMES SRODES

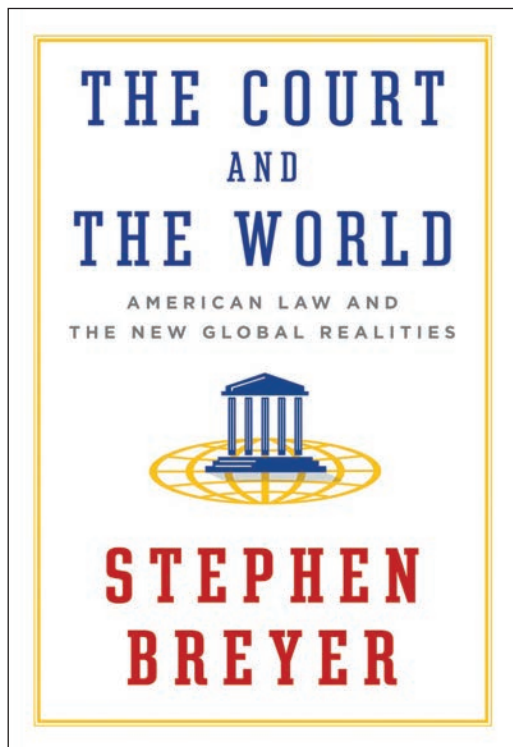
Very few books truly merit being called required reading, but this is surely one of them.

U.S. Supreme Court Associate Justice Stephen Breyer has written an elegantly accessible tour of the new international legal structure that has sprung up simultaneously in this asymmetrical and unstable world of instant communications, economic interdependence, pervasive terrorism, and fear for our civil liberties. It should be required reading for all of the people seeking to be our next president; indeed, several copies could be useful for the present occupants of the White House.

What Justice Breyer has done in this book is provide legal professionals and lay readers alike with a primer on why our confidence in the permanence in what might be called the American Way of Law is disturbingly being challenged seemingly by forces beyond the control or understanding of the public or, it appears, of the legal profession itself. We are in the 15th year of a world war by other means that has unhinged world economic patterns, undermined national certainties about culture and human relations, and raised a level of domestic violence that poisons any attempt at active civil discourse.

Justice Breyer's solution is that those nations among of us that are bound by a commitment to democracy and the rule of law must cooperatively broaden our responses to these threats not only to defend our proven values as a society but also to help other parts of the globe where the protections of common law are either still forming or nonexistent. He does not single out our gridlocked U.S. Congress for it always has been an unseemly brawl, and perhaps rightly so. Nor does Breyer exhort our presidents who have always overreached their Constitutional powers since George Washington's time in office.

Instead he looks to the law itself and the courts that interpret it and do much,



albeit not all, the enforcing of it. Understandably he, of course, looks to the U.S. Supreme Court to be a primary agent of change both at home and abroad. But he also argues for our lower federal and state courts as well as the legal systems of other nations to become far more vocal in the conversation over what a truly global legal system should look like.

The Court and the World is organized into four separate broad questions about the future of America's laws in an ever intrusive global environment. Justice Breyer does not pretend that these are the only issues facing modern legal structure, but they do serve as a valuable conversation starter.

Part one of the book is perhaps the most pressing and controversial. It is the headline-causing argument over where under our Constitution do we balance national security needs and individual civil liberties. It is an uncomfortable part of America's legal history that in certain times of crisis our Congress and presidents have been quick to shove individual protections aside to meet an existential national threat.

Most of the historical cases Breyer cites are familiar ones. Abraham Lincoln's suspension of *habeas corpus* and suppression of pro-Secessionist newspapers during the Civil War, Woodrow Wilson's press censorship and imprisonment of dissenters, and Franklin Roosevelt's internment of Japanese residents of California all are stains on our national

conscience. But Breyer's point is that invariably when presidents (and the Congress) have overreached, very soon afterward public opinion and the lawmakers roll back those intrusions.

The president, Breyer concludes, does not have a blank check on security or civil liberties. The contemporary dilemma is, of course, what do we (and the courts) do about our present vexations over a world order that has come unstuck and such thorny questions as the imprisoning of suspected (but not convicted) terrorists in Guantanamo, cyber-intrusions by government security agencies, and the rights of the foreign immigrants who exist among us.

The second section of the book is equally thorny. This part looks at whether and how far American statutory law should reach in regulating international commerce and how far the laws and plaintiffs of other nations should be able to have access to American courts and protections.

Part three is a restatement of the conflicts of laws of other nations, particularly on matters of domestic law and financial regulations and the current attitude of the U.S. courts on our own body of rules. Should the Supreme Court, for example, begin to or even be required to consider foreign precedents and rules on matters of child custody or on dispute resolution through mandatory arbitration? What about wage, health, and safety standards abroad that differ sharply from those we have here?

The fourth part sees Breyer arguing persuasively that American jurists (and by implication, American lawmakers) can and should learn much by considering the way other democracies settle conflicts, establish rules, and regulate the increasingly complex corporate and personal interactions that go on across the globe, much of it in the free-for-all known as the Internet.

In the end, the justice makes a ringing defense of the rule of law, which, he says, "is vital to build a humane, democratic, and just society." And not just for American society, but for an interdependent world that becomes more so every day. One does not have to agree with Justice Breyer on every conclusion, but understanding what the questions are is a matter too vital to be left to public office seekers alone.

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



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attorney briefs

By David O'Boyle

Honors and Appointments

Diane Seltzer Torre has received the Exceptional Service Award from the U.S. District Court for the District of Maryland... **Ivan K. Fong**, general counsel at 3M Company, has received the International Institute for Conflict Prevention and Resolution's Corporate Leadership Award... **Charles A. McCullough II** has been appointed to a three-year term as director of the Australian National University North American Liaison Office... Quarles & Brady LLP managing partner **Larry P. Cote** has joined the board of directors of the Community Anti-Drug Coalitions of America... **Judge Wilhelmina Marie Wright** has been confirmed by the U.S. Senate to the U.S. District Court for the District of Minnesota... Lerman Senter PLLC partner **S. Jenell Trigg** has received the Everett C. Parker Lifetime Achievement Award from the Multicultural Media Telecom & Internet Council and the Lifetime Achievement Award as a Public Interest Legal Advocate Leader from the Rainbow PUSH Coalition... **Richard C. McNeill Jr.** has been admitted to membership in the National Academy of Arbitrators... **Elizabeth Sarah "Sally" Gere** has been appointed deputy attorney general for the public interest division at the D.C. Office of the Attorney General. **James "Tony" Towns** has been appointed community outreach director at the D.C. Office of the Attorney General... **Debra Lyn Bassett** has been named the John J. Schumacher Chair in Law at Southwestern Law School in Los Angeles... **William C. E. Robinson**, corporate secretary at GEICO, has received the *Washington Business Journal's* Minority Business Leader Award.

On the Move

Vincent H. Cohen Jr. has joined Dechert LLP as partner on the firm's

litigation team... **Andrew B. Art** has joined Duncan, Weinberg, Genzer & Pembroke, P.C. as senior counsel... **Dwight P. Bostwick** has been named chair of the executive committee and partnership board at Zuckerman Spaeder LLP... **Sean P. Murphy** has joined Duane Morris LLP as partner in the firm's real estate practice group... **Adam R. Shartzler** and **Kevin C. Wheeler** have been promoted to principal at Fish & Richardson... **Pieter M. O'Leary** has been promoted to partner at Burdman & Ward... **Jay B. Stevens** has joined Kirkland & Ellis LLP as of counsel... **David E. Aron** has moved to a new position within the Commodity Futures Trading Commission as special counsel in the Data and Reporting Branch of the Division of Market Oversight... **Nicole H. Sprinzen** has joined Cozen O'Connor as member. **Barbara "Biz" Van Gelder** has joined Cozen O'Connor as member on the firm's criminal defense and internal investigations team... **Gil Ehrenkranz** has joined Manatt, Phelps & Phillips, LLP as counsel... **Krista E. Bianco**, **Mareesa A. Frederick**, **Minjae Kang**, **Naresh Kilaru**, **Timothy P. McNulty**, and **C. Brandon Rash** have been elected partner at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP... **Rachel L. Partain** has joined Caplin & Drysdale, Chartered, as member... **Neil Lefkowitz**, **Tiffany R. Moseley**, and **Steven S. Rosenthal** have joined Loeb & Loeb LLP as partner... **Adam L. Fotiades** and **Paul B. Hynes Jr.** have been promoted to partner at Zuckerman Spaeder LLP... **Matthew M. Bryant** and **Eleanor A. Hunt** have been promoted to senior counsel at Joseph, Greenwald & Laake, P.A.... **Joshua B. Brady** has been elected partner at Williams Mullen... **Jeffrey L. Rhodes** has joined Doumar Martin, PLLC as partner... **Anne Magee Vaughan** has joined Baker & McKenzie LLP as counsel... **Akin M. Alcitepe** has joined Sedgwick LLP as partner... **Robert J. Grey** has joined K&L Gates



Tara M. Lee has joined Quinn Emanuel Urquhart & Sullivan, LLP as partner.



Scott M. Kelly has been elected shareholder at Banner & Witcoff, Ltd.



Bryna R. Shmerling has joined Ober|Kaler as associate.

LLP as partner... **Mark A. Catan** has joined Potomac Law Group, PLLC as partner... **Jennifer M. Keas** and **Frank S. Murray Jr.** have been elected partner at Foley & Lardner LLP.

Company Changes

Faegre Baker Daniels has opened a new office at 1990 S. Bundy Drive in Los Angeles.

Author! Author!

Allan I. Mendelsohn, an attorney at the Law Offices of Allan I. Mendelsohn, has written the article "Unravelling Open Skies," in the *Annals of Air and Space Law*, published by McGill University.

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 David O'Boyle at doboyle@dcbar.org. Follow me on Twitter at [@d_oboyle](https://twitter.com/d_oboyle).

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Making a Lasting Impact

"Children and families are my passion, and the reason why I chose to practice family law. Many of my cases deal with children, and it's very meaningful for me to find solutions that will have a lasting and hopefully positive impact on them for life."

An Emotional Process

"Anger fuels litigation. Addressing client emotions was something I had to learn. Emotions can be the most challenging part of the job, and it's important to recognize where your client's emotions come from. Learning about psychology and conflict resolution helped me to understand my clients better and calm them down, allowing us to focus on finding legal solutions."

Knowing Their Pain

"When I began practicing, I was very clinical in my work. I viewed all of my cases like a surgeon dealing with a cancerous growth. The shift for me was going through my own divorce in 2005, where I experienced the emotions of litigation firsthand. That experience made me pay more attention to my client's feelings, learn collaborative divorce strategies like mediation training, and become a more effective and caring family law attorney."

#IamtheDCbar

DC BAR

Disciplinary Counsel

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legal services provided by an attorney for clients can lead the attorney into a violation of federal law. Transporting money obtained by illegal activities through smuggling is apparently fraught with difficulties, so the client thinks, “Lawyer!” It is just not about \$10,000 cash anymore. The area of “suspicious activity” can be a nightmare to counsel. (I remembered Walt Disney buying a lot of Orlando, Florida, land with shell corporations!) Education is critical to those who practice law involving criminal defendants and/or interesting financial transactions. I know we have a good deal more to learn in this office to even understand the dynamics of open client communications versus being drawn into client criminal activity in the area of money laundering.

So, the only constant in the world is change. Now we can answer our phone with our watch. The profession is having the same tailwinds as we scoot forward in our practice. Back to basics. We have an obligation to represent our clients ethically while safeguarding their confidences and secrets. The discipline system must protect the public. How we do this with change surrounding us is the constant reoccurring evaluation for each lawyer, g.

Gene Shipp serves as disciplinary counsel for the District of Columbia. To reach the D.C. Bar Lawyer Assistance Program, contact the confidential line at 202-347-3131 or e-mail lap@dcbar.org. To reach the D.C. Bar Practice Management Advisory Service, contact Dan Mills at 202-626-1312 or dmills@dcbar.org or Rochelle Washington at 202-737-4700, ext. 3217, or rwashington@dcbar.org.

Disciplinary Actions Taken by the Board on Professional Responsibility

Hearing Committees on Negotiated Discipline

IN RE KENNETH H. ROSENAU. Bar No. 342733. January 15, 2016. The Board on Professional Responsibility Hearing Committee Number Five recommends that the D.C. Court of Appeals accept Rosenau’s petition for negotiated discipline and suspend him for 30 days for violations of Rules 8.4(c) and 8.4(d).

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE ELEANOR NACE. Bar No. 287391. January 12, 2016. Nace 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 November 12, 2015, recommendation of disbarment.

Informal Admonitions Issued by the Office of Disciplinary Counsel

IN RE BERNARD A. GRAY SR. Bar No. 955013. January 8, 2016. Disciplinary Counsel issued Gray an informal admonition. While retained to represent a client in a landlord–tenant matter, Gray failed to provide competent representation, failed to serve the client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters, failed to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information, and failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Rules 1.1(a), 1.1(b), 1.4(a), and 1.4(b).

IN RE BERNARD A. GRAY SR. Bar No. 955013. January 8, 2016. Disciplinary Counsel issued Gray an informal admonition. While retained to represent a client in a landlord–tenant matter, Gray failed to provide competent representation, failed to serve the client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters, and failed to represent the client zealously and diligently within the bounds of the law. Rules 1.1(a), 1.1(b), and 1.3(a).

IN RE NIGEL L. SCOTT. Bar No. 214494. January 4, 2016. Disciplinary Counsel issued Scott an informal admonition. While retained to represent clients in a domestic matter, Scott failed to provide competent representation, failed to serve the clients with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters, failed to represent the clients zealously and diligently within the bounds of the law, and failed to act with reasonable promptness. Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c).

The Office of Disciplinary Counsel compiled the foregoing summaries of disciplinary actions. Informal Admonitions issued by Disciplinary Counsel and Reports and Recommendations issued by the Board on Professional Responsibility are posted at www.dccourts.gov/internet/opinionlocator.jsf.

Bar Business

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6:00-8:10 p.m. ■ Credit: 2.0 Credit Hours
- 11** Drafting Marital Separation Agreements in the District of Columbia, Maryland, and Virginia: More than the Basics
5:30-8:45 p.m. ■ 3.0 Credit Hours
- 12** Strategies for Handling a Death Penalty Case: Case Study of Alfred DeWayne Brown 
1:00-2:00 p.m. ■ Credit: 1.0 Credit Hours
- 13** Basic Estate Planning Series, Part 2: Planning for Estates Over \$5.45 Million
5:30-8:45pm ■ 3.0 Credit Hours
- 14** How to Get What You Want: A Litigator's Guide to Negotiations
1:00-4:15 p.m. ■ 3.0 Credit Hours
- 14** A Lawyer's Ethical Duties to Understand Metadata, Digital Evidence in the Cloud, and More 
6:00-8:15 p.m. ■ **2.0 Ethics Credit Hours**
- 15** Effective Writing for Lawyers Workshop
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- 18** Walking the Tight-Rope: Maintaining Competency and Compliance with the Ethics Rules for Governmental Lawyers 
1:00 – 3:10 p.m. ■ **2.0 Ethics Credit Hours**

April

- 18** For Lawyers Who Lobby (and Their Firms): Legal Ethics and Unauthorized Practice Update
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- 19** Forming Government Contracts: Understanding the Players and the Process 
10:00 a.m.- 12:10 p.m. ■ 2 Credit Hours
- 19** Social Media Policies In the Workplace: Drafting Tips 
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- 20** Representing Clients in Congressional Investigations 
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- 20** Basic Estate Planning Series, Part 3: Senior Surviving Spouse Planning
5:30-8:45 p.m. ■ 3.0 Credit Hours
- 21** Immigration Law Basics: Dealing With Special Issues in Employment-Based Immigration Cases 
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