

JANUARY 2012

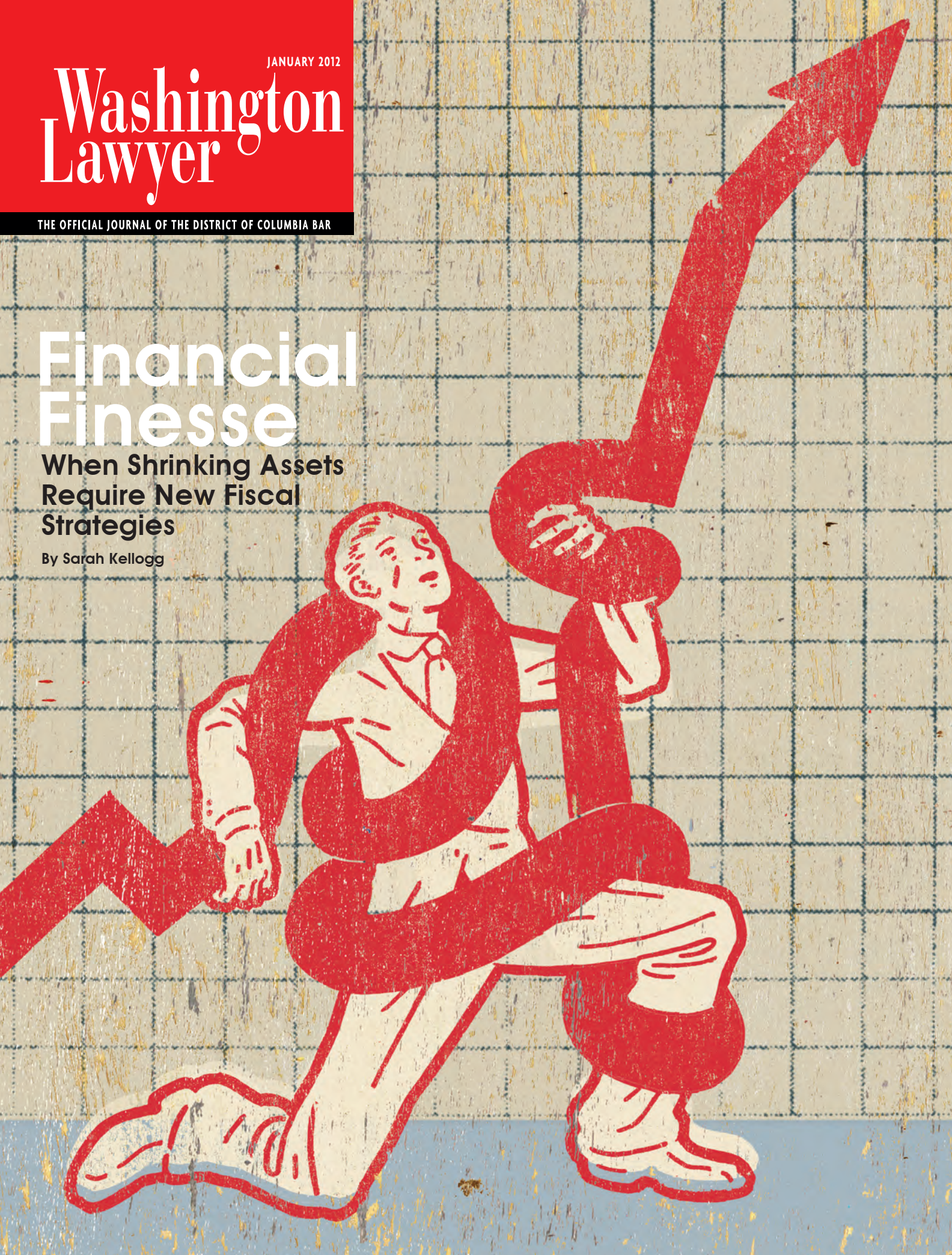
Washington Lawyer

THE OFFICIAL JOURNAL OF THE DISTRICT OF COLUMBIA BAR

Financial Finesse

When Shrinking Assets
Require New Fiscal
Strategies

By Sarah Kellogg



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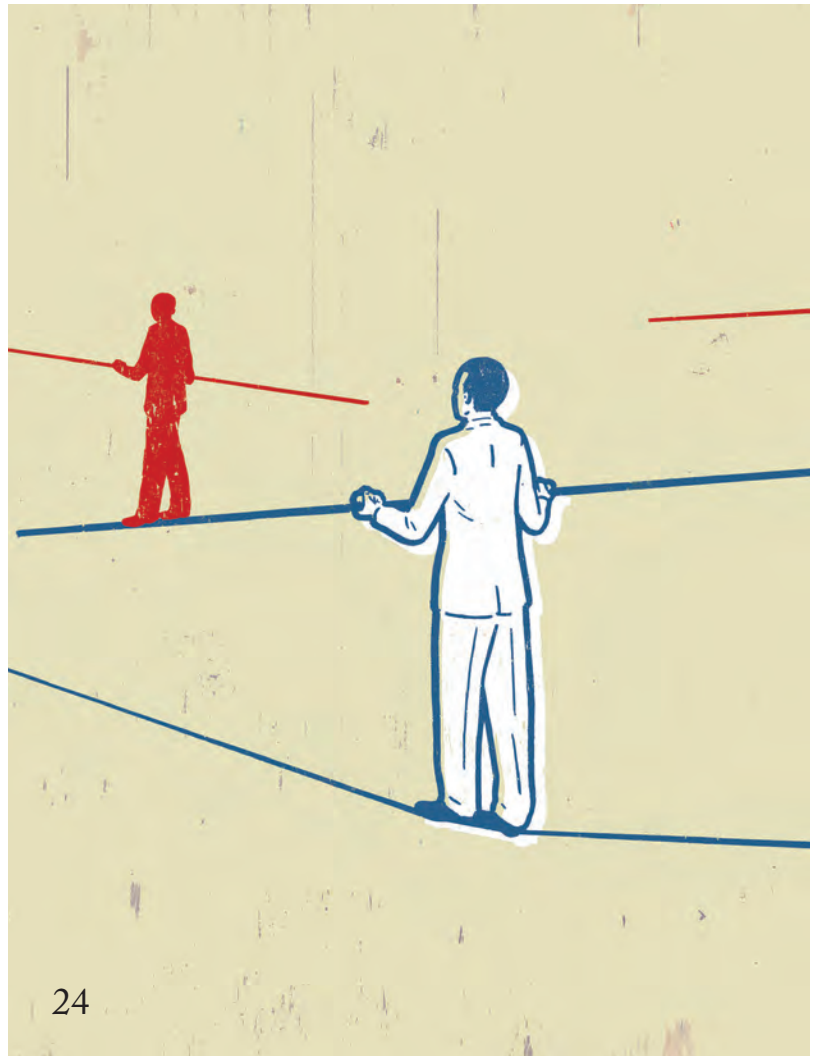
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Financial Finesse

With today's topsy-turvy financial markets, attorneys must find new ways to juggle their equally hectic professional and economic lives, as *Sarah Kellogg* reports.

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Reinventing Janet

Janet Fries, of counsel at Drinker Biddle & Reath LLP, has worked closely with U.S. Supreme Court Justice Sandra Day O'Connor, but not always in a legal capacity, as *Thai Phi Le* reports.

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letters



Far-Flung Members Stay Involved

Darrell G. Motley's column, "New Technology, Old Values," brings up all kinds of ways for D.C. Bar members to get involved ("From the President," October 2011). Although many Bar members do not live in the Washington metropolitan area, we can still find ways to participate and give back. I live abroad, and I have managed to do just that.

I have lived in Portugal for more than 20 years, and I have been performing pro bono work, mostly for Portuguese who lived and worked in the United States for 20 years or more and then returned to Portugal to retire to their respective communities. Most of the cases I han-

dled were in the area of taxation resulting from my volunteer work for the Volunteer Embassy/Consular Tax Assistance Program, or VECTA, at the Lisbon Embassy. Clients came in for taxes, but their legal problems were much greater. I did the best I could by writing letters for them.

At times, I could benefit from having help and advice from others in specialized fields. For example, one of my neighbors is American fugitive George Wright who was just apprehended after being on the lam for 41 years. (As of this writing, Portugal will not extradite Wright to the United States, citing that he is a Portuguese citizen.)

Additionally, it would be helpful if the Bar's Continuing Legal Education courses could be made available online for those of us who don't reside in the Washington metropolitan area.

—Gilbert Wells
Colares, Portugal

Editor's Response:

The Bar's strategic plan includes the goal of providing "high quality educational programs and resources online and on-demand." In keeping with that goal, the Bar is working to enhance and expand online delivery of Continuing Legal Education and other educational programs and materials. Additionally, the Bar has

set a goal of providing a platform to help members regularly engage through social media tools. The Bar is undertaking steps in fulfilling this objective as well.

Baseball and Government Don't Mix

In his review of James B. Stewart's book *Tangled Webs*, Joseph C. Goulden writes that "[s]urprisingly (to me, at any rate)" sportswriters disapproved of the federal government's prosecution of Barry Bonds for alleged perjury related to performance-enhancing drugs (October 2011 issue). He should not have been surprised. Maybe the sportswriters felt that enforcing the rules of baseball is none of the government's business, and that the Bonds prosecution is evidence that the federal government is, at least in this matter, a bit out of control.

—Michael Lewyn
Forest Hills, New York

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 fax at 202-626-3471 or by e-mail at communications@dcbbar.org. Letters may be edited for clarity and space.

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from the president

By Darrell G. Mottley

Sustainability in the D.C. Bar is about preserving our institutions to endure into the future. Today, our Bar leadership is addressing several trends in the constellation of stressors and economic inertia. In the District of Columbia, economic pressures have exacerbated the multifaceted problems in federal court funding and public funding for civil legal services. The need to focus on two vital and enduring areas of the D.C. Bar mission has become critical: (1) aiding the courts in carrying out and improving the administration of justice, as well as promoting access to justice; and (2) enhancing the delivery of legal services to those in need. Both areas weigh heavily on Bar members involved in advocating on behalf of District of Columbia residents.

Court Funding

“It is as much the duty of Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals.” These words were delivered by President Abraham Lincoln in his State of the Union address to Congress in 1861.

For lawyers and litigants, the issue of adequate court funding for the fair, prompt, and efficient administration of justice cannot be overstated. A recent article in *The Wall Street Journal* emphasized that a large criminal docket and judicial vacancies have stalled the civil docket in the federal courts.¹ When the business community highlights the backlog in the civil side of the courts, then we know the acute problems in civil litigation will get more attention from the public. At the national level, the American Bar Association also has spearheaded discussions on the lack of state court funds.

To better understand the context of court funding in the District of Columbia, a short review of the history might be helpful. In 1970 Congress reorganized the courts of the District of Columbia pursuant to a comprehensive scheme, creating a unified, modern court system

Sustainability: The Courts and Access to Justice

that included the D.C. Superior Court and D.C. Court of Appeals (the Courts). Since the late 1990s, the budget for the Courts, along with other federal agencies, has been determined in the federal appropriation process.² While Congress is expected to enact a budget for the Courts in time for the start of the new fiscal year on October 1, Congress typically passes a continuing resolution permitting the Courts to spend generally at the level of the prior year’s appropriation until the budget is finalized. Unfortunately, the funding may ultimately be reduced to even lower levels, an incredible setback for legal services providers and, ultimately, District of Columbia residents.

Our Courts need the Bar to advocate for proper funding to sustain the excellent work of the institution for the future. In supporting adequate funding for the Courts, the Bar advocates not only for the Courts, but, more significantly, for the residents of the District of Columbia, whom many of us serve as counsel.³

Access to Justice

Just as the D.C. Bar has an obligation to ensure that the D.C. Superior Court and the D.C. Court of Appeals are sufficiently resourced to safeguard the fair administration of justice, so, too, must we assist in strengthening our legal services community to ensure our neighbors who are unable to afford counsel have greater access to justice. In 2005 the D.C. Bar and the D.C. Consortium of Legal Services Providers proposed that the D.C. Court of Appeals create the D.C. Access to Justice Commission “to help improve the ability of low- and moderate-income residents to access the civil justice system.” By any measure, the commission has been a great success.

Probably the most noteworthy of its achievements has been the landmark appropriation in 2006 of public funding for civil legal services by the D.C. Council. We, as lawyers, understand how difficult it is to navigate the complexities of our

legal system. Every day in our courts, too many vulnerable residents are forced to fend for themselves in situations where their stakes—their homes, their children, their jobs, their safety—are on the line. Equal access to justice, without regard to income, is a fundamental value of our judicial system. This appropriation has supported legal services attorneys who help expand access to health care and income benefits for the disabled, protect workers from illegal employment practices, and preserve the availability of safe and affordable housing for low-income families.

D.C. Bar leaders have advocated for continued public funding every year and, fortunately, the funding has been reauthorized every year—and at a time when the demand for legal services has skyrocketed. It is critical that we stand with the Access to Justice Commission and the Consortium of Legal Services Providers to advocate for continued funding so people living in poverty have a fighting chance to lift themselves up to a better place.

Many D.C. Bar members might be surprised to learn that the Bar cannot advocate publicly unless you, as members, authorize the D.C. Bar Board of Governors to issue public statements or to testify.⁴ On March 20 the Bar will hold a special meeting of the active membership to reauthorize our Bar to advocate for these two important issues. Please mark your calendars and plan to attend.

Notes

1 Gary Fields and John R. Emshwiller, *Criminal Case Glut Impedes Civil Suits*, Wall St. J., Nov. 10, 2011, available at <http://online.wsj.com/article/SB10001424052970204505304577001771159867642.html>. (Last accessed November 22, 2011.)

2 National Capital Revitalization and Self-Government Improvement Act of 1997.

3 Report of the District of Columbia Bar Court Funding Committee, available at www.dcbar.org/inside_the_bar/structure/reports/court_funding_committee/index.cfm.

4 As a result of a referendum in 1976, the D.C. Bar may speak on proposed legislation if 1) the legislation is closely and directly related to the administration of justice, and 2) it receives authority from its membership at a meeting or a referendum.



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bar happenings

By Kathryn Alfisi



Mick Wiggins

Health Law Reception Addresses Viability of Health Care Act

On January 12 the D.C. Bar Health Law Section will hold a reception featuring a discussion on the constitutionality of the Patient Protection and Affordable Care Act, a legal challenge pending before the U.S. Supreme Court.

The discussion will be led by Randy Barnett, a professor at Georgetown University Law Center, and Simon Lazarus, public policy counsel at the National Senior Citizens Law Center. Both experts have written extensively on the questions raised by the various court challenges to the act, and they have assisted in writing amicus curiae briefs submitted to the courts addressing the constitutional challenges. Barnett is part of the legal team for the case decided by the U.S. Court of Appeals for the Eleventh Circuit, which is before the Supreme Court.

Stuart I. Silverman of the Office of the Inspector General for the District of Columbia will moderate the program, which takes place from 5:30 to 8:30 p.m. at McDermott Will & Emery LLP, 600 13th Street NW.

For more information, contact the Sections Office at 202-626-3463 or sections@dcbar.org.

New CLE Course Examines Cloud Computing Trend

On January 19 the D.C. Bar Continuing

Legal Education (CLE) Program will hold a new course, “Cloud Computing: The Basics and Much More,” which will cover one of the hottest trends in technology impacting government agencies, corporations, and law firms.

Cloud computing technology involves accessing and using computer software, hardware capacity, and other computing resources and related services through the Internet, rather than purchasing or licensing them for installation and operation on one’s own premises.

The course will provide background information about these transactions that are already dominating the delivery of technology, a discussion on managing the primary risks they raise, and a mock negotiation of a cloud computing services agreement.

Participants will learn about basic cloud computing service models and the significant issues raised by cloud computing, including data security, confidentiality, service levels, and remedies and termination.

H. Ward Classen, deputy general counsel at Computer Sciences Corporation, and Philip D. Porter, a partner at Hogan Lovells, will serve as faculty.

The course, which takes place from 6 to 8:15 p.m., is cosponsored by the D.C. Bar Arts, Entertainment, Media and Sports Law Section; Computer and Telecommunications Law Section; Corporation, Finance, and Securities Law Section; Government Contracts and Litigation Section; and Intellectual Property Law Section. It will be held at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

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

Law Students, Employers Meet for 10th Public Service Career Fair

On January 27 area law students and employers will get together once again

SAVE THE DATE

On January 4 the Women’s Bar Association (WBA) of the District of Columbia will present a program titled “Persuading With Passion: Tips From the Top” moderated by Hollingsworth LLP’s Rebecca Womeldorf and featuring some of the area’s top attorneys. For more information, contact the WBA at 202-639-8880 or admin@wbadc.org.

for the annual Washington, D.C./Baltimore Public Service Career Fair, which gives participants an opportunity to discuss local public interest and government job opportunities.

Participating organizations and agencies will hold individual interviews, conduct table talk sessions, and accept résumés.

The event takes place from 9 a.m. to 5 p.m. at George Mason University School of Law, 3301 North Fairfax Drive, Arlington, Virginia. It is sponsored by American University Washington College of Law, Federal Bar Association, George Mason University School of Law, Howard University School of Law, The Catholic University of America Columbus School of Law, University of Baltimore School of Law, University of the District of Columbia David A. Clarke School of Law, and University of Maryland School of Law.

For more information, contact coordinators Christina Jackson at cjackson@wcl.american.edu or Jennifer Pollard at jpollard@law.umaryland.edu.

Superior Court Seeks Applicants for Civil Mediation Program

The Multi-Door Dispute Resolution Division of the Superior Court of the District of Columbia is accepting applications until January 13 from lawyers interested in mediating in its Civil Mediation Program.

Lawyers do not need to be D.C. Bar members to be considered, but applicants who have experience litigating personal



Randy Barnett

Courtesy of Georgetown University Law Center

injury, negligence, and motor vehicle accident cases will be given priority.

Interviews and selection will be conducted throughout the application period, and the class may be filled before the close of the application period if sufficient numbers of qualified applicants are accepted before that date.

Those accepted will attend a four-day training that will be held from 9 a.m. to 5 p.m. on March 15, 16, 22, and 23. Trainees must attend the entire training.

Following training, mediators will complete a mentorship with an experienced civil mediator for at least three cases. Following the completion of the training and mentorship, mediators must commit to mediating at least two mornings per month for one year. Mediation in these cases is held from 9 to 11 a.m. every Tuesday, Wednesday, and Thursday.

Mediators are paid a stipend of \$50 per case after completing training and mentorship and mediating three cases pro bono.

The application form can be found at www.dccourts.gov/mediationtraining. Applications may be submitted by e-mail (the preferred method) to MultiDoorTraining@dsc.gov or by regular mail to Karen Leightnam, Training Manager, D.C. Superior Court, 515 5th Street NW, Washington, DC 20001.

The Collection of the Supreme Court of the United States

JUSTICE SCALIA KEYNOTES WMACCA MEETING



Antonin Scalia

also will elect its new officers and directors at the meeting, which takes place from 12 to 2 p.m. at The Ritz-Carlton, Tysons Corner, 1700 Tysons Boulevard, McLean, Virginia. For more information, contact Ilene Reid at 301-881-3018, or Ilene.Reid@WMACCA.com, or visit www.wmacca.com.

The Washington Metropolitan Area Corporate Counsel Association (WMACCA) will hold its annual meeting on January 19, featuring Supreme Court Justice Antonin Scalia. WMACCA

January Ethics Offerings Address a Range of Topics

In January the D.C. Bar Continuing Legal Education (CLE) Program will offer ethics courses dealing with effective time management techniques for lawyers, post-government service, and ethics issues facing corporate counsel.

First up on January 4 is "So Little Time, So Much Paper: Effective Time

Management Techniques for Lawyers," which will teach participants how good organization and time management skills can help them attain their goals and make them more effective lawyers.

Meg Spencer Dixon of Spencer Consulting will discuss topics such as time management techniques, the power of effective goal-setting, planning on a regular basis, filing systems/information management techniques, lawyers' top 10 law practice/client service problems and how to solve them, and avoiding procrastination. The D.C. Rules of Professional Conduct also will be discussed to demonstrate how many ethical violations can be avoided by implementing these various time management techniques.

The course takes place from 6 to 9:15 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

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Ethics Issues for Attorneys” on January 11 will address the important ethics issues and potential pitfalls for attorneys leaving federal government employment for the private or nonprofit sector. Even those who are not planning to leave government work will benefit from a clear understanding of postgovernment employment ethics issues, including matters an attorney may be permanently barred from working on after leaving federal service.

Participants will learn about everything from potential conflicts of interest that must be considered during and after the employment search process to rules about confidentiality and contact with one’s former government employer. Attendees will walk away with a better grasp of both the ethical standards in the applicable D.C. Rules of Professional Conduct and any relevant statutory requirements. The course also will alert participants to postgovernment employment issues on fee sharing, the Obama Ethics Pledge, and other matters dealing with employment transitions.

Peggy Love, an attorney and former deputy ethics official at the Office of General Counsel of the U.S. Environmental Protection Agency, and Thomas B. Mason, a partner at Zuckerman Spaeder LLP, will serve as faculty.

The course takes place from 5:30 to 7:45 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

“Ethics Issues Facing Corporate Counsel” on January 18 explores the unique ethics issues, including conflicts of interest, confidentiality, corporate wrongdoing, and compliance with the Sarbanes–Oxley Act requirements, that corporate counsel face.

Faculty expert Thomas E. Spahn, a partner at McGuireWoods LLP, will address such issues as the dangers of not properly identifying your exact client within the corporate entity, what to do when one of your client’s affiliates dis-

agrees with another affiliate, who owns the attorney–client relationship after a company you represent sells its stock or assets, whether a law firm can represent one of your client’s affiliates while taking a matter adverse to another affiliate, how to handle requests for privileged documents from employees and former employees of the company you represent, and the “fiduciary exception” and when it applies.

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

“For Lawyers Who Lobby (and Their Firms): Legal Ethics and Unauthorized Practice Update” on January 26 will help District lawyers and law firms involved in lobbying activities understand the implications of recent opinions by the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law and the D.C. Bar Legal Ethics Committee regarding how the D.C. Rules of Professional Conduct apply to lawyers who lobby.

Faculty will use hypothetical scenarios to explore important issues and recent developments for lawyer-lobbyists such as when is lobbying governed by the ethics rules; the ethical implications for law firms with nonlawyers engaged in lobbying; what issues arise for law firms that lobby and have law offices in different jurisdictions; how do conflict-of-interest ethics rules apply to lobbying matters; nonwaivable, personal, and other conflicts of interest that come up in the lobbying context; lobbying and the rules preventing contact with represented parties; confidentiality and attorney–client privilege in the lobbying context; and advance waivers and lobbying.

Arthur Burger, a director at Jackson & Campbell, P.C., and Albert W. Turnbull, a partner at Hogan Lovells, will serve as faculty.

The course takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation Section; Labor and Employment Law Section; and Law Practice Management Section.

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

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



Arthur Burger

Courtesy of Jackson & Campbell, P.C.

SAVE THE DATE

On January 18 the Capitol Hill Chapter of the Federal Bar Association will hold a Library of Congress Luncheon featuring speaker Maria Pallante, the 12th United States Register of Copyrights, at the United States Library of Congress. For more information or to register, contact Matt McGhie at 202-224-6494 or matt_mcghie@slc.senate.gov.

Federalist Society Holds Faculty Conference

The Federalist Society for Law and Public Policy Studies will hold its 14th Annual Faculty Conference on January 5 and 6 at the Omni Shoreham Hotel, 2500 Calvert Street NW.

The conference will allow for those interested in the Federalist Society to share ideas and scholarship with one another. The conference starts at 5:15 p.m. on January 5 with a panel discussion on government ownership and corporate law post-bailout, followed by a reception from 7 to 9 p.m.

Day two of the conference starts with a continental breakfast from 8 to 9 a.m. and will feature panels on public sector unions, judicial ethics, a young legal scholars paper presentation, and a luncheon debate about “The Alien Tort Statute, International Law, and the Judiciary.” The day ends with a cocktail hour from 5:30 to 6:30 p.m.

For more information, contact Anthony Deardurff at anthony.deardurff@fed-soc.org, or visit www.fed-soc.org.

Children’s Law Center Holds Special Education Attorney Training

On January 18 the Children’s Law Center (CLC) will hold a special education training session that will teach participants how to represent parents and caregivers of children with special education needs.

The training, which takes place from 12:30 to 4:30 p.m., also will allow participants to learn more about pro bono work with the CLC.

Founded in 1996, the CLC is a D.C. legal services organization and the only one that provides comprehensive representation specifically on behalf of children.

For more information, visit www.childrenslawcenter.org. To RSVP to the training, contact Melanie Jaskolka at 202-467-4900, ext. 586, or mjaskolka@childrenslawcenter.org.

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

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projects, several sections host receptions honoring the local and federal judiciary and District of Columbia officials. Sections periodically comment on timely issues within their expertise and jurisdiction, and produce a variety of publications, manuals, digests, and newsletters.

To become a section member or section subscriber (for non-D.C. Bar members), please complete the form below or online at www.dcbbar.org. For more information, please call the Sections Office at 202-626-3463. ■

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(Dues cover the period ending June 30, 2012.)

speaking of ethics

By Hope C. Todd

Sam Solo had not been this optimistic in quite some time. Last month, he had received an offer from Fast & Loose, LLP to become “of counsel” to the firm. Sam would keep his own law firm, of course, but Fast & Loose was looking for someone to occasionally handle plaintiff employment matters. Sam maintained a fairly substantial practice representing large office building owners in disputes with wayward tenants, but in recent years, he had taken on a number of individual employee lawsuits against private employers.

Sam, who was thrilled to have a new source of referrals and advertising, also thought that prospective clients would be impressed that he was part of a “larger operation.” He ordered new business cards and letterhead and gave his approval to Fast & Loose to promote him in its law firm communications. Moreover, in his effort to get the word out about his new affiliation, he added a link to the Fast & Loose Web site on his own firm’s home Web page. However, when he clicked on the “Our Professionals” portion of the Fast & Loose site, he was surprised to see no fewer than 15 other lawyers listed as of counsel, several of whom had been opposing counsel in cases he recently tried, including Laura Litigation, who Fast & Loose listed as a “specialist in Trust and Estates.”

In fact, Sam represents two building owners in matters in which Laura represents the opposing party tenants. For a brief moment, he wondered whether he should tell Fast & Loose about those matters, but he determined there was really no need to do so because his of counsel relationship focused solely on employment law, and Laura’s practice apparently focused on trusts and estates.

As early as 1985, the D.C. Bar Legal Ethics Committee, noting the “evolving concept” of the term *of counsel*, pointed out that lawyers use the expression to describe a number of relationships.¹ In Opinion 151, the question presented was whether a firm needed to comply with the fee sharing provisions of the then-effective D.C. Code of Professional Responsibility when the firm split a legal fee with an *of counsel* lawyer.² The committee concluded that

Considering ‘Of Counsel’

in some instances, of counsel relationships were akin to partner and associate relationships, and in those circumstances, the rule governing fee division between lawyers not in the same firm should not apply. However, without much guidance in the plain language of the D.C. Code, the committee was left to conclude generally that “the ethical ramifications of the ‘of counsel’ relationship flowed from the actual nature of the arrangements established.” Thus, to determine which ethical mandates apply to any particular of counsel relationship, one must look at how the relationship actually operates. In the ensuing years, several D.C. Legal Ethics Opinions, as well as Formal Opinions of the American Bar Association (ABA), have arguably turned that general conclusion on its head.³

Today, the use of the term *of counsel* or similar designation carries significant ethical implications. The of counsel designation is commonly used to describe different types of employment relationships, including, for example, the senior partner who remains at the firm, working significantly reduced hours instead of retiring, or a career lawyer at the firm who is too skilled and experienced to serve as an associate but, to optimize work-life balance or by firm preference, has not become partner. In each of these examples, the lawyers are employees of a firm and, from a client perspective (as well as ethical perspective), not readily differentiable from firm partners or associates. However, the of counsel designation can also be applied properly to a lawyer who is not an employee of the firm, who may be a sole proprietor or even a partner in another law firm, or who may serve as of counsel to more than one firm. As such, the use of the of counsel designation necessitates two significant ethical directives.⁴

1. *The use of an of counsel designation requires a close and ongoing relationship between the lawyer and the firm.*

Pursuant to D.C. Rule 7.5(a), “a lawyer shall not use . . . a professional designation that violates Rule 7.1.” In turn, D.C. Rule 7.1(a) provides that “[a] lawyer

shall not make a false or misleading communication about the lawyer or the lawyer’s services.” Although neither the D.C. Rules nor the ABA Model Rules specifically defines the of counsel designation, the ABA opined, as early as 1990, that the term of counsel holds out to the public that the lawyer has a “close, regular, and personal relationship” with the firm that is “general and continuing.”⁵

The D.C. Bar Legal Ethics Committee agreed with this interpretation of the designation in Legal Ethics Opinions 247 (1994) and 255 (1995) and, most recently, in Opinion 338 (2007). In Opinion 338, the committee permitted a lawyer to serve as both of counsel to Firm A and a partner in Firm B if the of counsel association with Firm A was “regular and continuing” and if “the lawyer was generally available personally to render legal services to that firm’s clients.”

2. *An of counsel designation deems lawyers to be “associated” in a firm under D.C. Rule 1.10, such that all the conflicts of the of counsel lawyer and of the law firm are imputed to each other.*

D.C. Rule 1.10(a) states in pertinent part that, “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9....” (emphasis added).

Comment [1] to Rule 1.10 clarifies that

[t]wo practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules.

In Opinion 247, the committee consid-



Mick Wiggins

ered whether lawyers who held themselves out to the public as of counsel could avoid imputed disqualification and determined they could not. The lawyer argued that although he shared office space with the associated firm as of counsel, he actually did little more than “render occasional service to the associated firm on matters outside his real estate practice.” Relying primarily on the language on Comment [1] to D.C. Rule 1.10 and ABA Formal Op. 90-357, the committee concluded that “an of counsel designation gives the public impression of a sufficiently close relationship among lawyers that they should be treated as if they were in the same firm for imputed disqualification analysis under [D.C.] Rule 1.10.”

In Opinion 338, the committee confirmed that an of counsel lawyer to Firm A who was a partner in Firm B would be deemed to be “associated” with Firm A, and that “any disqualification of a lawyer in either firm would be imputed to all lawyers of both firms.”⁶

Alternatives to the ‘Of Counsel’ Designation

There are, of course, many situations in which unaffiliated lawyers and law firms can benefit clients by working together on specific matters. The legal ethics opinions discussed herein are by no means meant to discourage such beneficial alliances. However, for the lawyer who only occasionally works for clients of another firm on specific types of issues (such as Sam Solo’s proposed arrangement in the opening hypothetical), the ethics rules provide a straightforward approach to what is essentially a joint representation. Sam Solo could serve as an independent contract lawyer for Fast & Loose’s occasional employment cases, but only if the contractual relationship is clearly explained to the client at the inception of the representation, and if Sam and the firm comply with the fee sharing requirements of D.C. Rule 1.5(e).⁷ However, if, in fact, a lawyer’s relationship is regular, close, and continuing, then the mere absence of an of counsel or similar designation may not necessarily avoid imputed disqualification under D.C. Rule 1.10(a).⁸

For a solo practitioner, the appeal of the greater resources of a larger law firm and the marketing and referral potential of an of counsel designation may be quite tempting; for a firm, the ability to expand into different practice areas or jurisdictions without costs of adding employees is also attractive, and in some cases, the designation makes sense. It is doubtful,

however, that Fast & Loose has either a close, continuing, or regular relationship with its 15 named of counsel lawyers, and it is clear that, at the very least, potential conflicts abound.

Legal Ethics counsel Hope C. Todd and Saul Jay Singer are available for telephone inquiries at 202-737-4700, ext. 3231 and 3232, respectively, or by e-mail at ethics@dcbar.org.

Notes

1 See D.C. LEO 151 (1985).

2 Unless certain conditions were met, DR 2-107(A) provided that “[a] lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office....” Rule 1.5(e), the successor to DR 2-107(A), which became effective in the District of Columbia in 1991, specifically provides:

A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) The division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of lawyers outside the firm on the fee to be charged;
- (3) The client gives informed consent to the arrangement; and
- (4) The total fee is reasonable.

A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. See Comment [9] to D.C. Rule 1.5.

3 The American Bar Association Standing Committee on Ethics and Professional Responsibility issues formal advisory opinions interpreting the ABA Model Rules of Professional Conduct. Neither the ABA Model Rules nor the ABA’s Formal Opinions specifically govern the conduct of District of Columbia Bar members. However, to the extent the language of the D.C. Rules of Professional Conduct is the same as or similar to an ABA Model Rule counterpart, an ABA Formal Opinion interpreting the language may inform the analysis and conclusions of the D.C. Bar Legal Ethics Committee in issuing formal ethics opinions interpreting the D.C. Rules, and vice versa.

4 This article does not address instances where a lawyer identifies him- or herself as “of counsel” on court filings in a single case. In the absence of any other general “holding out to the public” of such a relationship, such conventional designation does not typically implicate the broader misrepresentation or imputed disqualification issues discussed herein. See also ABA Formal Op. 90-357 (1990).

5 ABA Formal Op. 90-357 (1990) notes that its analysis would also more broadly apply to other terms such as “special counsel,” “counsel,” “tax counsel,” or other designations that give the impression of a “close, regular, and personal relationship” between a lawyer and a firm.

6 See D.C. LEO 338 (2007). Importantly, the opinion reminds lawyers that pursuant to D.C. Rule 1.6, the of counsel lawyer or associated firm may need to obtain a client’s or potential client’s informed consent to disclose, with respect to any new matter, sufficient information to the other firm to facilitate both firms’ ability to check for potential conflicts. Although a client’s name and type of representation ordinarily do not constitute client “confidences or secrets” under D.C. 1.6(b), this information may require protection in certain circumstances. See e.g., D.C. LEO 312 (2002) (Information That May Be Ap-

propriately Provided to Check Conflicts When a Lawyer Seeks to Join a New Firm).

7 See also D.C. Rule 1.4(b). Indeed, Opinion 255 outlines an ethical roadmap in a similar relationship to facilitate avoidance of both a misleading impression of a regular and continuing relationship and conflicts imputation under D.C. Rule 1.10(a).

8 In D.C. LEO 352, the committee, addressing ethical issues that commonly arise for “temporary contract lawyers,” found that “[t]he imputation of a temporary contract lawyer’s individual conflicts to a hiring firm under D.C. Rule 1.10 depends on the nature and extent of the lawyer’s relationship with the firm and the extent of the temporary lawyer’s access to the firm’s confidential client information.” The opinion notes, however, that if the relationship between a lawyer and a firm is expected to last indefinitely, the lawyer is not a “temporary lawyer,” and the conclusions by the committee may not apply.

Disciplinary Actions Taken by the Board on Professional Responsibility Hearing Committees on Negotiated Discipline

IN RE ROBERT W. MANCE III. Bar No. 285379. October 26, 2011. The Board on Professional Responsibility’s Ad Hoc Hearing Committee recommends that the D.C. Court of Appeals accept Mance’s petition for negotiated discipline for four consolidated matters and suspend Mance for six months with fitness for violations of Rules 1.1(a), 1.1(b), 1.3(a), 1.5(b), 1.7(b), 1.8, and 1.16(d).

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE RICHARD D. LIEBERMAN. Bar No. 419303. October 7, 2011. The Board on Professional Responsibility recommends that the D.C. Court of Appeals accept Lieberman’s consent to disbarment.

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE DENNIS P. CLARKE. Bar No. 54353. October 13, 2011. The D.C. Court of Appeals approved Clarke’s petition for negotiated discipline and suspended him for 90 days, with all but 30 days of the suspension stayed, followed by two years of probation during which Clarke must not be found to have violated any Rules of Professional Conduct. If, however, a new investigation of alleged ethical misconduct is undertaken against Clarke from the beginning of the suspension period until the conclusion of the two-year probationary period, and any such investigation results in a finding that Clarke violated the Rules of Professional Conduct, Clarke will be required to serve

the remaining 60 days of the suspension consecutively to whatever sanction may be imposed against him in the new matter or matters. Clarke inflated billable rates for associate attorneys and paralegals who provided legal services to an individual client, in violation of Rule 8.4(c).

IN RE MICHAEL JOSEPH MASON. Bar No. 358684. October 20, 2011. The D.C. Court of Appeals reinstated Mason with conditions. The conditions agreed to by Mason include: (1) successful completion within one year of reinstatement of the mandatory Continuing Legal Education class required of all new admittees; (2) successful completion within one year of reinstatement of 12 hours of Continuing Legal Education in the subject areas of criminal law, criminal procedure, and evidence; and (3) consultation with the D.C. Bar Practice Management Advisory Service prior to reentry into private practice and the execution of a waiver of confidentiality to permit Bar Counsel to obtain information on compliance. In addition, pursuant to the court's authority, *see* D.C. Bar R. XI § 16(f), the court imposed a condition that Mason remain in compliance with his post-release supervision imposed by the state of Virginia and execute the necessary waivers of confidentiality required for Bar Counsel to obtain information on Mason's compliance.

IN RE DAVID H. SAFAVIAN. Bar No. 448540. October 13, 2011. The D.C. Court of Appeals disbarred Safavian, *nunc pro tunc* to November 13, 2006, excluding the period of August 13, 2008, to February 18, 2009, representing the time when the interim suspension was lifted. Safavian was convicted in the U.S. District Court for the District of Columbia of obstruction of justice, in violation of 18 U.S.C. § 1505, and of making false statements, in violation of 18 U.S.C. §

1001, crimes involving moral turpitude *per se* for which disbarment is mandatory under D.C. Code § 11-2503(a) (2001).

IN RE SHERYL L. ROBINSON WOOD. Bar No. 438953. October 13, 2011. The D.C. Court of Appeals approved Wood's petition for negotiated discipline and publicly censured her. The U.S. District Court, Eastern District of Michigan, Southern Division, appointed Wood as a monitor to evaluate compliance with two consent judgments involving the city of Detroit. Although Wood's position required her to remain neutral and independent from the parties, she had "undisclosed and personal communications with then Detroit Mayor Kwame Kilpatrick" from late 2003 through 2004, and intimate contact with the former mayor in early 2004. After the Michigan court confronted her with these facts, Wood voluntarily resigned as monitor on July 22, 2009. Rule 8.4(d).

Reciprocal Matters

IN RE MICHAEL A. KAPLAN. Bar No. 947499. October 6, 2011. In a reciprocal matter from New Jersey, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Kaplan for one year, all stayed in favor of a one-year probationary period subject to the conditions imposed in New Jersey.

IN RE MARK A. KEY. Bar No. 458725. October 6, 2011. In a reciprocal matter from North Carolina, the D.C. Court of Appeals imposed functionally equivalent reciprocal discipline and suspended Key for 90 days with fitness.

IN RE GABRIEL I. MARTIN. Bar No. 465046. October 6, 2011. In a reciprocal matter from Florida, the D.C. Court of Appeals suspended Martin for three years with fitness, *nunc pro tunc* to August 29, 2011.

IN RE RITU SINGH. Bar No. 493198. October 20, 2011. In a reciprocal matter from New Jersey, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Singh, *nunc pro tunc* to August 24, 2011. Singh was permanently disbarred by consent in New Jersey based upon her admission that she had knowingly misappropriated client trust account funds.

IN RE ROBERT TEIR. Bar No. 413171. October 6, 2011. In a reciprocal matter from Texas, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Teir for 18 months, all stayed in favor of an 18-month probationary period subject to the conditions imposed by the state of Texas that he not engage in professional misconduct or violate any state or federal criminal statutes.

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE JACK B. JOHNSON. Bar No. 344291. October 17, 2011. Johnson was suspended on an interim basis based upon his conviction of a serious crime in the U.S. District Court for the District of Maryland.

IN RE JEFFREY A. NEMEROFSKY. Bar No. 476841. October 11, 2011. Nemerofsky was suspended on an interim basis based upon discipline imposed in California.

Informal Admonitions Issued by the Office of Bar Counsel

IN RE HARRY TUN. Bar No. 416262. October 3, 2011. Bar Counsel issued Tun an informal admonition for disclosing a client's confidences and secrets without the client's knowledge or permission while representing the client in a criminal matter. Rule 1.6.

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

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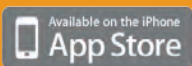
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2012 D.C. Bar Elections Open for Nominations

The D.C. Bar is accepting résumés from members wishing to be candidates in the 2012 Bar elections. The deadline for receipt of résumés is January 6.

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

Nominations may be submitted online at www.dcbar.org/inside_the_bar/structure/nominations, or mailed to the D.C. Bar Nominations Committee, Attn: Katherine A. Mazzaferri, 1101 K Street NW, Suite 200, Washington, DC 20005-4210.

In addition, the Nominations Committee will hold a public meeting at 12:15 p.m. on January 24 at the D.C. Bar headquarters, at which time members of the Bar are invited to speak briefly on their own behalf or on behalf of persons whom they propose for nomination. Anyone wishing to speak at that meeting should call Ms. Wynn at 202-737-4700, ext. 3221, to schedule time.

For more information, contact D.C. Bar Chief Executive Officer Katherine A. Mazzaferri at 202-737-4700, ext. 3220, or executive.office@dcbar.org.

Bar Seeks Nominees for 2012 Rosenberg, Marshall Awards

The D.C. Bar is calling for nominations for its 2012 Beatrice Rosenberg Award for Excellence in Government Service and 2012 Thurgood Marshall Award. Both awards will be presented at the Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting on June 19.

The Rosenberg Award is presented annually to a D.C. Bar member whose career exemplifies the highest order of

HONORING EQUALITY



The Hispanic Bar Association of the District of Columbia (HBA-DC) held its 34th Annual Equal Justice Awards Reception on November 10, honoring individuals and organizations that have made outstanding contributions to the Hispanic community. Pictured, from left, are HBA-DC president William Alvarado Rivera, HBA-DC incoming president Lyzka DeLaCruz, D.C. Superior Court Judge Hiram Puig-Lugo, and U.S. District Court for the District of Columbia Judge Ricardo M. Urbina.—K.A.

public service. The Bar established the award in honor of Beatrice “Bea” Rosenberg, who dedicated 35 years of her career to government service and performed with distinction at the U.S. Department of Justice and the U.S. Equal Employment Opportunity Commission. She also served as a member of the Board on Professional Responsibility.

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

rosenberg_info.cfm#criteria.

The Bar established the Thurgood Marshall award in 1993, which is presented bi-annually in alternating years. Candidates for the Thurgood Marshall Award must be members of the D.C. Bar who have demonstrated exceptional achievement in the pursuit of equal justice and equal opportunity for all Americans.

Nominations for both the 2012 Rosenberg and Marshall awards should be submitted to Katherine A. Mazzaferri, Chief Executive Officer, District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. The last day for submissions is February 10.

For more information about the Marshall Award, e-mail marshallaward@dcbar.org; for information on the Rosenberg Award, e-mail rosenbergaward@dcbar.org. Information for both awards can be found at www.dcbar.org/awards.

To learn more about the Bar's 2012

Celebration of Leadership, which will be held at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW, visit www.dcbar.org/annual_dinner.—*K.A.*

Superior Court Issues New Rule on Electronic Devices in Courtrooms

In November the Superior Court of the District of Columbia issued a new rule on the possession and use of electronic devices in courtrooms and hearing rooms.

Administrative Order 11-17 explains that while the court already had in place rules regulating cameras and recorders, advances in technology have made it possible for other electronic devices such as phones and computers to record images, sounds, or both.

"[T]echnology has made it possible to capture images or sound, or both, and to disseminate or broadcast them either immediately from the courtroom or at some point in the future, contrary to court policy," Chief Judge Lee F. Satterfield wrote in the order. "The use of such devices in the courtroom when not part of court proceedings may be disruptive to the court proceedings."

The order mandates individuals, including members of the media and students, to turn off all electronic devices before entering a courtroom. Pocket-sized electronic devices should also be turned off and put away so they are not visible. Bar members and other individuals who are authorized to sit in designated rows of the courtroom are exempt. Members of the media may be given permission by the presiding judge to use electronic devices for official business.

Individuals who violate these procedures may be ejected from the courtroom and found in civil or criminal contempt of court.

The administrative order in its entirety can be viewed by visiting www.dccourts.gov.—*K.A.*

Jack Keeney Sr. Dies at 89

On November 19 John C. "Jack" Keeney Sr., a legendary figure in the legal community, passed away at 89. For nearly six decades, he dedicated his career to the U.S. Department of Justice (DOJ), retiring in 2010 as deputy assistant attorney general for the Criminal Division.

His 59 years of service to the government made him the longest-serving federal prosecutor, serving under a dozen U.S. presidents and more than 20 attorneys general. During his tenure at DOJ, he helped build and expand the Organized

Crime Division as well as investigated major cases of fraud. He noted in an interview with *Washington Lawyer* that one of the most important projects he worked on was a treaty negotiation with Switzerland, which allowed the United States access to numbered Swiss bank accounts when needed during a criminal investigation.

John C. Cruden, president of the Environmental Law Institute and former D.C. Bar president, reflected on the years he worked with Keeney. "I worked down the hall from Jack for the last 20 years," he said. "He was for me the model of a DOJ prosecutor: intellectually confident, courageously determined, and fair in all matters. Jack often helped me through the thickets of bureaucratic webs, and often encouraged some idea I had which others disclaimed. And in all matters he led by example—his work ethic, his love of his family, particularly his grandchildren, and his commitment to justice. He was more than a mentor for me; he was the guide post by which I measured my own conduct. He set a standard of excellence that will not be surpassed."

Keeney's work was admired by those who knew him and often honored by his peers. Throughout his career, he has received the highest honors from numerous organizations. In 1990 he won the DOJ Criminal Division's Henry E. Petersen Award. By 1996, he had received both the Attorney General's Award from DOJ and the Beatrice Rosenberg Award for Outstanding Government Service from the D.C. Bar.

To honor Keeney, the Pennsylvania State University Dickinson School of Law will pay tribute by naming its Semester in Washington Program after its legendary alumnus.

Keeney is survived by five children, including John Keeney Jr., a former D.C. Bar president, Terence Keeney, Jeanmarie Keeney, Joan Keeney, and Kathleen Keeney, and four grandchildren.

"The D.C. Bar is profoundly saddened by the loss of Jack Keeney. His contributions to our profession and his service to the public provide tangible examples of the true meaning of service, integrity, and leadership," D.C. Bar President Darrell G. Mottley said.

Added Cruden, "He was widely admired as a public servant and loved as a friend . . . We will miss you, Jack. Godspeed."—*T.L.*

Bar Sections Announce Steering Committee Openings

The D.C. Bar sections are seeking members interested in steering committee positions for all of the Bar's sections. Members wishing to be considered should submit a Candidate Interest Form and résumé to the Sections Office by 5 p.m. Eastern Time on Thursday, February 2. All section members have been notified by e-mail or postal mail about the availability of Candidate Interest Forms, which can be found online at www.dcbar.org/for_lawyers/sections/section_elections/index.cfm.

Nearly all steering committee vacancies are for three-year terms. Each section has two, three, or four available positions. A list of vacancies can be found at www.dcbar.org/for_lawyers/sections/section_elections/vacancies.cfm.

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

The elections will take place in the spring of 2012, and the results will be announced in June. The winning candidates will assume their new steering committee roles on July 1.

For more information about the elections, visit www.dcbar.org/for_lawyers/sections/section_elections.

Former D.C. Superior Court Chief Judge Hamilton Dies

Eugene N. Hamilton, who served 30 years on the bench and was the second African American to serve as chief judge

of the Superior Court of the District of Columbia, died on November 19 at the age of 78.

Hamilton was born in Memphis where he attended public schools before receiving degrees from LeMoyne College and the University of Illinois.

Following law school,

Hamilton served on active duty in the U.S. Army as a Judge Advocate General Officer. He then joined the Civil Division of the U.S. Department of Justice as a trial attorney, working there until his appointment to the Superior Court in 1970.



Courtesy of the D.C. Superior Court

Eugene N. Hamilton

“He was a man of many talents who led our court during the crucial years of revitalization. His commitment to the children of D.C. was evident in his final days, as he ruled on a case involving a child abandoned at Children’s National Medical Center, ensuring he got the treatment he needs,” said Superior Court Chief Judge Lee F. Satterfield.

Hamilton served in every division of the Superior Court and was a member of the D.C. Courts’ Joint Committee for Judicial Administration, the governing body of the courts, from 1991 to 2000. In 1993 Hamilton became the second African American to serve as chief judge of the D.C. Superior Court.

For the next 15 months, Hamilton served as chair of the Mayor’s Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform.

Hamilton was a former member of the executive committee of the National Conference of State Trial Judges of the Judicial Administration Division of the American Bar Association. He also served as chair of the Continuing Legal Education Advisory Board at Georgetown University Law Center, and was on the faculty at Harvard Law School as a

lecturer on law.

Among the awards and recognition Hamilton received were the United Black Fund’s Calvin W. Rolark 2000 Humanitarian Award, University of Illinois Liberal Arts and Sciences’ Alumni Award, Washington Bar Association’s Charles Hamilton Houston Medalion of Merit, and Greater Washington Urban League’s Whitney M. Young, Jr. Community Service Award.

He also was the recipient of an honorary doctor of law degree from the University of the District of Columbia David A. Clarke School of Law.

Hamilton is survived by his wife, Virginia David Hamilton; nine children, Alexandra Evanzz, Steven Hamilton, James Hamilton, Eric Hamilton, David Hamilton, Rachael Hamilton, Jeremiah Hamilton, Michael Hamilton, and Marcus Hamilton; 15 grandchildren; and one great-granddaughter.—*K.A.*

Bar Conducts Judicial Evaluations

The District of Columbia Bar Judicial Evaluation Committee (JEC) is conducting its 2011–2012 evaluation program. Attorneys are invited to provide feedback on the performance of certain judges who

preside over the D.C. Court of Appeals and D.C. Superior Court.

The JEC invites all active D.C. Bar members who reside/work in the Washington metropolitan area to complete evaluations for judges before whom they have appeared in the past two years (November 1, 2009, to October 31, 2011). The link to the survey has been e-mailed to all eligible D.C. Bar members. *All participants will remain anonymous.* The deadline for responses is 10 p.m. EST on January 13, 2012.

The following eight Court of Appeals judges will be evaluated this year: Michael W. Farrell, John R. Fisher, Theodore R. Newman, Kathryn Oberly, William C. Pryor, Frank E. Schwebel, John A. Terry, and Annice Wagner.

The following 25 Superior Court judges will be evaluated this year: Judith Bartnoff, Leonard A. Braman, Patricia A. Broderick, A. Franklin Burgess Jr., Arthur Burnett Sr., Zoe Bush, Erik Christian, Laura Cordero, Rufus G. King III, Neal E. Kravitz, Lynn Leibovitz, Jose M. Lopez, Cheryl M. Long, Juliet McKenna, Stephen G. Milliken, Florence Pan, Rhonda Reid Winston, Maurice Ross, Linda D. Turner, Paul R. Webber III,

The 2011 Cohen & Cohen, P.C. Mock Trial Competition

Congratulations to Winners Laura Mazor and Michael Smith!

Cohen and Cohen, P.C. proudly sponsored the 9th Annual Cohen & Cohen, P.C. Mock Trial Competition at the George Washington University Law School. The competition was officiated by the honorable Judge Charles T. Price. A record number of upper level law students competed in the contest. The Cohen & Cohen, P.C. Mock Trial Competition provides a forum for soon to be lawyers to compete and showcase their trial skills.



From Left to Right: Laura Mazor, Dean Paul Berman, Judge Charles Price, Wayne Cohen, and Michael Smith.



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Ronald P. Wertheim, Susan R. Winfield, Peter H. Wolf, Melvin R. Wright, and Joan Zeldon.

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

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

Judge Griffith Explores Power of Congress in D.C. Circuit

On November 15 Judge Thomas B. Griffith of the United States Court of Appeals for the District of Columbia Circuit delivered this year's Harold Leventhal Lecture, focusing his speech on the power of Congress in the D.C. Circuit.

Originally, Griffith was planning to provide a comprehensive review of the Senate's history as a litigant before the D.C. Circuit, but when confronted with so many cases, Griffith joked that he realized he bit off more than he could chew.

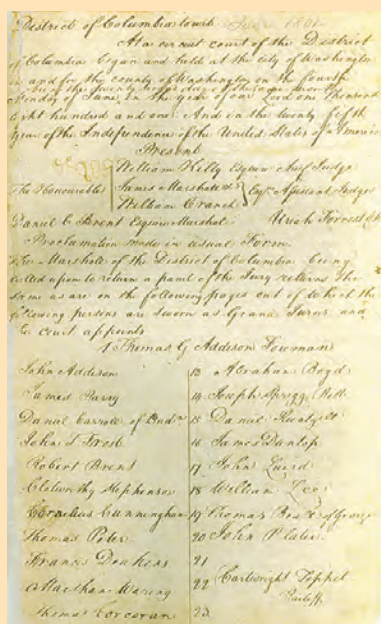
Instead, Griffith focused on a comparison of the D.C. Circuit's 1974 decision in *Senate Select Committee on Presidential Campaign Activities v. Nixon* and the U.S. Supreme Court ruling in *United States v. Nixon* that same year. At the center of the cases was the issue of whether President Richard Nixon had to surrender the now infamous White House tapes. The D.C. Circuit ruled that Nixon did not have to give up the tapes, but was overturned by the Supreme Court.

In both cases, the decisions were unanimous. Why did the Senate lose and the special prosecutor win, Griffith asked. "Why did the court find the Senate's asserted need for the tapes less compelling than the needs of the criminal justice system?"

In the D.C. Circuit case, the court rejected the argument of the Senate Select Committee that Congress needed the tapes to make informed decisions about enacting campaign finance laws and what details the laws should contain. On the other hand, in *United States v. Nixon*, the special prosecutor was able to convince the Supreme Court to reject Nixon's assertion of executive privilege.

"These contrasting instances provide,

DOCUMENTING HISTORY



Historical Society for the D.C. Circuit

What is the first recorded act of the District of Columbia Circuit Court when it was first convened in June 1801? Answer: It appointed a grand jury. The three judges of the then newly created D.C. Circuit Court named a foreman, 20 jurors, and a bailiff from among the District's 8,100 residents. Even though Maryland and Virginia had ceded the land to the federal government in the early 1790s, it remained within the jurisdiction of each state until December 1800. The Historical Society of the District of Columbia Circuit has recently obtained a copy of this earliest entry with the help of Robert Ellis, the archivist for judicial records at the National Archives.—T.L.

I will argue, insight into the judiciary's notions of societal values, and they also provide fodder for rumination of the proper role of the courts under the Constitution," Griffith said.

Griffith debated whether the need for information was higher in the criminal justice system than in Congress. "Perhaps the criminal justice system implicates core concepts of individual liberty that we value more highly than informed legislation by the elected representatives," he pondered.

However, he said legislation can have real effects on people's liberties. "Giving proper weight and deference to Congress' needs for information to legislate is vital to ensure its vibrancy among the branches."

The aftermath of the Nixon case,

Griffith said, was that the D.C. Circuit became more hesitant to intervene in legislative and executive branch disputes.

The Leventhal Lecture was moderated by Michael Stern, cochair of the D.C. Bar Administrative Law and Agency Practice Section.—T.L.

Raising the Bar Campaign Draws More Support From Local Firms

Since its launch in December 2010, the D.C. Access to Justice Commission's Raising the Bar in D.C. Campaign has nearly tripled its number of supporters, with 22 law firms pledging a percentage of their revenues to local legal services providers.

"The law firm community has responded enthusiastically to the campaign. The growing list of participating firms includes firms of all sizes that have committed to helping increase access to quality legal services to the underserved population," said Jessica Rosenbaum, the commission's executive director. "We are deeply grateful to the private bar for stepping forward in this time of urgent need."

With the support of the D.C. Bar Foundation and the D.C. Bar, the initiative was developed to substantially raise financial support to the District's legal services community by establishing benchmarks for law firm giving and recognizing law firms that generously give at those levels.

The campaign recognizes three levels of giving: platinum, gold, and silver. The platinum level signifies those that donate at least .11 percent of their office revenue. Those on the gold level have pledged .09 percent, and silver recognizes firms that donate .075 percent. The percentage includes cash donations, donated attorney's fees, and support for fellowships.

"District law firms are unparalleled in their commitment to providing pro bono and financial support to serve the legal

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needs of indigent District residents,” said Andrew Marks, Access to Justice commissioner and partner at Crowell & Moring LLP. “The private bar recognizes that District communities living in poverty are in crisis, and is stepping forward to dramatically increase resources to serve those most in need.”

Law firms in the Leadership Circle and that pledge to donate funds at one of the three levels in 2011 are Akin Gump Strauss Hauer & Feld LLP; Arnold & Porter LLP; Arent Fox LLP; Banner & Witcoff, Ltd.; BuckleySandler LLP; Covington & Burling LLP; Crowell & Moring; Delaney McKinney, L.L.P.; DLA Piper LLP; Jenner & Block LLP; Jones Day; Kirkland & Ellis, LLP; Klein Hornig LLP; Law Offices of Gary N. Horlick; Mayer Brown LLP; McDermott Will & Emery LLP; McKenna Long & Aldridge LLP; Sidley Austin LLP; Steptoe & Johnson LLP; Sutherland Asbill & Brennan LLP; Wilmer Cutler Pickering Hale and Dorr LLP; and Zuckerman Spaeder LLP.

R. Bruce McLean, partner and chair at Akin Gump, said “D.C. law firms take seriously their obligation to ensure equal access to justice. As a matter of principle, we share a commitment to helping those who are most vulnerable.”

Firms that donate at a benchmark level in 2011 will be honored during a ceremony in early 2012. For more information or to join the campaign, contact Rosenbaum at 202-344-4441 or jess.rosenbaum@dcaccessjustice.org.—*T.L.*

Superior Court Fields Juror Questions Through Live Chat

District of Columbia residents who have questions about jury duty can submit their queries online and get immediate responses through a live chat feature on the D.C. Superior Court’s Web site.

Implemented in November, the live chat service is available weekdays from 10 a.m. to noon and from 2 to 4 p.m. Messages submitted at other times are answered through e-mail.

“The court relies on jurors to ensure the right to a trial by a jury of one’s peers. We try to make jury duty as convenient as possible and have an online system for registering, checking on last date of service, and deferring jury service to a more convenient date,” Superior Court Chief Judge Lee F. Satterfield said. “The live chat feature is just the most recent step in many efforts to be as accommodating as we can

to potential jurors. We still answer questions by phone, but some prefer to e-mail questions and we thought this approach would be a good addition.”

As of November 16, Superior Court Jurors’ Office staff had responded to more than 220 questions online on topics such as jury service deferrals, juror numbers, the online juror registration/deferral system, and amenities available to those serving jury duty.

To use the court’s live chat service, go to www.dsc.gov/dccourts/superior/special_ops/jurors.jsp.—*K.A.*

Corporate Counsel Group Seeks Nominations for Recognition Program

The Association of Corporate Counsel (ACC) is seeking nominations for its newly created ACC Value Champions, which honors law departments and law firm leaders who have worked to implement best practices that improve the

value of legal spending.

The recognition program is part of the larger initiative ACC Value Challenge, which aims to reconnect the value and cost of legal services. About three years ago, the ACC wanted to help start a conversation about how best to apply traditional business principles to the delivery of legal services to ensure the greatest value to an organization’s clients. Since then, the ACC has dedicated a lot of resources to the effort, including posting practical tips online.

“We want to identify and celebrate those who have gone within their departments and done work on this on the ground—actually, in the trenches—and taken those principles and applied them in their business functions in a way that drove real change for their client,” said Amar D. Sarwal, vice president and chief legal strategist at the ACC.

ACC Value Champions are innovative leaders who developed or expanded programs that have helped an organization reduce its costs to corporate clients while still achieving strong profits.

“They don’t just talk the talk. They walk the walk,” Sarwal added. He emphasizes, however, that ACC Value Champions do not have to be the “Steve Jobs types” at their company. “There are those folks, too . . . but they are also people who do things that are replicable on the ground level,” he said. “They don’t have to change the world and [have] created the iPhone. What they needed to have done is driven value in a measurable way for their company.”

Nominations should include the scope and duration of the project as well as any management tactics, tools, templates, or dashboards used or developed in the process. The project can either be part of a multiyear effort or a single project that has produced measurable results.

Law department leaders (both outside and inside counsel) can be nominated or nominate themselves for in-house team projects that did not involve a law firm or firms. Law department and law firm leaders can co-nominate firm/client partnerships.

The ACC is the world’s largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations, and other private-sector organizations around the globe.

Nominations are due by March 15 and will be reviewed by the ACC staff and

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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 District of Columbia practice offered by the D.C. Bar Continuing Legal Education Program.

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

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

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

The preregistration fee is \$219; the onsite fee is \$279. Upcoming dates for 2012 are January 7, February 7, March 10, April 10, May 12, June 5, and July 14. Advanced registration is encouraged.

For more information or to register online, visit www.dccbar.org/mandatorycourse.



CCE Report: Joblessness Among Previously Incarcerated Impacts District's Economy, Safety

Joblessness among District of Columbia residents who have previously been incarcerated is exacerbating the city's already high unemployment rates, raising the possibility of a return to crime, and threatening public safety, according to a report released in November by the Council for Court Excellence (CCE).

The report, "Unlocking Employment Opportunity for Previously Incarcerated Persons in the District of Columbia," is the first major study to document unemployment among the previously incarcerated and to offer solutions for addressing the problem. D.C. Council members joined D.C. Chamber of Commerce president and chief executive officer Barbara Lang and others on November 17 when CCE presented the report.

The study shows that about 10 percent of the District's current population, or an estimated 60,000 people, have criminal records. About 8,000 people return to the District each year after being released from prison or jail; statistics suggest that within three years, about 4,000 of them are reincarcerated.

"A steady flow of individuals into our communities who are short on skills and face barriers to getting a job is likely to create unemployment challenges for years to come. The possibility of criminal behavior related to lack of opportunity could present ongoing challenges in preserving public safety," reads the report.

'Collateral Consequences'

Since 2005 CCE, a nonprofit organization that works to improve the administration of justice in local and federal courts, has been addressing the issue of "the collateral consequences for persons with criminal records" as part

of its justice system reform efforts.

In 2006 CCE proposed the D.C. Criminal Record Sealing Act, which was subsequently adopted by the city council. CCE held a public forum in 2008 on the effects of the Revitalization Act, which had made significant changes to the criminal justice system. Out of these efforts grew the organization's D.C. Prisoner Reentry Initiative, and starting in 2009, the putting together of a report.

"The committee [behind the report] was composed of our board members, people from the D.C. Chamber of Commerce, advocates for former offenders, and law enforcement and corrections workers. It seemed to us that these were the major groups that would have ideas about what might be accomplished. We wanted to try to get consensus from this group about what we could do to identify and promote legislation and policy," said Peter Willner, CCE's senior policy analyst.

The report is based on the responses of 550 previously incarcerated individuals in the District concerning their employment challenges, as well as on in-depth interviews with nearly 20 District employers and representatives of local business associations.

While the major barriers to reentry into society for the previously incarcerated include health care, housing, and substance abuse, the committee decided to focus solely on employment.

"Fixing the whole reentry system is not realistic, so we began to focus more narrowly on the subject of employment and its close relationship to recidivism," said June Kress, executive director of CCE.

The executive summary of the report echoes Kress' sentiments. "While the lack of a job is only one factor leading to recidivism, research shows that when the previously incarcerated have stable employment they are less likely to return to crime and public safety improves," it states.

Dim Prospects

For Willner, the results generated by the survey were not entirely unexpected, but some still managed to surprise him.

"One of the report's findings that I found interesting was that one of the most frequent types of jobs that

respondents reported having were positions of trust, such as a manager or supervisor. A third of those people had been convicted of a crime of violence or a fraud-type of crime. To me that counters the view that someone who has committed this type of crime could never be employed in a position of trust," he said.

Among the report's other findings: 46 percent of those surveyed said they were unemployed; 80 percent said they were asked "all the time" about their criminal record while looking for a job; there was little or no difference in unemployment rates for those who earned a GED or job certificate before or after prison and those who did not; and 77 percent said they received no assistance from "anyone at the facility" in helping them look for a job.

After analyzing the survey results, CCE came up with the "5 percent solutions," which are intended to be used as "part of an overall policy to improve employment prospects for the previously incarcerated."

"With the 5 percent solutions, the idea is that if you have things like liability protection and certificates of good standing, you aggregate small changes over time," said Willner.

Call for Action

The solutions Willner alluded to involve the D.C. Council enacting liability protection for employers who hire previously incarcerated persons to "help minimize the risk of negligent hiring lawsuits when businesses employ those with a criminal record."

CCE is also proposing for D.C. criminal justice system agencies to consider establishing a "certificate of good standing" program to promote licensing and hiring of previously incarcerated persons.

Other solutions listed in the report are for the D.C. Justice Grants Administration to annually review the performance of D.C. government contracts and grants related to reentry and develop a compendium of best practices to better direct future reentry funding; for the Federal Bureau of Prisons and, if necessary, the Court Services and Offender Supervision Agency and U.S. Parole Commis-

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Off the Beat

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sion to regularly review and revise employment programming available to D.C. residents based on current employment trends and job forecasts; and for the D.C. Superior Court to not establish a reentry court.

Getting liability protection legislation passed will be the first part of implementing CCE's recommendations. According to Kress, Councilmember Phil Mendelson (At-Large)

has already publicly said that he is ready to proceed with a bill in January. Kress said she doesn't anticipate much of a challenge since the D.C. Chamber of Commerce is on board.

While CCE issued the report with the purpose of informing D.C. policymakers and business leaders of its recommendations and urging action on them, the other purpose of the study is to educate the community of the effects of a criminal record on obtaining employment.

"In addition to the specific recom-

mendations, we really wanted to educate a vast part of the city about this issue. Wards 7 and 8 have a first-hand understanding of the collateral consequences of incarceration, but there are other parts of the city where people really don't know about it," Kress said. "So the report was intended to educate people and to show that there are economic implications if we don't address this issue. After a three-year period, many people go back to being incarcerated because they can't find jobs, which really hurts the city overall."—*K.A.*

Legal Beat

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ACC Value Challenge steering committee members. Winners will be announced in spring 2012. To access the nomination form or for more information, visit www.acc.com/valuechallenge/valuechamps/.—*T.L.*

Superior Court Celebrates 25th Annual Adoption Day

With children excitedly tugging on their own balloons and families happily scrambling for their seats in the atrium, the Superior Court of the District of Columbia commemorated its 25th Annual Adoption Day on November 19.

The event celebrated the finalization of 29 adoptions, as well as encouraged others to open their hearts and families to adopting or fostering a child in the city's public child welfare system.

"Let me express my appreciation for the children and families for inviting myself and others to participate in their celebration," said Debra Porchia-Usher, interim director of the D.C. Child and Family Services Agency. "This is a demonstration of their commitment to each other for a lifetime. They have agreed to participate in this journey together as they begin to reconfigure their families, as they begin to learn how to love each other, as they begin to learn how to help each other grow."

Adoption Day 2011 began with speeches from D.C. Superior Court judges, including Chief Judge Lee F. Satterfield, family court presiding Judge Zoe Bush, Associate Judge Juliet J. McKenna, and Senior Judge Bruce S. Mencher. The crowd also heard from the District's

RAISING AWARENESS AND FUNDS



Steven E. Purcell

Equal Justice Works held its 25th Anniversary Gala, featuring guest speakers U.S. Attorney General Eric H. Holder Jr. (pictured), NBC's *Meet the Press* moderator David Gregory, and Massachusetts Governor Deval Patrick. The gala raised a record \$2.7 million to support the creation of public interest opportunities for law students and lawyers.—*K.A.*

deputy mayor for Health and Human Services, Beatriz Otero, and Renette Oklewicz of the Freddie Mac Foundation.

The ceremony featured musical acts from local children that brought some in the audience to tears while others quietly sang along. "There can't be a happier place in the city right now," said Oklewicz, who later presented a video montage of adoption at the court over the past 25 years.

Barbara Harrison, NBC4 news anchor and a regular to Adoption Day, emceed the ceremony as judges signed the adoption decrees. Harrison spoke about each family and the child who had found his or her "forever family." To complete the

adoption, the families were joined by the judge who oversaw their case, as well as their social worker.

"The family is society's most fundamental unit for human happiness. Every child deserves to be a member of a loving and nurturing family," said Judge Mencher, who helped develop the Superior Court's first Adoption Day in 1987. "For many children, this becomes possible only in an adoptive family. Adoption brings to both children and parents joy beyond measure."—*T.L.*

Reach D.C. Bar staff writers Kathryn Alfisi and Thai Phi Le at kalfisi@dcbbar.org and tile@dcbbar.org, respectively.

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Financial Finesse

When Shrinking Assets Require New Fiscal Strategies

BY SARAH KELLOGG

As the economics of the legal profession have churned in recent years, attorneys have watched their personal fortunes fall and rise and fall again, the result of a fickle economy, law firm downsizing, and a convulsing stock market. There is no doubt the home mortgage crisis and the ensuing economic collapse have produced a financial climate that is marked by dread and skepticism. And the financial markets—difficult enough to maneuver when they are bullish—have become nearly impossible to forecast as a hiccupping bear.

For attorneys, the toll has been remarkably harsh. Between 2008 and 2011, the average net worth for attorney households declined by more than 30 percent nationwide, and the number of lawyers with a net worth of \$1 million or more shrank by 22 percent, according to recent surveys. Meanwhile, attorney households saw the value of their primary residences shrink by some \$200,000 between 2008 and 2011.

Attorneys who are reluctant to open their quarterly missives detailing the state of their investment portfolios can take heart—they're not alone. The average American family's household net worth declined 23 percent between 2007 and 2009, according to "Surveying the Aftermath of the Storm," a March 2011 report from the Federal Reserve Board examining the effect of the economic collapse nationwide.

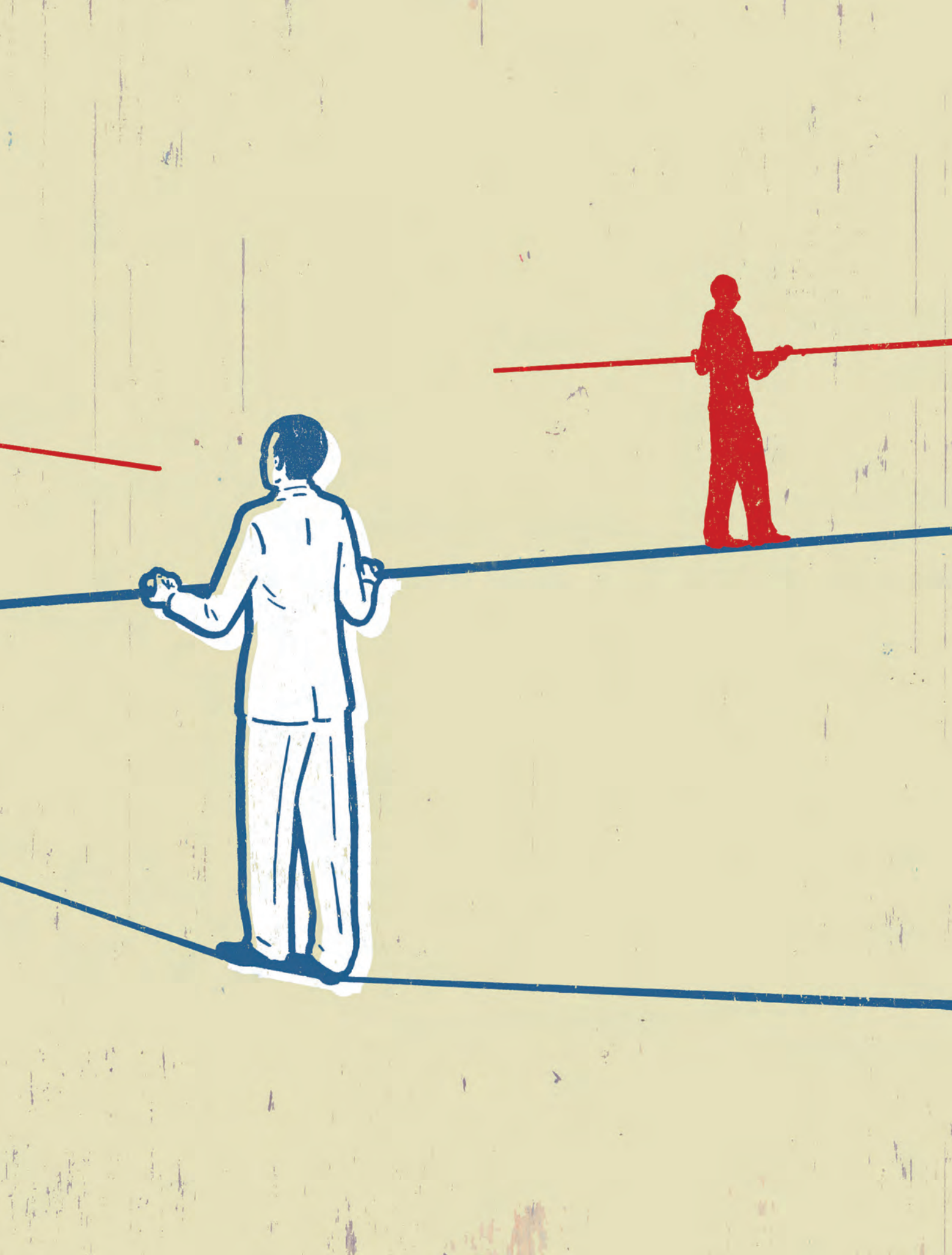
Financial experts believe that the decline in personal wealth in attorney households is obviously a factor of the current state of the economy, but it also suggests that attorneys may not be doing enough to manage their own wealth and would benefit from additional instruction and guidance from an outside professional, one with substantially more experience and success at dodging the landmines of a bad economy.

And that help might be arriving just in the nick of time. Money coaches believe there is no end in sight to the current economic rollercoaster ride, making it even more difficult for amateur investors—no matter their educational pedigree—to pick winners and avoid losers. The complexity of today's erratic economy demands far more financial knowledge and nuance than the heady days of the 1990s when attorneys saw their personally managed investments shoot the moon.

"In a volatile and range-bound market like [the one] we have been in for the last decade, and perhaps will be in for the next several years, you obviously want to depend quite a bit less on the market's direction for return," says Robert S. Scherer, manag-



Images by Dan Page/theispot.com



ing director at The Scherer Group at Graystone Consulting, a Washington, D.C., financial consulting firm. “Instead, it is never more important to be diversified and to have investment managers that exhibit skill and use that skill to be flexible, to employ a wide opportunity set, and to be equal parts opportunistic and risk-sensitive as prices and values dictate. There are many examples of portfolios that have been able to navigate the last decade successfully using these tactics and capabilities.”

Wealth advisors say the challenge today for lay investors managing their own portfolios is finding the proper balance, not necessarily of asset categories but rather of self-certainty in their decision making. Attorneys and other sophisticated professionals often fall victim to a fatal overconfidence when devising their financial plans because they are highly educated, entrepreneurial, and confident of their infallibility.

“With some attorneys, there’s the disease of hubris,” says Marvin H. McIntyre II, managing director of the Capitol Wealth Management Group at Morgan Stanley Smith Barney in Washington, D.C. “There’s a strain of that affliction that also tends to be in the medical profession and in the accounting profession. They’re making tough decisions in the workplace, and they figure they know all of the alternatives and the degree of risk they’re taking in their portfolios and strategies. I guess they’re fine until they’re not, but really, how do they keep up with everything they need to know as investors and still bill 80 hours a week?”

It’s a question for many attorneys as they look to manage their often-substantial portfolios while juggling hectic professional and personal schedules. Even for financial advisors, keeping in touch with ever-changing financial strategies influenced by the creaky world economy, the machinations of Congress, and the whims of other investors is difficult. Who can really blame skilled attorneys for trusting their own proven gut instincts and work ethic before seeking assistance from outsiders in guiding their portfolios? Yet logic demands careful consideration and an unbiased approach to creating a financial strategy for a lifetime.

“Professional service people, especially lawyers, are indeed different from other segments of the workforce in that [so many of them] generally bill by the hour,” Scherer says. “Thus, there is a more direct connection to the adage that ‘the harder you work, the more successful you are, and the more money you can make.’ That means you probably have less time to devote to looking after your own life, including money and retirement. Lawyers, if anyone, are the most logical candidates to have a professional advisor who pays attention 24-7-365.”

Financial planning isn’t a hobby for late nights or Saturday mornings before the kids’ soccer game while hunched over a laptop, experts say. Nor is it an activity that should be governed by pride or emotions. Money coaches recommend hiring a profes-

sional advisor, of course. But equally important is committing yourself to a lifetime of learning about investing and financial self-sufficiency. When financial well-being is at stake, for you and your family, it is better to set aside ego and bring the professionalism of the workplace to bear on the drafting and execution of an unflinching financial plan.

More Years, More Money

In this era of economic retrenchment and uncertainty, the time-honored principles of retirement planning and the philosophies that rule ambitious investors have evolved to reflect the reality of the 21st century—nothing is certain, except change and periodic bouts of investment grief.

Americans are living longer today than at any point in history, and that poses challenges for retirement planning. Where men once only lived into their sixties, improved education and health care have resulted in longer life spans. From 1980 through 2007, life expectancy at birth in the United States increased from 70 years to 75 years for men and from 77 years to 80 years for women, according to the Centers for Disease Control and Prevention. The gap in terms of race also diminished during that period, narrowing from eight years to six years between white males and black males, and from six years to four years between white females and black females.

And extreme longevity is more than a circus act these days. More Americans are living to 90 and beyond, and by 2050, there could be nearly 9 million people 90 or older in the United States, the U.S. Census Bureau reports. In fact, the number of 90-year-olds nearly tripled between 1980 and 2010, rising from 720,000 to 1.9 million. Of that figure, 74 percent were women.

Living longer, Americans also are deciding to work longer, both by choice and out of necessity. The seventh annual Retirement Survey by Wells Fargo concluded that 80 really has become the new 65. Setting a goal to retire at a specific age—the customary target of 65—is now a dated concept, due in no small part to the federal government’s decision to implement a retirement age that has been steadily creeping upward for the baby boomers. Social Security’s full retirement benefits kick in at age 65 for individuals born in 1937 or earlier, 66 for those between 1943 and 1954, 66 and change for those between 1955 and 1959, and 67 for those born in 1960 and later.

With the government pushing individuals to work longer, many Americans are complying and choosing work over retirement. Seventy-six percent of those polled by Wells Fargo said they expect to work until they have saved enough money to retire, regardless of their age. Only 20 percent believed it is better to retire at a specific age, whether they have enough savings or not.

Moreover, traditional retirement savings arrangements have



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Marvin H. McIntyre II, managing director of the Capitol Wealth Management Group

evolved in recent years. The defined benefit retirement plan, a staple of major company benefits two decades ago, is in decline as employers try to limit their future financial responsibilities. Instead, they offer the defined contribution retirement plan, shifting the risk of prudent investing to employees. Between 2007 and 2011, the number of employers who offered defined benefit pension plans declined from 40 percent to 22 percent, while the number offering defined contribution retirement plans rose from 83 percent to 93 percent, according to the 2011 Employee Benefits report from the Society for Human Resource Management.

With many Americans looking at longevity and an extended work life, wealth advisors say financial strategies need to be adjusted to reflect these realities. When it comes to investing, despite flashy stories to the contrary during the boom years, slow and steady wins the day. Experts know that may not appeal to high-flying professionals who yearn for 20 percent annual returns, but it is a no-nonsense approach to financial planning—and it works.

“One reason we like working with lawyers is most of them are fairly bright and they catch on fast. Once you point out the logic of what you’re recommending, they usually say go ahead,” says Alexandra Armstrong, chair and founder of Armstrong, Fleming & Moore, Inc., a Washington, D.C., financial consulting firm.

“I’ve always said that the type of law someone practices really influences how they invest or at least view investing,” Armstrong adds. “Litigators are comfortable with risk, while estate planning lawyers, because they’re patient people, they want to move methodically through the decision-making process. A public utility lawyer is used to debating something for five years before it gets resolved.”

Putting off critical financial planning decisions until later in life may be human, but it can be risky. The hair-trigger market combined with high unemployment, debt troubles in Europe, government debt, and wage stagnation all contribute to an unstable climate where wealth can be wiped out in a flash. Grand slams in investing can happen with amateurs, but they shouldn’t be depended on to build family financial security.

For example, Michael J. Johnston, who recently retired as executive vice president of The Capital Group Companies, Inc., a Los Angeles-based mutual fund manager that is second in size to Fidelity, says a savvy investment advisor could find new prospects in the market now and next year, taking advantage of opportunities that will emerge from pent-up consumer demand for houses, cars, and appliances. However, he notes that monetary gossip or risk-averse tactics that often drive market whims and deflate portfolios might more easily influence an inexperienced hand.

“At times like this, when there’s so much bad news, any scrap of bad news is amplified and people react,” Johnston says. “If we were not depressed but manic instead, any scrap of good news would be amplified and people would react.”

Early Career Years

Understanding the life cycle of financial planning for attorneys is critical to developing a foundation for wealth management across a lifetime. At each career stage, individuals must set financial goals

that are practicable and aspirational, always with an eye toward guarding against unforeseen events while preparing for retirement.

First, young lawyers must save money. Newly minted attorneys, fresh from law school and eager to embrace a legal career and their new salaries, may be impatient to spend their much-deserved earnings, but wealth coaches counsel moderation and sacrifice. Retirement might seem like a distant shore, and contingency planning seems frivolous for those in full health with nary a cloud in the sky, but everyone needs to start somewhere.

“It’s all about balance in your twenties,” says Steven Thalheimer, a certified financial planner and owner of Thalheimer Financial Planning in Silver Spring, Maryland. “Hopefully, right out of school, they’ll start earning a decent salary. They’ll have to live frugally for a few years to concentrate on the repayment of their college loans, but they should not give up saving for the longer and shorter term. At this age, the balance is between living, saving, and paying down debt.”

Money coaches say the most important factor in financial planning at this stage is establishing good financial habits. After years of financial deprivation, a spending spree is quite naturally in the offing, and young lawyers could spend their first few months of financial solvency buying cars, clothes, and homes to decorate their new lives. Even less lavish spending can drain checking accounts as new lawyers in pricey Washington try to live within their means, more or less.

Thomas A. Haunty, coauthor of *Real Life Financial Planning for Young Lawyers: A Young Lawyer’s Guide to Building the Financial House of Their Dreams*, encourages young attorneys to restrain their desires to spend excessively on the trappings of the lawyer lifestyle—rich dinners, high-priced tech devices, and trendy vacations—even if they balk at his staid advice. “When they get out of school, I encourage them to live on 80 percent of what they make and park away 20 percent,” says Haunty, a senior partner at North Star Resource Group, a financial consulting firm in Madison, Wisconsin.

It’s at this stage where the much talked about magic of accumulation really begins. If the goal is to have \$1 million at



In this era of economic retrenchment and uncertainty, the time-honored principles of retirement planning and the philosophies that rule ambitious investors have evolved to reflect the reality of the 21st century—nothing is certain, except change and periodic bouts of investment grief.

“Lawyers tend to live a really big lifestyle because they have this big income. To sustain that lifestyle, they really need to do the math and start planning early. If somebody is making \$300,000 today . . . and they want to live that way in retirement, they’ll have to put away close to \$8 million by the time they retire.”

Annette F. Simon, principal with the Garnet Group

retirement—a conspicuously modest goal for most professionals today—then a young attorney with more than 30 years to save can reach that goal by putting aside \$158 a month, benefiting from compounding interest and a lifetime of disciplined saving. If attorneys delay their monthly savings strategy until they reach 35, that monthly nut becomes \$442, and at 45 it jumps to \$1,300. If an attorney fails to lock into a retirement savings plan until he or she reaches 55, the monthly savings rate is more than \$4,000. When contemplating a lifetime of savings, the earlier the better.

At an earlier point in their financial lives, young attorneys should be fully participating in their employer’s tax-deferred saving plans, a qualified 401(k) or 403(b). For 2012 the Internal Revenue Service set the maximum amount an employee can contribute to one of these plans at \$17,000. For those 50 or older, the catch-up contribution in 2012 is \$5,500. These plans provide the foundation for a strategy of aggressive investing and saving for the long term.

Financial advisors suggest that one easy tip for increasing savings contributions over time is setting aside a portion of annual salary increases for savings. The best candidate for those dollars is a cash account for contingencies where individuals should set aside between three to six months of their annual earnings.

Next to adopting a two-pronged savings strategy—one line of savings for retirement and another for contingencies—a critical component of financial management for young lawyers is managing debt. Student loans are an emotional and financial burden, with many young lawyers carrying a load between \$100,000 and \$150,000 in law school and undergraduate debt. Financial advisors debate whether recent graduates should race to pay off their loans quickly or leverage the low interest rates and liberal repayment schedules. Often a young lawyer’s tolerance for carrying debt is a determining factor.

Everyone agrees, however, that the first financial action to take with student debt is consolidation. By rolling the loans together into a single note with a low interest rate, young lawyers save money and hassles. “With younger lawyers, it’s about explaining the basics,” Haunty says. “When they come out of law school, they’re so freaked out with their student loan debt, they say they’ve got to pay it off immediately, but that’s not necessary. I try to tell them their biggest problem isn’t debt. It’s accumulating assets.”

For lawyers with young children, this is a prime time to establish a college savings plan to set aside money for their educational futures. Regardless of whether the children want to go to a public or private school, these types of 529 savings plans—the District of Columbia, Maryland, and Virginia all have college savings plans—frequently have tax benefits and provide a simple method for saving. As usual, it is key to consider personal financial goals and the expenses and risks associated with these plans before investing.

Midcareer Years

For lawyers at midcareer, financial planning should be more about growing their net worth than establishing a fiscal foundation. With large, successful law firms, partners have the oppor-

tunity to generate significant amounts of discretionary cash to finance their lives and channel into their savings. Of course, this is the time when prosperous attorneys also invest in boats, country club memberships, and vacation homes. Those purchases are reasonable, and even deserved by many accounts, as long as they maintain their commitment to savings, financial advisors say.

“Lawyers tend to live a really big lifestyle because they have this big income,” says Annette F. Simon, a principal with the Garnet Group, a Washington, D.C., financial consulting firm. “To sustain that lifestyle, they really need to do the math and start planning early. If somebody is making \$300,000 today, which is not unusual for a D.C. attorney, and they want to live that way in retirement, they’ll have to put away close to \$8 million by the time they retire. People don’t think that way. They just keep pushing off the hard work [of saving] until later on.”

This is an opportunity, however, to double down on the saving by putting off the purchase of a second or third home and earmarking those dollars for retirement. With the kids off to or out of college, this also might be the first time to consider how much it might actually cost to live in retirement. With a yearly 4 percent withdrawal rate the norm in retirement, it’s important to calculate how much annual income it will take, \$100,000 or \$300,000, to enjoy retirement.

For equity partners in a law firm, this period can be especially complex. Because equity partners contribute to the firm’s capital account, financial planning must take into account these contributions and disbursements. Required contributions can come as a one-time payment financed from personal savings or by a bank loan (often guaranteed by the firm), or they can come over time by making payments from salaries, draws, or withheld year-end profits.

“It seems like such a no-brainer to be an equity partner in a law firm,” Simon says. “Capital accounts are like an enforced savings program, and attorneys feel they have a greater stake in the firm. When they choose to retire, they know they’ll get that money when they leave the firm.”

During the recession, a number of firms issued capital calls to their equity partners, asking for increased contributions or requesting that they limit distributions to preserve the accounts. This delicate partnership dance requires attorneys to determine the impact of satisfying capital calls on their finances, such as ascertaining the effect mortgaging a home or pledging other assets as collateral would have on their goals for financial independence.

“When the economy was in trouble and law firms started going under, being an equity partner became a big risk,” says Simon, noting this is especially true for smaller firms where there are fewer individuals to share the pain. “Like a home mortgage, the loan follows you. People who have borrowed the money to fund their capital account contribution are in bad shape if the firm goes under, and they still have to pay back that loan.”

This midcareer period is often an ideal time to diversify investments. With more income, established attorneys can access sophisticated investment vehicles, branching out into novel stocks, bonds, real estate, and cash ventures. Once again, money



coaches say it's critical when determining asset allocations to consider the level of risk, the time horizon before retirement, tax implications, and long-term personal objectives.

Not everyone is positioned to take these kinds of risks in midcareer, however. Those who have done little planning before reaching middle age are true latecomers to the party, and they face challenges in building serious wealth in the time left before retirement. "Most people come to see us when they're in their fifties," Armstrong says. "It makes sense. The kids are through college, and they think their big expenses are over. They realize that it's time for them to think about retirement. When you ask them when they want to retire, they usually say yesterday or never, but mostly they're thinking sometime in the next 10 years, and they realize they should start planning.

"We do our projections based on living to age 100, particularly because people who are more affluent seem to be in good health and do live longer. We also talk to them about having to support a parent or child while they're in retirement. These are entirely possible these days, and they need to be prepared."

Finally, a crucial step in this phase of the financial life cycle is protecting family, lifestyle, and wealth from unforeseen consequences of life. Most lawyers have purchased a variety of insurance products to address the events that mark middle age—parenthood, disability, and death. Life and disability insurance are essential if attorneys hope to protect their assets and their families, and those policies should be updated to reflect changes in circumstances, including growth in net worth.

"Everybody knows about life insurance, although for high-earning people, they need to make sure they have adequate coverage that will allow their families to maintain the lifestyles they've become accustomed to," Thalheimer says. "We also encourage our clients to supplement their company disability policy, which tends to be fairly basic and wouldn't be enough to live on for any period of time. Most importantly, this is when we encourage clients to look at long-term-care insurance for their retirement."

Inching Toward Retirement

The final stage of a legal career can be exceptionally gratifying, with senior lawyers choosing new professional avenues or slowing down to enjoy a leisurely transition into retirement. For those attorneys who have planned well, these preretirement years should be relatively trouble-free, since much of the heavy lifting to ensure an ample income in retirement was done decades before.

McIntyre of Morgan Stanley Smith Barney says this is also a

time when attorneys should consider adjusting their asset mix to reflect the current state of the economy or to proactively protect their assets for a lengthy retirement. "There's always the possibility to rebalance and do what's necessary to upgrade and get a higher income with more safety," he says. "You have to be comfortable with your choices. Your head has to hit the pillow at night, and you have to be able to sleep."

Many advisors recommend that individuals consider shifting everything from their Individual Retirement Account, or IRA, into an annuity upon retirement. That way, part of the money would be protected from the vagaries of the stock market and the kinds of losses experienced by retirees or soon-to-retire folks in 2007 and 2008. "I saw a lot of people get very nervous in 2008 and 2009 when they realized they had 100 percent of their retirement in a retirement account," Armstrong says. "I never recommended annuities before 2008 because of the fees, but now that the fees have gone down and the market is so unpredictable, they're a lot more attractive."

For some attorneys, and not necessarily the ones who haven't planned well enough, transitioning into a part-time status at a law firm or working in some other context might be helpful. It not only eases the transition from full-time work to a relaxed retirement, it also keeps money coming in to slow down the rate of withdrawal from their portfolios.

Another lesson of the last recession is to have a substantial war chest of cash assets when inching closer to retirement. Some advisors recommend having between two and three years' worth of living expenses in cash to ward off any premature dips into retirement funds. With investment accounts fluctuating daily, no one wants to start withdrawing money from their accounts for living expenses and risk the long-term viability of their portfolios.

"A lot of the decisions you make going into retirement are one-time, irreversible decisions," Simon says. "We recommend making these decisions slowly and with a lot of forethought. Too much is at stake not to."

One of the critical activities that should have been completed at this stage in life is estate planning, experts say. Having an updated will—something that should have been executed decades before, of course—is essential, making sure it reflects current goals and wishes as well as addresses changes in tax laws. There is a laundry list of concerns that will be tackled in a comprehensive estate plan, including deciding how beneficiaries receive their inheritances, determining how assets will be directed, and naming the guardian for any minor children and the executors and trustees of the estate.

The conversations that surround the estate-planning process also will illuminate individual concerns about a business or personal legacy, opening the door for more vigorous donations to favored charitable organizations or alma maters. They also can lay the groundwork for the gradual transfer of wealth to the next generation.

Where Do I Start?

Not surprisingly, wealth management advisors say the most important step to take to prepare for retirement is to hire a financial planning professional—no matter what stage you're at in the financial planning life cycle. They're definitely biased, but that doesn't mean they aren't right.

"These are tumultuous times, and the idea of attorneys, no matter how learned they might be, managing their own wealth is not smart," McIntyre says. "Unless they're focusing on their investments all the time, the odds are that they will underperform a competent financial professional, and may be frighteningly so."

Certainly a smart attorney can excel at making any number of the key decisions involved in financial planning, but after 14 hours in the office, how many attorneys have the energy and focus to dedicate additional hours to the hard work of understanding the markets and investment strategy? That's why it makes sense to take advantage of the wide variety of services available from individuals, companies, and major financial services institutions that cater to professionals, and specifically attorneys.

"Only about 10 percent of the people I meet with are really good at taking information and acting on it appropriately," Thalheimer says. "The vast majority of people either procrastinate or are too busy to keep an eye on their investments. They say they are, but from my perspective, they're just not adequately doing it."

Banks have created divisions that exclusively serve attorneys, including Citibank and SunTrust Banks, Inc., and they provide trust and investment services designed around the particular needs of lawyers. With a keen understanding of the pressures in the legal profession, these types of services provide individualized solutions.

Experts say that selecting a wealth advisor is much like selecting an attorney, so due diligence is required to ensure that the individual or company can be trusted and has a good track record in managing investments. One of the critical questions to ask is how the person is compensated. Most financial planning consultants in the business are compensated based on commission for selling specific products to their clients. Top-notch investment counselors, for the most part, work on a fee-only or hourly basis, and they are generally certified and accredited by the National Association of Personal Finance Advisors.

"An attorney should have a relationship with a financial advisor and be meeting with them once a year to review the plan," Simon says. "Too much can change in a year for clients not to have regular contact."

Money coaches say that this is a particularly vital time for attorneys to look for outside assistance. The instability of the markets makes it difficult to plan for the future, even for the experts, and that means amateur investors will face even bigger hurdles as they look to create wealth and secure their retirement.

"There are only three things you can do in a market that is essentially range-bound and return-starved like the one we are in: save more, spend less, or work longer," Scherer of Graystone Consulting says. "The market right now shows no sign that it will cooperate in terms of delivering big investment returns, especially without taking an inordinate amount of risk."

A layperson investor may still be dreaming about the big returns from the 1990s and be trying to outsmart the market, a very dangerous proposition, Scherer says. "I don't think people should be reaching for big returns. It's a market of mid-size returns, low growth, and high volatility. The only way to make up for that is to put more money away, or if you don't, then be reconciled to work longer or spend less in retirement. There's no other way to make the formula work."

Whether attorneys decide to take a do-it-yourself approach to financial planning or work with a wealth advisor, they always must keep their eyes on the ultimate prize. "The No. 1 goal for everybody is not running out of money," Haunty says. "When you do financial planning well, you are able to look back on your life and be happy. You've had a great life. Houses. Cars. Got married. Your kids are awesome. And in the end, you didn't have to continue working forever to be comfortable. That sounds like a great retirement."

Sarah Kellogg is a Washington, D.C.-based freelance writer who last wrote about the creation of a national digital library.



FINANCIAL STRATEGIES FOR A LIFETIME

Financial planning is a lifetime pursuit with critical milestones for attorneys at various stages of their careers. Generally speaking, these are critical steps to take to secure your financial future:

New to the Workforce

- Determine life goals, set financial milestones, and develop a financial plan
- Save at least 10 percent of your annual income
- Participate in your firm's 401(k) or 403(b) program, saving the maximum amount allowed by law annually
- Seek financial planning assistance from a certified advisor
- Consolidate student loan debt into a single, low-interest payment
- Create a contingency fund for unexpected events

Midcareer

- Create a plan that sets goals for retirement finances and lifestyle
- Build wealth by doubling down on savings for short- and long-term goals
- Pay down debt
- Take advantage of IRS rules allowing catch-up payments to retirement funds
- Purchase or extend life, disability, and long-term care insurance
- Work with a wealth advisor to manage investments and retirement funds
- Pursue home ownership if you haven't purchased one at this point
- Adjust retirement strategy to reflect the effects of health care costs, the stock market, aging parents, and paying for college

Preretirement

- Refine retirement goals for lifestyle and finances
- Consider working part time with the firm during transition
- Set aside two to three years of income in a cash account
- Develop a solid plan to manage investment income throughout retirement
- Pay off any outstanding debt
- Contemplate next steps for preserving inheritance for children and supporting philanthropic pursuits

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Many D.C. Bar members have enriched their practice of law by participating in programs sponsored by the voluntary bar associations in the District of Columbia. These bar associations offer a variety of programs and benefits designed to improve the individual lawyer's practice.

The D.C. Bar encourages lawyers to investigate the programs of these organizations and to consider membership. Get involved today by sending or faxing your contact information to the D.C. Bar. We'll see that your contact information is forwarded to the bars of your choice!

Voluntary Bar Associations of the District of Columbia

American Association of Jewish Lawyers and Jurists: Represents the District's Jewish legal community, defending Jewish interests and human rights in D.C., the U.S., and abroad.

American Hellenic Lawyers Society: A local association for attorneys who are of Greek descent or whose practice involves Greece or Cyprus.

American Immigration Lawyers Association, D.C. Chapter: Founded to promote the practice of immigration law.

Asian Pacific American Bar Association of the Greater Washington, D.C. Area: Concerned with legal and social issues facing the Asian Pacific community in D.C.

Bar Association of the District of Columbia: The original voluntary bar for D.C., offering social and professional interaction.

D.C. Association of Criminal Defense Lawyers: NACDL local chapter, featuring a lawyer's strike force committee, which provides vigorous and effective legal representation to criminal defense lawyers who have serious conflicts with a judge or the prosecutor's office.

D.C. Defense Lawyers' Association: Defense attorneys in D.C. civil cases.

Department of Justice Association of Black Attorneys: Promotes the interest of minority attorneys and other employee members at the Department of Justice and in the greater community.

Energy Bar Association: Promote the proper administration of laws relating to the production, development, conservation, transmission, and economic regulation of energy.

Family Court Trial Lawyers Association: Solo practitioners and small law firms that provide legal services to children and families at Superior Court.

Federal Bar Association, Capitol Hill Chapter: For attorneys practicing before the federal courts and in areas of federal law.

Federal Bar Association, D.C. Chapter: For attorneys practicing before the federal courts and in areas of federal law.

Federal Communications Bar Association: A volunteer organization of attorneys, engineers, consultants, economists, government officials, and law students involved in the study, development, interpretation, and practice of communications and information technology law and policy.

Gay, Lesbian, Bisexual & Transgender Attorneys of Washington: Works to advance the rights of lesbians and gay men.

Greater Washington Area Chapter, Women Lawyers Division, National Bar Association: Concerns of metropolitan community in general and African American women lawyers in particular.

Hispanic Bar Association of the District of Columbia: Further the legal rights afforded to Hispanics and to create a network of Hispanic legal professionals.

Inter-American Bar Association, D.C. Chapter: Promotes the rule of law in the Western Hemisphere.

International Trade Commission Trial Lawyers Association: For attorneys and those interested in the U.S. International Trade Commission and unfair trade practices.

Iranian-American Bar Association, D.C. Chapter: Seeks to educate the Iranian-American community and the community at large about legal matters of interest.

Metropolitan Washington Employment Lawyers Association: Provides assistance to lawyers in protecting the rights of employees against the greater resources of their employers and the defense bar.

National Conference of Black Lawyers, D.C. Chapter: Works for advancement of political and human rights in the U.S. and internationally.

National Lawyers Guild, D.C. Chapter: Supports economic, social, and political justice.

Native American Bar Association of Washington, D.C.: Open to all attorneys and law students interested in the field of Indian law.

Sections of the D.C. Bar: The 21 sections of the D.C. Bar offer a wide selection of professional activities, providing a myriad of opportunities for the seasoned practitioner or the new attorney to advance specialized interests and to network with colleagues.

South Asian Bar Association: A local association of attorneys of south Asian origin and attorneys whose practice involves south Asia.

Superior Court Trial Lawyers Association: Members provide skilled and vigorous representation for indigent individuals charged with crimes within D.C.

Trial Lawyers Association of Metropolitan Washington, D.C.: Local affiliate of the Association of Trial Lawyers of America.

Vietnamese American Bar Association of the Greater Washington, DC Area, Inc.: To promote the professional growth and advancement of Vietnamese American attorneys and further the legal rights affecting the local Vietnamese American community.

Washington Bar Association: Promotes the Afro-American lawyer's presence in the legal, judicial, and economic structure of American society.

Washington Council of Lawyers: Promotes the practice of pro bono and public interest law.

Washington Foreign Law Society: Promotes knowledge and understanding of foreign and international law.

Washington Metropolitan Area Corporate Counsel Association: The Washington metropolitan region's bar association for attorneys who practice in-house with corporations and other private-sector organizations.

Women's Bar Association of the District of Columbia: Works to achieve equality for women and justice for members of the community.

Young Lawyers Division of the Washington Bar Association: Promotes the Afro-American lawyer's presence in the legal, judicial, and economic structure of American society.

Young Lawyers Section of the Bar Association of the District of Columbia: Devoted to providing service to the community and to the Bar.

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Please forward my name and contact information
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The District of Columbia Bar, Attention: Executive Office
1101 K Street NW, Suite 200, Washington, DC 20005-4210
Phone 202-737-4700 Fax 202-626-3471
E-mail: executive.office@dcbar.org





Reinventing Janet

Photographer-Turned-Lawyer Follows Up One Successful Career With Another

By Thai Phi Le

Standing atop a step ladder, Janet Fries was pointing her camera at U.S. Supreme Court Justice Sandra Day O'Connor.

“But all of her expressions were worried because she thought I was going to fall off the ladder,” recalled Fries. “Being seven months pregnant, I had to confront the physical component of the job—that I was always climbing over something, or crawling under something, or dragging a ton of equipment, or running after somebody.”

For nearly two decades, Fries had climbed, crawled, dragged, and ran around as a professional photographer, capturing the local scene for *San Francisco* and *Washingtonian* magazines, and on assignment for national publications such as *Time*, *People*, and *Fortune*. Her work has been displayed in galleries, including the Kathleen Ewing Gallery here in Washington, and is in the permanent collections of the Corcoran Gallery of Art, Oakland Museum of California, and the Smithsonian's National Portrait Gallery.

That day in 1989, as she was photographing Justice O'Connor, she began contemplating a career in law. While a growing trend in the United States is for

Sandra Day O'Connor: During the photo shoot with U.S. Supreme Court Justice Sandra Day O'Connor for the *American Lawyer* magazine in 1989, Fries began considering a switch in careers from a photographer to an attorney.

attorneys to opt for alternative careers, there are those like Fries who choose to become a lawyer later in their lives. For many, it's an ideal way to blend two interests, whether it be law and engineering or law and the arts, as Fries eventually did.

The Early Days

Fries' photography career began in the early 1970s. While studying art history at Smith College in Massachusetts, an architecture professor encouraged students to take photos of buildings to discuss later.

"I liked that process so much that I kind of caught the bug," she said. "The very nature of it was that I needed to go out to see things and do things to take photos, and then retreat to the dark room to make prints. So there was a built-in public and private component that was very appealing and seemed to present a good balance for me."

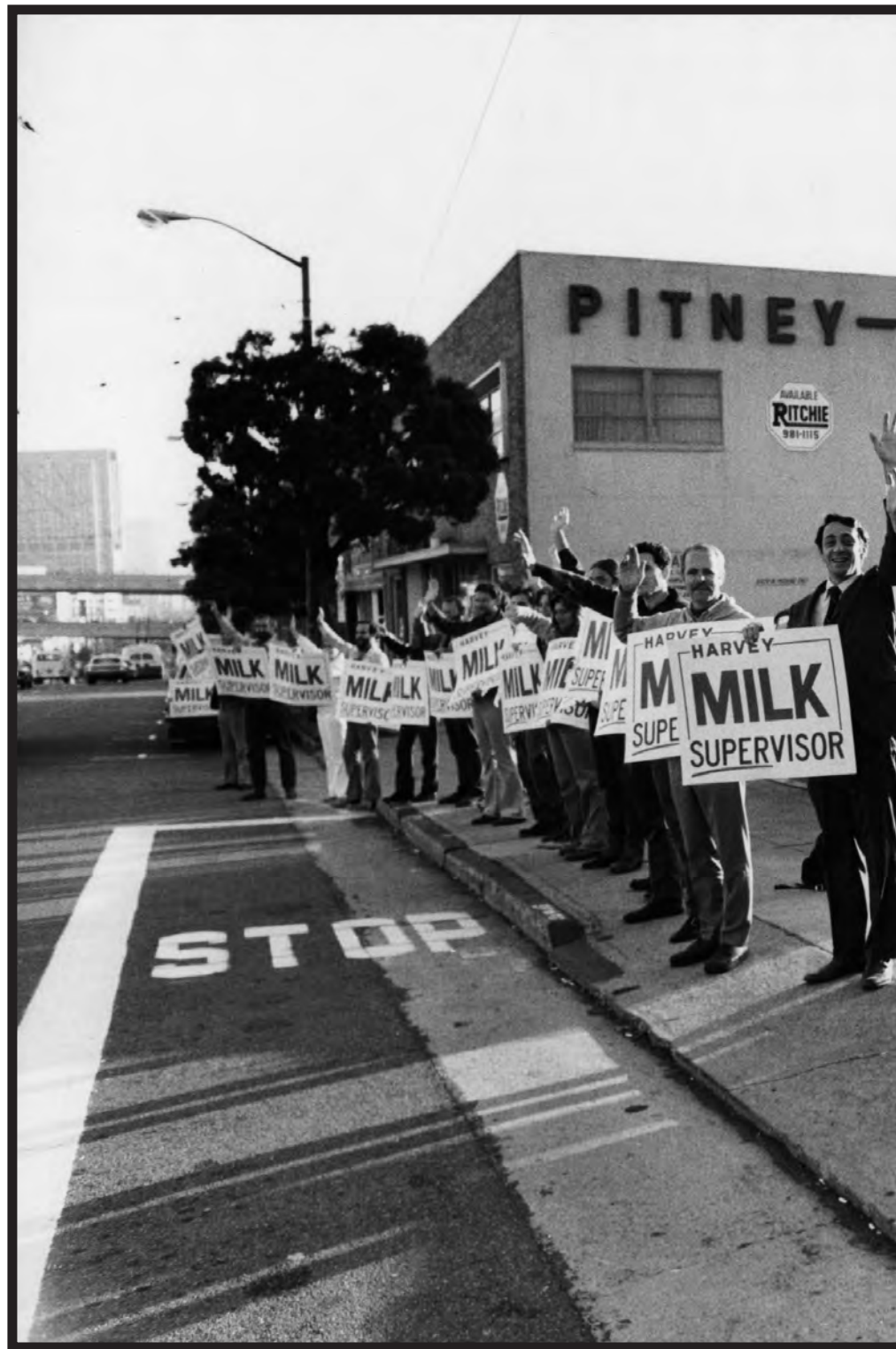
After graduating in 1971, Fries attended San Francisco State University to get her master of arts degree. In San Francisco, her first published photos appeared in the *Berkeley Barb*, a weekly underground newspaper. She and a colleague covered alternative events, from political protests and demonstrations to the creation of communes and neighborhood co-ops.

A Gallery of History

While Fries has photographed a variety of events around the world, she has made most of her living taking portraits of some of the nation's most famous and infamous figures. Often, her images have marked significant moments in history.

She documented the rise of gay rights icon Harvey Milk, from his stumbles in 1973 when he first ran unsuccessfully for the San Francisco Board of Supervisors to his eventual election in 1977. She remembers how interested Milk was in photography and photographers (he owned Castro Camera in San Francisco). Eleven months after taking office, Milk was assassinated. He left behind a political legacy, one that was honored posthumously in 2009 with the Presidential Medal of Freedom and that can be relived through many of Fries' images.

Among her most famous portraits are Jim Jones, best known for founding the religious group Peoples Temple and his role in the eventual mass suicide of more than 900 of its members. "He was, at that point [when I took his photo], the darling of the liberals. He was doing wonderful work in the community, feeding the homeless, and helping to get out the vote," Fries remembered. "But despite all of that, there was just something about him I did



not like. And the photos I took put him in a very negative light.

"I don't know whether it was good luck or whether there was some instinct," she said, but following the mass suicide in Jonestown, Guyana, her photographs were widely sold. Her portrait of Jones also later appeared as one of the first editorial photos published in *The New Yorker*.

Years later, in the late 1980s, Fries photographed then U.S. Rep. John McCain after he announced his bid for the Senate. The shoot took place at the Vietnam War Memorial. It was one of those extra cold winter mornings when not only does your breath hang in the air, but apparently your Hasselblad camera can freeze as well.

"It had a crank mechanism that froze,



which I didn't realize," she said. The photographs were being layered one over the other, ruining them all. "The freezing of the camera was not a good moment in photo technology," she joked, thankful she had used other cameras that day.

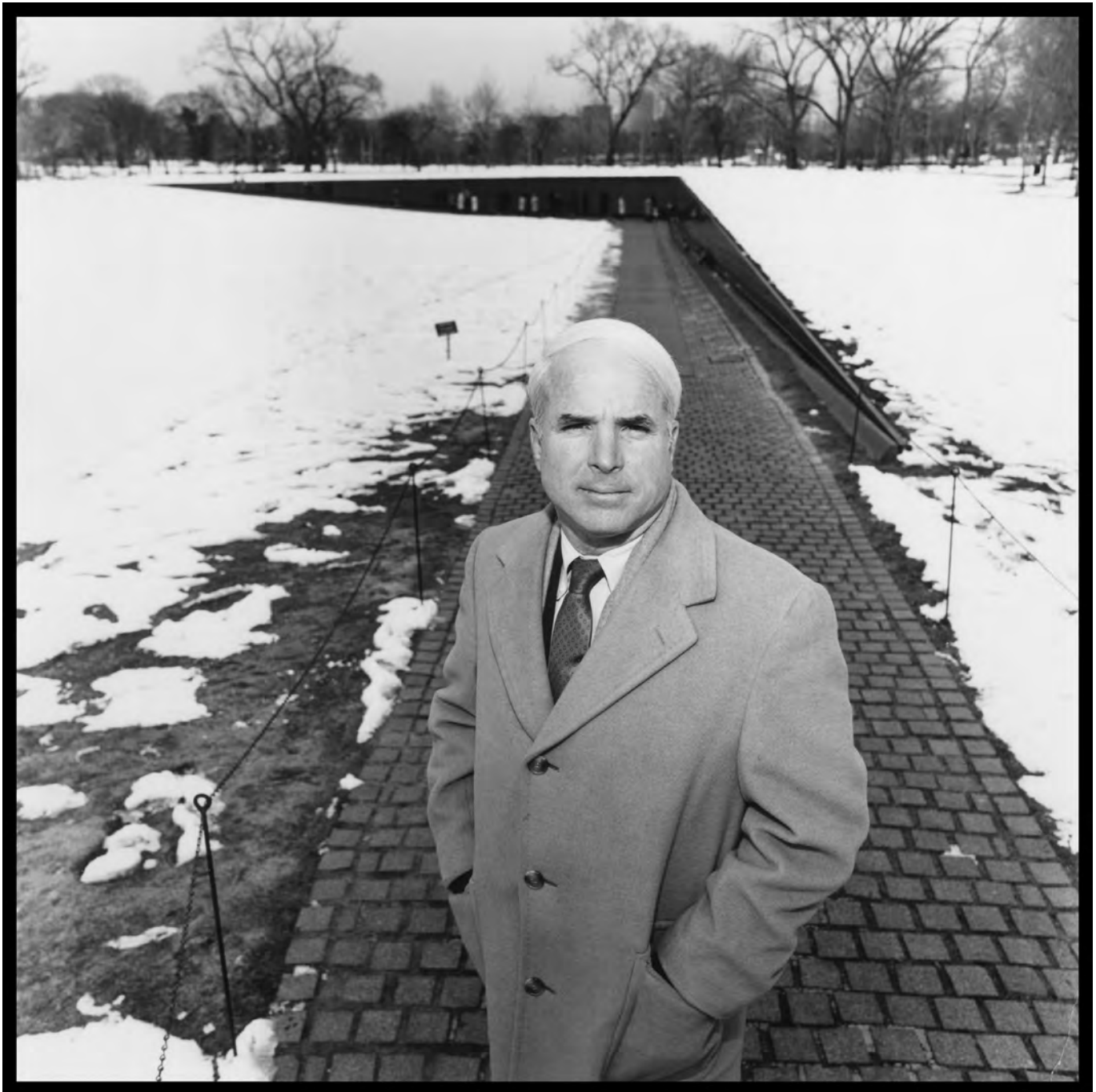
Not all of Fries' subjects were newsmakers destined for the history books. She also spent time as a photographer for *Peo-*

ple, a job she called a "hoot." She laughs, remembering the standing instruction the magazine had in its early days. "No matter who you were photographing, you were supposed to ask them to stand on their head. I could never get anybody to stand on their head, but it typically got people relaxed because it seemed so silly."

Even as she became more prolific in her

Harvey Milk:

During an unsuccessful bid for the San Francisco Board of Supervisors in 1975, Harvey Milk and his supporters would create a human billboard—because he could not afford a real one—along the main arteries of the city to garner more votes. This photo was published in the *San Francisco Bay Guardian*, a weekly paper.



career, the dark room remained a sanctuary, a step in the process she loved. “I loved the dark room. That was just magic—watching the image appear in the developing tray.”

With music or an audio book playing in the background, she’d watch her images appear. There were the faces, of Vice President Hubert Humphrey during an impassioned speech and of musicians Jerry Garcia of the Grateful Dead, Eric Clapton, and Marty Balin, lead singer of Jefferson Airplane.

Fries also experimented with different techniques, once photographing Hong Kong only in black-and-white infrared.

“I wanted to have photos that were individual and personal, but didn’t look like all the other pictures of Hong Kong that had been taken,” she said. “I got some good photos, but you would never know it was Hong Kong.” Some of those black-and-white infrared landscape prints now sit in both the Corcoran Gallery of Art and Oakland Museum of California.

In addition to Justice O’Connor, she has taken photos of three other Supreme Court justices—William Brennan Jr., Antonin Scalia, and John Paul Stevens. Her portrait of Stevens was used on the back cover of his memoir that came out in October.

Drawing From Experience

Despite the incredible caliber and range of subjects she has photographed throughout her career, the photo shoot with Justice O’Connor remains as one of her most distinct memories. “On the ladder, it occurred to me that I could get a legal education that would allow me to work with photography and visual arts through the law,” Fries said.

It took her two years to make that leap. After caring for a newborn, Fries enrolled at The George Washington University Law School in 1991. The running joke in her family is that as her son started nursery school, she began law school.

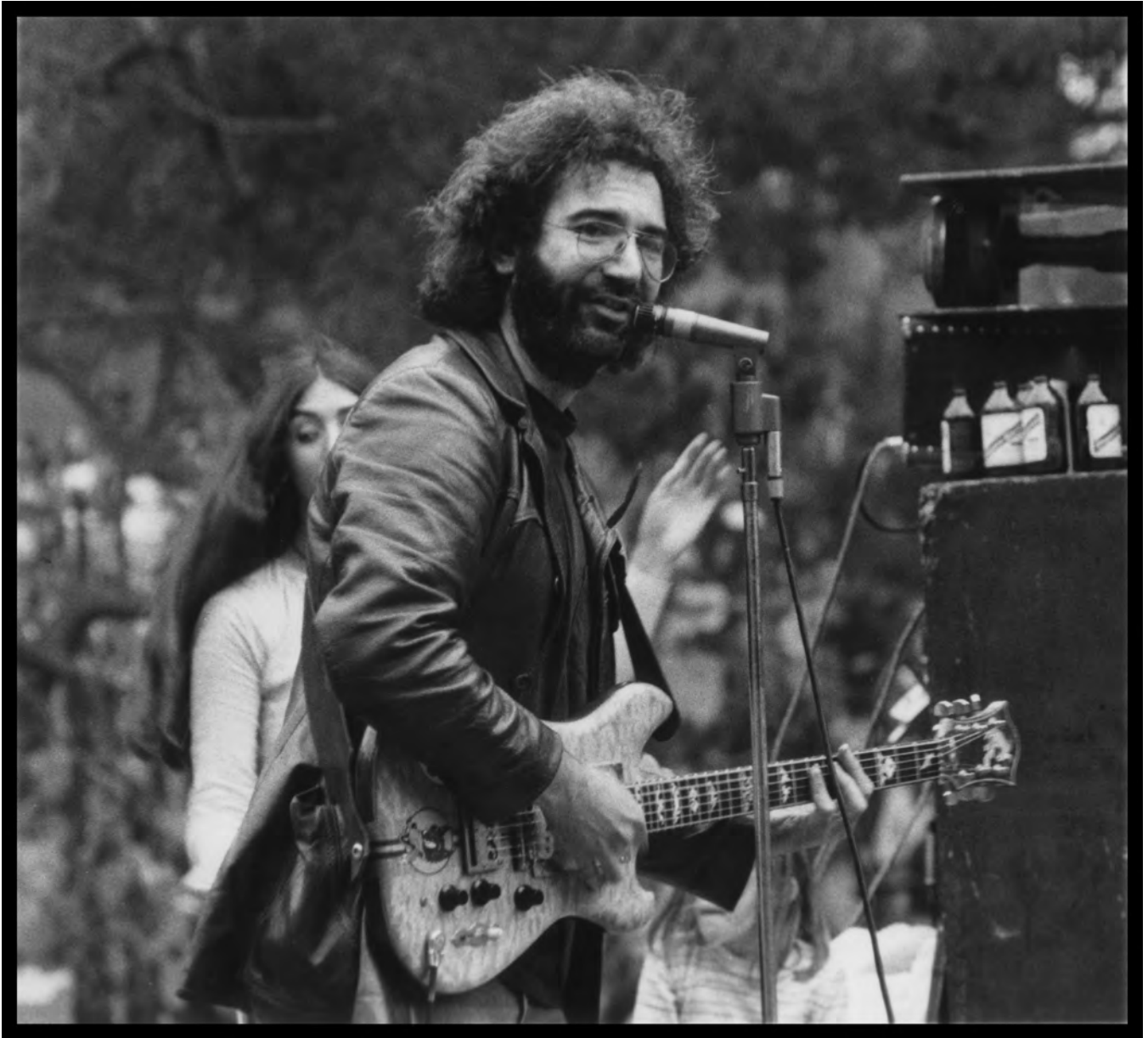


John McCain (opposite page): Fries photographed a variety of movers and shakers in the Washington, D.C., area for *Washingtonian* magazine. Among them was John McCain, who had recently announced his bid for the Senate at the time of this photo.

Hubert Humphrey (above): In 1975, Fries captured Hubert Humphrey during one of his famous impassioned speeches. This photo is showcased in the Smithsonian's National Portrait Gallery.

Jim Jones (right): Photographed in 1976, Jim Jones had yet to become infamous for his role in the Jonestown, Guyana, mass suicides. Following the deaths of more than 900 Peoples Temple members, this portrait was published in numerous magazines, including *The New Yorker* in 1993.





Jerry Garcia: Over the years, Fries has been able to photograph many people in the entertainment industry, including the legendary Jerry Garcia. This photograph was taken in 1974.

Today, Fries is of counsel at Drinker Biddle & Reath LLP, focusing her practice on copyright and trademark law, entertainment law, and Internet law. She also serves on the board for the Washington Area Lawyers for the Arts. She has represented a variety of clients, from authors and artists to producers and Internet companies. “I love what I do,” she said. “I love working with creative people.”

She doesn’t consider her career switch as a dramatic shift, and often draws from her previous experience as a photographer to help build trust with her clients. “Having spent years as a photographer, that experience resonates with some of

my clients. I am able to understand the creative process and to empathize with the concerns that clients have about works they’ve created,” she said. “I get their relationship with their work and what they’re doing. That has been a positive for me.”

The only drawback has been less time for photography, which she hopes to do more of now that her daughter, her youngest child, has recently left for college, coincidentally attending a photography program at Shepherd University in West Virginia. Her son, now a senior at the University of Wisconsin—Madison, is contemplating law school. “Maybe I

was more influential than I realized or intended,” she laughed.

With two children away at college, Fries plans to get back behind her camera while maintaining her legal career. “It requires a lot of juggling, but I think most lawyers are adept at juggling. We juggle different cases and different clients. It’s a skill that most lawyers have,” she said. “I’ve met a number of other lawyers who are playwrights or essayists in the early morning or late at night or on the weekends, who balance their legal careers with other pursuits. I know it can be done.”

Reach Thai Phi Le at tle@dcbar.org.

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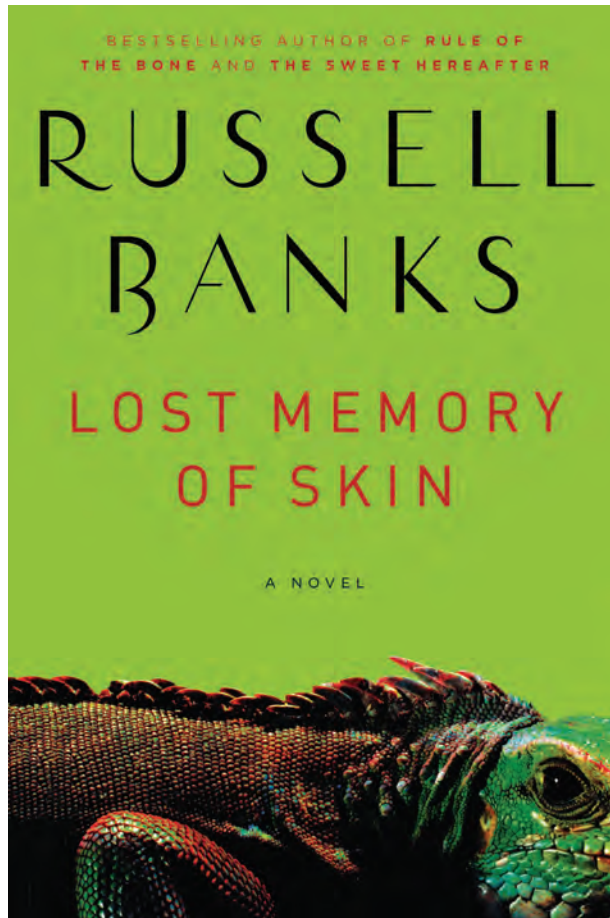
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Lost Memory of Skin

By Russell Banks
Ecco, 2011

REVIEW BY PATRICK ANDERSON

As I write this, the Penn State child-sex scandal dominates the news, and there seems to be a near-universal belief that if the accused ex-coach is found guilty as charged, he should be punished to the fullest extent of the law.

But what about the thousands of more ambiguous sex-offense cases that receive less publicity? For example:

- In Florida, a judge recently sentenced a 26-year-old man to life in prison, without the possibility of parole, for downloading a large amount of child pornography from the Internet.

- In California, a 20-year-old woman sued a 17-year-old pop singer for allegedly fathering her child, whereupon a lawyer warned that, given their ages, she could be prosecuted for statutory rape.

- In Texas, a 19-year-old high school football star and a 15-year-old cheerleader fell in love and began having sex. The age of consent in Texas is 17, and when the girl's mother

complained to police, the boy was arrested for statutory rape. When the mother tried to withdraw her complaint, she was told it was too late: justice must be done. Facing prison, the boy pleaded guilty in exchange for probation; he was required to register as a sex offender, receive counseling, and move out of his home lest he endanger his 12-year-old sister. Today, 15 years later, the couple is married and has four daughters; the father, still registered as a sex offender, can't coach his daughters' soccer teams.

In *Lost Memory of Skin*, distinguished American novelist Russell Banks (*The Sweet Hereafter*, *Continental Drift*) grapples with such questions and—challenging the hang 'em-high tide of public opinion—comes down on the side of compassion for minor offenders who confront harsh, one-size-fits-all punishments.

Banks tells his story through The Kid—the only name he's known by—a 22-year-old convicted sex offender who managed to achieve his unhappy legal status without ever having sex with anyone. His crime was exchanging e-mails with

The novel's central drama is whether the Kid, condemned by the law to unemployment and homelessness—dumpsters are his main source of food—can possibly make a decent life for himself. It seems more likely that he will inevitably be returned to jail. . . .

what he thought was a flirtatious 14-year-old called Brandi who invited him to her home for what he imagined would be his first sexual experience. Instead, he walked into a police trap, was charged with soliciting sex from a minor, sentenced to six months in jail, and then forbidden for 10 years to leave the county or to live within 2,500 feet of a school, playground, or other place where children gather. He is required to wear a GPS monitoring device on his ankle, and his picture and criminal history are available on the Internet to anyone—such as potential employers—who wants to seek them out.

All this takes place in Calusa, a fictional South Florida city that's a lot like Miami, where Banks lives part of each year. In Calusa, that 2,500-foot restriction means that, as a practical matter, the Kid and other sex offenders must live either under a causeway that stretches from the mainland to offshore islands or in a massive swamp where they would coexist with a multitude of mosquitoes, snakes, and alligators. The Kid chooses to set up camp with other sex offenders beneath the causeway. All this, Banks has said, was inspired by a real under-the-causeway encampment near his Miami condo. He visited the camp and was pained to see "the unintended consequences of good intentions."

Banks presents the Kid as more sinned against than sinning. He never knew his father, who was simply one of the countless men who passed through his mother's life. She shrugged when, at 11, he began his addiction to Internet porn. He never read a book in school, and he was booted out of the army for giving porn videos to his buddies in basic training. The Kid is naïve and a loner, but he's also street smart and likable. In some ways, he's a modern Huck Finn. The novel's central drama is whether the Kid, condemned by the law to unemployment and homelessness—dumpsters are his main source of food—can possibly make a decent life for himself. It seems more likely that he will inevitably be returned to jail for one parole violation or another. It's a hard-hearted reader who will not feel sympathy for this convicted sex offender who's never known sex.

For dramatic purposes, Banks needed to give the Kid a foil; a less inventive writer might have conjured up a hostile cop or parole officer. Instead, the author provides a far more intriguing figure. He's

a professor of sociology, known only as the Professor, who turns up at the camp one day and says he wants to interview the Kid for his research project on sex offenders and homelessness. The Professor is both a genius and a giant. In the IQ department, he's not only a member of Mensa, he's in its top 1 percent. Physically, he's massively, morbidly obese, around 500 pounds, thanks to obsessive eating. The Kid is understandably suspicious of this bloated, smooth-talking stranger, but he's flattered, too. Moreover, the Professor offers money, advice, and transportation. They become a team.

We're suspicious of the Professor. Might he himself be some sort of sex offender? Or a one-time spy, as he hints? Or something even more sinister? The Kid's straightforward story—can he survive and stay out of jail?—becomes entangled with the complicated, slowly unfolding secrets of the Professor's life. Banks makes this oddest of couples believable, even though they might have come from different planets. The Kid's involvement with the Professor will ultimately force him to make moral decisions—just as Huck Finn had to in his day—of a sort he had never before imagined.

There are colorful secondary characters in the homeless camp, including a former state senator with a yen for young girls. Banks provides gorgeous writing as he catalogues Florida's tropical beauties, including the Kid's brief sojourn on a houseboat in an Everglades-like swamp. He also shows the region's horrors. In one scene, a hurricane rages over South Florida. Most people are safe in their homes, but the Kid and his companions in their shantytown are unprotected. Their pitiful possessions are swept away and rising waters threaten their very lives. The Kid, in despair, asks himself what's the use of struggling if "you're never going to get ahead in life anyhow because you're a convicted sex offender and are condemned to be one for the rest of your life." This scene reminded me—as I think Banks intended—of the moment when King Lear, alone on the heath in the storm, cries out for pity not for himself but for the "poor naked wretches" of the world who are helpless amid life's calamities. It's that powerful.

Lost Memory of Skin is in some ways a strange story but it's supremely readable. Ultimately, it's a humanistic novel. Banks

is calling for compassion for sex offenders, and not only the innocent ones like the Kid. He has the Professor argue that the ever-increasing number of sex offenders is the inevitable result of the proliferation not only of Internet porn but of ubiquitous sex in advertising, movies, and every corner of our popular culture. The Kid himself, although he begins the story with contempt for "chomos" (child molesters) and other serious offenders, ends it feeling brotherhood with all sex offenders "as if they were all trembling leaves on the branches large and small of a vast electrical tree that casts its shadow across the entire country."

Few readers are likely to fully embrace that vision, but Banks makes a strong case that harsh and arbitrary laws that have been used against hundreds of thousands of minor sex offenders should be reconsidered. In making his case, he's written a haunting, fascinating novel.

Patrick Anderson, a novelist and journalist, reviews crime fiction for The Washington Post.

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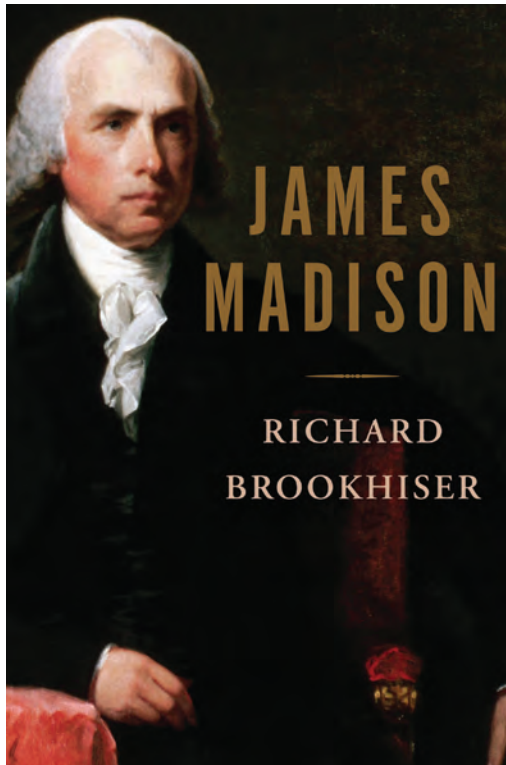
By Richard Brookhiser
Basic Books, 2011

REVIEW BY RONALD GOLDFARB

Casting directors for a movie, *The Founding Fathers*, would use glamorous stars for the George Washington, Thomas Jefferson, and Benjamin Franklin roles. At just more than five-feet tall and a bit over 100 pounds, the slight and sickly James Madison role would not go to one of Hollywood's hot stars. But in the creation of our Constitution and Bill of Rights, in the very creation of our government, no character played a greater intellectual role than Madison. Not as dramatic a character as Washington, nor as flamboyant a personality as Jefferson, nor as colorful a figure as Franklin, Madison was the quiet, hard-working philosopher-theorist who made good things happen. In his book, *James Madison*, historian and journalist Richard Brookhiser describes him as "silent, shy, stiff . . . Madison shone in the dark, drudgery of work." He was not an orator, "there was not an ounce of melodrama in him, scarcely of drama." Madison "was at the center of things," writes Brookhiser who has written about Washington and Alexander Hamilton, has perspective, and knows this era.

A Virginian, tutored privately as a youngster by a Scottish schoolmaster, then educated at Princeton, Madison would go on to become "the Father of the Country." As a young, privileged Virginian, Madison served in his state's legislature (1778–1779) and later in Congress (1780–1783). In Virginia, Madison fought against patronizing language that free exercise of religion would be "tolerated." Toleration implies that superiors grant such a right from their privileged position. Madison fought for and gained language assuring all people "full and free exercise of their religion," the author writes. No one allowed others to practice their religion; "they worshipped as they wished because it was their right as men." The United States is still fighting over this fundamental distinction.

As a key participant in the Constitutional Convention in 1787, Madison served as rapporteur, and his records of those proceedings—while not made public at the time to preserve the sanctity of the negotia-



tions—later became the chief resource for historians of these extraordinary meetings.

When the convention participants put off the resolution of certain contentious issues on the promise they would be resolved in an early Congress, it was Madison who performed that responsibility, several years later ushering the passage of the Bill of Rights through the first Congress. He managed navigating "the proposals of earnest idealists and secret saboteurs into something like the first ten amendments of the Constitution," Brookhiser writes.

In his writings about the nature of our federal system in the *Federalist Papers*, in his correspondence with Jefferson about the grand experiment in government they were undertaking, in his roles as advocate and arbiter at the convention and in his legislative work, Madison was as much as anyone, arguably more, the brains behind the genius of our Constitution. More so than in his later two terms as our fourth president, Madison, the political theorist and pragmatic politician, was the critical intellectual among the Founding Fathers. His influence was dominating; he was, in Brookhiser's words, "the muse of history."

Madison was a linguist, and a scholar of political theories. He read the works of historians and studied the governments of early Greek, Roman, and European societies. And the author reveals, "he wielded his reading like a weapon." Brookhiser relates a charming story demonstrating Madison's erudition. In a debate

about proportional representation, he corrected fellow delegate Oliver Ellsworth of Connecticut, noting that under the early German system, the King of Prussia had nine votes. That Madison advised about the practices of Prussia and how members' votes were proportioned (and, by the way, Montesquieu thought that was the fittest model), can you imagine any of the members of the current Congress being able to discuss the workings of our government at this intellectual level?

Brookhiser's concise story about Madison's role in the adoption of the Bill of Rights makes clear why he says of Madison, "If he was not quite the Father of the Constitution . . . he was its midwife." First, Madison won the tactical battle to pass a Bill of Rights in the first Congress as opposed to attempting to do so in a second Constitutional Convention. He needed to quiet the concerns of constitutional skeptics, and he wanted to have a central role in the process. Some critics "wanted to do nothing . . . others wanted to undo everything," Brookhiser writes. Then there was the question of having "structural" amendments dealing with substantive issues—taxes, treaties, trade—or limiting the amendments to "the security of rights" and not "the whole structure of government," as he persuaded his colleagues was the better course.

Drawing on his extensive knowledge of historic precedents and his earlier experiences in Virginia and at the national convention, Madison led Congress to the passage of the Bill of Rights in what today would be deemed warp speed. A select committee met in July. They held 11 days of hearings in August and sent their proposals to the Senate. With a few changes—cutting Jefferson's proposed preamble, and a formula for congressmen's constituents—the proposed 12 amendments were cut to 10, and listed separately rather than "shoehorning" them into existing articles. Madison was, in Brookhiser's words, "a secular Moses," delivering the Ten Commandments that would guide our country's conscience for centuries. By December, the Bill of Rights was ratified by the states. It is a great story, about which volumes have been written, but Brookhiser tells its essence in four pages.

Brookhiser is a deft condenser of early American constitutional history. Madison's role as the father of our first political party is told with sophisticated, wry humor by Brookhiser: "[P]olitics never rests, even among friends and allies. Even when they agree, there are still slight shades of difference that may deepen over

time.” And so, after the Constitutional Convention and the First Congress, differences over foreign affairs and taxing powers (things never change) led to “political heresies” among the young nation’s political leaders, with Madison in the middle of debates that escalated and divided leading figures. Madison and Jefferson, with others, became leaders of what became the Republican Party, opposing Hamilton and others, the Federalists. In the press, correspondence, and congressional debates, they fought until friendships frayed.

Madison championed public opinion to temper the interplay between government and society, arguing that one political party should check on the other. He defended populism over the Federalist notion of a leadership class, and he “understood public opinion,” the author writes. Madison advocated that “the censorial power is in the people over the government and not in the government over the people,” a philosophical viewpoint he shared with Jefferson. Public opinion aided the sovereignty of the people to rebuke or endorse government. Madison defended the press, “not as a privilege accorded journalists” but rather “another name for citizen responsibility,” according to Brookhiser.

Much of the Madison–Jefferson communications are relevant today as for example, Jefferson’s letter remarking that “...it is a universal truth that the loss of liberty at home occurs under the threat of dangers real or pretended, from abroad.”

By the beginning of the 19th century, the capital moved to Washington, Jefferson was president, and Madison his secretary of state and intimate advisor. The United States doubled its size as a result of the Louisiana Purchase, and it pursued diplomatic negotiations with Britain, France, and Spain. Aided by his wife Dolly’s social graces and glamour, Madison succeeded his friend Jefferson and became our fourth president, despite the administration’s strains over foreign trade at the time. Brookshire writes:

Madison had won the highest office in the system he had helped create, following in the footsteps of Washington, the man he most admired, and Jefferson, the man he most loved. He faced a small but angry opposition, a divided party, and a world war.

Madison’s tenure as chief executive was fractious, even with a Congress of junior partners of the Founding Fathers “still

in their thrall.” Foreign affairs plagued his presidency. In 1872 the country went to war with Britain, an act for which Brookhiser notes, “America was out of practice.” When the British defeated the French under Napoleon Bonaparte and attacked the United States, America would face the ignominious burning of its capital by a better fortified enemy. The government was in ashes and bankrupt, a victim partially of Madison’s failure at administrative management. He had to fight to thwart attempts to move the capital to Philadelphia or New York, even rumblings about secession by northern Federalist states. Brookhiser points out that the Federalists were now protesting Madison’s war measures, the same Madison who had criticized Federalist bellicose measures. “... no one was awarding points for consistency.” The victory over the British at New Orleans led to a peace the new country needed; it cured what one quoted politician called “the bad passions of human nature.”

Brookhiser’s final chapter describes Madison’s shameful blind spot about slavery. He was intelligent enough to know that the “Bible is against slavery; but the clergy do not preach this.” Nor did Madison, nor Jefferson, nor most of the

other brilliant creators of our government who allowed self-interest to blind their views about the pernicious doctrine that eventually would lead the country to its Civil War. He believed in the union but would not add his voice or vote to this one “torch of discord.”

* * *

At this stage in our national history, it is remarkable to be reminded about the adoption of our Constitution and Bill of Rights. The intellectual level of the debates over profound issues, and the compromised resolutions made by political opponents compared to recent congressional behavior reminds one that there was a time when important issues were debated and resolved wisely and expeditiously by our political leaders. If the Founding Fathers are looking down today at the workings of their governmental descendants, they would weep. And the serious and influential James Madison would not recognize the dysfunctional system he so singly and brilliantly helped create.

Ronald Goldfarb is a Washington, D.C., attorney, author, and literary agent whose reviews appear regularly in Washington Lawyer. Reach him by e-mail at rlglawlit@gmail.com.

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attorney briefs

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Edward W. Gray Jr., a partner at Fitch, Even, Tabin & Flannery, was inducted into the National Bar Association Hall of Fame, an honor bestowed upon lawyers in practice for 40 years or more who have served gallantly in the pursuit of justice and equality... **Dov Apfel** has been awarded the Dan Cullan Memorial Award, a national lifetime achievement award conferred by the executive board of the Birth Trauma Litigation Group of the American Association for Justice... **Michael Byowitz**, a partner at Wachtell, Lipton, Rosen & Katz in New York, has received a Lifetime Achievement Award, presented by the American Bar Association's (ABA) Section of International Law. Byowitz also has been awarded the Outstanding State Co-Chair of the Fellows of the American Bar Foundation Award from the Fellows of the American Bar Foundation... **Kenneth O. Hassan** has been appointed to the Lifelong Learning Society Jupiter Advisory Board at Florida Atlantic University... **Covington & Burling LLP** and **Perkins Coie LLP** have been named among the nation's best law firms for women lawyers by the National Association of Female Executives and Flex-Time Lawyers... **Ted Voorhees**, a partner at Covington & Burling LLP, has been selected chair-elect of the ABA's Section of Antitrust Law. Other Covington lawyers have been named to leadership posts within the ABA Antitrust Section for 2011-12: **Harvey Applebaum** will serve on the section's International Task Force; **Stephen Calkins** will serve on the section's Publications Advisory Board; **Michael Fanelli** will serve as a member of the section's International Cartel Task Force; **Deborah Garza** will serve on its Advisory Board on Section Reserves; **John Graubert** will serve as vice chair of the section's Federal Civil Enforcement Committee; and **Katherine Sauser** will serve as assistant to chair-elect Voorhees... **Laurence M. "Larry" Evans** has been inducted into the National Academy of Arbitrators... **Lucia Anna "Pia" Trigiani**, a principal with Mercer Trigiani,

has been named to the 2011 Hall of Fame for the Italian American Business and Professional Societa... **Marie-Therese "MT" Connolly**, Life Long Justice initiative director at Appleseed, has been recognized with a MacArthur Foundation fellowship... **Karen E. Evans**, senior trial counsel at Jack H. Olender & Associates, P.C., has been appointed president-elect of the Trial Lawyers Association of Metropolitan Washington, DC... **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC** has been ranked among the top 10 in the 2012 edition of Vault, Inc.'s "Best Law Firms to Work For"... **Selena Linde**, a partner at Perkins Coie LLP, has been named one of the 2012 Women Worth Watching award winners by *Profiles in Diversity Journal*... **Cynthia M. Krus**, a partner at Sutherland Asbill & Brennan LLP, has been named Community Leader of the Year by Bread for the City during the organization's annual Good Hope Awards.

On the Move

John A. Sheehan has joined Clark Hill PLC, focusing his practice primarily on litigation and enforcement defense in environmental matters... **Janice Housey** has joined Symbus Law Group, LLC as a member in the the firm's Tysons Corner, Virginia, office... Former acting solicitor general **Neal Katyal** has joined Hogan Lovells as partner and cohead of the firm's appellate practice... **Roberto A. Rivera-Soto**, the first Hispanic American to serve on the Supreme Court of New Jersey, has joined Ballard Spahr LLP as a litigation partner in the firm's Cherry Hill, New Jersey, office... **Linda J. Morgan** has joined Nossaman LLP as partner in the firm's infrastructure and public policy practice groups... **Michael Lewyn** has joined the Touro College Jacob D. Fuchsberg Law Center in Central Islip, New York, as associate professor... **Jonathan D. Cahn**, **Marian M. Hagler**, and **Guly Sabahi** have joined SNR Denton as partner in the firm's corporate practice. Cahn also will assume a leadership role as U.S. head of the firm's



David A. Vaughan has returned to Dechert LLP as partner in the firm's financial services group.



Ranan Z. Well has joined Stradley Ronon Stevens & Young, LLP as of counsel in the firm's mergers and acquisitions practice group.

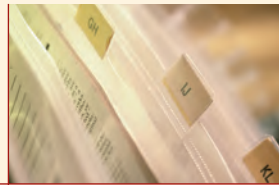


Raymond P. Ausrotas has joined three others in opening Arrowood Peters LLP in Boston (see Company Changes).

emerging markets energy strategies group. **Sam J. Alberts** has joined SNR Denton as partner in the firm's restructuring and insolvency practice... **David W. Campbell** has joined ThyssenKrupp USA, Inc., as director of government relations... **Amar D. Sarwal** has been promoted to vice president and chief legal strategist at the Association of Corporate Counsel... **Evan S. Stolove** has been promoted to vice president and deputy general counsel at Fannie Mae... **John M. McNulty** and **Julia R. Milewski** have joined Hollingsworth LLP as associate... **Mitchell H. Stabbe** has joined Edwards Wildman Palmer LLP (formerly Edwards Angell Palmer & Dodge LLP) as partner in the firm's intellectual property department... Perkins Coie LLP has added four attorneys to its national insurance coverage practice: **Vivek Chopra** and **Leon Kellner** have joined as partner. **Christina Buschmann** and **Aaron Coombs** have joined as associate... **Steven M. Cohen** has joined Zuckerman Spaeder LLP as partner in the firm's New York office... Fox Rothschild LLP has expanded and is adding the following employees

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docket



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

JANUARY 4

So Little Time, So Much Paper: Effective Time Management Techniques for Lawyers

6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

JANUARY 5

Hot Topics in the SEC's Division of Corporation Finance
12–1:30 p.m. Sponsored by the Corporate Finance Committee of the Corporation, Finance and Securities Law Section.

Mentor–Mentee Networking Event

6–7:30 p.m. Sponsored by Antitrust and Consumer Law Section.

JANUARY 10

Meeting With Doug Scheidt, Associate Director/Chief Counsel, SEC's Division of Investment Management
12–1:30 p.m. Sponsored by the Investment Management Committee of the Corporation, Finance and Securities Law Section. Jenner & Block LLP, 1099 New York Avenue NW, suite 900.

Employee Benefits Tax, Part 3

12–2 p.m. Sponsored by the Employee Benefits Committee of the Taxation Section.

State and Local Tax, Part 2

12–2 p.m. Sponsored by the State and Local Tax Committee of the Taxation Section.

Introduction to Health Law 2012, Part 1: Introduction to the U.S. Health Care System

6–9:15 p.m. CLE course cosponsored by the Courts, Lawyers and the Administration of Justice Section; Health Law Section; and Labor and Employment Law Section.

JANUARY 11

Basic Training, Day One: How to Start a Law Firm

9:15 a.m.–4:30 p.m. Sponsored by the D.C. Bar Practice Management Service Committee. Contact Daniel M. Mills, manager of the Practice Management Advisory Service, at 202-626-1312 or dmills@dcbar.org.

Legal Issues in Mass Digitization

12–2 p.m. Sponsored by the Intellectual Property Law Section and cosponsored by the Arts, Entertainment, Media and Sports Law Section.

Agency General Counsel Series: Commodity Futures Trading Commission

12:30–2 p.m. Sponsored by the Administrative Law and Agency Practice Section and cosponsored by the Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; International Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing, and Land Use Section. Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW.

Leaving Government Employment: Ethics Issues for Attorneys

5:30–7:45 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section;

Government Contracts and Litigation Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

JANUARY 12

Constitutionality of the Patient Protection and Affordable Care Act: The Competing Views

5:30–8:30 p.m. Sponsored by the Health Law Section. McDermott Will & Emery LLP, 600 13th Street NW.

Financial Accounting Basics for Lawyers

6–8:45 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Estates, Trusts and Probate Law Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Taxation Section.

JANUARY 17

New Tax Practitioners, Part 2

12–2 p.m. Sponsored by the New Tax Practitioners Committee of the Taxation Section.

Introduction to Health Law 2012, Part 2: Introduction to Medicare

6–9:15 p.m. See listing for January 10.

JANUARY 18

Pass-Throughs and Real Estate Tax, Part 3

12–2 p.m. Sponsored by the Pass-Throughs and Real Estate Committee of the Taxation Section.

The Year in Review and Updates From Heckerling

12–2 p.m. Sponsored by the Estate Planning Committee of the Taxation Section.

Ethics Issues Facing Corporate Counsel

6–8:15 p.m. CLE course cosponsored by all 21 sections of the D.C. Bar.

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Attorney Briefs

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to its new District of Columbia location: **Dirk D. Haire, Reginald M. Jones,** and **Larry D. Harris** as partner, and **Douglas P. Hibshman** and **Farah A. Shah** as associate... **Adam D. Resnick** has joined Mosaic Legal Group, PLLC as partner, concentrating his practice on trademarks and intellectual property law... **Adam V. Lichtenstein** has joined the National Rural Utilities Cooperative Finance Corporation as corporate counsel at its headquarters in Dulles, Virginia... **David Boling** has been named deputy executive director of the Maureen and Mike Mansfield Foundation for Pacific Affairs... Covington & Burling LLP has elected eight attorneys to the firm's partnership: **Brian Bieluch, Matthew DelNero, Christopher Denig, Jeffrey Lerner, Miguel López Forastier, Mona Patel, Jeannie Perron,** and **Einar Stole**... **Donald L. Vieira** has joined Wilson Sonsini Goodrich & Rosati as partner... **Andrew E. Tomback** has joined Zuckerman Spaeder LLP as partner in the firm's New York office... **Rosemary C. Harold** has joined Wilkinson Barker Knauer, LLP as partner... **John D. Heffner** has joined Strasburger & Price, LLP as of counsel in the firm's transportation and logistics group... **Glenn A. Fine** has joined Dechert LLP as partner in the firm's white collar and securities litigation practice.

Company Changes

Regina A. DeMeo has opened the **Law Office of Regina A. DeMeo**, a full-service family law firm located at 1666 Connecticut Avenue NW, suite 250... **Fox Rothschild LLP** has relocated its office to 1030 15th Street NW, suite 380 East... Allen Erenbaum has opened **Erenbaum Legal Strategies, Inc.** in Manhattan Beach, California. The firm focuses on the intersection of law and government, particularly companies and organizations with state legislative, regulatory, and compliance issues; business immigration matters; and ballot measures and election law issues... Lisa G. Arrowood, Kevin T. Peters, Raymond P. Ausrotas, and Jed DeWick have opened **Arrowood Peters LLP** in Boston. The firm will focus on complex civil litigation and trial work... Edwards Angell Palmer & Dodge LLP and Wildman, Harrold, Allen & Dixon LLP have merged to form **Edwards Wildman Palmer LLP**... Baach, Robinson & Lewis has been renamed **Lewis Baach**, following the departure of Jeffrey Robinson, who has

taken a top position at the NAACP Legal Defense and Education Fund, Inc.

Author! Author!

Julie Domike and **Alec Zacaroli** of Kilpatrick Townsend & Stockton LLP have edited *The Clean Air Act Handbook, 3rd Edition*... **Joel P. Bennett** has written *How to Start and Build a Law Practice in the District of Columbia, 2011 Edition*, published by the Bar Association of the District of Columbia... Oxford University Press has released paperback and Kindle versions of **Michael A. Carrier's** book *Innovation for the 21st Century: Harnessing the Power of Intellectual Property and Antitrust Law*... **Regina A. DeMeo** has authored the chapter "The Expanding Role of Collaborative Family Law," which was included in Aspatore Publication's Inside the Mind Series on Understanding Collaborative Family Law... **Arnold Rochvarg**, a professor of law at the University of Baltimore School of Law, has written *Principles and Practice of Maryland Administrative Law*, a treatise, published by Carolina Academic Press, which explains the administrative process before Maryland agencies and judicial review of Maryland agency decisions... **Lara Degenhart Cassidy**, of counsel at Perkins Coie LLP; **Christine Spinella Davis**, an attorney at GEICO; and **David C. Mancini**, a partner at Seyfarth Shaw LLP, have coauthored the chapter "Boiler and Machinery Insurance" as part of the *New Appleman on Insurance Law Library Edition*, published by LexisNexis... **Jerry W. Cox** has written the book *On the Lip*... **Paula DiMeo Grant** has coedited *Law for Nurse Leaders: A Comprehensive Reference*, published by Springer Publishing Company. Grant and **John J. Vecchione** of Valad & Vecchione PLLC have coauthored chapter 4 of that volume, titled "Laws Governing the Work Place"... **David B. Orange** has edited *Great Patents: Advanced Strategies for Innovative Growth Companies*, a handbook for executives at small and medium businesses. It was published by Logos Press... **David Gurnick**, a California State Bar certified specialist in franchising and distribution law with the Lewitt Hackman firm in Los Angeles, has written *Distribution Law of the United States*, published by Juris Publishing.

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. E-mail submissions to D.C. Bar staff writer Thai Phi Le at tle@dcbar.org.

Docket

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Guardianships and Conservatorships in the District of Columbia

6–9:15 p.m. CLE course cosponsored by the Estates, Trusts and Probate Law Section; Health Law Section; Labor and Employment Law Section; and Law Practice Management Section.

JANUARY 19

Postmortem Estate Planning, Part 5

12–2 p.m. Sponsored by the Estates, Trusts and Probate Law Section.

Tax Audits and Litigation Tax, Part 4

12–2 p.m. Sponsored by the Tax Audits and Litigation Committee of the Taxation Section.

Cloud Computing: The Basics and Much More

6–8:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Computer and Telecommunications Law Section; Corporation, Finance and Securities Law Section; Government Contracts and Litigation Section; and Intellectual Property Law Section.

JANUARY 20

Effective Writing for Lawyers Workshop

9:30 a.m.–4:30 p.m. CLE course cosponsored by all 21 sections of the D.C. Bar.

JANUARY 23

Introduction to Export Controls

6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; and International Law Section.

JANUARY 24

New Tax Practitioners, Part 3

12–2 p.m. See listing for January 17.

Pretrial Process by the Pros: The Keys to Getting Your Case Ready for Trial

6–8 p.m. Sponsored by the Family Law Section.

Introduction to Health Law 2012, Part 3: Introduction to Medicaid

6–9:15 p.m. See listing for January 10.

classifieds

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legal spectator

By Jacob A. Stein

The Happy Warrior



My grammar school was H.D. Cooke at 17th Street and Mozart Place. Our morning recess was given over to kickball games. On a cold day in March 1932, a big boy pushed a smaller boy aside. Then something happened. Ralph Temple stepped forward and placed himself between the smaller boy and the big bully. When the bully raised his fist, Ralph knocked him down. When the bully got up, his palms were bleeding. We all knew that the bully was no longer a threat.

There is a catch to that story. Ralph Temple was not born until October 1932, so how could he be there at the Cooke playground in March? Let's just say, if he were there, he would have done just what I described.

After Ralph's death in August of this year, John Karr and I talked about Ralph's unique determination to rescue those who need help. Some of the time it can be dangerous.

John has been in and out of courts for many years. In that time, he has seen the best and worst and everybody in between. John and Ralph were really good friends. He saw that quality in Ralph. John said it is something that cannot be learned. It is unique. In fact, very few of us are born with it.

John and I were trying to find a colorful word to describe it. What about the word *infracaninophile*, the friend of the underdog. When the bully steps forward, the *infracaninophile* meets him halfway.

Ralph was born in England and eventually arrived in the United States carrying his pleasant English accent. He graduated from Harvard Law School in 1956. Thereafter, he worked with Thurgood Marshall at the NAACP Legal Defense and Educational Fund from 1956 to 1957, when he joined the Army.

He then taught at Harvard, George Washington, and Howard universities before joining a big law firm. While he was at the firm, he found a way to connect with the newly enacted 1964 Civil

Rights Act. He soon found that this was his calling in the law, civil rights and civil liberty. The *infracaninophile*.

He left the big firm and became legal director of the National Capital Area American Civil Liberties Union (ACLU). He served there from 1966 to 1980. He was in many of the big controversial cases that were litigated. He always conducted himself in an ethical manner under demanding contentious settings.

When he left Washington, he moved to Oregon and connected with those who were in ACLU work.

In lunches he and I had in the past four years, Ralph said things were pretty quiet in Oregon. He said there remained in him a few more contests, even if limited to arguing with the dry cleaner for not taking the stain out of his necktie. The owner had promised that it could be done, but it was still there. "Now, please. I know you can do it. I will pick it up next week. You can do it. Believe me, you can."

Ralph's son, Johnny, put together a memoir of his dad's reflections about justice, the courts, the people he knew, and comments of a very personal nature. He titled it *Life, Liberty and the Pursuit of Happiness*.

He records that in 2009 Ralph was told that he must have surgery, serious surgery, and there was a risk of death. Here is an interesting reflection:

[A] significant aspect of contemplating major surgery is how to manage your mind, how to live through the experience—or, as my wife put it: "What am I called upon to do?" I believe all would agree that the best thing to do is to live the time before the surgery as happily as one can—which includes making your loved ones, friends, and others as happy with your situation as possible.

He added he made the mistake of asking the doctor to describe the sur-

gery. It was not helpful to have those details in mind.

He goes on to say that when real serious matters confront you, it is a good thing to create within yourself two people. "The key is to change it from a conversation between you and you to a conversation between you and an 'other,' some conceived source smarter than you."

William Wordsworth and Ralph have an understanding. What follows proves it:

Who is the happy Warrior? Who is he

What every man in arms should wish to be?

—It is the generous Spirit, who, when brought

Among the tasks of real life, hath wrought

Upon the plan that pleased his boyish thought:

Whose high endeavours are an inward light

That makes the path before him always bright;

Whose powers shed round him in the common strife,

Or mild concerns of ordinary life,

A constant influence, a peculiar grace;

But who, if he be called upon to face Some awful moment to which

Heaven has joined

Great issues, good or bad for human kind,

Is happy as a Lover; and attired

With sudden brightness, like a Man inspired;

And, through the heat of conflict, keeps the law

In calmness made, and sees what he foresaw:

Or if an unexpected call succeed,

Come when it will, is equal to the need . . .

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

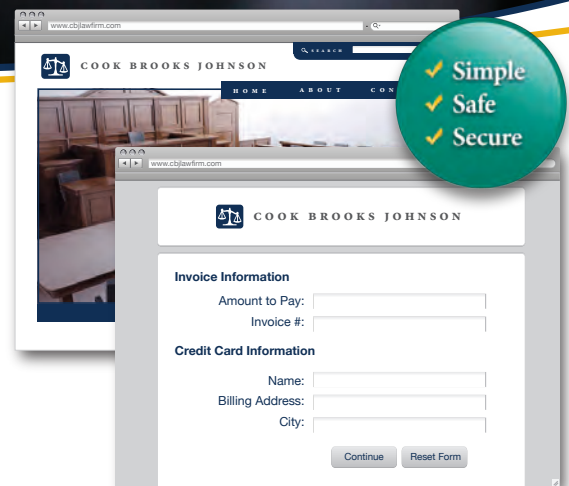
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