MARCH 2014

Washington Lawyer

THE OFFICIAL JOURNAL OF THE DISTRICT OF COLUMBIA BAR

U.S. Supreme Court: A Quietly Significant Term

By Sarah Kellogg

March 2014
Volume 28 No. 7
www.dcbar.org

CONTENTS

Cover photo by istock.com

Now Available in Virginia!

The D.C. Bar Lawyers' Professional Liability Insurance Program offers broad coverage with great pricing for attorneys and law firms in D.C., Maryland and Virginia, all backed by an A rated carrier.

Trust USI Affinity, the endorsed broker of the D.C. Bar and a national leader in Lawyers' Professional Liability, to tailor a solution to your firm's individual needs. More than 15,000 law firms nationwide depend on our solutions and expertise to help them protect their practice. You should too.

Find out why so many legal professionals choose USI Affinity.
Call or go online today.

For a **FREE** quote contact us
1.855.USI.0100 pin 706
www.mybarinsurance.com/dcbar

DCBAR

The D.C. Bar
Lawyers' Professional Liability Program

Advised and Administered by
USI AFFINITY

Washington Lawyer

PRESIDENT
Andrea Ferster

PRESIDENT-ELECT
Brigida Benitez

SECRETARY
Sara Kropf

TREASURER
Steven N. Berk

BOARD OF GOVERNORS
Amy L. Bess, Susan Low Bloch, Theodore D. Chuang, Cindy Conover, Sabine S. Curto, Lily M. Garcia, Stephen I. Glover, Jeffrey S. Gutman, Glenn F. Ivey, Susan M. Kovarovics, Bridget Bailey Lipscomb, Richard J. Marks, Bonnie Montgomery, Marianela Peralta, Gregory S. Smith, Annamaria Steward, Michelle C. Thomas, Vytas V. Vergeer, Thomas S. Williamson Jr.

CHIEF EXECUTIVE OFFICER
Katherine A. Mazzaferri

EDITOR IN CHIEF
Cynthia G. Kuhn

MANAGING EDITOR
Tim Wells

ASSOCIATE EDITOR
Andrea T. Williams

COPY EDITOR
Fleur L. Harris

STAFF WRITERS
Kathryn Alfisi, Thai Phi Le

PUBLICATIONS COMMITTEE
Lauren E. Becker, Kate McSweeny, Maria G. Mendoza, Don A. Resnikoff, Armando Rodriguez-Feo, Samara K. Schwartz, Elizabeth T. Simon, George P. Slover, Brenda A. Waugh, Mara E. Zimmerman

ART DIRECTION AND PRODUCTION
Ron Flemmings & Company

EDITORIAL OFFICE
The District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210;
202-737-4700

ADVERTISING SALES
W. Virgil Cotton

ADVERTISING OFFICE
The District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210;
202-737-4700, ext. 3268; vcotton@dcbar.org

HEADQUARTERS
The District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210;
202-737-4700; toll free 1-877-33DCBAR (1-877-333-2227); www.dcbar.org

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

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

PRINTED WITH SOY INK

letters

Life Lessons for Disenchanted Contract Lawyers

I read with interest Anna Stolley Persky's January 2014 cover story "Under Contract: Temporary Attorneys Encounter No-Frills Assignments, Workspaces."

I don't feel sorry for the super-choosy but unhappy contract attorneys who think the world owes them a living. To end up where they did, they rejected many options, i.e.: (1) moving to Maryland, Virginia, or other parts of the United States, taking other bar exams, and applying for jobs in those jurisdictions; (2) joining court-appointed panels to represent indigent clients; or (3) starting their own firms.

As for their complaint about pay, everyone knows that law firm associate salaries are through the roof. The hourly rates paid to contractors are a way for law firms to bring those salaries back down to earth.

Their complaint that they don't know when or where their next job will come from makes them no different than solo law firm practitioners who also don't know when or from where their next client will come.

To their complaint that law schools flood the legal market with too many attorneys, the oversupply of attorneys was a known fact before most of these contractors applied to law school. Had they done their research ahead of time, they could have chosen other career paths.

They complain about working conditions, but cell phones have cameras, and the prohibition on cell phones makes sense when sensitive documents are under review. A portable wall poster will dress up a windowless office. Contract attorneys can bring detergents and utensils to clean dirty bathrooms.

Life is what you make it.

—Gary Roberts
San Diego, California

Ms. Persky's article on contract lawyers was an excellent depiction of the hazards and humiliations of being a temporary attorney. I retired after 33 years in the practice of law and recently decided to try my hand at contract work. Rather than it being a satisfying turn in using my years of litigation skills, it was one of the most disappointing experiences of my legal career.

The secretary was insolent and rude, frequently redoing my work because she "knew her forms" even when she did not. The boss rebuked me for, among other things, moving a paragraph in a form pleading and for leaving 45 minutes early one day. It is nice to know that I am not alone in my feelings about being a temporary attorney. The author correctly describes the work as "mundane, tedious and sometimes [often] mindless."

Luckily, the job ended after two months, and I do not have to make my living this way. I am not sure if there will be a next time.

—Cynthia Thomas
Mandeville, Louisiana

Ms. Persky writes that "[s]ome lawyers having difficulty finding permanent employment, and yet trying to make a living from their trade, they express bitterness that law schools continue to churn out more lawyers."

Let's face the facts: For a long time, the legal professional was an attractive and viable option for students because of the once-soaring salaries and numerous vacancies. When I graduated law school 25 years ago, I had my pick of cities and firms. But times have changed.

If I could offer some advice to the current crop of contract lawyers, it would be to look outside the law for career satisfaction. In my case, I practiced law for a dozen years before being downsized—twice. But, I reluctantly transitioned to the business world and have found repeated success. I couldn't be happier.

—Marilyn Bouster
Cleveland, Ohio

Ferster's Fix Needs Tweaking

D.C. Bar President Andrea Ferster's January 2014 article, "Is D.C. the Face of the New Jim Crow?" brought some welcome attention to recent public reports authored by the American Civil Liberties Union of the Nation's Capital and the Washington Lawyers' Committee for Civil Rights and Urban Affairs (WLC) detailing the racial disparities in arrests by D.C. police agencies. These reports detail the undeniable fact that these agencies target African Americans for arrest for offenses that large swathes of the D.C. public—both black and white—"commit" on a regular basis.

Ferster appropriately notes the overwhelming disparities in arrests for marijuana, which blacks and whites consume in equal numbers. Marijuana arrests account for more than 9 percent of all arrests in the District of Columbia, and 93 percent of those arrested are African Americans. It is absurd to suggest that D.C. residents "demand" such arrests, as D.C. Police Chief Cathy L. Lanier claims. Similar racial disparities are found in every single category of offense, from traffic stops to disorderly conduct arrests.

The WLC report details that D.C. police almost exclusively make arrests for misdemeanors and drug offenses, and more than 90 percent of these arrests are of African Americans. Fewer than 4 percent of arrests are for murder, aggravated assault, sexual assault, and arson offenses for which citizens more reasonably "demand" action.

Ferster focuses on the need to improve employment opportunities and public education for the District's African American population, and such improvements are sorely needed, but she misses the more obvious point. In addition to poor job prospects and struggling schools, the District's African American population also must deal with a police force that unfairly and illegally targets them for arrest for "crimes" that white Washingtonians commit at the same rate but without arrest. The problem is not social conditions; the problem is racially biased policing.

—Philip Fornaci
Former director,
WLC's DC Prisoners' Project,
and coauthor of the report,
"Racial Disparities in Arrests
in the District of Columbia"

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 1-877-508-2606 or by e-mail at communications@dcbar.org. Letters may be edited for clarity and space.*

facebook.com/dcbarhq

twitter.com/DC_Bar

LinkedIn Groups›District of Columbia Bar

from the president

By Andrea Ferster

Patrice Gilbert Photography

Gender Role Reversal Has Impact on Big Law

"Until women have supportive employers and colleagues as well as partners who share family responsibilities, they don't have real choice. And until men are fully respected for contributing inside the home, they don't have real choice either."

—*Sheryl Sandberg, Lean In*

What do the ABA Task Force on Gender Equity, Sheryl Sandberg, and Millennials have in common? They want to improve life for everyone.

The task force has challenged the legal profession to face the fact that the latter is not immune to gender inequality. In her letter introducing the ABA's gender equity toolkit for partner compensation, ABA past president Laurel Bellows points out that "Women partners in law firms earn substantially less than their male colleagues even when they perform exactly the same work, have similar books of business, and make similar (or even greater) contributions to firm administration."

It would be easy to discount these numbers by assuming that this compensation gap is attributable to the "lifestyle" choices that women voluntarily make to accommodate their family responsibilities. However, a survey and report issued by the National Association of Women Lawyers refutes this. Instead, the study found that the disparity in partner compensation is attributable to factors such as the lack of gender diversity in compensation committees, the failure to give origination credit to women, and compensation systems that overvalue rain making and billable hours and undervalue work performance and institutional investment measures.[1]

Tracking these findings, women lawyers at Greenberg Traurig, LLP filed a $200 million class action sex discrimination suit in 2012 alleging that undercompensation is attributable to a "boys club" environment in which male lawyers hog origination credit, exclude women from client pitches, and favor themselves in work assignments.[2]

Regardless of the outcome of this litigation, large firms should take notice of the pay gap. Lorelie Masters, a member of the task force, points out that "If women law firm partners can't achieve pay equity in law firms, who can? If you don't fix the problem at the top, you won't fix it at the bottom. And I don't see how any institution within the profession can survive long term if it's not reflecting society as a whole."

It's not just women lawyers who are affected. The same compensation system that discriminates against women partners is also harmful to men, who are increasingly demanding greater flexibility to deal with family responsibilities.[3] As Sandberg contends in her thoughtful book *Lean In*, "Counterintuitively, long-term success at work often depends on *not* trying to meet every demand placed on us." And for men *and* women, it is simply not possible to have work-life balance and be on the top end of partner compensation.

These lawyers are not slinking down the off-ramp into second tier or nonlegal work. They are forming law firms and developing business models that are luring clients and lawyers away from traditional law firms. These models include virtual law firms composed of telecommuters who set their own schedules and annual hours, and small firms that offer better work-life balance for their attorneys with lower overhead for their clients.

These firms are offering collaborative, nonhierarchical, more egalitarian work environments that are drawing clients and lawyers away from traditional firms.

The seeds of change can be seen in the Small Firm Managing Partner Roundtable, convened by the D.C. Bar's Practice Management Service Committee at the behest of the managing partners of law firms composed of four to 50 lawyers. The roundtable was initiated to provide a forum to discuss common issues related to growth, such as compensation, financial management, hiring, retention, marketing, space, and other management issues. Despite a still recessionary economy, these small firms are growing and thriving.

The number of Big Law "refuseniks" is likely to increase as the legal workforce starts to absorb more Generation Y lawyers (born after 1980), often referred to as Millennials. Generation Y—both women and men—is more entrepreneurial and less tied to gender stereotypes.[4] Gen Y men are less interested in long hours and increased responsibility at work and more interested in spending time with their families than the generations of men who came before them.[5] Call them entitled or visionary, their expectations and responses to the conventions of Big Law likely will change the workplace.

Former large firm partner and now solo practitioner Sara Kropf agrees that Big Law is going to have to change in fundamental ways if it is going to survive. Kropf believes that "the upcoming generation of associates at law firms will look ahead at how difficult it is if not impossible to reach the highest levels of success within Big Law, and will look very carefully at other options."

So, will women be able to climb in equal numbers to the upper echelons of large law firms? Or will the disparity in pay demonstrate that compensation models and business practices at large firms are unsustainable, leading ultimately to the end of the era of Big Law as it currently exists? It is my hope that under either of these scenarios, the result will be improved working conditions and work-life balance for all of us.

Reach Andrea Ferster at aferster@railstotrails.org.

Notes

1 The National Association of Women Lawyers and the NAWL Foundation Report of the Fourth Annual National Survey on Retention and Promotion of Women in Law Firms 7 (2009).

2 Debra Cassens Weiss, *Class Action Claims 'Boys Club' at Greenberg Traurig Hogs Work and Origination Credit,* ABA Journal, Dec. 3, 2012.

3 *See* report available at http://bit.ly/1ejGztQ.

4 *See* report available at http://uscham.com/1eANjQk.

5 *See* report available at http://bit.ly/1iQH6Xu.

D.C. Bar Members Save up to 34% With UPS®

The D.C. Bar is proud to bring its members valuable discounts on the products and services you need. Make the most out of your membership and take advantage of some of the most competitive rates available on shipping services. Whether you need your documents or packages to arrive the next day or are looking for the most affordable shipping option, UPS understands the importance of reliability, speed and cost.

Your D.C. Bar Sample Discounts

UPS Service	UPS Member Discount
UPS Next Day Air®	Up to 34%
UPS Next Day Air Saver®	Up to 34%
UPS 2nd Day Air A.M.®	Up to 30%
UPS Ground	Up to 16%
UPS Worldwide Express®	Up to 33%

To save on your UPS shipments, simply:

Call: **1-800-MEMBERS (636-2377)**

Visit: **savewithups.com/dcbar**

the pro bono effect

By Reid D. Henderson

One Cure for All of Those Lawyer Jokes

Ronald Flemmings

We are all familiar with lawyer jokes: What do you call a thousand lawyers at the bottom of the ocean? A good start. With all the complaints about "frivolous" litigation, ambulance chasing, and greed in the profession, it can be easy to forget that lawyers serve a vital function in society. This is especially true in the District of Columbia where the oft-cited statistic is that one out of every 10 residents is a lawyer. My experience volunteering with the D.C. Bar Pro Bono Program's Consumer Law Resource Center (CLRC) for the past several years has provided a welcome reminder of our profession's real value to individuals and the community.

The CLRC provides free legal information and assistance to individuals on consumer law matters or small claims cases at the D.C. Superior Court. On a typical morning, volunteers will see 15 to 20 customers about a wide range of legal issues, including debt collection cases, disputes with home improvement contractors, security deposit refunds, credit reporting, identity theft, and problems with car repairs or used cars. The customers at the CLRC have varying levels of sophistication, but they all have one thing in common: They have a legal problem and they need our help.

For lawyers who've spent years studying the legal system and training as professional problem solvers, the legal system makes sense. For our customers, being involved in the judicial process is often a stressful, intimidating, and confusing experience. We listen to their stories, explain their rights, talk to them about their options, and guide them through the legal process so they can vindicate those rights. Volunteers explain the available options and draft pleadings, motions, and other documents.

In many cases, the difference between a judgment and a dismissal is just a brief talk with a lawyer. For example, a woman sued for her deceased husband's credit card debt came to us after spending months trying to negotiate a resolution with the credit card company. We were able to explain that she was not responsible for her husband's credit card debt and that the statute of limitations had expired long before the lawsuit was filed. A short time later, the plaintiff dismissed the case with prejudice.

It is often the simple things that have the biggest impact on a customer's life. An elderly woman came to the CLRC when she was sued by her condominium association for unpaid condo fees. The substantial equity in the property was her life savings, but she could not afford to pay the fees. She was terrified that the association would imminently take the property from her and she would lose all of the equity. Her relief was palpable after I explained the litigation process, the defenses she could raise, and that, no matter what happened, she had a right to all of the excess proceeds after satisfying an eventual judgment. As an aside, I mentioned that she could avoid the litigation by selling the condo and paying the association any amounts it was owed. I was shocked by her smile and excitement at this news. She had wanted to sell the condo and move in with a relative, but thought that she couldn't because of the lawsuit. A few weeks later I received an effusive thank you card that still hangs on the wall in my office.

A lot of our work is simply translation—decrypting legalese into understandable English. We explain the meaning of an order or a motion, the significance of facts to legal arguments. We also help customers explain their claims or arguments to the court in pleadings and motions. Many customers only need someone to explain the litigation process—complaints, answers, and scheduling orders.

If your law firm, voluntary bar association, or D.C. Bar section is considering expanding your involvement in pro bono work, the D.C. Bar Pro Bono Program has a range of opportunities from which to choose. You can provide brief information and services at one of its four resource centers (landlord and tenant, probate, tax sale, and consumer law) at the D.C. Superior Court; brief advice at a Saturday morning walk-in clinic; or full representation in a family, public benefits, consumer, bankruptcy, or personal injury defense matter. No matter what area of law you practice, you will be supported by the Pro Bono Program's staff attorney experts and subject area mentors to help you achieve success for your customers or clients.

Pro bono service is fun, rewarding, and a great investment in professional development. Every time I volunteer, I learn something new about D.C. law and the rules of civil procedure. I have learned about new areas of law and put my knowledge of civil procedure into constant practice. Each customer I help provides an opportunity for me to improve my skills as an interviewer, as a communicator, and as a writer. Best of all, there is no homework.

I doubt that punch lines questioning the need for lawyers will end any time soon. I may even laugh myself once in a while. However, whenever I need a lift about our chosen profession, I think about the many people I have helped, especially my pro bono clients. Almost none of them could afford to pay a penny to a lawyer, but for each one of them, the information and services I provided helped to improve their lives. And that's no joke.

Reid Henderson is the principal attorney at RDH Law, P.C. specializing in consumer litigation and small business counseling. In 2012 he was recognized by the D.C. Bar as Pro Bono Lawyer of the Year for his service as a volunteer mentor at the Consumer Law Resource Center.

HELPING OUR NEIGHBORS

For the past 21 years, the D.C. Bar Pro Bono Program's Advocacy & Justice Clinic has helped improve the lives of over 6,000 D.C. residents. By recruiting, training and supporting pro bono lawyers at major law firms and government agencies, we provide much needed legal representation in housing, family law, public benefits and consumer disputes.

The D.C. Bar Pro Bono Program gratefully acknowledges our 2014 Advocacy & Justice Clinic partners. Their representation will help ensure that more than 350 families living in poverty do not lose their homes or custody of their children, or go without food or medical care, simply because they lack meaningful access to legal counsel.

The D.C. Bar Pro Bono Program is supported entirely by voluntary contributions.

Learn more at **www.dcbar.org/probono**

DC BAR
PRO BONO PROGRAM

ADVOCACY & JUSTICE CLINIC PARTNERS

PLATINUM

Akin Gump Strauss Hauer & Feld LLP
Finnegan Henderson Farabow Garrett & Dunner LLP
Morgan Lewis & Bockius LLP
U.S. Department of Justice
Wiley Rein LLP

GOLD

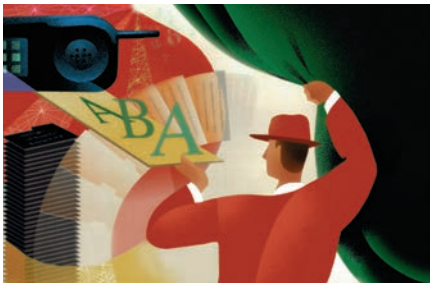
Council of the District of Columbia
Foley & Lardner LLP
Jenner & Block LLP
King & Spalding LLP
Sidley Austin LLP
Skadden, Arps, Slate, Meagher & Flom LLP
Stinson Leonard Street LLP
Williams & Connolly LLP

SILVER

Baker Botts LLP
Baker & Hostetler LLP
Bingham McCutchen LLP
Boies, Schiller & Flexner LLP
Dentons US LLP
Dickstein Shapiro LLP
DLA Piper US LLP
Epstein Becker & Green, P.C.
Goodwin Procter LLP
Hughes Hubbard & Reed LLP
McDermott Will & Emery LLP
Miller & Chevalier, Chartered
Morrison & Foerster LLP
Nixon Peabody LLP
Pepper Hamilton LLP
Ropes & Gray LLP
Sutherland Asbill & Brennan LLP
Zuckerman Spaeder LLP

bar happenings

By Kathryn Alfisi



Mick Wiggins

15th Youth Law Fair Addresses Issue on Drug and Alcohol Use

The Superior Court of the District of Columbia and the D.C. Bar Litigation Section will hold their 15th Annual Youth Law Fair on March 22, focusing on youth drug and alcohol use.

The law fair is a free, educational event that brings together students, lawyers, judges, educators, and community leaders to explore issues facing students in the Washington metropolitan area.

This year's fair takes place from 10 a.m. to 2:30 p.m. at the H. Carl Moultrie Courthouse, 500 Indiana Avenue NW.

To register, visit sites.google.com/site/youthlawfair. For more information, contact the D.C. Bar Sections Office at 202-626-3455 or outreach@dcbar.org. (See request for volunteers on p. 21.)

March CLE Courses Explore Estate Planning, Premarital Agreements

In March the D.C. Bar Continuing Legal Education (CLE) Program will offer courses in estate planning and premarital agreements.

"Top Estate Planning Developments of 2013 and Top Estate Planning Predictions for 2014, With Implications for Our Practices" on March 12 will be led by Ronald Aucutt, a partner at McGuireWoods LLP.

The course will address several key questions, including is estate tax law really permanent; do headlines about the Internal Revenue Service (IRS), White House, and Congress affect practitioners; and what is the real significance of recent same-sex marriage developments? Aucutt also will discuss "what is big and what is small" in the administration's budget proposals and the U.S. Department of the Treasury–IRS' Priority Guidance Plan, where valuation is going, and whether trust law is headed in the right direction.

The course takes place from 10 a.m. to 12:15 p.m. and is cosponsored by the D.C. Bar Estates, Trusts and Probate Law Section and Taxation Section.

On March 13 the CLE Program will offer the course "Premarital Agreements in the District of Columbia, Maryland, and Virginia: Practical Advice and Comparisons," a program geared toward attorneys with a family law background, whether or not they are admitted to practice in each of the three jurisdictions.

Participants will receive practice tips from experienced family law attorneys on topics such as how to conduct the initial interview, basic dos and don'ts, creative drafting techniques, and enforcement and modification strategies.

Robin A. Clark of the Law Office of Robin A. Clark, LLC; Darryl A. Feldman, principal at Ain & Bank, P.C.; and Daniel L. Gray of Cooper Ginsberg Gray, PLLC will serve as faculty.

The course takes place from 6 to 9:15 p.m. and is cosponsored by the D.C. Bar Family Law Section and Litigation Section.

Courtesy of McGuireWoods LLP.

Ronald Aucutt

Courtesy of Cooper Ginsberg Gray, PLLC

Daniel L. Gray

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

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

D.C. Bar Prepares for 2014 Celebration of Leadership in June

The 2014 Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting will be held on June 17 at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW.

Courtesy of Steptoe & Johnson LLP

Brigida Benitez

The evening will open with the D.C. Bar Pro Bono Program's Presidents' Reception at 6 p.m., followed by dinner and the presentation of awards at 7:30.

The reception will honor incoming Bar president Brigida Benitez of Steptoe & Johnson LLP and will benefit the Pro Bono Program, which is supported entirely by voluntary contributions.

Highlights of this year's Celebration of Leadership include Benitez' swearing-in ceremony, the announcement of 2014 D.C. Bar election results, and the presentation of awards to D.C. Bar sections, pro bono attorneys, law firms, and others who have served the Bar and its community.

The evening also features the presentation of the Bar's 2014 Beatrice Rosenberg Award for Excellence in Government Service and its Justice Thurgood Marshall Award.

For more information about the Presidents' Reception or to make a donation to the D.C. Bar Pro Bono Program, contact Kathy Downey at 202-588-1857 or kdowney@erols.com. For more information about the Awards Dinner and Annual Meeting, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or annualmeeting@dcbar.org.

WBA Hosts Talk With Judge Kessler, Forum on Small Firm Associate Work

The Women's Bar Association (WBA) of the District of Columbia will hold two events in March, starting with a discussion on how associates can navigate work at a small firm.

The program "Succeeding as a Small Firm Associate" on March 6 will look at the best and worst things an associate can do at a small firm, and how an associate can market for and bring positive change to a small firm. This forum also will discuss small firm dynamics (the power structure and the associate), as well as questions an associate should never ask and questions he or she needs to ask.

Courtesy of the U.S. District Court for the District of Columbia

Gladys Kessler

Panelists include Kellie Budd, an associate at Doumar Martin PLLC; Paulette Chapman, a partner at Koonz, McKenney, Johnson, DePaolis & Lightfoot, L.L.P.; and Elaine L. Fitch, a partner at Kalijarvi, Chuzi, Newman & Fitch, P.C. Daniel Mills, assistant director of the D.C. Bar's Practice Management Advisory Service, will moderate.

The program takes place from 6 to 8 p.m. at Jenner & Block LLP, 1099 New York Avenue NW, suite 900. It is sponsored by the WBA's Solo & Small Practice Forum and Young Lawyers Committee.

On March 25 the WBA's Communications Law Forum will mark Women's History Month with a conversation with Judge Gladys Kessler, senior judge of the U.S. District Court for the District of Columbia.

In 2013 Judge Kessler was a recipient of the Margaret Brent Women Lawyers of Achievement Award presented by the American Bar Association's (ABA) Commission on Women in the Profession. Judge Kessler cofounded the Women's Legal Defense Fund and was one of 60 women judges who met in 1979 and founded the National Association of Women Judges, serving as its third president. While serving as a judge on the D.C. Superior Court, she was instrumental in establishing one of the first ABA-sponsored multidoor dispute resolution programs.

At the WBA event, Judge Kessler will be interviewed by Lorelie S. Masters, a partner at Jenner & Block and past president of the WBA. The conversation takes place from 12 to 2 p.m. at Jenner & Block.

To register for either event, visit www.wbadc.org and click on "Event Calendar." For more information, contact the WBA at admin@wbadc.org or 202-639-8880.

D.C. Affairs Section Holds First Moot Court Competition

The D.C. Bar District of Columbia Affairs Section is holding its first D.C. Cup Moot Court Competition on April 5 and the competition committee is looking for Bar members who are interested in serving as judges.

The competition features participants from District law schools and takes place at the University of the District of Columbia David A. Clark School of Law, 4200 Connecticut Avenue NW.

The section is looking for 18 judges for brief scoring and 18 additional judges for oral arguments. Individuals interested in judging oral argument rounds or competitors' brief submissions must fill out and submit the necessary form by March 3. To submit the form, visit http://adobe.ly/1bOmsD4.

For more information about the competition, e-mail sections@dcbar.org and put "D.C. Cup Moot Court Competition" in the subject line.

continued on page 46

speaking of ethics

By Hope C. Todd

Mick Wiggins

Ethical Mandates in Private Adoptions

"It is also clear that the harm occasioned to the client can never be adequately rectified."[1]

Stories of failed child adoptions leave only the coldest heart unmoved. Common features in these adoption cases often include: (1) a deceived birth parent deprived of due process and of the fundamental liberty interest in parenting his or her child (often, though not always, through the intentional improper actions of the other birth parent); and/or (2) corrupt intermediaries engaged in unlawful conduct against eager prospective adoptive parents who joyfully welcome and care for and love their adopted child. Inevitably in these devastating tales, the day comes when the adoptive parents learn that something has gone terribly wrong. And then the legal battle ensues, a nightmare which begins when the child is perhaps less than a year old and ends three or four years later, when the child is tearfully ripped from the only parents and home that he or she has ever known and is returned to the person (or couple) who has desperately longed for permanent custody and for the opportunity to raise and love his or her child. In these legal matters, there are no victors, only victims, and justice has a hollow ring.

Such heartbreak is all the more unfathomable when it results from a lawyer's failure to act with requisite legal competence or, in the most extreme case, when a lawyer willfully participates in a fraud or crime. For such lawyers, a disciplinary penalty involving a lengthy suspension, or even disbarment, is the consistent, if inadequate, consequence.[2]

No doubt, the vast majority of adoptions are successfully and legally accomplished through the assistance of competent and compassionate counsel. However, the very nature of private adoption practice gives rise to a number of significant ethical issues, particularly with respect to conflicts of interest, which adoption practitioners must identify and appropriately address lest they violate the D.C. Rules of Professional Conduct and risk grave harm to clients and to the proper administration of justice.

At first blush, one might regard the objectives and interests of birthparents, prospective adoptees, and adoptive parents in every adoption as wholly consistent and aligned toward a common goal: the timely and permanent placement of a child in a loving and proper home. And yet, not every prospective adoption is pursued to completion. Relevant information may come to light about birthparents, prospective adoptees, or prospective adoptive parents that influences whether one or more of the parties wishes to proceed with the adoption, or impacts "whether the adoption will be in the best interest of the prospective adoptee," the ultimate question before the court in every adoption.[3] Indeed, human hearts and minds may also change for any reason in the course of an adoption proceeding.[4]

No doubt, the vast majority of adoptions are successfully and legally accomplished through the assistance of competent and compassionate counsel.

In Opinion 366 (*Ethical Issues That Commonly Arise in Private Adoption Matters*), the D.C. Bar Legal Ethics Committee provides a roadmap for adoption practitioners to navigate what are often delicate issues, including: 1) representation of birth parents when legal fees are paid by the prospective adoptive parent/s; 2) ethical implications of reciprocal referral arrangements among private adoption attorneys; 3) representation of more than one birth parent; and 4) representation of a client in an adoption whose interests are adverse to a former client in a previous adoption matter. Not surprisingly, all these situations give rise to conflicts of interest under one or more rules, specifically D.C. Rules, 1.7, 1.8, and 1.9.

Generally, a lawyer's duties of loyalty and zealousness assume that a client is entitled to a representation free of material limitations, whether those limitations are in the form of the lawyer's obligations to another current or former client, or are due to a lawyer's own personal, financial, or other interests.[5] The conflict of interest rules identify circumstances in which duties owed to others, or where the lawyer's own self-interest, raise the possibility of affecting a lawyer's "wholehearted and zealous representation" of a client's interest.[6] The conflicts rules also recognize, however, that in many matters, lawyers are fully capable of acting with absolute fidelity to their clients' interests even in the face of competing interests, and that clients should have the autonomy "to make reasoned judgments about the trade-offs that are at stake."[7]

Opinion 366 examines when and under which circumstances a private adoption practitioner may properly seek and obtain a client's *informed consent*[8] to take on a representation notwithstanding the existence of a conflict of interest. The committee makes clear that obtaining a client's informed consent in such matters is neither a simple panacea nor a mere formality.

For example, obtaining a birth parent's informed consent to have his or her lawyer's fees paid by the prospective adoptive parent(s)[9] requires:

> '[A] discussion of the client's . . . options and alternatives' and an 'explanation . . . of material advantages and disadvantages of the proposed course of conduct.' . . . An indigent birth parent must be informed that court-appointed counsel is available under D.C. Code § 16-316(a) as an alternative to accepting a lawyer whose fees are paid for by the adoptive parents; although the lawyer is free to fairly state her opinion regarding the advantages of not having a court-

> appointed lawyer, the client must be told that she has a choice and be provided with sufficient information to make that choice intelligently.'

The opinion also provides practical considerations and guidance about whether and how a lawyer may properly obtain the informed consent of each birth parent to simultaneous representation. Although the question of joint representation of birth parents is ostensibly a narrow one, the committee broadly extends its reasoning and the applicability of the opinion, to joint representations generally, not merely to adoption matters.[10] As such, a lawyer contemplating a joint representation *of any kind* would be well served by reading the opinion.[11]

In addition to addressing conflicts issues, Opinion 366 also provides critical guidance on an adoption practitioner's permissible communications with an unrepresented party to an adoption (most commonly, an unrepresented birth parent), when the lawyer represents either the prospective adoptive parent/s or the other birth parent. The committee notes that despite the availability of paid or court-appointed counsel, it is not uncommon for a "birth [parent] to decline the opportunity to consult with an attorney before executing the statutory consent form that terminates [his] or her parental rights."[12]

In obtaining such statutory consent from an unrepresented birth parent, a lawyer must be extremely cautious to ensure that his or her conduct conforms with Rule 4.3,[13] such that

> [T]he lawyer may not advise the unrepresented birth parent on any matter. If the birth parent poses a question that requires other than an objective answer (*e.g.*, what happens next, who is the judge assigned to the matter), the lawyer must limit her response to advising the birth parent that he or she may want to talk with a lawyer and the available options for obtaining one.

Notwithstanding the significant liberty and human interests at issue, private adoption lawyers owe no greater ethical duties to their clients—whether to birth parent(s) or to prospective adoptive parent(s)—than they owe to any other client in any other matter. Yet, as described in Opinion 366, the very nature of private adoption proceedings, the relatively small number of adoption practitioners, and the specific vulnerabilities of clients and other parties in the proceedings, demand that adoption practitioners exercise particular care to ensure that they comply with the D.C. Rules.

Legal Ethics counsel Hope C. Todd, Saul Jay Singer, and Erika Stillabower are available for telephone inquiries at 202-737-4700, ext. 3231, 3232, and 3198, respectively, or by e-mail at ethics@dcbar.org.

Notes

1 *In Re Grossman*; 3 Mass. Attorney Disciplinary Reports 89 (Aug. 10, 1983).

2 *See In Re Louis Capozzoli*, M.R. 18371 (Ill. Jan. 2, 2003)(IARDC); *In Re Joyce Sibson Dove*, Nos. SC05-302 & SC05-1157 (Fla. June 12, 2008); *In Re Rochelle J. Thompson*, No. 09-80-GA (State of Michigan Attorney Discipline Board Jan. 17, 2012).

3 D.C. Code § 16-309(b)(3); *see, e.g., In re E.D.R.*, 772 A.2d 1156 (D.C. 2001).

4 In 1987 the ABA Legal Ethics Committee opined that a lawyer could not ethically represent both the adoptive and biological parents in an adoption proceeding, citing the "inherent and irreconcilable conflict[s]" in the transference of parental rights, including consent to termination of parental rights and revocation of same. ("*An adoption is a highly emotional undertaking for both the adoptive and biological parent. In such situations the lawyer must take particular care that the client fully understands the significance of the legal actions being taken. The lawyer has the obligation not only to advise the client of legal rights and responsibilities, but also to counsel regarding the advisability of the action contemplated.*"). ABA Informal Opinion 87-1523 (1987).

5 *See generally* Geoffrey C. Hazard & W. William Hodes, The Law of Lawyering §§ 10.1-3 at 10-1-11 and § 10.4 at 10-13 (3d ed. Supp. 2004).

6 *See* Comment [7] Rule 1.7, *see also* Rules 1.8(a) and Rule 1.9.

7 *See* Geoffrey C. Hazard & W. William Hodes, The Law of Lawyering § 10.8 at 10–22 (3d ed. Supp. 2004).

8 "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." D.C. Rule 1.0(e).

9 Rule 1.8 (e) which governs when a lawyer may accept third-party payments, provides that "[a] lawyer shall not accept compensation for representing a client from one other than the client unless: (1) The client gives informed consent after consultation; (2) There is no interference with the lawyer's independence of professional judgment or with the client–lawyer relationship; and (3) Information relating to representation of a client is protected as required by Rule 1.6."

10 "We take this opportunity to review relevant provisions of the D.C. Rules of Professional Conduct in the context of joint representations to ensure that lawyers' consultations with their prospective clients address fully "the implications of the common representation" and that clients who consent to joint representation have been adequately informed of the actual and potential consequences of the decision." D.C. Legal Ethics Opinion 366 (2014).

11 The opinion reminds lawyers that "… a lawyer who is considering undertaking joint representation must keep in mind that '[n]o matter how consistent the apparent interests of clients in a joint representation may appear at the onset … [joint representation] poses inherent risks of future conflicts of interest.'" And that "[a] joint representation in and of itself does not alter the lawyer's ethical duties to each client, including the duty to protect each client's confidences." D.C. Legal Ethics Opinion 366 (2014).

12 "[O]btaining a birth parent's formal consent is *the* essential step in a proceeding that will result, if the court grants the adoption petition, in the transfer of parental rights from the unrepresented birth parent to the lawyer's client(s)." D.C. Legal Ethics Opinion 366 (2014).

13 D.C. Rule 4.3 provides: "(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not: (1) Give advice to the unrepresented person other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client; or (2) State or imply to unrepresented persons whose interests are not in conflict with the interests of the lawyer's client that the lawyer is disinterested."

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

IN RE STEVEN B. KELBER. Bar No. 358515. December 17, 2013. The Board on Professional Responsibility's Hearing Committee Number Five recommends that the D.C. Court of Appeals accept Kelber's petition for negotiated discipline and suspend him for 60 days, stayed in favor of probation for one year on the condition that Kelber is not the subject of a disciplinary complaint that results in a finding that he violated the disciplinary rules of any jurisdiction in which he is licensed to practice during the probationary period, and he promptly notifies Bar Counsel of any ethics complaint filed against him and its disposition; there is no fitness requirement, provided that Kelber successfully completes probation. If he does not, Kelber should be suspended for 60 days and required to demonstrate his fitness to practice as a condition of reinstatement. Kelber violated Rules 8.4(c) and 8.4(d).

IN RE YOSHIHIRO SAITO. Bar No. 351973. December 11, 2013. The Board on Professional Responsibility's Hearing Committee Number Eight recommends that the D.C. Court of Appeals accept Saito's petition for negotiated discipline and suspend him for one year for violation of Rule 8.4(c).

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE GILBERT BABER. Bar No. 428285. December 30, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals suspend Baber for three years, and that he be required to prove fitness and pay restitution as conditions of reinstatement. This matter concerns Baber's representation of a client in connection with the probate of the estate of the client's late mother,

who died intestate, and Baber's filing of a lawsuit against the client in connection with that representation. Baber failed to provide competent representation and to represent the client with skill and care; failed to represent the client zealously and diligently and failed to act with reasonable promptness in the representation; failed to keep the client reasonably informed about the status of the probate matter, failed to comply promptly with reasonable requests for information, and failed to explain the probate matter to the client to the extent reasonably necessary to allow the client to make informed decisions regarding the representation; collected or sought to collect an unreasonable fee; revealed confidences or secrets of the client, used confidences or secrets of the client to the client's disadvantage, and used confidences or secrets of the client for Baber's own advantage; failed to take timely steps to the extent reasonably practicable to protect the client's interests, including but not limited to failing to surrender client papers and property; knowingly made a false statement of fact to a tribunal; knowingly made a false statement of fact in connection with a disciplinary matter and/or failed to disclose a fact necessary to correct a misapprehension known by Baber to have arisen in the matter; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; and engaged in conduct that seriously interfered with the administration of justice. Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), 1.5(a), 1.6(a)(1), 1.16(a)(2), 1.16(a)(3), 1.16(d), 3.3(a)(1), 8.1(a), 8.4(c), and 8.4(d).

IN RE ANDRE P. BARBER. Bar No. 466138. December 31, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Barber. This matter arises out of Barber's involvement in a series of landlord–tenant disputes. Barber pursued frivolous pro se litigation with his own landlord and engaged in wide-ranging misconduct while representing three tenants, two of whom he eventually sued for fees, in their disputes with another landlord. The board generally adopted the findings of two separate Hearing Committees (with one exception), which found *inter alia* that Barber engaged in frivolous and burdensome litigation tactics, pursued meritless claims for attorney's fees, disobeyed a court order, failed to cooperate with Bar Counsel's investigation, and made false representations in both judicial and disciplinary proceedings. Rules 1.3(b)(2), 1.4(a), 1.7(b)(4), 3.1, 3.2(a), 3.2(b), 3.3(a), 4.4, 7.1(a), 7.5(a), 7.5(d), 8.1(a), 8.4(c), 8.4(d), and 8.4(g) and D.C. Bar R. XI, § 2(b)(3).

IN RE TAKISHA BROWN. Bar No. 472664. December 30, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Brown. While representing a client in a personal injury matter, Brown violated Rules 1.4(a), 1.4(b), 1.5(c), 1.15(a), former Rule 1.15(b) (now 1.15(c)), and 8.4(c), as well as D.C. Bar R. XI, § 19(f), including the intentional misappropriation of settlement funds Brown was obliged to pay her client's two medical providers.

IN RE LORENZO C. FITZGERALD JR. Bar No. 390603. December 31, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals suspend Fitzgerald for one year with fitness. Fitzgerald was originally retained to represent a defendant in a criminal trial. Thereafter, he failed to deliver the client's file to successor appellate counsel in a timely manner, requiring her to file a motion to compel with the court; failed to respond to the court's orders compelling him to produce the file and to show cause why he should not be held in contempt; failed to respond to Bar Counsel's inquiry in a timely manner, requiring Bar Counsel to file a motion with the Board to compel him to respond; and falsely claimed that he had delivered the client file timely to successor counsel, had lost the receipt for the delivery of the file, and had not received Bar Counsel's requests for information relating to the complaint. Rules 1.16(d), 8.1(a), 8.1(b), 8.4(c), and 8.4(d).

IN RE CHARLES MALALAH. Bar No. 978801. December 31, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Malalah. As a condition of reinstatement, Malalah should be required to return to the client the $33,333.33 plus interest at the legal rate of 6 percent calculated from the date he withdrew the funds from his IOLTA account. While representing the client in connection with an automobile accident case, Malalah failed to keep his client reasonably informed about the status of the matter and failed to comply with the client's requests for information; failed to provide his client with a writing showing the remittance to the client and the method of its determination; engaged in reckless and/or intentional misappropriation of entrusted funds; failed to place entrusted funds in an escrow account, instead placing them in his operating account and thereby commingling client funds with his own funds; failed to place entrusted funds in a separate account containing the words "trust account" or "escrow account;" and engaged in conduct involving dishonesty, fraud, deceit, and/or misrepresentation. Rules 1.4(a), 1.5(c), 1.15(a), 8.4(c), and former Rule 1.19(a) (relevant provisions moved to Rule 1.15 and section 20 of Rule XI of the Rules Governing the District of Columbia Bar).

IN RE WILLIAM N. ROGERS. Bar No. 73221. December 31, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals suspend Rogers for 90 days with fitness. Rogers violated Rules 4.2(a) (contact with a represented party) and 8.4(c) (dishonesty) when he met with an elderly woman without the consent of her counsel and when he prepared testamentary documents for her that benefitted his client. Rules 4.2(a) and 8.4(c).

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE J. SCOTT BROWN. Bar No. 958256. December 12, 2013. The D.C. Court of Appeals disbarred Brown. Brown pleaded guilty and was convicted in the U.S. District Court for the Eastern District of Missouri on a single count of conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 371, a crime involving moral turpitude *per se* for which disbarment is mandatory under D.C. Code § 11-2503(a) (2001).

IN RE VIRGINIA R. FLING. Bar No. 375547. December 18, 2013. The D.C. Court of Appeals granted Bar Counsel's motion to revoke Fling's probation, as she violated the conditions of her probation, and suspended her for an additional 30 days with fitness and the requirement that she complete 12 hours of CLE courses in immigration law to be approved by Bar Counsel and pay restitution to three clients. The court had previously accepted Fling's petition for negotiated discipline for two consolidated matters and imposed the following sanctions: (1) 120-day suspension with 90 days served and 30 days stayed; (2) 12 hours of CLE courses in immigration law

to be approved by Bar Counsel; (3) restitution to three clients; (4) one-year unsupervised probation; and (5) no fitness requirement, provided that Fling successfully completes probation. Fling agreed that the court should suspend her for the remaining 30 days of the original suspension and impose fitness if she failed to meet all of the conditions set forth within a year of her reinstatement.

In one matter, Fling mishandled her representation of a client when she incorrectly assured him that he could leave the country without prejudicing his pending permanent residency application. As a result, the client lost his eligibility for permanent residency and was faced with a 10-year bar against reentering the country. When the client retained new counsel, Fling failed to promptly forward his files to the new attorney.

In the second matter, Fling mishandled her representation of a client and his employee when she incorrectly filed the employee's application for a work visa extension, which was denied as a result. Fling subsequently misinformed the client and his employee regarding the extension, causing the employee to be present in the country without authorization. Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 1.4(b).

Reciprocal Matters

IN RE FRANK B. CEGELSKI. Bar No. 414766. December 26, 2013. In a reciprocal matter from New York, the D.C. Court of Appeals imposed functionally identical reciprocal discipline and suspended Cegelski for five years with fitness, including payment of restitution imposed by the state of New York. Cegelski resigned from the practice of law in New York and admitted that he had misappropriated client funds.

IN RE ROSEMARY FOSTER. Bar No. 207332. December 19, 2013. In a reciprocal matter from Oregon, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Foster for 30 days, *nunc pro tunc* to October 5, 2013, with reinstatement contingent on her taking the Multistate Professional Responsibility Exam and earning a scaled score of 85 or greater. In Oregon, Foster was found to have engaged in the unauthorized practice of law while administratively suspended, and violated rules relating to forming a partnership with a nonlawyer.

IN RE GARLAND H. STILLWELL. Bar No. 473063. December 26, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals suspended Stillwell for 60 days with fitness. In Maryland, Stillwell was found to have failed to safeguard an unearned fee in trust, failed to keep his client apprised of developments in her case, and neglected his client's matter.

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 at www.dcattorneydiscipline.org. Most board recommendations as to discipline are not final until considered by the court. Court opinions are printed in the Atlantic Reporter *and also are available online for decisions issued since August 1998. To obtain a copy of a recent slip opinion, visit www.dccourts.gov/internet/opinionlocator.jsf.*

Opinion 366

To see a full version of D.C. Bar Legal Ethics Committee Opinion 366, *Ethical Issues That Commonly Arise in Private Adoption Matters*, visit the Bar's Web site at www.dcbar.org, click on the "Bar Resources" tab, and look for "Legal Ethics."

legal beat

By Kathryn Alfisi and Thai Phi Le

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

Justice Sotomayor Joins Panel for Van Vleck Moot Court Finals

"All rise." The four George Washington University Law students on stage stood up as a panel of three judges took their seats before them. It was a quarter past 3 p.m. on January 23, and the Van Vleck Constitutional Law Moot Court competition finals at Lisner Auditorium was about to begin.

As if arguing a case before a packed auditorium wasn't enough to create jitters for competitors Olivia Jahn and Amanda Nagrotsky, who represented the petitioner, and James Gross and Kyle Singhal for the respondent, they had the additional pressure of presenting before U.S. Supreme Court Justice Sonia Sotomayor. Justice Sotomayor was joined by Robert Katzmann, chief judge of the U.S. Court of Appeals for the Second Circuit, and Lee Rosenthal, district judge of the U.S. District Court for the Southern District of Texas, Houston Division.

This year's fictional case, *Buzz Alden and Betty Eddy v. The United States of America*, examined the application of the Fourth Amendment when the government utilizes information gathered from GPS services on a smartphone and images taken from a drone to track an alleged criminal. In a two-week period, the government pinged Alden's phone 917 times.

Nagrotsky argued that the government went too far in its use of cell phone information without a warrant and invaded the petitioner's reasonable expectation of privacy in his home. "If the Fourth Amendment is to have any vitality in the digital world in which we now live, this court must adapt its Fourth Amendment jurisprudence accordingly to advances in technology," she said.

The opposing team defended the U.S. government, stating that its client had the right to collect the data both on the smartphone and by aerial images taken by the drone because it was no different than a stake-out tactic used by law enforcement. In addition, Singhal argued, the information from the cell phone was data Verizon Wireless already was collecting as part of its normal business records.

After more than an hour of arguments, the judges convened and declared the opposing team victorious in the finals, acknowledging that it had more case law in its corner.

Justice Sotomayor addressed the audience full of law students before the event ended. "You give me hope about the future of our profession. You keep me inspired to do what I'm doing because I know that there are young people who are following who have the same passion and excitement and love of skill that I do. And that's the hope you give me: to know that we will be continuing to better the profession because you're out there," she said.

Then, addressing the four students who just argued before her, Justice Sotomayor said, "This was an extraordinary presentation of legal skill."—*T.L.*

Thai Phi Le

Phyllis Goldfarb, Jacob Burns Foundation Professor of Clinical Law at The George Washington (GW) University Law School; U.S. Supreme Court Justice Sonia Sotomayor; GW President Steven Knapp; and Gregory E. Maggs, interim dean of GW Law, took part in a ribbon-cutting ceremony to dedicate the newly renovated Jacob Burns Community Legal Clinics at 620 20th Street NW. See story on page 17.

D.C. Court of Appeals' CUPL Seeks Candidates for Vacancy

The District of Columbia Court of Appeals seeks applicants for a vacancy on its Committee on Unauthorized Practice of Law (CUPL).

The CUPL is largely responsible for enforcing the court's Rule 49, concerning unauthorized practice, and with releasing opinions interpreting Rule 49. Members of CUPL also conduct investigations and take part in compliance decisions. Members must belong to the D.C. Bar and are appointed to three-year terms, which are renewable.

For more information, contact CUPL staff at 202-879-2777, between 9 a.m. and 4 p.m., Monday through Friday.

To be considered for a vacancy, send a cover letter and résumé to the attention of Cherylen Walker-Turner, Esq., Chambers of Chief Judge Eric T. Washington, District of Columbia Court of Appeals, 430 E Street NW, Third Floor, Washington, DC 20001.

Bar Seeks Nominations for Annual Awards at Celebration of Leadership

The D.C. Bar is seeking nominations for outstanding projects and contributions by Bar members that will be recognized at

the 2014 Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting. The deadline for submissions is March 28.

Bar members are encouraged to submit nominations for the following: Best Bar Project/Frederick B. Abramson Award, Best Section, and Pro Bono Awards.

Nominations may be submitted in one of the following ways: (1) online at www.dcbar.org/awards; (2) by e-mail to annualawards@dcbar.org; or (3) by mail to Katherine A. Mazzaferri, Chief Executive Officer, District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. Electronic submissions are encouraged.

The winners will be honored on June 17 at the Bar's Celebration of Leadership at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW. The Bar also will present its Beatrice Rosenberg Award for Excellence in Government Service and its Justice Thurgood Marshall Award at the event.—*K.A.*

Online Voting in Sections' Steering Committee Elections Opens April 29

The 2014 D.C. Bar section steering committee elections will be conducted primarily online, with paper ballots only available on request. Voting will take place on the Bar's Web site between April 29 and May 23.

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

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

Pro Bono Award Renamed in Honor of Laura Rinaldi

At the request of the D.C. Bar Pro Bono Committee, the D.C. Bar Board of Governors voted at its January meeting to rename the D.C. Bar Pro Bono Lawyer of the Year Award in honor of Laura N. Rinaldi, former managing attorney for the D.C. Bar Pro Bono Program, who passed away in 2013.

"The void Laura left is felt each day, but we hope that naming this significant award in her honor will acknowledge Laura's legacy and serve as an example to lawyers across the District to follow in her path of service in our community," D.C. Bar President Andrea Ferster said.

The award is presented annually to a lawyer for excellence, achievement, and a commitment to providing legal services to the poor and disadvantaged in the District of Columbia.

"Laura embodied the spirit of the D.C. Bar Pro Bono Lawyer of the Year Award, by challenging the legal community not to accept the status quo but to reach beyond what we think is possible to seek true access to justice and fairness," reads the resolution requesting the name change.

Courtesy of the D.C. Bar Pro Bono Program

Laura N. Rinaldi

Rinaldi was responsible for all of Pro Bono's public benefits work, oversaw the Health Care Access Project and Immigration Legal Clinic, co-managed the Advocacy & Justice Clinic, and helped to staff the Landlord Tenant Resource Center and the monthly Advice & Referral Clinic.

Before joining the D.C. Bar, Rinaldi was a supervising attorney at the Children's Law Center and a clinical instructor at the University of the District of Columbia David A. Clarke School of Law.

The Laura N. Rinaldi Pro Bono Lawyer of the Year Award will be presented at the Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting on June 17 at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW.—*K.A.*

GW Inaugurates Newly Renovated Jacob Burns Legal Clinics

On a cold, blustery night in January, a small crowd of people packed into the newly renovated Jacob Burns Community Legal Clinics for a ribbon-cutting ceremony marking its grand opening at The George Washington (GW) University Law School.

Inside the brick building, clinic supporters listened to remarks from GW leaders about the significance of the clinics in helping the community. Since the clinics were founded in 1971, they have served individuals from all walks of life, including survivors of domestic violence and human trafficking, people seeking political asylum or appealing criminal convictions, clients who need medical or unemployment benefits, and entrepreneurs looking to start a nonprofit or small business.

During the ceremony, Phyllis Goldfarb, Jacob Burns Foundation Professor of Clinical Law and associate dean for clinical affairs at GW, spoke about the center's importance to students who may one day lead the legal profession. "One of the goals of the clinics is to teach students the skills and habits and values of how you keep on learning and growing as lawyers," she said. "When we dedicate this building tonight, we rededicate ourselves to our education and service mission and to the craft of lawyering."

GW President Steven Knapp then introduced guest speaker U.S. Supreme Court Justice Sonia Sotomayor, whose career reflects a lifelong commitment to public service. "We are the only profession [where] part of our professional association credo requires public service, pro bono work. There is no other profession, including the medical [profession], for which that is a fundamental aspect of their job. Some do it by choice, but we're obligated to do it by our training," Justice Sotomayor said.

Addressing those people integral to the legal clinics, Justice Sotomayor added, "You have served the GW community for . . . over 40 years. Now you have a home befitting of your efforts. Thank you for everything you do for your individual clients, but more importantly, thank you for what you do to uphold the profession I love and to make me continually proud of it and of you."

The center was named after Jacob Burns, an attorney, artist, and philanthropist who was a longtime university trustee. His great granddaughter Holly attended the ribbon-cutting ceremony.—*T.L.*

Law Firm Luncheon Focuses on Corporate, Pro Bono Partnerships

At the quarterly D.C. Bar Pro Bono Partnership meeting on January 30, a panel of speakers examined law firm and corporate legal department partnerships in a conversation dubbed as "The Good, the Bad, and the Ugly," hosted by Crowell & Moring LLP.

The panel was made up of representation from two law firms, a large corporation, and a legal services provider. Led by moderator James Sandman, president of the Legal Services Corporation and chair of the D.C. Bar Pro Bono Committee, the speakers discussed their individual experiences as they tried to connect the

corporate and law firm world through pro bono work.

Donald Salzman, pro bono counsel at Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, talked about the importance of creating a strategic framework inside a firm to take on pro bono cases and allowing corporations to participate at a level that feels most comfortable. Most importantly, Salzman stressed the significance of a corporation's general counsel. "It's really important to have the general counsel of the [corporate] partners really buy into this and be enthusiastic about it and share the message," he said.

Aimee Imundo, senior counsel at General Electric, reiterated his points, noting that when looking for the best collaboration, GE specifically chooses a law firm with a strong pro bono infrastructure. She also told attorneys in the room to be mindful of the fact that most corporations have limited to no budget for pro bono work. These limitations affect the cases Imundo selects. She has to look at time constraints and the ability to develop a certain expertise among the attorneys at the company.

The drawback to corporate partnerships is that many companies do not have a pro bono culture, or they think they can take on cases without doing the legwork of getting training, said Vytas Vergeer, legal director with Bread for the City.

Susie Hoffman, a public service partner at Crowell, detailed two experiences that did not end well—limited participation from both companies on their individual cases and diminished pro bono partnership after the cases were resolved.

The key, Sandman said, is finding out where a corporation's initiative to take on a case came from. Was it from the general counsel or from lower level attorneys? In addition, realize the importance of case selection, involving the company in the process, and being prepared to change course if the partnership is not a good fit. If the partnerships are successful, however, there is great potential to expand pro bono service and participation in the District, Sandman said.—*T.L.*

New Family Law Interactive Tool Gives Clients Access to Legal Help

From 8 a.m. to 5:30 p.m., Monday through Friday, the Family Court Self-Help Center at the Superior Court of the District of Columbia is bustling with customers. Most are sitting down to talk with a staff or attorney volunteer at the center as the volunteer drafts their pleading; other unrepresented litigants are tapping away at the free computers available at the center.

Each year about 8,000 customers walk through the Self-Help Center's doors. The service being offered is invaluable, but the demand is high. To meet the demand, the D.C. Bar Pro Bono Program launched a new online tool in January aimed at helping unrepresented parties in family law cases. The new tool offers six interactive online interviews that guide pro se litigants as they fill out their form pleadings in divorce, custody, or child support cases.

"The D.C. Bar Pro Bono program is always looking for ways to fill the gaps in legal services. Not everyone has the ability to get a lawyer, so the new online interactive interviews work like Turbo Tax forms and provide legal information that will better equip people to represent themselves," said Monika Kalra Varma, executive director of the Pro Bono Program. "In addition, with access to technology as great as it is now, we can reach a larger number of people and empower them as they navigate the legal system."

The interviews are simple, asking people yes or no questions like "Do you have a D.C. child support order?" and "Do you have a copy of the most recent child support order with you right now?" As the questions become more involved, the Web site offers answers to commonly asked questions. For example, the question "Has there been a major change since the existing D.C. child support order was entered?" is paired with a link that answers the question of what is considered a major change.

At the end of the interview, the information is displayed as a printable document and serves as a formal court pleading that can be filed with the D.C. Superior Court. Those who need additional assistance are directed to the Self-Help Center, a free walk-in clinic that provides unrepresented parties with general information and guidance in family law matters such as divorce, custody, visitation, and child support.

Christopher M. Locey, a family law attorney at Kuder, Smollar & Friedman, PC, knows all too well the needs of the family court and its customers. In addition to his professional experience, Locey has volunteered at the Self-Help Center, is a mentor at the D.C. Bar Pro Bono Program's Advocacy & Justice Clinic, and is a trained attorney volunteer negotiator in the Domestic Relations Branch of the Superior Court.

"I've seen how many people there are out there who need this help," Locey said. The online interviews complement the center's work and provide pro se litigants with even greater access to significant legal tools.

"The wonderful thing about this is how accessible it is. By being on the Internet, people can do it regardless of what their work schedule is, any time of day, weekends, day or night. They can do it quickly and easily," Locey added. Another great advantage is it allows customers to pause the interview if they realize they need more information to finish the pleading.

The online tool fulfills a recommendation by the D.C. Bar Family Law Task Force. For more than three years, the Pro Bono Program has worked with the support of other legal services providers to develop and conduct quality testing of the interviews. The new resource can be accessed at www.lawhelp.org/dc/self-help-forms.—*T.L.*

Bar Seeks Candidates for Committee, Board Vacancies

The D.C. Bar Board of Governors is seeking candidates for appointment this spring to the Attorney/Client Arbitration Board (ACAB), Judicial Evaluation Committee, Legal Ethics Committee (LEC), Clients' Security Fund, and the Bar Foundation, as well as to the Board on Professional Responsibility (BPR) of the D.C. Court of Appeals.

With the exception of the ACAB and the LEC, which have seats for nonlawyers, all candidates must be members of the D.C. Bar. For BPR openings, three individuals will be selected for each vacancy and the names of the nominees will be forwarded to the D.C. Court of Appeals for final appointment. Preference is given to individuals with experience on BPR hearing committees.

Résumés must be received by March 14. Individuals interested in applying should submit a résumé with a cover letter stating the committee on which they would like to serve to executive.office@dcbar.org or by mail to the D.C. Bar Screening Committee, 1101 K Street NW, Suite 200, Washington, DC 20005-4210.

Additionally, Bar members interested in being considered for BPR hearing committee vacancies that arise periodi-

cally should send a letter of interest and résumé to the Board on Professional Responsibility, 430 E Street NW, Suite 138, Washington, DC 20001.

13 New Law School Graduates Selected as OAG Ruff Fellows

Thirteen new graduates of area law schools have started work at the Office of the Attorney General for the District of Columbia (OAG) in January as its new class of Charles (Chuck) F. C. Ruff Fellows.

The fellows are 2013 graduates of American University Washington College of Law, George Washington University Law School, Georgetown University Law Center, and the University of the District of Columbia David A. Clarke School of Law.

"We are delighted with our continuing partnership with three law schools and welcome the addition of American University to the ranks this year. Our previous classes of talented Ruff Fellows have contributed an enormous amount to our legal work on behalf of the District, and we expect no less from the new class of outstanding law school graduates," said D.C. Attorney General Irvin B. Nathan.

The fellows, who are being jointly funded by the law schools and OAG, were chosen by the OAG in a competition among top graduates of each school. They will work on D.C. legal issues for a year.

During the last two years, 30 Ruff fellows worked at the OAG, and several of them were hired for permanent positions in the office.

The fellowship is named in honor of the District's corporation counsel (now known as attorney general) from 1995 to 1997. Ruff also served as D.C. Bar president from 1989 to 1990. It was created to provide the District with more legal help and to promote public interest legal work.

The new fellows and their assignments at the OAG are (from George Washington) Catherine Brinkley, Legal Counsel Division; Erin Dykstra, Family Services Division; Andrew James, Public Safety Division; Ana Jara, Civil Litigation Division; Allison Myers, Commercial Division; and Sonia Weil, Personnel and Labor Relations Section; (from Georgetown) Aaron Finkhousen, Civil Litigation Division; Stacy Jeremiah, Public Safety Division Neighborhood and Victim Services Section; Rebecca Kohn, Attorney General's immediate office and Office of Solicitor General; Raffi Melanson, Public Interest Division; and Sara Tonneson, Public Interest Division; (from UDC) Patrice Wedderburn, Family Services Division Mental Health Section; and (from American University) Bonnie Lindemann, Public Safety Division Juvenile Section.—*K.A.*

Hispanic Bar Association Elects New Officers, Board Members

The Hispanic Bar Association of the District of Columbia (HBA-DC) held its annual meeting and elections on January 16, which featured the swearing-in of its new officers and board members by Judge Ricardo Urbina (Ret.).

Fernando Rivero, assistant attorney general at the Office of the Attorney General for the District of Columbia since 2005, was sworn in as president. Rivero's practice includes civil prosecution, representing approximately a dozen government agencies and enforcing their legal mandates.

"We are excited to begin another year as stewards of the HBA-DC tradition of leadership, civil engagement, and service to others that has made HBA-DC one of

continued on page 21

New Bar Members Must Complete Practice Course

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

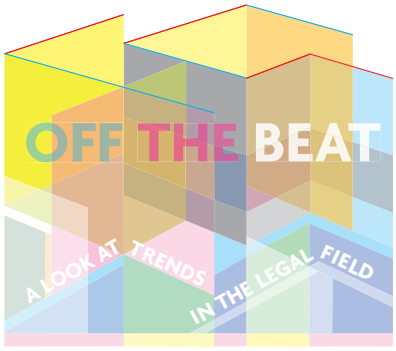
D.C. Bar members who have been inactive, retired, or voluntarily resigned for five years or more also are required to complete the course if they are seeking to switch or be reinstated to active member status. In addition, members who have been suspended for five years or more for nonpayment of dues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

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

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

The preregistration fee is $219; the onsite fee is $279. Courses will be held March 8, April 8, May 17, and June 10. Advanced registration is encouraged.

For more information or to register online, visit www.dcbar.org/membership/mandatory-course.cfm.



Lawyers Could Look Beyond U.S. Borders for Pro Bono Opportunities

Would you like to use your legal talents to help people throughout the world? It's not as difficult as you may think. While the majority of pro bono opportunities for U.S. lawyers are domestic, there is a growing number of organizations that allow legal professionals to provide international pro bono work, particularly in developing and post-conflict countries.

On January 29 representatives of some of these organizations spoke about global opportunities for attorneys at "Pro Bono Without Borders," a program sponsored by the Washington Council of Lawyers, the Hispanic Bar Association of the District of Columbia, the South Asian Bar Association of Washington, D.C., and DLA Piper LLP.

"We couldn't have had this discussion 15 years ago. The whole notion of international pro bono [was] in its nascent stages," said program moderator Suzanne Turner, a partner at Dechert LLP and chair of the firm's pro bono practice.

Speakers included representatives from Appleseed, DLA Piper's New Perimeter, the International Legal Resource Center of the American Bar Association (ABA) Section of International Law and the United Nations Development Programme (UNDP), the International Senior Lawyers Project, and Lawyers Without Borders.

All of these organizations have Web sites that offer information for individuals who want to learn more or who would like to get involved in international pro bono work.

Doing Good Around the World

The International Legal Resource Center was created in 1999 as a partnership between the ABA and UNDP. The center provides technical legal assistance to UNDP in connection with its rule of law and democratic governance work in developing countries. This assistance includes placing legal experts with UNDP country offices and regional service centers, conducting legal research in support of UNDP legal reform work plans, and assessing legislation.

Lawyers Without Borders was founded in 2000 by Christina Storm, its current executive director, after searching unsuccessfully for opportunities to do international pro bono work. The nonprofit's work focuses on supporting the rule of law, economic development, conflict resolution, peacebuilding, and sustainability in the legal sector around the world. Its volunteers include college students, law students, attorneys, and judges.

The International Senior Lawyers Project was formed in 2000 by Anthony Essaye, a retired partner at Clifford Chance, and Robert Kapp, of counsel at Hogan Lovells. Both currently serve as co-presidents. The organization works with experienced lawyers to promote human rights, equitable and sustainable economic development, and the rule of law.

The global law firm DLA Piper created New Perimeter as a separate nonprofit entity in 2005 to enable its lawyers to participate in international pro bono projects. New Perimeter's projects deal with access to justice and law reform, women's and children's rights, environmental protection, legal education, economic development, and food security.

Appleseed recently celebrated the 10th anniversary of Mexico Appleseed, which, like the national office, works to identify and examine social injustices, make specific recommendations, and advocate for effective solutions. The national office and Mexico Appleseed work closely together and have a number of cross-border projects.

Global Impact

One of Appleseed's cross-border project was "Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors," a report that examined the risks facing thousands of unaccompanied children crossing illegally into the United States from Mexico and the protection of their rights on both sides of the border. The report, a collaborative effort with Akin Gump Strauss Hauer & Feld LLP; DLA Piper; Jáuregui, Navarrete y Del Valle, S.C.; and Mayer Brown LLP, won first prize in the 2012 UNICEF Mexico National Awards.

Another Appleseed project involved the protection of assets and custodial rights of Mexicans who were detained or deported.

Lawyers Without Borders has a wide range of programs for volunteers, from providing training for judges, lawyers, and law enforcement to sending participants to observe important court proceedings as a neutral party to report on procedure and fairness. For example, volunteers observed the Caprivi Strip treason trial in Namibia, the longest and largest trial in that country's history.

New Perimeter also provides training. In February New Perimeter volunteers conducted an international negotiations training with the East African Development Bank in Rwanda; it is also working with Fundación Pro Bono Colombia, the only pro bono organization and clearinghouse in Colombia, to spread the concept of pro bono. The organization also worked with the Namibia Paralegal Association to help update its access to justice manual.

The International Senior Lawyers Project trains public legal aid lawyers in places such as Haiti. Volunteers are currently working with lawyers in Cambodia to bring a case against multinational corporations on behalf of Cambodian villagers who were evicted from their land. There are also long-term projects in places like Liberia, where the organization has been working since 2006 on concession agreements and natural resource management.

Among the diverse efforts of the International Legal Resource Center, whose work has reached over 100 countries, is a project in Fiji involving a number of junior lawyers working on research projects on a range of legal issues, as well as experts providing input on revising a mineral law.

Challenges and Benefits

International pro bono work is not without its unique challenges, from poor Internet connection to costs asso-

ciated with travel to safety and cultural sensitivity.

But according to Betsy Cavendish, president of Appleseed, "helping get the pro bono bug inculcated is sometimes a tough task" when doing international work. Unlike in America, in some other countries "it's not self-evident that lawyers have a duty and an opportunity to build a better society generally."

"How to navigate the process of change within a cultural context takes some sensitivity, and figuring that out in each culture is a bit of a challenge," Cavendish said.

It also helps to have an understanding of the challenges that partners in developing countries often face.

"The volunteers always have to keep in mind that as much as they can bring their experience, wisdom, and ideas to a project, they cannot know the circumstances that their overseas partners are working under. They might have to be dealing with politics, or they might be under-resourced and stretched thin. These are often post-conflict countries where laws could have been destroyed at some point," said Andra Moss, director of communications and volunteer development of the International Senior Lawyers Project.

While there may be some challenges, there are also rewards. "I think there are so many great benefits to doing global pro bono," said Kristen Abrams, international pro bono counsel and program manager at New Perimeter. "It's a terrific firm integration tool. We have offices all over the world and New Perimeter is one way that our attorneys can work with one another. Also, anytime we have the opportunity to work in another culture and understand another legal system, it's a professional development tool. Beyond that it's an opportunity to give back in a really meaningful way."

Moss said it's important to connect people with legal experience and the desire to help those in need.

"The volunteers are resources that our partners overseas could never be able to afford, and we're dealing with major issues related to human rights, the rule of law, or building the legal infrastructure of countries. They deserve to have as good legal representation and legal support as anyone, but so many times it's just out of their reach."—*K.A.*

continued from page 19

the most effective voluntary bar associations in the nation's capital," Rivero said. "We look forward to our work co-hosting the Hispanic National Bar Association's annual convention in September in Washington, D.C., providing a host of professional development opportunities for Latino attorneys and law students."

HBA-DC's 2014–15 officers also include Juan M. Sempertegui, president-elect; Maria G. Mendoza, vice president for external affairs; Geovanny Martinez, vice president for internal affairs; Iris Y. Gonzalez, vice president for membership; Erik J. Burgos, treasurer; and Carlos Siso, secretary.

The new members of its board of directors are Edgar Class, Lyzka DeLa-Cruz, Holli J. Feichko, Chris Kyle, Leila Levi, Richard Rodriguez, and Marina Torres.—*K.A.*

Bar's New Web Site Allows Ease of Access, More Interactive Use

The D.C. Bar launched its new Web site. With its streamlined navigation, new online storefront, and improved search features, the site provides Bar members and the public greater access to important legal information.

The dynamic visual design will point users toward the latest, most relevant news and offer a more interactive experience while conducting legal research, registering for their next course, or searching for pro bono opportunities around the District of Columbia.

In addition, the new Marketplace serves as a one-stop shop for members to buy or download materials made available from some Continuing Legal Education and Sections programming, and numerous publications such as the *District of Columbia Practice Manual*. Users also can register for events in one easy transaction.

Need information while waiting on the platform for the Metro? No problem. The new site renders in a mobile-friendly interface to make browsing seamless on any device, from your tablet to your smartphone.

Visit the new Web site at www.dcbar.org.—*T.L.*

Youth Law Fair Seeks Volunteers

Looking for a fun, new volunteer opportunity? Organizers of the 15th Annual Youth Law Fair, which takes place on March 22, is looking for volunteers to help with the day's events in various capacities. Bar members, exhibitors, parents, and law students are encouraged to volunteer.

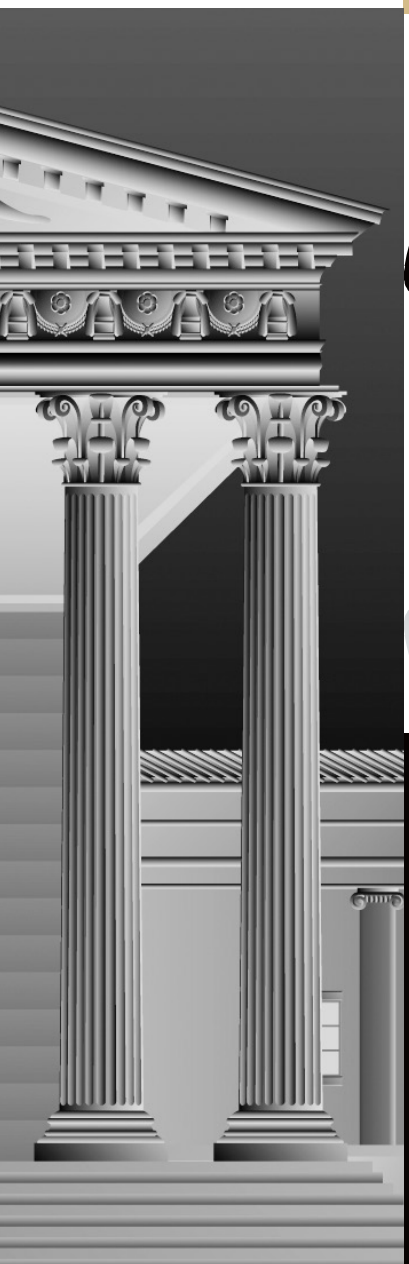
The annual Youth Law Fair brings together local high school students, judges, lawyers, and educators to explore issues faced by youth in the surrounding area. This year's theme is "Standing Tall Against K2 and Alcohol."

The free event will be held from 10 a.m. to 2:30 p.m. at the H. Carl Moultrie Courthouse, 500 Indiana Avenue NW.

To volunteer, contact the Sections Office at 202-626-3463 or Outreach@dcbar.org.

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

U.S. Supreme Court in 2014:



Big Cases, Major Issues

by Sarah Kellogg

At first blush, it looked like the October 2013 term of the U.S. Supreme Court would be a bit of a snooze, the kind of term that interests attorneys and legal scholars, but leaves judicial dilettantes and average Americans lost in a doctrinal haze. That seemed especially true coming on the heels of the headline-grabbing 2012 term, which was chock-full of blockbuster social and political decisions. By contrast, this term seemed destined for the footnotes of judicial history.

Six months into the term, however, the exact opposite is true. The Court looks to have gathered a collection of notable cases. While the justices will consider their fair share of arcane legal questions, they also will revisit a number of far-reaching constitutional issues such as "buffer zones" around abortion clinics, limits on campaign contributions, and prayer at government meetings.

Images by istock.com

"This has been a Court in recent years that has not been shy in taking big cultural questions, in revisiting old precedents, reorienting decades-old bodies of jurisprudence, and rewriting the law," says Stephen I. Vladeck, professor and associate dean for scholarship at American University Washington College of Law. "This term, it's not health care, it's not voting rights, and it's not gay marriage. It's not huge and pressing front-page social issues but quietly significant legal and constitutional questions."

The Court's calendar is sprinkled with cases that link to prior rulings, and will give the justices a chance to answer some of the issues left unresolved by previous decisions. Furthermore, the Court has lined up a handful of provocative cases that test the limits of executive, congressional, and judicial power. These cases promise to invigorate separation-of-powers debates for years to come. There are even a few chances for the justices to give some guidance on how to apply the actual law.

Some see an agenda in the Court's cases this year and believe the conservative majority is on a mission to excavate precedents, although there appears to be no coordinated effort to kick *stare decisis* to the door. At least not yet.

"They're very much taking on first principles," says Doug Kendall, founder and president of the Constitutional Accountability Center, a Washington, D.C.-based think tank and law firm. "There [are] a lot of cases that seem to raise either big questions about the meaning of constitutional phrases or test very old and established precedents."

Others say the Court isn't so blatantly calculating. Its schedule isn't governed by the majority's goals as much as what bubbles up from the lower courts. "When they are only taking 75 cases a year, it's really hard to have statistically significant observations about what they're doing no matter what," says John P. Elwood, a partner in the appellate practice group at Vinson & Elkins LLP. "They are a fairly minimalist Court. It just so happens that there are several cases that present issues of long-term concerns of various justices this year."

A number of legal questions on the Court's calendar have been constitutional aggravations to justices in the past, including its 2000 decision in *Hill v. Colorado* (establishing a buffer zone around abortion clinics, a particular concern of Justice Anthony Kennedy) and the legitimacy of affirmative action programs (a frequent target for Justice Clarence Thomas).

When the final story is written about this term, many believe it could turn out to be the most legally noteworthy term in many years, affecting not only the everyday lives of Americans but also reaching the highest levels of power and changing the way the nation's most important and influential institutions conduct business.

And, as always, waiting in the not-too-distant future is a surge of hot-button cases addressing gay marriage, abortion rights, and wiretapping, to name but a few, that could overshadow the doctrinal questions of this term. Already, a number of high-profile cases are moving swiftly through the judicial pipeline and likely will be on the docket in the near future if not the next term.

"One might say this is the calm before the storm, but it's a false calm," says Vladeck. "It implies the Court's not doing much this term, and I think the Court's able to do a lot more with a term like this one than . . . in years when it has many blockbuster cases. This is a Court that is

> *When they are only taking 75 cases a year, it's really hard to have statistically significant observations about what they're doing no matter what. They are a fairly minimalist Court. It just so happens that there are several cases that present issues of long-term concerns of various justices this year.* —John P. Elwood

not really worried about its own power and legitimacy. As long as the case comes in the right posture, they're going to take it and run with it."

Balancing State and Federal Powers

The three cases that comprise the term's portfolio of separation-of-powers cases are absorbing, in part because their facts make them so readable, and sometimes downright odd. They are the judicial equivalent of a John Grisham legal thriller with the same high-stakes gambits, political intrigue, and national and international consequences.

In any other court, the scandalous details of a love triangle gone wrong—cheating husbands, desperate wives, and toxic poisons—would qualify as a showstopper. In the Supreme Court, the case of *Bond v. United States* goes from merely salacious to significant because it addresses the delicate constitutional balance between state and federal powers.

The case begins with Carol Anne Bond of Philadelphia who threatened her best friend, Myrlinda Haynes, after she learned that Haynes was pregnant and Bond's husband was the father. After a series of threatening phone calls and confrontations with Haynes, Bond was arrested and pleaded guilty to harassment charges in state court in 2005. It looked like her quest for vengeance would end there, but it didn't.

Using chemicals she had stolen from her employer and other chemicals she ordered over the Internet, Bond created a potentially lethal compound to use against Haynes. She took the material, which was a bright orange color, and spread it on Haynes's mailbox, doorknob, car door, and other surfaces Haynes was likely to touch. Haynes, who only received a slight burn, complained to police but they dismissed the activities. When Haynes's mail carrier alerted superiors, U.S. Postal Service inspectors began surveillance in and around Haynes's home and caught Bond on 24 separate occasions applying the toxic chemicals.

Armed with these peculiar facts, an ambitious U.S attorney decided to prosecute Bond for violating the Chemical Weapons Convention Implementation Act of 1998, a law that was adopted to enact the international treaty banning the use or storage of hazardous chemicals. The Convention is generally aimed at curbing chemical weapons abuses by nation-states during conflicts and wars.

At issue in *Bond* is whether the Necessary and Proper Clause of the Constitution that outlines Congress's powers to execute its enumerated duties also applies to its ability to make laws to execute a treaty, even if that authority treads on state powers. Bond, who received a sentence of six years in prison for chemical assault, contends that Congress may find it necessary to implement treaties, but it was not proper for the federal government to extend the chemical weapons treaty to cover all chemicals, including the orange substance she used against Haynes.

"If the Senate has the ability to ratify a treaty on any topic and then pass domestic legislation to implement that treaty, then we're saying the federal government's power cannot be limited to those historically enumerated powers in the Constitution," says John Malcolm, director of the Edwin Meese III Center for Legal and Judicial Studies and the Ed Gilbertson and Sherry Lindberg Gilbertson Senior Legal Fellow at The Heritage Foundation, a conservative think tank. "It basically is another way for Congress to get new authority and to hold new power over the states."

In deciding the case, the Court will likely revisit *Missouri v. Holland*, its 1920 holding that treaty power is not constrained by states' rights limitations in the Tenth Amendment. The opinion, written by Justice Oliver Wendell Holmes, also held that Congress has the power to implement treaties and can exceed its enumerated powers in fulfilling its treaty duties. The *Missouri* ruling noted that "[i]f the treaty is valid there can be no dispute about the validity of the statute" used to execute it.

Missouri is considered a foundational case, and overruling a decision written by such a distinguished jurist would be groundbreaking, say observers. But if the Court is leaning toward trimming the sails of Congress as it enacts treaties, then the justices will need to address the *Missouri* precedent. It is one of the reasons that most observers believe *Bond* has the potential to be both scandalous and momentous.

Authority of Bankruptcy Courts

The limits of judicial power are the subject of *Executive Benefits Insurance Agency v. Arkison*, which could prove to be one of

the most far-reaching decisions in practical terms this year. At issue is whether bankruptcy judges can decide a question outside of their authority if the parties consent to it. Answering this seemingly simple question will have ramifications for years to come, bankruptcy experts predict.

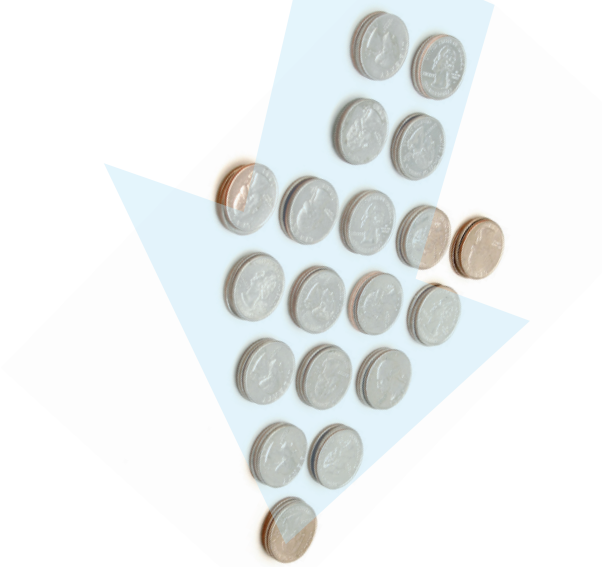
This case links back to a 2011 ruling, *Stern v. Marshall*, involving the estate of the late model and actress Anna Nicole Smith. In that case, the justices ruled that bankruptcy courts cannot issue a final judgment on state law claims. Smith married J. Howard Marshall, a wealthy Texas businessman, but he left her no money in his will. After he died, Smith filed for bankruptcy, and Marshall's son filed a proof claim in her proceeding. The bankruptcy court ruled in favor of Smith, awarding her a financial settlement from the estate, and the federal district court affirmed the decision, reducing the financial settlement significantly.

Meanwhile, a Texas probate court decided in favor of Marshall's son and his claim on the will. Did the bankruptcy court have the power to issue a final judgment, and if it did, then did that preclude the probate court's ruling? In a 5-4 decision, the Court held that it violated the separation of powers for Congress to give non-Article III bankruptcy judges the ability to issue final judgments over state law claims.

The question before the Court now is whether consent can overcome that constitutional limitation. In most bankruptcy cases, the parties consent to have non-Article III bankruptcy judges issue final judgments. If these judges aren't able to make final decisions, then the federal district courts will have to take on that responsibility. If the Court were to void that authority, it would likely affect magistrate judges and arbiters, both of whom can issue final judgments in civil cases with the consent of parties. By removing the authority of these non-Article III judges and magistrates, the Court would substantially increase the workload of federal district courts.

"This is another case that's conceptually interesting because it implicates the separation of powers," says Kannon Shanmugam, a partner at Williams & Connolly LLP who focuses on Supreme Court and appellate litigation. "It also has great practical impact. We're talking about a fairly significant number of bankruptcy disputes that are resolved by bankruptcy courts. It could create a significant workload for the district courts if the Supreme Court [were] to decide that consent was not enough."

> *"This is another case that's conceptually interesting because it implicates the separation of powers. It also has great practical impact. We're talking about a fairly significant number of bankruptcy disputes that are resolved by bankruptcy courts. It could create a significant workload for the district courts if the Supreme Court [were] to decide that consent was not enough."* —Kannon Shanmugam



Future of Recess Appointments

The most contentious of the three separation-of-powers cases is *National Labor Relations Board v. Noel Canning*. Canning, a Yakima, Washington, soft drink bottler and distributor, asked the courts to invalidate an unfair labor practices decision by the NLRB against the company, noting that President Obama's appointment of three of the five members of the NLRB panel that heard the case was unconstitutional.

Frustrated by Senate Republicans and their unwillingness to confirm his NLRB nominees, the president made the recess appointments in January 2012 while the Senate was in pro forma session, although the majority of the senators had already left town. It was an aggressive move—some called it overreaching at the time—and set a new course for presidential recess appointment power.

In its January 2013 decision, the U.S. Court of Appeals for the District of Columbia Circuit not only rejected Obama's sleight of hand but also called into question the legitimacy of presidential recess appointments going back decades. The D.C. Circuit's ruling stems from a narrow reading of the Recess Appointment Clause of the Constitution, which was used early in the nation's history because Congress rarely

convened. At that time, it was essential for the president to be able to appoint nominees to fill critical vacancies while the Senate was away.

In *Canning*, the Court must decide what the Framers meant when vacancies "happen" and if presidential administrations for decades have been wrong in interpreting that word. Despite historic custom and practice, the D.C. Circuit narrowly defined vacancies that "happen" as those that occur during the recess itself, not vacancies that happen to be open during a recess. The history of the clause will play a major role, as will its original purpose.

"This is not the horse and buggy era anymore," said Justice Elena Kagan during oral arguments of the case this past January. "There's no real, there's no such thing truly as a congressional absence anymore. And that makes me wonder whether we're dealing here with what's essentially an historic relic, something whose original purpose has disappeared and has assumed a new purpose that nobody ever intended it to have."

That new purpose is an attempt by a president to seize control of the appointment approval process from an intransigent Senate that often sits on nominations for months, if not years. While some suggest that the Obama administration overreached in its broad interpretation of the clause, others say it was a bold move to resolve a thorny problem. In the past, presidents straightforwardly made intersession appointments—appointments during breaks between the two formal sessions in a two-year congressional cycle. Obama decided to be bolder. He named the NRLB nominees during an intrasession recess, a less-formal break that occurs periodically throughout the year. He also made the appointments knowing full well that the Senate was in a pro forma session.

"You see a Court weighing in on how two other branches of government should interact with each other in *Noel Canning*," says Jessica Ring Amunson, a partner who specializes in appellate and Supreme Court matters at Jenner & Block LLP. "It's a fascinating case when you have the judicial branch having the ultimate say on the power of the legislative and executive branches. There's a lot at stake here."

In its ruling in *Canning*, the Court also will have to deal with the blowback that likely will result if the justices decide that presidential recess appointments can only be made when the vacancy was created by retirement, resignation, or death during an official recess. Such a decision could cause hundreds of appointments to be invalidated and may affect past rulings by the NLRB, federal judges, or other federal executives named by presidents of both parties.

"It's very rare that you have a Supreme Court case that involves a constitutional provision that the Supreme Court itself has never directly interpreted," says Shanmugam. "There's a real tension between the text and historical practice."

Itching After Precedent

Nothing sticks in the craw like a bitter dissent in a split decision, and this group of cases before the Court is deeply rooted in disputed earlier rulings. These cases, however, will turn on whether the Court embraces or rejects its own precedent. Many of these cases have been the focus of legal and public relations campaigns as advocacy groups sought to influence the justices. Using aggressive briefing, many groups have urged the Court in amicus briefs to overturn past decisions as out of date, illogical, or poorly reasoned.

In *McCullen v. Coakley*, the justices will consider whether a Massachusetts law establishing a 35-foot buffer zone around clinics providing abortion services is an infringement of the First Amendment. Under the law, only clinic patients and employees, police officers, and random citizens are allowed to knowingly enter or remain on a "public way or sidewalk adjacent to a reproductive health care facility within a radius of 35 feet" of any entrance or driveway. The test here is not solely whether this expansive zone limits free speech, but also if the law engages in viewpoint or content discrimination because it is aimed exclusively at anti-abortion protesters and does not apply to abortion rights advocates who assist women in and out of the clinic.

Justice Kennedy is expected to lead the charge in *McCullen*. In 2000 he wrote the dissent in the Court's *Hill v. Colorado* decision upholding the state's abortion clinic buffer zone. Justice Kennedy wrote, "We would close our eyes to reality were we to deny that 'oral protest, education, or counseling' outside the entrances to medical facilities concern a narrow range of topics—indeed, one topic in particular. By confining the law's application to the specific locations where the prohibited discourse occurs, the State has made a content-based determination."

"There has been some pretty aggressive briefing around *McCullen*," says Amunson, noting that there are explicit invitations to overrule precedent in the amicus briefs. "They're basically arguing that if the previous decision doesn't pass muster, then they think the Court ought to overrule it. They aren't accepting the Court's precedent. They're encouraging the justices to overrule themselves."

Bizarrely, the oral arguments on January 15 focused in part on size, as the justices wondered how big 35 feet really is. Doing everything shy of pulling out a measuring tape, the justices eyeballed their own chamber to decide what constituted a 35-foot zone. Justice Kagan questioned the size of the zone, adding that she was "a little bit hung up on why you need so much space." Massachusetts Assistant Attorney General Jennifer Grace Miller, arguing the case for the state, said the law is about congestion in the immediate area rather than strategically trying to block speech. "You have so many people there, the bad actors and the good actors," Miller said. "You have so many people congested in the same space from all points of view that it effectively blocks the door."

Another critical issue in *McCullen* is the notion of fair play. Can states create buffer zones to protect companies from belligerent protesters, or are these zones always unconstitutional because of discrimination? One can anticipate a time when medical research facilities conducting animal testing could seek some protections from state lawmakers if they were to become targets of animal rights protesters. Already the Court ruled in *Snyder v. Phelps* in 2011 that the Westboro Baptist Church was entitled to "special protection" in picketing military funerals under the First Amendment, no matter how outrageous the picketing.

Precedent could again play an influential role in a case that brings the constitutionality of prayer in government meetings back before the Court. In *Town of Greece v. Galloway*, the Court must decide how much space to put between government and religion, and whether Greece, a town in Monroe County, New York, acted unconstitutionally in inviting only Christian clergy to deliver invocations at meetings of the town's governing board.

Between 1999 and 2007, the town welcomed clergy to deliver a short prayer at each meeting. The clergy members' names were drawn from a compiled list. Up until the lawsuit was filed, the list was made up entirely of Christian organizations, so the clergy giving the invocation were only those of the Christian faith. Two town residents—a Jew and an atheist—filed a suit challenging the practice in 2008, noting that the town was, in effect, endorsing one religion in violation of the Establishment Clause. Even though the town had

not explicitly discriminated in the selection of clergy members to ensure they were all Christian, it still constituted a violation. The district court found for the town, but the U.S. Court of Appeals for the Second Circuit reversed.

The foundation for this case is *Marsh v. Chambers*. In 1983 the Court upheld the constitutionality of prayer before meetings of the Nebraska state legislature, noting that an invocation has historical roots that can be traced back to the early days of the republic when a prayer opened sessions of Congress. The practice of an invocation continues to this day.

During oral arguments in *Town of Greece* in November, Justice Kennedy questioned the historical argument, noting that "we've always done it" wasn't sufficient in his book, nor the notion that government prayer is always validated by history. Justice Samuel Alito wondered whether it was possible to reach a consensus on the type of prayer to be used in government meetings that would satisfy both atheists and Christians. "I just don't see how it is possible to compose anything that you could call a prayer that is acceptable to all of these groups," Alito said.

Campaign Finance, Privacy, and Affirmative Action

The Court returns to the subject of campaign finance in *McCutcheon v. Federal Election Commission*. The justices must decide whether to uphold aggregate caps on individual contributions to candidates and political parties or find such limits unconstitutional under the First Amendment. Such a finding would continue to chip away at *Buckley v. Valeo*, a landmark 1976 decision that established the distinction between limits on individual contributions and limits on individual expenditures to federal candidates and political parties.

The current law sets a two-year cap on aggregate campaign donations and was designed to limit how much an individual could give to candidates and party committees. Individuals are permitted to contribute no more than $48,600 to candidate committees and $74,000 to non-candidate committees over a two-year period.

McCutcheon could give the Court cover to invalidate *Buckley*'s framework. In the historic *Citizens United v. Federal Election Commission* decision in 2010, the Court found that the independent expenditures of organizations and individual donors are constitutionally protected free speech and cannot be limited. If the Court rejects aggregate contribution limits for the same reason, it likely would speed up challenges to campaign finance laws that have been on the books for decades.

"The campaign finance case is an instance where the so-called conservative block is interested in correcting *Buckley v. Valeo*," says Russell Wheeler, a visiting fellow at The Brookings Institution. "Some of the justices are clearly looking to mitigate rather seriously regulation of campaign contributions."

A 2006 precedent, *Georgia v. Randolph*, will likely be at the core of the Court's decision in *Fernandez v. California*, and the three dissenters in *Randolph*—Chief Justice John Roberts and Justices Antonin Scalia and Thomas—could come back for vindication. At issue in *Fernandez* is whether a cotenant's consent to search a private home is enough to outweigh the objections of another cotenant if the protesting party is not present.

In its 5–3 decision in *Randolph*, the Court allowed one tenant to veto the consent to a search of another tenant. While the Fourth Amendment forbids "unreasonable searches and seizures," the Court was divided in *Randolph* when it ruled that the police had violated the rights of Scott Randolph when they entered his home over his objections but with his wife's consent. In *Randolph*, the Court relied on social norms in making its decision, noting that when people live together they have less expectation of privacy. In his pointed dissent, Chief Justice Roberts said that people lose the expectation of privacy when they share space, and the police need not get consent from both tenants to search a private apartment or home.

Fernandez is a new wrinkle in *Randolph*, too. Unlike Randolph who objected to the search as it was happening, Walter Fernandez had been taken away by police, and the search was conducted while he wasn't in the apartment and after the cotenant gave consent. In the search, police found gang paraphernalia, a knife, and a gun; Fernandez was later convicted of robbery and possession of an illegal gun. The dissenters may finally get their day in *Fernandez*, although they'll need to find two more votes to do so.

Finally, in *Schuette v. Coalition to Defend Affirmative Action*, the Court is being asked to decide whether a 2006 ballot proposal adopted by 58 percent of Michigan voters violates the Equal Protection Clause. The proposal established a state constitutional amendment banning the use of race and sex, among other factors, in public university admissions.

The U.S. Court of Appeals for the Sixth Circuit held that the ban places an unfair burden on individuals who support racial and gender diversity as compared to those seeking to employ other factors in university admissions, such as legacy status or geography. In its decision, the Sixth Circuit noted that "[n]o other admissions criterion—for example, grades, athletic ability, geographic diversity, or family alumni connections—suffered the same fate."

At issue is the doctrine known as the "political process" theory, which holds that it is unconstitutional to make it harder for racial minorities to get protections through the political process than other ethnic or racial groups. Two earlier Court decisions address this question directly. In *Hunter v. Erickson* in 1969, the Court found that the city of Akron, Ohio, could not change its charter to require that any fair housing ordinance be approved by referendum. Then in 1982, in *Washington v. Seattle School District No. 1*, the Court found it unconstitutional for the state to use a statewide referendum to terminate its mandatory busing policy to integrate public schools in Washington.

During oral arguments in *Schuette* in October, the battle lines were clearly drawn. Chief Justice Roberts and Justice Scalia questioned why Michigan's ban should be ruled unconstitutional. "So why don't we say we want you to do everything you can without having racial preferences?" asked Roberts.

But Justice Sonia Sotomayor seemed

to have a somewhat harsher reaction to the amendment. "It's always wonderful for minorities that they finally get in, they finally have children and now you're going to do away with the preference for them," Sotomayor said during arguments. "It seems that the game posts [keep] changing every few years for minorities."

Seven states with similar bans—Arizona, California, Florida, Nebraska, New Hampshire, Oklahoma, and Washington—are closely watching the outcome.

A Little Guidance

There are a handful of cases before the Court that would benefit as much from the Court's guidance as its scholarship. After all, the Court is responsible for making critical decisions about the scope of laws and regulations, and its direction is useful in both criminal and civil cases.

That's true in two consolidated environmental cases on the Court's docket this term, *Environmental Protection Agency v. EME Homer City Generation* and *American Lung Association v. EME Homer City Generation*. The Court's direction could be vital in these cases, although environmentalists worry that it won't be the kind of guidance they want. Both cases involve the EPA and its authority to regulate air quality.

In December, eight of the justices heard arguments in the cases. (Justice Alito recused himself from the cases.) At issue is a Clean Air Act regulation, which was supposed to take effect in January 2012, requiring 28 states to reduce emissions of sulfur dioxide and nitrogen oxides that travel from their power plants downwind to other states. The EPA's solution was a cost-based formula that allocated a state's duty to control emissions.

The appeals court struck down the so-called Transport Rule in August 2012, noting that the EPA could not impose a federal plan on states until they are given notice of the amount of pollution emitted. The appeals court also ruled that the EPA was restricted in what it could consider when setting air quality targets for the states. The administration argued that the Clean Air Act requires the EPA and states to limit pollution that will "contribute significantly" to another state's air quality problems, but it is not limited in considering the amount of pollution in devising a plan.

"There's no question the EPA has, on occasion, taken very aggressive positions with respect to its own ability," says Malcolm of The Heritage Foundation. "Everybody wants to rule the world, and agencies often take broad interpretations of their own authority."

Coming near the end of the term are another two consolidated cases—*Sebelius v. Hobby Lobby Stores, Inc.* and *Conestoga Wood Specialties Corp. v. Sebelius*—that marry the issues of abortion and contraception to the Affordable Care Act (ACA). The cases challenge the government's employer mandate requiring businesses to provide contraceptives to their employees.

The Green family, owners of Hobby Lobby and its sister company Mardel, are facing millions of dollars in fines for refusing to provide abortion-inducing contraceptive drugs under the ACA mandate because of their faith tradition. Hobby Lobby has no problem providing contraceptives that don't induce abortion.

Attorneys for Hobby Lobby believe that the ACA mandate will be struck down because it violates the free exercise of religion. There are more than 80 lawsuits challenging the constitutionality of the contraceptive mandate. It was inevitable that the Court take up one of the cases because there is currently a "circuit split" on the question. Two federal appeals courts have upheld the mandate for contraceptive coverage, and three have struck it down.

Hobby Lobby believes that the Religious Freedom Restoration Act of 1993 (RFRA) entitles it to an exemption from the contraceptive insurance requirement. The Court's interpretation of the act will be critical in deciding the cases, as it considers whether the act's protections apply to companies, churches, and universities and not just to individuals. The RFRA has a provision for rejecting exemptions when doing so is the least restrictive means to serve a "compelling government interest." Forty-five lawsuits have been filed challenging the mandate.

"The Hobby Lobby case is an obvious choice," says Kendall of the Constitutional Accountability Center. "It's fascinating to me that we've been hearing free exercise cases since our founding, but it's never been decided whether a corporation can bring a case. It's amazing to me that it's still an open issue."

The Obama administration did create rules exempting religiously affiliated organizations and some nonprofits from the contraception requirement, but even those are being tested. In January, the Court issued an injunction in *Little Sisters of the Poor Home for the Aged v. Sebelius,* saying a group of Colorado nuns doesn't have to comply with the ACA as it pursues a challenge to the law. While religious organizations aren't required to provide contraceptives, they are required to file a form to receive an exemption. Filing the form triggers a mandate that a group's insurer separately arrange for contraceptive services. The nuns believe even signing the form is a violation of their faith. The Court did not decide the case's merits or even pluck it out for consideration this term, but it said its order remains in effect until the Tenth Circuit rules on the Little Sisters' appeal. A total of 29 lawsuits have been filed challenging the form mandate.

One more case that has broad consequences for the general public is *ABC, Inc. v. Aereo, Inc.*, which pits one of the nation's top broadcast TV networks against a fledgling streaming video service. The case will give the Court a chance to weigh in on the ever-changing landscape of digital television and creative content creation. At the center of the debate is the federal copyright law that gives content owners the exclusive rights to perform their works, and Aereo's format for collecting signals and sharing them with clients.

The appeals court ruled that Aereo's service does not infringe on copyright because the separate antennas it uses to capture broadcast signals allow each customer create his or her own copy of a broadcast program. There is no public transmission and no need to pay broadcast fees. That takes a bite out of broadcasters' pocketbooks because retransmission fees supplement advertising revenue for networks.

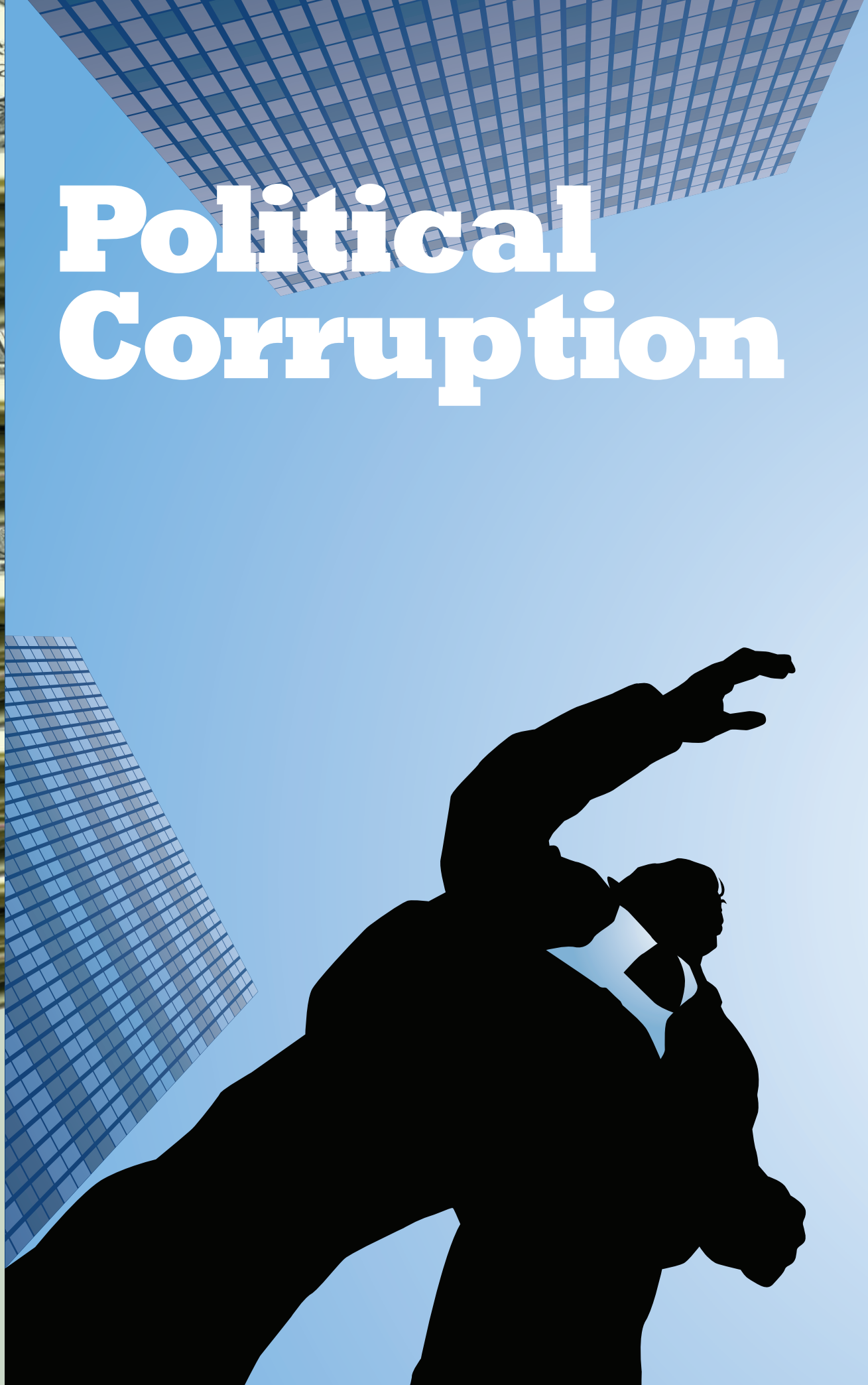
New technologies remain a thorn in the Supreme Court's side as it looks to resolve commercial disputes over digital ownership and copyright for creative content development. In the digital age, it's imperative that the Court be prepared for every contingency, which contrasts with another trend inside the Court: the emphasis on text and original meaning.

Every case is an opportunity for the justices to stretch their textualist muscles, and that is an especially important factor in a year like this one that looks at so many founding principles in the Constitution. The text isn't just Justice Scalia's passion anymore; every justice has adopted some version of the textualist cloak.

"The entire conversation has changed over time because of people like Justice Scalia," says Elwood of Vinson & Elkins. "Everybody is a textualist now and feels the need to discuss the textual meaning or to anchor things in the text of the Constitution. When they're issuing opinions these days, everybody feels they need to moor it to the text."

Sarah Kellogg last wrote about the Voting Rights Act in the December 2013 issue of Washington Lawyer.

Political Corruption



Government Procurement Problems in Washington, D.C.: Continuing Attention Needed

By Don Resnikoff and Tyler Patterson

It is not a novel idea that political cronyism and procurement issues are related. Awarding government contracts as favors to political cronies is obviously inconsistent with awarding contracts to the best-qualified competitor. David Catania, an at-large member of the Council of the District of Columbia, is one among many who worry that there's a perception in the District that political connections equal an improper shortcut to a contract.[1]

Allegations of recent political wrongdoing in the District are serious enough to suggest some prophylactic recommendations. One is simply that public and prosecutorial vigilance concerning political corruption is necessary to avoiding procurement problems—simply having rules and regulations on the books is not enough. With regard to prosecutorial vigilance, there is a strong argument that it would be better if the local prosecutor were an elected attorney general independent from the government administration the AG is monitoring.

There is also room for improved laws and regulations. The current procurement law in the District, effective in 2011, was intended to bring about reform, but it allows certain contracts to be awarded without competition based on a broad exercise of discretion that we think deserves narrowing and a more thorough review. We recommend an added layer of review by a public officer, a citizen ombudsman. We offer a specific list of recommendations at the end of this article.

Considering allegations of political wrongdoing is useful in shedding light on the shortcomings of procurement law and practice in the District, although we cannot vouch for the accuracy of any specific allegations.

For example, critics have alleged local mayoral campaign improprieties by Jeffrey E. Thompson that relate to his long-time role as a well-connected D.C. political insider. Allegations relevant to possible procurement wrongdoing have followed Thompson for years. The financial mess created by Thompson's failed D.C. Chartered Health Plan included allegations by the appointed receiver for Chartered Health Plan that Thompson siphoned $17 million from the company, which conducted its business so that large amounts of taxpayer money were required to pay obligations of the company.[2]

As far back as 1998, there were allegations concerning possible procurement improprieties at the D.C. Financial Control Board that involved Thompson. The General Accounting Office (GAO) was asked whether proper regulations and procedures were followed in awarding and administering contracts to the accounting firm Thompson, Cobb, Bazilio & Associates. The GAO found that the Control Board had not documented its basis for selecting Thompson's company for any of the three District contracts it received. There was no written record, the GAO said, that allowed it to "determine whether the awards were made at the lowest cost or best value and whether offers were treated fairly."[3]

Other D.C. procurement issues have surfaced. One concerned a D.C. government contract for new taxi meters. A *Washington Post* editorial said that "In a ruling that should serve as a wake-up call for corrective action, the city's Contract Appeals Board threw out a $35 million contract. . . , citing 'pervasive improprieties.' The stinging rebuke by a panel of administrative law judges faulted the 'meager' documentation offered by the city to justify the award, and it detailed 'numerous unexplained and glaring errors, inconsistencies and oversights that clearly occurred' during the procurement."[4]

The same editorial also discusses a separate case "in which vexing questions have been raised." That case involved the award of a five-year contract to manage city streetlights. "After another bidder protested the award, the city pulled back the lucrative bid, and when the original winner lost out, it yelled foul, raising issues

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

that the Contract Appeals Board seems to be taking quite seriously."[5]

To cite another example, federal authorities have investigated possible corruption in the awarding of the District's $228 million lottery contract. A recent article in the *Post* explains that "Lottery procurements became a nettlesome issue for [then-D.C. Chief Financial Officer Natwar] Gandhi. The 2008 award of the numbers-games contract came with allegations of improper political influence and whistleblower retaliation, leading to a federal investigation and civil lawsuits that have yet to be resolved."[6]

Recently, the D.C. attorney general took an important initiative and filed a lawsuit alleging that managers of a D.C. charter school diverted millions of dollars of government funds toward their own businesses. This charter school was intended to serve some of the District's most troubled teenagers, but the AG alleges that at least $3 million earmarked for the school was siphoned away to the managers' for-profit companies.[7]

Auditing firm KPMG published a report on the District government's internal control systems for 2012. The report highlighted weaknesses in the District's procurement and disbursement controls, as well as failures to comply with District laws and regulations.

For both sole source and emergency contracts, KPMG found that the D.C. Office of Contracting and Procurement (OCP) was not providing sufficient justification for avoidance of competitive bidding, with seemingly little oversight or consequences.

KPMG said that for 10 of the 38 "sole source" procurements (no-bid contracts), there was not sufficient documentation to validate that the sole source method was in fact justified, despite the fact that the applicable D.C. Municipal Regulation (DCMR) states that: "In each instance where the sole source procurement procedures are used, the contracting officer shall prepare a written determination and findings justifying the procurement which specifically demonstrates that procurement by competitive sealed bids or competitive sealed proposals is not required."

KPMG found that of the 13 "emergency" procurements, five of them did not include sufficient documentation to validate that the emergency procurement method was justified. Similar to sole source justification procurements, emergency procurements are shielded from competitive bidding practices because of the "emergency condition." DCMR Chapter 17 states that: "An emergency condition is a situation (such as a flood, epidemic, riot, equipment failure, or other reason set forth in a proclamation issued by the Mayor) which creates an immediate threat to the public health, welfare, or safety."

It is troubling that both sole source and emergency contracts were repeatedly issued to the same vendor over an extended period of time. That gives the appearance of an unfair advantage to select vendors who are cronies of people with political power.

Another failure found by KPMG is that of the 131 "competitive" procurements, for 30 of them there was no evidence that the procurements went through the statutorily required competitive bidding process. These were neither sole source nor emergency procurements, but regular procurements where no special designation could legitimately serve as a justification for the avoidance of competitive bidding by OCP. Also, for 15 of the 131 competitive procurements, the evidence of the excluded party list (from the bidding process) was not available for review, nor were the justifications for the exclusions.

KPMG also noted that for 22 of the 36 required monthly postings of contract "reconciliations" explaining the District's contracts (the 22 reconciliations being $3,304,205 of the 36 monthly totaling $4,349,614), the reconciliations were not reviewed and approved by the approving official in a timely manner in accordance with OCP Policy No. 2009-01. Multiple city agencies failed to comply with this policy.

In response to the KPMG report, various D.C. government officials went on record to state that reform was needed.

It appears that to at least some extent there has been reform, although the procurement problems just mentioned suggest that the reforms haven't been entirely effective. The D.C. Procurement Practices Reform Act (PPRA) took effect in 2011, establishing new guidelines for contract procurement in the District.

There are continuing reasons for public concern and scrutiny. While even very well-drafted laws and regulations about procurement are no guarantee against political corruption, we offer several recommendations:

Continued Public Vigilance. Local journalists have done a good job in focusing on D.C. government procurement issues. Newspapers, civic organizations, and, of course, the D.C. Council have important roles. Public scrutiny is needed to ensure that D.C. procurement officials are abiding by the letter and spirit of statutory and regulatory requirements;

Strengthen the Role of the D.C. Attorney General. The inspector general and the attorney general have substantial powers of review, and the attorney general has the ability to prosecute wrongdoing. Without calling into question diligent prosecutors now in the AG's office, it seems clear that an attorney general appointed by the mayor may have a conflict of interest when it comes to investigating procurement misbehavior by the mayor's administration. We believe that an elected attorney general would be less likely to have such a problem.

*Continue to Reform Local Procurement Statutes and Regulations***.** Several problems strike us with regard to D.C. procurement law. We recommend that the PPRA be modified to bring more clarification and specificity to standards of discretion for emergency and sole source procurements, and to provide for additional and more effective oversight by a citizen's ombudsman.

In summary, procurement problems may be addressed by reform of laws and regulations, but more is required because of the link between procurement problems and political corruption and cronyism. Rigorous attention by citizens and law enforcers, federal and local, is required to deal with the sort of political corruption that can undermine even the most well-considered procurement laws and regulations.

Don Allen Resnikoff and Tyler Patterson are members of the D.C. Bar, specializing in consumer and antitrust issues.

Notes

1 Jeffrey Anderson, *D.C. Hospital Contract Exposes Defects,* Wash. Times, Feb. 18, 2013, available at bit.ly/MazO2V, discussing whether D.C. government procurement practices involving small businesses are subject to undue political influence.

2 Colbert I. King, *Jeffrey E. Thompson Is Public Menace No. 1.,* Wash. Post, available at http://wapo.st/1ee22Ey.

3 *Ibid.*

4 Editorial Board, *D.C.'s Dizzying Contract Problems,* Wash. Post, Nov. 27, 2012, available at http://wapo.st/1f9f7Np.

5 *Ibid.*

6 Mike DeBonis, *Lottery Wranglings Could Delay New D.C. Scratch-Off Tickets for Months,* Wash. Post, Dec. 31, 2013, available at http://wapo.st/MaGqyb.

7 Brett Snider, *Charter School Managers Pocketed Millions in Scam: Lawsuit,* FindLaw, Oct. 10, 2013, available at http://bit.ly/19rxTQ5.

DC BAR
PRO BONO PROGRAM

Spring 2014
PRO BONO TRAINING OPPORTUNITIES

Representing Asylum Seekers – Basic Training
Friday, 03/07/14
9 a.m. to 3 p.m.

Child Custody Training
Tuesday, 04/01/14 and Tuesday, 04/08/14
5:45 p.m. to 8:30 p.m. (both sessions)

Representing Asylum Seekers – Advanced Training
Friday, 04/11/14
9 a.m. to 4 p.m.

Providing Pro Bono Representation Before the U.S. Court of Appeals for Veterans' Claims
Friday, 05/02/14
9 a.m. to 5 p.m.

Landlord/Tenant Practice in the District of Columbia: 2-Part Series
Tuesday, 05/06/14 & Tuesday, 05/13/14
5:45 p.m. to 8:45 p.m. (both sessions)

Family Court Self-Help Center Volunteer Training
Friday, 05/09/14
9 a.m. to 1 p.m.

Health Care Access Project Training
Friday, 05/16/14
9 a.m. to 4 p.m.

An Introductory Course on Wills & Advance Directives
Friday, 06/06/14
9:30 a.m. to 1 p.m.

Bankruptcy Training for Pro Bono Attorneys: 2-Part Series
Tuesday, 06/10/14 & Thursday 06/12/14
9 a.m. to 4 p.m. (both sessions)

Each year, the Pro Bono Program recruits and trains hundreds of D.C. Bar members to undertake pro bono assignments. We recruit expert practitioners to offer comprehensive, issue-area specific trainings that will prepare attorneys to confidently and comfortably represent pro bono clients with specific and underserved legal needs. Please note that the eligibility and obligations differ for each training session, based on programming needs and clinical requirements.

Training sessions will be held at:
D.C. Bar Conference Center,
1101 K Street NW, First Floor,
Washington, DC 20005-4210

Register today!
www.dcbar.org/pro-bono/resources-and-training/pro-bono-training.cfm

Do you have questions about volunteering with the Pro Bono Program?
Please contact Shannon Redd, staff attorney and training manager at the D.C. Bar Pro Bono Program, at sredd@dcbar.org

DC BAR
PRO BONO PROGRAM


T
PLUNKERT

The D.C. Homestead Deduction: RAPS for the Unwary and Suggested REFORMS

By Andrew L. Howlett

REAL PROPERTY TAXES ARE A MAJOR SOURCE OF REVENUE FOR MUNICIPALITIES ACROSS THE UNITED STATES. In the District of Columbia, real property taxes generated approximately $1.715 billion in 2011, or 32 percent of its total tax revenue.[1] Real property tax is the District's single largest source of tax revenue.[2]

Its current version of the real property tax, imposed in 1981, seeks an "[e]quitable sharing of the financial burden of the government of the District of Columbia."[3] Although the tax itself is not levied at a progressive rate, numerous incentives available to lower-income homeowners have the effect of lessening the real property tax burden on poorer District residents. In practice, however, taking advantage of these programs can be administratively difficult, to the point where many qualified homeowners are not able to avail of the benefits the District intended to provide for them.

This article lays out for the unwary the pitfalls and traps inherent to one of the District's most broad-based tax expenditures, the homestead deduction. At first blush, the mechanics of the real property tax as applied to the typical homeowner[4] in the District appear to be relatively straightforward.[5] The District assesses the value of the home and the land on which it

Illustrations by David Plunkert/theispot.com

sits based on the property's estimated market value.[6] The homeowner-taxpayer may appeal the District's assessment if he or she disagrees with it,[7] otherwise the tax owed to the District will be computed by multiplying every $100 of assessment by a statutory rate that depends on the class of the property.[8] The current rate for residential real property is $0.85 for every $100 of the property's assessed value.[9] Payments of the tax are due to the District in two equal semiannual installments, with the first installment due on March 31 and the second on September 15.[10]

The real property tax potentially imposes a significant burden on homeowners in the District where real estate is extremely expensive, even in lower-income neighborhoods.[11] For example, the average home cost in Anacostia is approximately $215,200.[12] The median annual household income in the same neighborhood is $29,480.[13] Therefore, without taking into account any relief, the owner of an average-value property in Anacostia would have an annual property tax burden of $0.85 x $215,200/100, or $1,829.20, which is about 6.2 percent of the household's median annual pre-tax income.

There are, however, a few deductions and other protections of which District homeowners may avail to lower their real property tax liability. For instance, low-income, first-time homebuyers qualify for a five-year property tax exemption;[14] senior citizens and disabled property owners with incomes below $100,000 receive a 50 percent reduction in their property tax bill;[15] and increases in the taxable assessment for many residential real properties are limited to 10 percent each year.[16] Low-income District residents also are eligible to claim a "Schedule H" credit on their income tax returns meant to provide relief from real property taxes.[17] The District also administers the Home Purchase Assistance Program, which provides interest-free loans and closing cost assistance to qualified low-income homebuyers.[18]

The most broad-based benefit is the homestead deduction, which, if applicable, reduces a home's taxable assessment by $69,350 for 2013, a tax savings of $589.48 per year.[19] Section I of this article discusses the rules and processes for obtaining the homestead deduction in the District. Section II describes the practical problems with the administration of the homestead deduction that result in it being unfairly denied to low-income homeowners. Section III proposes potential solutions to this problem.

I. Mechanics of the Homestead Deduction

Only "homesteads" are eligible for the homestead deduction. A homestead is defined as a piece of residential property owned by an individual who is domiciled in the District that is also that individual's principal place of residence in the District.[20]

The homestead deduction is not granted automatically; rather, District homeowner-taxpayers must affirmatively apply for it. Section 47-850(b) of the D.C. Code states that to qualify for the homestead deduction, "the individual shall complete and file with the Mayor an application in a form prescribed by the Mayor," and "certify, under penalty of perjury, the information provided on the application form." Form FP-100 (Homestead Deduction and Senior Citizen/Disabled Property Tax Relief Application) is provided by the District for this purpose and is available online.[21] Form FP-100 requires applicants to submit information about the property itself (address, square and lot number) and also certify (1) that the individual is domiciled in the District, (2) that the property in question is owned by the individual and is the individual's principal residence, (3) the date the individual moved into the property, and (4) what other property, if any, the resident owns in the District and some basic information about such property.

The form need only be submitted once to secure the benefit of the homestead deduction. It does not need to be resubmitted unless the information on the form changes (i.e., there is a new owner of the property, or the owner no longer

occupies the property as his or her primary residence).[22] For individuals who purchase residential property in the District, Form FP-100 is often completed at settlement and filed by them or their real estate agent immediately afterward. For this reason, Form FP-100 is included in a package with Form FP 7/C (Real Property Recordation and Transfer Tax Form).[23] If a properly completed application is filed during the period from October 1 through March 31, the property will receive the homestead deduction for the entire tax year; otherwise, the real property will receive only one-half of the deduction, applicable to the second tax installment only.[24]

The District periodically conducts homestead deduction audits to determine if properties receiving the homestead deduction are, in fact, eligible for it;[25] if they are not, the District will impose back taxes for periods in which the property received the homestead deduction but was not eligible for it.[26] These back taxes will be imposed with interest (at a simple rate of a 1.5 percent for each month of deficiency) and penalties (10 percent of the tax owed).[27] The District's assessment of back taxes, interest, and penalties for multiple tax years stemming from a single audit can result in a large unpaid balance that may lead to the property being sold at a tax sale, which will cause the owner to incur even more costs and potentially lose the property entirely.[28]

II. Potential Pitfalls in Obtaining the Homestead Deduction

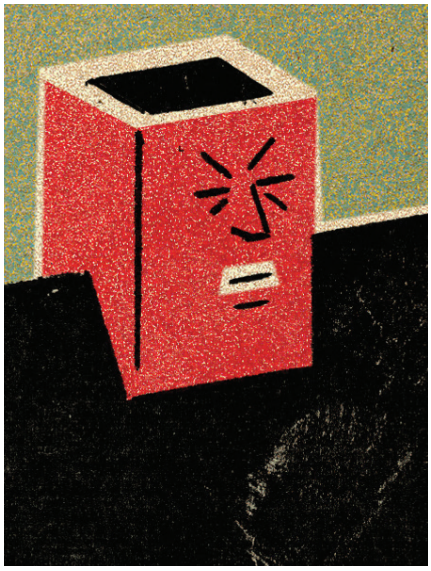
The two primary requirements of legal ownership and affirmative filing of an application create an administrative problem that denies the homestead deduction to many District residents who are the intended beneficiaries, particularly those who lack access to legal and real estate advice. Exacerbating this issue, the District will not permit the homestead deduction to be applied retroactively, which means that a resident can only remedy his or her failure to comply with the homestead deduction's complex requirements on a going-forward basis. As discussed below, this can lead to dramatic consequences, including the loss of the property altogether.

A. Ownership Requirement

Although not explicit in the statute itself, the ownership requirement for the homestead deduction requires *legal* ownership. In other words, the homeowner's name must be on the deed to the property that has been timely and appropriately filed with the District's Recorder of Deeds.[29]

As noted earlier, the ownership requirement is rarely a problem where the property is transferred through an arm's-length sale, where both parties are represented by real estate agents and sometimes attorneys as well. In that case, the representatives usually will ensure that the deed is appropriately and timely filed (and should also ensure that the application for the homestead deduction is filed, see section II.B below).

However, in other transfers problems can arise when the ownership requirement may become murky. The context with the most potential pitfalls in this respect is an inheritance. In contrast to an arm's-length sale, many small estates in the District are administered by personal representatives[30] who are family members of the decedent and who do not have any legal representation at all. These personal representatives may not know where and how to file a deed transferring the property from the estate to the appropriate devisee (often the personal representative him- or herself, or a family member), and may also be unaware that the devisee is eligible for a homestead deduction if he or she lives in the property, and that a form must be filed to obtain it.



Even if the personal representative knows that paperwork must be filed to effectuate a legal transfer of the property, this can be a slow process, as the personal representative is required to fulfill certain duties before title to the property can be transferred.[31] The devisee may be living in the property (and may have been for some time), and the property may have been receiving the homestead deduction prior to the decedent's death, but until the individual has legal title to the property, an application for the homestead deduction will not be accepted.[32] The personal representative likely is responsible for the property taxes until the deed is filed (during which time the property will be in the name of the estate), without the benefit of the homestead deduction.[33]

Even for those who are aware that such formalities are required in transferring and titling property in the District but choose to ignore them, the permanent removal of the homestead deduction for all periods of noncompliance, accompanied by interest and penalties, can be a particularly harsh punishment, as discussed in section II.C.

B. Application Requirement

While Form FP-100 typically will be filed appropriately in transactions where both parties are represented by real

> The real property tax potentially imposes a significant burden on homeowners in the District where real estate is extremely expensive, even in lower-income neighborhoods.

estate agents and/or attorneys, in other situations it can be easily overlooked. For example, where property is transferred outside of the context of an arm's-length sale (such as through a will or intestacy), there may not be any lawyers involved. An individual may own and live in a property for years and not know that the homestead deduction exists, or that he or she is required to affirmatively apply for it. The individual may assume, based on his or her tax bills, that the property is receiving the homestead deduction because the previous owner submitted an application for it. When the District conducts a reconfirmation audit, it will impose back taxes along with interest and penalties.[34]

Once again, inheritances are an area of significant concern: An individual may become a homeowner as a result of a bequest in a decedent's will, but may not know that he or she is required to affirmatively apply for the homestead deduction. Even if the property is timely and properly transferred and a deed is filed, no homestead deduction will be available until the individual files Form FP-100. The individual may not know he or she is required to do so until after a reconfirmation audit, at which point the magnitude of back taxes, interest, and penalties can lead to the property being sold at a tax sale, as discussed below.

C. Retroactive Taxes, Penalties, and Interest; No Retroactive Deduction

As noted above, following a reconfirmation audit the District will apply back taxes, penalties, and interest. On the other hand, a homeowner cannot have the benefit of the homestead deduction apply retroactively even if he or she met all of the statutory requirements for the relevant period, save filing an application. Thus, a homeowner who should have received the homestead deduction may face thousands of dollars in additional tax liability based on his or her ignorance of the filing requirement.

The table on the right provides an example of this draconian result. Suppose that a District resident lives in a property that she received through an inheritance on March 1, 2010, and that the property is worth $200,000. From 2010 through 2012, the property continues to be titled in the District's records in the name of the decedent, and continues to receive the homestead deduction. The resident pays the tax bill on the property as it becomes due. In early 2013 the District conducts a reconfirmation audit that determines the property is not entitled to the homestead deduction, either because title was never transferred to the resident (failed the ownership requirement) or Form FP-100 was never filed following the transfer (failed the application requirement). The District sends a tax bill that reflects $2,526 in back taxes, penalties, and interest.

The back taxes, penalties, and interest will continue to be due even if the resident files an effective homestead deduction the next day; the homestead deduction will only be valid going forward.[35] Interest will continue to accrue on any unpaid amounts. The resident can argue that that the penalties and interest should be waived, although granting such relief is completely within the District's discretion.[36]

Therefore, it is quite conceivable that as a result of a reconfirmation audit a low-income District homeowner may find him- or herself with a large tax bill due. Currently, failure to pay this tax bill may result in the District selling a lien on the property in a tax sale. Under the tax sale rules, the unpaid taxes will be auctioned off.[37] In order to redeem the property, the homeowner will have to pay not only the back taxes, penalties, and interest,[38] but also the tax sale fees and attorney's fees of the purchaser.[39] If he or she is unable to do so, the purchaser may use the purchased tax lien to foreclose the right of redemption on the property and obtain title to it.[40]

Following a *Washington Post* investigative series in September on the District's tax sale process,[41] there have been proposals to reform the tax sale system.[42] Currently, the District is involved in a lawsuit challenging the constitutionality of its tax sale procedures.[43] Further, as a result of the *Post*'s investigation, Mayor Vincent Gray and Chief Financial Officer Natwar Gandhi ordered the cancellation of the 2013 tax lien sales for all properties receiving the homestead deduction. This action, while a step in the right direction, is little comfort to District residents whose properties were sold at a tax sale as a result of being denied the homestead deduction in the first place.[44]

Even if such proposals for reforming the tax sale system are successful, the administrative problems of the homestead deduction system will continue to burden low-income homeowners, exposing them to higher taxes, penalties, and interest.

III. Suggestions for Reform

As discussed previously, the two major stumbling blocks in extending the homestead deduction benefit to low-income homeowners in the District are (1) the requirement that an application be affirmatively filed and (2) the requirement that the occupier of the home have clear legal title to the property.

A. Eliminate the Application Requirement

The application requirement should be eliminated altogether. Instead, the homestead deduction should simply be awarded to those homes whose owners are also domiciled there, with the default being that the homestead deduction is available for all residential real property unless a form is filed stating that the property is not occupied by its owner.

The District can periodically confirm compliance with the statutory require-

PRIOR TO AUDIT

Year	Assessed Value	Homestead Deduction	Annual Tax Rate	Tax Due
2010	$200,000	($67,500)	0.85%	$1,126
2011	$200,000	($67,500)	0.85%	$1,126
2012	$200,000	($67,500)	0.85%	$1,126

FOLLOWING AUDIT

Year	Assessed Value	Homestead Deduction	Annual Tax Rate	Tax Due	Back Taxes	Penalty	Interest (as of 3/1/13)
2010	$200,000	0	0.85%	$1,700	$574	$57	$168
2011	$200,000	0	0.85%	$1,700	$574	$57	$387
2012	$200,000	0	0.85%	$1,700	$574	$57	$77

ments through the reconfirmation audits it already conducts, providing notice to the homeowner that the homestead deduction may be removed.[45] When residential real property is transferred, Form FP-100 would be modified to require filing only in instances where the property does *not* qualify for the homestead deduction. Not only would this ensure that virtually all homeowners who are entitled to the homestead deduction receive the benefit, it would also lessen the administrative burden on homeowners and the city by reducing the number of filings.

Further, in cases where the District discovers through a reconfirmation audit that a property has wrongly received the homestead deduction, the District may still be "made whole" by imposing back taxes, penalties, and interest. As under current law, the owner should be required to notify the District if a property no longer qualifies for the homestead deduction.[46]

B. Permit Equitable Owners to Obtain the Homestead Deduction

In situations where an individual (1) occupies a property as his or her primary residence, (2) has assumed the responsibility for paying the real property taxes, and (3) has equitable but not legal title to the property, the homestead deduction should be available where the resident can prove equitable ownership. This would require a statutory change or guidance that interprets D.C. Code Ann. § 47-849(1)(A)(iii)'s ownership requirement to extend to equitable ownership, which could include a resident's interest in a property under a will in circumstances where title to the property has not been legally transferred from the estate to the resident, or a resident with uncontested ownership who acquired the property through a transaction where the deed of transfer was not properly filed with the Recorder of Deeds.

C. Permit the Homestead Deduction to Apply Retroactively

Just as the District will retroactively assess back taxes, penalties, and interest for tax years in which the homestead deduction was improperly received, if a homeowner applies for a homestead deduction and meets all of the other criteria for previous years, he or she should receive a credit against the taxes paid in those previous years that reflect the homestead deduction. Doing so would ensure that residents are not unfairly punished for being unaware of the application requirement, and also prevent residents from being surprised with large back taxes, penalties, and interest in situations where a reconfirmation audit retroactively removes the homestead deduction benefit solely because an application had not been properly and timely filed.

> [A]s a result of a reconfirmation audit, a low-income District homeowner may find him- or herself with a large tax bill due. Currently, failure to pay this tax bill may result in the District selling a lien on the property in a tax sale.

Conclusion

The homestead deduction has the potential to encourage low-income homeownership in the District and dramatically reduce the real property taxes of many District homeowners. However, the administration of this tax benefit contains many traps for the unwary that are likely to disproportionately impact low-income homeowners who lack access to legal advice on the complicated mechanics of the deduction and other issues related to the District's tax and property law. Reforming and simplifying the administration of the homestead deduction will make this important tax benefit more accessible to District residents.

Andrew L. Howlett is an associate at Miller & Chevalier Chartered. *He graciously acknowledges George Hani, a member at Miller & Chevalier, and Hyungmin Marc Joo, a law clerk at the firm during the summer of 2013, for their assistance on this article.*

Notes

[1] DC Fiscal Policy Institute, *Revenue: Where DC Gets Its Money* at 2, (Feb. 7, 2013), www.dcfpi.org/wp-content/uploads/2013/02/2-7-13-Final-Revenue-Primer1.pdf.
[2] *Id.* at 2.
[3] D.C. Code Ann. § 47-801(1).
[4] The real property tax also applies to business property. *See* D.C. Code Ann. §§ 47-812, -813.
[5] The tax is imposed by D.C. Code Ann. § 47-811(a).
[6] D.C. Code Ann. § 47-820.
[7] *See* D.C. Code Ann. § 47-825.01, *et seq*. Appeals are made to a "Board of Real Property Assessments and Appeals" appointed by the mayor.
[8] The Council of the District of Columbia is required by October 15 to establish by act the rates for each class of property. D.C. Code Ann. § 47-812. Improved residential property that is occupied by the owner thereof or used exclusively for non-transient residential dwelling purposes is Class 1 property. D.C. Code Ann. § 47-813(b)(1).
[9] D.C. Code Ann. § 47-812(a); Office of the Chief Financial Officer, *Notice of Statutory and Special Real Property Tax Rates for Tax Year 2013* (Oct. 19, 2012), www.dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=3813960.
[10] D.C. Code Ann. § 47-811(b).
[11] This is notwithstanding that the District's real property tax rate is lower than that of the surrounding counties of Maryland and Virginia, where the real property tax rate on residential property ranges from $0.958 (Arlington County) to $2.921 (some towns in Prince George's County) per $100 of assessment. The District has a higher proportion of lower-income residents on whom real property taxes are most burdensome than its surrounding counties. *See* Alemayehu Bishaw, U.S. Census Bureau, *Poverty: 2010 and 2011* at 3 (Sept. 2012) (showing that 18.7 per-

cent of the District's residents lived below the poverty line in 2011, compared to 10.1 percent of Maryland's residents and 11.5 percent of Virginia's residents), www.census.gov/prod/2012pubs/acsbr11-01.pdf.

12 Anacostia Home Prices and Home Values (Dec. 19, 2013), www.zillow.com/local-info/DC-Washington/Anacostia-home-value/r_121670.

13 Anacostia (Washington, DC), www.washingtonpost.com/real-estate/neighborhoods/Anacostia,+DC-neighborhood-details.html.

14 D.C. Code Ann. § 47-3503.

15 D.C. Code Ann. § 47-863.

16 D.C. Code Ann. § 47-864; D.C. Rev. Not. No. 2007-01 (Sept. 28, 2007). In order to take advantage of the 10 percent cap, the property must be receiving the homestead deduction, as discussed in detail below.

17 *See* D.C. Code Ann. § 47-1806.06. The Schedule H credit is available to homeowners and, to some extent, renters. *Id.* Schedule H assumes that 15 percent of rent paid is attributable to property taxes. D.C. Code Ann. § 47-1806.06(a)(2). The maximum income eligibility limit for the Schedule H credit is $20,000 and the maximum amount of the benefit is $750. D.C. Code Ann. § 47-1806.06(a)(1), (2). These numbers have not been adjusted for inflation since 1979; if they were, the income eligibility limit would be $53,000 and the maximum benefit would be $2,000. Lindsay Clark, *Property Tax Relief for DC's Low-Income Residents: Improvement Needed in DC's "Schedule H" Credit* (Apr. 8, 2007), www.dcfpi.org/4-8-08tax.pdf. The Schedule H program is subject to complex rules that can limit its benefit to residents most in need of assistance. *Id.*

18 To be eligible for the Home Purchase Assistance Program, an applicant must (1) be the head of a household and a first-time homebuyer, (2) be a low-to-moderate income resident based on standards maintained by the District's Department of Housing and Community Development, (3) own no other residential real estate within the last three years, (4) purchase a home in the District that will be the applicant's primary residence, and (5) possess a good credit rating. *See* District of Columbia Department of Housing and Community Development, *Home Purchase Assistance Program*, http://dhcd.dc.gov/service/home-purchase-assistance-program.

19 The homestead deduction is set at a base level of $67,500, which is increased annually beginning on October 1, 2012, by a cost-of-living adjustment. D.C. Code Ann. § 47-850(a). The cost-of-living adjustment for any tax year is $67,500 multiplied by the difference between the Consumer Price Index (CPI) for the Washington–Baltimore Metropolitan Statistical Area for the preceding tax year and the CPI for the current tax year, divided by the CPI for the tax year beginning on October 1, 2010. D.C. Code Ann. § 47-802(14).

20 D.C. Code Ann. § 47-849(1), (2)(A). A residence will only qualify as a homestead if it is more or less permanently occupied by its owner. Special rules apply to real property owned by a cooperative housing association. *See* D. C. Code Ann. § 47-849(2)(B).

21 Form FP-100 is available online at http://otr.cfo.dc.gov/publication/fp-100-homestead-deduction-senior-citizen-and-disabled-property-tax-relief-application. The same form is also used for real property tax benefits available to seniors and persons with disabilities. Prior to May 2, 2011, the application required supporting documents; such documents are no longer required. Office of Tax and Revenue, *OTR Streamlines Homestead Deduction and Senior Citizen or Disabled Tax Relief Application* (Apr. 18, 2011), http://otr.cfo.dc.gov/release/otr-streamlines-homestead-deduction-and-senior-citizen-or-disabled-tax-relief-application.

22 *See* D.C. Code Ann. § 47-850.02(a).

23 *See* District of Columbia Office of Tax and Revenue, Recorder of Deeds, Forms Center, http://otr.cfo.dc.gov/book/recorder-deeds-tax-forms.

24 D.C. Code Ann. § 47-850(c).

25 *See* District of Columbia Office of Tax and Revenue, *Homestead Deduction and Senior Citizen Tax Relief Audit* (Aug. 28, 2009), http://newsroom.dc.gov/show.aspx/agency/otr/section/2/release/17975/year/2009/month/8.

26 D.C. Code Ann. § 47-850.02(c)(3).

27 D.C. Code Ann. § 47-811(c).

28 *See* discussion in section II.C, *infra*.

29 *See* D.C. Code Ann. § 47-802(5)(A) (defining owner as "[a]n owner of record of real property. . .").

30 "Personal representative" is the District's term for "executor." *See* D.C. Code Ann. § 20-701 ("A personal representative . . . is a fiduciary who . . . is under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will or laws relating to intestacy and this title, as expeditiously and efficiently as is prudent and consistent with the best interests of the persons interested in the estate.").

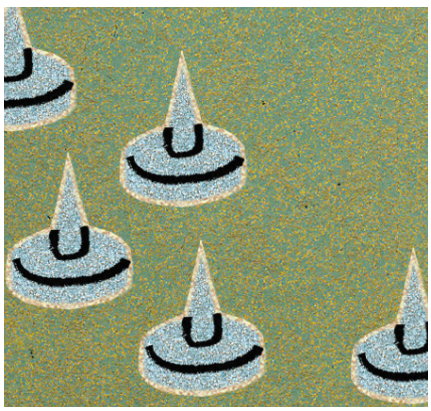
31 For example, the personal representative must provide notice of his or her appointment to all interested persons, creditors, and heirs; ensure that all documents relating to any estate property are correctly filed; and prepare a verified inventory of the property owned by the decedent. *See* D.C. Code Ann. §§ 20-702, -704, -705, -711.

32 Based on the author's experience negotiating these issues with the District's Office of Tax and Revenue, an equitable ownership interest, such as the right to receive the property through a will currently in probate, is not sufficient; the individual must have legal title to satisfy the ownership requirement. In other words, only *after* the personal representative successfully files a deed transferring the property from the estate to the devisee with the District's Recorder of Deeds Office can the devisee apply for the homestead deduction. *See* D.C. Code Ann. § 47-850.02(c)(2) ("[I]f the homestead was transferred and the grantee failed to record timely a deed under § 47-1431 . . . the real property shall be liable for the amount of the delinquent real property tax which was not timely paid, together with interest and penalty as provided in this chapter for the late payment of real property tax"). This process can be circumvented if the previous owner of the property files a Transfer on Death Deed with the Recorder of Deeds designating the transferee as the beneficiary of the deed. This procedure that was made available in 2012 allows the property to pass outside of the estate to the transferee upon the death of the original owner. *See* D.C. Code Ann § 19-604. *See also* http://otr.cfo.dc.gov/node/501452 (Transfer on Death Deed form).

33 D.C. Code Ann. § 20-702 ("The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession."). The money for the taxes could come from the estate, if such funds are available. Because the estate and not an individual is the legal owner of the property, the homestead deduction will not be available. *See* D.C. Code Ann. §§ 47-802(5)(A), 47-849(a)(2)(A)(iii).

34 D.C. Code Ann. § 47-850.02(c)(3).

35 Specifically, if a properly completed and approved Form FP-100 is filed from October 1 through March 31 of the tax year, the property shall receive the deduction for the entire tax year; if filed at any other time, the property shall receive only one-half of the deduction, applicable to the second installment only (due on September 15). D.C. Code Ann. § 47-850(c).



36 D.C. Code Ann. § 47-811.04(1) allows the mayor to waive penalties and interest if doing so would be equitable, just, and in the public interest.

37 D.C. Code Ann. §§ 47-847(a), 47-1340, *et seq*. For 2013, only those real properties owing at least $1,000 are eligible for tax sale. D.C. Mun. Regs., tit. 9, § 317.5.

38 D.C. Mun. Regs., tit. 9, § 316.2(a)(1) (requiring the owner to pay all "taxes, assessments, fees, penalties, interest and other costs levied by a Taxing Agency" in order to redeem the property).

39 D.C. Code Ann. § 47-1377 ("[U]pon redemption, a purchaser is entitled to be reimbursed by the redeeming person for . . . all expenses as allowed by the Superior Court, including expenses incurred for personal service of process . . . expenses for publication and posting of all required notices, expenses for postage, and reasonable attorney's fees."); D.C. Mun. Regs., tit. 9, § 315.3 (requiring payment of $200 tax sale fee).

40 *See* D.C. Code Ann. § 47-1370. There is a six-month waiting period following the date of the sale before the purchaser may file a complaint to foreclose the right of redemption. D.C. Code Ann. § 47-1370(a). The service of process of such a complaint is often the first notice that the homeowner receives that his or her home has been sold at a tax sale. *See* Katherine Driessen, *D.C.'s tax sale system lacks notice to homeowners, attorneys say*, Wash. Post (May 28, 2012), www.washingtonpost.com/local/dcs-tax-sale-system-lacks-notice-to-homeowners-attorneys-say/2012/05/28/gJQAr4cRxU_story.html.

41 Michael Sallah, Debbie Cenziper and Steven Rich, *Left With Nothing* (Part 1), *Suspicious Bidding* (Part 2), and *Mistakes Put Homes in Peril* (Part 3), Wash. Post (Sept. 8–10, 2013), www.washingtonpost.com/sf/investigative/collection/homes-for-the-taking.

42 *See* District Real Property Tax Sale Act of 2013, Bill 20-476. The District Real Property Tax Sale Act of 2013 would freeze any tax sale of real property of an owner who is a senior citizen, veteran, or disabled individual; establish a $2,000 threshold of taxes owed for any real property to go on a tax sale; require the District to pay the owner any amount it receives in excess of $2,000; and cap the buyer's attorney's fees (which must be paid by the owner) at $1,500. A public hearing on the bill was held on October 17, 2013. Mayor Gray submitted his own proposed Real Property Tax Sale Homeowner Protection Act of 2013 to the D.C. Council on September 17, 2013. This proposal is broader than the District Real Property Tax Sale Act of 2013, and would create notice requirements for properties that are in danger of being sold and establish an Office of Real Property Tax Sale Review to receive and review the applications for withholding properties from tax sales or for cancelling sales that have already occurred. In the meantime, the D.C. Council passed a similar emergency reform on September 17, 2013, that is effective for 90 days. Mike Debonis, *Emergency tax sale reforms pass D.C. Council*, Wash. Post (Sept. 17, 2013), www.washingtonpost.com/blogs/mike-debonis/wp/2013/09/17/emergency-tax-sale-reforms-pass-d-c-council.

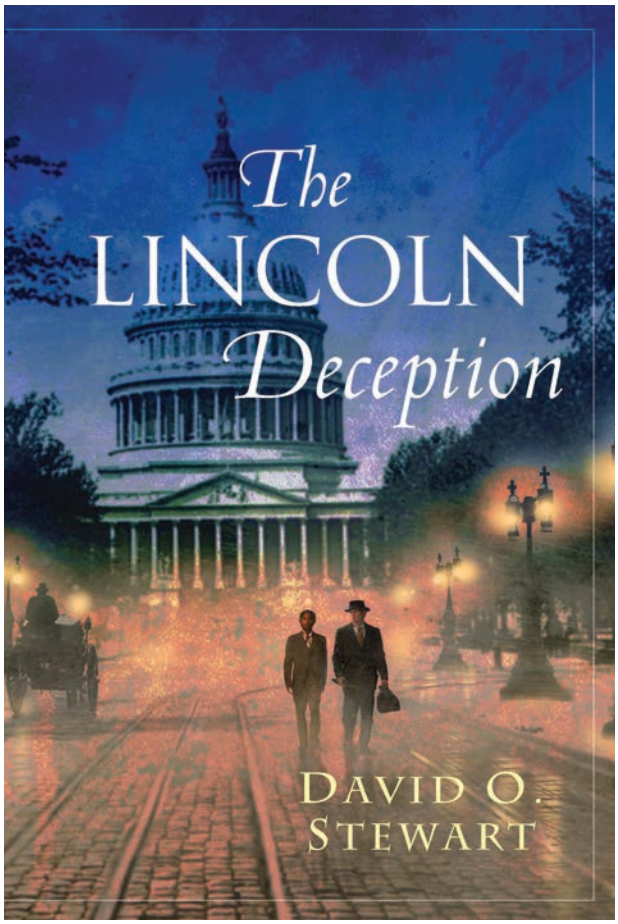
43 *See Coleman v. District of Columbia*, No.1:12-cv-01456 (D.D.C. Sept. 24, 2013).

44 *Mayor Gray and CFO Gandhi Order Cancellation of 2013 Tax-Lien Sales of District Homeowners' Properties* (Sept. 13, 2013), http://mayor.dc.gov/release/mayor-gray-and-cfo-gandhi-order-cancellation-2013-tax-lien-sales-district-homeowners%E2%80%99.

45 Indeed, the Homestead Audit Unit already conducts approximately 10,000 audits per year. Harvey Jacobs, *D.C. property tax exemptions: Know when you're eligible, and know when you're not*, Wash. Post (June 24, 2011), www.washingtonpost.com/realestate/dc-property-tax-exemptions-know-when-youre-eligible-and-know-when-youre-not/2011/06/20/AGGV06iH_story.html.

46 *See* D.C. Code Ann. § 47-850.02(b)(2).

books in the law



The Lincoln Deception
By David O. Stewart
Kensington Publishing Corp., 2013

Review by Joseph C. Goulden

Several years ago, while researching a book on the impeachment of President Andrew Johnson, author David O. Stewart's eye fell upon a single paragraph in an obscure biography of John Bingham, the lead prosecutor of the conspirators involved in the assassination of President Abraham Lincoln. On his deathbed in 1900, Bingham supposedly confided to his physician that Mrs. Mary Surratt, one of John Wilkes Booth's conspirators (she was hanged), had told him a secret that could "destroy the republic." As Stewart recounts in *The Lincoln Deception*, Bingham said "the secret would die with him, and so it did."

The passage preyed on Stewart's mind. "I walked around with it in my head for three years, trying to figure out what I could do with it," Stewart writes. He read extensively on the Lincoln assassination, looking for clues as to what secret Mrs. Surratt might have concealed. "I . . . finally decided that only a fictionalized account would allow me the freedom to explore what Mr. Bingham said and what it might have meant," he explains. As he relates, "a fictional treatment allowed me the freedom to explore the Booth conspiracy in the speculative fashion warranted by the known facts."

Stewart's use of the word "speculative" is wise, for he does not purport to have proof that any of the theories about a wide conspiracy beyond Booth's murder of President Lincoln is valid. Further, the "solution" that he offers in the final chapter is so contrary to the established record that it will provoke snorts and guffaws from Civil War historians. (I shan't spoil the read by telling any more of the ending.)

The value of the book is that Stewart casts the inquiring eye of an astute lawyer—he is counsel at Ropes & Gray LLP, where he formerly headed its litigation group—on circumstances concerning the assassination that have puzzled Lincoln historians for more than a century. And he does so with the skill of an able mystery writer who has crafted a readable

thriller in which villains abound and surprises pop up at every turn.

In Stewart's account, Dr. Jamie Fraser—the character inspired by Bingham's physician—is so curious about what secret Bingham had taken to his grave that he begins examining what record he can find about the Lincoln murder. He soon has a list of what would be known in the intelligence trade as "anomalies," that is, factors that seem out of the ordinary, or that raise issues for which there is no apparent explanation.

For a partner in his quest, Fraser has a black man, Speed Cook, a crusader for social justice who was the last man of his race to be driven out of professional baseball. Stewart's inspiration for the character was the real-life Moses Fleetwood "Fleet" Walker, who caught for the Toledo Mud Hens of the American Association (comparable to the National League) in 1884, before discrimination ended his career.[1]

Fraser soon concludes that Lincoln's murder was not a single assassination but part of a plot that would also have included the deaths of Vice President Johnson; the secretary of state, William H. Seward; the secretary of war, Edwin M. Stanton; and the general-in-chief of the Union Army, Ulysses S. Grant. As Fraser mused, "the plan involved nothing less than the decapitation of the United States government. . . . That was not the act of a deranged mind. Rather, it was a policy. Was the plot an act of war by the Confederate government?"

There is a soft core of evidence supporting this viewpoint. According to the trial transcript, prosecutor Bingham made repeated charges that Jefferson Davis, president of the Confederate States of America, was behind the plot. But although Davis was named as an unindicted co-conspirator, he was never formally charged. And, as Stewart writes, despite what he claimed in court, Bingham "never backed up the accusation." Nonetheless, he asserts, the important question to him was whether "Booth's planetary system was part of an even larger system."[2]

However, the testimony did touch on many of the points Stewart cites in his exploration of the possibility that the Lincoln murder was part of a larger plot. Here are some of the major points he addresses:

■ Was Booth an agent of the Confederate Secret Service? He and several of his associates in the plot traveled to Montreal in October 1864 to meet with Confederates who were plotting an invasion from Canada. After his death, investigators found in his trunk the key to a cipher used by Confederate agents to encode secret messages. Only another agent would have been entrusted with such a code.

■ Where did Booth and his fellow conspirators get the money that supported them and their travels in the days before the Lincoln murder? Although Booth was one of the leading actors of the era, he had been absent from the stage for more than a year. Yet he and friends spent lavishly in the weeks before the Lincoln murder.

■ A plot with several intended targets required intricate planning. Aside from Booth, none of the conspirators who were assigned targets showed any signs of superior intelligence. Did a person—or persons—of more sophistication guide the ragtag band of conspirators, who seemingly acted far beyond their skill level?

■ Why was no attempt made on the life of Vice President Johnson the night Lincoln was murdered? Conspirator George Atzerodt was assigned to kill him, but he made no serious attempt to do so. Was he acting out a ruse designed to draw attention away from Johnson's role as a criminal mastermind?

As events turned out, Johnson had a far more lenient postwar policy toward the vanquished South than was expected from Lincoln. Hence, the Confederacy supposedly would have happily seen Johnson ascend to the White House. Had Johnson been killed, the presidency would have gone to a non-entity named Lafayette S. Foster, president pro tem of the Senate. What was his appeal to the South? He came from a section of Connecticut with a concentration of textile mills that thrived on cotton smuggled from the South during the war. Was this connection of any significance?

■ How about the killing of Booth after he was tracked to rural Virginia? As Stewart writes, "He was shot as he stood alone in a burning barn, surrounded by Union soldiers. The sergeant who pulled the trigger claimed that Booth was about to shoot at the soldiers. Yet how much risk could a man in a burning barn pose to men safely outside and able to take cover?" Fraser posed a possibility: "Dead men tell no tales." (A skeptic could question the likelihood of the conspiracy reaching down the ranks of a cavalry detachment that encountered Booth more or less by accident and finding a Union soldier ready and willing to shoot the assassin.)

But, as Stewart makes plain, he is writing fiction, not making a historical case that would withstand peer review, or convince a jury. So he unleashes a rich and inventive imagination to touch a plethora of conspiratorial bases.

Northern cotton brokers and their textile-mill customers suffered great financial harm during the war because of embargos against the South. So Fraser and sidekick Cook confront the dean of brokers, a prominent Democrat who had wanted General George McClellan to defeat Republican Lincoln in the 1864 presidential election. After copious drinking, he stammers a monologue about the Union and Confederate armies making peace, uniting, and setting out to conquer Canada and Mexico. Which Lincoln would have opposed, of course. (In a minor subplot, Stewart also casts a hint of suspicion that Tammany Hall, the Democratic political machine that was just gaining power, had some role in this military scheme.)

As befits a thriller writer, Stewart provides several life-threatening brawls as Fraser and Cook make their rounds. And to add a spark of romantic interest, Fraser is smitten with a woman who turns out to be the daughter of Booth and a Washington prostitute (the daughter is a totally fictional character, Stewart assures us).

Enough. As these words are written, after the 50th anniversary of JFK's murder, America is awash with conspiracy theories of varying (and mostly doubtful) credibility. Some of the theories explored by Stewart are farfetched on the surface (for instance, the involvement of the Catholic Church in the Lincoln murder). And when he does make a stab at "an answer" in his last pages, he turns history inside out and stretches credibility far past the snapping point.

No matter. An entertaining read, even if the event at its core, the murder of a beloved president, remains a tragedy of our history.

Veteran Washington, D.C., writer Joseph Goulden is the author of 18 nonfiction books.

Notes

1 One school of baseball historians maintains that Fleet Walker deserves the accolade of being the first black to play big league ball, given that he preceded Jackie Robinson by 63 years. Walker is a revered alumnus of his alma mater, Oberlin College in Ohio.

2 The transcript I consulted while reading Stewart's book is *The Trial: The Assassination of President Lincoln and the Trial of the Conspirators*, edited by Edward Steers Jr., a thick paperback reissued in 2013 by the University Press of Kentucky. The book is not an easy read. The 400-plus pages each contain two columns of small-print type, the complete testimony of 366 witnesses over more than 50 days, without a hint of coherent organization.

attorney briefs

By Thai Phi Le

Honors and Appointments

Erek Barron has been named president-elect of the J. Franklyn Bourne Bar Association… **Steven H. Schulman**, a pro bono partner at Akin Gump Strauss Hauer & Feld LLP, has been elected to serve as president of the Association of Pro Bono Counsel… **Ivan Wasserman** has been tapped to serve as the administrative partner at Manatt, Phelps & Phillips, LLP, where he serves as a partner in the firm's advertising, marketing and media division.

On the Move

Jones Day has promoted to partner **Charles T. Kotuby Jr.,** a member of the firm's global disputes practice… **James "Tripp" Fussell** has joined Weisbrod Matteis & Copley PLLC as partner… **Matthew E. Price** has been elected partner at Jenner & Block LLP… **Michael J. Goecke**, **Michael J. Neary**, and **Julie A. Reddig** have been named principal at Lerch, Early & Brewer, Chartered… **Wesley Gelb** and **Rebecca Shankman** have been named partner at Ain & Bank, P.C.… **Penelope Farthing** has joined Bose Public Affairs Group LLC as senior advisor… **Linda E. Carlisle** has joined Miller & Chevalier Chartered as a member in the firm's tax department… **Tom Best, Patrick Linehan, Alice Loughran,** and **Stephanie Roy** have been promoted to partner at Steptoe & Johnson LLP. **Andrew Gordon, Heather Horne, Michael Maas,** and **Emily Nestler** have been named of counsel at the firm… **Robert M. Wise** has joined Loeb & Loeb LLP as partner in the firm's entertainment department… **Mark Brennan**, **Stephen Giordano**, **Anna Kurian Shaw**, **Leigh Oliver**, **Dominic Perella**, **Randy Prebula**, and **Evans Rice** have been promoted to partner at Hogan Lovells. **Eliza Andonova**, **Michael Bell**, **William Ferreira**, and **David Foster** have been promoted to counsel at the firm… Sutherland Asbill & Brennan LLP has promoted **Matt Gatewood**, a member of the firm's crisis management and complex litigation team, and **William Pauls**, a member of the firm's tax practice group, to partnership… Defense attorney **Larry Freedman** has joined Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C. as member in the firm's health law practice… **David L. Strickland**, a former administrator at the National Highway Traffic Safety Administration, has joined Venable LLP as partner in the firm's D.C. regulatory group.

Company Changes

Melissa Kucinski has opened **MK Family Law**, with practices in Maryland and Washington, D.C. The firm is located at 3 Bethesda Metro Center, suite 700, in Bethesda, Maryland.

Author! Author!

Michael Bruckheim, owner of the Law Office of Michael Bruckheim, LLC, has written a Quick Prep book titled *Facing a DUI Charge in DC: What You Need to Know*, which was published by Thomson Reuters… **Mark V. Vlasic**, a senior fellow and adjunct professor of law at the Institute for Law, Science & Global Security at Georgetown University and a principal at Madison Law & Strategy Group PLLC, has written numerous articles on various international law and policy topics, including the protection of Syria's antiquities, Switzerland's role in stolen asset recovery, and former Guatemalan General Efraín Ríos Montt. The articles have appeared in *Foreign Policy*, *Switzerland Today,* and *The New York Times*, respectively… **William Josephson**, of counsel at Fried, Frank, Harris, Shriver & Jacobson LLP in New York, has written "Political Campaign Interventions by Religious Organizations," which appeared in the December 2013 issue of *The Exempt Organization Tax Review*… Adam Gropper, legislation counsel on the Congressional Joint Committee on Taxation, has written *Making Partner: The Essential Guide to Negotiating the Law School Path and Beyond*, which was published by the American Bar Association… **Howard Levine** and **Cora Holt**, attorneys for Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, have written a supplement for Bloomberg BNA's 2013 *Biotechnology and the Federal Circuit,* presenting an analysis of recent biotech-related decisions at the Supreme Court and the Federal Circuit… **Ira P. Robbins**, professor of law at American University Washington College of Law, has authored *Habeas Corpus* and *Prisoners and the Law*, which were both published by Thomson Reuters West. He also has written "What Is the Meaning of 'Like'?: The First Amendment Implications of Social-Media Expression," which appeared in the 2013 *Federal Courts Law Review*, volume 7, issue 1.

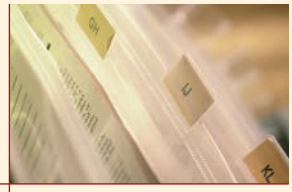
Jones Day has promoted Kevin R. Noble, a member of the firm's employee benefits and executive compensation practice, to partner.

Jordan Rubinstein has been named partner at Troutman Sanders LLP in the firm's insurance practice.

Jesse P. Kanach has joined Perkins Coie LLP as partner in the firm's investment management group.

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

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.

MARCH 4

The Politics of Copyright
12–1:30 p.m. Sponsored by the Intellectual Property Law Section.

What Every Lawyer Should Know About Immigration Law 2014, Part 1: Immigration Law Overview and Family-Based Immigration
5:30–8:45 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; Family Law Section; Government Contracts and Litigation Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

MARCH 5

New Tax Practitioners, Part 5: Back to Basics: Introduction to the Taxation of Debt Instruments
12–1:30 p.m. Sponsored by the New Tax Practitioners Committee of the Taxation Section.

Corporate Tax, Part 4
12–2 p.m. Sponsored by the Corporate Tax Committee of the Taxation Section.

MARCH 6

Small Business Legal Issues: A Training for Attorneys
9 a.m.–1 p.m. Presented by the D.C. Bar Pro Bono Program's Community Economic Development Project. Dickstein Shapiro LLP, 1825 I Street NW.

Lunch and Learn: A Day in the Life of an Estate Planning Lawyer
12–2 p.m. Sponsored by the D.C. Bar Practice Management Service Committee. Contact Daniel M. Mills or Rochelle D. Washington, assistant director and senior staff attorney, respectively, of the Practice Management Advisory Service, at dmills@dcbar.org and rwashington@dcbar.org, or call 202-626-1312.

U.S. Court of Appeals Eighth Circuit Decision in Iowa League of Municipalities
12–2 p.m. Sponsored by the Environment, Energy and Natural Resources Section.

How to Apply for Tax-Exempt Status 2014
6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Labor and Employment Law Section; and Taxation Section.

MARCH 7

Representing Asylum Seekers: Basic Training
9 a.m.–3 p.m. Presented by the D.C. Bar Pro Bono Program. Contact Kim DeBruhl at 202-626-3489 or kdebruhl@dcbar.org.

MARCH 10

Fee Agreements in the District of Columbia: Ethics and Practice Guide
6–9:15 p.m. CLE course cosponsored by all sections of the D.C. Bar.

MARCH 11

Estate Planning, Part 7
12–2 p.m. Sponsored by the Estate Planning Committee of the Taxation Section.

What Every Lawyer Should Know About Immigration Law 2014, Part 2: Employment-Based Immigration: Nonimmigrant Visas
5:30–8:45 p.m. See listing for March 4.

MARCH 12

Top Estate Planning Developments of 2013 and Top Estate Planning Predictions for 2014, With Implications for Our Practices
10 a.m.–12:15 p.m. CLE course cosponsored by the Estates, Trusts, and Probate Law Section and Taxation Section.

Bitcoin and Other Virtual Currency Explained
12–2 p.m. Sponsored by the Corporation, Finance and Securities Law Section.

Pass-Throughs and Real Estate, Part 5
12–2 p.m. Sponsored by the Pass-Throughs and Real Estate Committee of the Taxation Section.

Media Law Committee Brown Bag Lunch
12:15–1:30 p.m. Sponsored by the Media Law Committee of the D.C. Bar Arts, Entertainment, Media and Sports Law Section. The Washington Post, 1150 15th Street NW.

MARCH 13

Key Issues in Government Contracts Mergers and Acquisitions
12–2 p.m. Sponsored by the Government Contracts and Litigation Section. Jenner & Block LLP, 1099 New York Avenue NW, ninth floor.

International Tax, Part 5: Temporary Section 7874 Regulations
12–2 p.m. Sponsored by the International Tax Committee of the D.C. Bar Taxation Section.

Premarital Agreements in the District of Columbia, Maryland, and Virginia: Practical Advice and Comparisons
6–9:15 p.m. CLE course cosponsored by the Family Law Section and Litigation Section.

MARCH 14

Transgender Law Panel
12–2 p.m. Sponsored by the Equal Employment Opportunity and Individual Rights Committee of the D.C. Bar Labor and Employment Law Section and cosponsored by the Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; Health Law Section; Law Practice Management Section; and Litigation Section.

continued from page 11

Pro Bono Program Offers Training on How to Represent Asylum Seekers

On March 7 the D.C. Bar Pro Bono Program will host a basic training session for attorneys interested in representing asylum seekers.

The training is intended to prepare pro bono attorneys to represent indigent clients in asylum cases at the affirmative stage as well as detained individuals. Topics include U.S. asylum law, working with victims of trauma, preparing the I-589 application form, documenting asylum cases, credible and reasonable fear interviews, and practice before the U.S. Citizenship and Immigration Services Asylum Office.

The training takes place from 9 a.m. to 3 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is presented in collaboration with Capital Area Immigrants' Rights Coalition, Human Rights First, and Whitman-Walker Health, and cosponsored by the Catholic Charities Immigration Legal Services, Tahirih Justice Center, and the D.C. Bar Litigation Section and International Law Section.

Training participants are strongly encouraged to accept a pro bono referral from one of the sponsoring organizations. Attorneys who agree to take a pro bono case in the future must be admitted to practice in some U.S. jurisdiction and have their own malpractice insurance.

To register, visit www.dcbar.org/probono. For more information, contact the Pro Bono Program at 202-737-4700, ext. 3293.

Four-Part Series Provides Overview of Immigration Law and Practice

The D.C. Bar Continuing Legal Education (CLE) Program will present a four-part introductory course on immigration law in March.

"What Every Lawyer Should Know About Immigration Law Series 2014" provides an overview of immigration law that attorneys may encounter regardless of their specialty. Participants will learn about the government agencies involved, options for employment- and family-based immigration law, asylum and humanitarian relief, and immigration litigation practice.

Courtesy of Maggio & Kattar, P.C.

Anna Marie Gallagher

The series opens on March 4 with "Immigration Law Overview and Family-Based Immigration," which will introduce participants to the key statutes, regulations, and fundamental concepts of immigration and nationality law, as well as provide a roadmap to the various agencies that administer them.

Faculty will discuss essential concepts such as nonimmigrant versus immigrant visas, inadmissibility, removability, and what it means for a foreign national to be "out of status" or "unlawfully present" in the United States. The second half of the session will cover the basic requirements for one of the most common routes to obtaining U.S. legal permanent residence—family-based immigration—focusing on marriage to a U.S. citizen.

Through a mock client intake and immigration interview, attendees will learn the law, process, and some of the ethical considerations that may arise in such cases.

Faculty includes Margaret Gleason of the Office of the Citizenship and Immigration Services Ombudsman at the U.S. Department of Homeland Security and Elizabeth Quinn, a shareholder at Maggio & Kattar, P.C.

Part two, "Employment-Based Immigration: Nonimmigrant Visas," on March 11 will teach participants the fundamentals of employment-based nonimmigrant visas across the full spectrum of options and help them understand some of the key differences among the various types of visas.

The faculty panel, which includes business immigration practitioners and a government speaker, will guide attendees through the full life cycle of an application process. Adjudication by the U.S. Citizenship and Immigration Services (USCIS) and visa issuance at the U.S. Department of State also will be discussed.

Jim Alexander, managing shareholder at Maggio & Kattar; Denise Hammond of Hammond Immigration Law, PC; and Damon P. Kitterman of the State Department, will serve as faculty.

Part three, "Employment-Based Immigration: U.S. Legal Permanent Residence and Corporate Compliance," on March 18 focuses on the various avenues by which a foreign national may secure permanent residence through employment.

Participants will learn about PERM labor certification and labor certification-exempt categories (such as outstanding researchers and multinational managers/executives), as well as immigrant investor visas. In addition, faculty will briefly discuss employer compliance and enforcement efforts of a variety of government agencies, including site visits by the USCIS and audits by the U.S. Immigration and Customs Enforcement.

Alexander will be joined by Theresa Nahajzer, human resources consultant at M6 HR LLC, and Amy Novick of Haynes Novick Immigration as faculty.

The final session, "Overview of Immigration Litigation, Asylum, and Humanitarian Relief," takes place on March 25 and covers the key aspects of immigration law for individuals who are not eligible for employment- or family-based sponsorship.

Faculty will discuss how individuals may be placed in removal proceedings and what options may be available to them, as well as provide an overview of the statutory and regulatory framework of removal proceedings, asylum, and humanitarian relief options.

Judge Phillip T. Williams of the Baltimore Immigration Court; Anna Marie Gallagher, a shareholder at Maggio & Kattar; and Karen Grisez, special counsel and public service counsel at Fried, Frank, Harris, Shriver & Jacobson LLP, will lead this session.

The series 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; Family Law Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

All sessions will take place from 5:30 to 8:45 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

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

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

SAVE THE DATE
NAWJ Midyear Meeting and Leadership Conference

The National Association of Women Judges 2014 Midyear Meeting and Leadership Conference will take place March 13 to 15 at the Westin Georgetown, 2350 M Street NW. Highlights include a Congressional Women's Caucus luncheon, a keynote luncheon address by U.S. Attorney General Eric H. Holder Jr., and a day devoted to access to justice for trafficking victims. To register or for more information, visit www.nawj.org/midyear_2014.asp.

classifieds

CLASSIFIED RATES $125 for the first 175 characters in ***Washington Lawyer*** or $50 for the first 175 characters online only. $150 combo rate for the first 175 characters in both media. $2 for every 10 characters over the first 175. A WL confidential e-mail in-box for replies is available to you for $40 per each insertion. A border is available for $25 for print ads only. **Classified advertisement submissions must be received by March 3 to be included in the April issue of *Washington Lawyer.*** Please visit www.dcbar.org to place your ad, or for more information call 202-737-4700, ext. 3268, or e-mail advertising@dcbar.org.

ECONOMIC ANALYSIS

ECONOMIST

- Personal Injury
- Wrongful Termination
- Wrongful Death
- Discrimination

Valuation of Business, Securities and Pension Funds for Divorce and Business Cases

University Professor with Extensive Experience

Dr. Richard B. Edelman

8515 Whittier Boulevard • Bethesda, MD 20817

1-800-257-8626 301-469-9575

VISA *References and Vita on request - Visit at:* MasterCard

www.economic-analysis.com

SERVICES

Security Clearance Lawyers

McAdoo Gordon & Associates, P.C.

202-293-0534

www.mcadoolaw.com

DCBAR

D.C. Bar members are required, by Rule of the D.C. Court of Appeals, to file with the Secretary of the District of Columbia Bar any address changes within 30 days of occurrence. If you have had a change in address information, please visit us online at www.dcbar.org

SUBLEASE WANTED

Sublease of office space for 5 person law firm sough from larger law firm. Reply by e-mail with location, other details and contact information.

lawofficesublease@verizon.net

OFFICE SPACE

ATTORNEY OFFICE SUPPORT SYSTEMS

PLANS FROM $50-$200 PER MONTH

Mail; phone; receptionist; copies; fax; e-mail; internet access; Offices, conf. rooms as needed. Other support systems.

1629 K Street NW, Suite 300
Washington, DC 20006
Call: 202-835-0680 :: Fax: 202-331-3759

manager@osioffices.com :: www.washoffice.com

SERVING ATTORNEYS SINCE 1981

We can make downsizing or outplacement an upgrade.

Gain a competitive advantage over large firm practice.

LAWYERS' CHOICE SUITES

910 17th Street NW, Suite 800
Washington, DC 20006

A SHARED OFFICE ENVIRONMENT FOR LAWYERS OVERLOOKING FARRAGUT SQUARE

ELEGANT PRIVATE WINDOWED OFFICES

NEW AFFORDABLE SOLO PRACTICE SUITE

Full Time Receptionists : Conference Rooms : Secretarial Support : Internet Legal Research : Westlaw Provider

Senior Lawyer Discount

Alvin M. Gutman, Esq.
(202) 293-3595

www.lawofficespacedc.com

REAL ESTATE

FLORIDA HOMES & CONDOS FOR SALE
South Florida Real Estate Expert

Sheldon Jaffee ... Follows through on Promises & **Gets Results** ... Business Experience since 1976 ... In-Depth Knowledge of the Market ... World-Class Service.

Boca Raton-Delray-Highland Beach-Ocean Ridge-Manalapan-Palm Beach-Lighthouse Point

My Highest Priority is "Your Satisfaction"

(561) 395-8244

Lang Realty

Are you part of the Premier D.C. Area Legal Career Center?

THE PERFECT LEGAL JOB COULD BE CLOSER THAN YOU THINK.

Job Seekers:

- Search, find, and apply to legal jobs in the D.C. area.
- Post your resume anonymously.
- Set up job alerts and receive e-mails when jobs meet your specifications.

Employers:

- Access qualified local candidates directly.
- Post your open positions and search the resume bank.
- Job posting upgrades are available to help fill hard-to-fill jobs.

Visit us at:
www.dcbar.org

DCBAR

Did you know...

You can reach every attorney licensed to practice in D.C. through the Classifieds in *Washington Lawyer* or on our Web site?

Visit www.dcbar.org and follow the simple instructions.

The Classifieds—
Meeting Your Needs

www.dcbar.org

legal spectator

By Jacob A. Stein

A Tour of My Office, A Look in My Books

If you are around Connecticut and K and you have 10 minutes with nothing special to do, drop by my office. The office is small and square with no windows. On the four walls are books.

Let's start with the west wall. There we see the collected works of Samuel Johnson, who made many comments on the law and lawyers; near them are the works of William Hazlitt.

There is an impressive collection of Winston S. Churchill's speeches commencing in 1897.

Let's take volume VII and read Churchill's speech on December 26, 1941, to the Joint Session of Congress, Washington, D.C., right after Japan and Germany declared war on the United States. Churchill opened in a friendly way:

> I feel greatly honoured that you should have invited me to enter the United States Senate Chamber and address the representatives of both branches of Congress. The fact that my American forebears have for so many generations played their part in the life of the United States, and that here I am, an Englishman, welcomed in your midst, makes this experience one of the most moving and thrilling in my life. . . . By the way, I cannot help reflecting that if my father had been American and my mother British, instead of the other way round, I might have got here on my own. In that case, this would not have been the first time you would have heard my voice. In that case, I should not have needed any invitation, but if I had, it is hardly likely it would have been unanimous. So perhaps things are better as they are. I may confess, however, that I do not feel quite like a fish out of water in a legislative assembly where English is spoken.

Now we move to 35 volumes of Benjamin Franklin's letters. I bought these books in 1968 when I was at an ABA meeting in Philadelphia. The ABA session was dragging on and I decided to examine Philadelphia's bookstores.

In looking through the letters, I see that he wrote and received many letters in French. Where did Franklin pick up the language and write it so skillfully?

In the bookstore was a bust of Franklin. I looked at him, he looked at me, I bought it. It is on the north shelf of my office.

On the high, upper west shelf is an old-fashioned, two-hand staff telephone. You see these in the 1930s movies. With one hand, you hold the staff mouthpiece; in the other hand, you place the receiver and hold it to your ear.

On the north wall is a record player that plays the songs as old as the telephone.

The record player is on a standup desk. Why a standup desk? I saw pictures of Oliver Wendell Holmes standing with his standup desk. The first one I saw was in a secondhand furniture store on Indiana Avenue near the courthouse.

The second one I brought was a standup desk in New Orleans. It is a beautiful piece of furniture.

Let's go to the east wall where we see a number of things. There is a fish mounted, a rather large fish, and above it are the words, "If I had kept my mouth shut, I wouldn't be here."

I caught the fish from the office of Charlie Ford. This was long ago. Charlie Ford was a great 5th Street criminal lawyer. Charlie liked saying to the client, "My man, if you kept your mouth shut, you wouldn't be in all this trouble."

Let's take a look at the south wall. There is on the shelves a collection of books of quotations, mainly drawn from literature, maxims, eulogies, analogies, metaphors, and specialty books such as *The Experts Speak*. Here are some samples:

You won't have Nixon to kick around anymore—because, gentlemen, this is my last press conference.

—Richard M. Nixon
(former vice president of the United States), addressing reporters after losing the 1962 California gubernatorial election, November 7, 1962

I have no political ambitions for myself or my children.

—Joseph P. Kennedy,
I'm for Roosevelt, 1926

The thought of being President frightens me. I do not think I want the job.

—Ronald Reagan
(Governor of California), 1973

On the east wall are these words: "Sharpshooters don't charge by the cost of a bullet." I take it to mean that the lawyer, in sending a bill, is not bound by the hours, but by what is accomplished.

I have one big thick book with a yellow binding that contains proverbs from all over the world. Here is a Turkish proverb. The explanation is Worse than the Blunder:

> In the old days, a king known for his cruelty demanded that his court jester illustrate, within the hour, the meaning of a proverb, or be tortured to death.
>
> As the king and his queen, attired in royal robes, were some time later slowing mounting a staircase, the jester stole behind them and gave the king a loving pinch. The king, with sword drawn, wheeled around and was about to decapitate the fool, who yelled: "Sorry, Your Majesty, I thought it was the Queen!"

HEY!!! Did you hear that 1936 telephone ring? Is that possible? Who could be calling me through that phone? Could it possibly be a client?

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

CHEVY CHASE TRUST
INVESTMENT ADVISORS

Great minds invest alike.

CHEVY CHASE TRUST
WELCOMES AMY RASKIN

"As AllianceBernstein's Director of Thematic Research, head of US & Global Growth Equity Research and Chief Investment Officer of AllianceBernstein Venture Capital Fund, Amy Raskin has been recognized as a leading thinker on global macroeconomic trends. That's why all of us at Chevy Chase Trust are excited to welcome her as our new Chief Investment Officer. Our approach—and our reputation—have been built on the concept of customized thematic investing. So a like-minded professional will make a great thing even better."

– Peter Welber, President & CEO

And now, you can have one of the industry's brightest minds—and a dozen of her peers—thinking about your portfolio. To learn more visit ChevyChaseTrust.com or call Stacy Murchison at 240.497.5008.

West LegalEdcenter®

Is your firm struggling to manage CLE requirements cost-effectively? MDM&C isn't. "West LegalEdcenter has become our one-stop shop for all of our CLE, for all of our offices and all of our attorneys," says Nicole. "Within our first year alone, we saved close to $100,000." West LegalEdcenter gives your firm access to thousands of learning and development programs, accredited in your firm's jurisdictions, in a variety of convenient, accessible formats.

Hear Nicole's story and view a demo of West LegalEdcenter at **westlegaledcenter.com/link/testimonial**.
Learn more about McElroy, Deutsch, Mulvaney & Carpenter, LLP at **mdmc-law.com**.

Call 1-800-241-0214, option 3 to learn more.

THOMSON REUTERS™