MARCH 2010

Washington Lawyer

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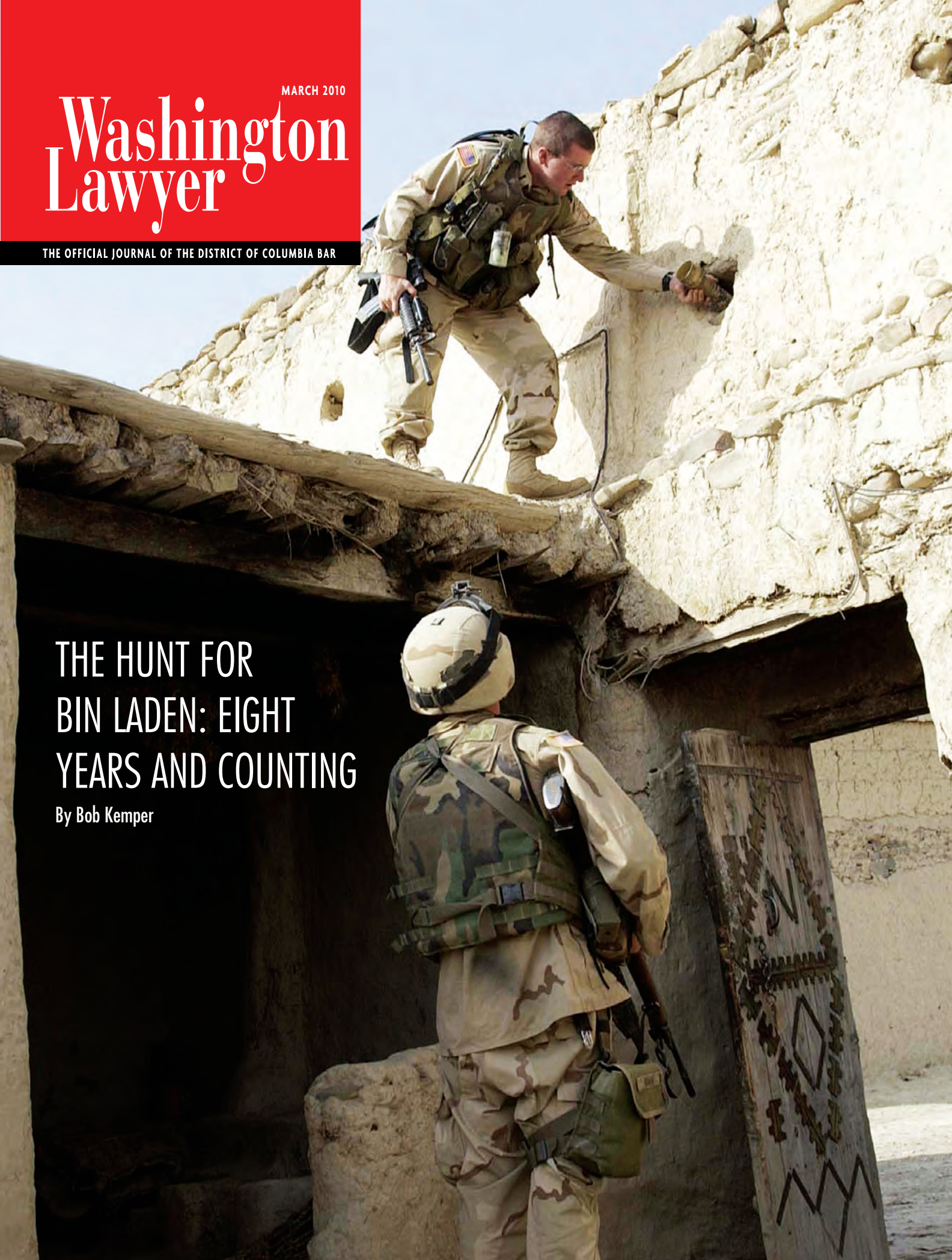

THE HUNT FOR BIN LADEN: EIGHT YEARS AND COUNTING

By Bob Kemper

March 2010
Volume 24 No. 7
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EDITORIAL OFFICE
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from the president

By Kim M. Keenan

Jacqueline Hicks

Missing Out on Member Benefits?

"Put not your trust in money, but put your money in trust."

—Oliver Wendell Holmes Sr.

Everyone is looking for ways to spend money more wisely—or spend less money—for necessary services. Lawyers are no exception. In 2008 the D.C. Bar surveyed its membership and discovered only about 20 percent take advantage of membership benefits. Tellingly, when asked what benefits should be added, some members asked for products or services that already were being offered by the Bar. So for the 20 percent who have been "capitalizing" on the Bar's services, hopefully you will discover additional services. As for the rest of you, who shall remain nameless, let's see if we can make you an offer you cannot resist.

By way of background, Bar members serving on the Membership Committee work with staff liaisons to create a suite of benefits designed to save members both time and money. As Bar members, committee members are in a unique position to carefully review our current offerings with a view toward improving existing benefits or adding new ones. By leveraging our size—the Bar boasts more than 90,000 members—the Membership Committee is able to secure better deals on products and services of value. Now more than ever, this important standing committee of the Bar provides an invaluable service to the membership as we all seek ways to boost the yield of every dollar we spend.

Key benefits utilized by members include insurance products being offered by Forrest T. Jones & Company, Inc., which include disability, health, and life coverage. GEICO is also a member of our benefits program, and you may be eligible for an additional member discount even if you have an existing GEICO policy. Bank of America offers Bar-branded credit cards and checks as another benefit. Our FedEx benefit, the product of one of our recently added partnerships, also can be used at FedEx Office retail locations, formerly known as FedEx Kinko's. This product, which is great for small offices, allows anyone to create mega-presentations without mega-costs.

If you have a small- to mid-size office or recently started your own law practice, a number of the Bar's services can aid in the administration and efficiency of your office, leaving you with more time and energy for the practice of law. Some of these services come from our partnerships with American Bar Association Retirement Funds; Diversified Services Group, Inc. (fee recovery and collections); Elavon, Inc. (credit card and check processing); Office Depot, Inc. (office supplies); Quick Messenger Service, Inc. (courier and line standing); Samson Paper (stationery and letterhead); and Sharp Business Systems (office business equipment). Our newest benefit comes from Carr Workplaces, which provides members near and far with a local spot for meetings and temporary offices. The company also offers virtual office features. Just think, after you participate in the Bar's free and confidential Practice Management Advisory Service, headed by manager Daniel M. Mills, you can surf the Bar's Web site at www.dcbar.org to find many of the services you need at a discount. At the end of the day, these services can save you time and money. On a good day, any extra time *is* money.

> Despite the mandatory nature of the Bar, our recently released strategic plan makes it clear that providing high-quality service to the membership is a priority.

Our benefits also provide more personal perks suitable for any member anywhere such as discounts on car rentals from Avis and Budget; purchases from Brooks Brothers clothiers; magazine subscriptions; and discounts on new cars from United Buying Service, Inc. We even have our own travel agency (available at www.dcbartravel.org) for all of your backpacking, snorkeling, and weekend getaway needs, and a fitness facility, The Sports Club/LA, to keep you healthy. Just to show you how much thought the Membership Committee gives to serving you, Framing Success, Inc. offers a special member discount on a custom frame for your D.C. Bar certificate. It also frames diplomas and other commemorative legal certificates.

If the services highlighted here do not convince you, then consider this: For the past few years, our membership benefits providers have contributed more than $240,000 to the Bar's yearly bottom line! This revenue is used to fund the important activities and work of the Bar such as the Continuing Legal Education (CLE) Program and the Pro Bono Program, neither of which is funded by your Bar dues. So not only do member benefits save you money directly, they also enhance our award-winning CLE Program and support our efforts to serve the community. That's like spending a dollar and having it work three times as hard for you—and the profession!

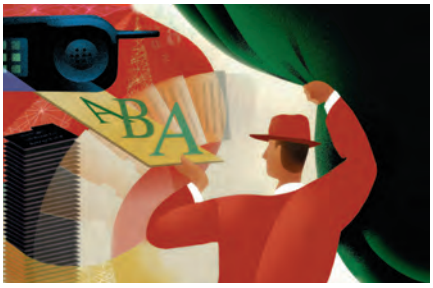
Despite the mandatory nature of the Bar, our recently released strategic plan makes it clear that providing high-quality service to the membership is a priority. Hopefully, I have made the case that the time has come for you to take a closer look at your Bar member benefits. Remember to bookmark www.dcbar.org/memberbenefits so you can regularly check the benefits being offered to every member. You may find that you could be saving money just by using your membership card.

When it comes to the Bar, membership really does have its privileges.

For more information on these or other benefits, contact the D.C. Bar Member Benefits staff at memberbenefits@dcbar.org. Kim M. Keenan can be reached at kkeenan@dcbar.org.

bar happenings

By Kathryn Alfisi



Mick Wiggins

2010 Judicial and Bar Conference Honors Three Outstanding Advocates

The local legal community will honor the accomplishments of three colleagues in the profession when members of the bench and bar convene on April 8 and 9 for the 2010 District of Columbia Judicial and Bar Conference.

The fifth biennial conference, which takes place at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW, will explore the theme "Survival Strategies for Modern Legal Times."

Courtesy of Vytas V. Vergeer

Vytas V. Vergeer

Courtesy of Eric S. Angel

Eric S. Angel

At the conference luncheon, the D.C. Bar will present its 2010 Beatrice Rosenberg Award for Excellence in Government Service to Harry Fulton, chief of the Public Defender Service for the District of Columbia's Mental Health Division. The annual award honors a Bar member whose career accomplishments include outstanding counsel to a government agency, exceptional service to the legal profession or the community, and unselfish contributions to advance the careers of colleagues.

Separately, the D.C. Bar Foundation will honor Eric S. Angel, legal director of the Legal Aid Society of the District of Columbia, and Vytas V. Vergeer, director of Bread for the City's legal clinic, as co-recipients of its 2010 Jerrold Scoutt Prize. Angel and Vergeer are being recognized for their collaborative efforts to reform pro bono tenant representation in the D.C. Superior Court Landlord and Tenant Branch.

The prize, named in honor of the founding partner of Zuckert, Scoutt & Rasenberger LLP, is awarded annually to an attorney working with an area nonprofit organization that provides direct, hands-on legal services to the poor and disadvantaged.

The first day of the conference features afternoon programs focusing on the theme, while day two offers eight seminar programs and two plenary sessions, a musical continuing legal education program called "Ethics Rock Extreme," a membership forum on the D.C. Bar's first strategic plan, and another forum on judicial selections.

Two seminars on electronic communications have been lined up for the conference. The first seminar will explore emerging e-communication issues in the court before, during, and after trial, and the other will review the pitfalls for lawyers.

Other programs target topics such as the keys to successful law firm management, perceptions of race and ethnic disparities in the courts, how to navigate District tax disputes, prosecutors' disclosure obligations, and postconviction issues.

John A. Payton Jr., president and director-counsel of the NAACP Legal Defense Fund, will be the keynote speaker at the conference luncheon.

For more information on the 2010 Judicial and Bar Conference, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or conference@dcbar.org, or visit www.dcbar.org/conference.

SAVE THE DATE! 2010 Presidents' Reception & Annual Business Meeting and Awards Dinner

The 2010 Presidents' Reception and the D.C. Bar Annual Business Meeting and Awards Dinner will be held on Thursday, June 24, at The Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW. The Presidents' Reception will be held at the hotel's State Room from 6 to 7:30 p.m., while the Annual Business Meeting and Awards Dinner takes place at the Grand Ballroom starting at 7:30. For more information on the Presidents' Reception, contact Kathy Downey at 202-588-1857 or kmdowney@erols.com. For details on the Annual Business Meeting and Awards Dinner, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or vallen@dcbar.org.

New CLE Offering Covers Trademark Cases

In March the D.C. Bar Continuing Legal Education (CLE) Program will hold a new course covering fraud in trademark cases.

"Fraud in Trademark Cases: Impact of the Federal Circuit's New Standard" on March 8 is designed for trademark practitioners, in-house counsel, general practitioners, and litigators who counsel and represent trademark owners in prosecution, maintenance, and infringement matters.

Since 2003, third parties have pleaded and prevailed in opposition and cancellation proceedings before the Trademark Trial and Appeal Board (TTAB) of the U.S. Patent and Trademark Office based on a finding of fraud under a "knew or should have known" standard of a material misrepresentation in the facts of the registration.

On August 31, 2009, in *In re Bose Corp.*, the United States Court of Appeals for the Federal Circuit handed down a decision that essentially eviscerated this longstanding, but purportedly lenient, standard for a finding of fraud in trademark cases.

This presentation will explore the

impact of the court's ruling, including how the TTAB is handling fraud claims post-*Bose*. In addition to general trademark practice and maintenance tips, participants will learn how to defend their clients against claims of fraud and how to avoid fraud claims.

Courtesy of Morgan, Lewis & Bockius, LLP

Michael F. Clayton

Cheryl L. Black, of counsel at Goodman Allen & Filetti, PLLC; and Michael F. Clayton, a partner at Morgan, Lewis & Bockius, LLP, will serve as faculty.

The program takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Corporation, Finance and Securities Law Section; Intellectual Property Law Section; Litigation Section; and Tort Law Section.

This course takes place at the D.C. Bar Conference Center, 1101 K Street NW, first floor. For more information, contact the CLE Office at 202-626-3488 or visit www.dcbar.org/cle.

Federal Bar Holds 34th Annual Tax Law Conference

The Federal Bar Association's Section on Taxation will hold its 34th Annual Tax Law Conference on March 5 at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW.

Intended for attorneys, accountants, and tax practitioners in government and private practice, the conference will include a tax legislative update and symposia covering topics such as international tax, tax accounting, domestic corporate tax, employee benefits and executive compensation, and tax treaty issues.

Conference highlights include a luncheon featuring Judge Francis Allegra of the U.S. Court of Claims and the presentation of the 2010 Kenneth H. Liles Award to Fred T. Goldberg Jr., a partner at Skadden, Arps, Slate, Meagher & Flom LLP and former IRS commissioner.

Registration begins at 7:30 a.m. and the conference closes with a reception from 6 to 8 p.m.

For more information, contact the Federal Bar Association at 571-481-9100, or fba@fedbar.org, or visit www.fedbar.org.

Sections Luncheon Looks at Securities Class Actions

On March 10 the Investor Rights Committee of the D.C. Bar Corporation, Finance and Securities Law Section will hold the luncheon program "Private Securities Litigation: Critical Trends and Developments in Securities Class Actions."

The luncheon features a panel of practitioners who will explore the legal and practical considerations impacting pleading standards, class certification, secondary liability, subject matter jurisdiction of U.S. courts over claims of non-U.S. investors, and trends in the number and nature of securities class actions.

Speakers include Charles Davidow, a partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP; Daniel S. Sommers, a partner at Cohen Milstein Sellers & Toll PLLC; and Andrew Tulumello, a partner at Gibson, Dunn & Crutcher LLP. Michael Lowman, a partner at Jenner & Block LLP and former assistant chief litigation counsel for the U.S. Securities and Exchange Commission's Division of Enforcement, will moderate.

The program takes place from 12 to 2 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by the D.C. Bar Courts, Lawyers and the Administration of Justice Section; Litigation Section; and Labor and Employment Law Section.

For more information, contact the Sec-

tions Office at 202-626-3463 or sections@dcbar.org.

Courtesy of Paul, Weiss, Rifkind, Wharton & Garrison LLP

Charles Davidow

Courtesy of Cohen Milstein Sellers & Toll PLLC

Daniel S. Sommers

New Course Examines D.C. Fee Agreements

On March 16 the D.C. Bar Continuing Legal Education (CLE) Program will offer advice on developing fee agreements and the ethical issues involved through its new course "Fee Agreements in the District of Columbia: Ethical and Practical Guidance."

This course will explain the requirements of a written agreement, including the scope of the agreement; fee structure (hourly, fixed, contingency, and others); and handling of expenses. Attendees will learn about the implications of the recent *In re Mance* decision dealing with flat fees and restrictions on nonrefundable fees, how to deal with client files and property in fee agreements, and how to address fees to be charged for the services of associates and legal staff.

Joel P. Bennett of the Law Offices of Joel P. Bennett, P.C.; attorney Heather C. Bupp-Habuda; Daniel M. Mills of the D.C. Bar Practice Management Advisory Service; and Wallace "Gene" Shipp Jr., bar counsel for the District of Columbia, will serve as faculty.

The course takes place from 6 to 9: 15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Estates, Trusts and Probate Law Section; Family Law Section; International Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Tort Law Section.

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

FCC's Ruth Milkman Speaks at Women's Bar Luncheon

On March 11 Ruth Milkman, chief of the Wireless Telecommunications Bureau of the Federal Communications Commission (FCC), will speak at a Women in Government luncheon hosted by the Women's Bar Association of the District of Columbia (WBADC).

Milkman will discuss her duties at the FCC, as well as her career path leading to her current position.

Milkman has been with the FCC since 1986, serving in various positions such as deputy chief of the International Bureau and of the Policy and Program Planning Division of the Common Carrier Bureau.

The luncheon, presented by WBADC's Communications Law Forum, takes place from 12 to 1:30 p.m. at Willkie Farr & Gallagher LLP, 1875 K Street NW.

To register or for more information, contact Jade Nguyen at 202-639-8880, or admin@wbadc.org, or visit www.wbadc.org.

ASIL Explores International Law Changes at 104th Annual Meeting

The American Society of International Law (ASIL) will hold its 104th Annual Meeting from March 24 to 27 at The Ritz-Carlton, 1150 22nd Street NW, under the theme "International Law in a Time of Change."

ASIL's annual meeting brings together more than 1,000 practitioners, academics, and students to discuss the latest developments in international law. This year's meeting will explore the remaking of international law through new modes of lawmaking, new methods of global governance, new substantive rules to address evolving problems, and new individuals and institutions involved in international and transnational problems.

Highlights include a keynote lecture by Harold Hongju Koh, legal adviser to the U.S. Department of State, and comments from Edith Brown Weiss, a professor at the Georgetown University Law Center; Meg Kinnear, secretary-general of the International Centre for the Settlement of Investment Disputes; and Georgetown Law professor Dinah Shelton.

Various panels will discuss topics such as climate change, China on the world stage, extraterritoriality, corruption and human rights, women's rights, detention and interrogation policy in the Obama administration, and environmental justice.

For more information, contact Wendy Roller at 856-642-4218, or wroller@asil.org, or visit www.asil.org.

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

speaking of ethics

By Saul Jay Singer

Mick Wiggins

In Trust Accounts We Trust

After Laurie Lawyer expended hundreds of hours representing Calvin Client in a personal injury case, and after Laurie's firm fronted more than $50,000 in expenses in the case, the defendant settled on the eve of trial for $600,000. Laurie deposits the settlement check into Firm's trust account and prepares a final accounting as follows:

$200,000	Contingency fee as per retainer agreement
$50,000	Legal expenses
$100,000	Outstanding fees due to Cal's medical providers as per negotiated agreements
$350,000	Total Disbursements
$600,000	Total Settlement Proceeds
$250,000	**Balance Due to Calvin Client**

The first inkling of trouble begins when Laurie receives a call from Cal's ex-wife, advising that Cal owes $15,000 for outstanding court-ordered child support. In the days that follow, Laurie hears from Pain Specialist, who claims that Cal had been ignoring his $1,000 invoice for more than a year; Spiritual Healer, who claims $25,000 for providing "spiritual guidance to help Cal deal with back pain;" the Internal Revenue Service (IRS), which advises that Cal owes federal income taxes and serves notice of a $10,000 lien against any trust funds held by Laurie on Cal's behalf; and Sam the Deli Guy, who claims that Cal had walked out without paying for his corned beef sandwich and diet cream soda. Sam demands payment of $15, plus unspecified damages for "emotional distress."

When Laurie calls Cal to ask about these various claims, he accuses her of manufacturing lies and demands immediate receipt of "my $600,000." When she tries to explain the various deductions that had to be taken against the aggregate settlement, Cal angrily replies that:

- Laurie wasn't entitled to *any* fee because "you wore a yellow blazer at our meeting last week, and you know how much I hate all things yellow;" and
- Firm could not recoup expenses because "I never agreed to pay expenses and, in fact, Paul Partner assured me that my case was so strong and so large that any lawyer would happily agree to eat the expenses."

As to the third-party claims, a heated Cal declares that his ex-wife had cheated on him and, therefore, was not entitled to a monthly $1,000 court-ordered payment; that he neglected to tell Laurie about Pain Specialist because the doctor had failed to forward any invoice; that Spiritual Healer was a charlatan, with bad breath to boot; and that the corned beef sandwich was inedible. As to the IRS lien, Cal asserts The Steve Martin Defense—"I forgot"—invoked during his classic *Saturday Night Live* routine.

Laurie easily determines that: (1) no reasonable finder of fact could possibly deny her fee because she "wore a yellow blazer," (2) the retainer agreement can entertain no interpretation other than that Cal must pay Firm's expenses, and (3) she will not undertake to adjudicate the merits (*vel non*) of the third-party claims and, thereby, subject herself to potential liability. She transfers $250,000 from Firm's trust account to its operating account, and advises Cal that the $350,000 balance will remain protected in Firm's trust account pending final resolution of all third-party claims, known and unknown, against the settlement proceeds.

Laurie is wrong on almost all counts. She has committed multiple violations of Rule 1.15(c) of the District of Columbia Rules of Professional Conduct, which details a lawyer's duties when disputes arise with respect to the ownership of trust funds under a lawyer's control:

> When in the course of a representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved . . . .

Comment [5] to Rule 1.15 elaborates:

> Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

But this begs the question: While Laurie "*may* have a duty" to protect third-party claims, when does she actually have the affirmative duty to do so? Moreover, if Laurie "should not unilaterally assume to arbitrate" the dispute, how is she to decide whether the third-party claim is a "*just* claim"—or just a claim?

The D.C. Bar Legal Ethics Committee provides significant guidance on this issue in Opinion 293, which begins by drawing an important distinction between claims against trust funds by clients and claims by third parties. Because of a lawyer's paramount duty of loyalty to a client, even the mere assertion of a claim by a client constitutes sufficient grounds to prevent a lawyer from withdrawing any disputed property, and "there is no requirement that the dispute be genuine, serious, or bona fide."[1] As such—and though there could be few claims as preposterous as Cal's

detestation of Laurie's yellow blazer—Laurie's transfer of her contingency fee (and Firm's expenses) to Firm's operating account was improper.[2]

As to the third-party claims, Opinion 293 defines a *just claim* that must be honored by the lawyer as one relating to *the particular funds in the lawyer's possession*, and not merely a general, unsecured client debt. Thus, when an attachment or garnishment arising out of a money judgment against Cal establishes a third party's entitlement to specific settlement proceeds in Laurie's trust account and is served upon her, she must protect these funds, whether or not the order is related specifically to Cal's case.

Despite claims by Pain Specialist, Spiritual Healer, and Sam the Deli Guy, where none of these third parties has perfected a garnishment/attachment of the settlement proceeds, Laurie may—indeed, she *must*[3]—distribute the "disputed" funds to her client, even in the face of these pending claims.[4] The same is true with respect to the ex-wife's claim, even though she approaches Laurie with a court order in hand for child support, because that order does not relate specifically to the settlement proceeds. However, as Opinion 293 makes clear, Laurie must protect a statutory lien that applies to the settlement proceeds in the matter she is handling. The IRS lien in this case is such a lien, and Laurie has the duty to retain $10,000 in the trust account to satisfy it.

Conclusion

- Notwithstanding a D.C. lawyer's broad duty of client loyalty, Laurie may refuse to distribute to Cal $250,000 that she and Firm claim as a contingency fee ($200,000) and outstanding expenses ($50,000). However, she may not take distribution of these funds until either Cal consents to such distribution or the fee and expense dispute is adjudicated in Laurie's favor.
- While Laurie must preserve $10,000 to satisfy the IRS lien, she need not retain any additional funds to satisfy any of the other third-party claims.
- As soon as practicable, Laurie must distribute $240,000 to Cal, representing the $600,000 in aggregate proceeds, less: (a) $250,000 contingency and expenses; (b) $10,000 for the IRS; and (c) $100,000 to providers, the distribution of which Cal does not dispute. She need not fear any additional third-party claims—even as to perfected liens specifically against the trust funds—of which she is unaware at the time of the distribution.[5]

Practice Tip

A lawyer must carefully walk the line between the duty of loyalty and the duty to disburse client funds on the one hand, and the duty to protect funds relating to certain third-party claims on the other hand. When it comes to trust accounts, there will, indeed, be a significant penalty for early withdrawal!

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

Notes

1 *In re Haar*, 667 A.2d 1350, 1353 (D.C. 1995).

2 Laurie's remedy is to file suit against Cal to recover her fee (and Firm's expenses). Such an action is subject to Rule 1.6(e)(5) ("A lawyer may use or reveal client confidences or secrets . . . to the minimum extent necessary in an action instituted by the lawyer to establish or collect the lawyer's fee.")

3 *See*, e.g., Comment [4] to Rule 1.15: "The undisputed portion of the funds should be promptly distributed."

4 In marked distinction is the case where the lawyer has executed an authorization and assignment pursuant to which the lawyer ratifies a contract between the client and the medical provider to pay certain funds in the lawyer's possession. In such instances, the lawyer must retain the disputed funds at issue in the trust account.

5 As Opinion 293 makes clear: "to begin with, the rule [to preserve trust funds as to which there is a 'just claim'] does not apply to claims of which the lawyer lacks knowledge."

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE JAMES W. BEANE JR. Bar No. 444920. December 22, 2009. On remand from the D.C. Court of Appeals, regarding the issue of the "appropriateness of a negotiated discipline," the Board on Professional Responsibility recommends that the court reject the proposed sanction, a six-month suspension with fitness.

IN RE ANDREW J. KLINE. Bar No. 358547. December 22, 2009. The Board on Professional Responsibility recommends that the D.C. Court of Appeals suspend Kline for 18 months, with the suspension stayed after nine months, on the condition that Kline agrees to be placed on monitored probation for two years with conditions as stated in the Board Report and Recommendation. Kline negligently misappropriated and commingled entrusted funds and "committed a significant number of serious ethical violations" while representing a client in a litigation matter. Specifically, Kline failed to make crucial litigation filings, and, as a result, a default judgment was entered against his client. Without telling his client about the default judgment, Kline negotiated settlement terms with the adverse parties under which his client was to pay $50,000. He did not bring these terms to his client's attention; instead, he submitted a draft agreement that called for the dismissal of his client's $7,500 contract claim but required no monetary payment from his client. When even those terms were not acceptable to his client, Kline forged his client's signature on a settlement agreement containing the terms he had negotiated; paid the adverse parties $50,000 of his own funds; and presented the forged agreement to them as a valid settlement agreement. Rules 1.1(a), 1.2(a), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 8.4(b), 8.4(c) and D.C. Bar R. XI, § 19(f).

IN RE THEODORE S. SILVA JR. Bar No. 412894. December 31, 2009. In a consolidated reciprocal and original matter, the Board on Professional Responsibility recommends that the D.C. Court of Appeals suspend Silva for three years and require that he demonstrate fitness as a condition for reinstatement, showing that he has beaten his cocaine addiction and not used the drug during the period of his suspension. It is also recommended that the court require the Office of Bar Counsel to publish the discipline imposed by the Virginia State Bar Disciplinary Board in accordance with D.C. Bar Rule XI, § 11(c). The original matter relates to Silva's admitted failure to complete work for a client; his subsequent falsification of the signatures of others, including falsely notarizing documents; and falsely advising his client and supervising partner that work had been completed. The reciprocal discipline matter arises out of Virginia's public reprimand with terms based on Silva's guilty plea for cocaine possession in late 2002 in Arlington, Virginia. Silva's conviction was vacated upon his completion of the conditions of his sentence and probation. Rules 1.3(a), 1.3(b)(1), 1.3(c), 1.4(a), 1.4(b), 8.4(b), and 8.4(c).

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE TOAN Q. THAI. Bar No. 439343. December 24, 2009. The D.C. Court of Appeals suspended Thai for 60 days, with the suspension stayed after the first 30 days in favor of probation for one year, provided that, within the first 30 days, he files an affidavit with the Board on Pro-

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legal beat

By Kathryn Alfisi and Thai Phi Stone

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

Bar Seeks Nominations for 2010 Awards Ceremony

The D.C. Bar is seeking nominations to recognize outstanding projects and contributions by Bar members at the 2010 Annual Business Meeting and Awards Dinner on Thursday, June 24, at the Grand Ballroom of the Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW.

The Bar will present its highest honor, the Thurgood Marshall Award, to a Bar member who has demonstrated exceptional achievement in the pursuit of equal justice and equal opportunity for all Americans. The Bar also will present the Frederick B. Abramson Award, which is given in recognition of extraordinary service to the profession.

Bar members also are encouraged to submit nominations for the following awards: Best Bar Project, Best Section, Best Section Community Outreach Project, Pro Bono Lawyer of the Year, and two Pro Bono Law Firm Awards—one for small firms (2–50 lawyers) and one for large firms (51 lawyers or more).

The awards will recognize contributions made between April 1, 2009, and March 31, 2010.

Award nominations must be submitted by April 2 to D.C. Bar Executive Director Katherine A. Mazzaferri, 1101 K Street NW, Suite 200, Washington, DC 20005-4210, or online at www.dcbar.org/awards.—*K.A.*

Bar Seeks Candidates for Board, Committee Vacancies

The D.C. Bar Board of Governors is seeking candidates for appointments this spring to the Legal Ethics Committee, Judicial Evaluation Committee, Attorney/Client Arbitration Board, and D.C. Bar Foundation, as well as to the Board on Professional Responsibility (BPR) of the D.C. Court of Appeals. All candidates must be members of the D.C. Bar.

For BPR openings, three individuals will be selected for each vacancy and their names will be forwarded to the D.C. Court of Appeals for final appointment. Preference is given to individuals with experience on BPR hearing committees.

Individuals interested in applying should submit a résumé, with cover letter stating the committee on which they would like to serve, to the D.C. Bar Screening Committee, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. Online submissions can be made at www.dcbar.org/vacancies. Résumés must be received by March 15.—*K.A.*

From Grads to Dads

Leah Gurowitz

On January 29 the Superior Court of the District of Columbia held its second Fathering Court Initiative graduation to recognize individuals who completed the year-long program, which instructs men who recently have been released from prison on how to reconnect with their children and to meet child-support obligations. Here, Fathering Court case manager YuVette Russell (left) and Superior Court Magistrate Judge Milton C. Lee Jr. (right) flank Fathering Court graduate Michael Turner, who displays his diploma.—*K.A.*

Commission Nominates Judge Lee to Superior Court

The District of Columbia Judicial Nomination Commission has nominated Magistrate Judge Milton C. Lee Jr. to be an associate judge of the Superior Court of the District of Columbia. The nomination was sent to the U.S. Senate on January 20.

Lee will fill the seat vacated by retired Associate Judge Jerry S. Byrd.

Since his appointment in 1997, Lee has served as a magistrate judge in the Criminal and Civil divisions of the Superior Court. He is currently assigned to the family court, and he also presides over the Fathering Court Initiative, a treatment-oriented approach to reuniting children with their noncustodial parents recently released from prison.

From 1985 to 1993, Lee was a staff attorney at the District of Columbia Public Defender Service, where he tried several felony cases. He later taught at the Georgetown University Law Center in the Criminal Justice Clinic and at the University of the District of Columbia David A. Clarke School of Law.

For additional questions about Lee's nomination, please contact Judge Emmet G. Sullivan, chair of the Judicial Nomination Commission, at 202-354-3260 or jnc@dcd.uscourts.gov.—*T.S.*

Bar Offers Discount on Sections Membership

The D.C. Bar is offering a 50 percent discount on memberships to all its 21 sections until June 30, 2010. With more than 24,000 members, the Bar's sections offer premium networking opportunities through educational programs, judicial receptions, and other exclusive events.

Additional benefits include early notifications of events, newsletters, discounts on Sections and Continuing Legal Education programs, and access to publications at reduced rates. Members also get the chance to be part of more than 100 committees in specialized areas, from environmental law to telecommunications.

To join, visit www.dcbar.org/for_lawyers/sections/join.cfm.—*T.S.*

Pilot Program Tests Use of Listservs for Section Members

Three D.C. Bar sections have launched listservs as part of a pilot program to assess the value of an electronic discussion group. Under the program, the Estates, Trusts and Probate Law Section; Law Practice Management Section; and Litigation Section are the first sections to use listservs to connect attorneys in similar fields.

Members who join the listserv receive valuable information about events, programs, and issues affecting practicing lawyers. With greater participation, the listservs are poised to become a powerful tool in advancing the law, putting the advice of some of the most respected attorneys within a few keystrokes.

The Estates, Trusts and Probate Law Section has had great success in garnering support, creating a listserv community of more than 140 people. With topics ranging from ethical debates about debt collection to whether or not conservators can retain counsel, lawyers have received extensive information to better serve their clients.

Both the Law Practice Management Section and Litigation Section are seeking additional members to spur discussions. The Law Practice Management Section's listserv also aims to post important information for its members in one forum to avoid the inconvenience of having to check numerous outlets.

Throughout the project, assigned coordinators will field questions, suggestions, and complaints, which will help determine whether or not to continue or

Changes to Bar Dues Payment Schedule

This year D.C. Bar members must pay their annual dues by July 15—a month earlier than in previous years—to avoid being charged a late fee.

Dues statements for fiscal year 2010–2011 will be sent to Bar members in May, with a response deadline of July 1, allowing members a two-week grace period before a $30 late fee is assessed.

Dues amounts for 2010–2011 will be set by the Bar's Board of Governors in April at the conclusion of its budget deliberations. When paying dues, members also may join a section or renew their section memberships and make contributions to the D.C. Bar Pro Bono Program. For online payments, members will need their username and password, which automatically can be retrieved if their e-mail address matches what the Bar has on file.

E-mail addresses can be checked by visiting www.dcbar.org, selecting the "Find a Member" button at the top right side of the page, and locating the individual record. If the e-mail address is incorrect, corrections may be sent to memberservices@dcbar.org.—*K.A.*

expand the use of listservs for members of all sections of the Bar.

To participate in the pilot program, visit www.dcbar.org/for_lawyers/sections/listserv/listserv_terms.cfm. For additional information, contact David Itkin, Sections Office senior member information specialist, at 202-737-4700, ext. 3253, or at ditkin@dcbar.org.—*T.S.*

Commission Selects Nominees for Superior Court Vacancies

The District of Columbia Judicial Nomination Commission has selected candidates for two vacancies on the Superior Court of the District of Columbia.

Three candidates were chosen for each vacancy, and the nominations were forwarded to President Barack Obama on February 1 for consideration. The president has 60 days to choose from the pool of nominees. The candidates were submitted to fill vacancies created by the retirement of Judge Geoffrey A. Alprin and Judge Cheryl M. Long.

To fill the vacancy created by the retirement of Judge Alprin, the commission has nominated Maria C. T. Amato, general counsel for the D.C. Department of Corrections; Robert D. Okun, a prosecutor in the U.S. Attorney's Office for the District of Columbia; and Judith A. Smith, magistrate judge on the Superior Court.

The commission has recommended Devarieste Curry, a partner at McLeod, Watkinson & Miller; Todd E. Edelman, a clinical professor at the Georgetown University Law Center; and Elizabeth C. Wingo, a magistrate judge on the Superior Court, to replace Judge Long.

All questions concerning the nomination application process should be directed to Judge Emmet G. Sullivan, chair of the Judicial Nomination Commission, at 202-354-3260 or jnc@dcd.uscourts.gov.—*T.S.*

New Member Benefit Offers Access to Business Centers Nationwide

The D.C. Bar has joined forces with Carr Workplaces, a provider of alternative workplace solutions, to offer members significant benefits and access to the 23 Carr-operated business centers across the country, including 11 in the Washington metropolitan area.

"Our unique partnership with the D.C. Bar provides a critical link to space and services for the legal community in Washington," said Joe Wallace, chief executive officer of Carr Workplaces. "Attorneys expect the same level of service and professionalism they provide to their clients, the same rigor they apply to their own practices. Our workplaces are structured to deliver those high standards of support from the moment they walk in."

This partnership provides Bar members with the flexibility of short-term leases for exclusive office space across the region and no start-up capital costs. It also offers on-site support staff and fully equipped, information technology-enabled offices. The benefits will be especially valuable to Bar members who manage their own practice or participate in a boutique firm.

Carr Workplaces also has offices in California, Florida, Georgia, Illinois, Massachusetts, New Jersey, and New York.—*T.S.*

D.C. Circuit Seeks Nominees for Gribbon Pro Bono Award

The Standing Committee on Pro Bono Legal Services of the United States District Court for the District of Columbia Circuit Judicial Conference is seeking

nominations for its fifth annual Daniel M. Gribbon Pro Bono Advocacy Award.

The award, endowed by Gribbon's family and friends, honors his lifetime commitment to and strong support for pro bono legal services. Individuals or firms that have demonstrated distinguished advocacy before the district court in a pro bono matter that concluded between July 1, 2008, and December 31, 2009, are eligible for the award.

Interested parties may nominate themselves, and nonwinning nominees from previous years can resubmit their applications if they meet the criteria.

All nominations must be in writing and are limited to six pages. They may also include a description—up to two pages—of the pro bono work and letters of support. Nominees should not attach pleadings or court filings. Descriptions must be received no later than noon on

Bar Members Must Complete Practice Course

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

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

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

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

The preregistration fee is $219; the onsite fee is $279. Course dates are March 6, April 13, May 8, June 8, July 10, August 10, September 11, October 5, November 6, and December 7. Advanced registration is encouraged.

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

March 17, while supporting letters will be accepted through noon on March 31.

Nomination materials may be e-mailed to Standing Committee member Scott A. Memmott at smemmott@morganlewis.com. Nominees also may submit the original plus 10 copies of their documents to: Scott A. Memmott, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

For additional inquiries, contact Memmott at 202-739-5098 or at the previously listed e-mail address.—*T.S.*

Law Firms Swap Suits for Jeans for Justice

During any ordinary workday, swarms of people in suits walk the streets of Washington, D.C. For one day, however, attorneys and staff at local law firms dressed down for the Go Casual for Justice Jeans Day, a fundraiser organized as part of the National Pro Bono Week Celebration in October.

Lawyers and staff from 33 firms donated $5 or more to wear jeans in the office. The fundraiser brought in more than $33,500, which was donated to the D.C. Bar Foundation for its programs that support the District's nonprofit legal services community. Already, half of the money is being put to work through the foundation's Loan Repayment Assistance Program (LRAP). In January, the foundation issued 53 LRAP awards to poverty lawyers working on behalf of the District's poor.

"The fact is that we didn't have enough money to fully fund the LRAP awards this year," said Katherine Garrett, the foundation's executive director. "Through people's generosity, we were able to provide at least three additional LRAP awards as a result of Casual for Justice."

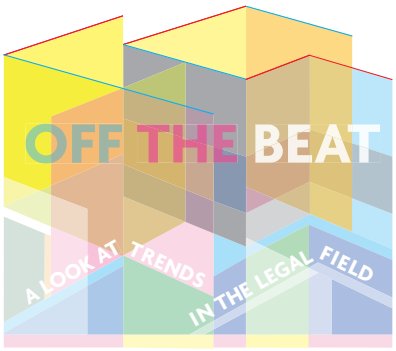
To rally his colleagues to support Casual for Justice, Sidley Austin LLP managing partner Carter Phillips issued a friendly challenge: Raise more than $4,000 and the diehard Ohio State Buckeyes fan would do the unthinkable—wear a hat and tie embossed with logos of the University of Michigan Wolverines. If they raise less than $3,000, pro bono counsel Rebecca Troth and associate Clifford Berlow would sing the Ohio State fight song in the firm's atrium.

With 141 participants, the firm raised nearly $6,000 and watched Phillips don the Michigan gear at a Halloween party, complete with blinking lights to highlight the "M" on his cap.

"Sidley has always been committed to pro bono work and helping the communities in which we have offices," said Ronald S. Flagg, a partner at the firm and president-elect of the D.C. Bar. "We feel very strongly that the fundraising efforts of the D.C. Bar Foundation are especially critical today, when the legal needs in our community are growing at the same time the resources available to legal service providers are shrinking. I hope Casual for Justice can make an even bigger contribution to these efforts in 2010."

Dechert LLP, another contributor to the event's success, already has plans to expand its Casual for Justice fundraiser by involving its London office. With the support of so many firms in the area, Pro Bono Week organizers are excited for this year's event, which is slated for October 29, 2010.—*T.S.*

Reach D.C. Bar staff writers Kathryn Alfisi and Thai Phi Stone at kalfisi@dcbar.org and tstone@dcbar.org, respectively.



Healthy Habits for the Short-on-Time Crowd

Everyone knows somebody who has done it—and we may be equally guilty ourselves. With a pint of ice cream in hand, we have watched *The Biggest Loser*, raving about how motivating the two-hour weight loss show is. Throw in the local news and *The Tonight Show*, and we have quickly become a statistic—the group of people who, according to a study by Australian researchers, watch four or more hours of television a day, increasing our mortality rate by 46 percent.

Lawyers easily fall into this category. Despite 16-hour days chockfull of briefs, depositions, and client dinners, they lead sedentary—albeit stressful—lives that put them in the company of couch potatoes.

The evidence is stacked against them. Lawyers are prone to coronary artery disease, hypertension, and ulcers. In a study published in the June 1997 issue of *The Journal of Occupational and Environmental Medicine,* the most recent report available, epidemiologists determined that female lawyers working more than 45 hours a week were three times more likely to suffer a miscarriage. And while attorneys are movers and shakers in the figurative sense, they literally move less than the majority of the population.

The American Council on Exercise reported that lawyers were near the top of the least active occupations, traveling an average of two miles a day compared to, for instance, mail carriers who logged six miles in an eight-hour period.

A Weighty Subject

With little movement beyond ascending the corporate ladder, weight gain is a reality many people in the legal community face. In 2003 Mark Leventhal, an associate at Bode & Grenier, LLP, weighed 220 pounds and heard three words from his doctor that spurred him into action: "You are obese." For Leventhal, eating well was his biggest obstacle. "On the *Today* show they say, 'Let's cut up apples and drizzle honey over them. It makes a wonderful snack.' In reality, how many lawyers actually have time to cut up apples and drizzle honey over them?" he asked. Leventhal does, however, try to plan for the day as much as possible. He buys a salad in the morning and brings fruit and snacks to work. He keeps healthy, frozen meals in the firm's fridge in anticipation of inevitable late nights.

Already exercising most mornings, Leventhal became even more diligent at the gym. Through Team in Training, a charity sports training program, he ran his first marathon on June 6, 2004. To date, he has run 14 marathons and 19 half marathons, and has dropped more than 50 pounds.

Training for marathons may not be everyone's goal, but there are simple ways to fit exercise into a busy schedule. The key is being creative. Below are a few tips to stay active.

Create a Mini-Gym

Bring in dumbbells, mats, fitness balls, resistance bands, and other exercise equipment as space, money, and noise allow. Don't have an office? See if there is an empty office that can be converted into a small gym.

While adults should participate in 2½ hours of moderate level activities—or at least 1 hour and 15 minutes of vigorous workout—each week, exercise does not have to be completed in long stretches of time. "You can get health benefits from engaging in physical activity in bouts as short as 10 minutes at a time," said Dr. Carol E. Torgan, a health scientist and representative for the American College of Sports Medicine. Instead of sauntering to the vending machine for a break, pull out those dumbbells or crank out a few crunches.

Keep it Moving

Since the mid-1990s, Judge T. Rawles Jones Jr. of the U.S. District Court for the Eastern District of Virginia has been doing three quarters of his office work behind his stand-up desk, custom-made for his six-foot build. Standing improves circulation, burns more calories than sitting, and strengthens back and leg muscles.

Douglas K.W. Landau, a trial lawyer at Abrams Landau, Ltd., often stretches during conference calls, which can reduce fatigue, muscle tension, and stress while increasing flexibility and range of motion in joints.

Like your cushy chair while working? Take the steps instead of the elevator when heading out to lunch. Walk a few extra blocks in the hunt for your daily dose(s) of caffeine. Bike or run to work, if possible.

Integrate Exercise Into the Job

Admittedly, most of the population is not like Landau, who finds a race in virtually every city he travels to and runs for miles in the middle of the night when he cannot sleep. Despite his boundless energy, he has tricks up his sleeve to ensure he stays fit. Instead of cramming exercise into his schedule, he makes it a part of his job. As a personal injury lawyer, he often runs around accident sites to get a feel for the case, bringing a recorder in case any trial ideas pop up.

He also networks at the gym. "Young lawyers need to practice their elevator speech and make it a locker room speech," said Landau, who suggests wearing T-shirts branded with the company logo to start conversations. "A former partner used to do weightlifting with a doctor the firm had a relationship with. It's like taking your best client out for drinks."

Going out of town? See if your health club is a member of the International Health, Racquet & Sportsclub Association, and check out its Web site for the nearest gyms, which often are free or offer a reduced rate. Local community colleges also have free tracks on which to run.

Prioritize

The best advice is to stop putting exercise at the bottom of the ever-growing to-do list. "No lawyer I know is so organized that they have all their work finished every single day," Landau said. "There are always things you can do . . . that you can go back to and do better. It's got to be good enough to be done, and then you've got to move on and do the things that are important for you, your longevity."—*T.S.*


THE HUNT: 8 YEAR

Bin Laden Trail Turns Cold—
Does America Have a Clue?

S AND COUNTING

By Bob Kemper

He is arguably the most wanted fugitive in the history of the American justice system, the target of a multibillion-dollar global manhunt, a man with no country to call his own. Yet, Osama bin Laden, who committed murderous crimes against America, remains a free man.

Nearly two decades have passed since bin Laden's terrorist network first attacked American interests abroad, more than 10 years since he declared war on all Americans, and eight years and counting since his followers rammed jetliners packed with fuel and innocent civilians into the towers of the World Trade Center in New York, the walls of the Pentagon outside of Washington, D.C., and, thwarted by passengers, an empty field in Pennsylvania.

"If he thinks he can hide and run from the United States and our allies," President George W. Bush said of bin Laden in 2001, not long after America lost its inviolate sense of security on that September morning, "he will be sorely mistaken."

But Bush's eight-year tenure ran out. A new president, Barack Obama, has inherited the manhunt. Meanwhile, bin Laden remains hidden away, an "iconic figure" in the words of Army General Stanley A. McChrystal, who now leads the Afghan war that targets bin Laden. The al Qaeda leader is on the lam, possibly in the Pakistani tribal areas that border Afghanistan, U.S. officials say. Bin Laden persists in taunting his pursuers through regularly released video and audio recordings—36 since 2001 and four in 2009 alone—and continues to inspire thousands of new, anti-American jihad recruits around the world, including a handful in the United States itself.

Yet, when Americans see that it took only a few months to capture Iraqi President Saddam Hussein, who played no role in the September 11, 2001, terrorist attacks, and they see other suspected al Qaeda operatives imprisoned by the dozens at the Guantánamo Bay prison camp in Cuba, the question lingers: Why can't the United States fulfill its promise to the families of the victims of 9/11, and Americans in general, to bring bin Laden to justice?

"He needs to be held accountable for the deaths of 3,000 people," says Jamie S. Gorelick, a partner at WilmerHale LLP who served as deputy U.S. attorney general and who was a member of the National Commission on Terrorist Attacks Upon the United States, more commonly known as the 9/11 Commission. "President Bush said he needs to be brought to justice, and that has not changed."

Chase Gone Cold

The search for individual fugitives often takes considerable time and resources. Even massive manhunts sometimes succeed only through a turn in luck. Luis Armando Peña Soltren, the longest missing fugitive in Federal Bureau of Investigation (FBI) history who hijacked an airliner and diverted it to Cuba in 1968, wasn't caught until October 2009—and only after he turned himself in. Unabomber Theodore J. Kaczynski sent the first of his 16 mail bombs in 1978. He was caught 18 years later, after his brother told the FBI of Kaczynski's whereabouts. Eric Rudolph, wanted for the 1996 Olympic Games bombing in Atlanta as well as attacks on abortion clinics in Alabama and Georgia, eluded federal authorities for five years, even though they knew he was hiding in the Nan-

tahala National Forest in western North Carolina. Rudolph remained free until a rookie cop spotted him foraging for food in a dumpster not far from the woods in 2003.

The scope and expense of the global hunt for bin Laden is unprecedented. Yet, it has been impeded on a number of fronts, including pre-9/11 legal obstacles such as prohibition on the exchange of information between U.S. law enforcement agencies and intelligence services; international political entanglements among leaders of Afghanistan, Pakistan, and the United States; and missed military opportunities such as America's failure to capture or kill bin Laden in December 2001 at Tora Bora in Afghanistan, according to intelligence, military, and legal experts. The fundamental impediment to bringing bin Laden to justice, however, is that capturing him is no longer a top priority for the United States—and has not been for several years—even though bin Laden retains the U.S. government's "High-Value Target No. 1" designation, those experts claim.

Bush, who once kept in his Oval Office desk a scorecard with pictures of al Qaeda terrorists on which he drew an X as each was captured or killed, began deemphasizing the importance of getting bin Laden, a man he claimed to want "dead or alive" only months after the war in Afghanistan began.

"And the idea of focusing on one person … really indicates to me people don't understand the scope of the mission," Bush said in March 2002. "Terror is bigger than one person. And he's just … a person who's now been marginalized…. You know, I just don't spend that much time on him … to be honest with you."

Obama, who during the 2008 presidential campaign declared bin Laden "our biggest national security priority," recently unveiled a war plan for Afghanistan that was silent on bin Laden. In announcing his plan to the cadets at West Point, Obama mentioned bin Laden only once and only in passing.

"He fell by the wayside years ago," Andrew J. Bacevich, a former Army colonel who now teaches at Boston University, says of bin Laden. "It was the Bush administration that chose to remove bin Laden's capture from its list of priorities, and my sense is the Obama administration has seen fit to endorse that."

The White House is unlikely to acknowledge it directly, but former intelligence officials say bringing bin Laden to justice has become less relevant strategically for the United States. No one is suggesting the United States abandon its search for bin Laden, but those officials say bin Laden's forced isolation and his refusal to use telephones or radios that can be tracked by U.S. technology have robbed him of his control over al Qaeda's operations. Targeting others who are now actively planning future attacks against the United States is, by necessity, a higher priority, they claim. Moreover, those officials say, al Qaeda itself has changed. Washington now views the group more as an amorphous member of a broader "syndi-

cate" of terrorist groups, loosely connected by shared resources, personnel, and training facilities, rather than a more easily targeted cohesive set of operatives.

"Given that reality, it's wise for the [Obama] administration to not say getting Osama bin Laden is our No. 1 priority because the odds do not favor accomplishing that," says Bruce O. Riedel, a senior fellow at The Brookings Institution's Saban Center for Middle East Policy. Riedel has worked for the Pentagon, National Security Council, and Central Intelligence Agency (CIA) and advised the Obama administration during its transition into the White House. "But I think it remains very high on the intelligence community's list to get some information about him. The truth is, we don't have a clue where this guy is," Riedel adds.

Botched Mission at Tora Bora

Defense Secretary Robert Gates acknowledged as much in December 2009 when he said it had been "years" since the United States had any idea where bin Laden was. "Well, we don't know for a fact where Osama bin Laden is," Gates said. "If we did, we'd go get him." While it may be "undeniably difficult," the United States must bring bin Laden to justice, McChrystal, the man leading the Afghan war, later told a Senate committee.

"I believe he is an iconic figure at this point, whose survival emboldens al Qaeda as a franchising organization across the world," McChrystal said. "It would not defeat al Qaeda to have him captured or killed, but I don't think we can finally defeat al Qaeda until he is finally captured or killed."

The last time the U.S. government knew bin Laden's location for certain was in December 2001 at Tora Bora in eastern Afghanistan. At Tora Bora, where its jagged peaks reach up to 14,000 feet, bin Laden had built a heavily fortified and well-stocked complex of caves and tunnels carved deep into the mountain by heavy equipment borrowed from his father's construction company. The United States knew of the fortification because the CIA had helped bin Laden build the fortress two decades earlier, when bin Laden and the mujahideen were fending off invading Soviet forces. The United States expected bin Laden to eventually make his way to Tora Bora once U.S. troops started invading Afghanistan. Two months after the invasion began, bin Laden and hundreds of his fighters arrived.

When the time came to act, however, fewer than 100 Special Forces personnel were sent in. Requests for thousands of additional U.S. troops were rejected by then-Defense Secretary Donald Rumsfeld, who said he was worried about sparking anti-American backlash in the region. The U.S. government did provide air strikes, including a 15,000-pound bomb dubbed "Daisy Cutter," so massive it was delivered not by a bomber but by a heavy-lift cargo plane and shoved out the back. But the task of actually pursuing bin Laden was left to two Afghan warlords of questionable loyalty and ability who not only distrusted each other, but shared a distrust of their U.S. handlers.

Rumsfeld, General Tommy Franks (who was leading the war in Afghanistan at the time), and then-Vice President Dick Cheney would later claim that the United States was never certain bin Laden was at Tora Bora, but their claims were contradicted by a variety of sources with first-hand knowledge. The U.S. Special Operations Command, then headed by McChrystal, detailed in a 2007 history of the battle the lack of troops, supplies, and air lift needed to capture or kill bin Laden who, according to the report, was "squarely at Tora Bora" at the time. "All source reporting corroborated his presence on several days from 9–14 December," the report said.

The Senate Foreign Relations Committee, chaired by Senator John Kerry (D–Mass.), a Bush critic, released another report in November 2009,[1] also concluding that bin Laden was "within our grasp" at Tora Bora. The report went on to say the Bush administration mishandled the mission because it was already distracted by its secret planning of the invasion of Iraq, which began on Bush's orders just weeks before bin Laden arrived at Tora Bora.

Bin Laden—apparently so convinced he would make his last stand at Tora Bora that he wrote his last will—escaped, walking about 20 miles down the other side of the mountain and across the Pakistan border.

Pakistan's Lingering Distrust

Former CIA officer Arthur Keller knows first-hand the frustrations the United States has faced in its hunt for bin Laden and al Qaeda in the years that followed the Tora Bora mission. Keller was part of a special CIA team sent to Waziristan, in the lawless tribal areas of Pakistan, to hunt down al Qaeda operatives who fled Tora Bora that December day in 2001 only to find that Pakistan, America's chief ally in the Afghan war, harbored a deep distrust of America. The Pakistanis also maintained connections to some of the terrorists who, for years before, enjoyed the covert support of Pakistan's chief intelligence agency, the Inter-Services Intelligence (ISI), which saw the terrorist groups as a strategic asset in challenging India over rights to Kashmir.

"We were so restricted in our movements—the Pakistanis wouldn't let us get out—that a lot of times [details of the hunt] had to be relayed via computer," says Keller, who remained confined to a compound nicknamed "Shawshank" while Pashtun operatives recruited by the CIA conducted the search for al Qaeda. "Usually, there was no face-to-face with the people you were running. You had to do everything with your computer. You're physically in the area, but you don't get a whole lot of benefit from that because you don't get to meet most of the people that you're running. We would operate second- or third-hand."

"I believe he is an iconic figure at this point, whose survival emboldens al Qaeda as a franchising organization across the world." —Army General Stanley A. McChrystal

The relationship between the United States and Pakistan has always been a tempestuous one, replete with serial separations and followed by desperate but tenuous reunions, Riedel, the expert on South Asian issues at Brookings, notes. Over seven decades, the United States has embraced Pakistan and gave it billions of dollars in aid and military assistance only to break ties again when Pakistan, feeling perpetually insecure in its relationship with India, began supporting anti-Indian terrorist groups and building its own nuclear arsenal, both of which, the Pakistanis insist, are critical to their national defense. Pakistan was America's gateway to diplomatic relations with China in the 1970s, its covert ally against the Soviets in Afghanistan in the 1980s, and then a nuclear weapons-seeking pariah in the eyes of America in the 1990s. Then came the 9/11 attacks.

Immediately after the attacks, Pakistan, an Islamic state, agreed to assist the American invasion of Afghanistan despite Pakistan's past support for Afghanistan's Taliban government, which the United States was bent on removing. However, when the Taliban and al Qaeda shifted their base of operations from Afghanistan to Pakistan to escape U.S. forces, Pakistan's relations with the United States once again chilled.

"The Pakistanis don't believe we're reliable," Riedel says. "Many Pakistanis, particularly in the army, believe we're a bigger threat to their sovereignty than India is. That kind of argument resonates very powerfully across a wide section of Pakistani opinion and particularly a very large percentage of the Pakistani officer corps. Changing that is not something you're going to do in months or years."

Indeed, former ISI chief Hamid Gul claimed in December 2009 that bin Laden and the Taliban left the region and that the United States remained in Pakistan only because it was working with Israel to dismantle Pakistan's nuclear capabilities.[2] In light of such conspiratorial perceptions, Pakistan insists that its own forces—backed by billions of dollars in American aid—lead the hunt for terrorists within its own borders, severely

hampering efforts to capture bin Laden, U.S. intelligence officials say.

"The Pakistani population was completely against any kind of action," Keller says. "They regarded the Taliban and al Qaeda largely as American problems. 'Why are we fighting America's war? Why are we doing this?' They didn't see homegrown militancy as a problem…. They would shell things [in the tribal areas] with artillery and they would send in helicopter gunships and they would call that an operation. But they wouldn't send in troops, they wouldn't aggressively patrol, they wouldn't conduct raids. Airpower can't win or hold territory. Only troops can do that, and they weren't willing to engage the troops."

Pakistan helped the United States capture more than 550 terrorists since 2001, including Khalid Sheikh Mohammed, the reputed mastermind of the 9/11 attacks, but U.S. officials continue to complain that Pakistan is not doing enough to help destroy the Taliban and capture bin Laden. The Pakistanis respond angrily, insisting they simply don't know where bin Laden and other al Qaeda leaders are.

"They know where the people are. They're not stupid. They're just pretending to be stupid," Keller says. "If they wanted to, they could go round up a half-dozen Taliban leaders. But they don't want to do that because some of them still see those guys as strategic assets to keep India from gaining control. The only way to really get them to go full bore against these targets would be to convince them, somehow, that their Indian worries are gone. But how would you do that? It would have to be a generational, attitudinal shift, and I don't see that attitude going away any time soon."

Safe Haven in Tribal Lands

There is no law in what is now the land of bin Laden. The Federally Administered Tribal Areas is part of Pakistan, but not subject to its government's laws or courts. The ruling clans, which a century ago foiled the British Empire's efforts to annex the tribal areas, make their own rules. It is the epitome of sanctuary for anyone fleeing the laws of the outside world, though the presence of bin Laden and the Taliban are now taking a toll on the clans.

The Taliban has established a shadow government to enforce its version of Islamic law, and the presence of Taliban and al Qaeda fighters has drawn U.S. missile attacks, leaving scores dead and unleashing a new wave of terrorist attacks inside Pakistan itself. Since 2006, more than 20,000 Pakistanis have been killed or injured in terrorist attacks on hotels, mosques, and shopping districts, according to reports from the Pakistani government and nongovernmental organizations operating in the region. The Pakistani government responded to the violence with its most robust military offensives in the tribal lands, only to spark further terrorist attacks near Pakistani court, intelligence, and military facilities. Amid the violence, Taliban and al Qaeda fighters continue to cross into Afghanistan to attack U.S.-led troops, and then flee back into the tribal areas where American forces, in deference to Pakistan, cannot cross.

"There's a difference between the violation of Pakistani sovereignty by a drone that operates 60,000 feet in the air and Marines on the ground," says Riedel of Brookings. "In the second case, I think the Pakistani reaction would be very, very serious."

Intelligence sources and international law experts agree that the United States would willingly breech the Afghan–Pakistan border if it knew for sure that bin Laden was within striking distance. The world community, they say, would understand. But invading Pakistan to capture less important targets risks alienating America's most important ally in the region.

"One of the myths out there is that somehow there are international laws that would have prevented" the United States from pursuing bin Laden into the tribal areas, says John N. Moore, director of the University of Virginia's Center for National Security Law. "We've been attacked by Osama bin Laden … and it's an ongoing series of attacks and we have every right under international law to arrest him if we can, or to target him as a combatant in an ongoing defensive effort against continuing attacks on the United States and our allies. There are, however, a variety of political relationships and issues with Pakistan that are very important and very serious because the Afghan war—and success in that war—have really related to the success of preventing the Taliban from taking over in Pakistan and getting, finally, control over the tribal areas. So working with the government of Pakistan is very important for us."

While the diplomatic push and pull between the United States and Pakistan continues, complicated by nation–state considerations bin Laden is free to ignore, the al Qaeda leader remains at large. And while bin Laden is more isolated than ever before, his enduring freedom has enhanced his already mythical reputation, U.S. officials say, inspiring wannabe terrorists not only in places such as Somalia and Yemen, but right inside the United States.

Hunt for Homegrown Terrorists

Investigations into terrorist bombings in Madrid in 2004 and London in 2005 turned up evidence of al Qaeda connections. Al Qaeda claimed credit for the 2007 bombings in Algeria as well as two attacks in 2008 against the U.S. Embassy in Yemen and the Danish Embassy in Pakistan. A classified U.S. intelligence report, leaked to the media in 2007, concluded that al Qaeda, coordinating with extremists in Pakistan, is now stronger than at any time since 2001.[3]

Inside the United States, law enforcement agencies have uncovered a variety of homegrown terrorists in Boston, Chicago,

Houston, Los Angeles, and Miami, and in smaller towns in Colorado, New Jersey, North Carolina, and elsewhere. José Padilla, a New York native and Muslim, was arrested in 2002 on suspicions that he was planning a bombing attack and sentenced to 17 years in prison on terrorism charges. David C. Headley of Chicago was arrested in October 2009 for plotting an attack against a Danish newspaper. Seven men in Miami were arrested in 2006 for plotting to bomb the Sears tower in Chicago. Fourteen people were arrested in 2009 for trying to recruit Somali Americans to fight in Somalia. When Major Nidal M. Hasan, a Virginia-born Muslim in the U.S. Army, shot and killed 13 people last November in Fort Hood, Texas, fears that he was part of a terrorist network gained credence when e-mail he exchanged with a radical cleric, who the FBI believes is an al Qaeda recruiter, were found.

The U.S. fight against bin Laden and al Qaeda has morphed over the years, and the debate continues over whether terrorism should be addressed as a crime, with law enforcement agencies and civilian courts taking the lead, or as an act of war, with the U.S. military in control of the strategy and responsible for detaining and trying any suspected terrorists it captures.

President Bill Clinton handled the first attack on the World Trade Center in 1993 and the two embassy bombings in 1998 as law enforcement matters, leaving it to the FBI and the U.S. Department of Justice to capture and prosecute the bombers, even as the CIA hunted bin Laden covertly.

Bush, arguing that Clinton's approach was inadequate in the face of the 9/11 attacks, militarized the fight, dispatching U.S. forces overseas to dismantle al Qaeda and capture or kill bin Laden, and weighing whether to deploy troops within the United States as well. An October 2001 Department of Justice memo assured Bush that he had the constitutional authority to deploy troops on U.S. soil in his "war on terrorism" despite a 131-year ban on such deployments under the Posse Comitatus Act, and without regard for Americans' Fourth Amendment rights to unreasonable search and seizure. (When Cheney urged Bush to send U.S. troops to capture six suspected al Qaeda members in 2002 in Buffalo, New York, however, Bush refused. The "Lackawanna Six," as they became known, were arrested by the FBI and local police and jailed after pleading guilty in federal court.)

Fighting the War in Courts

Obama so far appears to be searching for a balance between Clinton's approach and Bush's tactics, which led to two wars in Islamic countries and many of which are now being restructured by Congress and the courts. In one illustrative act, the Obama administration announced that Khalid Sheikh Mohammed, the alleged mastermind of the 9/11 attacks who has been held at Guantánamo Bay since 2003 and repeatedly subjected to interrogation techniques many liken to torture, will be moved to New York to stand trial in civilian court in 2010. It was a positive sign for legal experts who believe the Bush administration went too far in trying to create a separate judicial process for detainees, one which failed to provide routine protections to defendants and ignited a legal feud that delayed the trials of many.

Bush. . . militarized the fight, dispatching U.S. forces overseas to dismantle al Qaeda and capture or kill bin Laden.

"This was not a tough-minded decision that, in the end, worked to bring justice to those who needed to be tried by the military commissions or otherwise, but rather it slowed down the process very dramatically. This is something that's very clear," says Moore of the University of Virginia's Center for National Security Law. "There were several mistakes made by the George W. Bush administration as [it] began to figure out what is the paradigm and how are we going to deal with this after 9/11 and, in fairness, this was a very difficult, tough setting.

"What we need to do is balance a little more effectively the application of both the criminal justice and the military paradigm," Moore adds. "Those who went fully to the military paradigm have a point that prior to 9/11, we had erred on the side of thinking about these issues as solely criminal justice issues. We need to deal with the problem of terrorism across both the war-fighting and criminal-justice paradigm. But you need to choose very carefully which elements go where."

Joe McMillan, a partner at Perkins Coie LLP in Seattle, experienced the Bush-era military tribunals when he flew to Guantánamo Bay in 2008 to help defend Salim Ahmed Hamdan, the man who once served as bin Laden's $200-a-month driver and the first detainee to formally face charges in court—seven years after he was first apprehended in Afghanistan. McMillan had trouble just getting access to his client and to information relevant to the case. National security protection measures seemed extreme. When McMillan and his team attempted to quote from *The 9/11 Commission Report*,[4] a public report that, in book form, made *The New York Times* Best Sellers List in 2004, the U.S. government objected, insisting that quoting from the report could endanger national security.

"That's an example of how the national security privilege can, in my view, be abused in military commissions that would be far less likely to happen, in my opinion, if there was a U.S. federal district judge in a U.S. civilian court," McMillan says. McMillan's fight against the tribunals resulted in the 2006 U.S. Supreme Court decision in *Hamdan v. Rumsfeld*,[5] which shot down Bush's proposed military commissions on the grounds that they violated the Uniform Code of Military Justice and the Geneva Conventions. Congress has since revamped the way the commissions would operate.

"It's been a system that's been cobbled together in a manner that has been subject to constant criticism and challenge, revised as decisions from courts have come down, and all in a very unnecessary way," McMillan says. "We have both civilian courts and courts martial that have a long tradition of administering justice in a manner that we think lives up to the concepts of due process that we recognize as essential guarantees of integrity of the judicial process. The need for these military commissions, these archaic institutions, to be dusted off and retrieved from the scrap heap of history is highly questionable."

U.S. courts have, in fact, handled hundreds of terrorism-related cases since 9/11. Of the 828 defendants indicted in the United States on terrorism-related charges, 593 have been processed through the civilian court system, according to the New York University School of Law's Center on Law and Security in its *Highlights From the Terrorist Trial Report Card 2001–2009: Lessons Learned*.[6] Of the 593 defendants, 523 have been imprisoned, which translates to an 88.2 percent conviction rate, according to the report.

Long Wait for Justice

There are those who speculate about the possibilities of putting bin Laden on trial for his crimes. Obama suggested during the 2008 campaign that an international tribunal, similar to the Nazi-era trials at Nuremberg, would be an appropriate forum "to assure that the United States government is abiding by the basic conventions that would strengthen our hand in the broader battle against terrorism." International tribunals were convened in 1993 to prosecute war crimes in the former Republic of Yugoslavia and in 1994 to address genocide in Rwanda, although they dragged on for years and cost millions of dollars. Others say that trying bin Laden in a U.S. courtroom would help reestablish America's global reputation, which they consider as having been weakened by Bush administration policies.

Intelligence and military sources, however, consider the capture of bin Laden unlikely, even if the United States finds him. It is far more likely he will be killed—or take his own life—in a quest for martyrdom rather than be taken alive, they say.

Either way, one group that fully expects the United States to eventually bring bin Laden to justice is the families of the 9/11 victims. Family members over the years have spoken out on a variety of issues—from the formation of the 9/11 Commission to illegal immigration—and opinion varies widely among them.

"I can't imagine, though, a family member who would feel that [the hunt for bin Laden] should just be dropped," says Brian Richardson of the New York-based group Families of September 11. "I can't imagine that there would be a family member who wouldn't want to see him apprehended and either put on trial or go before a military tribunal."

Carie Lemack's mother, Judy Larocque, boarded American Airlines Flight 11 at Boston's Logan International Airport to attend a business meeting in California on September 11, 2001, when, 15 minutes into the flight, a man named Mohamed Atta and four others seized control of the jetliner. At 8:46 a.m., the hijackers rammed the plane into the World Trade Center's North Tower, killing Larocque and 91 other passengers instantly. Seventeen minutes passed until a second jetliner hit the South Tower, confirming to the world that America was under attack.

Larocque's foot was found amid the rubble of the Twin Towers, though it would take more than five years to identify it as hers. Pieces of her bones were found blocks away. Lemack does not believe the amorphous term "terrorism" adequately explains what happened to her mother. She sees it, pure and simple, as murder.

"It's very difficult. Each family and each family member has their own journey they're going through in terms of dealing with it. It is not an easy process. A lot of times, people seem to forget that these are murderers," says Lemack, who has spent the past eight years tirelessly organizing the victims' families, pushing for the formation of a special commission to investigate what happened, and then lobbying Congress to implement antiterrorist laws recommended by the commission.

Lemack has formed a new group, Global Survivors Network, which includes people who have suffered at the hands of terrorists on six continents, and travels the world reminding those who may feel a kinship with terrorists that innocent people are being killed and families devastated.

"You use the word 'terrorist' and people forget that there are human beings on the other side of that. My mother was murdered. And to not have been able to have some of the same resources that most murder victims get is very difficult," Lemack says. "As the family of any murder victim would, we want to see those who plotted murder against a loved one, my mother, to be brought to justice, to be held accountable for their actions."

Perhaps bin Laden will be. An indictment against bin Laden that includes 238 criminal counts—none of them directly related to 9/11—has been pending in U.S. courts since 1998. He has been at the top of the FBI's Most Wanted list since 1999.

Freelance writer Bob Kemper wrote about the state secrets privilege in the November 2009 issue of Washington Lawyer.

Notes

1 A report to members of the Committee on Foreign Relations, United States Senate, *Tora Bora Revisited: How We Failed to Get Bin Laden and Why It Matters Today*, available at www.foreign.senate.gov/imo/media/doc/Tora_Bora_Report.pdf.

2 *Ex-ISI Chief Slams U.S. Military Agenda in Pakistan*, available at www.presstv.ir/detail.aspx?id=112832&sectionid=351020401.

3 National Counterterrorism Center report, *Al-Qaeda Better Positioned to Strike the West. See also*, Spencer S. Hsu and Walter Pincus, *U.S. Warns of Stronger Al-Qaeda: Administration Report Cites Havens in Pakistan,* Wash. Post, Jul. 12, 2007.

4 *9/11 Commission Report*, available at http://govinfo.library.unt.edu/911/report/911Report.pdf.

5 *See Hamdan v. Rumsfeld 548 U.S. 557 (2006).*

6 Center on Law and Security, New York University School of Law report, *Highlights From the Terrorist Trial Report Card 2001–2009: Lessons Learned,* available at www.lawandsecurity.org/publications/TTRCHighlightsSept25th.pdf.

The District of Columbia Courts and the District of Columbia Bar cordially invite you to attend the

2010 DISTRICT OF COLUMBIA JUDICIAL AND BAR CONFERENCE

SURVIVAL STRATEGIES *for Modern Legal Times*

Ronald Reagan Building and International Trade Center
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Thursday, April 8 – Friday, April 9, 2010

Join us on this fifth anniversary of our joint conference for discussions about issues of particular interest to the community. Programming will include timely conversations about how all involved in the administration of justice—judges, lawyers, and litigants—are managing in a very challenging environment. Register online at **www.dcbar.org/conference**.

ITINERARY

Thursday, April 8, 2010

12:15 p.m.	Conference Registration Opens
1:15 – 2 p.m.	Call to Order and Reports
2 – 2:15 p.m.	Refreshment Break
2:15 – 3:45 p.m.	**PLENARY:** Impact of the Economy on the Legal Profession
3:45 – 4 p.m.	Refreshment Break
4 – 5:15 p.m.	**PLENARY:** Addressing Impairment in the Legal Profession
5:15 – 6:15 p.m.	Opening Night Reception

Friday, April 9, 2010

8:30 – 9:30 a.m.	Conference Registration
9:30 – 10:45 a.m.	**PLENARY:** Special Courts and Litigants with Unique Stresses
10:45 – 11 a.m.	Refreshment Break
11 a.m. – 12 p.m.	**PLENARY:** Surviving and Thriving: Turning the Stress Around
12:15 – 2 p.m.	Keynote Luncheon with address by **John Payton**, President and Director-Counsel of the NAACP Legal Defense and Educational Fund Inc. and presentation of the Beatrice Rosenberg Award for Excellence in Government Service to **Harry J. Fulton**, Chief of the Mental Health Division of the Public Defender Service for the District of Columbia
2:15 – 3:15 p.m.	**FREE FORUM:** Strategic Planning: Envisioning the Future and Setting a Path to Achieve Success
2:15 – 3:45 p.m.	**SEMINAR:** The Duty to Disclose: Reexamining Prosecutors' Obligations under *Brady v. Maryland*
2:15 – 3:45 p.m.	**SEMINAR:** Perceptions of Race and Ethnicity in the Courts: Views from the Bench, Bar and Jury Box
2:15 – 3:45 p.m.	**SEMINAR:** Don't Get Lost: Navigating an Income or Sales Tax Dispute through the D.C. Administration and Courts
2:15 – 4:15 p.m.	**SEMINAR:** The 20 Keys to Successful Law Firm Management
2:30 – 4 p.m.	**SEMINAR:** Emerging E-Communication Issues: Before, During, and After Trial (Part One)
2:30 – 5:45 p.m.	**CLE:** Ethics Rock Extreme: Ethics on the Cutting Edge (3.0 Ethics Credit Hours, including one hour of professionalism for those states with such requirements)
3:45 – 5:45 p.m.	**FREE FORUM:** So You Want to Be a Judge in the District of Columbia
4 – 5:30 p.m.	**FREE SEMINAR:** Representing a Client with a Disability
4 – 5:45 p.m.	**SEMINAR:** What Happens After Sentencing?: Post-Conviction Issues for District Criminal Offenders
4:15 – 5:45 p.m.	**SEMINAR:** Emerging E-Communication Issues: Before, During, and After Trial (Part Two)
6 – 8 p.m.	Judicial Reception honoring members of the local and federal judiciary in the District of Columbia and including a presentation by the D.C. Bar Foundation to its 2010 Jerrold Scoutt Prize recipients **Eric S. Angel** of the Legal Aid Society of the District of Columbia and **Vytas V. Vergeer** of Bread for the City

PLENARY PANELS

Thursday, April 8, 2010, 2:15 – 3:45 p.m.

Impact of the Economy on the Legal Profession

James W. Jones, Managing Director, Hildebrandt International, *moderator*

Avis E. Buchanan, Director, Public Defender Service for the District of Columbia, *speaker*

Renee Devigne, Dean of Students, George Washington University Law School, *speaker*

Daniel M. Mills, Manager, D.C. Bar Practice Management Advisory Service, *speaker*

William J. Perlstein, Co-Managing Partner, WilmerHale, *speaker*

Maureen Thornton Syracuse, Cochair, Consortium of Legal Service Providers and Director, D.C. Bar Pro Bono Program, *speaker*

Thursday, April 8, 2010, 4 – 5:15 p.m.

Addressing Impairment in the Legal Profession

Roger E. Warin, Partner, Steptoe & Johnson LLP, *moderator*

The **Honorable Gladys Kessler,** Senior Judge, United States District Court for the District of Columbia and Chair, Commission on Judicial Disabilities and Tenure, *speaker*

The **Honorable Sarah L. Krauss,** Acting Justice, Supreme Court, Kings County, New York State Courts and Chair, Committee on Lawyer Alcoholism and Drug Abuse, New York State Bar Association, *speaker*

The **Honorable Richard H. Ringell,** Magistrate Judge, Superior Court of the District of Columbia and Member, D.C. Bar Lawyer Assistance Committee, *speaker*

Tiffany M. Joslyn, Counsel, White Collar Crime Policy, National Association of Criminal Defense Lawyers (NACDL) and Volunteer, D.C. Bar Lawyer Assistance Program, *speaker*

Denise Perme, Manager, D.C. Bar Lawyer Assistance Program, speaker

Hope C. Todd, Assistant Director, Legal Ethics, D.C. Bar Regulation Counsel, *speaker*

Friday, April 9, 2010, 9:30 – 10:45 a.m.

Special Courts and Litigants with Unique Stresses

The **Honorable Heidi M. Pasichow,** Associate Judge, Superior Court of the District of Columbia, *moderator*

The **Honorable Linda Kay Davis,** Associate Judge, Superior Court of the District of Columbia and Presiding Judge, Mental Health Diversion Court, *speaker*

The **Honorable Wendell P. Gardner, Jr.,** Associate Judge, Superior Court of the District of Columbia and Presiding Judge, Adult Drug Court, *speaker*

The **Honorable S. Pamela Gray,** Magistrate Judge, Superior Court of the District of Columbia and Presiding Judge, Family Treatment Court, *speaker*

The **Honorable Milton C. Lee, Jr.,** Magistrate Judge, Superior Court of the District of Columbia and Presiding Judge, Fathering Court, *speaker*

Friday, April 9, 2010, 11 a.m. – 12 p.m.

Surviving and Thriving: Turning the Stress Around

Ellen Ostrow, Ph.D., Principal, LawyersLifeCoach LLC and Member, D.C. Bar Lawyer Assistance Committee, *presenter*

SEMINARS

All seminar programs will be held on Friday, April 9, 2010.

2:15 – 3:45 p.m.

The Duty to Disclose: Reexamining Prosecutors' Obligations under *Brady v. Maryland*

Sponsored by the D.C. Bar Criminal Law and Individual Rights Section; cosponsored by the Superior Court Trial Lawyers Association

DESCRIPTION: Litigation relating to the prosecution's duty to disclose exculpatory materials under *Brady v. Maryland* has become increasingly contentious. A panel representing the perspectives of judges, defense attorneys, and current and former prosecutors will examine whether recent incidents of violation of the *Brady* disclosure obligation truly represent a trend; whether the system of *Brady* disclosure and enforcement is broken; and whether a new system for encouraging disclosure is necessary.

Todd E. Edelman, Associate Professor of Law, Georgetown Law Criminal Justice Clinic, *moderator*

The **Honorable Paul L. Friedman,** Judge, United States District Court for the District of Columbia, *speaker*

Thomas Anderson, Assistant General Counsel, Executive Office of the United States District Court, *speaker*

Robert M. Cary, Partner, Williams & Connolly LLP, *speaker*

David Shertler, Partner, Shertler & Onorato LLP, *speaker*

2:15 – 3:45 p.m.

Perceptions of Race and Ethnicity in the Courts: Views from the Bench, Bar and Jury Box

Sponsored by the D.C. Bar Litigation Section; cosponsored by the Asian Pacific American Bar Association of the Greater Washington D.C. Area; D.C. Bar Courts, Lawyers and Administration of Justice Section; D.C. Bar Criminal Law and Individual Rights Section; D.C. Bar District of Columbia Affairs Section; Hispanic Bar Association of the District of Columbia; Washington Bar Association; and Women's Bar Association of the District of Columbia

DESCRIPTION: The program will be a town-hall style discussion about improving public perceptions of racial and ethnic disparities in the District of Columbia courts. Panelists will address both civil and criminal cases, and will discuss issues of access to the courts, impact of race and ethnicity on decision makers, whether and what types of bias may exist, and solutions to address such biases.

Neely Tucker, Staff Writer, *Washington Post*, *moderator*

The **Honorable Neal E. Kravitz,** Associate Judge, Superior Court of the District of Columbia, *speaker*

Roy L. Austin, Assistant United States Attorney, U.S. Attorney's Office for the District of Columbia, *speaker*

Angela J. Davis, Professor, American University Washington College of Law, *speaker*

2:15 – 3:45 p.m.

Don't Get Lost: Navigating an Income or Sales Tax Dispute through the D.C. Administration and Courts

Sponsored by the D.C. Bar Taxation Section, State and Local Committee; cosponsored by the D.C. Bar Administrative Law and Agency Section and the D.C. Bar Litigation Section

DESCRIPTION: A diverse panel will discuss the key aspects of handling a non-property tax controversy in the District of Columbia. The speakers will focus on contesting assessments within the Office of Tax and Revenue, the Office of Administrative Hearings, the D.C. Superior Court, and the D.C. Court of Appeals. Significant procedural differences between assessments and refund claims will also be discussed.

Todd Lard, General Counsel, Council on State Taxation, *moderator*

Richard G. Amato, Senior Assistant Attorney General, District of Columbia, *speaker*

Edward A. Blick, Assistant General Counsel, D.C. Office of Tax and Revenue, *speaker*

Stephen P. Kranz, Partner, Sutherland Asbill & Brennan LLP, *speaker*

Alan C. Levine, Chief Counsel, D.C. Office of Tax and Revenue, *speaker*

2:15 – 4:15 p.m.

The 20 Keys to Successful Law Firm Management

Sponsored by the D.C. Bar Practice Management Service Committee; cosponsored by the Association of Legal Administrators and the D.C. Bar Law Practice Management Section

DESCRIPTION: Effective and efficient law office management can make the difference in a firm's profitability and rate of growth. Knowing the elements of good management is essential for a firm of any size. Find out from experienced lawyers, an administrator, and a marketing specialist the keys to good law firm management. The 20 most important aspects of effective and efficient law firm management will be presented.

Daniel M. Mills, Manager, D.C. Bar Practice Management Advisory Service, *moderator*

Anne E. Collier, Founder, Arudis, *speaker*

Tom Foster, Founder and Owner, Foster Web Marketing, *speaker*

Marilyn E. Mickelson, Law Office Administrator, The World Bank, *speaker*

Benjamin F. Wilson, Managing Principal, Beveridge & Diamond PC, *speaker*

Peter C. Wolk, Attorney at Law, *speaker*

2:30 – 4:00 p.m.

Emerging E-Communication Issues: Before, During, and After Trial (Part One)

Sponsored by the District of Columbia Bar Board of Governors

DESCRIPTION: The rise in electronic communications – e-mails, text messages, IM, blogs, social networks, and more – affects every step of our litigation process. Part One of this lively, two-part program will use hypothetical scenarios to explore practical, e-communication issues about the creation of the attorney-client relationship, lawyer marketing, internal corporate communications, the fate of electronic files, ex parte communications with represented adversaries, and discovery tactics.

Thomas E. Spahn, Partner, McGuire Woods LLP, *presenter*

4 – 5:30 p.m.

Representing a Client with a Disability (Free Seminar)

Yvonne Doerre, LCSW, "Put Families First" Project Manager, Evidence-Based Associates, *moderator*

Todd R. Christiansen, M.D., Child, Adolescent, and Adult Psychiatrist, Psychiatric Institute of Washington, *speaker*

Laurie B. Davis, Staff Attorney, Mental Health Division, Public Defender Service for the District of Columbia, *speaker*

Hope C. Todd, Assistant Director, Legal Ethics, D.C. Bar Regulation Counsel, *speaker*

4 – 5:45 p.m.

What Happens After Sentencing?: Post-Conviction Issues for District Criminal Offenders

Sponsored by Our Place, D.C.; cosponsored by the Court Services and Offender Supervision Agency; Public Defender Service for the District of Columbia; Superior Court of the District of Columbia; and the United States Parole Commission

DESCRIPTION: This panel will discuss issues facing a D.C. felony inmate after sentencing in D.C. Superior Court. What are the challenges involved in serving a sentence in a federal prison? And, when the released inmate comes home, what are the ins and outs of community-supervised release? Our panel endeavors to answer these questions and more.

Michelle Bonner, Director of Legal Services, Our Place, D.C., *moderator*

Rainey Brandt, Special Counsel, Superior Court of the District of Columbia, *speaker*

Donna McLean, Hearing Officer, United States Parole Commission, *speaker*

Olinda Moyd, Director, Parole Division, Public Defender Service for the District of Columbia, *speaker*

4:15 – 5:45 p.m.

Emerging E-Communication Issues: Before, During, and After Trial (Part Two)

Sponsored by the District of Columbia Bar Board of Governors

DESCRIPTION: Part Two of this interactive program continues the examination of the impact of e-communications, including "tweeting" and "friending," on the litigation process. This session focuses on outsourcing, inadvertent transmissions of privileged information, inadvertent production of documents, the right to "mine" metadata, the efforts of courts to deal with e-communications of lawyers and jurors, and the use of "unpublished" judicial decisions.

Thomas E. Spahn, Partner, McGuire Woods LLP, *presenter*

FREE MEMBERSHIP FORUMS

Friday, April 9, 2010, 2:15 – 3:15 p.m.

Strategic Planning: Envisioning the Future and Setting a Path to Achieve Success

Sponsored by the District of Columbia Bar Board of Governors

DESCRIPTION: The D.C. Bar has recently adopted a strategic plan that sets out an envisioned future for the Bar as well as a series of goals and objectives to make that a reality. Bar leaders who served on the committee that oversaw this process will walk you through the steps that were taken to develop the plan, discuss how it will guide the organization's decision making, and help you consider whether engaging in a strategic plan process can help put you or your firm or organization in a better position to survive challenging economic times.

Cynthia G. Kuhn, Director, D.C. Bar Communications and Staff Liaison, D.C. Bar Strategic Planning Committee, *moderator*

Amy L. Bess, Partner, Sonnenschein Nath & Rosenthal; Member, D.C. Bar Board of Governors; and Cochair, D.C. Bar Strategic Planning Committee, *speaker*

James W. Jones, Managing Director, Hildebrandt International and Cochair, D.C. Bar Strategic Planning Committee, *speaker*

Kim M. Keenan, The Keenan Firm and President, District of Columbia Bar, *speaker*

Friday, April 9, 2010, 3:45 – 5:45 p.m.

So You Want to Be a Judge in the District of Columbia

Sponsored by the District of Columbia Bar Board of Governors

DESCRIPTION: What does it take to become a judge in the District of Columbia? Find out about the judicial application and nomination processes. Gain insights into how judicial candidates are selected: what qualifications are required; what experiences are helpful; and what opportunities may be available. Also learn about how voluntary bar associations participate in recommending candidates for the D.C. judiciary.

Kim M. Keenan, The Keenan Firm and President, District of Columbia Bar, *moderator*

The Honorable Emmet G. Sullivan, Judge, United States District Court for the District of Columbia and Chair, District of Columbia Judicial Nomination Commission, *speaker*

The Honorable Anthony C. Epstein, Associate Judge, Superior Court of the District of Columbia, *speaker*

The Honorable Juliet J. McKenna, Associate Judge, Superior Court of the District of Columbia, *speaker*

The Honorable Phyllis D. Thompson, Associate Judge, District of Columbia Court of Appeals, *speaker*

The Honorable Melvin R. Wright, Deputy Presiding Judge, Civil Division, Superior Court of the District of Columbia, *speaker*

James G. Flood, Shareholder, Brownstein Hyatt Farber & Schreck and President, Bar Association of the District of Columbia, *speaker*

Consuela A. Pinto, President, Women's Bar Association of the District of Columbia, *speaker*

MUSICAL CLE COURSE

A separate fee is required to attend the musical CLE course.

Friday, April 9, 2:30 – 5:45 p.m.

Ethics Rock Extreme: Ethics on the Cutting Edge

(3.0 Ethics Credit Hours, including one hour of professionalism for those states with such requirements)

Presented by the D.C. Bar Continuing Legal Education Program; cosponsored by all 21 D.C. Bar Sections

DESCRIPTION: Don't miss our newest musical ethics course. This course will match ethics conundrums to rock-n-roll tunes from the 70s and 80s. From the opening strains of the Queen medley, to an audience sing-along, to the ethical dilemma-filled version of Billy Joel's "Piano Man", this course explores the latest developments in the always dynamic field of legal ethics with parodies of a wide-ranging selection of rock-n-roll artists. Among the ethics issues raised by our altered lyrics:

- Ethical perils of new technology
- Using clients' confidences
- Settlement dilemmas
- Handling the dubious deception
- New fee issues
- Client and witness fraud
- Limits of bullying, threats and hardball
- Unwaivable conflicts that lawyers think are waived
- Moral obligations of advocacy
- Hidden perils of the exceptions to confidentiality
- ...and more.

Jack Marshall, ProEthics, *faculty*

Mike Messer, *singer*

HIGHLIGHTS

Friday, April 9, 2010, 12:15 – 2 p.m.

Keynote Luncheon

A premier networking opportunity featuring a keynote address by **John Payton**, President and Director-Counsel of the NAACP Legal Defense and Educational Fund Inc. and including the presentation of the Beatrice Rosenberg Award for Excellence in Government Service to **Harry J. Fulton**, Chief of the Mental Health Division of the Public Defender Service for the District of Columbia

Friday, April 9, 2010, 6 – 8 p.m.

Judicial Reception

An exceptional opportunity to meet colleagues, the reception honors members of the judiciary, particularly those who have retired or taken senior status in the past year. The reception also features the D.C. Bar Foundation's joint presentation of its 2010 Jerrold Scoutt Prize for exceptional service to **Eric S. Angel** of the Legal Aid Society of the District of Columbia and **Vytas V. Vergeer** of Bread for the City for their collaborative efforts to reform pro bono tenant representation in the D.C. Superior Court Landlord and Tenant Branch.

TAKING THE STAND

RATIONING JUSTICE

The Need Is Up and the Money Is Down

By Peter B. Edelman and Jonathan M. Smith

Margret is a single mother. *She works a low-paying job to support her children and to pay her rent. It was always a struggle, but she kept current with her landlord. What she did not know was that her landlord was not making his payments to the bank.*

The bank foreclosed on Margret's apartment building, and she received a summons and a complaint for eviction. At the same time, the lender was seeking to toss Margret and her kids from their home, the new owner stopped paying utilities for common areas, and the hallways were plunged into darkness.

Margret went to her eviction hearing not knowing what to do. She was up against a bank with a lawyer. She did not know her rights or how to assert them in the process.

She was referred to a Legal Aid lawyer working in a courthouse office who took her case. Her lawyer secured a temporary restraining order to get the lights turned back on and defended the eviction, ultimately achieving a settlement favorable to Margret. Disaster was averted for Margret and her children.

Margret got lucky. She found a lawyer who could help her navigate the court system and get her a just result. Thousands of District of Columbia residents with problems as serious as Margret's are forced to proceed without counsel every year, often with disastrous results.

Despite that law is the local industry, as many as nine out of 10 persons living in poverty in the District cannot get a lawyer when they need one. An effective legal services community and a generous pro bono bar have not been enough to bridge the gap, leaving most low-income people who face an eviction, have a battle over custody, need to resolve an unemployment dispute, or are fighting the termination of public benefits to do so alone without the help and counsel that a lawyer can provide.

Since the beginning of the recession, the gap between the demand for legal help and available services has grown. In the fall of 2009, we set out to determine what was happening. The D.C. Access to Justice Commission and the D.C. Consortium of Legal Services Providers surveyed legal assistance organizations about the impact of the economic downturn. We asked them about the effect of the recession on demands for services, new and emerging client needs, and any impact on funding, staff, and programs.

The results were alarming. Three interlocking factors worked together to magnify the crisis: more people are being driven into poverty, government and nonprofits have shrinking resources to serve people in need, and the legal services community has lost up to 25 percent of its financial support. We project that the crisis in civil legal assistance—which existed before the recession but has been made vastly worse by it—will deepen in 2010 and 2011. The commission and the consortium published the results of this survey in the report *Rationing Justice: The Effect of the Recession on Access to Justice in the District of Columbia*.[1] Our key findings include:

Funding for civil legal services has decreased by $4.5 million since the beginning of the recession. We found that virtually every funding stream has decreased. Legal services programs primarily rely on support from individual lawyers and law firms, government grants, and the Interest on Lawyers' Trust Accounts (IOLTA) Program—each of which is being choked. IOLTA had over $1 million fewer to give in 2009 than the prior year because of low interest rates and reduced economic activity. Government and private grants are diminishing, and some law firms have reduced their charitable giving. Foundations play an important, although smaller role, but they also will have less to give. The decline in resources forced legal assistance groups to use limited reserves and to cut staff.

Legal services program staff was slashed. Twenty-one lawyers and 30 nonlawyer staff members were eliminated through attrition and layoffs. The corps of full-time lawyers working for communities living in poverty decreased by 12 percent. The cut to administrative and operations staff, paralegals, and policy advocates was 37 percent.

Salaries were cut or frozen, and benefits reduced. The compensation of legal services lawyers is among the lowest in the profession. Starting at around $40,000 annually, legal services pay already trails government pay and is about one-fourth of what is paid in private firms. Nevertheless, compensation took a hit. In some cases, salaries were cut, and in others frozen. Many programs reduced benefits so as to avoid layoffs that would harm clients.

Services to clients were diminished. As a result of decreased staff, client services were cut. We estimate that the loss of lawyers resulted in more than 1,000 fewer cases being litigated and more than 2,000 additional people going to court without essential counseling or advice. Intake hours were cut, wrap-around services such as social work and counseling were reduced, and efforts to address broad-based or systemic issues were not pursued.

2010 will be worse. As bad as things were in 2009, this year likely will be worse. Employment opportunities for low-wage workers are not likely to reappear quickly, and the District government has hundreds of millions of dollars less to spend on social programs. The legal issues that emerge out of poverty will be magnified by the reductions in available social services. More clients will be seeking help, their problems will be more severe, and their options more limited.

Legal services programs will not be able to meet the increased need. In 2010 they will see a further decline in income, and many programs have exhausted much of their flexibility to absorb the cuts without reducing services. The District government is among the largest funders of legal services. Nevertheless, it cut its appropriation to the D.C. Bar Foundation by $700,000 for grants that will be awarded in May. This represents a 20 percent reduction in the District's commitment. The $700,000 cut pays the salary, benefits, and associated overhead of as many as eight to 10 lawyers.

The District's reduced commitment comes at a time when state and local budgets are under severe pressure. However, by reducing legal services funding, the District has made itself an outlier. Recognizing the rising tide of need and the important role that legal services play in ensuring a functioning justice system, many states have increased their contribution to help fill the gap left by other funding sources. In some states, innovative, new initiatives have been launched in the midst of the crisis. Boston and California have undertaken large pilot projects where counsel is appointed in certain civil cases and data are collected to measure the effect of creating a right to counsel, with the goal of expanding the availability of lawyers.

The loss of $700,000 from the District is compounded by the fact that other funding sources also will decline. Foundations will have less to give, and it will be a while before it is clear whether the changes in the law firm community will have a negative impact on giving. Even stimulus funding, which provided limited relief for some programs that do domestic violence work, will dry up. While federal support to the federal Legal Services Corporation will increase next year, the funds that will come to the District will be modest: an increase of $100,000 to a single organization, the Neighborhood Legal Services Program.

Increases in Poverty and Legal Needs

Sam is blind and lives on a small Social Security Disability Insurance check. To make ends meet, he applied for food stamps, but he was incorrectly determined to be ineligible. His income, he was told, was too high. This was wrong. His income and medical expenses qualified him for benefits. It took a lawyer to investigate, and the threat of a hearing before an administrative law judge to get a settlement for current and back benefits. He now has access to adequate nutrition.

Chronic poverty in the District has, for a very long time, created a need for civil legal services. Nearly 20 percent of District residents are poor, the vast majority being women, children, the elderly, and persons

"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 are of interest to others. The opinions expressed are the author's own.*

living with disabilities.

Poverty has increased with the recession. Job loss in service and construction industries has forced families that were moving up the economic ladder to fall back. The result is uneven across the District. Communities that have historically high rates of poverty are suffering the worst. In East of the River neighborhoods, unemployment rates have risen to Depression-era levels: Ward 8, 28.3 percent; and Ward 7, 19.5 percent.

In the *Rationing Justice* report we found an increase in demand across the board. The issues that led to legal disputes for poor persons continued to dominate the dockets of legal services organizations. However, in a few key areas we found an increased need and the emergence of new problems.

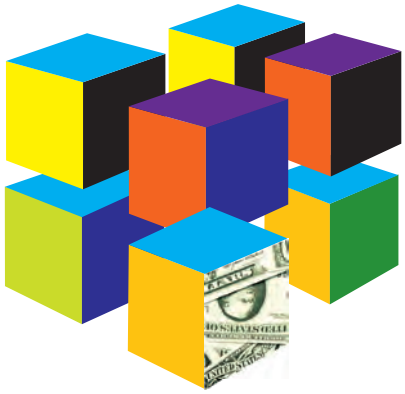
Foreclosure. Legal aid lawyers reported a significant increase in requests for help related to foreclosure. Foreclosure is on the rise in the District, and the East of the River neighborhoods are the hardest hit. As landlords lose properties to foreclosure, it often takes the intervention of counsel to keep the bank from evicting tenants. The foreclosure crisis affects thousands of the District's seniors and low-income families.

Domestic Violence. Economic pressures have put an enormous strain on low-income families, and, at the same time, the recession has deprived many women living in poverty of economic independence. These pressures and the lack of options combine to increase the incidence and severity of domestic violence. Access to a lawyer is, in many cases, the only effective way for a woman and her children to escape from an abusive relationship. Quality representation is time-consuming and requires expertise, experience, extensive training, and the ability to provide representation on a broad range of collateral issues for a sustained period of time.

Government Support. Access to government benefits often means the difference between being housed or homeless, between nutrition and hunger, between health care and illness, between destitution and a minimum level of basic human dignity. The recession has forced more people to rely on public benefits. Bureaucratic errors, language barriers, or mental disabilities make the system challenging to navigate, and, in turn, make mistakes impossible to correct without a lawyer.

The Effects of Not Having a Lawyer

Jane lived with her five children and her granddaughter in subsidized housing. She paid a portion of her rent through a housing voucher. Several weeks before coming to Legal Aid for assistance, the Housing Authority had abruptly stopped paying the landlord its portion of the rent. She could not find out why until she secured a lawyer. It turned out to be a bureaucratic mistake—one that nearly rendered her homeless. Even after the problem was brought to light, it was not corrected until the eve of an administrative trial.



The legal needs of people living in poverty are immense, especially in times of economic turmoil. Low-income and poor people encounter the legal system at much higher rates and often in more high-stakes matters than people with greater means. Government resources such as income support, medical programs, public and subsidized housing, nutrition programs, and unemployment insurance are all highly regulated and have complex administrative schemes. The complexity leads to frequent errors that can only be untangled by an expert who has the ability to go to court or appeal to an administrative tribunal.

In private disputes such as child custody, a consumer dispute, or a private housing case, people living in poverty also are at a disadvantage. Decisions about important aspects of their lives and about basic human needs are being made through a complex and opaque process that they are required to face without help. No person who could afford a lawyer would go to court alone if the custody of a child or the loss of a home was at stake.

The consequences of not getting it right can be tragic:

- A child improperly denied medical benefits may suffer a lifetime of preventable chronic illness, or the illness may interfere with his or her education and future prospects;
- A senior who is defrauded and loses the deed to the family home may have no other assets to provide support and security, rendering him or her homeless;
- A woman who is illegally fired because she took off a day to get a protective order that would provide safety from her abuser will lose the income necessary to support her children; or
- A family wrongfully evicted may lose all of its belongings, risk job loss and school disruption, and suffer a cascade of economic consequences.

Impact on Legal System and Administration of Justice

The hearing was not going well for Dianne. She was a victim of domestic violence and her abuser had just received custody of their child. He was calm, cool, and collected, and had persuaded the court that she was a bad mother and could only have supervised visits with their child. Her powerlessness in the situation and her abuser's use of the child to continue to control her made her emotional. Her emotion did not play well in the courtroom. The judge was exasperated and asked a Legal Aid lawyer to consult with Dianne. The lawyer stepped in. While not able to get custody in that hearing, at a later hearing she did turn the tide, and Dianne walked out with increased and unsupervised visits. She could now spend real time with her child.

The findings of the *Rationing Justice* report have profound implications for the entire legal community. The recession may well be creating structural changes in the justice system, as it relates to low-income individuals, that will have long-lasting implications.

Legal Services Community. The impact on the legal services community is obvious. Providers have become weaker and smaller, and vital infrastructure has been lost. As a direct result of the recession, there are fewer lawyers working for providers, training and other budgets have been starved, and support staff has been cut to the bone. More lawyers will be lost in the next year.

Through efforts of the Access to Justice Commission, Consortium of Legal Services Providers, D.C. Bar Foundation, and the provider community, significant progress had been made to strengthen and rationalize the system prior to the recession. Increased funding was secured and new offices were opened in communities of identified need, innovative collaborations were started, and progress was made to develop cross-program initiatives to provide more comprehensive services to clients. Much of this progress has been

placed at risk by the funding cuts.

The legal services provider community has developed in an organic fashion over the past 25 years. Programs were started to meet the needs of specific client communities or to fill gaps in the legal services network. During times of expanding resources, these new programs brought to the table new ideas and creative strategies for service delivery. But even in the good times, the network did not always work to maximum efficiency for clients. Programs too often worked in silos, and clients and social services providers had trouble finding the right point of entry.

Competition in the marketplace for funding has proven an imprecise planning tool to allocate resources to areas with greatest legal needs. Grants and restricted money help preserve silos. Initiatives meeting new needs are often only possible with new funding that has become rare in the past two years. With fewer dollars available, it is difficult for the community to respond to changing circumstances or emerging needs.

The Courts. The District's courts have adopted the motto "Open to All, Trusted by All, Justice for All." The court's commitment to this set of ideals has led it to take important steps to address the flood of litigants who cannot afford counsel. The court has established a Family Law Self-Help Center and worked with the D.C. Bar Pro Bono Program to create other self-help centers for other high-volume pro se dockets throughout the courthouse.

Nevertheless, the courts are fundamentally structured for litigants who have lawyers. Complex legal doctrines govern the rules of decision, and it is rare that a person without legal training can navigate more than the simplest of proceedings. Pro se support, while important, will only get a litigant so far, and for a person with a mental disability or a language barrier, it may be no help at all.

More than 63,000 civil cases are filed each year in the Superior Court of the District of Columbia. More than two-thirds of those cases—in excess of 44,000 actions—are in the Landlord and Tenant Branch where fewer than 3 percent of defendants have counsel. The situation is not much better in any of the other high-volume, "poor people" courts in matters such as child custody, child support, and small claims. Litigants show up on their own for complicated proceedings designed to be conducted by lawyers and in which the most important issues are at stake.

The growing gap between needs and available help further exacerbates the crisis in the courts. Without fundamental, structural changes, the mismatch between an increasing body of pro se litigants and a court process that requires counsel will not only lead to an unjust result in many cases, but also diminish public confidence in the court and its decisions.

Pro Bono Community. The generous contribution of time from lawyers in private practice is essential to ensure that every person who needs a lawyer to resolve a dispute gets one. However, the legal issues that confront people in poverty are not necessarily simple or casual matters. Often they require specialized training and expertise to be effectively resolved. Government benefits programs can be governed by a web of intersecting regulations, poverty law cases are resolved against a background of statutory and case law that must be mastered and heard in courts with specialized rules and customs, and clients living in poverty often have several intersecting problems to untangle and hard and complex lives.

Effective pro bono assistance depends on the existence of a robust provider community to offer mentoring and training for cases. As the legal services community shrinks and expertise, infrastructure, and talent are lost, the ability of private lawyers to be effective is diminished.

The Bar. The legal system works only if it works for everyone. To the extent that justice depends on the ability to pay for a lawyer, that the law is only applied to those who can afford it, the entire system is at risk. Every member of the bar has a stake and should be invested in the solution.

Funding and Reform

Restoration of the lost funding to the legal services network is essential. While it is not sufficient to fill the justice gap, it restores a solid foundation and ensures that certain essential services lost over the past year can be replaced.

Restoring the status quo is just a start. Justice is a grand and noble ideal. It requires fair laws, lofty and rigorous jurisprudence, and accessible and transparent institutions. But justice finds its meaning in the daily lives of individual people. Justice is whether a person is housed, has nutrition, is safe, can get medical care, is provided an education, and has the opportunity to earn a meaningful income. It is for this reason the *Rationing Justice* report draws its name from and begins with the words of Judge Learned Hand:

> It is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect.... If we are able to keep our democracy, there must be one commandment: THOU SHALT NOT RATION JUSTICE.

Out of the crisis created by the recession is an opportunity for our community to respond by ensuring adequate financial support for legal services, expanding on the culture of pro bono, and changing judicial institutions to be a venue for everyone, regardless of wealth, to get a fair hearing according to the law.

Peter B. Edelman is a professor at the Georgetown University Law Center and chair of the District of Columbia Access to Justice Commission. Jonathan M. Smith is executive director of the Legal Aid Society of the District of Columbia, a member of the District of Columbia Access to Justice Commission, and a member of the Steering Committee of the D.C. Consortium of Legal Services Providers.

Note

[1] *Rationing Justice: The Effect of the Recession on Access to Justice in the District of Columbia* report available at www.dcaccesstojustice.org/rationing.html.

GLOBAL WARMING:
WHERE DO WE GO FROM COPENHAGEN?

By Thai Phi Stone

As leaders from more than 180 countries gathered for the climate change talks in December 2009 in Copenhagen, Denmark, the mood was tense. It had been 12 years since the Kyoto Protocol was initially adopted. More research had pointed to the devastating effects of global warming, including extreme flooding and drought. Sea levels were rising, scientists argued. Studies continue to stress that increased carbon emissions could threaten the world's ecosystems. The Copenhagen negotiations were important.

Long before the United Nations (UN) Climate Change Conference 2009, people had hoped the endgame would be a legally binding treaty that establishes climate mitigation efforts beyond 2012, the timeframe agreed upon in Kyoto. Despite the thousands of people convened in Copenhagen and the awareness that climate change was a global issue, all eyes were on the negotiators from China, India, and the United States. Who would make cuts? Would the cuts be enough? Would the countries be willing to make legally binding commitments?

While India ranks fourth among the world's leading greenhouse gas emitters, China and the United States top the list, accounting for 40 percent of all carbon gas emissions combined. There is no doubt these countries are necessary pieces to solving the ever-growing problem of climate change. From there, however, views diverge on everything from how large the reductions need to be to whether the countries' actions should be subject to an international monitoring system.

Who's on First?

Among the major points of contention is which countries should clean up first, often pitting developed against developing countries. "On the one hand, developing countries will say that they did not create this problem and are just in the early stages of their development," says Kyle W. Danish, an attorney at Van Ness Feldman. "At the same time, there's just a mathematical reality that without significant action from developing countries, we won't be able to get there. Developing countries' emissions have surpassed developed countries' emissions. Their efforts are needed."

Since the Kyoto Protocol was negotiated in the late 1990s, however, a problem has arisen that has further complicated the debate. "[Then] there was a very stark distinction between developed countries and developing countries. Developed countries were supposed to do a lot and do it first, and developing countries didn't have to do anything or would do it a lot later," says Danish. "It's become clear [now] that you can't talk about developing countries as one undifferentiated group."

And while major developing countries such as Brazil, China, India, Indonesia, Mexico, and South Korea no longer expect to negotiate the same terms as poor nations, they still believe they should do less, with a longer timeframe to allow their economies

to grow and catch up to industrialized nations.

"It's all posturing. The diplomatic process is so much posturing," says James W. Rubin, a senior attorney at Hunton & Williams LLP. "At the end of the day, China and India are going to recognize that if they want to ensure their economic development and, at the same time, play a role in international politics and decision making, they're going to have to do more than make that argument."

Countries Pitch Potential Emission Targets

In the months leading up to Copenhagen, the public waited anxiously to hear if China, India, and the United States would step up with actual numbers for emission cuts. The European Union (EU) had taken the lead in 2008 when it announced carbon reductions of 20 percent by 2020 compared to 1990 levels. If other countries would participate, the EU promised 30 percent cuts.

With the clock ticking down, concern grew. "There are some people in Congress who are saying, 'I don't feel that we can comfortably take on an emission limit in this country if China and India haven't committed to do something.' And China and India will say, 'Why should we commit to do something if the United States hasn't?'" Danish says. "The track the Obama administration would like to avoid is this endless loop of 'you first' diplomacy."

As if on cue and with less than two weeks to go before the delegates met in Denmark, some of the holdouts announced their commitments, increasing the chances of a potential agreement at the climate change talks. On November 25, President Barack Obama offered a U.S. emissions reduction target in the range of 17 percent below 2005 levels by 2020, with a goal to reduce emissions 83 percent by 2050. A day later, China announced its plan to adopt a domestically binding goal of cutting carbon intensity—lowering carbon output relative to its gross domestic product—by 40 to 45 percent from 2005 levels by 2020. Following suit, India's Environment Minister Jairam Ramesh announced his country's plan to decrease its ratio of pollution to production by 20 to 25 percent in comparison to 2005 levels.

With real numbers on the table, the question turned to whether the cuts would be enough. Yvo de Boer, executive secretary of the UN Framework Convention on Climate Change, acknowledged that the pledges were "not yet where science says they need to be if we're going to avoid the worst impacts of climate change."

According to a December 18 report by *The Washington Post*, an internal UN analysis circulating around the conference noted that despite current cuts on the table, the future global temperature would still increase by more than 5.4 degrees Fahrenheit. The goal is to keep the Earth's temperature from rising more than 3.6 degrees Fahrenheit above preindustrial levels by 2050.

Michael A. Levi, the David M. Rubenstein Senior Fellow for Energy and the Environment and director of the Program on Energy Security and Climate Change at the Council on Foreign Relations (CFR), believes China needs to do more. In an expert brief titled "Assessing China's Carbon-Cutting Proposal," he wrote, "These targets, while impressive in some meaningful ways, are disappointing…. The problem with the proposed Chinese carbon intensity cuts is not that they do not result in absolute emissions reductions—it is that they do not represent a significant deviation from current business as usual."

"Business as usual" doesn't mean that China, or India for that matter, is doing nothing to mitigate its carbon emissions. "Both countries have come up with what they consider climate policies and programs, which could be significant. What's lost in the noise here is that China has made a lot of strides in fuel efficiency. They're beginning to develop coal plant efficiencies. They're doing their thing," Rubin says.

In November 2009, Obama and Chinese President Hu Jintao also announced a list of upcoming projects aimed at expanding energy options while limiting emissions. Those projects include the establishment of a U.S.–China Clean Energy Research Center, a renewable energy partnership, an action plan to tackle energy efficiency, and a joint initiative to accelerate the deployment of electric vehicles.

In India, there is a plan to create mandatory fuel efficiency standards by 2011, use cleaner technology in coal-fired power plants, build a solar energy facility by 2022, and improve the energy efficiency of its buildings.

Negotiating a Legally Binding Contract

Perhaps the issue is not whether these nations will do more, but whether they are willing to be bound to more. "Are they willing to make some kind of commitment to it so other countries can feel it's commensurate?" Rubin asks.

"Some of these countries, they're very concerned about being incrementally hauled into a clear legal commitment under international law. China, in particular, is very wary of that," says Stephen Porter, director of the Climate Change Program at the Center for International Environmental Law (CIEL). Danish offers a gloomy forecast as well: "I am pessimistic that we would elicit a binding limit on any of those countries in Copenhagen."

Danish has a reason for his pessimism. A week into the Copenhagen negotiations, the issue came to a head. Tensions rose between China and the United States as Todd D. Stern, America's special envoy for climate change, emphasized that carbon reductions were key to an agreement. "If you care about the science—and we do—there is no way to solve this problem by giving the major developing countries a pass," he told reporters on December 9. "Emissions are emissions." China's climate change ambassador, Yu Qingtai, was quick to rebuke the United States' negotiating stance, telling reporters that America should do "some deep soul-searching."

"China is unlikely to revise its declared carbon intensity goal in the face of Western opposition," wrote Levi in his November 30, 2009, expert brief for the CFR. "In announcing its carbon intensity target, China emphasized that its actions were voluntary."

Throughout the global summit, China stated that it was against the idea of adding its voluntary targets to any international agreement. Ramesh, India's environment minister, also repeatedly said his country, which ranks fifth in the world for carbon dioxide emissions, would not accept a legally binding emissions reduction target.

Despite this hard-line stance, the United States again emphasized that a global pact could not be reached without commitments from the two countries. By the end of the negotiations, the battle over firm targets went to China and India. The final agreement, which is light on details, does not require specific emissions cuts from any nation. The EU remains the only group of nations with binding emissions reduction targets.

The accord, however, set a January 31, 2010, deadline for industrialized countries to register their climate pledges and for developing nations to present voluntary targets. The deadline came and went with a weak response. The UN confirmed that 55 nations submitted plans, with about 130 countries choosing not to do so yet. The countries with pledges, however, did encompass 78 percent of the world's greenhouse gas emissions. Both China and the United States formally set the targets they had discussed during the Copenhagen conference. Other nations are expected to send their own plans, despite missing the original "soft" deadline.

Who Pays?

Even if the stars align and all countries agree to caps on their carbon emissions as well as changes to domestic policy to curb global warming, another issue looms: funding. Applying the same rationale they used with carbon cuts, many developing countries argued that industrialized nations should foot the bill.

"One of the problems is that going back to 1990, 1992, developed countries essentially agreed to pay the full agreed cost of mitigation, adaptation for developing countries. At that time, there was a different conception about the severity of the problem and how much it would cost," Porter says. "So now, we're kind of stuck with that promise or obligation of the convention, and developing countries are rightly saying, 'Hey, you agreed to this and you have to pony up.'"

The dynamics of the debate, however, have changed as costs have dramatically increased, Porter adds. At the time of the Kyoto Protocol, less was known about the actual overall implications of climate change. On September 2009, the World Bank released preliminary results of a global study that placed the cost of adaptation to climate change in developing countries at $75 to $100 billion a year for the period 2010 to 2050. Other studies listed higher amounts. In November, the International Energy Agency, an intergovernmental organization that advises 28 member countries on energy policy, said a climate deal could cost trillions of dollars over the next 20 years.

"To get [developing countries] where we need them to be, they're going to need some help," says Rubin, the attorney from Hunton & Williams. "I think there is an obligation on the developed world … to lead by reductions as well as to help pay for them, at least through the building capacity and technology requirements these countries should have. But to just pay them so they do the right thing is not the obligation."

Stern took it a step further when talking to reporters at Copenhagen, rebuffing arguments that the United States owed a debt to other nations for its emissions over the years. "I actually completely reject the notion of a debt or reparations or anything of the like…. For most of the 200 years since the Industrial Revolution, people were blissfully ignorant of the fact that emissions caused a greenhouse effect."

Some experts argue that a few of the developing countries are significantly developed and may not need access to public funding. "I think people appreciate that it's reasonable to turn to China, India, Brazil, Mexico, South Korea, some of the major developing countries, and expect that they take on a commitment that they fund either wholly or significantly on their own," Danish says.

Rubin agrees: "Some of these countries, like India and China, they're not economically problematic. They have huge industries, and the hope is that they'll come up with ways to reduce their national emissions while increasing their environmental output without needing huge cash infusions."

Placing India or other nations in the same category as China may not be equitable, though. In an interview with CFR staff writer Toni Johnson, Elizabeth C. Economy, a senior fellow and director of Asia Studies at CFR, said China itself may even need to be separated completely from the group of major developing countries.

"China should be put into its own category," she said. "Other developing countries [that] have far fewer resources should be the primary targets for an international fund…. China is in a better position to stand on its own to contribute to addressing the problem, whereas there are other countries, and I would include India in this group, that are more in need of international resources."

Protecting the Poor

While even the idea of helping fund mitigation efforts in China or India sparks great controversy in the United States, few people argue that impoverished nations—those whose existence are threatened by rising sea levels, drought, and other global warming effects—should not receive aid. "Some obligations among the developed countries is to take care of countries that cannot by themselves mitigate or adapt to the harms of climate change that were largely caused by developed countries' emissions over time," Rubin says.

The Obama administration seemingly agrees. On the second-to-last day of the Copenhagen talks, U.S. Secretary of State Hillary Clinton pledged to help build a $100 billion annual fund by 2020 to pay for adaptation efforts in poor countries. The EU also had previously made the same commitment. However, the final text of the Copenhagen accord, which is not legally binding, only mentions a $30 billion funding over the next three years and describes the $100 billion fund as just a goal. Where the money would come from is up in the air.

Despite the possible financial commitments, a large funding hole remains. To help fill the void, Porter of the CIEL suggests that major developing countries also contribute. "There is a role for the large merging economies to play in all of this both in reducing emissions and providing financial assistance, particularly to their poor cousins, if you will, in the G–77."

But Porter points out an issue that makes it more difficult for the United States to ask China to help pay for climate change efforts. "If you take any sort of logical approach to it in terms of historical emissions and capacity to pay, we haven't exactly set a sterling example that would give us the moral high ground to say to China or others, 'Okay, we've done our share. Now you need to step up.' We haven't put ourselves in a very good position to be able to make that happen collectively."

Durwood Zaelke, director of the secretariat of the International Network for Environmental Compliance and Enforcement, believes China has the capacity to provide aid, citing its foreign assistance programs that are helping build roads and improving courts in Asia and Africa. "I think it's clear that they could do more and the key is that they see the strategic advantage to do it. They're building themselves into a superpower and this could be part of the superpower obligation to the world," he says. "Right now, it's the U.S., EU, and Japan mostly. China could use this to enter into the top ranks of the superpowers and say, 'We can do more and we will do more.' That would be a good political move."

Finding the Funds

The answer to how to pay the hefty price tag for climate change likely lies in a combination of public and private funding, as well as some form of technology cooperation. "To rely on the annual U.S. appropriations process for a significant amount of funds, I think, would be very difficult," Porter says.

Responding to the need for more aid, several financial mechanisms were established over the years, including the Global Environment Facility (GEF), Adaptation Fund, and Clean Development Mechanism (CDM).

The GEF provides grants to developing countries and countries with economies in transition for projects related to various environmental issues. Since its inception in 1991, it has allocated $8.8 billion for more than 2,400 projects in more than 165 countries. Despite its success, Rubin believes that for the GEF to help contribute to the current financial needs of a new international treaty, its programs will have to be significantly augmented.

Reviews for both the Adaptation Fund and the CDM are mixed. Neither has lived up to expectations, raising much less money than hoped. The Adaptation Fund was supposed to raise money through a tax on carbon credits sold in the UN emissions trading system and through contributions by developed countries. "I think it's fair to say that the amounts of funding into the existing fund are inadequate for the job," Porter says.

The CDM was an innovation from the Kyoto Protocol that allowed industrialized nations to invest in emissions-reducing projects in developing countries. In return, the developed countries would receive emission reduction credits to help them meet the targets they agreed to in the protocol. "It's been effective in the sense that it's raised money and [helped reduced emissions] but there are concerns about how it's worked, whether it's too bureaucratic, whether it's allowed projects that really don't qualify," Rubin says.

"With the economic collapse, that's affected the price of carbon and probably slowed significantly the pace of CDM projects," Porter says. "That's the problem with a market mechanism. If you're relying on a percentage of transactions and the overall value of transactions is down, your contributions to the Adaptation Fund will go down."

Among the most talked about funding mechanisms is the cap-and-trade system, already in use by the UN. Through cap-and-trade, the government would set a limit on carbon emissions. Companies or organizations are then given a certain amount of emission permits, representing the amount of carbon they can produce. Businesses that cut their emissions are left with extra permits they can sell to those that need more than their allowance.

In an argument for an emissions trading system, Danish and coauthor Megan Ceronsky, an associate at Van Ness Feldman, stated that the "European Union Emissions Trading System … yielded a $50 billion market in 2008." Both are proponents of auctioning off allowances and allocating some of the revenue to fund clean energy programs.

"Targeted allocations offer opportunities to address the initial impacts of a new emissions limit," they wrote in "Carbon Taxes Are Fine, but a Cap-and-Trade Program Is Better." The article appeared in the March/April 2009 issue of *Trends*, a bimonthly newsletter of the American Bar Association's Section of Environment, Energy, and Resources. "These impacts could be severe, for example, for regions that have relied on coal-fired electricity and for companies in internationally competitive markets. Allocations could help ease their transition into a carbon-constrained economy," they added.

Zaelke, however, questions if cap-and-trade is the most viable option. "Can we afford to continue down a path looking at a cap-and-trade system that is designed to change relative prices over time to save the world from a problem that is moving so fast that we can't even keep up with the assessment of the problem? The answer is no. That's not sane to gamble the world on what is still an experiment."

An alternative to the cap-and-trade system is a carbon tax, an environmental tax on carbon dioxide emissions. Some of the benefits of a carbon tax would be predictability of energy prices, fast implementation, transparency, and simplicity.

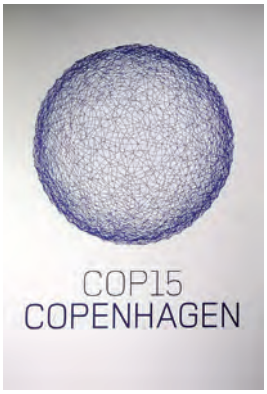
"We agree that a carbon tax could offer predictable costs, administrative simplicity, and an opportunity to offset other taxes," wrote Danish and Ceronsky. "Our point is simply that a cap-and-trade program can do all these things, and more."

Avoiding Past Mistakes

The bill before the U.S. Senate as of December, the Clean Energy Jobs and American Power Act, would create a cap-and-trade system. Before Copenhagen, people closely watched the progress of the bill and hoped for its passage, knowing that U.S. policy could have a deep impact on global negotiations.

"There's definitely an interaction between what we do here in the United States and the international policy," Danish says. "[The Obama administration] wants to show enough commitment and political will to lead and elicit commitments from major trade competitors like China and India, yet not go out so far ahead of Congress that they return to find an angry Senate. It's a delicate dance."

In Porter's view, "They've clearly tied their negotiation position in the talks to outcomes of the U.S. legislative process, which is moving, but slowly." This became apparent in November when the commitments announced by the United States aligned with



the numbers in the Senate bill. It was a move likely to avoid the mistakes of previous presidents.

"The United States went into Kyoto and agreed to something without making sure they could do it domestically. It was all done politically," Rubin says. The Clinton administration made promises it could not keep and was met with a strong rejection from Congress upon its negotiators' return.

Following Kyoto, the Bush administration chose not to ratify the treaty. "We took ourselves out of the game on a lot of different things on the environment during the Bush administration," Rubin says. "We lost essentially 10 years of international negotiations and we're just getting back to it now. We could be much closer to an agreement had we stayed engaged on a more international side."

Rubin believes that had the United States ratified the treaty, essentially giving itself a seat at the table, some of the funding mechanisms would be stronger today. "The CDM probably would have been better if the United States played a more formative role in running it. We were observers."

Speak Softly and Carry a Big Stick

Despite its shaky history on climate change efforts and unwillingness to ratify the Kyoto Protocol, the United States played a key role in creating the compliance and enforcement mechanism that came out of Kyoto. "The U.S. was very involved in the design of the Kyoto regime, if not the primary architect," Porter says.

The enforcement and compliance regime created then now serves as the building blocks for a potential post-Copenhagen system, including monitoring, reporting, and verification. Whether countries should be held accountable under the system was an issue that stalled the December talks, with Secretary of State Clinton saying that an agreement would not be reached if China refused to submit to a verification process to ensure transparency of its actions. Chinese Premier Wen Jiabao countered that his country would honor its word with "real action."

"Compliance is always the difficult part of any kind of area of international law," Danish says. "It's always this combination of carrot and sticks, and usually some greater reliance on carrots."

Most treaties incorporate compliance factors, but typically involve helping countries comply or provide money or technical assistance. "There aren't really any sticks out there. The [World Trade Organization] has a stick, but it's a communal stick," Rubin says. "Countries all agree to essentially abide by the same rules, and if you don't abide by the other country's rules, then they raise tariffs on you. It's not an enforcement issue as much as it allows countries to take, essentially, revenge.

"At the end of the day, it doesn't look like the United States' model of enforcement. You don't have an international [Environmental Protection Agency] or court system to deal with this kind of stuff. There are almost no examples of strong, hard compliance in the international environment arena."

So what are the possible options on the table to enforce climate change commitments? Trade sanctions are likely a top candidate, already used in other treaties such as the Montreal Protocol, which targets reductions in ozone-depleting chemicals. While Zaelke believes trade sanctions are useful, he thinks compliance should be dominantly facilitative. "Let's help countries solve the problem. Then for those who aren't with the program? We're going to use trade sanctions. That's our big hammer in international law," he adds.

The United States' first climate bill—the American Clean Energy and Security Act of 2009, which the U.S. House of Representatives narrowly passed on June 26—carries a provision that imposes border taxes or tariffs on energy-intensive imports from countries that do not actively seek to cap their carbon emissions. Obama has called on Congress to remove the tariff clause.

"This is something that is very offensive to some of the other countries, but obviously, it would be a pretty powerful lever by invoking trade," Danish says. Punishing violations with border taxes or other methods presents new issues. "Any punishment delivered in international law tends to harm you," Danish adds. "Utilizing tariffs or border taxes can be powerful, but so powerful that it creates a trade war and hurts us."

And who determines which countries are noncompliant? The likelihood of one large bureaucracy overseeing an entire compliance process is slim, leaving much of the responsibility to individual nations. "It's usual under international law that there's kind of a domestic obligation to whatever extent the national system provides for domestic enforcement," Porter says.

Porter, however, sees a potential problem: While the U.S. legal system is strong enough to enforce the commitments, other countries may have a more difficult time. "Corruption may be an issue where there just are no tools for communities and other affected folks to hold their governments accountable. What do you do then in the absence of an international regime to ensure compliance?" he asks.

It was a key issue before the negotiators at Copenhagen, and one that will not be resolved any time soon. While the U.S.-backed accord, finalized on the last day of the global meeting, includes language about implementing a reporting and verification system, it lacks information on how the pledges would actually be monitored. It only specifies that both developed and developing countries would list their plans to address climate change and report their progress. There is a goal to subject participating countries to international review, but little else.

Rubin, who worked on setting up the compliance enforcement mechanism for the Kyoto Protocol, says, "In Kyoto, it was determined there would be a compliance mechanism, but it took years and years and years to come up with one."

The lengthy time it took to establish Kyoto's compliance system underscores the entire process of creating an international climate treaty itself. Even the timeframe to create a legally binding international pact was up for debate in Copenhagen, which resulted in the removal of the 2010 deadline.

"These international agreements, they just take years to put together. When we look at fully elaborated international regimes like the World Trade Organization, those really came together over a couple decades," Danish says. "The difficulty is that there's this disconnect between the timing of the problem and the timing of the ability of international negotiations and governance. You keep trying to push to create ambitious commitments and hope you get part of the way there."

Time, however, is just one more thing needed to make a dent in the climate change dilemma. Even as scientists say that the world should have begun fixing the problem years ago, the debate continues its slow trudge through the international negotiation process. Next stop: Mexico City in November 2010.

D.C. Bar staff writer Thai Phi Stone wrote about lockstep compensation at law firms in the January issue of Washington Lawyer.

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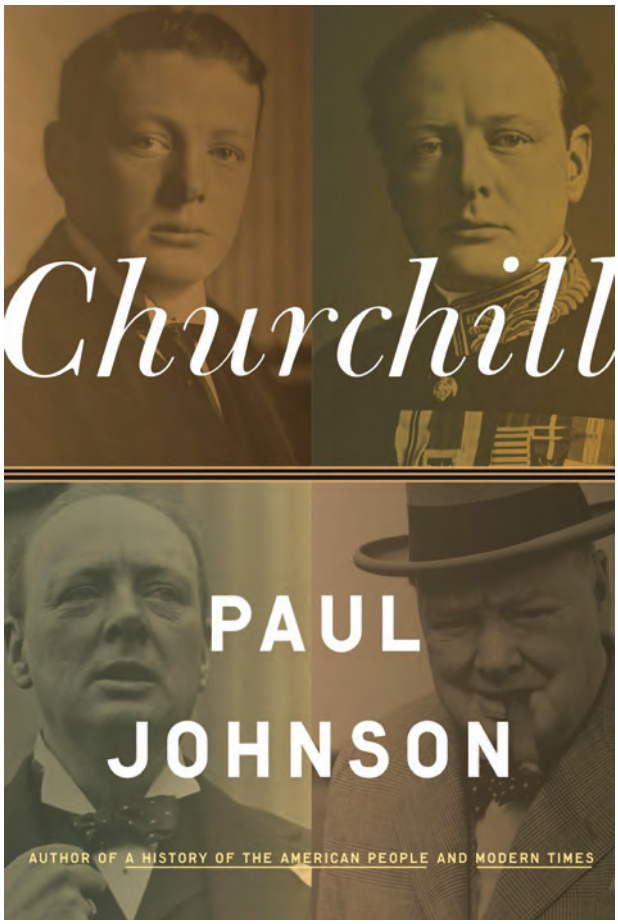

Churchill
By Paul Johnson
Viking, 2009

REVIEW BY RONALD GOLDFARB

Having recently reviewed two massive biographies—*Louis D. Brandeis: A Life* (900 pages) and *Woodrow Wilson: A Biography* (600 pages)—I wondered how anyone could do justice to so prolific and profound a world figure as Winston Churchill in 166 pages, as Paul Johnson has attempted. Churchill was a towering public figure for more than 60 years. An active military officer and a politician, Churchill also wrote about 10 million words during his dramatic and diverse career, and delivered 500 major speeches in the House of Commons. Scores of books have been written about him and news reports covering his career are voluminous. There are Churchill societies and newsletters.

As a historian and witness to Churchill history, Johnson has the credentials and experience to contribute a fresh and substantive new take. But this book is a disappointment, even while it presents some charming and entertaining moments.

The panorama of Churchill's early, privileged life begins at Blenheim Palace, and continues at Harrow School and Royal Military College, Sandhurst (a cadet school). As the son of Lord Randolph Churchill and a wealthy American mother, Jennie Jerome, young Winston was raised in an elite world of government access and sophisticated society. Too quickly, Johnson takes the reader to Churchill's South Africa experiences in the Boer War where he began his unusual practice of writing about events he was engaged in during his wartime and political careers. Churchill served in Cuba and India, seeking wartime action and writing about his experiences. Too glancingly, Johnson brings young Churchill, 26, back to England with medals and a notorious reputation. While he was "the best-known young man of his generation," Churchill also was burdened by critics and enemies who considered him "brash, arrogant, presumptuous, boastful, and a bounder." Quite a start for one who would become a uniquely heroic personality of his generation. But it is not a beginning Johnson develops adequately, however exotic the possibilities.

Johnson calls Churchill "a mass of contradictions," though his short biography describes a man of constant talents and persistent drives. He was elected to the Parliament from different districts under the labels of six parties. Churchill's peripatetic political moves are too sparsely explained. Churchill had a long and faithful marriage to his lifelong partner, Clementine Hozier. They had a son and four daughters, although, Johnson writes, so eccentric and manic was Churchill's lifestyle that he and his wife "led separate existences under the same roof."

Churchill held several positions in various governments. In addition to being prime minister during World War II, he was Home Secretary, First Lord of the Admiralty, and Chancellor of the Exchequer. He courted media moguls and used those contacts and his skills at writing about his military and political experiences to advance his ideas and fortunes. That practice would be impossible under modern ethics standards.

Churchill's experiences were so rich and diverse that Johnson's approach of briskly flying over them leaves the reader hungry for information about some of his subject's lesser-known but important positions. An example is the story—referred to but untold—of Churchill's frustrated, planned response to the Communist buildup in 1917 in Russia, which Johnson suggests could have saved many millions of lives had Churchill's ideas been implemented. The same is so of Johnson's reporting about Churchill's experiences in the Colonial Office in the 1920s when the Middle East configuration of countries was created, a series of impositions that haunts international politics today. Johnson's reference to Churchill's role in the Balfour Declaration, and his conclusion that "Without Churchill it is very likely Israel would never come into existence," is questionable, failing to develop the theme and to substantiate his view. Johnson calls Churchill's support of King Edward VIII's marriage to Wallis Simpson "quixotic," an example of the author's overly empathetic treatment of his subject.

Churchill's ability to write the histories he participated in provided him with international fame and private fortune. His "endless vista of publisher's contracts all over the earth" allowed him to buy and develop Chartwell, his home and acreage in Kent. There, he wrote, corresponded copiously (5,000 letters to and from President Franklin D. Roosevelt in six years), painted (500 paintings), laid bricks, and entertained lavishly, consuming prodigious amounts of champagne, brandy, and cigars. He could, Churchill boasted, do "200 bricks and 2,000 words a day." He traveled, lectured, and was ever ready to pursue the chapter of his life that is best known—coping with the challenges of World War II.

Churchill's life and career were at their nadir after World War I and before World War II; "He brooded in his inactivity," Johnson reports. But he was prepared to enter his most memorable days as the second war approached. Churchill's earlier warnings of the rise of Nazism had proved correct, and as the German war machine advanced in Europe, Neville Chamberlain resigned and Churchill was made prime minister. The man and the challenge met on the world stage. Churchill's diary reflected his confidence: "I felt as if I were walking with Destiny, and that all my past life had been but a preparation for this hour and for this trial.... I was sure I would not fail."

It is in Johnson's chapter of Churchill's efforts during World War II (May 1940–July 1945) that his book hits its stride. Through his oratory and personal symbolism, Churchill (and Great Britain) had their "finest hour." Churchill's strategic buildup of the Royal Air Force proved decisive. The code breakers made critical breakthroughs that aided the Allies' tactics. Churchill's military decisions to move forces into the Mediterranean and to urge Russia to enter the war on the Allies' side helped turn the tide of the war.

Johnson concludes that Churchill's leadership was a critical and historic factor: "No one else could have done what he did through his personal leadership, courage, resolution, ingenuity, and his huge and infectious confidence." He performed rigorously despite strokes, a heart attack, and pneumonia. He accepted Roosevelt's questionable openness to Joseph Stalin, despite his prescient misgivings about Communist expansionism, in order to assure the end of the war.

Churchill was brutal in his war planning. He endorsed heavy bombing of German cities, Dresden and Hamburg particularly, which was criticized after the war for the killing of hundreds of thousands of civilians. But the tactic of reprisal was popular in England at the time. Its citizens had experienced German assaults on its cities. Like Harry S Truman's decision to bomb Hiroshima and Nagasaki, Churchill's decision to obliterate German cities to disrupt German war efforts and derail their attacks on the eastern front were viewed at the time as the cruel necessities of war the perpetrators had not started.

A product of the colonial and imperialistic era, Churchill fought to preserve, against progressive views of the times, British interests in the Middle East and Far East, with their economic advantages. While Johnson applauds Churchill's vision in World War II, he sidesteps judging his lack of it in these instances.

When the war in Europe ended, Churchill urged his nation to continue in the Allied coalition until Japan surrendered. The English people, exhausted by their ordeals, voted their leader (then as a Tory) out of office. It was a remarkable human drama—the man who led his nation for five years and three months in a successful world war was dismissed.

Britain's global power contracted and its people were "exhausted, impoverished, and emotionally numb." Churchill became a citizen of the world, especially admired in the United States. His landscape paintings sold well. He owned and raced horses. He wrote his war memoirs at Chartwell, which Johnson says became "a writing factory" of cowriters, researchers, and consultants, working on his official wartime papers that he took as his personal and exclusive property. He created his own history before others could revise it. No surprise then that Churchill "won the war of words, as he had earlier won the war of deeds." He was awarded the Nobel Prize in Literature in 1953 and earned millions for his writings.

Churchill returned to the House of Commons late in his life, and was honored by Queen Elizabeth II with the Knighthood of the Order of the Garter. His final years were "an age of dying embers, with occasional flickers of flame and fiery glow." On January 24, 1965, Churchill died in his London home at Hyde Park Gate at age 90. The last words of this sophisticated world figure: "I am bored with it all."

The disappointment of this book is that Johnson touches all the bases but does not linger long enough to examine some of them satisfactorily. The book reads like a lecture to a worldly audience, with charming anecdotes and quotable references from diverse sources, puzzling personal asides (I slept in that bed; I drew Churchill caricatures when I was 5), arch remarks ("a drinking companion told me"), and French phrases left untranslated. It is confounding how so permanently interesting a subject could be examined by so studied and qualified a biographer with such a mixed result.

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

attorney briefs

By Thai Phi Stone

Honors and Appointments

AARP in Maryland has appointed **Rawle Andrews Jr**. as interim senior state director … **Darin A. Jones**, a contracting officer at the U.S. General Services Administration, has passed the Professional Engineer (PE) Exam in civil/construction engineering to become a licensed PE by the South Carolina State Board of Registration for Professional Engineers and Land Surveyors… **Lisa D. Taylor** of Stern & Kilcullen, LLC in Roseland, New Jersey, was named to the New York Area's Top Lawyers list by *New York* magazine… **Andrea C. Ferster** of the Law Office of Andrea Ferster received the 2009 Historic Preservation Review Board Chairman's Award for Law and Public Policy at the District of Columbia Awards for Excellence in Historic Preservation… **David P. Bloch** has been appointed to serve as deputy chief investigative counsel to the Office of the Special Inspector General for the Troubled Asset Relief Program.

On the Move

Mayer Brown LLP has promoted **Joseph R. Baker** to partner in the firm's general and appellate litigation practices… **Joseph J. LoBue** and **Michael A. Umayam** have been promoted to special counsel at Fried, Frank, Harris, Shriver & Jacobson LLP… **Sam J. Alberts** has joined the bankruptcy and creditors' rights practice at Dickstein Shapiro LLP… **Edward J. O'Connell III** has been named equity partner at Whiteford, Taylor & Preston, L.L.P.… **Craig A. Benson** and **Andrew C. Finch** have been elected partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP… **Noah A. Brumfield**, **Daniel A. Hagan**, and **Mara E. Topping** have been named partner at White & Case LLP... **Gregory E. Heltzer**, **Christopher D. Man**, and **Joshua D. Rogaczewski** have been promoted to partner at McDermott Will & Emery LLP… **John I. Sakhleh** has been promoted to partner in Sidley Austin LLP's securities and futures regulatory practice. **Brian R. Nester** has joined the firm's intellectual property litigation practice as partner… **Jeffrey L. Hare** has joined DLA Piper LLP as partner in the government affairs group and will chair the firm's financial services regulatory practice within government affairs. **Luis R. Mejia** has joined the firm's securities enforcement and litigation practices as partner, providing insight to clients on the U.S. Securities and Exchange Commission's conduct from a compliance, enforcement, and policy perspective… **Mark V. Vlasic** has completed his appointment as head of operations of the StAR Secretariat at the World Bank Group and is serving as senior fellow at Georgetown University's Institute for Law, Science and Global Security. He also is a partner at Ward & Ward PLLC, where he heads the firm's international practice… **Adin C. Goldberg** has joined the New York office of Bond, Schoeneck & King, PLLC, as member (partner) in the firm's labor and employment, employee benefits and executive compensation, and immigration practice.

Company Changes

Attorneys Arthur Adelberg, Richard Lorenzo, Jay Matson, and Nicole Travers will assist **Loeb & Loeb LLP** in opening an office at 601 Pennsylvania Avenue NW, suite 900 South… Shirlene A. Archer has opened **Archer Legal Services, PLLC**, with its principal office at 1629 K Street NW, suite 300. The firm will represent D.C. residents in cases involving business law, family law, and nonprofit law… David B. Deitch has left Janis, Schuelke & Wechsler to open a solo practice, the **Law Offices of David B. Deitch PLLC**, located at 1455 Pennsylvania Avenue NW, suite 400. The new practice will focus on white collar, criminal defense, and civil litigation cases… Attorneys Michael Andrews and Jani Tillery have opened the **D.C. Crime Victims Resource Center** at 1411 K Street NW, suite 1400.

David S. Petron has been elevated to partner in Sidley Austin LLP's U.S. Securities and Exchange Commission practice group.

Toyja E. Kelley has been elected partner at Tydings & Rosenberg LLP in the firm's litigation department.

Stradley Ronon Stevens & Young LLP partner Mark E. Chopko has coauthored ***Exposed: A Legal Field Guide for Nonprofit Executives.***

Author! Author!

Alan S. Nemeth, an adjunct professor of animal law at the American University Washington College of Law, has written "An Introduction to Cap and Trade for Animal Welfare," which was included in the *Journal of Animal and Environmental Law*… **Jerry W. Cox** of Potomac Strategy Associates has written *Transportation of Hazardous Materials in Plain English Packaging*, a practical guide to "hazmat" safety law, published by Touching Covers, Inc.… Stradley Ronon Stevens & Young LLP partner **Mark E. Chopko** has coauthored *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. The tome is designed to assist nonprofit executives in identifying legal issues that can arise in ordinary business activities.

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

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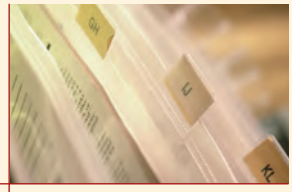

Note: Unless otherwise indicated, all D.C. Bar events are held in the D.C. Bar Conference Center at 1101 K Street NW, first floor. For more information, visit www.dcbar.org or call the Sections Office at 202-626-3463 or the CLE Office at 202-626-3488. CLE courses are sponsored by the D.C. Bar Continuing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

MARCH 2

How to Represent Your Client Effectively in Security Clearance Cases
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section, Criminal Law and Individual Rights Section, Government Contracts and Litigation Section, International Law Section, Labor and Employment Law Section, and Litigation Section.

MARCH 4

"Cloud Computing:" A Truly New Service or Just a New Trendy Name?
12–2 p.m. Sponsored by the Computer and Telecommunications Law Section. Cosponsored by the Corporation, Finance and Securities Law Section, Estates, Trusts and Probate Law Section, Government Contracts and Litigation Section, Intellectual Property Law Section, and Labor and Employment Law Section.

Introduction to Securities Law 2010, Part 1: Introduction to the Securities Act of 1933 and the SEC Registration Process
6–9:15 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section and Criminal Law and Individual Rights Section.

MARCH 8

Fraud in Trademark Cases: Impact of the Federal Circuit's New Standard
6–8:15 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section, Intellectual Property Law Section, Litigation Section, and Tort Law Section.

MARCH 9

Regulation of Clinical Trials: The New Life Sciences Frontier 2010
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section, Health Law Section, and Intellectual Property Law Section.

MARCH 11

Basic Training: Learn About Running A Law Office
9:15 a.m.–4:30 p.m. Training presented by the Practice Management Advisory Service. Contact Manager Daniel M. Mills at 202-626-1312 or dmills@dcbar.org.

An Informal Discussion With U.S. Trade Representative General Counsel Timothy M. Reif
12–2 p.m. Sponsored by the International Trade Committee of the International Law Section. McKenna Long & Aldridge LLP, 1900 K Street NW.

Introduction to Securities Law 2010, Part 2: Introduction to Investment Advisers and Investment Companies
6–9:15 p.m. See listing for March 4.

MARCH 15

How to Apply for Tax-Exempt Status 2010
6–8:45 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section, District of Columbia Affairs Section, Labor and Employment Law Section, and Taxation Section.

MARCH 16

Representing Political Asylum Seekers: Advanced Training
1–5 p.m. Training presented by the D.C. Bar Pro Bono Program. Contact Kim DeBruhl Roberson at 202-737-4700, ext. 3289.

Fee Agreements in the District of Columbia: Ethical and Practical Guidance
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section, Corporation, Finance and Securities Law Section, Courts, Lawyers and the Administration of Justice Section, Estates, Trusts and Probate Law Section, Family Law Section, International Law Section, Labor and Employment Law Section, Law Practice Management Section, Litigation Section, and Tort Law Section.

MARCH 18

Community Property for the East Coast Practitioner
12–1:45 p.m. Sponsored by the Estates, Trusts and Probate Law Section.

Introduction to Securities Law 2010, Part 3: How the Securities Exchange Act of 1934 Works and Regulation of Broker–Dealers.
6–9:15 p.m. See listing for March 4.

MARCH 19

Effective Writing for Lawyers Workshop
9:30 a.m.–4:30 p.m. CLE course cosponsored by all 21 sections of the District of Columbia Bar.

MARCH 22

What Every Lawyer Needs to Know About Customs and Customs Law 2010
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section and International Law Section.

MARCH 23

What You Need to Know About Domestic Partnerships and Same-Sex Marriage in DC, MD, and VA
6–9:15 p.m. CLE course cosponsored by the Estates, Trusts and Probate Law Section and Family Law Section.

MARCH 25

Introduction to Securities Law 2010, Part 4: SEC Enforcement and Private Rights of Action
6–9:15 p.m. See listing for March 4.

MARCH 31

Basic Training: Learn About Running A Law Office
9:15 a.m.–4:30 p.m. See listing for March 11.

BPR Requests Volunteers for Hearing Committees

The Board on Professional Responsibility (BPR) is seeking volunteers for its Hearing Committees. The committees hear lawyer discipline cases and draft reports with findings of fact, conclusions of law, and recommended sanctions.

Hearing Committee members, composed of D.C. Bar members and members of the public, are appointed periodically by the BPR and are eligible to serve two consecutive three-year terms.

Interested parties should submit a cover letter and résumé to Elizabeth J. Branda, Executive Attorney, Board on Professional Responsibility, 430 E Street NW, Suite 138, Building D, Washington, DC 20001. For more information, call 202-638-4290.

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Let's keep in touch.

Speaking of Ethics

continued from page 11

fessional Responsibility and the Office of Bar Counsel certifying that he accepts the conditions of probation. The court further ordered that as a condition of Thai's probation, he shall take six hours of continuing legal education courses in both legal ethics and law office management, as approved by the Office of Bar Counsel, within the first six months of his probation. Finally, the court ordered that Thai pay his client restitution in the amount of $4,500, plus interest at the usual legal rate, for his failure to provide adequate representation in his client's immigration case. For purposes of restitution, interest shall be calculated from February 24, 2003, the date his client's deportation order was issued. While retained to represent a foreign national in an immigration matter before the Immigration Court, Thai failed to provide competent representation, serve his client with skill and care, represent his client zealously and diligently within the bounds of the law, act with reasonable promptness in representing his client, keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and surrender papers and property (the client file) to which the client was entitled as soon as reasonably practicable. Rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 1.16(d).

Reciprocal Matters

IN RE ELMER D. ELLIS. Bar No. 423276. December 3, 2009. In a reciprocal matter from the United States Court of Appeals for the District of Columbia Circuit, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Ellis for 120 days, with reinstatement conditioned upon the satisfaction of the continuing legal education requirements imposed by the D.C. Circuit.

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

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legal spectator

By Jacob A. Stein

Louis Armstrong

Biographer Terry Teachout has written a new book titled *Pops: A Life of Louis Armstrong* about the legendary American jazz trumpeter and singer. Why another? Mr. Teachout says the other biographies did not do justice to Louis Armstrong (hereafter, Louis) the person, as well as the gifted musician and vocalist. Mr. Teachout is right. I base my opinion not entirely on hearsay (Fed. R. Evid. 801, 802). I base it, in part, on personal knowledge (Fed. R. Evid. 601). I spent an evening with Louis. Here is my testimony.

In the 1950s, Doc Pressman's Randolph Pharmacy, located at 14th and Randolph streets in Washington, D.C., was a meeting place for musicians. Doc believed in the therapeutic efficacy of vitamin pills, especially vitamin E when taken in huge quantities.

Doc tacked to his bulletin board postcards from musician friends. Among the cards were several from Louis containing affirmations of the remarkable qualities of vitamin E and evaluations of the laxative samples Doc supplied him.

On a June day in 1955, Doc said in a casual way that he and I were to meet Louis, who was performing at an open-air theater in Washington. Doc said he had word from "Pops" that he was running low on supplies and needed his medicine cabinet restocked.

Doc filled a satchel with vitamin E, vitamin C, and other assorted pills and laxative samples. We were then on the way to meet one of the few men who had gained lasting worldwide fame, authentic fame (Fed. R. Evid. 901), on his own terms.

As we approached Louis' dressing room, I was concerned that Doc did not know Louis as well as Doc made it appear. Would we be just intruders? Doc knocked on Louis' half-opened door. Louis was seated opposite a small table with a mirror above it, and on the table were bottles of various pills and lotions. His trumpet was on the table, horn end down. He was wearing a bathrobe. He had a large handkerchief wrapped around his head like a hat. Black-rimmed eyeglasses rested on his forehead. His white silk stockings were rolled down to his black shoes. He was dabbing a cotton wad into a lubricant and then applying it to his lips. Without getting up, Louis gave Doc a warm, friendly, husky-voiced greeting. I saw at once that they were real friends, comfortable and relaxed in each other's company, nothing forced.

The general flow of the conversation centered on Louis' recent U.S. Department of State worldwide goodwill tour. Doc opened the satchel to show the contents to Louis who looked in with satisfaction to the portable medicine chest.

I noticed a young man somewhere between the ages of 18 and 21 peeking into the dressing room, holding the hand of a pretty young girl. Louis saw them in the mirror and turned around to see this innocent young couple. He invited them in. The young man was excited by this turn of events. He told Louis how thrilled he was to meet and talk to this great musician. Louis interrupted and asked how he was feeling. The startled young man replied he was feeling fine. There followed Louis' lecture (well known to his friends) on the need for a good, reliable daily laxative. He recommended Swiss Kriss, the laxative he discovered abroad. He gave handfuls of samples to the young man. He then turned again to dabbing his lips with the cotton swabs. The puzzled couple withdrew.

It was near showtime, and as Doc and I were leaving the room, Louis asked me if there was a song I would like to hear. I mentioned his 1932 recording of "That's My Home." He remembered it, although he had not played it in years. He was glad I mentioned it because it gave him a good test to see if he could do what he thought he could do—recall the words. He said he had that gift. He could remember the words to all the songs he ever sang, hundreds of them. The band would be surprised to hear him start up "That's My Home," but they were all good fakers and they would be all right. He then asked Doc to give him a ride to the Annapolis Hotel after the show was over.

On that beautiful night, as the show was coming to a close with the strains of "When It's Sleepy Time Down South," Louis looked in our direction, gave us the big stage wink, and then he trumpeted into "That's My Home," first playing it and then singing it, just as he did on my old 78 record. As he finished he looked over at us, smiled triumphantly, and raised the trumpet into the air.

Afterward, Doc and I waited outside Louis' dressing room. He smiled as he walked out. He said he was sure glad he knew the words to "That's My Home." Off we went to the Annapolis Hotel.

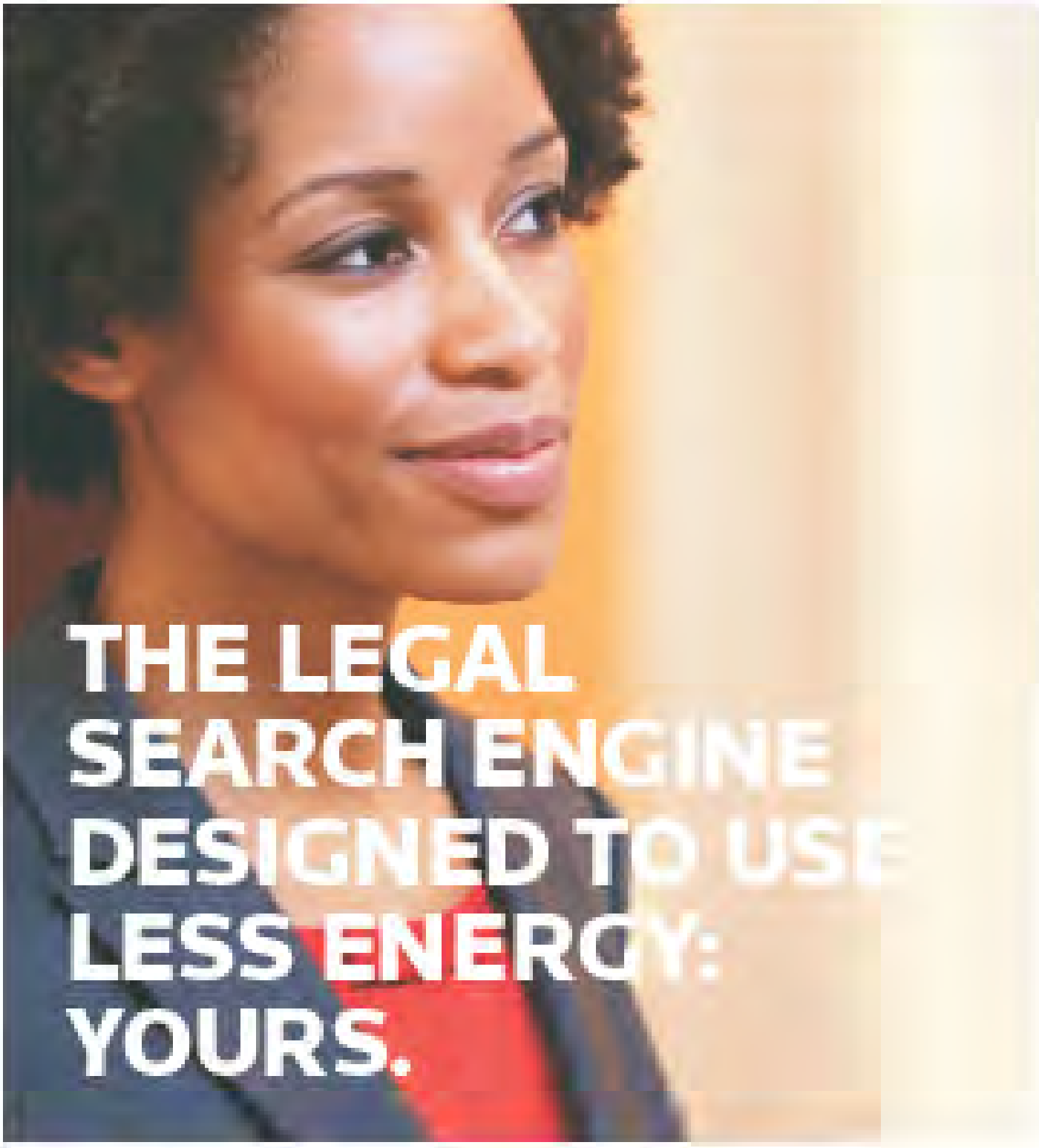
What I recall of the conversation at the hotel is something Mr. Teachout covers in detail—Louis, the man inside. I asked Louis how he does a two-hour show and then remains so composed. He said there were good audiences, like the one that evening, and there were bad audiences. The ups and downs a hundred times a year. He never let it get to the man inside. He protects that boy from New Orleans.

The impact of Louis' conversation personality has been the subject of testimony by a number of witnesses. Tallulah Bankhead said of it: "He uses words like he strings notes together—artistically and vividly." Those who spoke with him for 10 minutes were (consciously or unconsciously) imitating him. His slang, first picked up by musicians, turned up everywhere.

After an hour or two, Doc stood up and announced we were leaving. It was past 2 in the morning. Louis wrote out a list of the pharmaceutical supplies he needed and told Doc where to send them.

In the late 1960s Louis fell ill, but he continued to work. He celebrated his 70th birthday at the Newport Jazz Festival, and then he had to be hospitalized. He died at home, two months later, on July 6, 1971.

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



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