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ABOVE THE GUIDELINES

Low Bono Widens Path to Access to Justice

By Kathryn Alfisi

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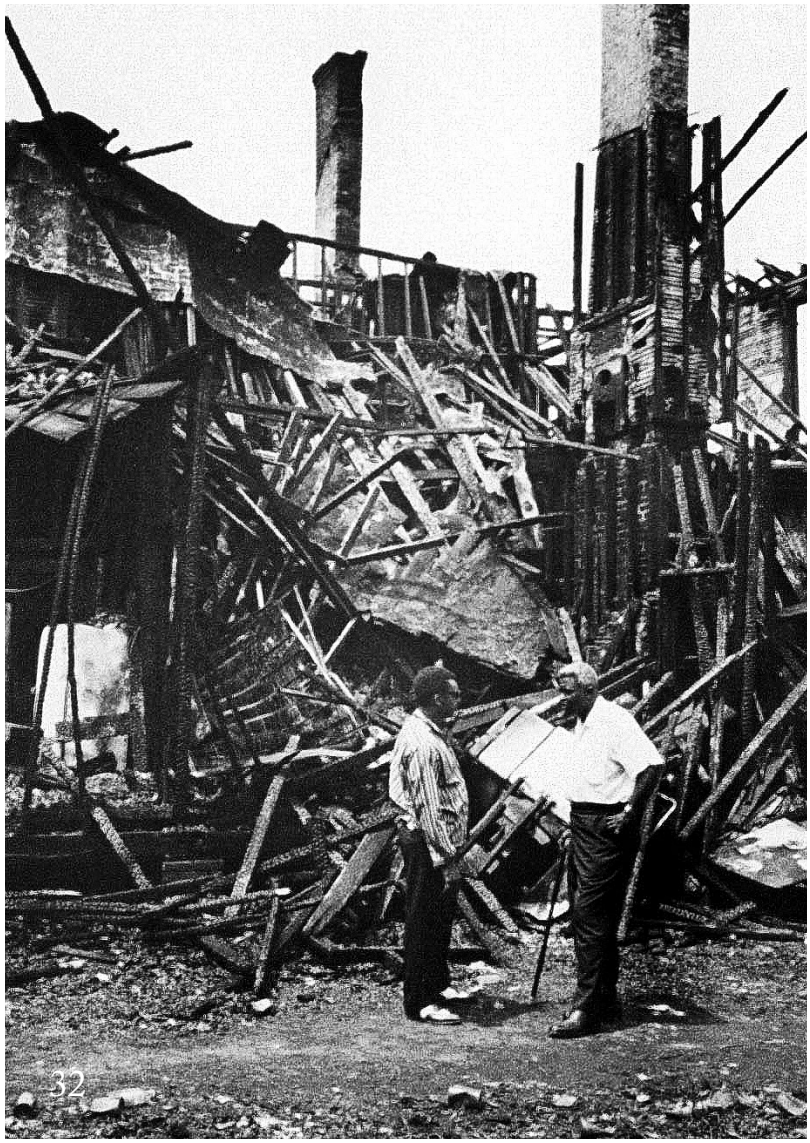
CONTENTS



Cover illustration by Getty Images


Find people worthy of the name on the door. That was my mentor's advice. But the landscape has changed over the last few years. Profits are harder earned and have to be more wisely spent. So I'm getting help to keep our practice healthy enough to attract and retain top talent. After all, it might as well be my name on the door.
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letters

With Puerto Rico Comes a Lesson in Geography

Ronald Goldfarb's May 2013 review of Justice Sotomayor's book *My Beloved World* mentions a quotation from José Gautier Benítez's poem "To Puerto Rico (I Return)."

Mr. Goldfarb is puzzled that Justice Sotomayor would select a verse that refers to being exiled. Perhaps he could potentially understand her viewpoint when he (and presumably others) label her and her family as immigrants, when, in fact, Puerto Ricans who are born in Puerto Rico are U.S. citizens and remain U.S. citizens if they "move" to the mainland.

—Todd Taylor
Washington, D.C.

Job Market Is Tough on Lawyers, Too

I find it disheartening that the net result for recent law school graduates and their inability to find employment as attorneys has become so difficult ("Is Law School Worth It?" March 2013). However, how could anyone be so naïve as to believe that the practice of law is but mere employment? I suggest that they examine their own goals in life and perhaps find a less noble way of earning a living.

—Milton W. Armiger
Kensington, Maryland

Drone Use Raises Privacy Concerns

Sarah Kellogg's July/August cover story on drones is a timely article on a touchy subject, but it also raises some concerns about where we're headed as a nation ("Drones: Coming to the Skies Near You").

On the one hand, it's good to know that the U.S. government has the safety of its citizens in mind as it launches these vehicles into our atmosphere as a way to protect and preserve our borders as well as a way to engage in other practical security measures. What's troubling is that this extra layer of safety comes at the expense of privacy. Throw in the recent reports about the government using federal agencies to gather data on American citizens, and the privacy issue becomes that much more disturbing.

It's one thing to think that you are being watched, say, in a public setting like a parade or sporting event, but to know you're being watched as you move throughout your day, engaging in routine activities, is downright intrusive.

This should give American citizens something to think about.

—Mark Shipply
Northport, Maine

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from the president

By Andrea Ferster

D.C.'s Fight for 'Long Overdue' Autonomy Rights Continues

Patrice Gilbert Photography

"The arc of the moral universe is long, but it bends toward justice."

—Martin Luther King Jr., quoting Theodore Parker

The actions of Congress sometimes feel remote to residents of the District of Columbia, whose 632,000 citizens lack any voting representation in the branch of federal government responsible for declaring war and setting national policy for the country. At the same time, D.C. residents are affected more closely and directly by congressional actions than any other jurisdiction in the country.

Elsewhere in the United States, it is basic Tenth Amendment jurisprudence that Congress has no power to pass laws changing the way states regulate activities to promote public safety, or to interfere with decisions made by local authorities to spend locally raised revenue on public health initiatives. All states would likely agree that Congress has no business legislating in these areas of general police powers reserved for the states.

Not so in the District of Columbia. For more than 200 years, Congress has taken each of these intrusive actions with respect to the District, which lacks any sovereign authority over even purely local affairs. D.C. residents pay this constitutionally sanctioned penalty for choosing to live in the District, perhaps to be near their work or their families, or because it offers a lifestyle or political and cultural values that best suits them.

To give just a few examples, from 1988 to 1993 and from 1995 to 2009, Congress prevented the District from using locally raised tax dollars to cover abortion services for its low-income residents. The restriction was lifted in 2009, only to be reinstated in 2011. From 1992 to 2002, Congress barred the District from spending any funds to implement the Health Care Benefits Expansion Act, which allowed domestic partners greater rights. From 1999 to 2007, the District was the only city barred by Congress from using local tax money to fund its needle exchange program, an effective health initiative in the fight against AIDS. And new "riders" proposed in the 2014 Financial Services and General Government Appropriations bill would prohibit the use of federal funds for medical marijuana programs despite the fact that D.C. voters overwhelmingly approved a referendum to legalize medical marijuana in 1998.

The march toward self-determination for D.C. residents has been slow, but incremental progress has been made. The first step was taken in 1960 when Congress passed the Twenty-Third Amendment to the U.S. Constitution. As a result of that amendment, which was ratified by the requisite three-quarters of the states in March 1961, D.C. residents were permitted to cast their votes for president and vice president for the first time in 1964.

In Congress, however, D.C. residents were not represented at all until 1970 when the District was permitted to send a single non-voting delegate to the U.S. House of Representatives. Three years later, Congress enacted the District of Columbia Home Rule Act, giving residents the right to elect local officials and the authority to legislate on most local matters. To this day, D.C. residents lack voting representation in both houses of Congress.

The home rule charter keeps the District on a very tight leash—and Congress yanks that leash on a regular basis. While the District can pass laws, Congress has the right to veto any legislation before it becomes effective. Congress also retains plenary authority to adopt or amend even purely local laws. Moreover, unlike any other place in the country, Congress must approve the D.C. budget, including how the District spends the nearly $6 billion it raises annually from its own residents.

The fundamental injustice of denying D.C. residents the rights of self-determination and representation has been formally recognized by international tribunals as being a violation of international law.[1] However, Congress has not been swayed even by international censure, and efforts by the District's defenders to incrementally advance D.C. voting rights in Congress have died without action or have become the victim of politics.[2]

For many residents, the only answer is for the District to become a state.[3] In 1980 and 1982, D.C. residents voted to become a state and passed a charter. This year, after years of inaction, bills have been introduced in both the Senate and the House that would create the state of New Columbia from the District's eight hometown wards, but without jurisdiction over federal buildings and territory in the city. The new state would have two senators and, initially, one member of the House.[4]

While several D.C.-based advocacy organizations support statehood as the ultimate means of securing full voting representation in Congress and sovereignty over its local affairs, these organizations have taken a page from the civil rights movement and have embarked on a new incremental strategy. DC Appleseed, an organization that works on developing solutions to problems affecting the daily lives of those who live and work in the national capital area, and D.C. Vote have been central players in the effort to gain voting representation in Congress and local sovereignty for the District.[5] Partnering with other advocates for D.C. voting rights, and assisted by a dedicated team of pro bono lawyers, these groups have designed a strategy to free the D.C. budget from political interference.

This strategy is now bearing fruit. On April 23, 2013, D.C. voters overwhelmingly approved an amendment to the D.C. home rule charter—the Local Budget Autonomy Emergency Act of 2012. The charter amendment will allow the District to spend its own revenue according to its own budget passed by the D.C. Council and approved by the mayor, rather than wait on Congress to make an affirmative appropriation. Bud-

continued on page 46

Art by renowned illustrator Alex Nabaum.

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the pro bono effect

By Richard J. Marks

Transactional Lawyers Rising to the Challenge to Serve

Ronald Flemmings

Ask people to think "pro bono work," and many would picture a litigator standing before a judge fighting for her client's home. It's the traditional image, and in it we transactional lawyers are on the sidelines writing our annual check to a legal services group. It's not because we don't want to help; we sometimes just don't know how. More and more, however, we are being called upon to assist nonprofit organizations and disadvantaged small businesses.

I remember as a young associate at a Baltimore law firm in 1994 wanting to find ways to help the community. I began working with a local nonprofit corporation to create guidelines for articles and bylaws, leading to more pro bono work. It was fulfilling to help community-based nonprofits because they serve as such a vital lifeline. When you help an organization, you help everyone whom the organization assists. Often it's indirect, but it's powerful.

This proved especially true in 2007 when the D.C. Bar Pro Bono Program matched my firm, DLA Piper, with Bread for the City. The organization wanted to expand its Northwest Center to accommodate more clients, but the project would cost millions of dollars. Bread for the City had secured a grant covering half of the costs, but it needed help raising the remaining funds.

This is where my friend David Krohn, a finance partner at DLA Piper, stepped in. He led a team of attorneys from our finance and corporate practice groups to structure a financing package for Bread for the City using the New Market Tax Credits, a federal program designed to spur revitalization in low-income communities. After Bread for the City received the financing, the project broke ground in May 2009.

Thanks to David and his team's efforts, Bread for the City was able to grow its medical practice from serving 2,500 patients annually to 6,000 patients, and to double the number of its patient visits to 18,000 per year. Its building also now houses a dental clinic that serves nearly 700 low-income patients each year.

Sadly, David passed away suddenly more than a year ago. He was a great lawyer who was widely admired. He helped conduct numerous transactions for his clients, but, on a fundamental level, that work pales in comparison to the gift he gave to this community through his work for Bread for the City.

What David showed is that we can all help. Like any other business, nonprofits have to comply with the D.C. rules for businesses operating in the city. They must follow federal and local labor laws. They rent and buy real estate and create intellectual property that needs protection. They receive government grants and contracts and engage in activities requiring risk management advice.

Transactional attorneys have the skills to assist nonprofits with these endeavors, and in doing so, they can leave an important mark on the fabric of this city. Our pro bono efforts make it possible for these organizations to carry out critical services, such as helping children achieve their dreams of attending college, allowing senior citizens to remain in their homes, and reaching at-risk youth. One transactional lawyer's time serving one local nonprofit organization can benefit hundreds, if not thousands, of District residents.

The opportunities are out there. You just need to find them. Through its Community Economic Development (CED) Project, the D.C. Bar Pro Bono Program matches lawyers with nonprofits in need of legal representation. You can also prepare a bulletin on a new development in the law, or teach a class to nonprofit staff on corporate governance, insurance, or employment issues.

Disadvantaged small businesses also need our help. The CED Project hosts a monthly small business clinic, staffed by volunteers, where business owners meet with attorneys who can answer questions and provide information ranging from how to form a limited liability company to employer's legal requirements. With our help, these owners are better equipped to successfully operate their businesses, strengthening the local economy and providing needed services to communities lacking basic amenities.

Giving our time to help a deserving nonprofit or small business always comes back two-fold. To this day, one of my most rewarding cases was a pro bono matter in 2002 in Louisiana. For years, activist organizations wanted to shut down the privately operated Tallulah Correctional Center for Youth, regarded as one of the worst juvenile prisons in the nation because of its countless civil rights violations, deplorable conditions, and rampant violence and abuse. Voiding the agreement between the prison owners and the state was proving difficult. Since the facility was originally financed with bonds, as a bond attorney, I was asked to review the agreement. I was able to draft a report used by Mitch Landrieu, then a state representative, and community nonprofits to pressure the government to shut the prison down. We were successful. The Tallulah juvenile facility was later converted into an adult substance abuse treatment center. No one would have ever thought that bond lawyers could help shut down a corrupt juvenile prison, but we did. To me, that shows the power of a single transactional attorney to help an entire community. Imagine what we could do with the help of thousands of District attorneys in creating change in all the city's neighborhoods.

Rick Marks is a business lawyer and partner at DLA Piper. He is the current chair of the D.C. Bar CED Project advisory board.

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Thank you to the thousands of D.C. Bar members who generously contributed to the D.C. Bar Pro Bono Program when renewing their membership dues this year.

With your support, the Pro Bono Program's innovative clinics, court-based resource centers and projects will help more than 20,000 D.C. residents living in poverty avoid eviction or foreclosure, secure vital benefits, access desperately-needed medical care, and protect and preserve their families.

Our neighbors count on us, and we count on you. **Thank you.**

The D.C. Bar Pro Bono Program is supported entirely by voluntary contributions from D.C. Bar members, law firms, D.C. Bar Sections and foundations. No D.C. Bar dues are used to finance the Pro Bono Program.

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bar happenings

By Kathryn Alfisi

Mick Wiggins

JNC Forum Brings Judges, Commissioners Before Public

The D.C. Judicial Nomination Commission will host a public forum on September 12 where attendees can meet and hear from Commission members and a panel of judges from the D.C. Courts. Tom Williamson, immediate past president of the D.C. Bar, will serve as moderator.

Judges from the D.C. Superior Court and D.C. Court of Appeals will be on hand to discuss life on the bench, pathways to the bench, the day-to-day work of a judge, and the various divisions in which a judge might serve.

Commissioners will discuss qualifications for judicial applicants, the application process, and the selection of nominees, as well as the function of the Commission and its role in the nomination process.

Members of the bench, bar, and public are encouraged to attend the forum, which will include a question-and-answer segment.

The forum takes place from 5 to 7 p.m. at the D.C. Court of Appeals, Historic Courthouse, 430 E Street NW, Second Floor, Courtroom One, Washington, DC 20001.

For more information, contact the Commission's Executive Director at 202-879-0478 or dc.jnc@dc.gov.

September CLE Offerings Include Appellate Court Classes

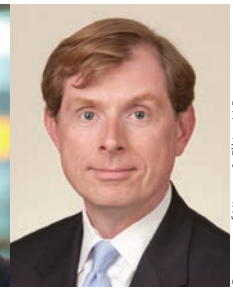
The D.C. Bar Continuing Legal Education (CLE) Program has lined up two courses in September that deal with appellate courts.

On September 11 the CLE Program will host the "Supreme Court Review and Preview 2013," a popular annual course that features a panel discussion of the issues and cases that will come before the country's highest court in the next term. The program also will look back at the highlights of the Court's 2012–13 term and what they may indicate for the future.

Lisa S. Blatt, a partner at Arnold & Porter LLP; John P. Elwood, a partner at Vinson & Elkins LLP; Irv Gornstein, visiting professor and executive director of the Supreme Court Institute at Georgetown Law Center; and Amy Howe, a partner at Goldstein & Russell, P.C. and editor of SCOTUSblog, will serve as faculty.

Courtesy of Arnold & Porter LLP

Lisa S. Blatt



Courtesy of Vinson & Elkins LLP

John P. Elwood

The course takes place from 9:30 a.m. to 12:45 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Health Law Section; International Law Section; Labor and Employment Law Section; Litigation Section; and Real Estate, Housing and Land Use Section.

On September 23 the CLE Program will offer the course "From the Ground Up: Fundamentals of Practice Before the D.C. Court of Appeals 2013," designed to guide both new and experienced attorneys in steering a case through the District's highest court.

Attendees will walk away from this course with a better understanding of what can be appealed and how to appeal properly, as well as how to deal with post-trial motions and other matters that may threaten their client's ability to appeal. Speakers also will provide insights on how and when attorneys should consider the use of an extraordinary writ, and how to handle an emergency matter properly and in a timely manner.

D.C. Court of Appeals Judges John R. Fisher and Inez Smith Reid (retired); Rosanna Mason, staff counsel at the D.C. Court of Appeals; and D.C. Solicitor General Todd S. Kim will lead this class.

The course takes place from 6 to 9:15 p.m. and is cosponsored by the D.C. Bar Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Real Estate, Housing and Land Use Section; and Tort Law Section.

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

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

Children's Law Center Honors Steptoe & Johnson as 'Champion'

The Children's Law Center (CLC) will host its annual Helping Children Soar benefit from 6 to 9 p.m. on September 17 where it will honor Steptoe & Johnson LLP with its Pro Bono Champion award.

In addition to serving as a fundraiser, Helping Children Soar acknowledges those in the legal, political, business, and philanthropic communities who support CLC's work in helping underprivileged children and their families in the District of Columbia. This year the event will focus on the ripple effect of changing the life of one child or that child's family and

the entire community.

Latham & Watkins LLP is the benefit's first Visionary Sponsor for giving at the $50,000 level.

The event takes place at The Kennedy Center Roof Terrace Restaurant, 2700 F Street NW. Proceeds will benefit the CLC.

For more information, contact Lori Piccolo at 202-467-4900, ext. 582, or visit www.childrenslawcenter.org/benefit.

Pro Bono Program Offers Various Training Opportunities in the Fall

The D.C. Bar Pro Bono Program will hold training sessions on public benefits and parole in September, followed by a two-part training on child custody in October.

The Public Benefits Training Series opens with "TANF Session: Cash Assistance for Families in Need" on September 18. The course is timely in that steep benefits reductions are coming this October for families who have received Temporary Assistance to Needy Families for more than five years.

Westra Miller and Lucy Newton of the Legal Aid Society of the District of Columbia will discuss eligibility, benefits, the new vendor contracts, the 60-month time limit, and sanctions for this critical safety net program.

The training continues on September 25 with "Food Assistance Session: Supplemental Nutrition Assistance Program (SNAP) (Formerly Food Stamps), WIC, and Other Food Resources." Alexandra Ashbrook of D.C. Hunger Solutions and Jessica Luna of The Urban Institute will focus on these nutrition programs that assist low-income District residents.

Both sessions take place from 12 to 2 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. The training series is cosponsored by AARP Legal Counsel for the Elderly, D.C. Hunger Solutions, Legal Aid, Washington Legal Clinic for the Homeless, and Whitman-Walker Health.

On September 24 the Pro Bono Program, in association with the Public Defender Service for the District of Columbia (PDS) and Williams & Connolly LLP, will hold the "Parole Advocacy Workshop" to teach attorneys how to defend individuals facing incarceration in hearings before the U.S. Parole Commission.

The workshop will explain the procedures of the Parole Commission and provide useful training on working with indigent clients and defending criminal charges.

No particular expertise is required to participate in the workshop, but attorneys must be admitted to practice in at least one U.S. jurisdiction. Malpractice insurance is not provided by the Pro Bono Program or by PDS. Participants are strongly encouraged to represent two clients at parole hearings with the assistance of experienced attorneys at PDS.

The workshop takes place from 9 a.m. to 5 p.m. at Williams & Connolly, 725 12th Street NW. It is cosponsored by the D.C. Bar Litigation Section, District of Columbia Affairs Section, and Criminal Law and Individual Rights Section.

On October 1 and 8 the Pro Bono Program will hold a child custody training designed to help attorneys who have little or no experience in family law matters to competently and comfortably handle custody and support cases for pro bono clients. The training will focus on child custody proceedings in the District involving indigent or low-income families.

The first session will discuss what child custody is, filing a child custody case, third-party child custody cases, and child support. Session two will take "a view from the bench" and address domestic violence, case preparation, and courtroom proceedings.

Attorneys need not have a particular expertise to attend. Attendees, however, must agree to accept one pro bono child custody case from at least one of the sponsoring organizations, unless the attendee is currently handling a pro bono family law case with one of these organizations.

The training takes place from 6 to 8:30 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

The training is also sponsored by Bread for the City, Catholic Charities, Children's Law Center, Columbus Community Legal Services at The Catholic University of America, and Legal Aid, and cosponsored by the D.C. Bar District of Columbia Affairs Section, Family Law Section, and Litigation Section.

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

ABA Merger Practice Workshop Highlights Enforcement Trends

On September 12 the American Bar Association's Section of Antitrust Law will hold the Merger Practice Workshop, a new, demonstration-based program that will take attendees inside the life cycle of a hypothetical merger.

The workshop will cover a range of topics, from pre-signing antitrust counseling to second request compliance and advocacy, and from competition authorities to negotiating remedies and consent decrees.

Speakers will highlight new developments in U.S. and international merger enforcement trends and demonstrate how critical decisions are actually made, as well as provide examples of important interactions between counsel and enforcers.

Attendees will have the opportunity to gain deep, practical insights into the merger review process from some of the most experienced practitioners in the government, corporate, and private practice sectors.

The workshop takes place at The George Washington University, Jack Morton Auditorium, 805 21st Street NW. Registration opens at 8 a.m., opening remarks are at 8:30 a.m., and a networking reception takes place from 5:45 to 7 p.m.

For more information, visit www.americanbar.org/calendar/2013/09/mergers_practiceworkshop.html.

CLE Offers New Courses on D.C. Nonprofit Law, Legal Writing

The D.C. Bar Continuing Legal Education (CLE) Program will offer two new courses in September, one an update on the District of Columbia's new nonprofit corporation law, the other a guide to legal writing.

Courtesy of Goldberg & Associates, PLLC

James M. Goldberg

"Update on the New D.C. Nonprofit Corporation Code: New Regulations, Technical Amendments, and Recent Experiences" on September 19 will review the major changes to the District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2010, which went into effect on January 1, 2012.

The course will examine the major revisions to the act, the substantive changes of the Technical and Harmonizing Amendments Act, and the key points of the D.C. Department of Consumer and Regulatory Affairs' (DCRA) regulations.

Josef Gasimov of the DCRA; James M. Goldberg of Goldberg & Associates, PLLC; Elizabeth Kingsley of Harmon, Curran, Spielberg & Eisenberg LLP; and Peter C. Wolk of the Law of Peter C. Wolk will serve as faculty.

The course takes place from 10 a.m. to 12:15 p.m. and is cosponsored by all sections of the D.C. Bar.

On September 20 the CLE Program

will offer "Four Steps to Standout Legal Writing," an interactive course that will provide attorneys with practical tools to help them make their next brief, letter, memo, or e-mail concise and more powerful.

Ross Guberman of Legal Writing Pro will teach attendees how to trim clutter, refine structure, improve flow, integrate legal authority effectively, draft winning facts, and avoid doing the little things that bug judges.

The course takes place from 9 a.m. to 4:30 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Antitrust and Consumer Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; International Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Real Estate, Housing and Land Use Section; and Tort Law Section.

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

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

ABA Course Examines Recent FCPA Challenges, Proceedings

The American Bar Association (ABA) Center for Professional Development and the ABA Criminal Justice Section and Section of International Law will hold a two-day program on the Foreign Corrupt Practices Act (FCPA) in September.

The sessions take place on September 18 and 20 at The Westin Georgetown, 2350 M Street NW, where faculty will provide a timely and substantive briefing on recent developments for companies and their officers and employees.

This year's program will examine trends stemming from recent proceedings brought by the U.S. Department of Justice and the U.S. Securities and Exchange Commission (SEC), as well as address recent challenges to the FCPA both in Congress and the courts.

Speakers will focus on certain recurring issues faced by practitioners and companies alike. In addition, the program will feature both an in-house perspectives panel and a panel dedicated to SEC enforcement and how it has evolved since the SEC's establishment of its FCPA unit.

For more information, visit www.americanbar.org/calendar/2013/09/fcpa2013.

Women's Bar Brings Back Stars of the Bar Reception

The Women's Bar Association (WBA) of the District of Columbia will hold its annual Stars of the Bar fall networking reception on September 19.

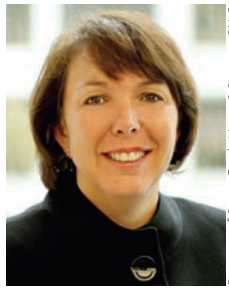
The reception is free to attend and offers guests the opportunity to network and learn more about the WBA. The event usually draws over 300 attorneys, judges, and law students.

The reception takes place from 6 to 8 p.m. at Hogan Lovells, Columbia Square, 555 13th Street NW. For more information, contact the WBA at 202-639-8880, or admin@wbadc.org, or visit www.wbadc.org.

CLE Program Offers Diverse Practice Courses in September

The D.C. Bar Continuing Legal Education (CLE) Program will offer attorneys a wide range of courses in September, from financial accounting to covenants not to compete to depositions.

"Financial Accounting Basics for Lawyers" on September 12 is a primer on the three types of financial statements: income statement, balance sheet, and statement of cash flows. Attendees will learn the different components of each financial statement and how they are interrelated.



Courtesy of Regan Zambri Long & Bertram, PLLC

Catherine D. Bertram

Designed for attorneys with little or no formal accounting background, this course will cover a variety of technical accounting matters that attorneys may encounter in their practice. It will help practitioners better represent their clients and understand the business, as well as the financial issues and concerns that affect their legal advice.

Attorney Felicia C. Battista and David J. Piper of Deloitte Financial Advisory Services LLP will serve as faculty.

The course takes place from 6 to 8:45 p.m. and is cosponsored by the D.C. Bar Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Estates, Trusts and Probate Law Section; Family Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Taxation Section.

On September 17 the course "Covenants Not to Compete in the District of Columbia, Maryland, and Virginia" will teach attendees the ins and outs of covenants not to compete, including drafting, negotiating, and enforcing from both the employer and employee's perspective.

Designed for employment and business lawyers, the course will provide attendees with current law and practical tips.

Faculty includes Edward Lee Isler, a partner at Isler Dare Ray Radcliffe & Connolly, P.C.

The course takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Corporation, Finance and Securities Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; and Litigation Section.

The course "Depositions That Work: Advanced Strategies" on September 18 is aimed at attorneys with some litigation experience who would like to improve their skills in taking depositions.

Topics to be discussed include deposition scheduling, videotaping and audiotaping of depositions, depositions upon written questions, depositions of attorneys, depositions of experts, and Rule 30(b)(6) depositions.

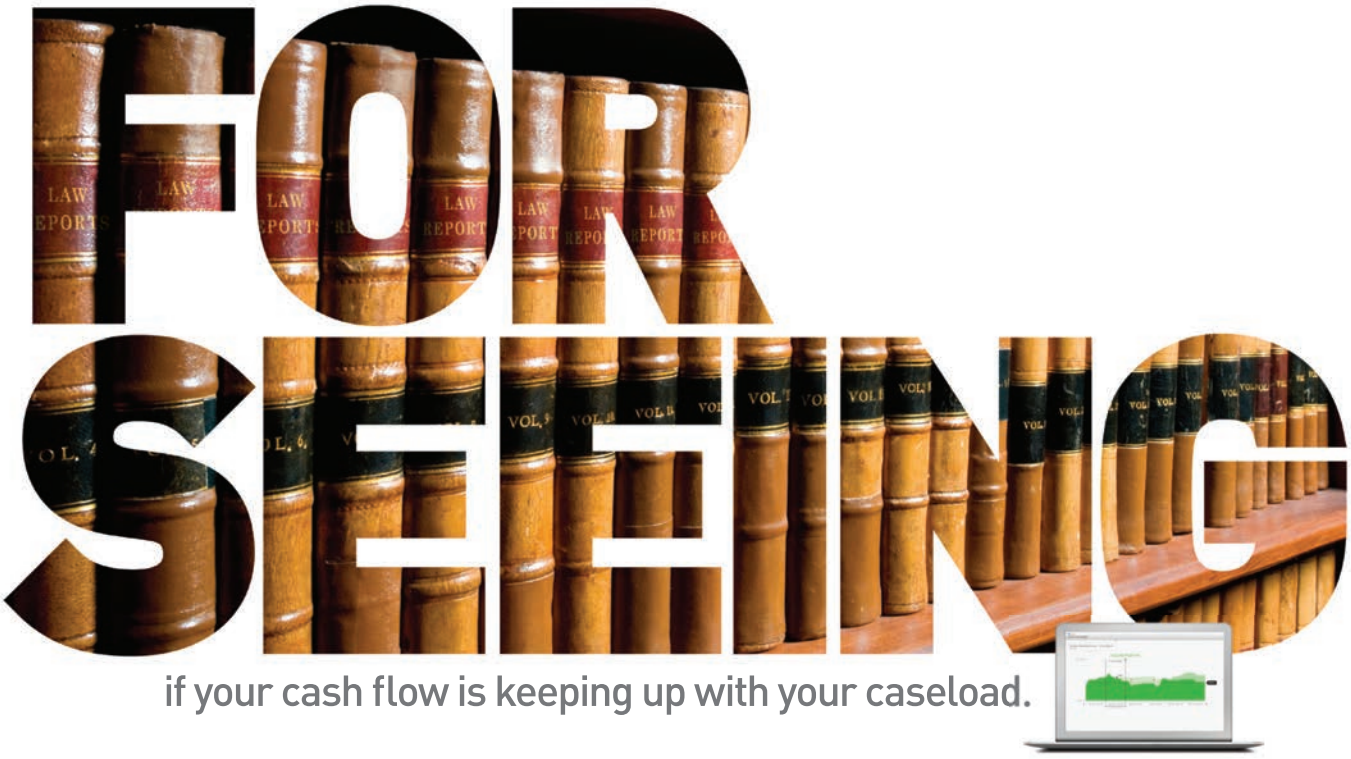
Catherine D. Bertram, a partner at Regan Zambri Long & Bertram, PLLC; Mitchell Riggs of LifeNow Video; and Michael F. Williams, a partner at Kirkland & Ellis LLP, will serve as faculty.

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

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

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

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



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speaking of ethics

By Saul Jay Singer

Mick Wiggins

Rule 1.7(b)(4) Conflicts: When It's *Personal*!

As Associate General Counsel (Litigation) for Federal Agency in the District of Columbia, Alice Cooper and Marilyn Manson are responsible for defending their agency against employment discrimination cases brought by Agency personnel. They receive an official notice advising that, because of the sequester,[1] all Agency lawyers will be subject to an 11-day administrative furlough.[2] A furious Alice is determined to appeal her furlough before the Merit Systems Protection Board, as is her right,[3] but Marilyn, though unhappy, believes that an MSPB appeal is futile and writes off her loss as yet another sacrifice to be made as part of her career in public service.

At an emergency meeting of all legal personnel a few weeks later, Agency General Counsel advises that the Agency has been hit with literally hundreds of employee claims challenging the legality and propriety of the furloughs and that, as such, *every* lawyer in the Litigation Branch is expected to roll up his or her sleeves and put in the time and effort necessary to defend the Agency against all such claims. When Alice advises General Counsel that she has her own claim pending on that very issue, she is sternly rebuked and ordered to "do your job." When Marilyn protests that, although she is not pursuing her own claim, she feels uncomfortable litigating against her colleagues—the very people with whom she interacts on a day-to-day basis and with whom she will have to continue to work after the furlough cases end—she is similarly admonished and ordered by General Counsel to do what she was hired to do. When the attorneys return to their offices, they each find 10 furlough case files waiting for them.

Meanwhile, across town at the Conflicts 'R Us[4] law firm, George Eliot has been retained to represent Plaintiff in a huge medical malpractice case against Irving Julius, M.D., one of the largest clients of an accounting firm that George owns on the side. "No problem," he tells his partners. "I never represented Dr. I, and he never received any legal advice from me; in fact, I'm almost certain that he doesn't even know that I'm an attorney."

George's partner, Patrick Benatar, has been working a large contingency case for almost two years and finally—finally!—the defendant has put a settlement offer on the table. Patrick's house is "under water," his divorce and the court's alimony and support order have financially devastated him, and he is at the end of his rope in attempting to avoid a bankruptcy filing, and if his client accepts the settlement offer, which George thinks is fairly reasonable, his earned contingency fee would offer financial salvation.

Another case comes in from Joannie Sue Cash (aka "A Lawyer Named Sue"), a former Conflicts 'R' Us partner. Sue now serves as in-house counsel for Kumquat Komputer, Inc., in which capacity she refers the more complex cases out to various D.C. law firms. Well aware of the excellence and reputation of her former firm's patent practice, she refers to Conflicts 'R' Us a particularly challenging patent infringement case against Computer Chips Ahoy, Inc.

* * *

Many lawyers inherently think of "conflicts" as those that arise between two or more current clients[5] or between a current and a former client.[6] Thus, for example, George Eliot sees no problem in filing suit against a large client of his accounting firm because he never represented that client as a lawyer.[7] However, disqualifying conflicts may not involve conflicts between two or more clients but, rather, conflicts that are personal to the lawyer.

The analysis of such conflicts begins with Rule 1.7(b)(4):

> (b) Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if: . . .
>
> (4) The lawyer's professional judgment on behalf of the client will be *or reasonably may be* adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.

(Emphasis added). This rule has exceptionally broad applicability; a lawyer has a Rule 1.7(b)(4) conflict not only where there exists an actual personal conflict, but even in cases where it is objectively *possible* for the lawyer to "pull his punches" in representing a client. Thus, for example, as to our furlough hypothetical, the D.C. Bar Legal Ethics Committee determined in Legal Ethics Opinion (LEO) 365 that Rule 1.7(b)(4)

> generally applies to a lawyer who is asked to defend an agency's furlough of other agency employees while the lawyer is pursuing her own challenge to the same furlough. [Such a lawyer] might be motivated to pull her punches in defending against substantially similar complaints brought by other agency employees, especially if the lawyer's advocacy on behalf of the agency may detrimentally affect her own case.

This opinion establishes clearly that Alice would have a personal conflict were she to defend the Agency against furlough claims by other Agency personnel. However, I submit that Marilyn would also have a Rule 1.7(b)(4) conflict pursuant to the broad "punch-pulling" analytical approach even though she herself has decided not to pursue a furlough action against the Agency. Because of her obviously strongly felt personal concerns about litigating against her friends and coworkers, there exists a reasonable possibility that her professional judgment on behalf of the Agency may be compromised.

However, notwithstanding their personal conflicts, it may still be ethically permissible for Alice and Marilyn to represent the Agency in these furlough cases

if they can meet the two requirements of Rule 1.7(c):

> (c) A lawyer may represent a client with respect to a matter in the circumstances described in paragraph (b) above if
>
> (1) Each potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation; and
>
> (2) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.

As comment 7 explains:

> The underlying premise is that disclosure and informed consent are required before assuming a representation if there is any reason to doubt the lawyer's ability to provide wholehearted and zealous representation of a client . . . Although the lawyer must be satisfied that the representation can be wholeheartedly and zealously undertaken, if an objective observer would have any reasonable doubt on the issue, the client has a right to disclosure of all relevant considerations and the opportunity to be the judge of its own interest.[8]

Rule 1.7(c)(1), which is an informed consent provision,[9] is easily met in this furlough case, where the client (i.e., the Agency) not only consents to the representation but, in fact, directs it.[10] Many lawyers erroneously conclude that obtaining the client's informed consent effectively resolves the personal interest conflict. In fact, pursuant to Rule 1.7(c)(2), the lawyer must also undertake *both* a subjective self-assessment and an objective analysis to determine whether, notwithstanding the client's informed consent, she will be able to go forward devoting no less than 100 percent of her efforts to the client with full competence, diligence, and zealousness and without a thought to her own interests. In the language of LEO 365:

> [T]he lawyer must [subjectively] hold such a belief *and* that belief must be reasonable under an objective standard . . . the prohibition of Rule 1.7(b)(4) is one which is highly dependent on the circumstances of the representation and the lawyer's own circumstances . . . we can do no more than identify the conflict of interest considerations, and leave it to the inquirer to determine whether the particular circumstance of his representation of his client are such that his judgment "will be or reasonably may be affected" . . . .

Some lawyers in Alice's position could undertake the requisite self-evaluation and subjectively conclude that "I am a consummate professional who can, and will, continue my practice of always being able to set aside all personal distractions and concerns so as to devote myself fully to the client's interests." However, whether a reasonable person in Alice's position could *objectively* come to that conclusion is, at the very least, arguable. Moreover, while it would almost certainly be generally easier for lawyers who have no furlough claims against the Agency to pass the objective test, Marilyn's personal concerns about litigating against her colleagues might mean that she could not satisfy the Rule 1.7(c)(2) subjective test and that, as such, she must refuse any assignment to represent the Agency against furlough claims.

It is important to note a significant distinction between personal conflicts under Rule 1.7(b)(4) and most other conflicts.

George Eliot has a clear Rule 1.7(b)(4) conflict because there is, at the very least, the possibility that he will "pull his punches" while representing Plaintiff in fear of alienating defendant Dr. I, a very large and important client of his accounting firm. Before commencing the representation, George will be required to: (1) obtain Plaintiff's informed consent to undertake the representation, after fully disclosing the scope of his relationship with Dr. I; and (2) undertake the requisite subjective self-evaluation to ensure that he can devote all his efforts and resources to Plaintiff, notwithstanding his broad personal concern for Dr. I's interests.

The financially desperate Patrick Benatar, who has a massive self-interest in getting his client to settle, would certainly be required to disclose to the client his financial problems and his keen personal interest in accepting the settlement offer. Even if the client agrees to grant informed consent to Patrick's continued representation, I think it would be very difficult indeed for Patrick to satisfy the Rule 1.7(c)(2) subjective test, and arguably impossible to believe that an objective person in Patrick's position would not at all be influenced by his great personal need to facilitate a settlement.

Similarly, there is at least the possibility that, in referring Kumquat Komputer to Conflicts 'R' Us, Sue Cash is trying to hedge her bets and curry favor with her former law firm in the event that she decides to return to her practice there, or that she is otherwise interested in promoting and furthering her connections to firm lawyers. As such, she would have to first obtain informed consent from Kumquat's duly authorized constituent[11] before making the referral. As to Rule 1.7(c)(2), the objective test should not be a problem here because a reasonable person could conclude that a lawyer with years of experience at a firm and who has intimate knowledge of that firm's strengths and weaknesses would be in a particularly strong position to determine the qualifications of that firm to serve as outside counsel. Subjectively, Sue must determine whether or not she has the best of motives and is acting solely in her client's interest in referring Kumquat to Conflicts 'R' Us.

It is important to note a significant distinction between personal conflicts under Rule 1.7(b)(4) and most other conflicts. While the D.C. Rules, unlike the American Bar Association Model Rules, generally do not permit ethical screening,[12] a specific exception is made for lawyers with personal conflicts. This means that even if George Eliot, Patrick Benatar, and Sue Cash have unresolvable personal conflicts, they may be timely screened and other Conflicts 'R Us lawyers could represent those clients in those cases.[13]

Finally, a practice tip: Traditional systemic conflicts checks, where firms and lawyers check each new client against a database of former and existing clients, are necessary—but not sufficient—to determine if a conflict exists. In each case, lawyers involved in a prospective representation must carefully consider Rule 1.7(b)(4) and the possibility of a disqualifying *personal* conflict. Moreover, lawyers must be ever vigilant regarding the possibility that a personal conflict may later rear its ugly head during the course of a representation.

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

Notes

1 Automatic budget sequestration is a provision of the Budget Control Act of 2011, Pub. L. 112–25, S. 365, 125 Stat. 240, signed into law by President Obama on August 2, 2011.

2 The U.S. Office of Personnel Management defines an administrative furlough as "a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations," noting that [F]urloughs that would potentially result from sequestration would generally be considered administrative furloughs."

3 *See generally* 5 C.F.R. pts. 351, *Reduction in Force*; 752, *Adverse Actions*.

4 The ethical propriety of this firm name is beyond the scope of this article. *See*, however, Rule 7.5 (Firm Names and Letterheads).

5 *See* generally Rule 1.7 (Conflict of Interest: General).

6 *See generally* Rule 1.9 (Conflict of Interest: Former Client).

7 Potential issues arising out of Rule 5.7 (Responsibilities Regarding Law-Related Services) are beyond the scope of this article.

8 *See also* Comment 11: "The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice."

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

In the context of resolving personal conflicts, it is critically important for a lawyer seeking to represent New Client to carefully consider the implications of Rule 1.6 (the duty to maintain and protect client confidences and secrets) in seeking informed consent. If, for the consent by New Client to be "informed," the lawyer would be required to disclose Rule 1.6-protected information from another client (current or past), the lawyer would be ethically prohibited from doing so. The result would be that the lawyer could not obtain the requisite *informed* consent; he could not satisfy Rule 1.7(c)(1); he, therefore, could not remove the taint of his Rule 1.7(b)(4) personal conflict; and he would be precluded from representing New Client.

10 The important question of when a lawyer must refuse to follow the orders of a supervisor is beyond the scope of this article. *See generally* Rule 5.2 (Subordinate Lawyers) and Saul Jay Singer, *Obedience,* Speaking of Ethics, Wash. Law., Jan. 2009, at 12. As to following orders from a supervisor in the specific context of being ordered to represent an agency against furlough actions by fellow employees, *see* the excellent discussion on this question in LEO 365.

11 *See* Rule 1.13(a) (Organization as Client).

12 Pursuant to Rule 1.0(l), screening "denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law."

13 *See* Rule 1.10(a)(1) (Imputed Disqualification: General Rule). There is no imputation of a lawyer's personal conflicts to other firm lawyers if "the prohibition of the individual lawyer's representation is based on an interest of the lawyer described in Rule 1.7(b)(4) and that interest does not present a significant risk of adversely affecting the representation of the client by the remaining lawyers in the firm."

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE STEVEN T. BERMAN. Bar No. 417783. June 27, 2013. The D.C. Court of Appeals disbarred Berman by consent.

IN RE ROBERT N. VOHRA. Bar No. 426365. June 27, 2013. The D.C. Court of Appeals suspended Vohra for three years with fitness. While representing two married clients in an immigration matter, Vohra violated rules pertaining to competence, skill, and care; zeal and diligence; intentional failure to seek clients' lawful objectives; intentional prejudice to clients; failure to act with reasonable promptness; failure to keep clients reasonably informed; failure to explain the matter to the extent reasonably necessary to allow clients to make informed decisions; knowing false statement of material fact to a tribunal; knowing false statement of fact in connection with a disciplinary matter; commission of a criminal act that reflects adversely on the lawyer's honesty, truthfulness, or fitness as a lawyer; dishonesty, fraud, deceit, or misrepresentation; and serious interference with the administration of justice. Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 3.3(a)(1), 8.1(a), 8.4(b), 8.4(c), and 8.4(d).

Reciprocal Matters

IN RE MARTA M. BERTOLA. Bar No. 447898. June 13, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Bertola for 60 days with fitness. Bertola consented to discipline in Maryland for misconduct, including unauthorized practice of law while her license was decertified due to her failure to file required IOLTA and pro bono reports.

IN RE GERALD F. CHAPMAN. Bar No. 432168. June 6, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and indefinitely suspended Chapman, with the right to seek reinstatement after 90 days. Chapman's reinstatement is contingent upon a showing of fitness. The Maryland court found that Chapman violated rules relating to communication with clients, improper fees, safekeeping property, responsibilities regarding nonlawyer assistants, and dishonesty.

IN RE DALE E. DUNCAN. Bar No. 370591. June 13, 2013. In a reciprocal matter from Virginia, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Duncan for two years, which shall be served after he completes his earlier suspension. In Virginia, Duncan was found to have failed to cooperate with a disciplinary investigation.

IN RE MICHAEL LAWRENCE EISNER. Bar No. 987138. June 13, 2013. In a reciprocal matter from Virginia, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Eisner. Eisner consented to revocation of his license in Virginia for misconduct, including abandonment of clients and failure to safeguard client property.

IN RE SHANNON M. GUIGNON. Bar No. 977747. June 13, 2013. In a reciprocal matter from Virginia, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Guignon. Guignon consented to revocation of his license in Virginia for misconduct, including neglect of a client's matter and subsequent dishonesty to conceal his earlier misconduct from the client.

IN RE THOMAS A. HAWBAKER. Bar No. 416661. June 6, 2013. In a reciprocal matter from California, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Hawbaker. The California court found that Hawbaker willfully misappropriated settlement funds.

IN RE KIMUEL W. LEE. Bar No. 424701. June 6, 2013. In a reciprocal matter from Louisiana, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Lee for two years, with reinstatement conditioned upon a showing of rehabilitation in accordance with the provisions of D.C. Bar R. XI, §§ 3(a)(2) and 16, *nunc pro tunc* to November 27, 2012. The Louisiana court found that Lee violated rules relating to incompetence, collecting an unreasonable fee, failure to timely turn over property to third parties, and dishonesty.

IN RE JOSEPH LOUIS LISONI. Bar No. 966515. June 6, 2013. In a reciprocal matter from California, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Lisoni for three years, with the last year of the suspension stayed subject to a four-year probationary period, and with reinstatement after serving the two-year active suspension period subject to a fitness requirement, the payment of restitution, and other conditions imposed in California. In California, Lisoni stipulated to violations of rules relating to a conflict of interest, failure to

comply with a court order, and misappropriation of client funds.

IN RE HENRY D. MCGLADE JR. Bar No. 379954. June 6, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and indefinitely suspended McGlade, with the right to seek reinstatement after five years or after his reinstatement to the bar in Maryland, whichever is first. The Maryland court found that McGlade violated rules relating to incompetence, negligence, communication, candor toward the tribunal, dishonesty, and conduct prejudicial to the administration of justice.

IN RE GREGORY MILTON. Bar No. 978857. June 6, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and indefinitely suspended Milton, with the right to seek reinstatement after 90 days, *nunc pro tunc* to May 17, 2013. Milton's reinstatement is contingent upon a showing of fitness. In Maryland, Milton stipulated that his conduct violated rules involving neglect of a client's matter, failure to communicate with a client, dishonesty, and candor to the tribunal.

IN RE ALFRED A. PAGE JR. Bar No. 480892. June 13, 2013. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed identical reciprocal discipline and disbarred Page. Page consented to disbarment in Maryland for misconduct, including abandonment of a client, dishonesty to a client, dishonesty to a court, and failure to safeguard an advanced fee until earned.

IN RE JAMES C. UNDERHILL JR. Bar No. 297762. June 13, 2013. In a reciprocal matter from Colorado, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Underhill for one year and one day, stayed in favor of a nine-month suspension and a two-year probationary period subject to the conditions imposed by the state of Colorado, *nunc pro tunc* to March 12, 2013. Underhill consented to discipline in Colorado for misconduct, including failure to deposit unearned fees in trust, failure to return unearned fees, failure to supervise nonlawyer assistants, neglect of client matters, and dishonesty.

IN RE JINHEE KIM WILDE. Bar No. 436659. June 20, 2013. In a matter involving a criminal conviction entered in a foreign country, the D.C. Court of Appeals dismissed the matter without prejudice to Bar Counsel's initiating proceedings regarding Wilde pursuant to D.C. Bar R. XI, § 8.

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE EDWARD C. BOU. Bar No. 37713. June 18, 2013. Bou was indefinitely suspended from the practice of law in the District of Columbia based on his claim of disability pursuant to D.C. Bar R. XI, § 13 (e).

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

legal beat

By Kathryn Alfisi and Thai Phi Le

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

Chief Judge Washington Redesignated for Third Term

The District of Columbia Judicial Nomination Commission (JNC) has redesignated Eric T. Washington as chief judge of the D.C. Court of Appeals. His third consecutive term began August 6 and will last four years.

The redesignation comes after a public notice in March asking regular, active judges on the D.C. Court of Appeals to apply for the position, and inviting members of the community to offer comments regarding Judge Washington's performance.

In addition, the JNC held a public forum in June allowing members of the bench and bar as well as other interested individuals to ask the judge questions and hear his ideas for the future of the court. With the recently released 2013–2017 strategic plan for the D.C. Courts as his guide, Judge Washington noted at the forum that his top priority remains improving case resolution, ensuring that decisions are both fair and timely.

"The caseload is huge, highest per capita in the country. Timely case resolution is critical for promoting public trust and confidence," he said during the forum. The court made inroads during Judge Washington's last term, implementing a new case management system. The median time on appeal for cases dropped from 505 days in 2007 to 352 days in 2012.

Berkemeyer Photography

Eric T. Washington

Over the next four years, Judge Washington plans to increase education outreach, transparency, and public education about the court's activities. His goals also include building a stronger work force at the courthouse by offering greater educational and training opportunities for employees.

Judge Washington was appointed to the Superior Court of the District of Columbia in 1995, and joined the D.C. Court of Appeals in 1999. In 2005 he was named chief judge. He previously worked as a partner at Hogan & Hartson LLP (now Hogan Lovells).—*T.L.*

D.C. Practice Manual, 2013 Edition, Is Available for Purchase

The D.C. Bar and its sections have released the *District of Columbia Practice Manual, 2013 Edition*, a two-volume, soft-cover guide covering the basics of law in the District of Columbia.

Produced with the assistance of Thomson Reuters, this easy-to-use format brings together the collective knowledge of hundreds of experienced practitioners in 33 chapters.

A must-have resource and the starting point for every D.C. practitioner, the new manual has an introductory chapter on Finding the Law in the District of Columbia, followed by specific chapters covering Administrative Procedure, Alternative Dispute Resolution, Antitrust, Appellate Practice in the D.C. Court of Appeals, Art Law, Child Abuse and Neglect, Commercial Law, Consumer Protection, Corporate Practice, Criminal Law and Practice, Criminal Traffic Offenses, Domestic Relations, Employment Law, Environmental Law, Government Contracts, Health Maintenance Organization Act, Human Rights, Intervention Proceedings, Juvenile Law and Practice, Landlord and Tenant Practice, Legal Ethics and Lawyer Discipline, Mental Health Proceedings, Partnerships, Personal Injury, Real Property, Small Claims, Superior Court Civil Practice, Taxation, U.S. District Court Civil Practice, Wills and Estates, Workers' Compensation, and Zoning and Historic Preservation.

The title is available for $300 and may be ordered from the D.C. Bar Member Services Center, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. Credit card orders may be placed by secure fax to 202-942-9752. Individuals purchasing the new edition are placed on standing order and qualify for subscription pricing discounts on subsequent editions. Owners of the manual's 2012 edition will receive the 2013 edition automatically. (See ad on page 43 for order form.)

For more information about the title, contact the D.C. Bar Communications Office at communications@dcbar.org.

Report Shows Increased Pro Bono Work Among D.C.'s Large Law Firms

The 62 large law firms in the District of Columbia that are enrolled in the D.C. Bar Pro Bono Initiative spent 6 percent more time on pro bono work in 2012 than in the previous year.

The 2012 Results of the D.C. Bar Pro Bono Initiative showed that the 62 firms collectively worked more than 825,000 pro bono hours that year, with each attorney at these firms contributing 81 hours. The new report also revealed that 69 percent of all partners at the participating law firms performed pro bono work, marking a 4 percent increase from 2011. (See the full report at www.dcbar.org/for_lawyers/pro_bono/resources/report.cfm.)

The Pro Bono Initiative was established in 2001 with initially 41 of the largest law firms in the District making the pledge to provide pro bono legal services at specified levels. Under the initiative, each firm agrees to commit either 3 percent or 5 percent of their total billable hours, or for individual lawyers, 60 to 100 client hours, to pro bono work. These standards were created by and are used with permission from the Pro Bono Institute, and are modeled after the institute's Law Firm Pro Bono Challenge.

"These are excellent results that reflect the strong pro bono culture in our Bar," said James Sandman, chair of the D.C. Bar Pro Bono Committee and president of the Legal Services Corporation. "But we need to do more. Too many people in our city face legal issues involving safety, subsistence, and family stability—the loss of their homes, the loss of their children, and incidents of domestic violence—

without any lawyer to assist them."

Sandman said he is confident that with the help and continued leadership of the participating law firms, the Bar can help make America's promise of "justice for all" a reality in the District.

Throughout the year, law firms enrolled in the Pro Bono Initiative track their progress and report it annually to the D.C. Bar Pro Bono Program to create an accurate picture of pro bono service in the District.—*T.L.*

Bar Seeks Candidates for Various Committee, Board Vacancies

The D.C. Bar Board of Governors is seeking candidates for appointment in the fall to various committees. The deadline for submitting application materials is Friday, September 6.

Standing Committees: Community Economic Development Pro Bono Project Advisory, Continuing Legal Education, Election Board, Lawyer Assistance, Leadership Development, Membership, Practice Management Service, Pro Bono, Publications, Regulations/Rules/Board Procedures, Rules of Professional Conduct Review, and Technology.

Committees With Nonlawyer Designees: Community Economic Development Project Advisory, Lawyer Assistance, Membership, Neighborhood Legal Services Program (NLSP), and Practice Management Service.

NLSP: The Board of Governors is accepting applications from D.C. Bar members who are interested in serving on the NLSP board of directors. Candidates must be licensed attorneys who are supportive of the Legal Services Corporation Act and have an interest in, and knowledge of, the delivery of quality legal services to the poor. The NLSP board is required to attempt to reflect the diversity of the NLSP client population in its recommendations to the Bar's Board of Governors.

Additionally, the Bar is seeking candidates to fill vacancies on the Committee on Nominations, D.C. Judicial Nomination Commission (JNC), and D.C. Commission on Judicial Disabilities and Tenure (JDT). The deadline to apply for these vacancies is October 4.

Committee on Nominations: The Bar is accepting candidate résumés for the seven-member Committee on Nominations. This body is appointed each year in accordance with the Bar's bylaws and is responsible for nominating candidates for the Bar's officer and Board of Governors positions for the next Bar election. Any active Bar member who is not a Board of Governors officer or member and who has not served on the Committee on Nominations during the past three years is eligible to apply.

JNC/JDT: The Board of Governors will need to fill vacancies for the D.C. Judicial Nomination Commission and the D.C. Commission on Judicial Disabilities and Tenure. All terms are for six years. Applicants for these commissions have to be active members of the D.C. Bar and bona fide residents of the District of Columbia.

To apply for openings, applicants must submit a résumé and a cover letter stating the committee or board on which they would like to serve, and a description of work or volunteer experiences providing relevant skills for the position(s) sought. Applications that do not include the requisite cover letter with a description of relevant experience will not be considered. Leadership experience with other D.C. Bar committees, voluntary bar associations, or the Bar's sections is highly desirable. Descriptions of the committees can be found online at www.dcbar.org/inside_the_bar/structure/committees.cfm.

Submit materials by e-mail to executive.office@dcbar.org or by mail to D.C. Bar Executive Office, 1101 K Street NW, Suite 200, Washington, DC 20005-4210.

Don't Lose Your License! Pay Bar Dues by September 30

D.C. Bar members whose Bar dues and/or late fee, if applicable, are not received or postmarked by September 30 automatically will be suspended for nonpayment and subject to additional reinstatement fees.

Dues are $265 for active members and $130 for judicial members and inactive members. 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.

The deadline for paying dues was July 1. Dues not received or postmarked by July 15 were assessed a late fee of $30.

Payments may be remitted by mail or submitted online at www.dcbar.org/login. 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.

Members are encouraged to confirm all of their personal information on the dues statement, including e-mail addresses.

Garrett to Step Down as Head of D.C. Bar Foundation

Katherine L. "Katia" Garrett will step down as executive director of the D.C. Bar Foundation on January 1, 2014, ending nearly a decade of leading the largest private funder of free civil legal services for the poor in the District of Columbia.

Tim Coburn Photography

Katia Garrett

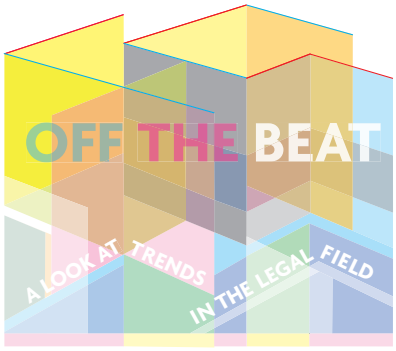
"I am both excited and saddened to have grown the Foundation to the point where a full-time leader is needed," Garrett said. "Sad because my own commitment to a part-time schedule means I will be traveling a different path, and excited at the prospect of continued strength and growth for [the Bar Foundation]."

Garrett was hired as the Bar Foundation's second executive director in 2005. Since that time, the organization has increased its annual grant awards from $1 million to between $3 million and $4 million. It also established a loan repayment program to assist legal services lawyers in the District, as well as a training and technical assistance program for grantees.

Under Garrett's leadership, the Bar Foundation was named Outstanding Foundation Partner by the Association of Fundraising Professionals–Washington, D.C., Metro Area Chapter, in 2008. In 2012 Garrett was honored as Woman Lawyer of the Year by the Women's Bar Association of the District of Columbia.

Marc Fleischaker, president of the Bar Foundation's board of directors, said Garrett's thoughtful and aggressive leadership enabled the organization to more than triple its grants over the past eight years. "We will be very sorry to see Katia leave the Foundation, but the extraordinary organization she has been instrumental in building will pave the way for new leadership to build an even stronger institution. The board, along with all of our grantee organizations and lawyers, will always be grateful for Katia's contributions to the Foundation and our city."

continued on page 21



Ruff Fellows Learn Challenges, Value of Public Interest Work

The discrimination case sat in the Office of the Attorney General (OAG) for the District of Columbia for about six years. Boxes of case-related materials passed from attorney to attorney before landing on Matthew Blecher's desk in 2012.

Blecher, then a recent graduate of Georgetown University Law Center and Charles F. C. Ruff Fellow at the OAG, scanned the papers. For a couple weeks he familiarized himself with the case, preparing for the opening statement.

"I was so nervous about it. I mooted it the day before [the trial] in front of . . . everybody's supervisor in every section," he said, laughing. "I didn't sleep the night before. [I] literally threw up. I mooted it again before we went over. We got to court and were ready for voir dire to start."

The judge called Blecher and his supervising attorney on the case, Sarah Knapp, into chambers, asking them to discuss a settlement one more time. "My jaw hit the floor. I thought for sure we were going to trial," he recalled. After a lengthy discussion, the case was settled.

While Blecher jokes about the heartbreak from missing his chance to make the opening statement, he said being able to work extensively on a case was an opportunity unique to Ruff Fellows that many of his classmates may not have been able to experience at their first post-law school jobs.

Filling a Need

The Charles (Chuck) F. C. Ruff Fellowship program was established in 2012 after Attorney General Irvin Nathan recognized a dual need: More public interest help at OAG and hands-on experience and insight to government service for new law school graduates. After an intensive interview process, the Fellows are placed in various divisions at the OAG for the yearlong program.

Named after the District's former corporation counsel (now known as attorney general), the fellowship embodies the spirit of a man who devoted much of his career to government service. Apart from serving as D.C. corporation counsel from 1995 to 1997, Ruff was U.S. attorney for the District, White House counsel to President Bill Clinton, and president of the D.C. Bar.

During the first year of the fellowship, the OAG partnered with Georgetown Law, The George Washington University Law School, and the University of the District of Columbia David A. Clarke School of Law, with an agreement that the program will be funded jointly by the schools and the District government.

"It gives us access to law school graduates who already are committed to public service. It allows us to work with people who have the same kind of passion that we have for the work and for the service," said Elizabeth "Sally" Gere, an assistant deputy attorney general who oversees the fellowship.

Not a Typical Internship

In two years the program has grown from 11 Fellows to 19 in the class of 2013–2014. The applicant pool grew exponentially as word got out about the program. Listening to the Fellows' stories, it's clear that the program is not the usual post-law school gig or internship.

"They got to do pretty much anything that one of our entry-level lawyers would do, which means they were treated no differently because they were Fellows . . . They weren't given better assignments. They weren't given fewer assignments. They were treated just as if they were new lawyers in the office," Gere said.

Fellows learn to take and defend depositions, write full-length briefs, manage their own caseload, mediate, negotiate, respond to emergency motions, and present a case before a judge, among other tasks.

Current Fellow Julia Maus recalled her first day in the Office of the Solicitor General. "I opened up my e-mail inbox and there was an e-mail saying, 'This is your first appeal. Start writing the brief.' I was so excited," she said.

Chanel Griffith, a 2012 Fellow, remembered a day of what seemed like an arraignment marathon that started at 10:30 a.m. when the court opened. "I did about 10 to 12 probable cause hearings," she said. "I was so into it. I hadn't eaten. I was just going and going."

She put in 12 hours of work that day, leaving at 10:30 p.m. "It takes stamina, but it also makes you work quickly, which is helpful for me as a new grad," she said.

Conquering the Curve

For the Fellows, the responsibilities are real, but the learning curve is steep. Their first hurdle: Conquering the jargon.

"They'd say this is an APO [assault on a police officer], AWIR [assault with an intent to rob] in a UE [unlawful entry]," said Griffith, who learned the new language using flash cards and getting quizzed by her husband.

Next, the Fellows have to face their fear. Portia Roundtree, a current Fellow in the civil litigation division, said she often feels extremely anxious before a trial despite putting in hours of work. But after getting support from her supervisor and speaking with a fellow attorney who, after more than 15 years of experience, still dry heaves before a trial, she began to realize she "can play ball."

Playing ball, however, doesn't always translate into a win. "It's especially hard when someone is really injured and they just don't understand," Griffith said. "It's the hardest thing for me to do. I don't think you'll ever get over that." But the Fellows realize they have more work to do and they buckle up again.

In the first class of Ruff Fellows, 10 have stayed with the OAG and one is clerking for a D.C. Superior Court judge.

"When I got my first case assigned to me as a first chair, my supervisor said, 'Your second chair will be Alicia [Cullen], our new Ruff Fellow.' I thought, wow, the whole system works," said Blecher, who still works in the public interest division as an assistant attorney general.—*T.L.*

The Bar Foundation has begun a process to search for Garrett's successor.—*K.A.*

Study Examines Racial Disparities in Arrests in the District

The Washington Lawyers' Committee (WLC) for Civil Rights and Urban Affairs released a report this summer stating that arrests in the District of Columbia appear to disproportionately target the African American community.

The study, "Racial Disparities in Arrests in the District of Columbia, 2009–2011," looked at all 142,191 adult arrests made in the District over that period. Overall, it found that more than 8 out of 10 individuals arrested were black, 7 out of 10 traffic arrests were black, and 8 out of 10 disorderly conduct arrests were black or Hispanic. When examining drug offenses, 9 out of 10 adults arrested were black despite national drug use trends.

"White people and black people do drugs in almost exactly the same ratios to their population," said WLC Executive Director Roderic V. O. Boggs at the July news conference introducing the report. "You would never ever know that by looking at the statistics."

Phil Fornaci, former director of the D.C. Prisoners' Project, said that he went into the process thinking he wouldn't be surprised by the results, but he was wrong. "The fact that African Americans are disproportionately arrested in literally every single field is very startling."

Boggs noted that he hopes the report serves as a "wake-up call to every single person who reads this." To address the issue, the study offered key recommendations, which included an investigation to assess what factors may be behind the disparities; community-wide dialogue and input from all affected groups, from police to judges; drug policy reform; and continued research.

In terms of research, Boggs said that his organization already has committed to a second study that will look at collateral consequences of arrests or convictions in the District under local and federal laws, as well as what types of civil rights challenges to these practices might be possible under existing civil rights laws or under new laws that WLC could propose. Boggs also said that a series of community forums was under way. The first was held in July.

"Why are 90 percent of these arrests taking place in the African American community? You see this across drug types. That's definitely worth attention," said Ranadeb Mukherjee, an associate at Covington & Burling LLP and one of the principal authors. "We're not saying there's necessarily animus behind it. There are a lot of explanations for why [these arrests have] occurred. But no matter how you explain it, 90 percent is a problem."

Mukherjee, along with a team of his colleagues at Covington, served as principal authors of the report. In addition, WLC was aided in the study by an Advisory Committee of senior and retired D.C. and federal judges.—*T.L.*

New Equal Justice Works Program Provides Legal Help for Veterans

In August the nonprofit organization Equal Justice Works kicked off its Veterans Legal Corps, which will deploy 36 lawyers and 200 law students to focus on the legal needs of low-income and homeless veterans nationwide.

"The needs are many," said Kerry O'Brien, director of federal programs and strategic initiatives at Equal Justice Works. "They need help accessing benefits they're entitled to from the Department of Veterans Affairs relating to service-connected injuries, particularly complex mental health disabilities. They have a whole host of legal issues as well related to housing; small tickets, fines, and warrants; child support; as well as myriad other civil legal issues."

The program, which is funded by AmeriCorps, will see participating lawyers and law students placed in legal aid organizations and one court across the country. Those organizations include Inner City Law Center in Los Angeles; Legal Aid Society of Cleveland; Land of Lincoln Assistance Foundation in Champaign, Illinois; Legal Assistance of Western New York in Jamestown, New York; and the University of Miami School of Law.

The first class of Veterans Legal Corps members will begin their service in September and will serve for two years. For more information on the Veterans Legal Corps program, visit www.equaljusticeworks.org.—*K.A.*

New Bar Members Must Complete Practice Course

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

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

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

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

The preregistration fee is $219; the onsite fee is $279. Upcoming 2013 dates are September 7, October 8, November 2, and December 10. Advanced registration is encouraged.

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

Da'aga Hill Bowman

The Washington Lawyers' Committee for Civil Rights and Urban Affairs honored (from left) Senior Judge John M. Ferren of the District of Columbia Court of Appeals, D.C. Public Schools Chancellor Kaya Henderson, Dickstein Shapiro LLP senior counsel Sidney Dickstein, and retired Judge Ricardo M. Urbina of the U.S. District Court for the District of Columbia for their commitment and advocacy to civil rights and equal justice.

Abramson Foundation Hands Out Scholarships to 8 D.C. Students

The Abramson Scholarship isn't your typical scholarship, recipients say. It's family. And this spring, eight more students joined the family as their accomplishments—and those of continuing scholars—were celebrated at the annual Abramson Scholarship Foundation reception.

The event, held at Venable LLP, featured keynote speaker David Soo, senior policy advisor to the under secretary of the U.S. Department of Education.

Each of the scholarship recipients graduated from a D.C. public or charter school and overcame difficult obstacles to reach the goal of higher education. The scholars will receive up to $15,000 of financial support as well as intensive mentoring through four years of college.

Some of the scholars are immigrants from Cameroon, China, and Nigeria. One remained at the top of her class while helping her single mother raise five younger siblings and working 20 hours a week as a waitress. Many are the first in their families to attend college.

Continuing scholar Omotayo Aweda came to the United States in December 2006 from Nigeria, where she witnessed some of the most horrific incidents such as bombings, terror attacks, and senseless murders. Believing that their daughter would have a better education in America, Aweda's parents sent her to live with her grandmother in the District.

"It was a huge culture shock for me," she recalled. But Aweda studied hard, and now she is aiming to start a nongovernmental organization focused on health policy and education that will cater to women and children in rural areas in her home country.

For Aweda, the scholarship is more than just funding for college. "They're not just saying, 'Go to school.' They're saying, 'Go to school, and I will go with you,'" she said. "I have my own biological family, but the Abramson [Scholarship Foundation] is a family on its own. They welcome me and accept me with all my flaws. They're helping to mold who I become." Aweda completed her freshman year at The George Washington University in May; she interns at the D.C. Department of Health Care Finance.

When Yue Ou emigrated from China to the District four years ago, she was terrified to speak to her peers because of the language barrier. But she wanted to make her mom proud. Ou's mother came to America in 2001 and worked in a restaurant at least 12 hours a day, six days a week, to raise the money needed to bring her daughter into the country. By the end of high school, Ou was vice president of the Asian Club and had mastered her most difficult class, AP U.S. History.

"My mom worked so hard for me. I [wanted] to get here, get the education, and try to give back to her, to give her a better life," said Ou, who will attend the University of Maryland in the fall and is interested in civil engineering.

Aside from the eight new scholars, 12 students are enrolled in college as Abramson continuing scholars. The scholarship was created in memory of Frederick B. Abramson, the first African American lawyer to head the D.C. Bar and whose commitment to public service inspired his colleagues.—*T.L.*

Judges Ferren, Urbina Receive 2013 Wiley A. Branton Award

On June 10 Senior Judge John M. Ferren of the District of Columbia Court of Appeals and retired Judge Ricardo M. Urbina of the U.S. District Court for the District of Columbia received the 2013 Wiley A. Branton Award from the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

The award was presented during the committee's annual luncheon and 45th anniversary celebration at the Grand Hyatt Washington. Named in honor of civil rights attorney Wiley A. Branton Sr., the award recognizes members of the legal community who have devoted their careers to civil rights advocacy and the mission to create equal justice for all.

The distinction was not lost on both judges. "It is an honor to accept an award named for Wiley Branton," Judge Ferren said. "He was a great civil rights lawyer."

Judge Urbina, who taught at Howard University School of Law during Branton's tenure as dean, told the audience, "To get an award in his name is probably one of the greatest honors that I can imagine."

Other awards were handed out during the luncheon, including the Vincent E. Reed Award, which was presented to Sidney Dickstein, senior counsel at Dickstein Shapiro LLP, and D.C. Public Schools Chancellor Kaya Henderson for their contributions to improving public education in the District.

"I want to thank the Washington Lawyers' Committee for encouraging these partnerships with schools. It is such a wonderful opportunity, not just a benefit for the schools but . . . a real benefit to law firms [and] other organizations," Dickstein said.

Bruce Hubbard, lead plaintiff in *Hubbard v. U.S. Postal Service*, a major class action brought by deaf postal workers after the anthrax scare in 2001, received the Alfred McKenzie Award, which honors clients whose courage produced significant civil rights victories. —*T.L.*

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

Continuing Legal Education

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

SEPTEMBER

9 What Estate Planning Attorneys Need to Know About Health Care Reform and Related Taxes
10 Handling DUI Cases in the District of Columbia Under the New Law
11 Supreme Court Review and Preview 2013
11 How to Litigate a Patent Infringement Case 2013
12 Financial Accounting Basics for Lawyers
16 Practicing Law Across State Lines: Ethics and Practice Advice
17 Covenants Not to Compete in the District of Columbia, Maryland, and Virginia 2013
18 Depositions That Work: Advanced Strategies
19 Update on the New D.C. Nonprofit Corporation Code: New Regulations, Technical Amendments, and Recent Experiences
19 Mastering Rules of Evidence Series, Part 1
20 Four Steps to Standout Legal Writing
23 From the Ground Up: Fundamentals of Practice Before the D.C. Court of Appeals 2013
24 Family Law Practice in the District of Columbia, Maryland, and Virginia: Practical Advice and Comparisons 2013
25 Beginner's Guide to Publishing Law and Publishing Agreements
26 Fee Agreements in the District of Columbia: Ethics and Practice Guide

Classes Qualify for MCLE Credit in ALL States

OCTOBER

2 Immigration Options for LGBT Clients in a Post-DOMA World
3 Mastering the Rules of Evidence Series, Part 2
7 Withdrawing from a Client Representation: Breaking Up is Hard to Do
9 Pretrial Skills Series, Part 1: Taking and Defending Depositions
10 What to Do When You Get a DNA Case
10 Drafting Financial and Health Care Powers of Attorney in the District of Columbia, Maryland, and Virginia
15 Changing Currents in Employment Law 2013: Recent Trends and Developments
16 Pretrial Skills Series, Part 2: Effective Use of Interrogatories, Document Requests, and Requests for Admission
18 Effective Writing for Lawyers Workshop
22 Introduction to Interpreting and Drafting Contracts
23 Bankruptcy 101 for Non-Bankruptcy Lawyers: Spotting the Issues
24 IP Basic Training: Patents, Trademarks, and Copyrights
24 Preventing and Litigating Will Contests in the District of Columbia, Maryland, and Virginia 2013
28 Ethics Issues in Family Law Cases in the District of Columbia, Maryland, and Virginia
29 Advising Foreign Nationals on Starting a Business in the United States 2013
29 Advertising Law and Unfair Competition: Substantiating and Litigating Claims
30 Avoiding Malpractice and Bar Complaints 2013

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

ABOVE THE GUIDELINES

Low Bono Widens Path to Access to Justice

By Kathryn Alfisi

THE LEGAL COMMUNITY IS WELL VERSED IN PRO BONO. Numerous legal services providers exist to help low-income clients, campaigns are built around the issue, and law firms as well as individual lawyers contribute time and money to promote access to justice. While the legal needs of individuals living in poverty remain acute and largely unmet, what about of those who earn too much money to qualify for free legal help but too little to hire an attorney?

For people who do not meet certain guidelines to avail of pro bono help (typically income at or below 200 percent of the federal poverty line), legal assistance may just be as elusive. It is a reality that inspired the concept of "low bono" work—legal help at discounted rates for clients of modest means.[1]

Luz Herrera, an associate professor at Thomas Jefferson School of Law, says the legal needs of those living above the poverty level have received more attention since the economy crashed.

"Poverty is so much more fluid now, and you have people coming in and out of the middle class and people . . . living paycheck to paycheck," says Herrera, who is considered a pioneer of low bono work. Without a financial cushion to fall back on, it can be difficult (if not impossible) for someone to afford a lawyer who charges $350 an hour.

Illustrations by Getty Images

The estimated number of middle-income Americans who need legal assistance can be hard to come by, although there is anecdotal evidence that it's not an insignificant figure.

"The shorthand figure is that we're able to provide representation for about 20 percent of the low-income people who have legal problems, and it's probably twice that for [those of] moderate income. Indications are that around 60 percent don't pursue judicial remedies for their problems," says William Hornsby, staff counsel for the American Bar Association's (ABA) Standing Committee on the Delivery of Legal Services.

Those who decide to take legal action may be turned away by legal services providers for exceeding their income guidelines for clients and end up going to court as pro se litigants, or turning to technology to access and complete legal documents. While these individuals may benefit from legal advice being offered at court self-help centers or by online resources, sometimes nothing can take the place of a legal counsel.

It is a need that low bono representation attempts to fill. Low bono work is often done by solo practitioners or attorneys at small firms, but more recently law schools have begun to take part through their so-called "incubator programs" that serve a dual purpose: addressing the legal needs of low- and middle-income people and providing training and jobs for recent law school graduates.

Reinventing Representation

The legal industry has become more accepting of unbundled legal services or limited scope representation, in which the lawyer and the client agree at the outset that the legal assistance to be provided is limited to specific tasks or certain parts of the case.

Many bar associations in the country have established reduced fee or modest means referral programs to help individuals who do not qualify for pro bono legal assistance find an attorney who can represent them for a lower fee. A number of unions and employers also have prepaid legal service plans.

Despite these offerings, affordable legal services still are not widely available to modest-means clients.

"I think it's a huge issue and it has been for years, and I don't know if we're any closer to solving it now than we were 10 or 20 years ago," says John Norwine, chair of the ABA Standing Committee on Lawyer Referral and Information Service and executive director of the Cincinnati Bar Association. "There are a lot of people out there, for example, who stay married for years because they cannot afford a divorce, or people who just need to get a simple will made but they never do because they're afraid it will cost them too much."

Peter Edelman, a professor at Georgetown University Law Center and chair of the D.C. Access to Justice Commission, says he has not seen the same strides being made to improve access to legal services for the moderate-income population.

"We really haven't cracked the nut in any kind of substantial way. These are all bits and pieces of things that are going on. I think I know enough about it to know that it's hard to do. With that said, I think it's very important and we should definitely be trying every model that we can think of, making use of all the new technologies, and see what else can be invented," he says.

The D.C. Bar will explore this new legal frontier with a dialogue later this year with stakeholders in the local legal community to address the issue of access to legal services for individuals whose incomes are above the poverty line, but below what's needed to afford the cost of traditional legal counsel.

Legal Counsel for the Elderly (LCE), an affiliate of AARP, has been ahead of the curve with its Reduced Fee Panel, created in 1987 to fill what LCE saw as a gap in the delivery of legal services to moderate-income seniors.

The panel has 14 attorney volunteers (interviewed and screened before entering into contracts with LCE) who provide legal services at reduced rates for clients referred to them by LCE's legal hotline staff. Roughly 250 to 300 cases are referred to these attorneys each year, according to LCE Executive Director Jan May.

Hotline callers who do not meet LCE's income or asset guidelines (200 percent of the federal poverty level), but who have less than roughly double those guideline amounts, qualify for a reduced rate of $90 an hour, a fixed amount for certain routine services, or a contingency fee of 30 percent. A hotline caller who has income or assets higher than the doubled amount may still be referred to a panel attorney and advised that the fee can be negotiated with the attorney.

About a year ago, May and Alan Herman, a supervisory attorney for LCE's legal hotline, put together a presentation for the D.C. Access to Justice Commission about the Reduced Fee Panel in the hope that other legal services providers would adopt similar programs.

"After you get it initially set up, it doesn't take a lot of time or energy. It probably takes about 10 to 15 percent of my time, and I'm the only administrator of the program here. It's not like it's difficult and you need a fulltime person to administer it," Herman says.

Based on LCE's experience, the need for such a program definitely exists, May says. "If you can figure out how to target and market to this income group, you'll

get the call. The people are there, there's no question about it," he adds.

LCE panel attorneys are almost always either from very small firms or are solo practitioners like Giannina "Gina" Lynn, the longest-serving panel volunteer. She became involved with LCE's Reduced Fee Panel when someone suggested to her that it would be a good source of clients.

"When I first started, it was really helpful because I wrote a lot of wills, which is great if you want to have a probate practice. . . . It really helped me get started because I didn't have a client base," Lynn says.

While panel cases made up a larger percentage of her practice early on, it now varies from where she could go months without having one case to handling three cases in one week. "I feel really good that a part of my practice is carved out for helping people who wouldn't be able to afford regular market-price wills. And even with the other people, I try to keep my rates low," she says.

An Ideal Match

Lynn is not the only solo practitioner offering low bono services to clients who could not afford full legal fees. But while low bono may be a noble effort, it can also be a financial challenge.

While working as a solo practitioner, Herrera charged $75 for a one-hour consultation and $150 an hour for her services, as well as flat fees. She says she was able to make a living, but she had to be very cost-conscious and went without the nice house or the expensive car that come with some legal careers.

"Those were choices I became comfortable with to serve the population I wanted to work with. I don't think every lawyer can do it, I think it has to be a lawyer who has a real commitment and interest in serving a particular client base," Herrera says. "I say that low bono is not for everyone and it's not forever. There could be individuals who start low bono practices in their first two years as they're building a client base, and then their fees could go up as their situation changes."

Dorene Haney recently became a solo practitioner offering low bono work after serving as a supervising attorney in the civil division of the D.C. Law Students in Court (LSIC). "I think there are people out there who have been doing this for years—they just don't charge that much and they let people take a long time to pay them. On a certain level this has been going on forever, it just didn't have a name," she says.

Haney plans to continue working on landlord–tenant-related matters, among other cases, as she did at LSIC, but says she is still in the process of figuring out certain details, such as how payment plans will work. One thing she does know is that there is a need for reduced-fee legal services.

> "There are solo and small firms that maybe . . . don't have enough work to fill all the hours. It can be helpful for a business to get that extra revenue from low bono."
>
> **—Michael Forster of Forster Law Firm**

"With LSIC, we would do a lot of intake, we'd talk to anybody, and we'd help people out even if they didn't meet the poverty level criteria, but we couldn't represent them. Doing that type of work, you get an idea of the scope of the problem," Haney says. "While there are a lot of people in landlord and tenant court who qualify for legal services, there's a fair number who don't but who still don't make a lot of money. There is a group of people who can't afford what you would think of as a typical attorney bill, but who really need help in order to pursue their matter. Not only people, but also small corporations; an LLC or something like that has to have a lawyer when they go to court, but they can't qualify for legal services because they're not a person. I think a lot of times that's a hard thing for them to do."

Haney commends the work of resource centers at the D.C. Superior Court to assist pro se litigants, but says there are people who still need a lawyer with them in court. She's concerned that pro se parties may not be handling their cases in an optimal way, such as deciding to settle when they don't need to.

Despite the economic challenges that come with providing legal services at discounted rates, low bono has drawn the interest of attorneys. Haney says that when she was preparing to go into low bono work, she heard from more than one fellow solo practitioner who also was interested in working at a reduced fee.

It's not the lack of interest that's the problem, Haney says, but the lack of a referral network or clearinghouse that would connect attorneys and clients. "The way people come to me is pretty haphazard—they talked to somebody who said 'Talk to Dorene'—and I'm sure that's true of everybody," she adds.

Apart from solo practitioners, low bono work is attracting some small law firms that focus on moderate-income clients. Some of these firms, especially those that are just starting off, that do not have enough work to justify hiring a new associate, may benefit from taking low bono cases.

Michael Forster, who runs Forster Law Firm with his wife, Kaitlin Forster, is one of those attorneys considering accepting low bono work. "There are solo and small firms that maybe . . . don't have enough work to fill all the hours. It can be helpful for a business to get that extra revenue from low bono. I know people earlier in their practice who weren't as well established taking cases like this," says Forster, a volunteer with LCE's Reduced Fee Panel.

Forster says low bono work helps to address two significant problems in today's legal landscape. "In my practice I've come across lots of people who tried to hire an attorney, but the cost of [either] the retainer or the hourly rate was too high for them, and I knew from my experience graduating from law school in 2010

that there are a lot of attorneys who don't have as much work as they want. I think there has to be some sort of way to match these two things up," he says.

Incubating Startup Practices

Reduced fee panels that connect modest-means clients with lawyers willing to provide legal services at lower rates only solve part of the problem. Many lawyers, particularly recent law school graduates, lack training and experience in law practice and in managing a solo practice to start their own law firms.

This is where incubator programs come into play. Law schools across the country are creating new models that provide recent law school graduates with hands-on training and experience and, at the same time, give the public access to affordable legal services. There are approximately 17 incubator programs nationwide that are either already operational or soon will be, according to Hornsby of the ABA.

"It's a product of the new economy . . . The idea is to combine a resource that combines the fact that a huge percentage of newly admitted [lawyers] are underemployed, and matching that up with the . . . goal of meeting the needs of moderate-income people fundamentally in the marketplace," Hornby says.

The first such program, Incubator for Justice, was established by the City University of New York School of Law in 2007. Since then other schools have followed suit, including California Western School of Law, Illinois Institute of Technology Chicago-Kent College of Law, University of Utah S. J. Quinney College of Law, and Pace Law School.

Lawyers for America, a pilot program at the University of California Hastings College of Law, places third-year law students at the Contra Costa County District Attorney's Office or at the Public Defender's Office where they will be employed for a year after graduation. The hope is that the program will be used as a model by other law schools. Brooklyn Law School is considering being among the first to do so.

"We started looking into it and talking about it. It's really about how do you finance more access to justice? We have unemployed lawyers and we have justice needs—why can't we get them together? There are these wonderful programs out there—the Skadden Fellowships, Equal Justice Works—but they're really very small when compared to the justice needs," says Marsha Cohen, a law professor and founding executive director of Lawyers for America.

"I think law firms should embrace this program with open arms, and hopefully open checkbooks, because when this program gains traction it's going to produce people looking for jobs as second-year lawyers who they will be able to bill as second-year," she adds.

Arizona State University (ASU) Sandra Day O'Connor College of Law launched its ASU Alumni Law Group this summer. The Law Group is a stand-alone nonprofit law firm modeled after a teaching hospital.

"We think that piece of the market isn't really working for a lot of people, including our graduates, anymore, so we said why don't we start a teaching law school that's just like a teaching hospital?" says law school dean Douglas J. Sylvester.

What makes the Law Group different than any other incubator program is that it will function as a law firm, according to Sylvester. There will be five to seven partners who will have the ability to hire and fire associates at the Law Group. Unlike a traditional law firm, it will accept cases based on what experiences the associates need, not on how much revenue the clients would bring to the firm. The Law Group aims to serve moderate-income individuals in practice areas such as consumer bankruptcies, contract drafting, criminal defense, family law, general litigation, and incorporation.

"We're going to either prove or disprove the idea that there's a huge swath of moderate-income individuals who would take advantage of legal services, but they just can't afford them. We're going to find out because we're clearly going to be out there offering our services to people who are priced out of the market but who would clearly benefit from legal protection," Sylvester says.

With more than a million people living in Phoenix, Sylvester says a lot of residents would benefit from affordable legal services. Small business owners, for instance, would benefit from legal advice on how to incorporate their businesses and protect themselves from personal liability, rather than enter into an informal partnership.

"Yet we know that a lot of people open up businesses every day with partners and never seek to protect their own personal assets. So we think we can provide a real service, but we'll find out whether people are willing to come forward and pay something in order to offset our costs," Sylvester says.

The Law Group will likely charge between $75 and $100 an hour, but Sylvester says one has to assume that the firm will take some litigation based on a flat rate and not a contingency fee.

"I think what we're going to do is bring in a whole new generation of people who would benefit from legal services, but don't even know how to get started. They don't trust attorneys, they don't know attorneys, and they get priced out of the market. This is a trustworthy name, it's priced correctly for them, and is even negotiable depending on what they can afford, and

there's no profit motive," he says.

Incubator programs are not exclusive to academia. The Chicago Bar Foundation, the charitable arm of the Chicago Bar Association, has launched an 18-month incubator program called the Justice Entrepreneurs Project, where recent graduates from local law schools are trained to work with the modest-income population in areas such as consumer law, family law, special education, and maybe some small business matters.

One way the trainees help their low- and moderate-income clients is by offering unbundled legal services or limited scope representation, where the attorney and client agree to limit the scope of the attorney's involvement in the case, thereby saving the client money. For example, the attorney will prepare and file the complaints while the client will handle the rest of the case.

Unbundling Option

Lawyers providing unbundled legal services, or limited scope representation, is nothing new when it comes to transactional matters, but lately the practice has gained acceptance and attention in litigation, particularly in court appearances.

Herrera used unbundling during her six years in private practice in Compton, California, and she thinks a lot of lawyers who are serving similar populations provide unbundled services. "It's just another tool in the toolbox for us to help address the need," she says.

For Washington, D.C., attorney Richard Zorza, coordinator of the Self-Represented Litigation Network, there's no alternative to unbundling legal services for lawyers to help to address the legal needs of moderate-income individuals.

"People can't afford what lawyers cost, and while there are things you can do to increase the supply of less expensive lawyers, and I think things like the incubator programs will do that, I don't see a solution that doesn't include unbundling," he says.

While Zorza thinks unbundling is essential, he also stresses that it requires constant work and is not self-executing. "What we learned is that it's not just enough to pass a rule, there really has to be facilitative energy; you have to put on trainings for attorneys, you have to figure out what's the marketing of the referral system, and you have to make sure there are rules in place, or at least practices in place, that ensure that judges let attorneys out when the scope of the representation runs out," he says.

Zorza says unbundling has to be sold to attorneys first because it's something new and a bit frightening. In addition, there needs to be a way to alert clients and lawyers about the use of unbundling and to connect the two groups, which is where he thinks a lawyer referral service would be useful.

> "Low bono, fee shifting, unbundling, and technology are all part of a moderate-income delivery system that might be a good fit for all these underemployed lawyers."
>
> **—Luz Herrera, Associate Professor at Thomas Jefferson School of Law**

In February, the ABA Standing Committee on the Delivery of Legal Services successfully brought a resolution to the ABA House of Delegates encouraging bar associations and other stakeholders in the legal community to advance the public understanding of limited scope representation. The resolution also encouraged practitioners to consider providing unbundled legal services to clients to improve access to justice.

According to Hornsby, unbundling has become one of the premier policy shifts in the legal industry in the last decade or so. "It's a win–win situation because if the lawyer charges an hourly fee, the lawyer doesn't need to change that, it can be the same hourly fee, but the unit cost of the representation is less because the lawyer is doing less of the tasks and it, therefore, becomes more affordable. So a person who might not be able to afford a $10,000 retainer for a divorce may be able to afford the $2,500 retainer because the lawyer is only doing a limited part of that representation," he says.

Some lawyers who perform pro bono work are open to unbundling because there's no ongoing obligation to clients, Hornsby says. As for the ethical obligations surrounding this platform for delivering legal services, Hornsby cites ABA Model Rule 1.2(c), adopted by more than 40 states, that allows lawyers to limit the scope of their representation if it's reasonable under the circumstances and if the client gives informed consent.

In April, the Limited Scope Representation Working Group, a joint project of the D.C. Access to Justice Commission and the D.C. Bar Pro Bono Program, issued a report on limited scope representation and sent its recommendations to the D.C. Superior Court for consideration.

Formed in 2012, the group represented a cross section of the legal community, from solo practitioners to lawyers from small and large firms, to leaders of the Bar and the commission. The group was tasked to develop recommendations to institutionalize the practice of limited scope representation in the District of Columbia to provide residents with low, limited, and moderate means greater access to counsel when they need it most.

Among other recommendations, the group proposed for the D.C. Superior Court to create a special committee to draft a court-wide rule permitting limited appearances, and for the D.C. Bar to implement a process to revise Rule 1.2(c) of the D.C. Rules of Professional Conduct to provide more guidance to lawyers who engage in limited scope representation as well as to protect clients. The Superior Court has passed administrative orders that allow for same-day representation in housing, child support, and consumer law cases.

"We at the Access to Justice Commission

are very excited about the recommendations that the joint working group produced. We're looking forward to the next steps and we hope what we recommended will make a significant difference for access to justice in the District," says Edelman, who has dedicated much of his legal career to improving access to justice for the poor.

The Legal Aid Society of the District of Columbia, which was part of the working group, has been providing limited scope representation for very low-income residents of the District.

"We've found [the administrative orders] to be invaluable ways of extending our reach. Often we will extend those cases fully, but sometimes just same-day representation provides a great service to the client," says Eric Angel, executive director of Legal Aid.

Other Affordable Alternatives

A number of state and local bar associations have developed programs to serve modest-means clients and to connect them with affordable lawyers.

The Chicago Bar Foundation has its Justice Entrepreneurs Project incubator program, while the Washington State Bar Association has partnered with Gonzaga University School of Law, Seattle University School of Law, and the University of Washington School of Law to run the Moderate Means Program. The program is a statewide lawyer referral service that connects moderate-income people with lawyers offering reduced-fee work in family, housing, and consumer law.

Nearby, the Oregon State Bar's Modest Means Program helps moderate-income residents find affordable legal assistance in family law, criminal defense, foreclosure, and landlord–tenant matters. Other bars with similar referral programs include the New Hampshire Bar Association, the Florida Bar, the Middlesex County Bar Association in New Jersey, and the Bar Association of Montgomery County in Maryland.

Support and certification are available through the ABA Standing Committee on Lawyer Referral and Information Service for the roughly 300 bar associations that have a lawyer referral service in place.

The Cincinnati Bar Association, for instance, operates two lawyer referral services for people of moderate means: the Attorneys for the Marginally Indigent, which charges set or capped fees for clients charged with misdemeanors, and the Modest Means Panel, where attorneys agree to represent clients in mostly civil cases, covering about 30 different practice areas, at lower fees. Attorneys ask for a certain maximum retainer in a case and do not charge more than $65 an hour.

"Even with only $65, there are a lot of people who can't afford that—they may have a matter that's going to take 30 to 40 hours. Much of the public can't afford any legal help," ABA committee chair Norwine says.

In the Washington, D.C., area, the Metropolitan Washington Employment Lawyers Association has a pro se referral program at the D.C. and federal courts where pro se litigants are referred to by the courts. If the pro se litigant and the program volunteer agree to the representation, the agreement is committed in writing. The representation is not necessarily offered at a discount, although it may be provided on a contingent-fee basis. If the individual and the attorney are both interested, they can enter into a non-contingent fee agreement.

Rise of New Models

Affordable legal resources for people of moderate means may be short at the moment, but some experts are excited at the efforts they've been seeing in this area in recent years.

"What we're seeing [are] some very organic models of growth to meet this issue. We're hearing more about the institutionalization of unbundling. We're also seeing state bars coming up with collaborative methods for modest means programs. Then there are the established bar association lawyer referral services offering panels. There are lots of challenges ahead, but also lots of experimentation with the types of programs that are responsive to the demands of people who don't have enough income for full representation," Hornby says.

Herrera, who has been working on low bono representation for most of her legal career, is also hopeful about the growth of such initiatives as unbundling of legal services and incubator programs. She thinks that advances in technology and the availability of online resources like LegalZoom, against the backdrop of the most recent economic crisis, have helped to move forward the issue of access to justice for individuals of moderate means.

"Low bono, fee shifting, unbundling, and technology are all part of a moderate-income delivery system that might be a good fit for all these underemployed lawyers," Herrera says.

Herrera adds that technology is currently the most widely used tool in access to justice programs. "I don't think that lawyers are taking the lead in providing moderate-income people with options . . . I think the non-lawyers have come in to fill a niche where the profession has been unwilling to consider an affordable legal service platform. I don't think it's a complete detriment, I think we need to leverage technology," she says.

While Edelman agrees that technology and user-friendly access to legal documents have a role to play, he also believes that creating new partnerships between the different components of the legal profession is important. "Law firms could be looking at new models, law schools could be looking at new models. I think that all the actors should be looking at what they could do," he says.

The ABA is among the organizations working to address the issue. James R. Silkenat, a partner at Sullivan & Worcester LLP who was sworn in as ABA president in August, wants to create a legal job corps to match unemployed lawyers with underserved communities. The proposed Legal Access Jobs Corps Task Force will look at ways to address the unmet legal needs of unemployed or underemployed recent law school graduates.

"The first job is to find the right model for this," Silkenat says. "We have to ask whether we should organize this as a separate national organization with the possibility of government or foundation funding, or . . . build on the dozen or so examples that exist around the country that are set up by bar associations, law schools, and courts.

"We also have to ask whether we should address this on a national basis or a state-by-state basis, or to just promote best ideas so that others will be encouraged to set up similar programs. We need to find something that's affordable, something that's sustainable, and that's really going to be the first task of the group," he adds.

Right now the intention is to have the task force find ways to meet the legal needs of both low- and moderate-income individuals, but that might change as things go forward. Silkenat recognizes that these individuals often face a host of legal issues, from child custody to spousal abuse, and from employment to housing foreclosure.

"There's just a wide range of areas where they'd be better off if they had legal help," he says.

Reach Kathryn Alfisi at kalfisi@dcbar.org.

Note

[1] D.C. Bar President Andrea Ferster covered this topic in her "From the President" column, which appeared in the July/August issue of *Washington Lawyer.*

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By Rick Schmitt

In 1963 some of the most climactic battles of the civil rights movement were being waged in what Rev. Dr. Martin Luther King Jr. famously described as America's most segregated city: Birmingham, Alabama.

Inspired by Dr. King, hundreds of black schoolchildren took to the streets of Birmingham in a historic Children's Crusade. Images of Birmingham's brutal response—of peaceful marchers scattered by police dogs and water cannons and hauled off to jail—played out on the network news and helped to propel civil rights into the national spotlight.

Under intense political pressure to do something, President John F. Kennedy proposed in a speech on June 11, 1963, what would become landmark civil rights legislation. That August, tens of thousands of citizens joined the March on Washington to hear Dr. King deliver his "I Have a Dream" speech on the steps of the Lincoln Memorial. Some dared to believe that a better future was within their grasp.

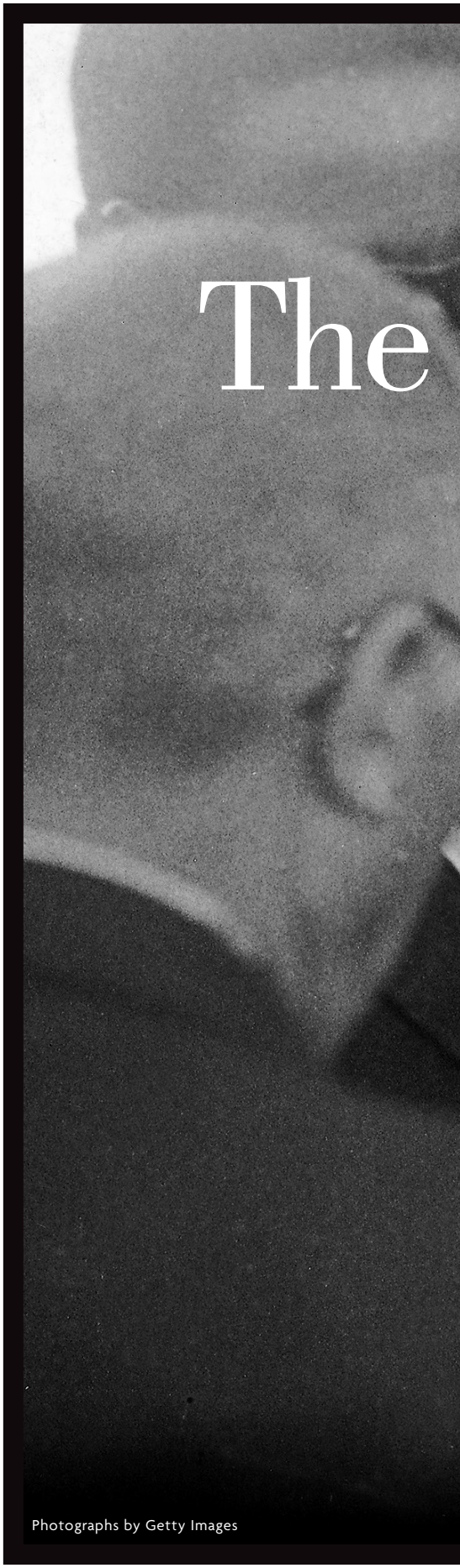
"It was a time of hope," says Freeman A. Hrabowski III, president of the University of Maryland, Baltimore County (UMBC), who, as a 12-year-old growing up in Birmingham, skipped school to join the student demonstrations. "By September, people were thinking that maybe the stirring up would make a difference. You had a man from the Deep South saying, 'I have a dream,' and we all began to think that maybe the dream could be fulfilled."

But segregation did not die easily, a fact that became devastatingly evident that Sunday morning, September 15, 1963. Hrabowski remembers being seated in his usual place in the balcony of his church in downtown Birmingham when his minister was handed a note and made the announcement: The 16th Street Baptist Church—the organizational headquarters and rallying point for Dr. King and his allies in Birmingham—had just been bombed.

The attack on the 16th Street Baptist Church was just part of the violence and suffering that marked that era. Three months earlier, on the night President Kennedy unveiled his civil rights legislation in a nationally televised speech, civil rights activist Medgar Evers had been murdered in Mississippi, where, a year later, the bodies of three missing civil rights workers would be found buried in an earthen dam. But the church bombing—which killed four young girls and injured more than 20 other people—is an image that continues to resonate 50 years later as perhaps the most heinous crime of that era.

WINDOW TO THE PAST
50 *years ago this month*

"The bombing of the church, in terms of human interest and real pathos, that was maybe worse than anything else," says John E. Nolan Jr., a senior partner at Steptoe & Johnson LLP who served as executive assistant to Attorney General Robert F. Kennedy at the time of the bombing, and who was



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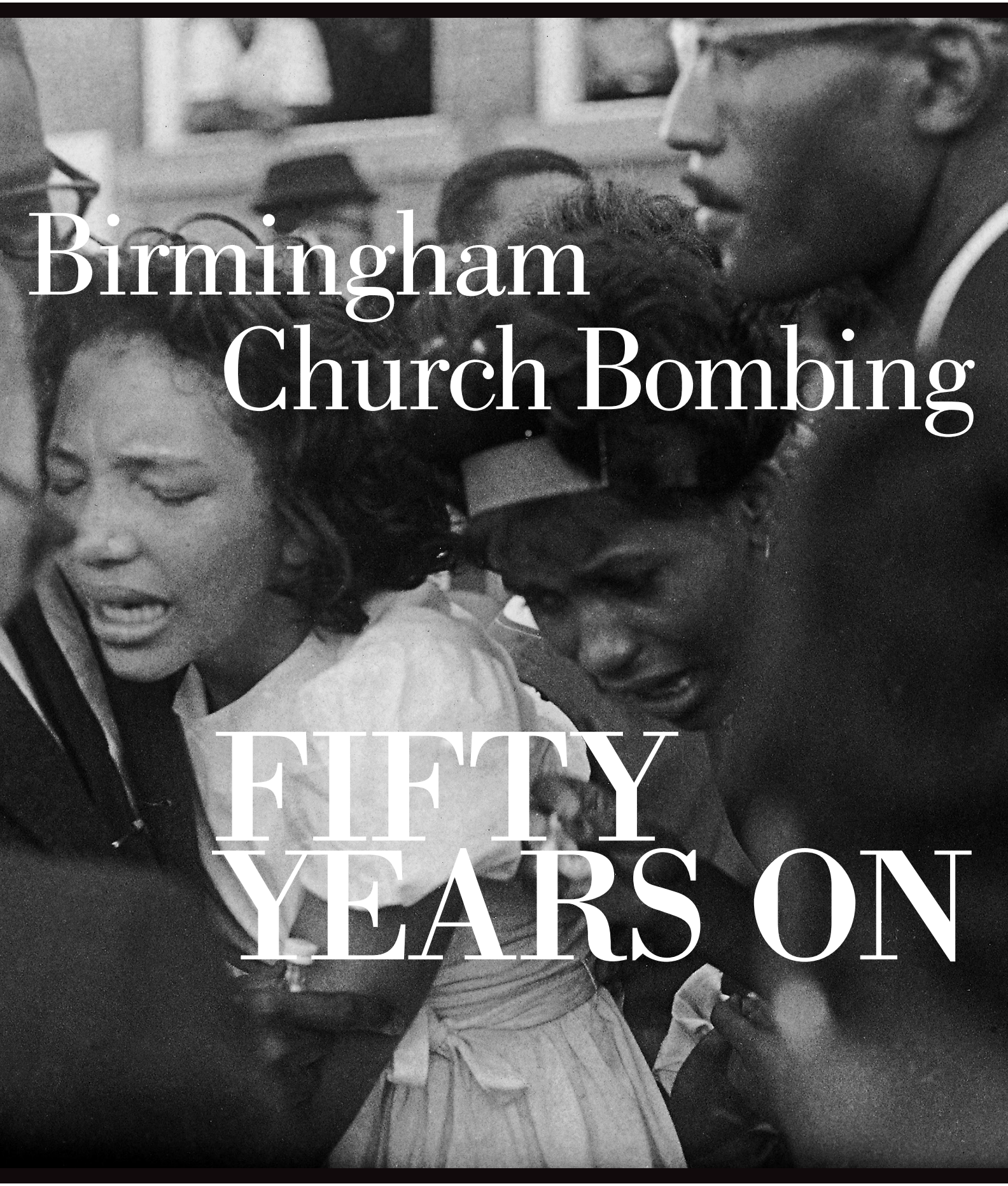


Birmingham Church Bombing

FIFTY YEARS ON

on a plane to Birmingham that Sunday to help keep the peace. "It was a helluva shocker."

THE BOMBING

In matters of race, Birmingham had a long history of confrontation. City officials refused to comply when courts struck down Jim Crow laws in the 1950s and 1960s, while the Ku Klux Klan operated as a de facto defender of the maintenance of the status quo.

In 1961 Birmingham officials chose to shut down its park system rather than comply with a federal desegregation order. That same year, the city's infamous public safety commissioner, Theophilus Eugene "Bull" Connor, conspired with local Klansmen to carry out a series of vicious assaults on the Freedom Riders as they bused through Anniston, Alabama, and Birmingham.

In December 1962, a dynamite bomb ripped apart the front of Birmingham's Bethel Baptist Church where black children were rehearsing a Nativity play. It was the third bombing of the church in seven years. Fortunately, no one was killed in any of those attacks, but no one was ever held accountable, either. From 1957 through the summer of 1963, there were 17 verified bombings of black homes and churches in "Bombingham."

"Birmingham is news because it is the largest city in the United States which adamantly refuses to call its white and Negro citizens together even to try to work out some solution to a problem which the Federal Government and enlightened public opinion plainly intend to force the city to solve," concluded an article in the March 2, 1963, issue of the *Saturday Evening Post* titled "A City in Fear: Racial violence smolders in this Deep South tinderbox."

In spring 1963 the sanctuary of the 16th Street Baptist Church—the largest and most elegant of the city's middle-class black churches—became the staging ground for a series of protests to jumpstart a year-old boycott of downtown department stores.

Opening photo shows mourners at the funeral for the victims of the 16th Street Baptist Church bombing. Baseball hero Jackie Robinson (below, right) visits what is left of homes owned by blacks that were burned down during a race riot.

Preacher and activist Fred Shuttlesworth, the leader of the Alabama Christian Movement for Human Rights who himself had barely survived a Christmas night church bombing in 1956, persuaded Dr. King and his Southern Christian Leadership Conference (SCLC), a civil rights organization comprised primarily of church leaders, to lead what Shuttlesworth envisioned as a history-making demonstration during the Easter season.

On Good Friday, Dr. King marched, and he was promptly arrested for violating an anti-protest injunction the city had won in court. Dr. King's "Letter From Birmingham Jail," which he wrote during his eight days in solitary confinement, became a famous articulation of the efficacy of nonviolent responses to racism, though interest in the march was flagging by the time he made bail. Organizers turned to black schoolchildren to carry the flag, which brought out Bull Connor and his police dogs and fire hoses, vaulting the campaign to the top of the network news.

Burke Marshall, then head of the U.S. Department of Justice's fledgling Civil Rights Division, and later a partner at Covington & Burling LLP, was dispatched by Attorney General Kennedy to facilitate negotiations with Birmingham's business leadership, which was being pushed to the bargaining table by adverse publicity and declining business. Among the people helping Marshall was the late Louis Oberdorfer, a judge on the U.S. District Court for the District of Columbia, former president of the D.C. Bar, and a Birmingham native, who was then a young attorney in the Justice Department's Tax Division. A pledge by the business interests to desegregate lunch counters and to hire more black store clerks ended the protests, but not the violence; segregationists responded by bombing the motel that served as command center for Dr. King and the SCLC, as well as the home of his younger brother, A. D. King, a preacher and leader of the Birmingham campaign.

That spring tensions remained high. In June, Alabama Governor George C. Wallace made his famous but futile "Stand in the Schoolhouse Door" in an attempt to block the integration of the University of Alabama. President Kennedy called out the National Guard to peacefully enroll two black students there, and then went on national television, making his long-awaited pitch for federal civil rights legislation, during which he declared: "The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them."

By summer, the long-smoldering issue of public school desegregation had come home to roost, when a federal appeals court demanded that Birmingham's schools be integrated. A federal judge in Birmingham approved a desegregation plan to go into effect that September, a decision that was greeted by the bombing of the Birmingham home of an NAACP attorney the following day. Meanwhile, Governor Wallace tried closing the schools, but he was rebuffed in the courts.

On September 10, 1963, after President Kennedy federalized the Alabama National Guard to maintain order, two black students were enrolled in elementary school, and for the first time, Birmingham had an integrated public school system.

On September 15, the marquee outside the 16th Street Baptist Church advertised the first in a series of monthly, youth-led worship services planned by the church's pastor, Rev. John Cross.

In the church basement that morning, a group of teenage girls was finishing up Sunday school classes while the adults met upstairs in the sanctuary. Ordinarily, the girls would sneak out to the drug store or grab a 35-cent Coke at a nearby motel restaurant to wait for the 11 a.m. church service to begin. But on this day, they were going to sing and act as ushers at the main service, so they stayed at church to get ready.

At one point, Cynthia Wesley, 14, and three other members of the youth choir—Addie Mae Collins, 14, her sister Sarah, and another friend, Carole Robertson, also 14—went to the basement lounge to freshen up. They were joined there by Denise McNair, 11.

Cynthia, the adopted daughter of a grade school principal and nursery school teacher, was an honor student who played the saxophone. The father of the Collins girls worked at a popular Chinese restaurant; their mother was a homemaker.

Carole, whose father was bandmaster at the local elementary school, her mother a librarian, was a straight-A student and Girl Scout. Denise put on her own annual talent show—creating plays and dance routines and giving poetry readings—to raise money for charity.

> From 1957 through the summer of 1963, there were 17 verified bombings of black homes and churches in "Bombingham."

At 10:22 a.m., an explosion ripped through the church building. Author Diane McWhorter describes the scene in her book *Carry Me Home: Birmingham, Alabama, the Climactic Battle of the Civil Rights Revolution:*

> [T]here was a resonant thud, as if someone had hit the world's largest washtub, followed by a ripping blast that sent a streak of fire above the church. Closed doors flew open, and the walls shook. As a stale-smelling white fog filled the church, a blizzard of debris—brick, stone, wire, glass—pelted the neighborhood.
>
> A motorist was blown from his car. A black pedestrian calling his wife from a pay phone across the street was whooshed, the receiver still in hand, into the Social Cleaners, whose front door had been whipped open. Johnny Apple, the NBC correspondent, felt the blast as he was having breakfast at the White Castle hamburger joint not far from the church.

The bomb had blown a hole in the church's rear wall that bordered the ladies' lounge. Rev. Cross briefly thought the church's water heater had exploded, but the full extent of the devastation became quickly apparent. He and other church members led a grim search through the rubble and discovered the victims.

"They were all stacked in a pile, like they clung together," Rev. Cross recalled in 2001. "Their bodies were so mutilated I couldn't recognize any one of them, as well as I knew these girls. It was like looking at strangers."

Denise was the first to be pulled from the wreckage, a chunk of

concrete mortar embedded in her skull. Cynthia was decapitated. Sarah was blinded but alive—she lost an eye in the attack—and was the lone survivor of the five girls who had entered the basement lounge.

Rev. Cross's 13-year-old-daughter, who, according to McWhorter, had declined to accompany her friend Cynthia to the restroom, but who had promised to hold her purse till Cynthia returned, suffered only minor injuries. A stained glass window of Jesus also survived—although the face was cut cleanly out of it.

As word of the bombing spread, an angry crowd gathered; seeking to head off a riot, the pastor picked up a bullhorn and recited the 23rd Psalm.

By the end of the day, two more black youths were dead: Johnny Robinson, 16, who was shot in the back while being chased by police for throwing rocks at cars with white passengers, and Virgil "Peanut" Ware, 13, who was killed by a pistol-packing Eagle Scout while riding on the handlebars of his brother's bicycle.

> "Their bodies were so mutilated I couldn't recognize any one of them, as well as I knew these girls. It was like looking at strangers."

Three days later, some 8,000 people, including 800 clergy of both races, packed the Sixth Avenue Baptist Church in Birmingham for the funeral of three of the four girls—Addie Mae, Cynthia, and Denise. (Carole's family held a separate, private service.) Dr. King delivered the eulogy: "These children—unoffending, innocent, and beautiful—were the victims of one of the most vicious and tragic crimes ever perpetrated against humanity. And yet they died nobly. They are the martyred heroines of a holy crusade for freedom and human dignity."

THE PROSECUTION

The bombing galvanized law enforcement, to a point.

The Federal Bureau of Investigation (FBI) launched what Director J. Edgar Hoover described as the most intensive manhunt since the search for John Dillinger. But Hoover, who despised Dr. King and regarded the civil rights movement as being controlled by communists, refused to allow his agents to share the evidence they uncovered with prosecutors—a fact that generated considerable controversy and anger down the road.

The local investigation followed a familiar script for crimes of that era. Most of the man hours spent on the case by the Birmingham Police Department and the Jefferson County Sheriff's Office focused on black suspects, on the theory that they had bombed the church in an attempt to win sympathy for the civil rights movement.

The prime white suspect was Robert Chambliss, a truck driver and Klan member whose fire bombings of houses of black families over the years had earned him the nickname "Dynamite Bob."

A month after the bombing, Chambliss was charged with possession of dynamite—a misdemeanor—fined $100, and sentenced to six months in jail. The judge suspended the sentence after Chambliss said he would appeal. Chambliss left the courthouse smiling for the cameras.

The bombing seemed destined for the cold case file of unsolved civil rights murders when a progressive and determined new Alabama Attorney General, Bill Baxley, decided to reopen the case after being elected in 1971. Chambliss was eventually indicted for murder, and in November 1977, he was tried and found guilty and sentenced to life in prison, where he died in 1985.

The star witness at his trial was a niece who remembered a kitchen-table conversation the day before the bombing in which Chambliss was in a rage over the recent integration of Birmingham public schools, and had told her "he had enough stuff put away to flatten half of Birmingham."

"You just wait till after Sunday morning," the woman recalled Chambliss saying. "They will beg us to re-segregate."

Chambliss, however, was not the lone perpetrator in the conspiracy to bomb the church. Two decades later, in a display of cooperation that would have been unheard of in the 1960s, the U.S. Attorney in Birmingham, Doug Jones, was deputized by the state of Alabama to pursue charges in state court. Jurisdictional issues and the statute of limitations had foreclosed bringing a federal case.

Jones, who as a second-year law student cut classes to sit through the Chambliss trial, insisted that the FBI give him full access to its voluminous investigative file. For the first time in more than three decades after the crime, the totality of the information originally gathered by the FBI was made available to a prosecutor.

Jones subsequently obtained murder indictments against two other men who, along with Chambliss, were members of a violent Klan offshoot: Thomas Blanton Jr., a Navy aircraft mechanic whose extracurricular activities included hanging out in grocery store parking lots so he could put acid on the car seats of black customers, and Bobby Frank Cherry, whose history of violence included a brass-knuckled attack on Shuttlesworth as the pastor tried to enroll his children in an all-white Birmingham high school in 1957.

The evidence at trial was compelling, including 30-year-old tape recordings between the defendants and another Klansman who decided to turn FBI informant after an agent showed him photos of the girls' mutilated bodies that had been languishing in the bureau's files.

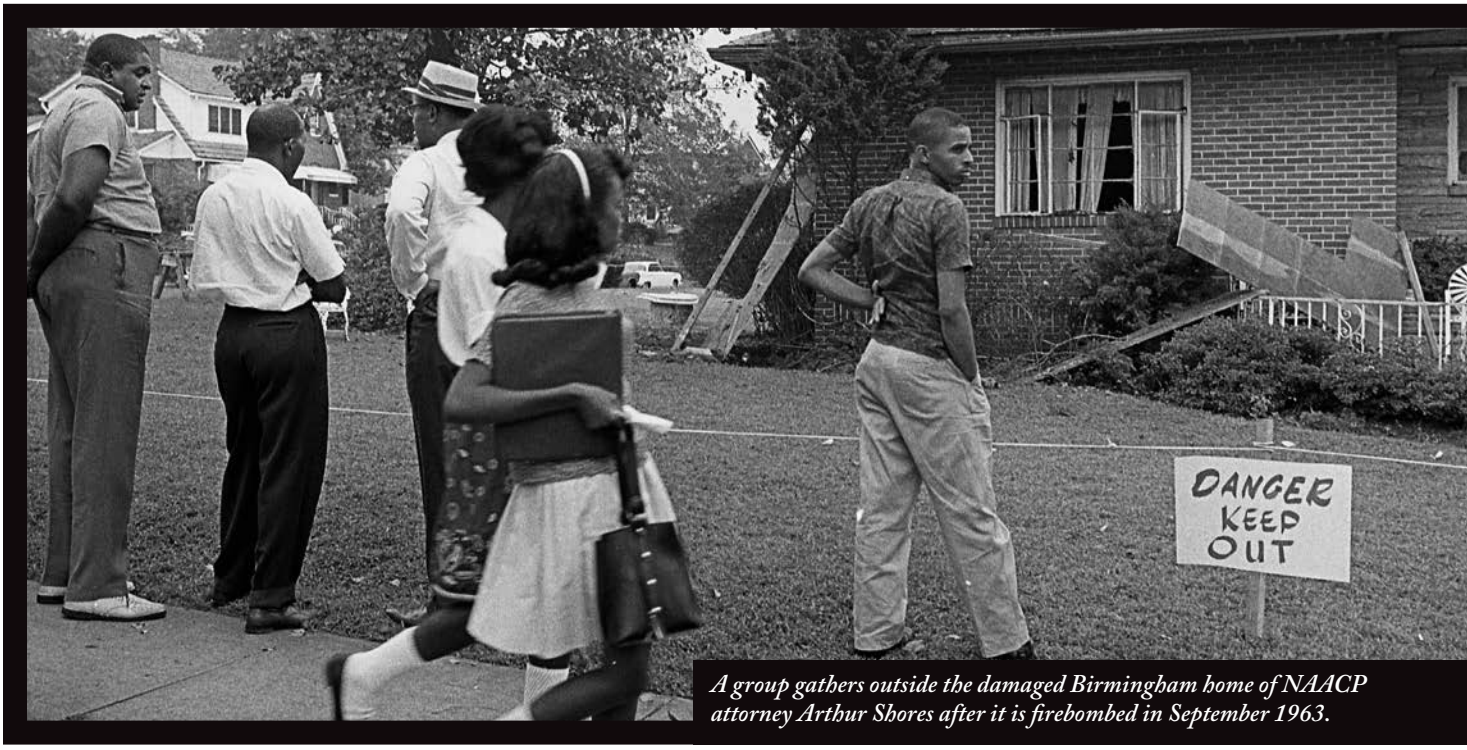
Blanton and Cherry were found guilty at separate trials in 2001 and 2002. Both were sentenced to life in prison. Cherry died in 2004.

The surfacing of the long-held secret FBI tape angered Baxley, who reopened the state investigation of the bombing in the 1970s, and who had long battled the FBI over access to its investigative record.

Baxley says he was constantly stonewalled by the FBI, even after Hoover died in 1972, in his efforts to get cooperation from the federal government. He finally obtained access to portions of the FBI file after friend and newsman and Alabama native Jack Nelson of *The Los Angeles Times* threatened to embarrass the Justice Department by publishing articles that it was covering up for the Klan by refusing to cooperate.

Even then Baxley says the FBI was selective in the evidence that it made available to him and his investigators. He says the evidence he got mostly corroborated what his investigators had already uncovered, and that the FBI turned over information only if it was specifically requested. "Their definition of cooperation and mine are 180 degrees apart," Baxley says. "They did not volunteer anything."

How did some of the most compelling evidence of guilt



A group gathers outside the damaged Birmingham home of NAACP attorney Arthur Shores after it is firebombed in September 1963.

remain buried in FBI files for decades?

The FBI has acknowledged that it did not give the secretly recorded audiotapes and other relevant evidence to Alabama officials when the state reopened its investigation. But the FBI denies any deliberate effort to thwart the state investigation, attributing the lack of cooperation to several factors, including changes in personnel and filing systems, an unwillingness to expose confidential informants, and lingering distrust between state and federal agents from the days of Jim Crow.

Baxley sees the lack of sharing as part of the FBI's "all take and no give" culture. While Baxley questions the decision makers, he says he has no bone to pick with the agents on the ground. "They made a wonderful investigation. They were outstanding, almost heroes," he says. "I got no complaint with those guys that were doing the work."

But the failure of the bureau to share its work with state prosecutors meant that the perpetrators lived as free men for a quarter-century after Baxley had concluded his investigation in the 1970s, believing the state did not have enough evidence to charge them. Baxley thinks he could have gotten a conviction at the time if the FBI evidence had been made available.

"It was the biggest regret of my public career, that I was unable to finish it," he says.

THE IMPACT

The bombing was certainly a watershed moment for the nation and for the civil rights movement. It helped awaken millions of Americans to the depths of hate of the Klan and its segregationist friends in the South who were blocking the federally mandated integration of schools and public facilities.

In the longer arc of history, the bombing helped to bring about the end of legalized discrimination. Along with the assassination of President Kennedy a little more than two months later, the bombing was pivotal to the passage of the Civil Rights Act of 1964 and the subsequent Voting Rights Act of 1965.

The bombing inspired song and verse, books, and movies. "Birmingham Sunday" was recorded by folk singer Joan Baez. A 1997 Spike Lee documentary, *4 Little Girls*, was nominated for an Oscar. Musician John Coltrane recorded an elegy to the bombing called "Alabama." McWhorter's book won a Pulitzer Prize.

In May 2013, during an Oval Office ceremony with the victims' families, President Obama signed a bill posthumously awarding the Congressional Gold Medal to the four girls.

A bronze memorial to the four girls, and the two other black youths murdered that day, is being unveiled in September across the street from the 16th Street Baptist Church in Kelly Ingram Park, where Bull Connor confronted the demonstrators with mass arrests and his water and canine firepower.

"You could not be alive then and not be affected," says Tom Williamson, senior counsel at Covington and immediate past president of the D.C. Bar. "The bombing in Birmingham was really the ulti-

Along with the assassination of President Kennedy a little more than two months later, the bombing was pivotal to the passage of the Civil Rights Act of 1964 and the subsequent Voting Rights Act of 1965.

mate horror. How could there be more innocent victims?"

At the time, Williamson, whose father was a career Army officer and among the first black officers to command white troops, had just started his senior year in high school. His was the only black family living in an all-white community in Northern California.

"We were living in a white world in a place where the only other black people in town worked as domestics. We were conscious of race as an issue every day of our reality," he says. "When this happened, when these girls were bombed, one thing it did for me was to remind me of just how perverse and twisted the values were of racist Americans."

"When I heard about what happened in Birmingham, on the one hand, I had the sense 'I am glad I don't live in the Deep South,'" recalls Williamson. "But I really had no illusions about the possibility this could happen anywhere in America, that the types of people who would perpetrate those offenses, they were not fenced in below the Mason–Dixon line."

"It ratcheted up people's understanding of the evil that they were up against," McWhorter says in an interview. In her book McWhorter, the daughter of a prominent white Birmingham family, traces the power of the Klan as being rooted in the city's wealthy white establishment, which included some of her relatives.

McWhorter says there is a lesson for members of society who would quickly paint all segregationists as cartoon racists; it took a village for segregation to survive for so long. "The alibi is that the Klansmen were rogues. But the truth was they were vigilantes for the status quo. They were not terrorists trying to overthrow the system. They were vigilantes trying to preserve the system," she says.

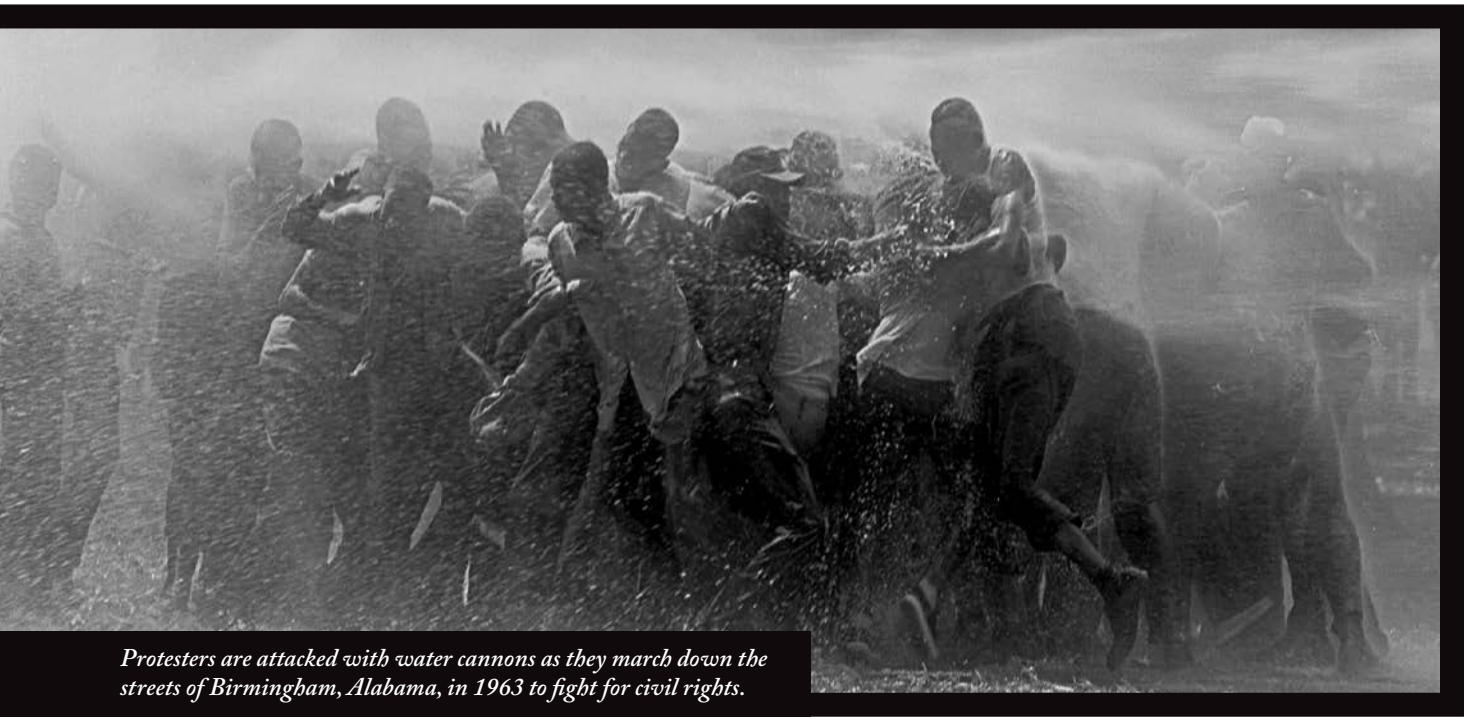
The bombing also was a reminder of the power—and limits—of government, and the immense challenges and dangers that faced the Justice Department lawyers who were the foot soldiers of the government effort in the South throughout the 1960s. Many are longtime members of the D.C. Bar who say the work they did during that time was among the most rewarding in their careers.

As an attorney at the Justice Department, Gerald Stern helped defend a black man mired in the upside-down world of southern justice when the man was charged with disorderly conduct after being beaten with a gun by a local sheriff while trying to register to vote in Mississippi. According to Stern, his client's only offense was "getting his head in the way of a gun." As was the situation with many civil rights cases of that era, a district judge declined to intervene, while the Justice Department succeeded in getting a temporary restraining order on appeal, persuasively arguing that, through intimidation, local officials were interfering with the man's right to vote.

Stern was later assigned to the team of Justice Department lawyers helping James Meredith to integrate the University of Mississippi. Stern spent two weeks living in a university dorm room next door to Meredith. "My job was to make sure he did not get killed," Stern says.

A former Civil Rights Division attorney, David Marlin remembers high-tailing it out of Selma, Alabama, after he was subpoenaed to testify in November 1963 before a local grand jury that was investigating Dr. King and the voting rights movement in what federal officials saw as obvious intimidation.

"The decision was made that I should get the hell out of Selma," Marlin recalls. "I don't know if they would have manhandled a lawyer, probably not. The main thing was we felt they had no jurisdiction."



Protesters are attacked with water cannons as they march down the streets of Birmingham, Alabama, in 1963 to fight for civil rights.

He rented a car and drove to the U.S. Attorney's Office in Birmingham, all the while hearing on the radio that a warrant had been issued for his arrest. An appeals court eventually blocked the grand jury subpoenas.

As a Yale law student, Delegate Eleanor Holmes Norton (D–D.C.) worked on a voting rights project in Mississippi. She had been asked by Bob Moses, a member of the Student Nonviolent Coordinating Committee, to come to Greenwood, Mississippi, which, by the spring of 1963, had become a center of protests and voter registration struggles that Moses and the SNCC were organizing.

Norton flew into Jackson and met with Medgar Evers, the

Mississippi field secretary of the NAACP who tried to persuade her to ply her budding legal skills in the larger town.

"That was at a time when there were almost no lawyers in Mississippi, and here I was, only a law student. But I told [Evers] I had promised Bob Moses I would come to Greenwood," Norton recalls. After taking her to a number of places where NAACP and movement volunteers were working, Evers dropped her off at the bus station, and she was later met in Greenwood by some young SNCC workers who took her to a farmhouse for the night.

Norton says she will never forget the next morning when the SNCC workers knocked on the screen door with the news that Evers had been shot and killed outside his home not long after he delivered her to the bus station. They also told Norton that civil rights activist Fannie Lou Hamer, who was later instrumental in organizing the Mississippi Freedom Democratic Party, and several other SNCC workers had been jailed and beaten by some locals in a town a few miles away.

"We have moved on from one set of horrible problems on which we have made good progress, and it has laid bare another set of problems. We are at the next layer of the onion."

"My first 24 hours in Mississippi were among the most eventful in my entire life," Norton says.

President Kennedy was criticized for moving too slowly on civil rights legislation and for refusing the pleas of Dr. King and other leaders to send in federal troops to protect demonstrators in the face of violence and intimidation.

The powers of the Justice Department lawyers on the ground, meanwhile, were relatively limited. They copied voting records and interviewed disenfranchised citizens to discern patterns that could support federal discrimination suits. They tried to find sympathetic power brokers in racially fractured small towns who might be willing to negotiate and make peace.

"It is very easy to say that we didn't do enough. Most of the time we were trying to keep people from knocking each other's heads in. If you couldn't do that, you were going to have setbacks to the whole thing," says Nolan, the Steptoe partner and former aide to Robert Kennedy.

That was no small feat. Nolan, a Marine Corps company commander in the Korean War, recalls spending months in Gadsden, Alabama, where the events in Birmingham and the murder of a white postal worker stirred a boycott of white merchants and protests, resulting in hundreds of people being arrested and beaten and cattle-prodded to jail.

"I have been around where the casualties were a lot heavier than they were in Gadsden, but the temperature of what was in the air was, I thought, as high in Gadsden as it was in South Korea and the Punchbowl," Nolan says, alluding to a valley in South Korea that was the site of many battles during the war.

Debate over the fruits of the 1960s-era civil rights battles has been sharpened in the wake of the U.S. Supreme Court's ruling this year in an Alabama case striking down a section of the Voting Rights Act. The act, one of the signature legacies of the civil rights movement, required states and other jurisdictions, mainly in the Deep South, to get federal approval before making any changes to voting laws. The Court held that the formula Congress set for determining which states are subject to the preclearance requirement was unconstitutional because of advances those jurisdictions have made in recent years in getting more blacks registered and elected to public office.

Veterans of the civil rights movement are not so sanguine; they say the decision ignores new obstacles to the rights of minority voters, including changes in voter ID laws and the controversial practice of redistricting.

"There is a lot of risk that these areas of the Old South will crawl back into suppressing the black vote," says Stephen Pollak, who, as a Justice Department official in the 1960s, helped to draft voting rights legislation, and as counsel at Goodwin Procter LLP helped to write a friend-of-the court brief defending the law in the recent case. The decision means plaintiffs will face a much harder time challenging local officials who enact suspect voting laws, he says.

"That proved to be an unworkable system in the early 1960s," adds Pollak, who was head of the Civil Rights Division the year Dr. King was murdered, a time he describes as "one crisis after the other."

Indeed, these lawyers say, while great progress has been made in civil rights, the basic work of ending discrimination is nowhere near complete.

"Where we are on civil rights is very different from where we were 50 years ago. Certainly, there is a lot of discrimination going on, but we have the framework of laws to deal with that, which are largely in place and largely effective," says Georgetown University Law Center Professor Peter Edelman, who worked at the Justice Department in the 1960s and was part of a team of lawyers that helped defend attorneys in the Civil Rights Division after they were charged by the state of Alabama with practicing law without a license.

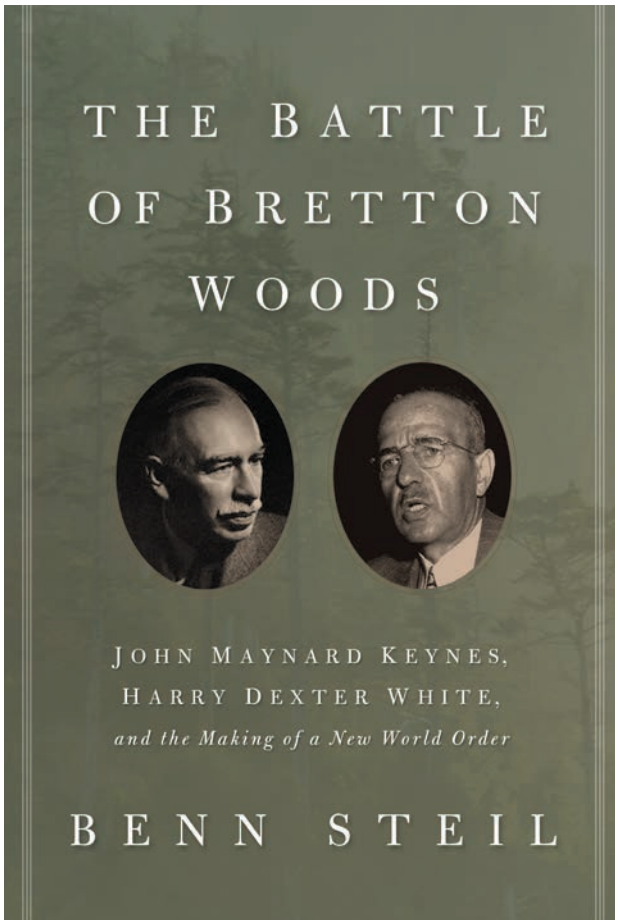
"Where we are now is in a world of structural racism, the larger forces that result in very, very troubling racially disparate outcomes," Edelman says, citing the disproportionate number of blacks and other minorities who live in poverty, are less educated, and are much more often incarcerated. "We have moved on from one set of horrible problems on which we have made good progress, and it has laid bare another set of problems. We are at the next layer of the onion."

Hrabowski, the UMBC president, remains hopeful. He says the first time he had ever seen white people in his church was at the funeral for the murdered girls. That encouraged him as a young boy, and the memory still encourages him.

"I saw men of God from different faiths in our church, and I looked into their faces, and I saw tears and devastation. And that picture in my mind as a black child, seeing these white men of God who were as grief-stricken as the rest of us, gave me hope," he says. "When you look back now, certainly enough happened to prick the conscience of America and we realized we could do better. We did make progress and more people of all races did go to college. There is a lot of unfinished business. We have not made enough progress, but we should hope to have more."

Rick Schmitt, who last wrote about the economics of a legal education in the March 2013 issue, is a Maryland-based freelance writer.

books in the law



The Battle of Bretton Woods: John Maynard Keynes, Harry Dexter White, and the Making of a New World Order
By Benn Steil
Princeton University Press, 2013

Review by James Srodes

In most public issue discussions these days, the law and economics are treated as two distinctly separate areas of human conduct. The truth is they are two sides of the same societal coin. One cannot have an economy without the rule of law, and one cannot make effective laws that ignore economic realities and needs.

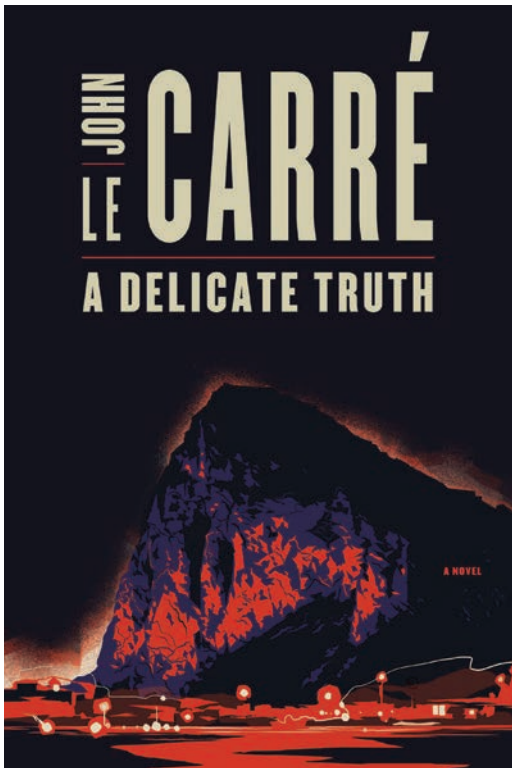
This highly accessible and exhaustively researched book tells a truly gripping tale of how, against formidable political odds and global chaos nearly 70 years ago, two iconic economic theorists created a legal framework based on controversial theories that resulted in the basic structure of our global marketplace today.

It was a ramshackle framework from the start and has lurched through unending crises and changes in function ever since, but the agreement generated by John Maynard Keynes, the wonder boy of the British Treasury, and Harry Dexter White of the United States Treasury is with us still. And it has, in all fairness, done a pretty good (but not perfect) job in fostering a kind of economic democracy that turned America, Britain, and other western states into economic powerhouses, even as it lifted hundreds of millions of people out of the most desperately primitive poverty in scores of other nations.

While there have been other documented histories of the Bretton Woods Agreement of 1944 and, indeed, whole shelves of biographies of Keynes and White, this is the one I cheerfully recommend for a reader who would like to know more about why we have the world economic structure we have today, how we came by it, and what the alternatives might have been—in short, what happens when men not versed in the precepts of international legal agreements have to adjust their creative economic policy objectives with legal and political realities. If "globalization" in your mind is as imprecise a cliché as "global warming," then this is the book for you to read.

continued on page 42

A Delicate Truth
By John le Carré
Viking Penguin, 2013



Review by Ronald Goldfarb

At nearly 82, John le Carré has not lost a bit of his art in *A Delicate Truth*, his 23rd novel in a writing career spanning half a century. As is well known, le Carré served in the British intelligence services during the Cold War, and his novels reflect his inside perceptions of that cold and lonely trade. Le Carré knows the world he describes, and he does so with verisimilitude and a literary master's touch.

In *A Delicate Truth*, le Carré brings all his insight into intelligence work, particularly the collaborative—when not competitive—efforts between countries, and recently with private agents. The world has changed post-Cold War, and in this book le Carré follows the unraveling of a top-secret, off-the-books counterterrorism deniable operation (that never was) called Wildlife, conducted by the Foreign Office and U.S. private operatives. The Global War on Terrorism has brought with its heroic ministrations questionable behavior, which some participants of good conscience in le Carré's book deplore. The secret effort is even hidden from cohorts, and its execution is suppressed due to an embarrassing abortive and deadly mess-up.

In *A Delicate Truth*, le Carré explores an act of extreme rendition in Gibraltar, an aborted kidnapping of an armaments terrorist, resulting in "human collateral damage" discharged by British soldiers out of uniform and American mercenaries who were legally inviolate. Operation Wildlife was "so monstrous, so incendiary . . . a hare-brained covert operation," but one not unlike others we've read about in modern nonfiction reports.

Years later, three of the participants in Operation Wildlife—one, a suspicious but manipulated observer-insider, the other two, field operatives—are brought together by the appearance of one of their former colleagues whose conscience has driven him, and then drives them, to become a whistleblower.

Le Carré is a masterful writer, and he shuffles his story one engrossing play of a card at a time, not always in sequential order, but riveting to the reader. The essential theme (as one of the very real protagonists is advised): "War's gone corporate." Patriotic fervor has engaged some insiders, and commerce has corrupted others.

How did it happen? Le Carré explains how public servants find themselves compromised "blue-chip British career diplomats . . . at the trading tables of the free world's vast intelligence marketplace." One of the "players," however, abhors what he senses happening around him, and "rates it illegal, immoral and doomed." He takes precautions not to be personally drawn into the events he notices happening around him. Isn't the purpose of diplomacy, he naively speculates, "to prevent war rather than to promote it?"

Le Carré's protagonist raises the same question some have asked in the United States about our post-9/11 policies: "[W]hat is the moral distinction, if any, between the man who applies the electrodes and the man who sits behind a desk and pretends he doesn't know what is happening, although he knows very well?" Or the administrators who conjure up the high jinx but use others to do the actual dirty work? The mercenaries "think they are heroes," one character notes, "when they're [expletive] psychos," not fighting for their country but for multinationals with their offshore bank accounts. The protagonist recoils from the pragmatic response of his mentor: "Hypocrisy is the tribute that vice pays to virtue, dear man. In an imperfect world, I fear it's the best we can manage."

Or is it? One of the three conscious-stricken protagonists, mid-level, mid-career civil servant Toby Bell, finds fortuitous soul mates in two other guilt-ridden, now-retired players in the incident. Sir Christopher "Kit" Probyn (former player, current retiree), along with his noble wife and daughter, is awakened from his forgotten past by Jeb Owens, who reminds him of "one innocent dead woman . . . one innocent dead child . . . one soldier who did his duty." They weren't civil servants, they were enablers, he charges. Toby tracks down Jeb's widow, who provides background details and adds proof supporting Jeb's charges and explaining his later questionable demise.

The trio tries to undo the disgraceful acts they had participated in during their past lines of duty. Can they force the genie back into the bottle? Don't we know the answer?

They run into cynics and, worse, the criminals in suits and suites who are employed to carry out the acts they dare not do themselves in their "elitist, self-regarding" officialdom, administrators in high office "in thrall to its own mystique." Le Carré harshly judges the lobbyists and arms salesmen who "beaver away at the fault lines between the defence industry and procurement," and who are "licensed to rip off the Exchequer, bribe officials . . . go private, go public, go any way they like . . . they've got a ministerial pass." They are the recent incarnation of what President Eisenhower warned his country about many decades ago.

Le Carré turns the light on this corrupt and cynical nether world, the excesses of which straight journalism sometimes reports, and he takes readers on a tour of how the results of perversions of power happen. His exposition is depressingly powerful. His characters reveal Big Greed, le Carré calls it, where "officials didn't know whether they were working for the [Government] or the arms industry, and didn't give a hoot as long as their bread was buttered."

It is all done behind closed doors, justified with amoral legal opinions and cleansed by the high-minded, euphemistic name "Ethical Outcomes." "They" have offices around the world, le Carré writes. "Everything from

continued on page 42

The Battle of Bretton Woods

continued from page 40

To be sure, through most of mankind's recorded history the world has been globalized. Polynesians ventured on flimsy rafts to trade cowrie shells with customers hundreds of miles away; the Silk Road was already a well-trodden path between China, India, and medieval Europe well before Marco Polo.

But by the sweltering July of 1944, with the end to World War II just coming into view, it became clear to most Allied leaders that a total overhaul of the world economic order was mandatory. The delegations from 44 nations arrived to an ornate but shabby 19th-century resort hotel at Bretton Woods, New Hampshire, partly to escape the lethal miasma of Washington, D.C., in summer but also to use the isolation to concentrate the attention of the delegates to the enormous task at hand.

The task at hand was, most simply, to create a world financial structure that would enhance free trade and erase the various colonial trade monopolies (most notably the subsidies that forced Britain to import its butter from New Zealand, its wool from Australia, and a whole warehouse of goods from India and elsewhere). The linchpin to the plan was to wean the global structure off its dependency on gold as a backing of national currencies by inserting the Yankee dollar in its place. And oh, yes, there was the small matter of how to restore the shattered economies of both Allied and Axis nations alike.

The Bretton Woods Agreement is credited with creating what we know as the World Bank (for reconstruction and economic development) and the International Monetary Fund (which seeks to ameliorate the episodic currency crises of trading nations). But nearly every one of the 44 original conferees—especially the Americans—knew that its overarching purpose was to provide the economic framework for that other global institution that dominates the perpetual search for peace, the United Nations. Without the two economic institutions, the United Nations itself—often flawed and dilatory—would not be at all as effective in imposing a broad range of legally binding standards on peace; the conduct of war; and the promotion of world health, welfare, or trade practices.

While there was a measure of agreement between Keynes and White about the architecture of the Bretton Woods pact, there also was a dangerously fraught difference in the personal objectives of the two intellectual draftsmen who dominated the other delegations. Keynes was committed to preserving as much as he could the remnants of the imperial prestige and power that Britain had enjoyed until the end of World War I. White had two objectives: To promote the ascendency of the United States as the postwar world superpower and to help his dream of fostering a communist society in America like that of his ideal, the Soviet Union.

As author Benn Steil documents, White was not only one of those naïfs who viewed Joseph Stalin's Russia through rose-colored glasses, but he also was from early days an active, useful recruit for Soviet intelligence. Keynes, for his part, was hamstrung by his personality. He was, in plain, a jerk—a snob about lesser folk (like Americans), he also was an intellectual bully who was not content to prevail in intellectual debate; he insisted on humiliating even his own delegation members who detested him to a man. Since both Winston Churchill and Franklin D. Roosevelt insisted that Stalin's Soviet Union must be convinced to join the United Nations, the struggle at Bretton Woods to get the Russians to take the first step and sign that pact is a dramatic substory about White's intrigues.

With some hesitancy, I have to confess some quibbles about Steil's effort. My complaints have nothing to do with author errors but more with his omissions. Steil is the director of international economics studies at the Council on Foreign Relations, yet he never mentions the CFR's role in the 20 years of debate after World War I on how to repair the global marketplace that was collapsing before Bretton Woods. Nor does he mention Roosevelt's role in arguing early on that the failure of the League of Nations to address the economic demands of less developed nations led to the march to the next war.

Also absent from this book, perhaps by design, is any reference to John Foster Dulles, who bested Keynes at the 1919 Paris Peace Conference on German war reparations, or to his sister Eleanor Lansing Dulles, a monetary economics rival to Keynes and one of the key staff members of White's delegation at Bretton Woods. That may be another book for another time.

James Srodes' latest book is On Dupont Circle, Franklin and Eleanor Roosevelt and the Progressives Who Shaped Our World. *His e-mail address is srodesnews@msn.com.*

A Delicate Truth

continued from page 41

personal protection to home security to counter-insurgency to who's spying on your firm to who's screwing your wife." Furthermore, the people on their payroll are heads of foreign services (serving and former, "all with contracts in place") and police chiefs and their deputies. "Throw in any odd Whitehall flunky who wants to make a buck on the side, plus a couple of dozen peers and MPs, and it's a pretty strong hand," le Carré writes. Virtuous challengers don't have a chance.

Readers see all the intrigue play out as Toby is engaged by the two other former players who are fighting with their consciences about their roles in a disaster they were a part of unintentionally. The plot is augmented by an American far-right evangelical, who is reminiscent of the character Julia Roberts played in the brilliant film *Charlie Wilson's War,* bankrolling the deadly games these officials play. Her bankroll seduces posh retirees doing "a bit of spying" for the "burgeoning terror industry" because they smell the money. They use American mercenaries, along with a corrupt British official, because the Central Intelligence Agency is, in their minds, "overrun with the red-toothed Islamic sympathizers and liberal [expletive]."

Le Carré's story is sad, but it suggests an ongoing dilemma. One worn character states: "life's what you're left with, really." That is the detritus of realpolitik. When the three defectors set out to right the wrong they perceive, without revealing the (at best) ambiguous ending, life treats them terribly. In some stories, alas, the bad guys win. They rationalize. They corrupt. They get away with it. At least in le Carré's novel, they are judged to be evil incarnate, "men of such glaring mediocrity" who have done great damage. And le Carré reminds readers that whistleblowing is "by definition a risk business."

The pressing, critical lessons of *A Delicate Truth* could come from today's headlines. Le Carré offers us a last hope. One character remarks: "however deep you may think you've buried your secret treasure, today's analyst with time on his side will dig it up."

Ronald Goldfarb is a Washington, D.C.- and Miami-based attorney, author, and literary agent whose reviews appear regularly in Washington Lawyer.

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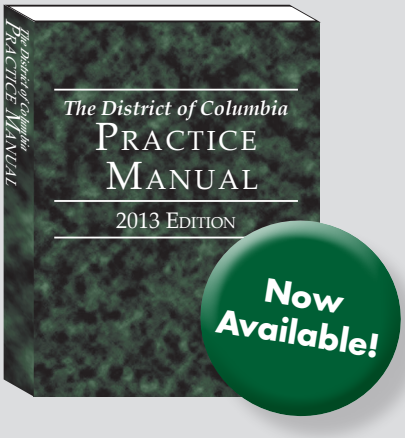

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By Thai Phi Le

Honors and Appointments

Richard J. Andreano Jr., a partner at Ballard Spahr LLP, has been named a fellow of the American College of Consumer Financial Services Lawyers… Real estate attorney **Lucia Anna "Pia" Trigiani** has been honored with the Virginia State Bar's 2013 Traver Scholar Award for outstanding efforts in real estate legal education… **Tammy B. Denbo,** a partner at Masten, Peterson & Denbo, LLC, has been awarded the Federal Bureau of Investigation Director's Community Leadership Award for her community service in 2012… **Howard Shelanski**, the director of the Bureau of Economics at the Federal Trade Commission and a professor at Georgetown University Law Center, has been confirmed by the U.S. Senate to serve as administrator of the Office of Information and Regulatory Affairs at the White House Office of Management and Budget. Shelanski also received a Burton Award for coauthoring the article "Merger Enforcement Across Political Administrations in the United States"… Georgetown University Law Center alumni **Mark P. Howe** and **Raphael A. Prober** also received Burton Awards for effective legal writing… **Judy Conti**, the federal advocacy coordinator at the National Employment Law Project, has been presented with the William & Mary Law School Association's highest recognition, the Citizen Lawyer Award, for her lifetime commitment to citizenship and leadership… **Paul V. Carlin**, executive director of the Maryland State Bar Association, has been inducted into the Philadelphia Bar Association's Senior Law Center Hall of Fame inaugural class… **Roseann B. Termini**, a professor and attorney specializing in food and drug, has been appointed to the Food and Drug Law Institute's Academic Programs Committee. She has also written "Curious About Veterinary Pharmacy Compounding—Who Really Has Regulatory Oversight," which was published in the Pennsylvania Bar Association's *2013 Health Law Quarterly*… Rochester Institute of Technology (RIT) has recognized **Brian P. O'Shaughnessy**, a shareholder at RatnerPrestia, as its 2013 Outstanding Alumnus for his generosity, leadership in the growth of the university, and highly distinguished service to RIT… **Stradley Ronon Stevens & Young, LLP** has been honored with the Catholic Volunteer Network's 2013 Bishop Joseph A. Francis Award for Service to the Community for the firm's exemplary community service and commitment to volunteerism in the Washington metropolitan area… **Mary Beth Beattie** of the Law Office of Mary Beth Beattie in Rockville, Maryland, has been elected chair of the Maryland State Bar Association Estate and Trust Law Section… **Gerald H. Acker,** a senior partner at the Law Offices of Goodman Acker P.C. in Southfield, Michigan, was elected president of the Michigan Association for Justice for the 2013–2014 term… **Helen Michael**, a partner at Kilpatrick Townsend & Stockton LLP, has been elected a member of the American College of Coverage and Extracontractual Counsel by its Board of Regents… **Bernard M. Resnick** has earned Recording Industry Association of America "Double Platinum" and "Billboard #1" plaques for his involvement in recording artist Justin Timberlake's recent *20-20 Experience*.

On the Move

Muftiah McCartin has been promoted to of counsel at Covington & Burling LLP. **Stephen M. Humenik** has joined the firm's commodities practice as of counsel. The new special counsels at the firm are **Damara Chambers**, **Ben Haley**, **Rick Longton**, **Zack Parks**, **Eve Pogoriler**, **Laura Sim**, and **Gina M. Vetere**. **Daniel Suleiman** has returned to Covington as special counsel, focusing his practice on defending individuals and corporations facing white collar criminal charges, Foreign Corrupt Practices Act investigations, and congressional inquiries… **Kimberly Reindl,** a Federal Communications Commission regulatory expert, has joined Perkins Coie LLP as senior counsel… **Debbie Matties** has joined CTIA-The Wireless Association as vice president of privacy… **Elizabeth Leavy** has joined Husch Blackwell LLP as associate, primarily focused in the area of government contracts… **Iris Y. González** has joined the AARP Foundation as senior litigation attorney on the health team… **Lawrence Roberts**, a senior Democratic official and counsel to then-Virginia Governor Tim Kaine, has joined Venable LLP as partner in the firm's state and local government group. **Allyson B. Baker,** a former Consumer Financial Protection Bureau enforcement attorney, has joined as partner in the firm's litigation group, while **Michael J. Rivera** has been brought on as partner in its SEC and white collar group… Veteran lobbyist and lawyer

continued on page 46

David Danner has been unanimously confirmed as chair of Washington state's Utilities and Transportation Commission by the state senate.

Paley Rothman LLP's Patricia Weaver has received the 2013 Professionalism Award from the Bar Association of Montgomery County.

Michael J. Grace has joined Whiteford Taylor & Preston LLP as counsel in the firm's tax group.

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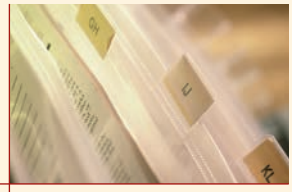

Note: Unless otherwise indicated, all D.C. Bar events are held in the D.C. Bar Conference Center at 1101 K Street NW, first floor. For more information, visit www.dcbar.org or call the Sections Office at 202-626-3463 or the CLE Office at 202-626-3488. CLE courses are sponsored by the D.C. Bar Continuing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

SEPTEMBER 4

Back to Basics: Recovery of Administrative and Litigation Costs; Qualified Offers
12–1:30 p.m. Sponsored by the New Tax Practitioners Committee of the Taxation Section.

SEPTEMBER 9

Successful Small Firm Practice, Day 1
12–2 p.m. (Afternoon Session); 6–8 p.m. (Evening Session). Sponsored by the D.C. Bar Practice Management Service Committee. Contact Daniel M. Mills, assistant director of the Practice Management Advisory Service, at 202-626-1312 or dmills@dcbar.org.

What Estate Planning Attorneys Need to Know About Health Care Reform and Related Taxes
6–9:15 p.m. CLE course cosponsored by the Estates, Trusts and Probate Law Section and Taxation Section.

SEPTEMBER 10

Handling DUI Cases in the District of Columbia Under the New Law
6–9:15 p.m. CLE course cosponsored by the Courts, Lawyers and the Administration of Justice Section and Criminal Law and Individual Rights Section.

SEPTEMBER 11

Basic Training and Beyond, Day 1: How to Start a Law Firm
9:15 a.m.–4:30 p.m. Sponsored by the D.C. Bar Practice Management Service Committee. Contact Daniel M. Mills, assistant director of the Practice Management Advisory Service, at 202-626-1312 or dmills@dcbar.org.

Supreme Court Review and Preview 2013
9:30 a.m.–12:45 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Health Law Section; International Law Section; Labor and Employment Law Section; Litigation Section; and Real Estate, Housing and Land Use Section.

How to Litigate a Patent Infringement Case 2013
6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Intellectual Property Law Section; and Litigation Section.

SEPTEMBER 12

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

SEPTEMBER 16

Successful Small Firm Practice, Day 2
12–2 p.m. (Afternoon Session); 6–8 p.m. (Evening Session). See September 9.

Practicing Law Across State Lines: Ethics and Practice Advice
6–8:15 p.m. CLE course cosponsored by the Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Environment, Energy and Natural Resources Section; Family Law Section; Government Contracts and Litigation Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; and Real Estate, Housing and Land Use Section.

SEPTEMBER 17

Managing a Successful Arbitration: Techniques and Best Practices From Experts in Arbitration
8 a.m.–5 p.m. Sponsored by the Alternative Dispute Resolution Committee of the Litigation Section.

Covenants Not to Compete in the District of Columbia, Maryland, and Virginia 2013
6–8:15 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; and Litigation Section.

SEPTEMBER 18

Basic Training and Beyond, Day 2: How to Grow a Law Firm
9:15 a.m.–4:30 p.m. See September 11.

Estates, Trusts and Probate Law Luncheon, Part 1
12–2 p.m. Sponsored by the Estates, Trusts and Probate Law Section.

Public Benefits: TANF Session: Cash Assistance for Families in Need
12–2 p.m. Presented by the D.C. Bar Pro Bono Program. Contact Kim DeBruhl at 202-737-4700, ext. 3289.

Fair Play? Competition in Sports Broadcasting and the Local Sports Fan
6–8 p.m. Sponsored by the Antitrust Law Committee of the Antitrust and Consumer Law Section.

Depositions That Work: Advanced Strategies
6–9:15 p.m. CLE course cosponsored by the Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Family Law Section; Government Contracts and Litigation Section; Intellectual Property Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Real Estate, Housing and Land Use Section; and Tort Law Section.

Attorney Briefs

continued from page 44

H. R. Bert Peña has joined Troutman Sanders Strategies… **Elizabeth A. Francis** has joined Charlson Bredehoft Cohen Brown & Sakata, P.C.… **Jeffrey C. Rambach** has joined Ungaretti & Harris LLP in Chicago as partner in the firm's tax and trusts and estates practices… **Cary Greene** has joined Davis Wright Tremaine LLP, practicing in the firm's food and beverage group. Energy attorneys **Glenn S. Benson** and **Mark L. Perlis** have joined the firm as partner. **Christin McMeley** has joined the firm's privacy and security practice group as partner… **Caitlin E. Gritt** has joined Bisceglie & Walsh as associate… Labor policy attorney **Maurice Baskin** has joined Littler Mendelson P.C. as shareholder… **David M. Endersbee** and **Jonathon H. Foglia** have been named partner in the aviation practice group of Zuckert, Scoutt & Rasenberger, L.L.P.… **Lance L. Shea** has joined Baker & Hostetler LLP as partner and national team leader of the firm's food and drug administration practice… **Elizabeth A. Diffley** and **Kenneth M. Vorrasi** have been named partner at Drinker Biddle & Reath LLP. Diffley works in the firm's Philadelphia office; Vorrasi serves in the firm's Washington, D.C., office… **Fernando M. Pinguelo** has joined Scarinci Hollenbeck, LLC as partner, taking on the role of chair of the firm's cyber security and data protection group and electronic discovery group… **Kate B. Polozie** has joined Potomac Law Group, PLLC as partner in the firm's corporate practice. **Ryan S. Spiegel** has joined as partner in its litigation practice… **Jeffrey P. Brundage** has joined Eckert Seamans Cherin & Mellott, LLC as associate in the firm's litigation division. **Daniel A. Glass** has been promoted to member at the firm… **Scott Blake Harris** has joined Wilkinson Barker Knauer, LLP as managing partner, focusing his practice on domestic and international telecommunications, technology, and energy law… **Stephen A. Best** has joined Brown Rudnick LLP as partner in the firm's white collar defense and government investigations group… **Eric R. Pogue** and **Andrew J. Turner** have been promoted to partner at Hunton & Williams LLP… **Peter M. Friedman** has joined O'Melveny & Myers LLP as partner in the firm's restructuring practice… **Stephen Ornstein** has joined Alston & Bird LLP as partner in the firm's capital markets practice… **Michael Magee Taylor Sr.** has been appointed senior vice president, general counsel, and corporate secretary for Inmarsat Government… **J. Andrew Jackson** has joined Jones Day as partner in the firm's government regulation practice… **Paul S. Bock** has joined Holland & Knight LLP as partner in the public policy and regulation practice group. Condominium lawyer **Douglas M. Irvin** has joined the firm as partner… **Moses A. Cook** has been appointed interim executive director of DC Law Students in Court… **James R. Hammerschmidt** has been named copresident of Paley Rothman LLP.

Company Changes

Latham & Watkins LLP has opened an office in Düsseldorf, Germany… Dawn-Marie Bey and Christopher Cotropia have opened the patent boutique **Bey & Cotropia PLLC**. Its office is located at 213 Bayly Court in Richmond, Virginia.

Author! Author!

George F. Indest III, president and managing partner of The Health Law Firm, has written "Legal Strategies for Doctors to Fight Bad Online Reviews," which was featured in the March/April issue of *Florida Medical Business*… **William S. Eubanks II**, a partner at Meyer Glitzenstein & Crystal and an adjunct professor at Vermont Law School and American University's Washington College of Law, has coauthored *Food, Agriculture, and Environmental Law*, a legal treatise published by the Environmental Law Institute and West Academic Press… **Adam C. Paul**, a partner at Kirkland & Ellis LLP, has cowritten the chapter "Almatis" in the *European Debt Restructuring Handbook*… **Mark V. Vlasic**, a senior fellow and adjunct professor of law at the Institute for Law, Science & Global Security at Georgetown University and a principal at Madison Law & Strategy Group PLLC, has cowritten the op-ed piece, "When Museums Do the Right Thing: Cambodian Statues, Mongolian Dinosaurs and the Fight Against Stolen Antiquities," which appeared in the *New York Times.*

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

From the President

continued from page 6

getary autonomy will help block one of the easiest and most pernicious paths to congressional abuse of power over the District: The insertion of controversial social policy riders when approving the District's annual local appropriations.

Congressional politics that delay the approval of appropriation measures have disastrous consequences for the District, preventing it from spending even its own funds. If the federal government shuts down, the D.C. government shuts down, too. And the White House Office of Management and Budget, not the District's elected officials, decides who is and who isn't an essential employee of the District.

The charter amendment giving the District budgetary autonomy from Congress became law in July. Next year, if all goes well, Congress may not be able to use riders attached to the District's local appropriation bill as a way to thwart the affirmative choices and policies adopted by D.C. elected officials and voters.

Some people believe that the measure may be unlawful, but Walter Smith, executive director of DC Appleseed, is confident that his pro bono lawyers will be able to mount a successful defense to any legal challenge to the amendment.

Of course, budgetary autonomy does not solve the fundamental injustice of the District's lack of voting representation in Congress, or Congress's authority to impose its legislative will on the District on purely local matters. Some residents believe that those rights will only be gained through passage of the New Columbia Admission Act, creating New Columbia as our country's 51st state. The Senate Homeland Security and Governmental Affairs Committee will be holding a hearing on the Senate bill this fall. Others put their hopes and efforts behind other vehicles for securing voting representation in Congress. But one thing almost all D.C. residents agree on is that full voting representation for the District is a matter of simple justice that is long overdue.

Notes

1 *See* the D.C. Vote Web site at www.dcvote.org/trellis/section.cfm?trellisID=13.

2 *See* the D.C. Vote Web site at www.dcvote.org/trellis/section.cfm?trellisID=10#house; *also see* Joan Indiana Rigdon, *Gun Fight, Revisited,* Wash. Law., May 2009, at 20.

3 *See* the New Columbia Web site at www.newcolumbiavision.org/home0.aspx.

4 New Columbia Admission Act (H.R. 292/S. 132).

5 *See* DC Appleseed's Web site at www.dcappleseed.org/project/dc-voting-rights.

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legal spectator

By Jacob A. Stein

Two Good Books, Lots of Great Tales

Years ago, many years ago, the criminal bar was located on 5th Street between D and F. The judges appointed the 5th Streeters to represent the criminals who could not afford to hire counsel. Despite the fact that there would be no payment, we eagerly took the assignments. We wanted to be in a courtroom, and in the very serious cases, we might get our names in the newspapers, the *Evening Star,* the *Post,* and the *Times-Herald.*

One of the local judges said that the 5th Streeters would take a lost cause and ride it horseback over the rim of hell. All that has been changed by the Public Defender Service.

Nevertheless, there are today criminal lawyers working solely on their own, or in a small firm, who like to take that horseback ride. They do not want to write memos or give advice to wealthy people. They don't believe that is the real practice of law. The bigger the LLP, the less justice.

Abbe Smith and Monroe Friedman, two very distinguished lawyers, have just put together a book titled *How Can You Represent Those People?* published by Palgrave, MacMillan. It is a collection of essays by those who have taken that horseback ride.

For instance, Barbara Babcock (Yale Law School, clerk for Henry Edgerton of the D.C. Circuit, and assistant attorney general for the Civil Division of the U.S. Department of Justice) says about *Those People*: "I always wanted to be a criminal defense lawyer, which was even more unusual for a woman in the early 1960s than wanting to be a lawyer at all. . . ." She said that she "had a fixed belief that lawyers had a high moral duty to defend—the more heinous the crime, the greater the duty."

Tucker Carrington, in her essay, describes her work at the Public Defender Service. She says the work she did there was one of the most significant things in her life.

> A few weeks before I left PDS, I tried my last case. Like every other case I handled, I wanted the best possible outcome for my client. But I also wanted something else out of it, too: Something for me. What I wanted was some sign, a capstone even, that my time as a public defender had been well spent—that I had become a skilled advocate, exhibited unwavering fidelity to my clients, and met the standard set by PDS: "The best representation that money can't buy."

Smith, the book's co-author with Friedman, says she represented a defendant who was convicted of murder, attempted murder, and car theft, and was sentenced to life in prison. Here are her interesting observations.

> I like guilty people. I do. I can't help myself. I prefer people who are flawed and complicated and do bad things to those who are irreproachable and uncomplicated and do the right thing. Flawed people are more interesting.

There is, she says, always something in the criminal's background or rearing that gives an insight to the crime. Her clients were not wicked. "They grew up in abusive or neglectful homes, falling prey to drugs or alcohol or gangs, were lacking in judgment, and had mental health problems."

She refers to Clarence Darrow (1857–1938) who "sought to make even the most hideous of crimes comprehensible. . . . [t]here were no moral absolutes, no truth, no justice. . . . only mercy."

Well, believe it or not, the same day *How Can You Represent Those People?* arrived, I received another book titled *In the Clutches of the Law/Clarence Darrow's Letters,* published by the University of California Press and edited by Randall Tietjen, a practicing lawyer. Tietjen proves in the facts that Clarence Darrow was and remains the most celebrated lawyer in American history.

Darrow's letters are interesting, and long. Here is a letter to a close friend, Mary Field Parton, dated Thursday, November 25, 1920. He tells his friend what this most famous lawyer was doing:

> I, like you, find nothing new from day to day. My office is filled all the time mainly by poor clients in trouble, people who have got money against the rules of the game & are trying to stay out of jail. People in all sorts of troubles: their wives crying & begging me to help as if I could do any thing if I only tried. How I wish I could but I can't. Lord what an awful mad house the world is, and it is Thanksgiving day and all the damn fools in the world are giving thanks that they are alive. Well I am not.

Now, back to 5th Street in the 1950s. Whenever there was a big murder case and the defendant was penniless, the judges called in Charlie Ford, the best criminal lawyer on 5th Street. In one of the cases, the defendant shot a man three times in the chest and three times in the back and reloaded the gun twice.

Charlie repeatedly asked his followers, "What do I say to the jury? They will bring in a first degree murder verdict and give him the chair. What am I going to say?"

I recall seeing Charlie standing up behind the defendant. Charlie put his hands on the defendant's shoulders, saying nothing for three minutes. Then Charlie screamed, "Sir, you are nothing but a second degree murderer. That's what you are, you know it, and this jury knows it." That was Charlie's closing argument.

The verdict. *Second degree* murder.

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

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