

FEBRUARY 2014

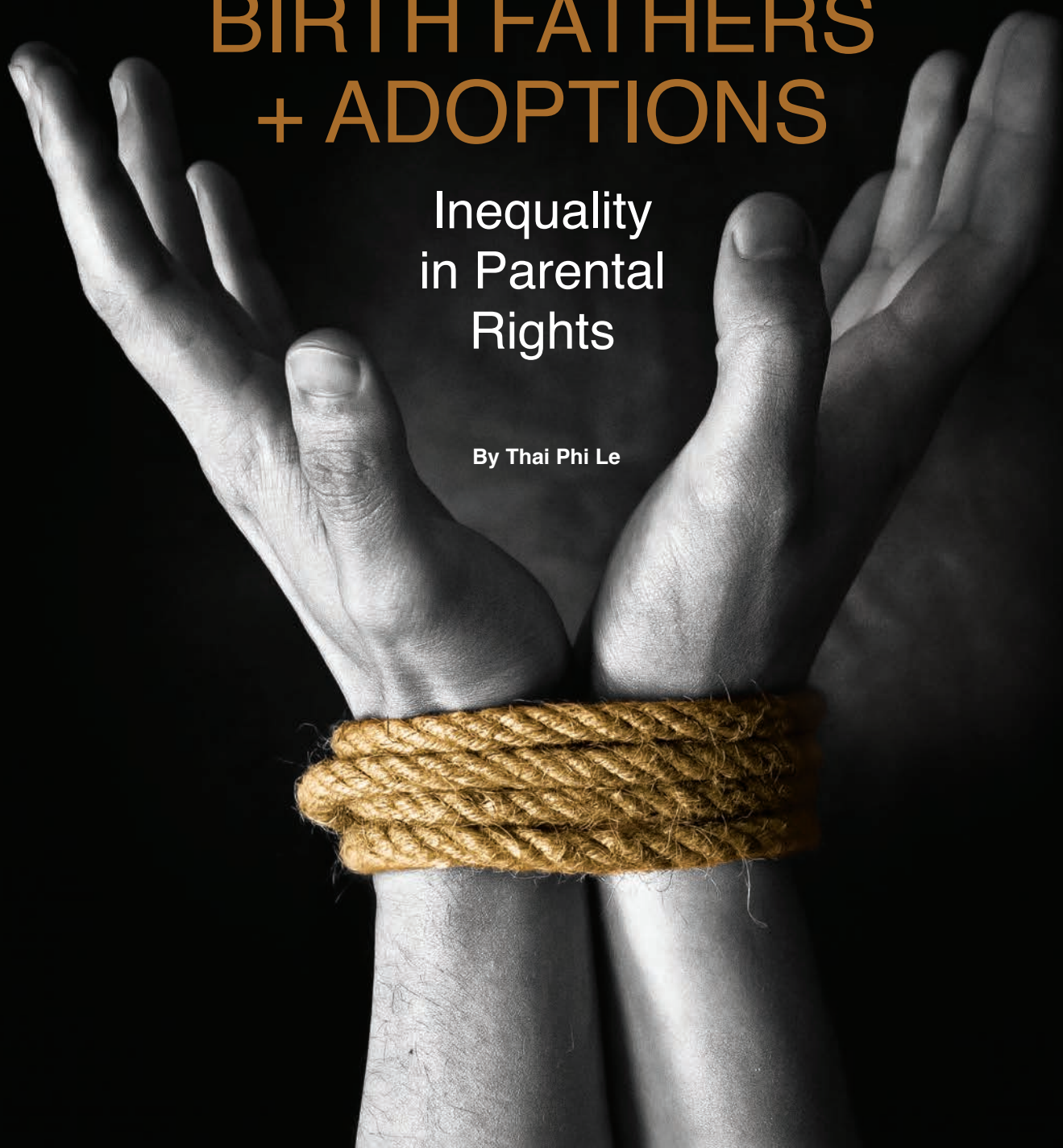
Washington Lawyer

THE OFFICIAL JOURNAL OF THE DISTRICT OF COLUMBIA BAR

BIRTH FATHERS + ADOPTIONS

Inequality
in Parental
Rights

By Thai Phi Le



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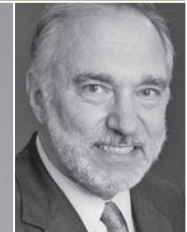
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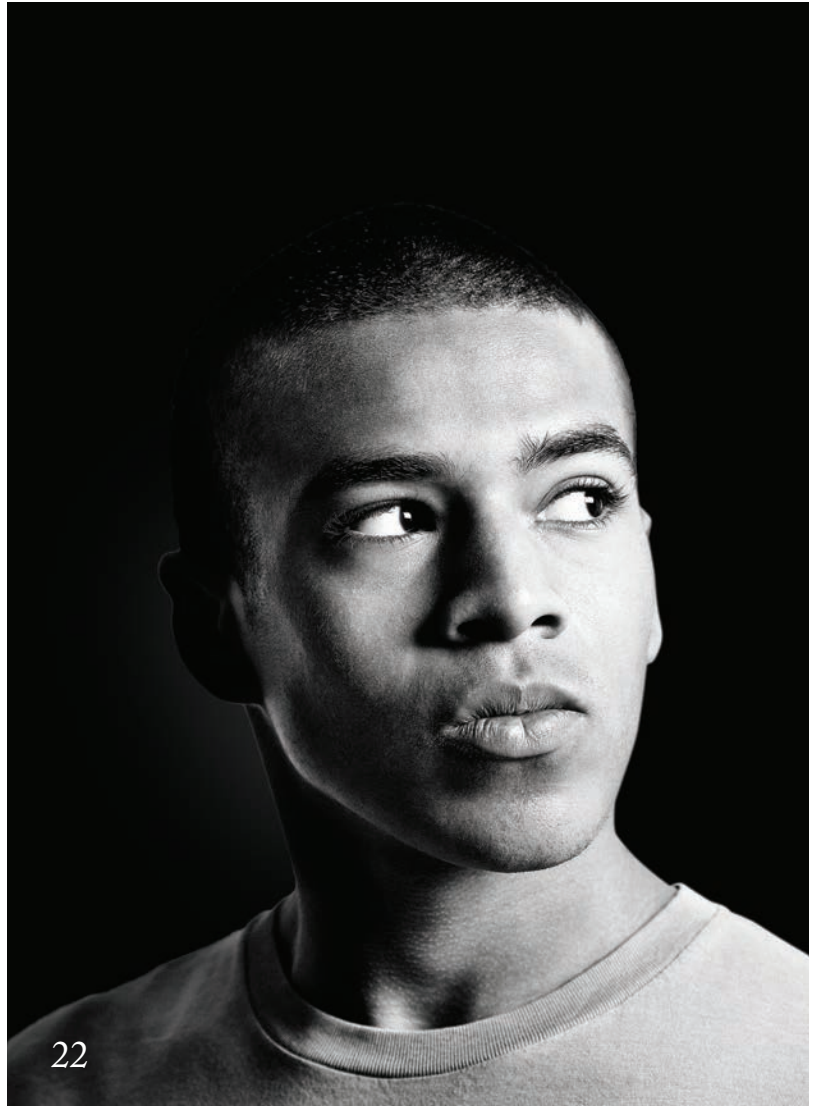
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Birth Fathers and Adoptions

What rights do birth fathers have?

Thai Phi Le reports on a few high-profile cases that highlight the struggles fathers endure in maintaining their parental rights.

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Taking the Stand

Attorneys *Joshua Berman*, *Glen Donath*, and *Christopher Jackson* argue the merits of Congress imposing a reasonable timeframe for prosecuting fraud cases committed during wartime.



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Letters



Ferster's Advice on Parking in D.C. Hard to Follow

In her December column, "Tips on Navigating Law School, Career," Andrea Ferster writes as part of Tip No. 3: "No ... parking tickets." Is she serious? Anyone who has spent any amount of time in the District of Columbia should know that it's impossible to avoid parking tickets. I am an expert on interpreting parking signs in the District of Columbia, but I've contributed plenty of parking fines to the District's coffers

The appropriate advice is to pay your parking tickets promptly. Unpaid tickets do come back to haunt people.

She's right about the DUIs, though.

Just ask the district attorney here in Austin, Texas.

—Nancy Jane Moore
Austin, Texas

Under Contract and Unfulfilled

Anna Stolley Persky's article on contract attorneys, which ran in the January issue, was an excellent depiction of the hazards and humiliations of being a temporary attorney ("Under Contract: Temporary Attorneys Encounter No-Frills Assignments, Workspaces").

I retired after 33 years in the practice of law and then, recently, decided to try my hand at contract work. Rather than being a satisfying turn in using my years of litigation experience, it was one of the most disappointing experiences of my legal career. The secretary was insolent and rude, frequently redoing my work because she "knew her forms" even when she did not. The boss rebuked me for, among other things, moving a paragraph in a form pleading and for leaving 45 minutes early one day.

It is nice to know that I am not alone in my feelings about being a temporary attorney. Ms. Persky correctly describes the work as "mundane, tedious and sometimes (often) mindless." Luckily, the

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

—Cynthia Thomas
Mandeville, Louisiana

As long as law schools continue to churn out a surplus of graduates, contract positions will play a pivotal role in helping law firms maintain an economic balance.

—George Holland
Detroit, Michigan

Let Us Hear From You

Washington Lawyer welcomes your letters. Submissions should be directed to Washington Lawyer, District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. Submissions are also accepted by fax at 1-877-508-2606 or by e-mail at communications@dcbarg.org. Letters may be edited for clarity and space.

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from the president

By Andrea Ferster

Family law is often mentioned as an area that exemplifies both the challenges of and opportunities for addressing the access to justice gaps for people of modest means. Many of the programs implemented by bar associations to make reduced-fee or “low bono” legal services available to persons of modest means focus on family law matters such as divorce, custody, and child support.

Here in the District, nearly one-third of the self-represented parties who visited the Self-Help Center at the family court of the D.C. Superior Court in 2013 self-reported that their income exceeded 200 percent of the federal poverty guidelines.¹ These parties do not qualify for pro bono legal services, but they can’t afford a market-rate lawyer. This is where private lawyers providing reduced-fee or low bono legal services are needed.

In fact, low bono lawyers have an established and respected place in the family court. The fees paid by the District of Columbia to lawyers serving on the family court panels for child abuse and neglect, juvenile delinquency, mental health, and special education cases are statutorily capped at an hourly rate of \$90, with an overall cap on fees depending on the complexity of the case.

Why do lawyers do this work? As Deborah Cason Daniels, president of the Family Court Trial Lawyers Association, points out, “because they are committed to public service and to helping families who are struggling.” Julie Petersen, executive director of the Montgomery County Bar, also says that “the desire to perform a public service” is one of the reasons lawyers participate in Montgomery County’s reduced-fee lawyer referral service.

And Rule 6.1 of the D.C. Rules of Professional Conduct confirms that providing professional services “at a substantially reduced fee, to persons and groups who are unable to afford or obtain counsel” is one way for lawyers to discharge their “pro bono public service” responsibilities.²

Connecting lawyers willing to charge

‘Low Bono’ Lawyers Fill Void in Family Court Proceedings

reduced fees with modest-means clients is only part of the solution to the access to justice problems facing moderate-income parties in family court. Promoting access to justice for all in our diverse community also requires innovation.³

One such innovation is a proposal by the D.C. Bar Pro Bono Program and the D.C. Access to Justice Commission to expand the D.C. Superior Court’s rules to formalize the practice of “limited scope representation,” or “unbundled” legal services.⁴ If adopted, rule changes would allow a party to reduce legal costs by retaining a lawyer for only a limited phase of a proceeding.

Collaborative practice, a successful mechanism for out-of-court dispute resolution, is another way to make legal proceedings more affordable. Collaborative law is a form of limited scope of representation—the lawyers represent the parties only for settlement purposes; it is a holistic approach, bringing a variety of professionals together to help the parties reach resolutions that work for the entire family. According to Barbara Burr, a collaborative lawyer, collaborative practice has a 90 percent to 95 percent success rate because the lawyers’ focus is on settlement.

Even though costs are reduced, a collaborative approach may still be too expensive. This is where the Collaborative Project of D.C. would step in. Modeled after the highly successful approach in Maryland,⁵ the Collaborative Project of D.C. was formed to link low- and moderate-income parties with collaborative professionals willing to provide services on a pro bono and reduced-fee basis.

Many of these innovations also will improve access to justice for those living in poverty. The D.C. Bar Pro Bono Program continues to make legal resources available to help pro se litigants in family court. In addition to the Pro-Se-Plus Divorce and Custody Clinics, in January 2014 the Pro Bono Program rolled out six exciting interactive “A2J” (Turbo Tax-like) family law interviews for self-rep-

resented litigants. People will now have 24/7 access to these interactive pleadings, which answer frequently asked questions along the way. The interactive interviews will allow litigants to use pro se model pleadings so that the Self-Help Center staff can focus their energy on more complicated issues and assist even more individuals. Recognizing the need to expand access to pro bono counsel in the area of family law, the D.C. Bar Pro Bono Program also placed 25 percent more family law cases with lawyers this past year.

The D.C. Bar is also working collaboratively with the D.C. Superior Court to help ensure that our family court continues to remain a national model of excellence that affords prompt and efficient access to justice for all parties. In April 2013, the D.C. Bar Family Law Task Force released a comprehensive report with recommendations to expand access to justice and to improve the administration of justice in the Domestic Relations and Paternity and Child Support branches of the family court. That report is based on years of surveying litigants, practitioners, and other jurisdictions’ best practices, as well as on fruitful conversations with the Superior Court. We are pleased that the court has been acting expeditiously to implement the task force’s recommendations.

There are no easy answers to closing our access to justice gap in the District, but we must constantly explore and develop new models. In this way we can safeguard our court’s worthy mission to be “open to all, trusted by all, and to provide justice to all.”

Reach Andrea Ferster at [aferster@railstotrains.org](mailto: aferster@railstotrains.org).

Notes

1 See “Justice for All?” available at <http://bit.ly/KmnICH>.

2 See Rule 6.1 of the D.C. Rules of Professional Conduct.

3 See “District of Columbia Courts State of the Judiciary 2010,” available at bit.ly/1gqLdWK.

4 Tom Williamson, “Limited Scope Representation: Progress and Prudence,” *Wash. Law.* June 2013, at 6.

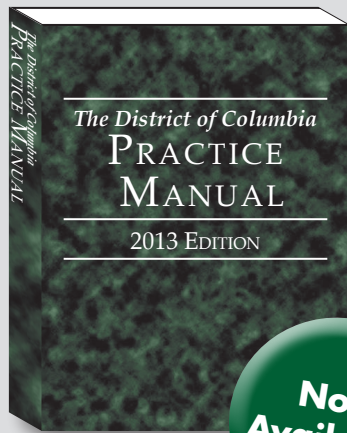
5 Collaborative Project of Maryland, available at <http://collaborativeprojectmd.org/>.



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bar happenings

By Kathryn Alfisi



Mick Wiggins

D.C. Bar Welcomes New President at 2014 Celebration of Leadership

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

Highlights of this year's celebration include the inauguration of incoming Bar president Brigida Benitez of Steptoe & Johnson LLP, the announcement of the 2014 D.C. Bar election results, and the presentation of awards to D.C. Bar sections, pro bono attorneys, law firms, and others who have served the Bar and its community.

The evening will open with the D.C. Bar Pro Bono Program's Presidents' Reception at 6 p.m. to honor Benitez, followed by dinner and the presentation of awards at 7:30. The reception will benefit the Pro Bono Program, which is supported entirely by voluntary contributions.

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

For more information about the Presidents' Reception or to make a donation to the D.C. Bar Pro Bono Program, contact Kathy Downey at 202-588-1857 or kdowney@erols.com. For more information about the Awards Dinner and



Brigida Benitez

Courtesy of Steptoe & Johnson LLP

Annual Meeting, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or annualmeeting@dcbar.org.

Courses Tackle Ethics Issues Facing Corporate Counsel, Lawyer-Lobbyists

In February the D.C. Bar Continuing Legal Education (CLE) Program will examine the ethics issues unique to corporate counsel and, in a separate course, will explore the ethical considerations for lawyers and law firms engaged in lobbying.

"Ethics Issues Facing Corporate Counsel" on February 3 is a lively, fast-paced program where faculty will use hypotheticals to discuss conflicts of interest, confidentiality, corporate wrongdoing, and compliance with the Sarbanes-Oxley Act requirements.

Saul Jay Singer, D.C. Bar legal ethics counsel, and Thomas E. Spahn, a partner at McGuireWoods LLP, will address questions such as what should counsel do when one of his or her client's affiliates disagrees with another affiliate, and can a law firm represent one of counsel's client's affiliates while taking a matter adverse to another affiliate.

Faculty also will look into how to handle requests for privileged documents from employees and former employees of the company that counsel represents, who owns the attorney-client relationship after a company that counsel represents sells its stock or assets, and "fiduciary exception" and when it applies.

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

On February 27 the CLE Program will offer the course "For Lawyers Who Lobby (and Their Firms): Legal Ethics and Unauthorized Practice Update" to help D.C. lawyers and law firms involved in lobbying activities understand the implications of opinions issued by the D.C. Court of Appeals Committee on Unauthorized Practice of Law and the D.C. Bar Legal

SAVE THE DATE! WOMEN'S BAR, FCBA MENTORING SUPPER

The Communications Law Forum of the Women's Bar Association of the District of Columbia and the Young Lawyers Committee of the Federal Communications Bar Association will hold their fourth annual mentoring supper from 6:30 to 9 p.m. on February 26 at Hogan Lovells, 555 13th Street NW. The event is an opportunity for attendees to network with some of the top communications lawyers in the District. For more information, call 202-639-8880 or visit www.wbadc.org.

Ethics Committee concerning conflict of interest rules, confidentiality, and other ethics considerations.

Led by Thomas B. Mason of Zuckerman Spaeder LLP, this course will use hypothetical scenarios to explore when lobbying is governed by the ethics rules, the ethical implications for law firms with nonlawyers engaged in lobbying, what issues arise for law firms that lobby and have law offices in different jurisdictions, how conflict of interest ethics rules apply to lobbying matters, lobbying and the rules preventing contact with represented parties, confidentiality and attorney-client privilege in the lobbying context, and advance waivers and lobbying.

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

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

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

D.C. Courts Line Up Events to Mark Black History Month

The District of Columbia Courts will celebrate Black History Month in February with an event every Friday. The annual observance features entertaining and enlightening events that celebrate black heritage.

This year's celebration include a program on the Freedom Riders, a book club talk on Solomon Northup's *Twelve Years a Slave*, and a month-long scavenger hunt that will reveal some of the history behind the D.C. Courthouse and Judiciary Square.

For more information on February events, contact Anita Jarman at 202-879-1218 or anita.jarman@dscs.gov.

CLE Program Offers Introductory Course on Essential Trial Skills

In February the D.C. Bar Continuing Legal Education (CLE) Program will offer the four-part "Essential Trial Skills Series," a great introduction to and overview of the trial skills a lawyer must possess in the courtroom.

The series includes lectures, discussions, and demonstrations emphasizing the rules, practices, and procedures in local and federal courts in the Washington metropolitan area. Both civil and criminal trial considerations will be discussed.

The series opens on February 5 with "Jury Selection," which will examine the process and procedure of jury selection, including the composition of the jury pool, peremptory strikes, and use of jury selection services.

Paulette Chapman, a partner at Koonz, McKenney, Johnson, DePaolis & Lightfoot, L.L.P.; Janet Mitchell of the Public Defender Service for the District of Columbia; and Dwight Murray, formerly of Jordan Coyne & Savits L.L.P., will lead this session.

Part two, "Opening Statements and Closing Arguments," on February 12 will help attorneys start out right and finish strong at their next trial. This session will look at opening and closing arguments from several key perspectives, including preparation, presentation, and objections.

Debra S. Katz, a partner at Katz, Marshall & Banks, LLP, and Michael F. Williams, a partner at Kirkland & Ellis

LLP, will serve as faculty.

Part three, "Witness Preparation and Direct Examination," on February 19 will cover attorneys' vital task of preparing witnesses to testify credibly at trial. This session will examine techniques and strategies for effective direct examination, maximizing a witness's potential and minimizing his or her weaknesses.

Attendees will hear from Catherine D. Bertram, a partner at Regan Zambri Long & Bertram, PLLC; Patrick J. Coyne, a partner at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; and Sara E. Kropf of the Law Office of Sara E. Kropf.

The final session, "Cross-Examination," on February 26 will teach attendees how to use cross-examination to tell their story, to control the witness, and to impeach the witness. This class is useful to attorneys who have yet to cross-examine a witness, as well as to practitioners who have a modest level of trial experience. It will delve into the objectives, strategies, tactics, mechanics, and legal principles of effective cross-examination.

Patrick J. Attridge of King & Attridge and L. Barrett Boss, a partner at Cozen O'Connor, will serve as faculty.

All sessions take place from 6 to 9:15 p.m. at the D.C. Bar

Conference Center, 1101 K Street NW, first floor. The series is cosponsored by the D.C. Bar 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; 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.

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

Pro Bono Program Training Prepares Attorneys to Handle Asylum Cases

On February 28 the D.C. Bar Pro Bono Program, in association with Capital Area Immigrants' Rights Coalition, Whitman-Walker Health, and Human

Rights First, will offer basic training for attorneys interested in representing asylum seekers.

The training is intended to prepare pro bono attorneys to represent indigent clients in asylum cases at the affirmative stage as well as detained individuals. Topics include U.S. asylum law, how to prepare an I-589 Application for Asylum form, documentation of asylum cases, how to work with victims of trauma, and credible and reasonable fear interviews. Practice before the U.S. Citizenship and Immigration Services (USCIS) Asylum Office also will be covered.

Faculty will include experienced immigration practitioners as well as staff from the Arlington USCIS Asylum Office.

Training participants are strongly encouraged to accept a pro bono referral from one of the sponsoring organizations. Attorneys who agree to take on a pro bono case in the future must be admitted to practice in some U.S. jurisdiction and have their own malpractice insurance. This training is also appropriate for paralegals and law students.

The training is cosponsored by Catholic Charities Immigration Legal Services, the D.C. Bar International Law Section and Litigation Section, and Tahirih Justice Center.

The training takes place from 9 a.m. to 3 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. For more information, contact the Pro Bono Program at 202-626-3489.

Georgetown Law's International Trade Update Returns in February

Georgetown University Law Center's Continuing Legal Education will hold its 2014 International Trade Update on February 27 and 28, an event that is expected to draw private practitioners, government attorneys, and in-house counsel seeking practical and timely information on international trade.

Attendees will learn important new developments affecting the trade and customs bars and will hear critical interpretation of those developments by senior partners at law firms, top government officials, judges from the U.S. Court of International Trade, and corporate counsel.

Professor John H. Jackson, director of Georgetown's Institute of International Economic Law, will be the keynote speaker, while Jan Woznowski, former director of the Rules Division of the General Agreement on Tariffs and Trade and World Trade Organizations secretariats, will serve as luncheon speaker.



Debra S. Katz

Michael F. Williams

Courtesy of Katz, Marshall & Banks, LLP

Courtesy of Kirkland & Ellis LLP

The program runs from 8:15 a.m. to 6 p.m. on day one and from 8 a.m. to 4:50 p.m. on day two at Georgetown University Law Center's Hart Auditorium, 600 New Jersey Avenue NW.

For more information, call 202-662-9890 or e-mail cle@law.georgetown.edu, or visit www.law.georgetown.edu/cle.

February Offerings Cover Business Entities, Legislative Drafting

In February the D.C. Bar Continuing Legal Education (CLE) Program will present a course on legislative drafting and two courses focused on limited liability companies (LLCs) and other business entities in the District of Columbia.

The February 4 course "LLCs in the District of Columbia and Other Business Entities" will guide participants through the laws governing these entities as well as their legal concepts, organizational principles, tax considerations, and attributes.

Attendees will learn why more than 90 percent of business entities formed in the District are LLCs, as well as the advantages and disadvantages of other legal entity forms, including corporations, nonprofit corporations, professional corporations, general partnerships, limited partnerships, limited liability limited partnerships, unincorporated nonprofit associations, and statutory business trusts.

Nicholas G. Karambelas of Sfikas & Karambelas LLP will help attendees understand the law and its practical application for their practice.

Karambelas also will teach the February 18 course "Drafting Operating Agreements for LLCs and Other Business Entities," which will explore the ins and outs of the operating agreement, including tax considerations.

Karambelas will cover indemnification and contribution, fiduciary duties, arbitration, bankruptcy, management rights and obligations, financial rights and obligations, contract governance, "good faith" and "fair dealing," enforcement provisions, and modification of agreement.

Attorneys who sign up for both courses will receive a \$29 discount. Both courses take place 6 to 9:15 p.m. and are cosponsored by the D.C. Bar Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Family Law Section; Law Practice Management Section; and Real Estate, and Housing and Land Use Section.

Finally, on February 20, the CLE Program will offer the course "Statute Drafting Workshop: D.C. Council Case

SAVE THE DATE! 15TH ANNUAL YOUTH LAW FAIR

The Superior Court of the District of Columbia and the D.C. Bar Litigation Section will present the 15th Annual Youth Law Fair on March 22, from 9:30 a.m. to 2 p.m., at the H. Carl Moultrie Courthouse, 500 Indiana Avenue NW. This free, educational event brings together students, lawyers, judges, educators, and community leaders to explore issues facing students in the Washington metropolitan area. For more information, contact the D.C. Bar Sections Office at 202-626-3455 or outreach@dcbbar.org.

Study," which will benefit anyone who has ever had to seek a legislative solution to a client's problem or who is involved in drafting statutes.

V. David Zvenyach, general counsel for the D.C. Council, will walk attendees through the process of drafting legislation for consideration by the council. Participants will learn how to approach the drafting process and how to frame the issues for it. They also will learn the difference between legislating by act or resolution, and the forms of bills and resolutions.

Using hands-on exercises, attendees will learn about composition, stylistic considerations, and special rules for amending existing law, as well as the components of a bill, drafting considerations, savings clauses, and conforming amendments.

The course takes place from 5:30 to 7:45 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section, Antitrust and Consumer Law Section, and District of Columbia Affairs 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.dcbbar.org/cle.

Courses Focus on U.S. Government Restrictions on Transactions

The D.C. Bar Continuing Legal Education (CLE) Program will hold two courses in February that look at U.S. government restrictions on international business transactions.

The February 11 course "Export Controls and Economic Sanctions 2014: Recent Developments and Current Issues" will focus on current topics such as developments under the Obama administration's Export Control Reform Initiative.

Faculty will discuss the proposed "600 Series" that migrates certain items from the International Traffic in Arms Regulations (ITAR) to the Commerce Control List; changes to U.S. trade sanctions and embargo programs in light of global political events; and changes to the ITAR rules pursuant to the implementation of the Defense Trade Cooperation Treaty between the United States and the United Kingdom.

Carol A. Kalinoski of Carol A. Kalinoski & Associates, Inc. and Thomas P. Scott III, of counsel at Ladner & Associates, PC, will serve as faculty.

The course takes place from 6 to 8:15 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; and International Law Section.

The new course "U.S. Economic Sanctions and the Office of Foreign Assets Control: An Introduction" on February 25 will provide a practical introduction to U.S. economic sanctions and to the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC), which administers U.S. economic sanction regulations.

Attendees will learn about the various types of economic sanctions imposed by the United States on certain countries, individuals, businesses, and other entities. Faculty will explain how the sanctions operate, review licensing procedures and exceptions, and discuss enforcement and voluntary disclosures for violations of sanctions.

Geoffrey M. Goodale, founder and chief executive officer of Trade Law Advisors, PLLC; Louis Rothberg, of counsel at Morgan Lewis & Bockius LLP; Tina Shaughnessy, counsel for international trade controls at General Electric Company; and John Smith, associate director of the Office of Foreign Assets Control at the U.S. Department of Treasury, will serve as faculty.

The course takes place from 6 to 9:15 p.m. and is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; and International 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.dcbbar.org/cle.

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

Join the voluntary bars today!

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

The D.C. Bar encourages lawyers to investigate the programs of these organizations and to consider membership. Get involved today!

Voluntary Bar Associations of the District of Columbia

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

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

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

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

Association of Nigerian Lawyers, Metropolitan D.C.: Promotes the professional interests of lawyers of Nigerian descent, as well as engages members in a way that will benefit the legal profession and the community through education, advocacy, and professional development. ■ www.anlaw-mdc.org

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

Bar Association of the District of Columbia, Young Lawyers Section: Devoted to providing service to the community and to the Bar. ■ www.badc.org/i4a/pages/index.cfm?pageID=3318

Capital Area Muslim Bar Association: Promoting the professional development of Muslim American attorneys and law students in the Washington metropolitan area. ■ www.dcmuslimbar.org

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

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

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

Energy Bar Association: Promotes the proper administration of laws relating to the production, development, conservation, transmission, and economic regulation of energy. ■ www.eba-net.org

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

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

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

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

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

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

Hispanic Bar Association of the District of Columbia: To further the legal rights afforded to Hispanics and to create a network of Hispanic legal professionals. ■ www.hbadc.org

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

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

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

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

National Conference of Black Lawyers, D.C. Chapter: Works for advancement of political and human rights in the U.S. and internationally. ■ www.ncbl.org/chapters.htm

National Lawyers Guild, D.C. Chapter: Supports economic, social, and political justice. ■ www.dcnlg.org

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

Sections of the D.C. Bar: The 20 sections of the D.C. Bar offer a wide selection of professional activities, providing a myriad of opportunities for the seasoned practitioner or the new attorney to advance specialized interests and to network with colleagues. ■ www.dcbar.org/for_lawyers/sections/index.cfm

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

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

Trial Lawyers Association of Metropolitan Washington, D.C.: The Trial Lawyers Association of Metropolitan Washington, DC (TLADC) seeks to promote the administration of justice, uphold the profession of law, and better prepare its members to advance the cause of those who are damaged in person or property and who must seek redress. ■ www.tla-dc.org/dc/

Vietnamese American Bar Association of the Greater Washington, D.C. Area, Inc.: To promote the professional growth and advancement of Vietnamese American attorneys and further the legal rights affecting the local Vietnamese American community. ■ www.vabadc.com

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

Washington Bar Association, Young Lawyers Division: Promotes the Afro-American lawyer's presence in the legal, judicial, and economic structure of American society. ■ www.washingtonbar.org/yld.php

Washington Council of Lawyers: Promotes the practice of pro bono and public interest law. ■ www.washingtoncounciloflawyers.org

Washington Foreign Law Society: Promotes knowledge and understanding of foreign and international law. ■ www.wfls.org

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

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

For additional information, please visit http://www.dcbar.org/for_lawyers/resources/voluntarybars.cfm.

bar counsel

By Joe Perry and Azadeh Matinpour



Mick Wiggins

"Lawyers have for centuries emphasized that the promotion of justice, rather than the earning of fees, is the goal of the profession."¹

On December 1, 2013, a Metro-North train headed for Manhattan derailed at "Spitting Devil's" curve in the Bronx, killing four and injuring dozens. By the following day, local personal injury firms had published statements online touting their credentials, suggesting negligence on the part of Metro-North, and emphasizing their firms' readiness to assist.

Such advertising, by itself, does not appear to run afoul of New York ethics rules barring in-person, telephone, or interactive computer solicitation.² It also likely would pass muster under the D.C. Rules of Professional Conduct governing attorney communications, which do not, generally, bar in-person solicitations provided they are not false or misleading.³ However, statutory law and another jurisdiction's rules may have a longer reach. In a 2009 column, Bar Counsel discussed how federal law governing rail accidents might bar seemingly permissible solicitation, and choice of law rules might dictate that a foreign jurisdiction's professional conduct rules apply.⁴

Since that time, the D.C. Court of Appeals has addressed the solicitation issue directly in the context of motor vehicle accidents. *In re Bergman* addressed a challenge to the descriptively named White Collar Insurance Fraud Prosecution Enhancement Amendment Act of 2006.⁵ Generally, the law prohibits the in-person solicitation of a motor vehicle accident victim within 21 days of an acci-

Profession Before Profit

dent, outside of circumstances where the attorney and potential client have a pre-existing business relationship.⁶ After its enactment, a D.C. Bar member brought suit, claiming that the law violated the First Amendment as well as the Home Rule Act. The court rejected these contentions, basing its decision in large part on members of the Bar and accident victims who spoke before the D.C. Council about the invasive nature of solicitations following an accident. The court found that even if no "overly aggressive" tactics were used, the sheer volume of solicitations could be disturbing at a time when many of the recipients are "likely to be in physical or emotional distress or in vulnerable circumstances."⁷ As such, the District had a substantial interest in regulating the practice, and given that the in-person solicitation bar is limited to 21 days, and that mail solicitations are permitted from the outset, the law is sufficiently tailored to pass constitutional scrutiny.⁸ Further, the court insisted that the case was "not about the benign democratic ideal of opposing views competing for public acceptance. Rather, it is about practitioners aggressively seeking to secure potentially profitable business."⁹

There is nothing shameful in an attorney working hard for his or her fee, and the prospect of a paycheck certainly may serve as a substantial motivation to do the best possible job for a client. The danger, particularly at the solicitation stage, is that the desire for profit may not align with a (potential) client's interest—those rendered vulnerable by a recently experienced accident may make a decision about hiring counsel or bringing suit that they would not otherwise make. Whatever the D.C. rules might permit, statutory regulation of in-person advertising goes further, not only protecting victims from harassment, but serving to remind lawyers in an extremely competitive corner of the profession that the client is in charge from day one.

Joe Perry and Azadeh Matinpour serve as assistant bar counsel and investigative attorney, respectively, in the Office of Bar Counsel.

Notes

¹ *Obralik v. Ohio State Bar Association*, 436 U.S. 447, 460 (98 S.Ct. 1912).

² Longstreth, Andrew, *Despite Ethics Ban, Lawyers Find Ways to Reach N.Y. Train Accident Victims*, Reuters, <http://reut.rs/IGIs7p> (last visited Dec. 12, 2013).

³ See Rules 7.1 (Communications Concerning a Lawyer's Services); 7.5 (Firm Names and Letterheads).

⁴ Gene Shipp and Joe Perry, *Tragedy and the Attorney Solicitation Debate*, Wash. Law., Oct. 2009 at 10.

⁵ 986 A.2d 1208 (D.C. 2010).

⁶ Solicitations by mail are permitted immediately after the accident, however, making the D.C. statute less restrictive than the Florida regulation upheld by the U.S. Supreme Court in *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (upholding Florida Bar prohibitions on targeted, direct mail solicitations to accident and disaster victims within 30 days of injury).

⁷ *Bergman*, 986 A.2d at 1214, 1218.

⁸ As the advertising the law sought to regulate constituted commercial speech, the law warranted only intermediate scrutiny. *Bergman*, 986 A.2d at 1216–17.

⁹ *Id.* at 1216.

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE THOMAS FORTUNE FAY. Bar No. 23929. November 27, 2013. The Board on Professional Responsibility directs Bar Counsel to informally admonish Fay. The Board upheld the Hearing Committee's finding of the existence of an attorney-client relationship where Fay was engaged by a suspended lawyer to file a civil complaint on behalf of the suspended lawyer's client. After filing the complaint, Fay, as the counsel of record, failed to provide his client with skill and care commensurate with that generally afforded clients by other lawyers in similar matters; failed to represent the client zealously and diligently, including failing to attend to the client's case with reasonable promptness; failed to keep the client reasonably informed about the status of the case; failed to explain the status of the client's case to permit client to make informed decisions regarding the representation; and failed to provide the client with a writing setting forth the basis of rate or fee, as prescribed by the Rule in place in 1999. Rules 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.4(b), and 1.5(b).

IN RE DARYL J. HUDSON III. Bar No. 292045. November 8, 2013. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Hudson. Hudson was convicted in the U.S. District Court for the District of New Mexico of seven counts of wire fraud, in violation of 18 U.S.C. § 1343, crimes involving moral turpitude *per se* for which disbarment is mandatory under D.C. Code § 11-2503(a) (2001).

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

IN RE WARREN E. BROWN. Bar No. 405274. November 27, 2013. The D.C. Court of Appeals granted Brown's petition for reinstatement.

IN RE SCOTT B. GILLY. Bar No. 442356. November 7, 2013. In a reciprocal matter from the U.S. District Court for the Southern District of New York, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Gilly for one year with fitness, *nunc pro tunc* to September 25, 2013. Gilly was found to have violated ethical rules relating to knowing use of false evidence, suppression of evidence, failure to disclose information he had a legal obligation to disclose, false statement to a third person, failure to supervise a subordinate lawyer, and dishonesty.

IN RE MATTHEW KLUGER. Bar No. 981786. November 21, 2013. The D.C. Court of Appeals disbarred Kluger. Kluger was convicted in the U.S. District Court for the District of New Jersey of obstruction of justice, in violation of 18 U.S.C. § 1512(c)(2); conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371; securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff(a); and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). Kluger's conviction for obstruction of justice is a crime involving moral turpitude *per se* for which disbarment is mandatory under D.C. Code § 11-2503(a) (2001).

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE SHERON A. BARTON. Bar No. 997851. November 21, 2013. Barton was suspended on an interim basis based upon discipline imposed by the U.S. District Court for the District of Maryland.

IN RE MIRA S. BURGHARDT. Bar No. 484157. November 21, 2013. Burghardt was suspended on an interim basis based upon discipline imposed in Massachusetts.

IN RE CHARLES P. INGENITO. Bar No. 450710. November 21, 2013. Ingenito was suspended on an interim basis based upon discipline imposed in New Jersey.

IN RE LILY MAZAHERY. Bar No. 480044. November 21, 2013. Mazahery was suspended on an interim basis pursuant to D.C. Bar R. XI, § 9(g), pending final action on the Board on Professional Responsibility's October 4, 2013, recommendation of disbarment.

IN RE JAMES MEANEY III. Bar No. 352872. November 21, 2013. Meaney was suspended on an interim basis based upon discipline imposed in Tennessee.

IN RE JOSEPH J. O'HARA. Bar No. 362581. November 21, 2013. O'Hara was suspended on an interim basis based upon his conviction of a serious crime in the U.S. District Court for the Western District of Texas.

IN RE WADE A. ROBERTSON. Bar No. 495427. November 21, 2013. Robertson was suspended on an interim basis based upon the California State Bar Court's involuntary transfer of his license to inactive status while the Supreme Court of California reviews the recommendation that Robertson be disbarred.

Disciplinary Actions Taken by Other Jurisdictions

In accordance with D.C. Bar Rule XI, § 11(c), the D.C. Court of Appeals has ordered public notice of the following non-suspensory and nonprobationary disciplinary sanctions imposed on D.C. attorneys by other jurisdictions. To obtain copies of these decisions, visit www.dccourts.gov/internet/opinionlocator.jsf.

IN RE ROBERT N. LEVIN. Bar No. 79137. On July 2, 2013, the Court of Appeals of Maryland reprimanded Levin for violations of Maryland Rules 1.15(e), 3.4(c), and 8.4(d) for disregarding a Writ of Garnishment.

IN RE MICHAEL W. LU. Bar No. 452071. On July 18, 2013, the Court of Appeals of Maryland reprimanded Lu by consent based upon Lu's admission that he violated Maryland Rule 1.3 by not diligently assuring that he and his

client had a complete understanding of one of the grounds for annulment of marriage in Virginia when translating from English to Chinese.

Informal Admonitions Issued by the Office of Bar Counsel

IN RE LAURA HEISER. Bar No. 411822. November 8, 2013. Bar Counsel issued Heiser an informal admonition. While practicing law as a U.S. Department of Justice attorney, Heiser failed to maintain an active license, engaged in conduct that seriously interferes with the administration of justice, and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rules 5.5(a), 8.4(c), and 8.4(d).

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

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

D.C. Bar Foundation Names Jarratt as Executive Director

The District of Columbia Bar Foundation's board of directors has named Kirra L. Jarratt as its new executive director. Jarratt recently served on the D.C. Bar Board of Governors.

Jarratt was formerly a legislative counsel in the Governmental Affairs Office of the American Bar Association, where she focused on issues such as campaign finance reform, elder law, and real property. She also worked on the reauthorization of the Violence Against Women Act. Jarratt follows Katherine L. "Katia" Garrett, who served as executive director of the Bar Foundation since 2005. Garrett stepped on December 20.

"I'm thrilled to build on Katia's history of success and thoroughly engage in the long-term strategic planning process that the foundation has begun," Jarratt said. "I am committed to building the foundation's community of support that is so instrumental in helping to improve access to justice for D.C.'s most vulnerable residents."

Jarratt's experience includes serving as general counsel for the D.C. Department of Youth Rehabilitation Services and as assistant general counsel at the D.C. Child and Family Services Agency. She also served as counsel for the U.S. Senate Judiciary Committee and as legislative director for Congresswoman Eleanor Holmes Norton. In addition, Jarratt founded the law firm of Jarratt & Jarratt, PLLC, where she litigated child welfare and family law cases. She is a graduate of Harvard and Radcliffe Colleges and the University of Michigan Law School.

"We have found an excellent new leader for the D.C. Bar Foundation who will build on the truly remarkable professionalism, vision, and strategic,



Washington Council of Lawyers (WCL) board member and Arnold & Porter LLP partner Phil Horton poses with Children's Law Center Executive Director Judith Sandalow, the recipient of the WCL's Presidents' Award, at the WCL awards ceremony on December 4.

collaborative growth that Katia Garrett has so effectively put in place during her tenure," said Marc Fleischaker, president of the Bar Foundation's board of directors. "Kirra brings leadership, passion and a deep commitment to serving the most vulnerable population in Washington, D.C."—*K.A.*



Kirra L. Jarratt

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

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

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

In addition, the new Marketplace serves as a one-stop shop for members to buy or download materials made available from some Continuing Legal Education and Sections programming, and numerous

publications such as the *District of Columbia Practice Manual*. Users also can register for events in one easy transaction.

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

Keep in mind that during the transition, bookmarked links may no longer work on our new Web site. The Bar's Web site is available at www.dcbbar.org.

For questions, feedback, or to report issues with the new Web site, please contact the D.C. Bar at 202-626-1302.—*T.L.*

Washington Council of Lawyers Recognizes Pro Bono Service

On December 4 the Washington Council of Lawyers (WCL) held its annual awards ceremony at Arnold & Porter LLP where it honored several members of the District of Columbia's legal community for their pro bono work.

"Our annual awards reception is a wonderful opportunity to celebrate the commitment to service of our awards recipients and to highlight the outstanding work of these individuals and this law firm. They are an inspiration, and, by their example, encourage all of us to find a way to give back," said WCL Executive Director Nancy Lopez.

The Law Firm Award went to Fried, Frank, Harris, Shriver & Jacobson LLP for being a leader in the public interest community and for its longstanding relationship with WCL.

The Outstanding Government Pro Bono Service Award went to Jay Own of the Antitrust Division of the U.S. Department of Justice, who has made regular pro bono service a part of his legal career. He has volunteered for the Washington Legal Clinic for the Homeless for more than five years, handling 126 pro bono clients, and he serves on the clinic's board of directors.

The first ever recipient of the Legacy Award was Arnold & Porter partner

Lawrence Schneider, who has been on the WCL board for more than three decades, during which time he has served as treasurer, vice president, and president; served on nearly every standing committee; and been an advisor and mentor to newer leaders.

Judith Sandalow, executive director of the Children's Law Center (CLC), received the Presidents' Award for her commitment to improving the lives of children in the District. Under her leadership, CLC has become the District's largest civil legal service organization.

"I believe the thanks are just as deserved by each of you and the hundreds of pro bono lawyers, board members, donors, and support staff who make our work possible," Sandalow said before reading aloud some thank you notes received.

"Just recently one of our pro bono lawyers thanked me for the opportunity to do pro bono work. She said 'thank you for giving me a chance to learn so much about our city, my neighbors, and what it really means to be a lawyer.' There is no better reward than that," Sandalow said.

Jenner & Block LLP partner and WCL past president and honorary board member Paul Smith gave the evening's keynote remarks in which he said the D.C. legal community has a dedication to serving the poor unlike any other city in the nation, and that the city's pro bono culture was so strong, thanks to the work of groups like WCL and CLC.—K.A.

Bar Seeks Candidates for Committee, Board Vacancies

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

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

Résumés must be received by March 14. Individuals interested in applying should submit a résumé with a cover letter stating the committee on which they would like to serve to executive.

A FOUR-LEGGED LIFT



Kathryn Alfisi

Georgetown University Law Center students take a break from studying for their December finals to play with Cody and take part in Pause for Paws. For the third year, Georgetown's Student Animal Legal Defense Fund presented the event, which brings together students and therapy dogs in an effort to reduce student stress and anxiety before exams. The 16 dogs were provided by Fidos for Freedom, Guiding Eyes for the Blind, Veterans Moving Forward, and Warrior Canine Connection.—K.A.

office@dcbar.org or by mail to the D.C. Bar Screening Committee, 1101 K Street NW, Suite 200, Washington, DC 20005-4210.

Additionally, Bar members interested in being considered for BPR hearing committee vacancies that arise periodically should send a letter of interest and résumé to the Board on Professional Responsibility, 430 E Street NW, Suite 138, Washington, DC 20001.

Bar's Sections Start Steering Committee Nominations Process

The D.C. Bar's sections have begun the process of electing steering committee members for 2014. Bar members who are interested to run must submit their Candidate Interest Forms and résumés by 5 p.m. on February 6.

Voting will begin on April 29 and end at midnight on May 23. Elected candidates will take office on July 1.

The D.C. Bar Sections Office held a briefing for prospective candidates on January 22.

Steering committee members are responsible for coordinating programs, projects, publications, and community outreach activities of the Bar's sections. Steering committees can issue public statements and submit comments

on legislation, court rules, and regulatory reform within their area of expertise.

Attorneys who are members of the D.C. Bar and of one or more of its sections are eligible to run for a seat on their sections' steering committees. Steering committee members are elected for three-year terms.

After the February 6 deadline, each section's nominating committee will select its slate of candidates. Nominating committees must submit their lists of nominees (two to three candidates per open seat) no later than March 3.

To know more about the sections elections or to view the Candidate Interest Form, contact the Sections Office at 202-626-3463 or sections@dcbar.org, or visit www.dcbar.org/sections/elections.

JNC Announces Three Nominees for D.C. Court of Appeals Vacancy

On December 18 the District of Columbia Judicial Nomination Commission recommended to President Obama three candidates for a vacancy on the District of Columbia Court of Appeals. The president has 60 days to select one of the nominees to fill the vacancy left by Judge Kathryn A. Oberly, who retired in November.

The commission recommended Todd

Sunhwa Kim, solicitor general of the District of Columbia since 2006. In his current position, Kim oversees appellate litigation for the D.C. government in the D.C. Court of Appeals, the U.S. Court of Appeals for the District of Columbia Circuit, and the U.S. Supreme Court.

Before becoming solicitor general, Kim was an appellate attorney in the Environmental and Natural Resources Division of the U.S. Department of Justice. A graduate of Harvard College and Harvard Law School, Kim clerked for Judge Judith W. Rogers of the D.C. Circuit.

The commission also nominated D.C. Superior Court Associate Judge Neal Elliott Kravitz, who has served on the court since 1998. Judge Kravitz is a member of the Standing Committee on Fairness and Access to the District of Columbia Courts and the Superior Court Rules Committee. Judge Kravitz has sat by designation on the D.C. Court of Appeals on several occasions and has authored several opinions for the court.

Prior to his appointment to the bench, Judge Kravitz was counsel to the assistant attorney general for civil rights at the Department of Justice, was principal deputy Democratic special counsel to the U.S. Senate Whitewater Committee, and was special investigative counsel to the U.S. Senate Select Committee on POW/MIA Affairs. He served as executive director of the New Hampshire Public Defender and worked as a staff attorney at the Public Defender Service for the District of Columbia. A graduate of Yale College and Harvard Law School, he served as law clerk to Judge Henry A. Politz of the U.S. Court of Appeals for the Fifth Circuit.

The third nominee, Paul Reinherz Quitman Wolfson, is a partner in the appellate and Supreme Court litigation group at Wilmer Cutler Pickering Hale and Dorr LLP, which he joined in 2002 after serving as an assistant to the solicitor general of the United States at the Department of Justice. At the Justice Department, Wolfson received the Attorney General's Distinguished Service Award in 2001 for "exemplary representation of the United States before the Supreme Court." He was a staff attorney at Public Citizen Litigation Group from 1990 to 1994. Wolfson graduated from Harvard University, the University of Cambridge, and Yale Law School. He clerked for Judge Phyllis Kravitch of the U.S. Court of Appeals for the Eleventh

JAMMIN' FOR JUSTICE



D.C. Law Students in Court Executive Director Moses Cook (right) joined the DCLSIC staff onstage at the Black Cat on November 20 to address the crowd before the start of a concert benefiting the organization. The concert was presented by JusticeAid, a recently formed organization that uses the arts to educate the public on justice issues and to raise money to support organizations dedicated to eradicating injustice. JusticeAid's board of directors is composed of D.C. attorneys and a retired D.C. Superior Court judge.—K.A.

Circuit, and then for Associate Justice Byron White of the Supreme Court.

For more information, contact the commission's executive director at 202-879-0478 or dc.jnc@dc.gov.—K.A.

New, Expanded Site Replaces Venerable THOMAS.gov

After more than a year in beta form, the new Congress.gov has replaced the popular THOMAS.gov, which helps users find free legislative information.

The new Congress.gov site has expanded the offerings once offered by THOMAS.gov, providing bill status and summary, member profiles, and bill text from the 111th and 112th Congress. In addition, the new site includes committee reports, direct links from bills to cost estimates from the Congressional Budget Office, legislative process videos, committee profile pages, and access to information dating back to the 103rd Congress. Over the next year, the site will also incorporate nominations as well as treaties and communications.

THOMAS.gov launched nearly 20 years ago, drawing an average of 10 million visitors a year. The site, however, was no longer able to accommodate the changes in Internet practices over the years, including the need for a mobile-friendly site. Congress.gov is a collabora-

tion between the Library of Congress, U.S. Senate, U.S. House of Representatives, and the Government Printing Office aimed at making the search for legislative information more streamlined, comprehensive, and intuitive.

Visitors to THOMAS.gov will be automatically redirected to Congress.gov. The link to the THOMAS page on Congress.gov will remain until late 2014. Users who want more help navigating the new site can sign up for online or in-person trainings, which are scheduled for March 11 and May 15. To register, visit beta.congress.gov/help.—T.L.

CCE Searches for Next Honorees of Justice Potter Stewart Award

The Council for Court Excellence (CCE) is accepting nominations for its 2014 Justice Potter Stewart Award until February 7.

The award is presented each year to members of the local and federal justice system who have exhibited throughout their careers the same persistence to improving the administration of justice as former U.S. Supreme Court Justice Stewart, the award's namesake. In addition, the individual or group must have demonstrated significant and sustained contributions to the legal system or the administrative aspects of the government in the District of Columbia.



Generation Hope, a nonprofit assisted by the CED Project, helps teen parents reach their goal of a college education.

SERVING THE COMMUNITY

D.C. Bar Pro Bono Program's Community Economic Development Project strengthens the community by matching pro bono lawyers with nonprofit organizations and small businesses serving the District's low-income neighborhoods.

The D.C. Bar Pro Bono Program gratefully acknowledges our Community Economic Development partners for providing pro bono legal services to 52 nonprofits, 296 disadvantaged small businesses and training 1,727 nonprofit managers and small businesses in its 2013 fiscal year.

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

Learn more at www.dcbar.org/probono

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District of Columbia Government
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 U.S. Small Business Administration
 U.S. Social Security Administration

In years past CCE has presented two Justice Potter Stewart Awards (and on a few occasions, three), one of which may be given to an “unsung hero” who has worked with little or no public acclaim. Current CCE board members or sitting judges are not eligible.

The award(s) will be presented at CCE’s 18th annual Justice Potter Stewart Dinner on May 8 at the Organization of American States.

Nominations can be mailed directly to the Council for Court Excellence at 1111 14th Street NW, Suite 500, Washington, DC 20005, or submitted online at www.courtexcellence.org, keyword: Justice Potter Stewart Award. —*T.L.*

Former D.C. Bar President Flagg Appointed to JNC

On January 2 the D.C. Bar appointed Ronald S. Flagg, former president of the Bar, as the newest member of the District of Columbia Judicial Nomination Commission.

Flagg currently serves as vice president for legal affairs, general counsel, and corporate secretary of the Legal Services Corporation (LSC). He also chairs the board of directors of the National Veter-

ans Legal Services Program.

Prior to his appointment to LSC, Flagg practiced commercial and administrative litigation at Sidley Austin LLP for 31 years, 27 years of which as partner. He also chaired the firm’s Committee on Pro Bono and Public Interest Law for more than a decade.

Flagg was president of the D.C. Bar from 2010 to 2011 and served on the Bar’s Board of Governors from 2007 to 2009. He also served as chair of the Bar’s Pro Bono Committee and of the AARP Legal Counsel for the Elderly’s governing board. He was a member of the American Bar Association’s House of Delegates, as well as of the board of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs.

A graduate of the University of Chicago and Harvard Law School, Flagg clerked for Judge Myron L. Gordon of the U.S. District Court for the Eastern District of Wisconsin.

Flagg replaces Venable LLP partner



Patrice Gilbert Photography

Ronald S. Flagg

Karl A. Racine on the commission, who also was appointed by the D.C. Bar.

Department of Homeland Security Receives Pro Bono Award

The Department of Homeland Security (DHS) was honored for its commitment to promoting and facilitating pro bono work among its attorneys by the Standing Committee on Pro Bono Legal Services of the Judicial Conference of the District of Columbia Circuit at the annual Federal Government Pro Bono Recognition Reception on December 16.

“They’re really doing double duty,” said committee chair James Sandman of government attorneys providing pro bono legal services. Sandman said government attorneys face special challenges when seeking to perform pro bono work—they have more restrictions and

NEW BAR MEMBERS MUST COMPLETE PRACTICE COURSE

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

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

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

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

The preregistration fee is \$219; the onsite fee is \$279. Courses will be held on February 4, March 8, April 8, May 17, and June 10. Advanced registration is encouraged.

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

SPECIAL NOTICE TO D.C. BAR SECTION MEMBERS: 2014 Steering Committee Voting to be Online

The 2014 section steering committee elections will be conducted primarily online with paper ballots only available on request.

Section members in good standing will access their ballots by logging into the Bar’s Web site during the spring voting period to cast their ballots. Individuals who wish to receive a paper ballot must submit a request no later than April 15, 2014 to www.dcbar.org/sections/elections or by email to section-ballot@dcbar.org.

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





Kathryn Alfisi

Chief Judge Richard Roberts of the United States District Court for the District of Columbia (left) presents Joseph Maher of the U.S. Department of Homeland Security with the John C. Cruden Federal Agency Pro Bono Leadership Award at the Federal Government Pro Bono Recognition Reception on December 16 at the William B. Bryant Annex of the U.S. Courthouse.

fewer resources.

“People would be amazed to discover that federal government attorneys make up more of the staff of the D.C. Bar Pro Bono Program’s clinics than any private law firm,” he said.

The reception marked Chief Judge Merrick Garland’s first time officiating an event as chief judge. Garland was instrumental in getting the U.S. Department of Justice to allow government attorneys to do pro bono work, which he talked about during his remarks.

“Look how far we’ve come. In early 1996 there was only one federal agency, the Justice Department, that had a program to encourage pro bono participation; now there are 28, with six more in the drafting stage. This year 17 federal agencies committed to staffing the D.C. Bar Pro Bono Program’s Advice and Referral Clinic, bringing volunteers to the clinic 21 times,” he said.

“These are hard economic times still. Many in our local community are hurting; they are in need of legal services and without the money to pay for them. Someone has to step up to meet that need. I’m proud of the people in this room because you are the ones who are stepping up.”

DHS attorney Joseph Maher accepted the John C. Cruden Federal Agency Pro Bono Leadership Award on behalf of his agency.

The reception is part of the conference’s ongoing efforts to encourage pro bono service by both private and public

attorneys admitted to its courts. In 1998 and in 2010 the conference recommended that attorneys perform 50 hours of pro bono legal service annually to fulfill their professional obligations under Rule 6.1 of the District of Columbia Rules of Professional Conduct.

Bar Seeks Nominations for Annual Awards at Celebration of Leadership

The D.C. Bar is seeking nominations for outstanding projects and contributions by Bar members that will be recognized at the 2014 Celebration of Leadership: The D.C. Bar Awards Dinner and Annual Meeting. The deadline for submissions is March 28.

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

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

The winners will be honored on June 17 at the Bar’s Celebration of Leadership at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW. The Bar also will present its Beatrice Rosenberg Award for Excellence in Government

continued on page 46



Legal Community, City Year Join Hands to Help Students Succeed

On a normal weekday morning in Washington, D.C., people briskly walk through the city streets, heads buried in their phones or pointedly making their way to the office. But November 21 wasn't a typical workday for some.

A couple of blocks from Jones Day, which sits on the corner of 3rd Street and New Jersey Avenue NW, people in red jackets started waving. The first time, you think nothing of it. Another block closer and the youths are smiling and saying hello. Now you're a little thrown off. As you round the corner, the "Good mornings!" ring in the air. What is going on? It's the second annual City Year Legal Community Breakfast, held at Jones Day.

Two Law Students and a Dorm Room

The idea for City Year was born in 1988 in the dorm room of two Harvard Law School students. "It was the belief that young people had a part to play in addressing some of the nation's most challenging issues," said Jeff Franco, vice president and executive director of City Year Washington, D.C.

The nonprofit's mission is to help students stay in school by sending AmeriCorps members into public schools to serve as tutors, mentors, and role models alongside teachers. City Year is currently in 24 communities across the United States.

The Washington, D.C., location was founded in 2000 by Christopher Murphy, a former attorney at Hogan & Hartson LLP (now Hogan Lovells) and current chief of staff of D.C. Mayor Vincent Gray. Murphy was an original corps member in 1988 in Boston. He led City Year D.C. for eight years and sat on its board of directors. Today the local branch has

156 full-time corps members in 13 District schools.

A Bright Spot

Andrew Edghill, one of the corps members, works with students at Neval Thomas Elementary School in Northeast D.C. At the breakfast, he talked about his background: a mother from the projects in Jersey City and a father who immigrated to America at the age of 19 from Panama. Both grew up to have successful careers.

"The opportunities and the experience that I've had, I'm grateful for," said Edghill. "I wanted to pay it forward after school. I thought City Year would probably be the best opportunity to do that."

Speaking to those seated at his table, Edghill said his biggest challenge was realizing that the opportunities he was afforded as a child were not possible for many of the students he now mentors.

Hank Walther, a partner at Jones Day, reiterated the struggles that many District students face. "If you go a mile or two east of here, across the Anacostia River and into Ward 7 or 8, only about 40 percent of students in those public schools graduate from high school. You can all imagine the tremendous social and economic consequences that come with figures like this and that come with dropout rates that are this high," he said. "But there are some bright spots, and City Year is one of the brightest spots in this story."

According to statistics from the 2011–2012 academic year, 59 percent of District students in the sixth grade through ninth grade who were sliding off in attendance were back on track by the end of the year with the help of City Year corps members, nine out of 10 students agreed that City Year helped them believe they could succeed, and 95 percent of students in kindergarten through fifth grade who received literacy tutoring improved their literacy assessment scores, with 41 percent of those students improving by an entire proficiency level.

Kwame Simmons offered a personal success story from Kramer Middle School in Southeast D.C. where he is principal. "Maya was the kind of middle school student that people dread to see coming. This is an adolescent teenage girl, stir-crazy for boys, [and] defiant. Anytime you say or do anything

against her predetermined plan, you had a fight on your hands," he recalled.

Maya was beginning eighth grade when the school started its partnership with City Year. "There was this woman in a red jacket [the group's trademark attire] who had this pristine kind of energy that mesmerized Maya in a way," Simmons said. In a few months, Maya started to change. She is now vice president of her 10th grade class at McKinley Technology High School.

"The City Year corps members come to Kramer and they inspire. They get children who are 11, 12, and 13 years old to believe in themselves," said Simmons. "When we have City Year corps members, they come in with this storm of positive energy. It's impacting the entire building. It's like nothing you've ever seen."

Legal Roots Growing

The impact City Year has had on students in the District would not have been possible without the support of the local legal community. Since the days of the law school dorm, the organization's roots have grown to include support from firms and attorneys around the nation's capital.

The second Legal Community Breakfast drew 250 attorneys, garnered firm sponsorships, and raised more than \$106,000 for the organization. Throughout the year firms donate space for staff and corps member training, serve on City Year's Annual Gala and Legal Breakfast Host Committees, and mentor corps members interested in law school. In addition, six of the 18 board members of City Year D.C. are lawyers.

"It's an example of something that attorneys can appreciate, which is if you don't have the foundation to succeed in school, then the opportunities that a lot of us have had as attorneys to succeed later on in our careers really aren't present for some of these kids," said Wesley Heppler, a partner at Davis Wright Tremaine LLP who has worked with City Year for about two years. "This is a chance for attorneys to impact these kids very directly, either through financial support or through hands-on support to give them the foundation and help they need to get to the places where we've been fortunate enough to get."—*T.L.*

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 ■

FEBRUARY

- 3 ABCs of the National Labor Relations Board Series, Part 1: Practice and Procedure Before the National Labor Relations Board
- 3 Ethics Issues Facing Corporate Counsel
- 4 LLCs in the District of Columbia and Other Business Entities 2014
- 5 Essential Trial Skills Series, Part 1: Jury Selection
- 6 Introduction to Health Law and the Affordable Care Act (ACA) Series Part 4: Medicare Under the Affordable Care Act
- 10 ABCs of the National Labor Relations Board Series, Part 2: Unfair Labor Practices
- 11 Export Controls and Economic Sanctions 2014: Recent Developments and Current Issues
- 12 Essential Trial Skills Series, Part 2: Opening Statements and Closing Arguments
- 13 Introduction to Health Law and the Affordable Care Act (ACA) Series Part 5: Compliance Issues and Health Data Privacy Under the Affordable Care Act
- 18 Drafting Operating Agreements for LLCs and Other Business Entities 2014
- 19 Essential Trial Skills Series, Part 3: Witness Preparation and Direct Examination
- 20 Statute Drafting Workshop: D.C. Council Case Study
- 24 ABCs of the National Labor Relations Board Series, Part 3: Union Organizing
- 25 U.S. Economic Sanctions and the Office of Foreign Assets Control: An Introduction
- 26 Essential Trial Skills Series, Part 4: Cross-Examination
- 27 For Lawyers Who Lobby (and their Firms): Legal Ethics and Unauthorized Practice Update

MARCH

- 4 What Every Lawyer Should Know About Immigration Law Series 2014, Part 1: Immigration Law Overview and Family-Based Immigration
- 6 How to Apply for Tax-Exempt Status 2014
- 10 Fee Agreements in the District of Columbia: Ethics and Practice Guide
- 11 What Every Lawyer Should Know About Immigration Law Series 2014, Part 2: Employment-Based Immigration—Nonimmigrant Visas
- 12 Top Estate Planning Developments of 2013 and Top Estate Planning Predictions for 2014, With Implications for Our Practices
- 13 Premarital Agreements in the District of Columbia, Maryland, and Virginia: Practical Advice and Comparisons
- 17 Drafting Employee Handbooks (Including Social Media Policies)
- 18 What Every Lawyer Should Know About Immigration Law Series 2014, Part 3: Employment-Based Immigration—U.S. Legal Permanent Residence and Corporate Compliance
- 20 What Every Lawyer Needs to Know About Customs and Customs Law 2014
- 21 Effective Writing for Lawyers Workshop
- 24 Litigation Ethics: Dealing With Witnesses
- 25 What Every Lawyer Should Know About Immigration Law Series 2014, Part 4: Overview of Immigration Litigation, Asylum, and Humanitarian Relief
- 26 How to Protect and Enforce Trademark Rights
- 27 How to Get What You Want: A Litigator's Guide to Negotiations
- 31 Execution of Judgments Under the Foreign Sovereign Immunities Act



Classes
Qualify for
MCLE Credit in
ALL
States

BIRTH FATHERS + ADOPTIONS

Inequality in Parental Rights

By Thai Phi Le

“Dada”. For many babies, it’s their very first word. It’s simple. Two syllables, four letters. But some things are never as simple as they first appear, including fatherhood.

What makes a man a father? Traditionally, “dad” has been the husband of the woman who has given birth to a child. In 2013, however, tradition is all but thrown out the door. Parents now run the gamut: spouses who adopt, gay partners, artificially inseminated couples, divorcees, people in lifelong, unmarried relationships, couples with a gestational surrogate, parents to a child resulting from a one-night stand.

While the public’s views regarding the unconventional definition of a parent have evolved, laws by nature take significantly longer to change. Critics of certain adoption laws believe that the rights of unwed fathers often fall victim to the transitional gap created as laws slowly adapt to the times. They point to stories like that of John Wyatt, Cody O’Dea, and other unwed fathers who fought lengthy court battles in an attempt to retain their parental rights.

As with most contested adoptions, the stories differ. Wyatt’s story begins in 2009 in Virginia, where he resides. His then girlfriend, Emily Colleen Fahland, got pregnant at 19. The two agreed to co-parent, but a few days before Fahland gave birth, she sent Wyatt a text message stating



that she was getting information from a Utah adoption agency. He argued that he thought the text meant she was just looking into adoption, not a statement that she was going forward with it.

A day after Fahland had “Baby Emma,” Wyatt went to the hospital, but neither mother nor baby was there. A week later, he sued for custody of his daughter who he discovered was adopted by a couple in Utah. He lost. Utah’s district court said Wyatt waited too long to assert his parental rights. A Virginia court disagreed, issuing a competing order that awarded custody to Wyatt.

More than four years later, the appeals have ended and Baby Emma remains with her adoptive parents. The controversial case put a spotlight on a lingering question on adoption law: Do unwed fathers have equal rights to parent their children?

Proving a Father’s Fitness

The U.S. Supreme Court first tackled the issue of unmarried fathers’ parental rights in *Stanley v. Illinois* in 1972. Peter and Joan Stanley lived together and had three children, but they never got married. When Joan died, the children automatically became wards of the state. Peter sued, arguing that the removal of his children without evidence that he was an unfit parent deprived him of his rights under the Equal Protection Clause of the Fourteenth Amendment. The case made its way to the Illinois Supreme Court, which ruled that there were no constitutional violations because there was a presumption that unwed fathers were unfit to take or retain custody of their children. The U.S. Supreme Court overturned the lower court, ruling that Peter was entitled to a hearing under the Due Process Clause to prove his fitness as a parent before losing custody.

Other cases followed. In the 1979 case *Caban v. Mohammed*, the High Court ruled that New York Domestic Relations Law § 111 was unconstitutional because it did not allow involved unwed fathers to stop the adoption of their children, but permitted either married parents or unmarried mothers to prevent an adoption.

Another case, *Lehr v. Robertson*, showed that there were limitations to the rights of an unwed father, often referred to as a putative father. The case originated in Ulster County, New York. In the 1970s the state established its putative father registry, which allows an unmarried male to officially document that he had relations with a woman that might produce a child. Registering does not guarantee a putative father rights to the child, but it provides

him with notice if a child is born and the mother begins adoption proceedings.

John Lehr never registered with the New York putative father registry after his daughter was born out of wedlock in 1976 to Lorraine Robertson. He did not offer child support and rarely saw her. Two years after her birth, Robertson’s husband petitioned to adopt the girl, and the adoption was finalized on March 7, 1979. Lehr did not know about the adoption proceedings until four days before the final order was signed. He asked the court to vacate the adoption, stating that his due process rights were violated.

In 1983 the U.S. Supreme Court upheld the New York Court of Appeals, ruling that Lehr had not established a relationship with the child and did not sign up for the putative father registry. His failure to “grasp[] that opportunity and accept[] some measure of responsibility for the child’s future” meant that he forfeited his right to notice of an adoption proceeding. The ruling legitimized putative father registries.

“I love that—if he ‘grasps the opportunity.’ The biological link is not enough. He has to grasp the opportunity to establish the parent-child relationship,” says Cynthia Mabry, a professor at Howard University School of Law where she teaches family and adoption law.

Despite some progress, the legal scales seem tipped against unmarried fathers. Today, advocates continue their fight to carve out more parental rights for birth fathers, especially as the number of children born to unmarried parents continues to grow. According to the Centers for Disease Control and Prevention, 40.7 percent of children were born out of wedlock in 2011.

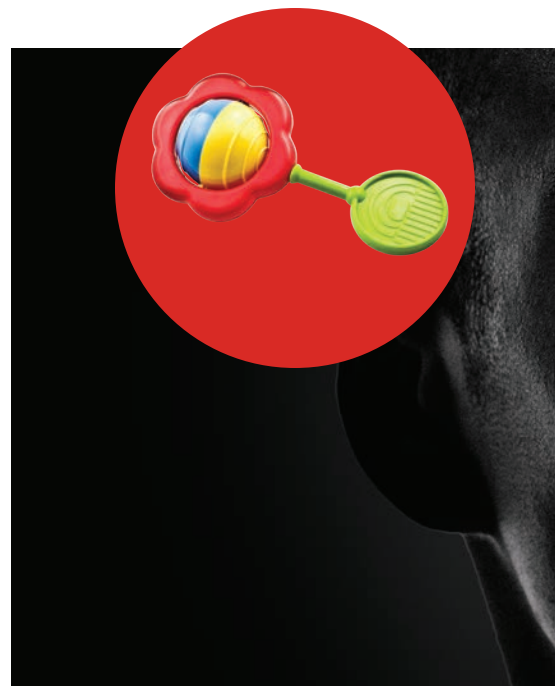
“The history of adoption, and very often still today, is that men involved are seen as obstacles [rather] than as participants. That doesn’t smack of equality to me,” says Adam Pertman, president of the Evan B. Donaldson Adoption Institute and author of *Adoption Nation: How the Adoption Revolution Is Transforming Our Families—and America*. “Is it true that many men are not interested in parenting in these situations? It is true. Anecdotally it seems very clear, but it also seems clear that a sizable and growing number [of fathers is] interested in being honest, real participants, whether it’s making adoption decisions, having an open adoption, or parenting.”

What Registry?

New York was the first state to establish a putative father registry in an effort to recognize a potential father’s rights and offer

him an opportunity to assert those rights. According to the Child Welfare Information Gateway, a clearinghouse of adoption and child welfare resources under the Children’s Bureau of the U.S. Department of Health and Human Services, 24 states, including Virginia, have established putative father registries as of 2010. Eleven states and the District of Columbia offer forms for fathers to voluntarily acknowledge their paternity. Since their inception, however, putative father registries remain controversial among adoption reform experts who debate their efficacy and benefits to birth fathers.

“On paper it’s effective, right?” Mabry says. “A putative father who registers should get notice of the adoption and ter-



mination of parental rights proceedings. The problem is that putative fathers or unwed fathers don’t know they exist.”

Virginia’s putative father registry faces that very issue. In 2005 the state legislature convened a study group to review potential revisions to Virginia’s adoption laws. Mary Beck, a professor at the University of Missouri Law School,¹ created the original draft for the state’s putative father registry. Stanton Phillips, who runs the Adoption Legal Services at Goldenberg & Phillips, P.C. in McLean, Virginia, and another attorney assisted with the procedural aspects of revising and updating the laws. The registry went into effect on July 1, 2007.

An article from the winter 2010 issue of

the Virginia State Bar's *Family Law News* noted that only 64 men signed up for the putative father registry during its first year when approximately 38,000 children were born out of wedlock in Virginia in 2007. The registry recorded 399 putative fathers from 2007 until November 2010.

Phillips believes the low numbers partially correlate to the fact that most birth fathers are usually not interested in raising a child, but he acknowledges that publicity about the registry must increase. "As any new system, there are kinks that need to be worked out," he says. "Overall, in the long run, I think it's going to be beneficial, but until the publicity gets out there, until there's an awareness of the existence of the registry, we're not going

current education campaigns surrounding the health care exchanges and other provisions of the Affordable Care Act (ACA). In April 2013, Sen. Max Baucus (D-Mont.), a key architect of the ACA, criticized the Obama administration's outreach efforts. A *Washington Post*-ABC News poll in September showed that more than six out of 10 Americans believed they did not have the information they needed about the law.

"And by the way, the consequences aren't as big. If a man doesn't sign up [for a registry] and wants to be a father, the consequences are really huge," Pertman adds.

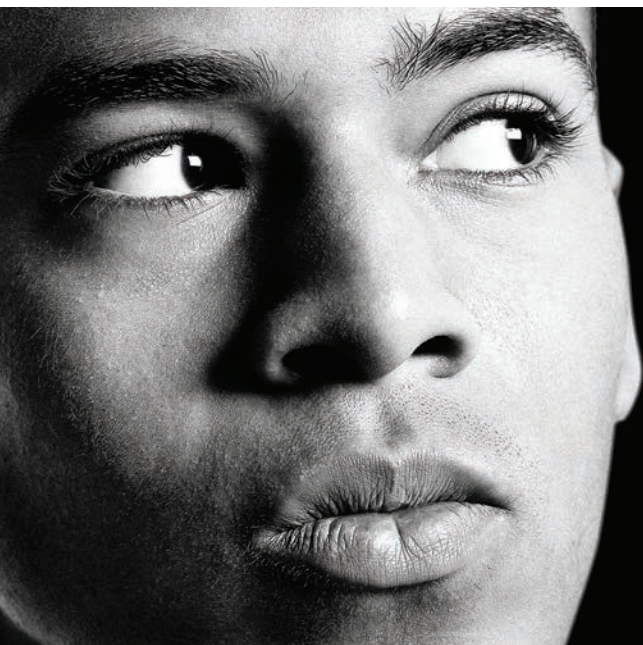
Mark McDermott of the Law Offices of Mark T. McDermott² recognizes that getting the word out is a huge concern, but he

tion could play a key role in increasing awareness about these registries.

"I would love to see it taught in school. When they teach health and sex education classes, put it into the curriculum that there is such a thing as a putative father registry to protect their rights," Phillips says.

The proposal may face an uphill battle, however, as many school systems already are dealing with criticism over sex education in schools.

"I think this country is schizophrenic. On the one hand, you've got Miley Cyrus all over the Internet. Then on the other hand, we don't talk about sex at all. Let's decide. You have to start educating kids," says Michele Zavos of Zavos Juncker Law Group PLLC in Silver Spring, Maryland.



DESPITE SOME PROGRESS,
the legal scales seem tipped against unmarried fathers. Today, advocates continue their fight to carve out more parental rights for birth fathers, especially as the number of children born to unmarried parents grows. According to the Centers for Disease Control and Prevention, 40.7 percent of children were born out of wedlock in 2011.

to have as many birth fathers being able to establish their rights."

Every state that has enacted a putative father registry has included provisions to publicize the registry. Virginia, like most other states, instructs its Department of Social Services to create and distribute publications and to issue public service announcements to inform the community of the existence of the registry. (Other putative father registries are run by the states' respective Department of Health.)

"I know the legislation talks about a public information campaign, but . . . we have a history of lots of realms where public information campaigns just aren't that complete," says Pertman.

One need not look further than the

believes it is getting easier to inform fathers. "We're in the electronic information age. Put stuff up on the Web, and these birth fathers will be more likely to see it than they would in some other places," he says.

Mabry suggests placing ads where men typically go, such as sporting events, bars, and public transportation, as well as hosting community-based "know your rights" sessions.

Early Education

But why wait to inform men of putative father registries? In the age of smartphones and considering the many distractions in our increasingly Internet-driven society, outreach efforts still may reach adults too late or not at all. Early educa-

Mabry agrees. "I know parents cringe at the thought, but [children] are engaging in sex, so they might as well know what the consequences are."

In addition to lectures about contraception and sexually transmitted diseases, children may also benefit from learning about their legal rights and responsibilities as they make their way to adulthood. A study that appeared in the April 2008 issue of the *Journal of Adolescent Health* concluded that teens who participated in comprehensive sex education programs were 60 percent less likely to get pregnant or get someone pregnant than students who did not.

Zavos recalls numerous situations during her career where a mother realizes years after her child is born that she

could have received child support. “It’s not just young men who don’t get it. Young women don’t get it. We don’t educate people. We just assume everybody should know this, or maybe we don’t care that they don’t know it,” she says.

Even with early education and public outreach, Pertman believes the registries will remain underutilized. “Whether it’s men or women, the notion that people are going to sign up after they have sex in case there might be a baby is really stretching the imagination to believe things that the evidence indicates might not happen. Are human beings really going to sign [up for] a registry of any sort, anywhere, as a matter of routine every time they have sex? It just strains credulity.”

For McDermott, the theory behind the registry is that if a man has unprotected intercourse, he’s on notice that he might be a father, that he has legal rights, and that he can grasp those rights, but he has to act. “If he has unprotected sex and he wants to assert his parental interest in a potential child that might come into existence, then yes, he should put his name on the list,” he says.

Call for a National Registry

In most cases, a man is not likely to register as a putative father a day after sex as a precautionary step. Often it’s the whispers and gossip about a potential pregnancy of a former partner that spur him to act. If he crosses the first hurdle—awareness

state’s 10-day post-birth limit to assert his paternity. Unknown to him, however, Baby Emma was in Utah, a state with some of the strictest laws in the country for unmarried fathers to assert their rights. In Utah, putative fathers must register within 24 hours of the baby’s birth, after which the mother can initiate the process to relinquish her rights or consent to adoption. Wyatt missed the state’s deadline.

“We have 50 different sets of laws and they’re dramatically different. It’s just astoundingly different on every little point. Since I’m licensed in D.C., Maryland, and Virginia, I get to see this every day. It’s all day long—I’m switching from Virginia to Maryland to D.C. law,” McDermott says.

DESPITE SUPPORT AMONG THOSE IN THE FAMILY LAW COMMUNITY, legislation for a national registry has failed to gain major traction. In addition, skeptics still question the registries’ effectiveness.



Zavos agrees. “It’s kind of presumptuous to think that they even work. . . . Yes, one should know that if you have sex with someone, there’s a possibility of having a child, even if you use protection. To then take that to the next step and say, ‘Well, now that person has a responsibility to try and figure it out,’ I just don’t think that’s really viable.”

At some point, however, some of the responsibility must be shouldered by the father. Zavos recognizes it’s a balancing act. “On the other hand, if a birth father really wanted to be a parent, doesn’t that person have some responsibility and obligation to find out if the woman he slept with had a child and that he’s responsible?” she asks.

of the registry’s existence—he faces the next challenge: where to register. That has become a more difficult question to answer as states have different laws on how birth fathers could assert their parental rights and because there is no national putative father registry. Some states require a father to register with the state in which he resides, and if different than the state where the mother lives, he must register with that state as well. Others, like Virginia, require fathers to register with the state where the child was conceived or born to protect their rights.

In the Baby Emma case, Wyatt started legal proceedings on February 18, 2009, in Stafford County, Virginia, to obtain custody of his daughter, well within the

To simplify the process and reduce confusion, legislation for a national putative father registry was drafted. In 2006 U.S. Sen. Mary Landrieu (D-La.) introduced the Protecting Rights of Unknowing Dads and Fostering Access to Help Encourage Responsibility Act of 2006, also known as the Proud Father Act. Had the law been approved, putative fathers would have to register only in one place. A national registry also would have alleviated potential jurisdictional issues and confusion when a mother moves to another state, or chooses to give birth or consent to an adoption in a place different than where the father resides.

The legislation was reintroduced by Sen. Landrieu in 2012 as the Protecting

Adoption and Promoting Responsible Fatherhood Act of 2012, and again in 2013 by U.S. Rep. Ann Kuster (D-N.H.), but it has yet to pass.

McDermott believes in the benefits of state registries, but he also strongly advocates for a national one. "This is a law that not only promotes adoption, but also the biggest beneficiaries of the national registry are the birth fathers because they no longer have to run around and play this guessing game because there will be a central place."

Phillips, the adoption attorney who was instrumental in drafting and rewriting Virginia's adoption laws, recounts the case of Cody O'Dea. O'Dea was in a relationship with Ashley Olea while both were residing in Sheridan, Wyoming, but



when it ended, she moved to Buffalo, a city about 35 miles away. Through the grapevine, O'Dea heard that Olea was pregnant, and he offered to support her and the baby financially. Weeks later, she told him that she miscarried. She had not. Toward the end of Olea's pregnancy, O'Dea discovered that she was still pregnant with his child, but planned to put the baby up for adoption. He registered with the putative father registries in Wyoming (the state of conception) and Montana (where Olea was working with an adoption agency). On June 15, 2006, he received a call from Olea informing him that she was in Utah. She gave birth there the same day. Utah's Supreme Court ruled that O'Dea didn't have any parental rights because he reg-

istered in the wrong states. Having a national registry would have protected a father like O'Dea by reducing the ability of a mother to thwart a father's efforts.

Despite support among those in the family law community, legislation for a national registry has failed to gain major traction. In addition, skeptics still question the registries' effectiveness.

"A national registry is better than having a hodgepodge of state ones," says Pertman of the Donaldson Adoption Institute. "I don't know [if] it's the answer, but it certainly helps mitigate the problems of state registries. It's not going to be a complete answer until everybody is on board. Even then, it'll still have significant gaps."

State Autonomy, Standardized Rules

Even if a national registry is established, would everybody be ordered on board? None of the bills proposed by either Sen. Landrieu or Rep. Kuster made state participation in the registry mandatory.

"That all has to do with the concept that Congress can't tell states what to do. They have to give them an incentive to do it," McDermott says. He believes that one of the fundamental policies of a national registry should be to not supersede state law.

Family law has historically been governed by state law, which is also why it's likely that even if all states were to participate in a national registry, many of the standards—from registration deadlines to revocation periods—still would vary from state to state.

A national registry with national standards may encounter pushback because of deference to state law, says Mabry, the Howard University law professor. "You have what are projected standards that all states would be expected to follow, but leave some leeway for states," she recommends.

"As much as possible, [states] want to have the prerogative. The laws of the states stay in place . . . just overlay [them] with this clearinghouse concept so the information can be accessed no matter what states are involved," McDermott proposes.

On the other hand, Zavos believes national standards are necessary for putative father registries to work as effectively as possible. She argues that allowing states to choose how to run their own registry gives too much room for "playing the game."

"When you look across the country and look at things like Medicaid [where] states are allowed to play with them in some way, when you allow that, people get hurt," she says, adding that if legislation allows for state input on the registries, then the elements should be standardized. "Make it

as specific as possible, and [states] get to decide whether they use 'the' or 'an.' That's how I would see it," Zavos says.

Complicating matters is the fact that more adoptions take place across state lines. The Internet has been a game-changer in family law over the past 10 to 20 years, according to Phillips. People are no longer looking at newspaper ads to find a mother putting her child up for adoption; they're surfing online.

"It would simplify things if there was a national standard. If each state followed the same rules and procedures, there'd be less confusion," Phillips says.

At the heart of the putative father registries are the notice provisions that inform a man of a potential adoption proceeding or termination of his parental rights. In Virginia, if the state knows who the birth father is and where he resides, it will send him a notice during pregnancy or after birth that there's an adoption plan for the child. He has up to 10 days to register. If he does not, he will receive no further notice of the proceedings. When there are no adoption plans in the works, a potential father has 10 days to register after the birth of the child to protect his rights.

"Until the registries become more widely known as a way of protecting rights, I think this is a good method of informing them [of] what's going on," Phillips says.

The lines, however, start to get blurry when it comes to notice through text messaging, which is often the primary form of communication among teens and even adults. A 2011 survey by the Pew Research Center's Global Attitudes Project showed that 67 percent of people in the United States who have cell phones use them to text. The center's Internet & American Life Project also found that American teens' daily use of text messaging has grown from 38 percent in 2008 to 54 percent in 2009, with over half of them sending more than 50 texts a day.

But should texting count as notice to putative fathers? In Utah, it may. In the Baby Emma case, the text message Fahlant sent to Wyatt was deemed sufficient notice that an adoption might occur.

"You have states that, I think, tend to be abusive such as Utah," Phillips says. "You have a birth mother from another state and she mentions the word 'Utah' in a text message, as [in] 'I'm looking at an agency in Utah,' [and] that's considered notice in Utah. . . . I don't believe that was an adequate constitutional notice."

"I do not think a text message is sufficient. I think it's the equivalent of putting

the agate type in the back of the newspaper,” Pertman says. “It’s a good way of saying, ‘See, I did it,’ without really doing it. If you’re serious and you want dads to step up, if the goal is to get them to step up rather than to shove them out the door, then a text message is clearly insufficient.” Currently, no laws specifically address the use of text messages as notice.

In the District, which has no putative father registry, notice of a potential adoption can be by publication and posting.

“Where’s this posting? The posting is in the courthouse in this little room up on the fourth floor, in the back, on a little piece of paper on the wall. Nobody even looks at it,” says Zavos, whose practice includes adoption, parenting, and assisted reproductive technology. “Even if you publish, which most judges are going to require to both publish and post, in all the adoptions I’ve done in my entire career—probably over 1,000 adoptions, and I’ve done a fair number of ones we had to post and publish—I had one person come in,” Zavos says.

Zavos recalls putting a notice in a local paper in a small town in either North Carolina or South Carolina. A cousin of the birth father came forward, stating that he wanted the child. The birth father was not interested in taking custody of the child, and the judge ruled the adoption could go forward. That was the only time that happened in Zavos’ career.

Mabry remembers the first time she saw the courthouse posting. “I was walking up the escalator and I see this board. It’s like one of these old-fashioned cork boards. All these little papers on it, little squares, three-by-five cards. I go over and say, ‘What in the world is this?’” she recalls. They were postings about adoptions. “I tell my students in Civil Procedure the same thing for the notice by publication. You have to get a judge’s permission to do it. Yeah, it’s in the newspapers in the classified section, [but] only Civil Procedures people look for it who want to share it with their students.”

Thoughtful, Ethical Adoptions

Groups like the National Parents Organization (formerly Fathers and Families) point to stories of fathers like Wyatt and O’Dea to show that registries may appear pro-birth father on the surface, but when explored further they actually impede these men’s rights. Both Wyatt and O’Dea wanted to be fathers but were denied their parental rights due to what some would call legal technicalities.

“They are ostensibly designed to enable men to step up, but in practice, at

least it appears that just as often they’re used to cut them out in a very deliberate fashion,” Pertman says.

The beneficiaries of putative father registries are often adoptive parents, Zavos says. “Putative fathers don’t know those [registries] are there,” she says. “That’s also a reflection of how money works in society. Most adoptive parents are going to have more money.”

McDermott disagrees with the perception that the registries are pro-adoptive parents. “I would say that’s just uninformed opinion or they’re just trying to sell a position because actually these facilitate birth fathers. It gives them an iron-clad, easy, understandable way to make sure he gets notice and participates in the proceeding,” McDermott says.

If putative father registries aren’t the solution to ensuring equal rights for unwed fathers, then what is? Pertman would like to see the same flexibility toward fathers that courts extend to mothers.

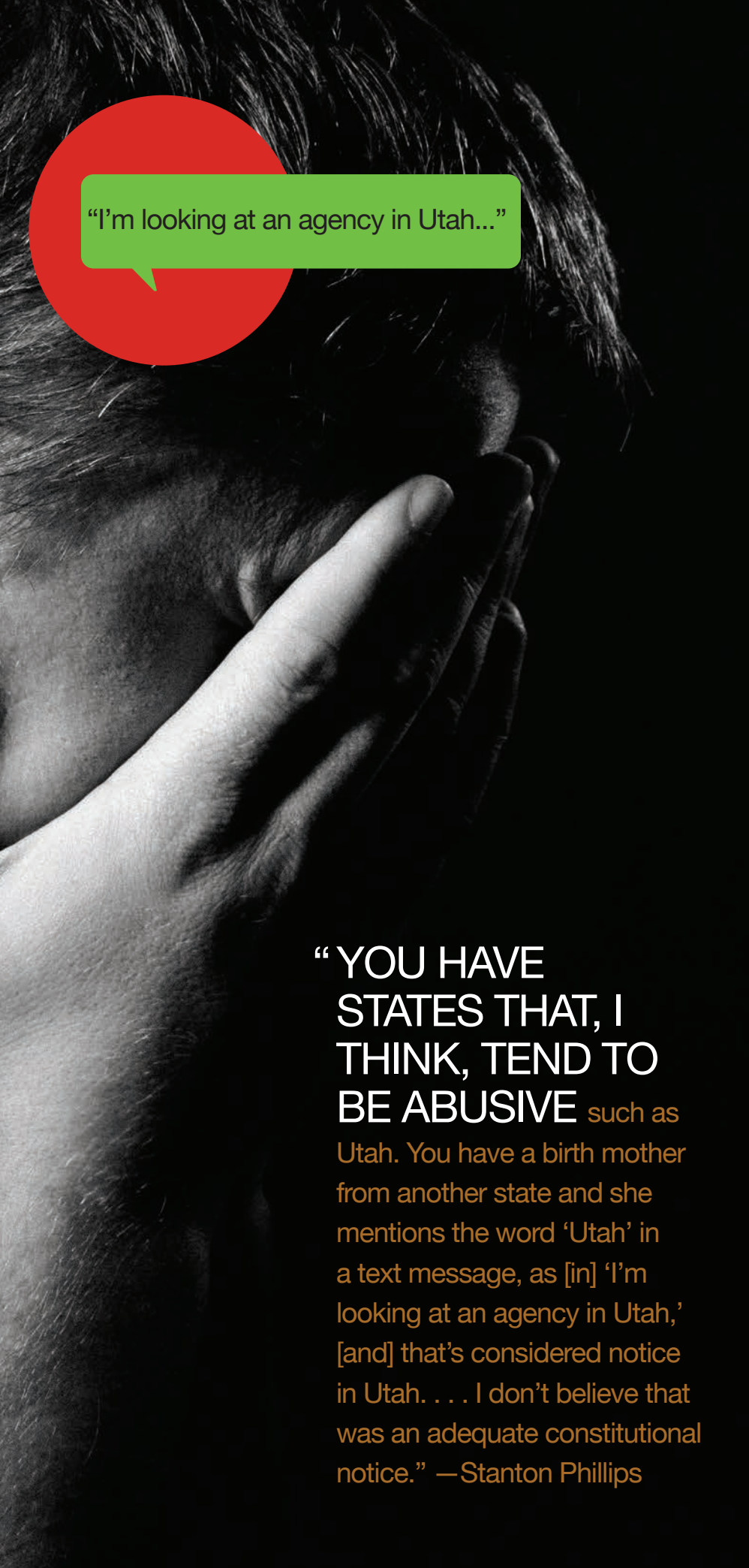
“There are a lot of cases where women get more flexibility—one more rehab, one more hearing, one more time—because she’s a mom. That’s a good thing. I’m not denigrating that, but we do very often put fathers on a lower tier,” Pertman says.

He emphasizes that this is not a battle between men and women, but one for stronger rights of parents to their biological children. He hypothesizes a scenario where a competent mom shows up late to a hearing and loses custody of her child. “I don’t think that’s a likely scenario or it wouldn’t be very prevalent,” he says. “But these registries and other circumstances, [these are] the standard for men. You didn’t step up in X amount of time. You know, life happens. I’m not excusing anyone. They do have to step up. They do have to show responsibility. . . . This is not an argument for deadbeat dads being forced to parent their children. It is an argument for taking circumstances into account and giving some priority to men who want to be parents.”

In addition to flexibility, Pertman would like to see more clinical-based research, extensive survey work, and the development of some uniform standards. “I’m an adoptive parent,” he says. “I’m not looking to stop adoptions. I’m looking to make them more thoughtful and ethical.”

There have been attempts to enact uniform standards before. In 1994 the Uniform Adoption Act was created and proposed by the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws. The act’s extensive framework





"I'm looking at an agency in Utah..."

"YOU HAVE STATES THAT, I THINK, TEND TO BE ABUSIVE such as Utah. You have a birth mother from another state and she mentions the word 'Utah' in a text message, as [in] 'I'm looking at an agency in Utah,' [and] that's considered notice in Utah. . . . I don't believe that was an adequate constitutional notice." —Stanton Phillips

included provisions on how to handle jurisdictional issues, the rights of adoptees, consent and relinquishment requirements, grounds for terminating parental relationships, and investigations and notice to an unknown father, among many others. The goal was to make the adoption process smoother and to enact laws that would create fewer disputes and provide more predictable results across the board.

"You can get to the heart of the matter of dealing with that child's best interest instead of . . . fighting over procedures and which procedures apply from one state to another," Phillips says.

Some adoption advocates vilified the law, and so far only Vermont has adopted it. McDermott, however, would like to see a revival of the Uniform Adoption Act to protect birth father rights, but he has no expectations it will happen.

"This product has been lying around since [1994], so that's a long time. If the states are going to get excited about it and do something with it, they would've done it by now," he says.

The reality is that it's unlikely a uniform interstate adoption law will be enacted anytime soon, Mabry says. "It took us years to sign uniform laws about intercountry adoptions. I can foresee it's going to take more decades . . . to get that because states are holding on to their province."

For now, Phillips believes that most state laws are fairly balanced. "There is a pendulum that swings. Sometimes it goes more in favor of birth father rights, and sometimes more in adoptive parents. The legislatures keep going back and forth in little degrees. Overall, you go back to the general concept that a birth father is given his notice and an opportunity to be heard. That's generally carried out in most states."

McDermott agrees. "I think it's becoming more and more balanced. Implementing putative father registries is a step to try to protect fathers," he says.

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Notes

¹ Phillips was one of John Wyatt's attorneys who helped petition the U.S. Supreme Court in December 2011 to hear the Baby Emma case. The High Court chose not to review the case.

² McDermott, former president of the American Academy of Adoption Attorneys, represented Colleen Fahland's parents in Baby Emma's adoption arrangements. In April 2012, the Virginia Supreme Court allowed Wyatt to sue McDermott and others involved in the adoption for "tortious interference with parental rights." McDermott told *Washington Lawyer* he could not discuss the case for this story, but stated that the suit for money damages was settled.

Taking
the Stand

A Casualty



Michael Austin/theisspot.com

Of WAR:

Lost amidst the recent debate in Congress over whether to authorize military action in Syria was something that lawmakers likely gave little, if any, thought to, but that could have a significant impact on those who stand accused of defrauding the federal government. Had Congress voted to authorize the use of military force, it likely would have triggered (or, more accurately, retriggered) the Wartime Suspension of Limitations Act (WSLA),¹ a World War II-era statute that, in its current form, has the potential to toll indefinitely any limitations period for fraud offenses committed against the United States government. Under the WSLA, it is entirely conceivable that the limitations period for a fraud offense committed in 2001 will not expire until well into the 2020s or beyond, more than quadrupling the ordinary five-year statute of limitations.

Reasonable Statute of Limitation Periods in Fraud Cases

By Joshua Berman, Glen Donath, and Christopher Jackson

Congress originally enacted the WSLA in the 1940s to provide federal law enforcement agencies more time to prosecute those who committed frauds against the federal government during a time of war, such as unscrupulous defense contractors.² The passage of the WSLA and prosecutorial utilization of the act made sense, given the significant drain on human and financial resources during and immediately after World War II. The act tolled the limitations period until three years after the termination of hostilities for virtually any kind of fraud in which the United States was a victim.³ Federal prosecutors made extensive use of the additional time the WSLA gave them in the years following World War II, and there are dozens of cases analyzing and applying the WSLA through the 1950s. For the next half-century, the WSLA appears to have been largely forgotten. Between the 1950s and 2008, there was only *one* published case in which the government attempted

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

(unsuccessfully) to invoke the WSLA shortly after the Persian Gulf War.⁴ The lack of case law left unanswered some of the more difficult interpretive questions regarding the act, such as when the United States is “at war” so as to suspend the limitations period and, conversely, when hostilities have ceased so as to permit the limitations period to resume running. The earlier case law had little

Afghanistan as justification for bringing otherwise stale cases and claims.⁸ Furthermore, prosecutors sometimes threaten to use the WSLA in an effort to force subjects and targets of federal criminal investigations to agree to toll limitation time periods during investigations.

The same year that *Prosperi* was decided, Congress passed the Wartime Enforcement of Fraud Act (WEFA),⁹

wars in Afghanistan and Iraq and also recently contemplated with regard to Syria—will trigger the statute. But only a formal proclamation by the president, with notice to Congress, or a concurrent resolution of Congress will suffice to end the “war” and resume the running of the five-year clock under the original limitations period.¹¹

The amendment is important because

Even if the formal prerequisites are followed to “terminate hostilities” in Afghanistan by the end of 2014, the original five-year limitations period for a covered fraud offense would not begin to run until December 2019. Thus, the statute of limitations would not expire until December 2024, more than 23 years after the start of the tolling period.

need to deal with these issues, given the relatively clear starting and ending points of World War II.⁵

The long period of dormancy ended, however, with *United States v. Prosperi*, a 2008 case involving the prosecution of employees of a concrete supply company in connection with the “Big Dig” construction project in Boston.⁶ The U.S. Department of Justice successfully argued that the wars in Iraq and Afghanistan had tolled the otherwise expired limitations period, and the district court allowed the case to proceed.⁷ Since *Prosperi*, the government (and private relators bringing *qui tam* suits) has invoked the WSLA in numerous cases, generally with success, citing the wars in Iraq and

which amended the WSLA to (1) extend the postwar tolling period from three to five years, and (2) clarify those circumstances in which the WSLA applied.¹⁰ Recognizing the original act’s ambiguity regarding when the United States was “at war,” Congress used much more precise language in the WEFA. The amendment simultaneously broadened the circumstances in which the WSLA’s tolling provision is triggered and narrowed the circumstances in which the “war” can be said to have ended. Now, under the post-amendment WSLA, virtually any congressional authorization for the use of military force—such as that which was approved by Congress prior to the

the degree to which defendants have prevailed in arguing against the application of the WSLA has depended in large part on whether the pre-amendment or post-amendment version of the statute applies. Defendants have had some success in fighting the more ambiguous pre-amendment version of the WSLA; they have had no success fighting the post-amendment version.¹² Whereas under the pre-amendment WSLA, a defendant could argue that the statute was triggered only by a formally declared war,¹³ or that an informal statement by the president sufficed to end the war for WSLA purposes,¹⁴ those arguments seem to have been completely foreclosed by the plain language of the

Notes

¹ Act of June 25, 1948, ch. 645, 62 Stat. 683, 828 (codified as amended at 18 U.S.C. § 3287 (2012)). The 1948 act had its origin in a similar statute enacted in 1942. *Bridges v. United States*, 346 U.S. 209, 217 & n.15 (1953) (citing act of Aug. 24, 1942, 56 Stat. 747–48).

² See *United States v. Smith*, 342 U.S. 225, 228–29 (1952); see also *id.* at 230 (Clark, J., concurring) (“Soon after the beginning of World War II, Congress realized that it would be impossible for the Department of Justice currently to investigate and prosecute the large number of offenses arising out of the war effort. Therefore, Congress suspended the running of the statute of limitations as to frauds against the Government. . . . It is clear that Congress intended to give the Department more time to apprehend, investigate, and prosecute offenses occurring ‘under the stress of present-day events’ of the war.”).

³ 62 Stat. at 828.

⁴ See *United States v. Shelton*, 816 F. Supp. 1132 (W.D. Tex. 1993).

⁵ See, e.g., *Smith*, 342 U.S. at 227.

⁶ 573 F. Supp. 2d 436 (D. Mass. 2008).

⁷ *Id.*

⁸ See, e.g., *United States ex rel. Carter v. Halliburton Co.*, 710 F.3d 171 (4th Cir. 2013); *United States v. Pfluger*, 685 F.3d 481 (5th Cir. 2012); *United States v. Wells Fargo Bank, N.A.*, ___ F. Supp. 2d ___, No. 12 Civ. 7527 (JMF), 2013 WL 5312564 (S.D.N.Y. Sept. 24, 2013); *United States v. Latimer*, No. CR-11-384-R, 2012 WL 1023569 (W.D. Okla. Mar. 27, 2012); *United States v. Anghaie*, No. 1:09-CR-37-SPM/AK, 2011 WL 720044 (N.D. Fla. Feb. 21, 2011); *United States v. Pearson*, Criminal Action No. 2:09cr43-KS-MTP, 2010 WL 3120038 (S.D. Miss. Aug. 4, 2010); *United States v. Western Titanium, Inc.*, Criminal No. 08-CR-4229-JLS, 2010 WL 2650224 (S.D. Cal. July 1, 2010).

post-amendment statute.¹⁵

Thus, under the current version of the WSLA, prosecutors can take the position that the United States has been “at war” at least since September 18, 2001, when Congress passed the authorization for the president to use military force in Afghanistan.¹⁶ Redundantly, Congress’s authorization for the use of force in Iraq also triggered the WSLA.¹⁷ And in spite

original five-year limitations period for a covered fraud offense would not begin to run until December 2019. Thus, the statute of limitations would not expire until December 2024, more than 23 years after the start of the tolling period. Of course, if neither Congress nor the president formally acts to terminate hostilities, the limitations period will *never* expire. And even if they do act, any new authoriza-

tion successfully deployed against an apparently facially valid application of the statute, at least in the absence of bad faith on the part of the government.²¹ Congress is free to eliminate—and it has eliminated—limitations periods altogether for many federal offenses.²²

Yet the mere fact that Congress was constitutionally authorized to do what it did does not mean that the WSLA is

Yet the mere fact that Congress was constitutionally authorized to do what it did does not mean that the WSLA is sound policy. Statutes of limitations exist for good reason: evidence goes stale, witnesses become difficult to locate, and memories fade.

of the fact that the last U.S. troops left Iraq in December 2011, it does not appear that that war has ended for WSLA purposes.¹⁸ Nor, by all accounts, has the war in Afghanistan.¹⁹ Thus, prosecutors could argue that the limitations clock has *not even begun to run* for any fraud perpetrated against the federal government for at least the past 12 years.

Moreover, U.S. troops are not scheduled to leave Afghanistan until December 2014, and some troops may remain beyond that date depending on the outcome of negotiations with the Afghan government. Even if the formal prerequisites are followed to “terminate hostilities” in Afghanistan by the end of 2014, the

tion Congress might pass for the use of military force in the future (such as that recently contemplated with regard to Syria) will retrigger the WSLA and toll the clock once again.

In spite of the seeming absurdity that an individual who, for example, kited a government check in 2001 could be timely prosecuted for the offense at least until 2024, the plain language of the statute seems to lead inexorably to that conclusion. And given that statutes of limitations exist as a matter of legislative grace, not constitutional right,²⁰ opponents of this potential abusive use of the WSLA struggle to conceive of any constitutional defenses that could be suc-

cessful. Statutes of limitations exist for good reason: evidence goes stale, witnesses become difficult to locate, and memories fade. Certainly, when the national government is focused on prosecuting a war effort the size and scope of World War II, it is understandable and desirable that the government be given flexibility to bring cases that would otherwise become stale.²³ But this rationale has little salience in the era of modern warfare, when engagements of more limited scope (and often, though not always, duration) are typical. Moreover, while modern-day military engagements certainly take their toll on the American people and the military, the effort on

⁹ Identical versions of the WEFA were rolled into two larger defense appropriations bills—the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, Pub. L. No. 110–329, § 8117, 122 Stat. 3574, 3647 (enacted Sept. 30, 2008), and the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110–417, § 855, 122 Stat. 4356, 4545 (enacted Oct. 14, 2008). The latter, duplicate statute was later repealed. See National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111–84, § 1073(c)(7), 123 Stat. 2190, 2475 (2009); see also 18 U.S.C. § 3287 note (2012) (Amendments).

¹⁰ The amended statute, codified at 18 U.S.C. § 3287, reads as follows:

When the United States is at war or Congress has enacted a specific authorization for the use of the Armed Forces, as described in section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)), the running of any statute of limita-

tions applicable to any offense . . . involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not . . . shall be suspended until 5 years after the termination of hostilities as proclaimed by a Presidential proclamation, with notice to Congress, or by a concurrent resolution of Congress. . . . For purposes of applying such definitions in this section, the term “war” includes a specific authorization for the use of the Armed Forces, as described in section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)).

¹¹ See *id.*

¹² Compare *Anghaie*, 2011 WL 720044, and *Western Titanium*, 2010 WL 2650224, with *Wells Fargo Bank*, 2013 WL 5312564, and *Latimer*, 2012 WL 1023569.

¹³ See, e.g., *Western Titanium*, 2010 WL 2650224, at *2–4.

¹⁴ See, e.g., *Prospere*, 573 F. Supp. 2d at 454.

investigations and prosecutorial staffing is dramatically different than 70 years ago. For example, military intervention in Syria, authorized by Congress, that hypothetically lasted only a few weeks would nevertheless be sufficient to toll the limitations period for a covered offense for *more than five years*. This would be so despite any indication that such a limited military action would in any way inhibit the Department of Justice from investigating and prosecuting fraud cases.

Such a stark departure from the ordinary rule in criminal jurisprudence should be supported by strong justification. For example, those crimes for which Congress has eliminated a limitations period entirely tend to be the most serious—crimes like murder, terrorism, and child abduction. These are crimes for which Congress has determined that the interests of prosecution are so acute they outweigh the countervailing considerations in favor of repose.²⁴ It is far from clear, however, that the kinds of offenses covered under the broad language of the WSLA, which would include everything from Social Security fraud to False Claims Act violations, fit into that category.²⁵

Because the consequences of indefinite (or effectively indefinite) tolling of the limitations period for myriad fraud offenses are so significant, and the government's need for such tolling in the modern era comparatively slight, policymakers should carefully consider options for mitigating the WSLA's impact. For

example, one step that could be taken immediately is for the president or Congress to formally end the Iraq War for WSLA purposes. The war in Afghanistan could be similarly "terminated" under the statute, either immediately or at some point in the near future as the United States continues to draw down its troop presence.²⁶ With regard to future authorizations for the use of military force, such as in Syria or elsewhere, Congress could include a provision that expressly prevents the WSLA from being triggered. Such a provision might be appropriate where, for example, the military action is contemplated to be of only limited scope and duration, and is, therefore, not of the type for which the WSLA was originally thought to be necessary.

As a more permanent solution, Congress could amend the statute to prevent never-ending "wars" that toll indefinitely the limitations period. For example, the statute could be revised so that, upon triggering, the limitations period would be tolled until the termination of hostilities *or until a future date certain* (say, three years from the triggering event), *whichever is sooner*, unless Congress acts to extend the period. This would preserve the WSLA's automatic triggering upon the outbreak of war, but would require Congress to make a reasoned judgment within a few years about whether the exigencies of the conflict justified continued tolling. Finally, federal prosecutors must continue to heed the age-old wisdom of

Justice George Sutherland in striking fair blows²⁷ and should exercise appropriate discretion in not threatening or seeking to invoke the WSLA in absurd situations.

Given that neither the president nor Congress has acted in more than two years to formally end the Iraq War for WSLA purposes, it appears that the WSLA has been forgotten—except, of course, by federal prosecutors who are increasingly invoking the statute to bring otherwise stale charges. The effects of the WSLA will likely be felt for years after the wars in Iraq and Afghanistan will have faded into history, and whatever justification for prosecutorial delay that earlier existed will have long since been extinguished. Policymakers should take note of this issue and act to restore a more appropriate balance between the desire for rigorous prosecution and the need for timely repose in matters of criminal law.

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¹⁵ See *Wells Fargo Bank*, 2013 WL 5312564, at *11 ("In light of the 2008 amendment, there is no dispute that the WSLA is now in effect. . .").

¹⁶ See Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

¹⁷ See Authorization for Use of Military Force Against Iraq, Pub. L. No. 107-243, 116 Stat. 114 (2002).

¹⁸ *Pfuger*, 685 F.3d at 485 (as of date of opinion, "neither Congress nor the president [had] met the formal requirements for terminating the WSLA's suspension of limitations"); *Wells Fargo Bank*, 2013 WL 5312564, at *11 ("[T]here has been neither a Presidential proclamation, with notice to Congress, nor a congressional resolution suspending hostilities."); see also *Halliburton*, 710 F.3d at 179.

¹⁹ *Pfuger*, 685 F.3d at 485; *Wells Fargo Bank*, 2013 WL 5312564, at *11.

²⁰ See *Doggett v. United States*, 505 U.S. 647, 669 (1992) (Thomas, J., dissenting).

²¹ The two most obvious limitations-related constitutional defenses—the Ex Post Facto Clause and the Due Process Clause—are unlikely to be of much use to criminal defendants when the government invokes the WSLA. The Ex Post Facto Clause prohibits only the retroactive application of an expansion of the limitations period after the period has expired; it does not protect against the tolling or extension of a limitations period that has not yet lapsed. See *Latimer*, 2012 WL 1023569, at *2 (rejecting argument that 2008 amendment to the WSLA violated Ex Post Facto Clause). The Due Process Clause may be invoked as a defense against pre-indictment delay even within the limitations period, but the defendant must show both actual prejudice caused by the delay and, in accordance with the weight of authority, bad faith on the part of the government (i.e.,

that the government intentionally delayed bringing indictment to gain tactical advantage). See Charles Doyle, *Statutes of Limitation in Federal Criminal Cases: An Overview* 16–17, Cong. Research Serv., RL31253 (2012) (citing numerous cases). Finally, neither the Sixth Amendment nor Federal Rule of Criminal Procedure 48(b), authorizing a court to dismiss an indictment in the event of unnecessary delay, offers much hope for relief. See *United States v. Marion*, 404 U.S. 307, 313–19 (1971) (holding that the Sixth Amendment's speedy trial provision and Rule 48(b) apply only after arrest or indictment).

²² *Halliburton*, 710 F.3d at 187 (Wynn, J., concurring) (citing Doyle, *supra* note 21).

²³ See *supra* note 2.

²⁴ See Doyle, *supra* note 21, at 1 ("There is no statute of limitations for federal crimes punishable by death, nor for certain federal crimes of terrorism, nor . . . for certain federal sex offenses. Prosecution for most other federal crimes must begin within five years of the commitment of the offense."); see also *id.* at 18–24 (listing all federal crimes for which there is no statute of limitations).

²⁵ Indeed, the WSLA has been successfully invoked even by private *qui tam* plaintiffs in cases in which the government declined to intervene to bring claims that would otherwise be time-barred. E.g., *Halliburton*, 710 F.3d at 173.

²⁶ We assume that the conflict in Afghanistan (as well as the broader, continuing efforts to fight terrorism globally) could be formally "terminated" for WSLA purposes without affecting the underlying congressional authorization for the use of military force.

²⁷ *Berger v. United States*, 295 U.S. 78, 88 (1935) ("[W]hile [a federal prosecutor] may strike hard blows, he is not at liberty to strike foul ones.")

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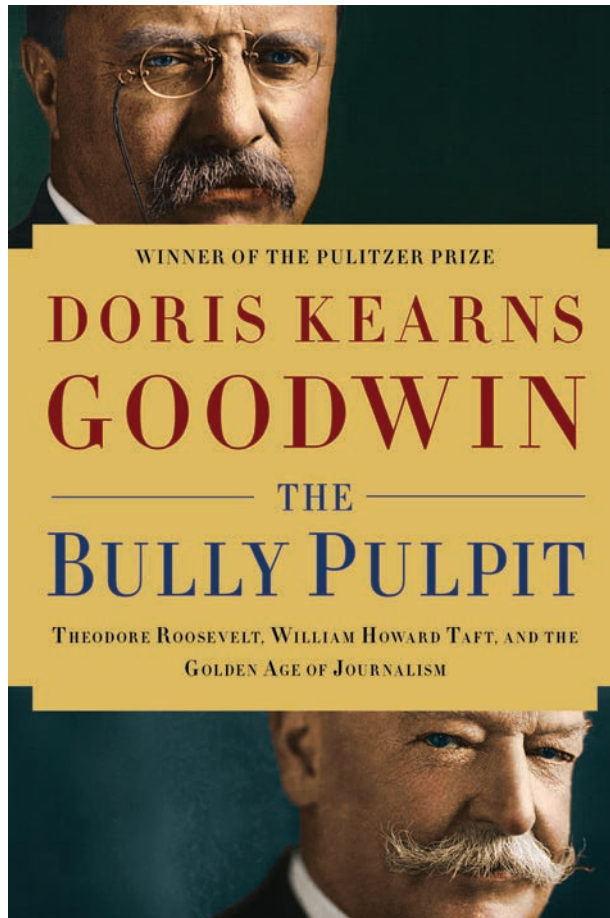
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**The Bully Pulpit:
Theodore Roosevelt,
William Howard Taft,
and the Golden Age
of Journalism**

By Doris Kearns Goodwin
Simon & Schuster, 2013

REVIEW BY PAUL D. PEARLSTEIN

This is a BIG book featuring two very BIG men! Actually, it could be three, four, or even five books. The subtitle, *Theodore Roosevelt, William Howard Taft, and the Golden Age of Journalism*, accurately describes the focus of the book. The author examines the lives and times of Roosevelt and Taft from the cradle to the grave.

Their wives were critical players and they are given their due. We see Roosevelt's love and loss of Alice and the devotion of Edith, his second wife and childhood playmate. Taft's politically ambitious spouse, Nellie, was a liberated lady for her time. Strong-willed and once employed, she smoked cigarettes, drank liquor, and enjoyed a good poker game. In later years, she even supported some of FDR's policies, much to the chagrin of her "Mr. Republican" son, Senator Robert Taft. Nellie successfully guided her talented spouse away from the bench to Washington, and ultimately to the presidency.¹ Although she suffered a stroke two

months after moving into the White House, she survived to age 81.

Doris Kearns Goodwin, a Pulitzer Prize-winning author, cleverly weaves the work of the progressive journalists into the lives of the two presidents and the issues of the era. As an impoverished Irish immigrant with manic energy and creativity, Sam McClure started *McClure's Magazine*. McClure put together a team of superstar reporters, including Ray Baker, Willa Cather, Stephen Crane, Jacob Riis, Upton Sinclair, Lincoln Steffens, Ida Tarbell, and William Allen White. For *McClure's Magazine*, these writers provided credible, hard-hitting exposés of corruption and abuses in the United States. The public drank up the stories and loved the new publication.

Several of these no-holds-barred reporters became close to Roosevelt. Some were invited to discuss their positions with the president even when they strongly disagreed with him. But what started as a symbiotic lovefest with the press became an irritant to Roosevelt by the

During Roosevelt's presidency, there were many pressing issues. Monopolistic trusts controlling steel, railroads, and oil corrupted and manipulated their markets.

end of his presidency. It was at a Grid-iron Dinner that Roosevelt labeled these irreverent journalists “muckrakers.”

When Roosevelt served as New York City Police commissioner, Riis, and later Steffens, suggested and accompanied him on unannounced predawn inspections of the police force. Roosevelt was shocked at what he found and took immediate action. Steffens followed up with damning articles exposing institutionalized police corruption. Additionally, in a 50,000-word, six-part series appearing in *McClure's Magazine*, Baker wrote about corruption in the railroad industry. Sinclair also wrote the “fiction” novel *The Jungle*. The book described in disgustingly accurate detail the horrors observed in the Chicago food processing industry.

Many readers will come to Goodwin's *The Bully Pulpit* already knowledgeable about the life of the frenetic Teddy Roosevelt: childhood sickness, father's early death, beginning political life in New York City and Albany, the Rough Riders, the Panama Canal, conservation, and even his Nobel Peace Prize.

By contrast, general knowledge about Taft is sparse. This giant of a man (weighing more than 335 pounds while in the White House) was a polite, judicious, tactful soul. He was well liked and modest. Although a self-doubting serial procrastinator, he had the ability to rise to the occasion at the 11th hour.

Both future presidents were from successful upper-class families and well educated. Roosevelt was a product of Harvard (the Porcellian Club) and a “taste” of Columbia Law School. Taft thrived at Yale University (Skull and Bones), received the highest honor from his class, and nurtured his love affair with the law at the University of Cincinnati College of Law.

Roosevelt and Taft appreciated one another's strengths and weaknesses. The two men first became acquainted in 1898 in Washington when President Benjamin Harrison nominated Taft as U.S. solicitor general. Roosevelt was then an appointed member of the Civil Service Commission. Both families lived within 1,000 feet of each other in the District of Columbia, and they became good friends. The relationship was so strong that Roosevelt furiously promoted Taft as his presidential successor. Unfortunately, there was a rupture after Taft's first term when Roosevelt savagely and personally attacked Taft

and ran against him with his Bull Moose Party. Roosevelt's venom divided the Republican Party and gave the presidency to the Democrat, Woodrow Wilson.

While serving as McKinley's assistant secretary of the Navy, Roosevelt did even more than publisher William Randolph Hearst to start the war with Spain. The victory over Spain resulted in the U.S. administration of Cuba and the Philippines. Happily serving on the U.S. Court of Appeals for the Sixth Circuit, Taft reluctantly accepted President McKinley's offer to become governor-general of the Philippines, replacing General Arthur MacArthur.² With Nellie's support, Taft became a well-received and highly successful governor-general. Meanwhile, Vice President Roosevelt had become president after McKinley was assassinated. The Tafts ended their foreign adventure and returned to Washington when Roosevelt appointed Taft his secretary of war and also sought his assistance with the Panama Canal.

During Roosevelt's presidency, there were many pressing issues. Monopolistic trusts controlling steel, railroads, and oil corrupted and manipulated their markets. High tariffs favored the owners of manufacturing companies but drove up prices for consumers. The issues created a bitter division within the Republican Party.

The Republican progressives wanted to break up the trusts, level the economic playing field, and improve the pay and working conditions of labor. Many believed that the harmful corruption and abuses of the Carnegies, Goulds, Morgans, Rockefellers, and Vanderbilts demanded correction. By contrast, Republican conservatives wanted more protection for the wealthy and even higher protective tariffs, lower taxes, and a hands-off, laissez faire policy on business and its trusts. As taught by political economist William Graham Sumner at Yale, the conservatives argued that the very rich had earned their success and the less fortunate workers deserved their fate. The successful captains of industry were increasing the wealth and strength of the entire country and must not be restrained. These “heroes” should not be interfered with and their “peccadillos” go with the territory.

Progressive journalists continued to weigh in on these issues. Baker set out to investigate the nation's tycoons. He began to study J. P. Morgan, who employed more than 250,000 people and

enjoyed “a yearly income almost as great as that of Imperial Germany.” Morgan, Andrew Carnegie, and other steel men had put together the United States Steel Corporation by manipulation, corruption, and brute force. U.S. Steel was “the first billion-dollar corporation in the world,” Goodwin writes. Morgan went on to help form and control the holding company, Northern Securities Company, which created a monopoly over rail transportation and steamships and became the second-largest corporation in the world behind U.S. Steel.

Baker's gripping articles disclosed the resulting abuses to the workers and customers under these giant trusts. Roosevelt was piqued and Baker was invited to discuss and argue the matter with Roosevelt at the White House. Once convinced, Roosevelt embraced the need for reform and took steps to confront the Northern Securities monopoly. His attorney general commenced one of the first Sherman Antitrust Act lawsuits in the country. A hard-fought victory was upheld by the U.S. Supreme Court. Northern Securities was finally dissolved, but, ironically, much of it reemerged in 1970 as Burlington Northern Railway.

In another article appearing in *McClure's Magazine*, Tarbell wrote a devastating disclosure of the abuses of John D. Rockefeller and his Standard Oil Company. Tarbell was personally motivated by the subject. Her father had been a very successful independent oil producer in Titusville, Pennsylvania, who was ruined when Rockefeller doubled the transportation costs for small, independent oil producers.

Tarbell's articles, along with those of Baker, Steffens, and others, made *McClure's Magazine* a huge success. As the entire country reacted to the exposés, Presidents Roosevelt and Taft listened and became cautious but committed progressives. New laws were created to give the federal government authority and some clout to fight and prevent the revealed corruption and abuses. The Bureau of Corporations (TR 1903), the Pure Food and Drug Act (TR 1906), the Federal Employers Liability Act (TR 1908), and the Payne-Aldrich Tariff Act (Taft 1909) all began to alter the freewheeling, irresponsible conduct of many businesses.

Goodwin's new book describes the players, political struggles, and many

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The Gods of Guilt

By Michael Connelly
Little, Brown and
Company, 2013

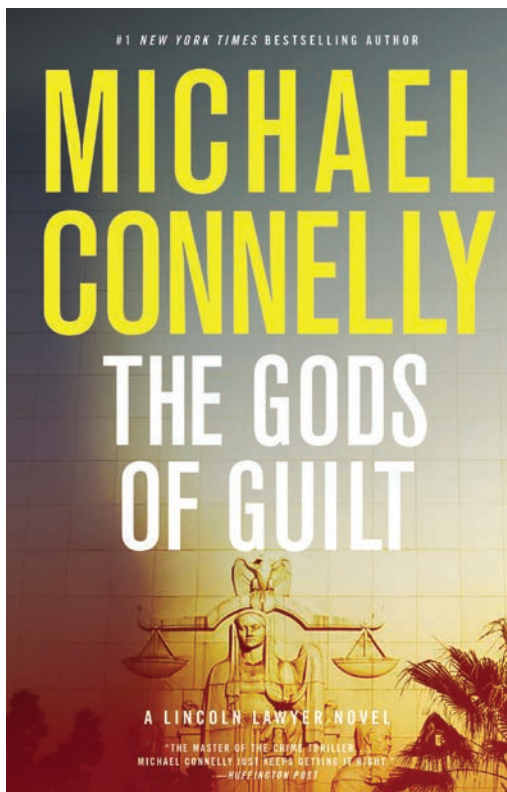
REVIEW BY RONALD GOLDFARB

"My pulpit is the well of the courtroom. I preach to the twelve apostles, the gods of guilt."

A former crime reporter for the *Los Angeles Times*, now a Florida resident, the super successful thriller novelist Michael Connelly gets his story ideas and expertise hanging out with the police and lawyers. The title, *The Gods of Guilt*, comes from a remark by one trial lawyer who used the phrase to describe the profound power of juries. Connelly saw the notion as a metaphor for one's own meditation on personal guilt, he once told a CNN interviewer, as people seek their private verdicts on their actions in life. As his old mentor (Legal Siegel, now in a retirement facility) tells the central character, a bruised-by-life, savvy but eccentric trial lawyer, "There are plenty of people out there judging us every day of our lives and for every move we make. The gods of guilt are many."

The award-winning author of a continuing series of successful novels (over 50 million copies sold so far) about crime and law in a big city (Los Angeles), Connelly brings together in his newest project his recent cast from *The Lincoln Lawyer* book-turned-movie. His central character is Mickey Haller, a veteran trial lawyer who cruises the city in his vintage Lincoln Town Car that also serves as his office (equipment and files in the trunk; printer in the passenger seat) and driven by his ex-client, ex-con Earl Briggs, who is working off his fee. "I liked working out of the back seat and flying by the seat of my pants," notes Mickey. Assisting Mickey is his office manager and ex-wife, Lorna Taylor; her new husband Cisco Wojciechowski, a tattooed, muscled investigator; and a young, striving legal assistant named Jennifer Aronson. For a fifth time, Connelly uses this colorful cast of characters in the latest drama in Mickey's adventurous, offbeat legal career.

Mickey's lawyer life isn't of the Big Law mold; it is more like the Fifth Streeters that columnist Jake Stein describes with much insight and charm on these pages. He picks up assigned cases at



the criminal courts, advertises, hustles. Mickey has honor, but he stretches ethics in his battles for justice on behalf of his "colorful" and sometimes questionable clients. His teenage daughter is alienated from him because she sees the things he does for his dark clients as either black or white, and he knows "it was gray, and the gray area was where her father dwelled," Connelly writes. Mickey's private life is in shatters. But he "doesn't like telling clients to abandon all hope," so Mickey does what he has to do, often coming close to ethical lines and occasionally crossing them.

I don't tell plots in reviews, but Connelly's plots are less his strength than the world he creates. His stories are breezy, complicated enough to keep readers paying attention, and filled with action and drama. The first half of the book brings the history and characters on stage. At page 233 he starts his central trial, as he often waits to do. Then he switches from the moods of Raymond Chandler to the lawyer tactics of Scott Turow. His trials have twists and turns that keep readers turning pages, unsure where the story is going. He mixes two trials—one historical, and the present a murder trial—and pulls them together ingeniously. Connelly writes in a worldly, noir style. He posits, "Isn't everybody hiding from something?" He captures the offbeat personalities of the lowlifes who inhabit the criminal

justice world—disbarred lawyers, crooked cops, frightening criminals, overworked DAs ("who seemed to carry the burden of proof in her slumped shoulders and permanent frown"), wizened judges, rogue DEA agents, savvy investigators, cartel thugs, and assassins. He also tosses in an assortment of sordid riffraff, pimps (this one digital), and prostitutes who are tough, with funny names like Glenda the Good Witch and Trina Trixxx. Most are tough, some are enticing, a few oddly appealing. Their lives are depressing: "She was unable to leave it, and eventually it took everything away from her. It was an old story, and in a year's time, it would be forgotten or replaced by the next one," Connelly writes. He knows crooks who pulled scams that "brought new meaning to the words heartless predator," and prisoners who knew how to work in their cells with throwaway cell phones and who ingeniously manage to operate on the streets while they do their time in joints. Connelly knows the criminal justice system from his days covering it as a reporter and from his regular interviews with players, along with his special sense of details and his intricate storylines. Trial lawyers will recognize how well he knows the system, and general readers must sense his verisimilitude. He uses small details such as noting how judges at sidebars with counsel turn on the fan at their desks so the jury won't hear the colloquy going on. Or the smart observation by one lay witness that "being able to describe him (a suspect) and recognize him are two different things." Connelly's books are filled with insightful reflections on how the system works from inside. *The Gods of Guilt* offers many:

Realities of Prosecution:

While I have zero doubt that innocent people are charged with murder, for the most part the police and prosecutors get it right, and you are left to negotiate or ameliorate the length and terms of punishment.

Life in Prison:

If you act unconcerned about being locked into a steel building with 1,200 violent criminals, then maybe they'll let you alone . . . if you show fear, then the predators will see it and exploit it. They'll come for you.

Suspects:

Most people who enter the criminal

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Identical

By Scott Turow

Grand Central Publishing,
2013

REVIEW BY PATRICK ANDERSON

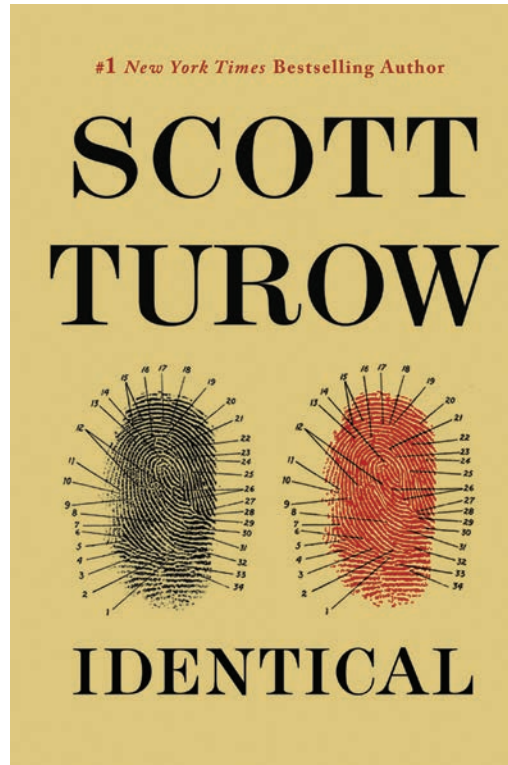
Scott Turow is far too intelligent and talented to write a truly bad novel, but I must say that I found *Identical*, his latest offering, to be perplexing. Turow again sets his story in the legal/political world of Kindle County, his fictional Chicago. His focus is on two prominent feuding Greek American families, one led by billionaire businessman Zeus Kronon, the other represented by the twin brothers Paul and Cass Gianis.

If you are up on your Greek mythology, you will recall that the god Zeus, taking the form of a swan, raped Leda, queen of Sparta, who gave birth to the twins Pollux and Castor. This mythology partially inspired the novel, as Turow tells us in an afterword that would have been more useful at the front of the book.

Turow's story moves back and forth between the September 1982 murder of Kronon's daughter Dita and events in 2008 that finally reveal the truth about her death. In 1982, Kronon hosts a lawn party at his mansion for several hundred of his fellow parishioners from St. Demetrios Greek Orthodox Church. The twins, Paul and Cass, then age 25, are among the guests, as is their mother Lidia; Paul has just finished law school and Cass is about to enter the police academy. Cass is also involved in a passionate affair with the spoiled and difficult Dita, whose name suggests Aphrodite, daughter of Zeus and goddess of love.

That night, after the party ends, someone enters Dita's room in the mansion and beats her to death. The killing is unsolved until Cass abruptly confesses to the crime and is sentenced to 25 years in prison.

In 2008, Paul is a state senator running for mayor of Kindle County and Cass has just been released from prison. By then, Kronon is dead: he has gone to Greece to rebury his daughter on Mount Olympus and—if you can believe this—someone pushed him off the mountain. His son Hal, a blustering right-winger who has inherited his father's shopping-center empire, tells reporters that he be-



lieves Paul, the Democratic candidate for mayor, was involved with his brother in the murder of his sister Dita.

Paul can't let such an explosive charge go unanswered, but when he sues Hal for defamation he opens himself up to lingering questions about the crime. DNA testing has progressed a great deal since 1982, and one question that arises is whether today's testing can establish whether blood found at the murder scene belongs to one or the other of the identical twins.

Hal underwrites an expensive negative ad campaign against Paul that Turow uses to express his scorn for the *Citizens United* decision. The lawyer Ray Horgan, a fixture in Turow's novels since *Presumed Innocent*, angrily declares that Hal is "an individual exercising his First Amendment rights. At least as long as there are five clowns on the Supreme Court who think that spending money is a form of unrestricted free speech."

Most of Turow's characters are interesting and complex, with few if any good-guy, bad-guy stereotypes. Two of the most interesting are investigators working for Hal to find dirt that might implicate Paul in the long-ago murder. Evon Miller is a 50-year-old lesbian who, after a successful career with the FBI (highlighted by undercover work that sent several judges to prison for corruption), has become Hal's chief of corporate security. She's a good person and good at her job, but we watch her suffer through the end of an unhappy

love affair with an emotionally unstable partner, followed by her fears that she may never find the love she seeks. She works closely with Tim Brodie, an 81-year-old retired detective who's an investigator for Hal and grieves endlessly for a wife he lost a few years earlier and for a six-year-old daughter who died decades in the past. Sorrow and mortality are oft-repeated themes of the novel.

We are often reminded in *Identical* that not only does Turow write extremely well about the law, but he also is a stylist, a writer who can inject graceful and vivid prose into a murder mystery. Tim, the old detective, recalls his dead wife's occasional anger toward him, "words that made his deflated hopeless heart flounder in his chest." On a spring day, Evon looks up and sees "high clouds plump as doves." An old woman's face is "a glistening pond of cold cream." Tim, who loves music, passes a woman playing the cello: "Her music, Brahms, was offered as a gift, a reminder of the eternal and even-handed power of beauty, a thought that stirred him deeply."

Turow's narrative moves briskly, punctuated by frequent reversals and surprises. The basic question is whether someone other than Cass killed Dita and, if so, why he chose to confess and go to prison. Many old loves and hates figure in the outcome.

Despite the novel's strengths, I had three problems with it. One is that, in exploring the question of whether one identical twin's DNA could be distinguished from the other's, Turow inflicts several pages of incomprehensible scientific jargon on us—and then the question proves not to matter in the outcome of the story. It's far more important that he demonstrates the exceptional love that exists between the brothers.

Secondly, I think Turow overdoes the parallels between his characters and the Greek gods. Besides Zeus and Aphrodite, Cass/Castor, Paul/Pollux, and Leda/Lidia, there's even a dog named Cerberus in honor of the three-headed watchdog that guarded the gates of Hades. It's just too much. Certainly, some of Turow's characters are as lustful, cruel, dangerous, and duplicitous as the Greek gods they suggest, but they could have been that way without the mythology to lean on.

Finally, while the novel is readable and entertaining, I found several elements of its outcome—its final revelations—to fall somewhere between unlikely and incredible. Turow asks us to

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The Bully Pulpit

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changes that occurred at the turn of the 20th century. She has written an important work of American history with a touch of, “Wow, did all of that stuff really happen in this country?”

Notes

1 After his presidency, Taft achieved his real goal when Warren Harding appointed him chief justice of the Supreme Court.

2 Like Father, Like Son. At that time, Douglas MacArthur's father, General Arthur MacArthur, was the governor-general of the Philippines and lived in the lavish Malacañan Palace. Arthur resented Taft, absented himself when Taft and his party first arrived, and refused to turn over the mansion to Taft. Being a polite gentleman, Taft backed off, found separate quarters, and only moved into the palace after MacArthur left.

Identical

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accept developments that left me shaking my head in disbelief.

Shakespeare sometimes injected twins into his comedies, but their use by lesser mortals has often been discouraged. In 1928, S. S. Van Dine, author of the Philo Vance mysteries, wrote an article titled “Twenty Rules for Writing Detective Stories,” in which he listed “devices which no self-respecting detective story writer” will use. One is “[t]he final pinning of the crime on a twin.”

Raymond Chandler, in his celebrated 1950 essay “The Simple Art of Murder,” deals harshly with the popular 1920s novel *The Red House Mystery*, which concerns twins Mark and Robert Ablett. Mark lives in an English country house. Robert, his wayward twin, is coming for a visit after 15 years in Australia. Soon after his arrival, one of the twins is found dead and the other vanishes. The police are incapable of determining which twin is the corpse. Chandler calls this “incredible,” and suggests that using twins in a mystery story can amount to fraud.

Rules are made to be broken, but even for a writer as skilled as Turow the use of twins is dangerous. The problem is that the identical characters tempt the writer to play games with the reader. Turow plays clever games in *Identical*, and some readers may find them fascinating. I didn't, but I remain confident that his next novel will mark a return to excellence.

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

The Gods of Guilt

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justice system end up being their own worst enemies. They literally talk their way into the handcuffs.

Evidence:

Mysteries always played into the defense's side. Mysteries were question marks, which led to reasonable doubt.

It is in the instinctual interpretation of voice and personality that we form our judgments of others. Nothing beats that. Not fingerprints, not DNA, not the pointed finger of the eyewitness.

Arraignment:

The place where the criminal justice system becomes a feeding frenzy, where those who are caught in the net are delivered to market.

Tactics:

Eighty percent of criminal law is figuring how to stay out of trial . . .

Bull---ing a jury is one thing. But it grows increasingly risky to mislead a judge who has been around the block a few times.

Miranda:

Largely bogus and part of the dance detectives engaged in every day in every police station. They walked a constitutional tightrope, trying to push things as far as they could before having to enlighten the hapless saps who sat across the table from them.

Investigations:

How drug cases were built. Small fish giving up bigger fish.

Trial Talent:

I knew lawyers from top law schools who couldn't find their way out of a courtroom. And I knew night school lawyers who I'd call in a heartbeat if it was ever my wrists in a handcuff. It was all about the lawyer, not the law school.

Verdicts:

The fine line between seeking the truth and seeking a verdict in your client's favor. They weren't always the same thing.

There is no script when you get into a courtroom. It's do or die.

Prison Atmosphere:

Sounds and smells, the drab gray steel set off by the garish orange uniforms of the incarcerated, the mixture of desperation and threat in the faces . . .

Hung Juries:

A sick dog and it needs to be put down as quickly and smoothly as possible. In the defense trenches, that is a victory.

Taking the Stand:

He believed—not without some merit—that guilty men remain mute and the innocent speak out. They testify.

Trials:

Always a work in progress and it almost never rolled out the way you initially planned or envisioned it.

The trial in *The Gods of Guilt* will have readers racing toward the exciting ending. This is typical Connelly at his best: scary, insightful, and filled with imperfect people fighting through hard and gritty lives.

In a recent interview, Connelly was asked what stories he was drawn to. His reply captures the essence of this book, and most of his detective and lawyer stories: “I like stories about people who have to go into the darkness for a good reason and then have to figure out how to deal with the darkness that seeps into their souls.”

Michael Connelly's *The Gods of Guilt* surely does that!

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



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attorney briefs

By Thai Phi Le

Honors and Appointments

Anna Blackburne-Rigsby, associate judge of the District of Columbia Court of Appeals, has been sworn in as the 34th president of the National Association of Women Judges... **Brian Kamoie** has been appointed assistant administrator of the Federal Emergency Management Agency for Grant Programs at the U.S. Department of Homeland Security... **William D. Nussbaum**, a partner at Hogan Lovells US LLP, has been inducted as a Fellow of the American College of Trial Lawyers... **Bill Mogel** of Mogel & Sweet has been honored by the Energy Bar Association with the Paul E. Nordstrom Award for exemplary long-term service to the bar and community... Justice at Stake has recognized **Mark Larson**, vice president and chief litigation counsel at Honeywell International, with the Justice at Stake Exemplar Award for the Defense of Fair Courts for his extraordinary commitment to preserving the integrity of Arizona's courts... **Melanie E. Bates** has been promoted to legislative director in Ward 6 Councilmember Tommy Wells' Office at the Council of the District of Columbia. She also has been selected president-elect of the Greater Washington Area Chapter, Women Lawyers Division, National Bar Association for the 2013–2014 bar year... **Todd C. Nichols** of Cogdill Nichols Rein Wartelle Andrews Vail has been named president-elect of the Washington State Association for Justice... The National Juvenile Defender Center has honored Georgetown University Law Center Professor **Kristin Henning** with the 2013 Robert E. Shepherd Jr. Award for Excellence in Juvenile Defense, which recognizes her dedication to juvenile representation and leadership in promoting this area of legal work on the local, regional, and national levels. The Order of the Coif has selected Georgetown University Law Center Professor **Neal Katyal** as its 2014 Distinguished Visitor. The Georgetown

Law Center has honored **Stephen Altman**, principal of Altman Dispute Resolution Services, with its 2013 Charles Fahy Distinguished Adjunct Professor Award for the JD Program, which is presented to an adjunct faculty member who has provided exceptional service in teaching, curriculum development, student counseling, and extracurricular activities... **Eshel Bar-Adon**, executive vice president of specialty finance and chief legal officer at BofI Federal Bank, has received the *San Diego Business Journal* 2013 General Counsel Award in the publicly traded medium category... Georgetown University Law Center Professor **Cornelia "Nina" Pillard** has been confirmed to the U.S. Court of Appeals for the District of Columbia Circuit... **David R. Kuney**, senior counsel at Sidley Austin LLP, has been elected to the American College of Bankruptcy... The Pennsylvania Clean Water Fund awarded its Florence Neilson Environmental Leadership Award to **Jordan B. Yeager**, an attorney with Curtin & Heefner LLP and chair of the firm's environmental and public sector section... **David M. Brodsky**, a principal at Brodsky ADR LLC, has been named chair of the board of directors for the American Constitution Society for Law and Policy... The Cook County Board of Commissioners has confirmed the appointment of Hoogendoorn & Talbot LLP partner **G. A. Finch** to the Cook County Employee Appeals Board in Illinois... Global cohead of litigation at Hogan Lovells LLP **Steve J. Immelt** has been voted in as the new chief executive officer of the firm... Georgetown University Law Center Professor **Chai Feldblum** has been confirmed by the U.S. Senate to a second term serving on the Equal Employment Opportunity Commission... **Richard Santalesa**, senior counsel of InfoLawGroup LLP, has been appointed cochair of the International Association of Privacy Professionals' KnowledgeNet in Connecticut...



Ryan Spiegel has joined Paley Rothman and will work in its litigation, commercial transactions, and government contracts practice groups.



David S. Cade has joined Polsinelli LLP as shareholder in the firm's health care practice.



Derek J. Schaffner has been promoted to counsel in Mayer Brown LLP's corporate and securities group.

Stephen Nagin, counsel to Peretz, Chesal & Herrmann, PL in Miami, has been elected chair of the Business Law Section of the Florida Bar... **Eric P. Gallun** was promoted to the rank of lieutenant colonel in September 2013 in the U.S. Army Reserve, JAG Corps. In addition, Gallun has been selected by the judge advocate general of the Army to serve as a military judge.

On the Move

William D. Booth has joined Michael Best & Friedrich LLP as partner on the firm's energy team... **Marc Fink** and **Jeffrey Lawrence** have joined Cozen O'Connor's newly formed international arbitration practice group as partner... **Consuelo Campuzano** has joined Potomac Law Group, PLLC, as partner in the firm's corporate practice. **Bill A. McGrath** has joined as partner, establishing the firm's consumer product safety and stewardship practice and joining the FDA regulatory compliance team... **John L. Cuddihy**

has joined Ballard Spahr LLP as partner, focusing on complex commercial litigation with an emphasis on patent infringement and antitrust issues...

Peter Lavallee, formerly of the District of Columbia Office of the Attorney General, has reentered public service as the director of communications and outreach at the Washington State Department of Natural Resources in Olympia, Washington... **Marion S. Cooper** has joined MercerTrigiani as counsel... **Kari K. Gregory** has been promoted to counsel at Latham & Watkins LLP. **Scott D. Forchheimer**, **David J. Greene**, and **Brian E. Kowalski** have been elevated to partner at the firm... **Juan Morillo** will join Quinn Emanuel Urquhart & Sullivan, LLP as partner and cochair of the white collar and corporate investigations group... **Lourdes C. Acevedo** has joined PobleteTamargo LLP as special counsel, focusing her practice on immigration and nationality matters... Former U.S. Supreme Court clerks **Emily Kennedy**, **David Morrell**, and **Ryan Watson** have joined Jones Day in the firm's issues and appeals practice. Morrell resides in the firm's Houston office... **Martin P. Dunn** has joined Morrison & Foerster LLP as partner in the firm's corporate finance practice... **J. Brian Davis** has joined Ivins, Phillips & Barker, Chartered, as partner in the firm's corporate tax group... **Bonnie Hochman Rothell** has joined Morris, Manning & Martin, LLP as partner in the firm's litigation practice... **Ernest B. Abbott** has joined Baker Donelson, PC as of counsel and member of the firm's state public policy group, concentrating his practice in the areas of emergency management and disaster recovery... Reed Smith LLP has added **Kristin C. Davis**, **Julie L. Hammerman**, and **Alexis P. Storey** as associate in the firm's insurance recovery group... Litigation and dispute resolution lawyer **Brian Netter** has been promoted to partner at Mayer Brown LLP. **Clinton H. Brannon** has been promoted to counsel in the firm's intellectual property group... **Jamie Bobotek**, **John Hane**, and **Patrick Jennings** have been elevated to partner at Pillsbury Winthrop Shaw Pittman LLP... Former U.S. Supreme Court law clerk **Brian Burgess** has joined Goodwin Procter LLP as associate in the firm's appellate litigation practice... Former Surface Transportation Board general counsel **Raymond A. Atkins** has joined Sidley Austin LLP as partner and member

of the firm's transportation practice...

Teresa (Terry) Stanek Rea, former acting and deputy director of the United States Patent and Trademark Office and acting and deputy undersecretary of commerce for intellectual property, has returned to Crowell & Moring LLP as partner in the firm's intellectual property group... **Joshua N. Rose** has joined Tully Rinckey PLLC as senior associate in the firm's employment law practice group. **Kathleen J. Raynsford** has joined the firm as of counsel in its labor and employment law practice group... Former U.S. Department of the Air Force counsel **David B. Robbins** has joined Shulman, Rogers, Gandal, Pordy & Ecker, PA, as partner and chair of the firm's government contracts practice... **Matthew Dyckman** has joined Goodwin Procter LLP as counsel in the firm's financial institutions group, focusing on corporate finance and securities, mergers and acquisitions, and banking and financial services... **Gary Guzy**, most recently deputy director and general counsel of the White House Council on Environmental Quality, has joined Covington & Burling LLP in the firm's environmental, clean energy, public policy, and government affairs practices... **Gregory S. Nixon** has joined CH2M HILL as senior vice president and chief legal officer... **Thomas N. Bulleit** has joined Ropes & Gray LLP as partner, leading the firm's health care practice... **Ike Adams**, **Torrey Cope**, **Michael R. Franzinger**, **Eric D. McArthur**, **James Mendenhall**, and **Ryan C. Morris** have been elected to partnership at Sidley Austin LLP... New York City Corporation Counsel **Michael A. Cardozo** has rejoined Proskauer Rose LLP as partner in the litigation department in the firm's New York office... **Katy M. Gottspomer** has been elected to partnership at Vinson & Elkins LLP, focusing her practice on energy infrastructure project development and finance transactions... **John W. F. Chesley** has been promoted to partner at Gibson, Dunn & Crutcher LLP, focusing his practice on white collar criminal and securities enforcement matters... Dickstein Shapiro LLP has elected **Katie Scott** and **David Yang** to its partnership ranks. Scott was elevated to partner in the firm's intellectual property practice. Yang is a partner in the firm's government contracts practice... **Jan Pederson** and the Pederson Immigration Law Group has joined Maggio + Kattar P.C. as shareholder... **Adam J. Siegel** has

joined the National Parks Conservation Association as associate general counsel.

Company Changes

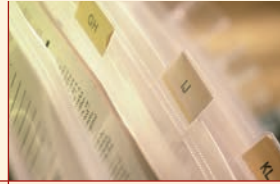
Jamie S. Kilberg has cofounded **Kauffman Kilberg LLC** in Portland, Oregon. The firm will focus on criminal defense in federal and state courts, including white collar criminal defense, environmental criminal defense, investigations, and compliance counseling... **Little Bulman Medeiros & Whitney PC** has merged with **Pierce Atwood LLP** and will operate under the **Pierce Atwood** name... **The Health Law Firm** in Altamonte Springs, Florida, has been certified by Orange County, Florida, as a Service-Disabled Veteran Business.

Author! Author!

Arthur J. Rynearson, a legislative drafting consultant, has written *Legislative Drafting Step-by-Step*, which was published by Carolina Academic Press... **Alexander Wohl**, speechwriter and adjunct professor at American University's Washington College of Law, has written *Father, Son and Constitution: How Justice Tom Clark and Attorney General Ramsey Clark Shaped American Democracy*, which was published by the University Press of Kansas... **Sherri L. Schornstein** has written *Criminal Enforcement of Intellectual Property Rights: U.S. Perspective*, which was published by LexisNexis... **James J. Gross**, a partner at Thyden Gross & Callahan, LLP, has released *It's Splitville*, a book about divorce, published by Apress Media... **Katy Goshtasbi**, chief executive officer of Puris Personal Branding Solutions, has authored *Personal Branding in One Hour for Lawyers*, published by the American Bar Association... **Howard Feinstein** has written *Fire on the Bayou: True Tales From the Civil Rights Battlefront*, which was published by Foxhead Books... **Anastasia "Stasia" Kelly** and **Suzanne Rich Folsom** have coauthored "Ten Traits of a Good Chief Compliance Officer: Lessons From Polar Exploration," which was published in the December 2013 edition of *Inside Counsel*.

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.

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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.

FEBRUARY 3

Ethics Issues Facing Corporate Counsel

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

ABCs of the National Labor Relations Board 2014, Part 1: Practice and Procedure Before the National Labor Relations Board

6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section, Health Law Section, and Labor and Employment Law Section.

FEBRUARY 4

New Tax Practitioners, Part 4

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

LLCs in the District of Columbia and Other Business Entities 2014

6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Family Law Section; Law Practice Management Section; and Real Estate, Housing and Land Use Section.

FEBRUARY 5

Corporate Tax, Part 3

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

Avoiding Counterfeit Parts (Webinar)

12:30–2 p.m. Sponsored by the Government Contracts and Litigation Section.

Essential Trial Skills, Part 1: Jury Selection

6–9:15 p.m. CLE course cosponsored by the 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; 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.

FEBRUARY 6

Estates, Part 6: How Does That Trust Thing Work Again? A Primer on Being a Trustee and a Review of the Uniform Trust Code

12–1:30 p.m. Sponsored by the Estates, Trusts and Probate Law Section.

Financial Products, Part 2: Capital v. Ordinary: Exploring the Limits of Section 1234A

12–1:30 p.m. Sponsored by the Financial Products Committee of the Taxation Section.

Lunch and Learn: What Solo and Small Firm Practitioners Need to Know About Malpractice Insurance

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

Introduction to Health Law, Part 4: Medicare Under the Affordable Care Act

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

FEBRUARY 10

ABCs of the National Labor Relations Board 2014, Part 2: Unfair Labor Practices

6–9:15 p.m. See listing for February 3.

FEBRUARY 11

Estate Planning, Part 6

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

Export Controls and Economic Sanctions 2013: Recent Developments and Current Issues

6–8:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; and International Law Section.

FEBRUARY 12

International Tax, Part 2

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

Media Law Committee Brown Bag Lunch

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

Essential Trial Skills, Part 2: Opening Statements and Closing Arguments

6–9:15 p.m. See listing for February 5.

FEBRUARY 13

Introduction to Health Law, Part 5: Compliance Issues and Health Data Privacy Under the Affordable Care Act

6–9:15 p.m. See listing for February 6.

FEBRUARY 18

Drafting Operating Agreements for LLCs and Other Business Entities 2014

6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Family Law Section; Law Practice Management Section; and Real Estate, Housing and Land Use Section.

FEBRUARY 19

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 or Rochelle D. Washington, assistant director and senior staff attorney, respectively, of the Practice Management Advisory Service, at dmills@dcbar.org and rwashington@dcbar.org, or call 202-626-1312.

Exempt Organizations, Part 3

12–2 p.m. Sponsored by the Exempt Organizations Committee of the Taxation Section.

Essential Trial Skills, Part 3: Witness Preparation and Direct Examination

6–9:15 p.m. See listing for February 5.

FEBRUARY 20

Best Practices to Make Your Next Mediation a Client Relations Success

12–1:30 p.m. Sponsored by the Alternative Dispute Resolution Committee of the Litigation Section. Hunton & Williams LLP, 2200 Pennsylvania Avenue NW.

Lunch and Learn: A Day in the Life of a Criminal Defense Lawyer

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

Tax Audits and Litigation, Part 4

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

Statute Drafting Workshop: D.C. Council Case Study

5:30–7:45 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section, Antitrust and Consumer Law Section, and District of Columbia Affairs Section.

FEBRUARY 24

ABCs of the National Labor Relations Board 2014, Part 3: Union Organizing

6–9:15 p.m. See listing for February 3.

FEBRUARY 25

The Best Person to Sell Your Services Is You

12:30–2 p.m. Sponsored by the Law Practice Management Section.

U.S. Economic Sanctions and the Office of Foreign Assets

Control: An Introduction

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

FEBRUARY 26

Basic Training and Beyond, Day 2:

How to Grow a Law Firm

9:15 a.m.–4:30 p.m. See listing for February 19.

D.C. Tenant Opportunity to Purchase Act (TOPA) and District Opportunity to Purchase Act (DOPA)

12–2 p.m. Sponsored by the Real Estate, Housing and Land Use Section.

Essential Trial Skills, Part 4: Cross-Examination

6–9:15 p.m. See listing for February 5.

FEBRUARY 27

Administrative Law Annual Review

12–2 p.m. Sponsored by the Administrative Law and Agency Practice Section and cosponsored by the Antitrust and Consumer Law Section; Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Family Law Section; Law Practice Management Section; and Litigation Section.

Lunch and Learn: A Day in the Life of a Family Law Lawyer

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

Annual Judicial Reception for Judicial Officers of the Federal and District of Columbia Judiciary

5:30–8:30 p.m. Sponsored by the Criminal Law and Individual Rights Section and Litigation Section. U.S. Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue NW.

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

6–8:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation

Section; Labor and Employment Law Section; and Law Practice Management Section.

MARCH 4

What Every Lawyer Should Know About Immigration Law 2014, Part 1: Immigration Law Overview and Family-Based Immigration

5:30–8:45 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Government Contracts and Litigation Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

MARCH 5

Corporate Tax, Part 4

12–2 p.m. See listing for February 5.

New Tax Practitioners, Part 5

12–2 p.m. See listing for February 4.

MARCH 6

How to Apply for Tax-Exempt Status 2014

6–9:15 p.m. CLE course cosponsored by the Arts, Entertainment, Media and Sports Law Section; Corporation, Finance and Securities Law Section; District of Columbia Affairs Section; Labor and Employment Law Section; and Taxation Section.

MARCH 7

Representing Asylum Seekers: Advanced Training

9 a.m. to 3 p.m. Training presented by the D.C. Bar Pro Bono Program, Capital Area Immigrants' Rights Coalition, Whitman-Walker Health, and Human Rights First. It is cosponsored by Catholic Charities Immigration Legal Services, Tahiri Justice Center, and the D.C. Bar International Law Section and Litigation Section. Contact Kim DeBruhl at 202-626-3489.

MARCH 10

Fee Agreements in the District of Columbia: Ethics and Practice Guide

6–9:15 p.m. CLE course cosponsored by all sections of the D.C. Bar.

MARCH 11

Estate Planning, Part 7

12–2 p.m. See previous listing for February 11.

Legal Beat

continued from page 19

Service and its Thurgood Marshall Award at the event.—*K.A.*

Judge Goldfrank Joins Commission on Judicial Disabilities and Tenure

On January 2 the D.C. Bar's Board of Governors appointed retired Judge Joan L. Goldfrank to the District of Columbia Commission on Judicial Disabilities and Tenure for a six-year term ending on January 1, 2020.

"I am honored to serve as a member of this important commission. The public's and attorneys' belief in and respect for the judicial system is critical to our community," said Goldfrank. "The commission is significant in ensuring the continued excellent bench in the District of Columbia. I look forward to contributing to the commission's work."

Goldfrank was appointed as magistrate judge to the D.C. Superior Court in 2002 and retired in 2012. Previously, she worked at the U.S. Department of Justice in various roles, including as senior legal advisor in the Professional Responsibility Advisory Office, as senior attorney in the Environment and Natural Resources Division, and as assistant counsel in the Office of Professional Responsibility.

In addition to her work at the Justice Department, she also served as executive attorney for the District of Columbia Board on Professional Responsibility, as staff attorney in the Legal Advisor's Office at Saint Elizabeths Hospital, as associate at Collier, Shannon, Rill & Scott PLLC, and as trial attorney at the U.S. Department of Energy.

The Commission on Judicial Disabilities and Tenure was established in 1970 to preserve an independent and fair judi-

ciary. The commission evaluates judges of the D.C. Court of Appeals and D.C. Superior Court who seek reappointment upon the expiration of their terms, or who retire and wish to continue service as senior judges, and investigates alleged judicial misconduct.—*T.L.*

Jenner & Block's Masters Joins Bar Foundation's Board of Directors

On November 12 the D.C. Bar's Board of Governors approved the appointment of Lorelie Masters to the board of directors of the D.C. Bar Foundation for a



Courtesy of Jenner & Block LLP

Lorelie Masters

three-year term. Masters filled the vacancy left by John Niels.

"I am thrilled that Lorie agreed to join our board, and that the Board of Governors approved the appointment. Her background in the public interest community and knowledge of how

legal service providers work, as well as her experience with the Bar, will be extraordinarily useful as we move forward to assure the best possible funding for the critical legal services that the Bar Foundation supports," said Marc L. Fleischaker, president of the Bar Foundation's board of directors.

Masters is a partner at Jenner & Block LLP, working in the firm's insurance recovery and counseling practice. Throughout her career, she has taken on leadership roles with the D.C. Bar and the American Bar Association, and served as president of the Women's Bar Association of the District of Columbia from 2007 to 2008. She served on the D.C. Bar's Board of Governors from 2010 to 2013.—*T.L.*

Capital Pro Bono Honor Roll Recognizes Attorney Service

Attorneys in the District of Columbia who performed 50 hours or more of pro bono work in 2013 are invited to be part of the Capital Pro Bono Honor Roll, an initiative of the D.C. Court of Appeals and D.C. Superior Court to honor pro bono service.

To be included in the 2013 honor roll, private and federal government practitioners must submit the required registration forms and apply by January 31 by visiting www.probono.net/dc/honor-roll. The list will be posted on the D.C. Courts' Web site, alongside a letter acknowledging the significance of the honor roll members'

contributions to the local community in increasing access to justice.

To register, attorneys must simply submit a declaration indicating that they have provided 50 hours or more of pro bono work or, to qualify for the higher recognition category, 100 hours or more of free legal service. Bulk applications may be submitted by office administrators.

Supported by the D.C. Access to Justice Commission and the D.C. Bar Pro Bono Program, the Capital Pro Bono Honor Roll was launched in 2011 to recognize the vital role that attorneys play in providing pro bono legal services to those who cannot afford counsel. It pays tribute to the thousands of D.C. Bar members and others practicing under D.C. Court of Appeals Rule 49 who provide desperately needed free legal services to those living in poverty, as well as to small, disadvantaged businesses and community-based nonprofits that are critical to the economic well-being of the District.

Georgetown Law, Thomas Reuters Release Legal Market Report

Bigger isn't necessarily better for law firms, according to a study released by the Center for the Study of the Legal Profession at Georgetown University Law Center and Thomas Reuters Peer Monitor.

The "2014 Report on the State of the Legal Market" shows that while 2013 was a record year for law firm mergers and the pace of lateral acquisitions remained strong, growth often leads to problems for firm leaders. In addition, a comparison of the number of lawyers in the Am Law 200 firms with the profits per partner of those firms showed no correlation between size and profitability.

"Law firms need to think more carefully and systematically about what is necessary to build sustainable organizations over the long term. That means giving serious thought both to how they provide services to clients and how they can provide opportunities for lawyers that elicit commitment and afford professional satisfaction," said Milton Regan, a Georgetown Law professor and codirector of the Center for the Study of the Legal Profession.

To view the full report, visit <https://peermonitor.thomsonreuters.com>.—*T.L.*

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

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legal spectator

By Jacob A. Stein

Gogol's Briefcase



The court clerks have the justified reputation of helping the lawyers who need help. Of course, the clerks play no favorites.

However, I shall speak of a matter in which a clerk was dishonest. The lawyer who was slighted was a Mr. Gogol, a slight man in his 50s. One could take him for a professor of mathematics or a specialist in the humanities. His overcoat was worn at the elbow. Nevertheless, the coat looked like the hand of a good tailor who made uniforms for prominent people. However, what really distinguished Gogol was his handsome brown leather briefcase with elegant brass fittings and a strong brass lock.

Gogol inherited the briefcase from his mother who inherited it from her mother, who was connected with the Russian Gogol family.

On the day in question, Gogol was in court with his briefcase containing all the legal papers of his only client, a woman in a divorce case. She wanted Gogol to get her a speedy trial so she could tell the judge the bad things her husband did.

Gogol and his client appeared as they should at 9:15 a.m. in the domestic relations Clerk's Office. The assignment clerk allocated cases from the calendar to be tried and reassigned the others. It was rumored that this clerk helped his friends get the assignments they wanted.

When Gogol's case was called, the assignment clerk was distracted momentarily by Gogol's briefcase. Was this odd-looking person *somebody* with such a briefcase? No, Gogol's shabby appearance confirmed that Gogol was a nobody.

Gogol waited in the Assignment Office to be assigned to a courtroom. At 3 o'clock the assignment clerk, scarcely looking up, told Gogol his case would not be reached on the calendar for at least two months.

When Gogol's client heard this, she was enraged. She told Gogol she will see the chief judge and get an explanation. Gogol could not stop her. Off they went to the

Chief Judge's Office. The chief judge's secretary asked what they wanted. Gogol told her about what went on with the assignment clerk. The chief judge's secretary told Gogol and his client to remain in the waiting room. She will talk with the judge. A few minutes later, she told Gogol that he must put his complaint in writing.

At this turn of events, Gogol's client demanded her file. Gogol suddenly recalled that he left his briefcase in the

The story takes a strange turn.

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Assignment Office. He ran back to the office to get his briefcase. Everyone had gone. There was no briefcase.

The next day Gogol returned early to the Clerk's Office. He asked the assignment clerk for the briefcase. The assignment clerk said no one has seen it. The clerk told Gogol to check with Lost and Found. Gogol went there in a panic. No briefcase was there. He left the courtroom. Nobody ever saw him again.

The story takes a strange turn. Three days later, after Gogol and the briefcase disappeared, odd things happened. All the lawyers in the town were surprised to learn that the combination locks on their fancy attaché cases would not open.

Locksmiths were called. They were baffled. They could not fix the locks. The only way to open the briefcase was to cut off the lock from the leather, but that would destroy the briefcase.

The following week a junior lawyer in a large firm discovered he could not open a senior partner's briefcase. The junior sought permission from the senior partner to pry open the lock to get the important documents in the briefcase. The

senior advised the junior that the firm paid \$600 for the briefcase. Its destruction could not be authorized without a meeting of the Acquisition Committee. The junior, in this dilemma, worked out a settlement.

The briefcase mystery was drawing attention among the Bar. The chief judge ordered a meeting of the courtroom clerks to discuss the matter of the briefcase.

The assignment clerk strolled across the courtyard to attend the chief judge's meeting. Suddenly, he felt a strong tugging at the fine brown leather briefcase with the beautiful brass locks and fittings. For a moment he thought he saw "Gogol" pointing to the briefcase. Then "Gogol" disappeared.

When the clerk arrived at the chief judge's conference room, he took his usual seat up front. He put the briefcase by his chair. He glanced at it from time to time. It seemed to be moving away from him. He looked to see if anyone else noticed this strange movement of the briefcase.

Then, it happened. The assignment clerk's briefcase fell open, spilling its contents onto the floor, the court's office supplies—staplers, rulers, pens, expensive bottles of ink, and other things that belonged to the court.

The assignment clerk did not know what to do. Should he gather everything up and put it back in the case? That would be incriminating. Should he just let the articles stay there on the floor? What to do. He decided to pick them up and put them back in the briefcase, but the briefcase had snapped itself shut.

After the meeting, the chief judge and the assignment clerk met privately. A week later, the clerk submitted his resignation.

Thereafter, all the locks of all the briefcases suddenly snapped open. What happened to the briefcase? It was put up for auction and purchased by an odd-looking person in a fine-looking overcoat.

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