MAY 2011

Washington Lawyer

THE OFFICIAL JOURNAL OF THE DISTRICT OF COLUMBIA BAR

The Transformation of Legal Education

By Sarah Kellogg

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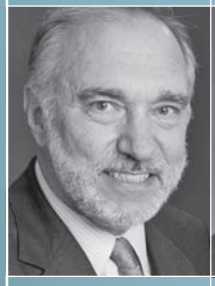

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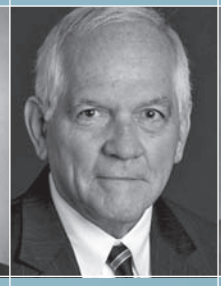

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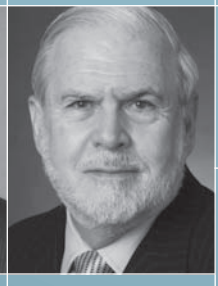

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May 2011
Volume 25 No. 9
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Washington Lawyer is published by the D.C. Bar for distribution to its membership; $5.21 of each member's dues is applied toward a subscription. Nonmember subscriptions are $35 each, domestic, and $50 each, foreign, prepaid (U.S. dollars). Changes of address must be in writing.

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

from the president

By Ronald S. Flagg

Putting Your Professional Experience to Good Use

Patrice Gilbert

At this time of year, speakers and columnists commonly issue clarion calls for new graduates to use their talents and new degrees to benefit their communities. I make a similar request today, although directed to a more mature audience—members of our bar with many years of professional experience.

Roughly 20,000 of our active members in the Washington metropolitan area have been practicing law for more than 25 years. We have worked successfully in a wide variety of niches, including large firms, small firms, solo practices, government, academia, and nonprofit organizations. Collectively, we have tried thousands of cases, argued thousands of appeals, drafted thousands of agreements, written countless articles and books, and helped more than a million clients. And yet, even with this impressive body of work behind us, some of the most professionally rewarding, important, and impactful years of our careers may still lie *ahead*. For example, if even a small percentage of our most experienced lawyers were to devote substantial time to the roughly two dozen legal services providers in our city, literally thousands of additional people in our community could be served annually.

With these thoughts in mind, the D.C. Bar Pro Bono Program, D.C. Access to Justice Commission, and 11 founding law firms last year launched the Senior Attorney Initiative for Legal Services (SAILS) Project to infuse much-needed resources into the public interest legal community by harnessing the vast experience of the many talented senior lawyers at D.C. law firms, government agencies, and corporate legal departments. The SAILS Project, chaired by Marc L. Fleischaker, partner and chair emeritus at Arent Fox LLP, was founded on the premise that by tapping this underused resource, we can significantly narrow the justice gap that has only expanded with the downturn in the economy.

At its inception, the SAILS Project reached out in two directions. First, we contacted legal services providers in the District to identify areas of unmet legal needs in our community where an infusion of experienced lawyers could have a major impact, as well as additional infrastructure or support they might need to use such additional resources most effectively.

Second, participating law firms were asked to institutionalize a senior lawyers project at their firms to build a structure and culture that encourages and supports experienced lawyers to undertake pro bono work. Though each firm will establish a program that is appropriate to its individual setting, the goal is to develop models that other firms could also consider to reduce barriers and create incentives for experienced lawyers to do more pro bono work and create a "pro bono path" as they transition from full-time billable work. In its focus on institutionalizing such policies, the SAILS Project differs from prior efforts in other major cities that have tended to focus on individual lawyers. We have learned from these prior efforts that the following criteria are essential to the success and sustainability of any firm's senior lawyers project:

- Ensuring that these experienced lawyers remain connected with their firms and have access to firm resources to support their pro bono efforts (including office space, administrative support, and legal support);
- Reviewing, refining, and institutionalizing, as appropriate, policies to ensure that senior lawyers who choose this path are supported; and
- Working in partnership with the legal services providers or public interest organizations to address urgent legal needs.

Many of the participating firms already have taken steps along these lines. For example, one firm that has billable-hour targets for partners during a formal phase-down period to retirement has adopted a policy that SAILS Project pro bono work will count toward those targets. Another firm that does not have a structured phase-down process or mandatory retirement age, and has had a number of senior lawyers remain at the firm doing significant pro bono work, made that option more universally known and the process more transparent. The firm sent a notice to every lawyer in its D.C. office, from the law school class of 1976 and earlier, informing them about the SAILS Project and inviting them to meet for an informal lunch with the firm's pro bono partner to explore options. Many partners responded by coming to lunch or contacting the pro bono partner privately.

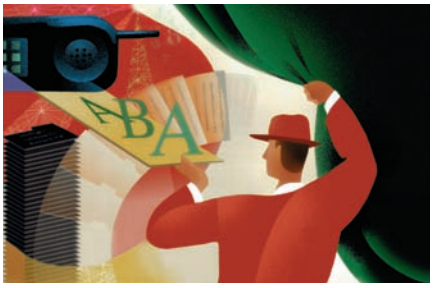
The SAILS Project, in partnership with the Washington Legal Clinic for the Homeless, Legal Aid Society of the District of Columbia, McDermott Will & Emery LLP, and Arent Fox, already has developed a program of expanded outreach and assistance for homeless and low-income veterans. The new program will include outreach by the Washington Legal Clinic for the Homeless, particularly to veterans who are homeless, and education, advice, and representation by lawyers from the clinic, Legal Aid, Arent Fox, and McDermott in a wide variety of areas, including veterans benefits, child custody, domestic violence, public benefits, landlord and tenant, and home foreclosure.

D.C. lawyers have long led the nation in their commitment to pro bono work and their support of the public interest legal community and the clients it serves. The SAILS Project has the potential to become a national model, producing best practices and creating thought leaders on how to marshal the extraordinary resources represented by our bar's most experienced members. It assuredly will significantly expand urgently needed resources into the public interest community and make a rapid and palpable impact on the availability of legal help for the most vulnerable members of our community.

Reach Ronald S. Flagg at rflagg@dcbar.org.

bar happenings

By Kathryn Alfisi



Mick Wiggins

Mottley Takes Oath of Office at Bar's Celebration of Leadership

Darrell G. Mottley, a principal shareholder at Banner & Witcoff, Ltd., will be sworn in as the 40th president of the D.C. Bar during its 2011 Celebration of Leadership on June 30 at the Mayflower Renaissance Hotel, 1127 Connecticut Avenue NW.

The event will open with a Presidents' Reception at 6 p.m. to welcome Mottley, followed by the awards dinner at 7:30. The reception, benefiting the D.C. Bar Pro Bono Program, aims to raise money for its programs that provide legal assistance to economically disadvantaged residents in the District of Columbia.

Courtesy of Banner & Witcoff, Ltd.

Darrell G. Mottley

Among the evening's highlights are the presentation of the Bar's 2011 Beatrice Rosenberg Award for Excellence in Government Service and the William J. Brennan Jr. Award, as well as the announcement of the Bar's election results.

Finally, the Bar will hand out awards in the following categories: Best Bar Project of the Year, Best Section of the Year, Best Section Community Outreach Project, Pro Bono Lawyer of the Year, and Pro Bono Law Firm Awards—one for small firms (2–50 lawyers) and one for large firms (51 lawyers or more).

The Presidents' Reception will be held at the hotel's State Room; the awards dinner will take place in the Grand Ballroom.

For more information about the Presidents' Reception or to make a contribution to the D.C. Bar Pro Bono Program, contact Kathy Downey at 202-588-1857 or kmdowney@erols.com. To learn more about the Celebration of Leadership, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or annualmeeting@dcbar.org, or visit www.dcbar.org/annual_dinner.

D.C. Judicial Conference Tackles Implicit Bias in Decision Making

The District of Columbia Courts will explore the impact of implicit bias on the judicial process when it convenes for its 36th Annual Judicial Conference on June 3 at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue NW (see full-page ad on inside back cover).

Linda Greenhouse, formerly a Pulitzer Prize-winning U.S. Supreme Court reporter for *The New York Times* and now the Joseph Goldstein Lecturer in Law at Yale Law School, will be the keynote luncheon speaker.

Centering on the theme "Implicit Bias: Recognizing It and Dismantling It," the conference will explore the neuroscience of implicit, or subconscious, bias and the many decision points in the judicial process that are impacted by it, ranging from jury selection to sentencing (and everything in between) to appellate decision making. Those who have studied the subject have been quite surprised to find that their own implicit biases are much more pronounced than they ever would have imagined.

The D.C. Courts' goal for this conference is to take this newfound knowledge to the next level, giving participants realistic and practical "takeaways" they can use in their chambers and practices. The conference aims to help attendees overcome subconscious thoughts so that their decisions are based on fair and equal treatment that is vital to public trust and confidence in the administration of justice.

One of the conference's highlights is a presentation by Dr. Mahzarin Banaji of Harvard University, titled "Blindspot: The Hidden Biases of Good People," from 9:15 a.m. to 12 p.m. Banaji, a nationally recognized scholar and presenter in the field of implicit bias, maintains an educational Web site, www.implicit.harvard.edu, designed to create awareness on unconscious biases in self-professed egalitarians. Details about her research also can be found at www.people.fas.harvard.edu/banaji.

Greenhouse's keynote luncheon speech will be followed by a second plenary session, "Applying the Principles: Dismantling Hidden Biases and Learning Neutral Assessment of Credibility, Competency, and Evidence," from 2:30 to 3:45 p.m. Kimberly Papillon, senior education specialist for the California Judicial Council, will moderate a panel of distinguished local jurists and lawyers who will discuss how to overcome or "dismantle" problems of implicit bias as exposed by Dr. Banaji's presentation.

Panelists include D.C. Court of Appeals Associate Judge Noël Anketell Kramer; D.C. Superior Court Associate Judge Herbert B. Dixon Jr.; Michele A. Roberts, a partner at Skadden & Arps LLP; and Kenneth L. Wainstein, a partner at O'Melveny & Myers LLP and former U.S. Attorney for the District of Columbia.

Registration starts at 8 a.m. The conference will close with a cocktail reception to enable members of the bench and bar to renew old acquaintances and make new ones.

For more information, please contact Cherylen Walker-Turner at 202-879-9930.

CLE's Immigration Law Series Continues in May

The D.C. Bar Continuing Legal Education (CLE) Program's "What Every Lawyer Should Know About Immigration Law" series, which opened April 26 with a look at family-based immigration, will continue in May with three more sessions.

The series provides an overview of various aspects of immigration law that attorneys may encounter regardless of their specialty. It covers immigration law and practice, including the government agencies involved; options for employment-based and family-based immigration law; asylum and humanitarian relief; and immigration litigation practice. Important legal ethics issues related to immigration practice such as dual representation and flat or fixed fee cases also will be discussed.

Part two, "Employment-Based Immigration: Nonimmigrant Visas," on May 3 focuses on the fundamentals of employment-based, nonimmigrant visas across the full spectrum of options: from training visas to employment visas, and from nationality-specific to occupation-specific visas. Topics to be discussed include adjudication by the U.S. Citizenship and Immigration Services and visa issuance by the U.S. Department of State.

Attorney Linda Dodd-Major; Stephen Pattison, senior counsel at Maggio & Kattar, P.C.; and Rachel A. Peterson of the State Department will serve as faculty.

Part three, "Employment-Based Immigration: Immigrant Visas, Corporate Compliance, and Ethical Considerations in Immigration Law," on May 10 will lead participants through the various avenues by which a foreign national may secure permanent residence through employment.

Faculty will discuss PERM labor certification and labor certification-exempt categories as well as immigrant investor visas. This session includes a substantive discussion of ethics matters in the context of immigration law and a review of key decisions within the immigration law area, relevant D.C. ethics rules, and dual representation and flat fee cases.

Shane Dizon, Kauffman Legal Research Fellow at New York University School of Law; Elizabeth A. Herman of the District of Columbia Office of Bar Counsel; and John Nahajzer, a managing shareholder at Maggio & Kattar, will lead this session.

Part four, "Overview of Immigration Litigation, Asylum, and Humanitarian Relief," on May 17 will cover key aspects of immigration law for individuals who are not eligible for employment- or family-based sponsorship. Participants will get an overview of the statutory and regulatory framework of removal proceedings, asylum, and humanitarian relief options.

Faculty members include Judge Phillip T. Williams of the Baltimore Immigration Court; David Cleveland, an attorney with the Catholic Charities of Washington, D.C.; and Anna Marie Gallagher, a shareholder at Maggio & Kattar.

The series is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Criminal Law and Individual Rights Section; Family Law Section; Government Contracts and Litigation Section; International Law Section; Labor and Employment Law Section; and Litigation Section.

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

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

Council for Court Excellence Honors Justice Potter Stewart Awardees

The Council for Court Excellence (CCE) will honor three "shining examples of service" with its 15th Justice Potter Stewart Award—Georgetown University Law Center professor Peter Edelman, the

late Sister Mary Ann Luby, and former U.S. Department of Justice senior official Donald Santarelli.

The honorees will be recognized during CCE's annual awards dinner on May 12 at the U.S. Chamber of Commerce, 1615 H Street NW. The event will start with a reception at 6 p.m., followed by dinner and the presentation of awards at 7 p.m.

The Justice Potter Stewart Award, named to honor the memory and public service of the late associate justice of the U.S. Supreme Court, was established in 1997 to recognize individuals and organizations and their work on behalf of the administration of justice.

Edelman, chair of the District of Columbia Access to Justice Commission, is being recognized for his extraordinary career in ensuring justice for all. Santarelli, now in private practice at Don Santarelli P.C., is being honored for serving the justice community in both the District and national level.

Luby, a tireless advocate for the homeless, passed away in November. She is remembered for her more than three decades of compassionate service to the District's most disadvantaged residents as the first director of the Rachael's Women's Center, and later as an outreach worker for the Washington Legal Clinic for the Homeless.

For more information or to purchase tickets, contact CCE at 202-785-5917 or visit www.courtexcellence.org.

Law Professor Coquillette Speaks at Law Day Luncheon

The U.S. Court of Federal Claims will hold its Eighth Annual Law Day Observance Luncheon on May 10, featuring Daniel R. Coquillette, a professor at Boston College of Law and the Charles Warren Visiting Professor of American Legal History at Harvard Law School, as guest speaker.

Coquillette, the author of several books, teaches and writes about legal history and professional responsibility. He served as a law clerk to Justice Robert Braucher of the Supreme Judicial Court of Massachusetts and to U.S. Supreme Court Chief Justice Warren E. Burger.

The luncheon begins at noon and will be held at the Willard InterContinental, 1401 Pennsylvania Avenue NW.

For more information, contact Carole Bailey at 202-357-6414 or visit www.cfcbar.org.

D.C. Law Students in Court Marks Celebration of Service

On May 5 the D.C. Law Students in Court Program will hold its Celebration of Service Reception and Auction where it will honor former D.C. Bar president James Sandman with its Celebration of Service Award.

File photo

James Sandman

Sandman, who serves as president of the nonprofit Legal Services Corporation (LSC), is being recognized for his extraordinary contributions to the D.C. community. Sandman spent 30 years at Arnold & Porter LLP where he championed the cause of expanding law firm resources for pro bono legal assistance. Before joining LSC, Sandman was general counsel for the District of Columbia Public Schools.

Law Students in Court is one of the District's oldest and largest clinical programs that provide critical legal services to low-income residents. Through the program, students from five participating law schools in the District—American University Washington College of Law, George Washington University Law School, Georgetown University Law Center, Howard University School of Law, and The Catholic University of America Columbus School of Law—represent clients in select civil and criminal cases before the Superior Court of the

District of Columbia, especially in the Landlord and Tenant and Small Claims and Conciliation branch.

The fundraiser takes place from 6:30 to 9:30 p.m. at Miller & Chevalier Chartered, 655 15th Street NW, suite 900.

To register or for more information, contact Flordelisa Pérez Dolan at 202-638-4798 or events@dclawstudents.org, or visit www.dclawstudents.org.

Federal Personnel Law Series Targets New Practitioners

Another series the D.C. Bar Continuing Legal Education (CLE) Program is offering in May is the three-part "Introduction to Federal Personnel Law," which is designed for new federal employment law attorneys and other lawyers who practice within the federal government or represent clients before federal agencies.

Part one, "Equal Employment Opportunity Commission (EEOC) Practice," on May 4 will focus on basic EEOC practice in the federal sector, including Title VII and related antidiscrimination statutes, federal sector regulations, and EEOC Management Directive 110. It will cover topics such as informal complaint/counseling stage, alternative dispute resolution and mediation, formal complaint and investigation process, final agency decisions, appeals to the EEOC Office of Federal Operations, and de novo proceedings through a complaint filed in the U.S. District Court.

Part two, "Merit Systems Protection Board (MSPB) Practice," on May 11 will provide an overview of disciplinary and adverse actions at the agency level based upon misconduct and performance-based actions, as well as practice before the MSPB on appeals from adverse actions. This session will review whistleblower claims and the required exhaustion of administrative steps on prohibited personnel action claims before the U.S. Office of Special Counsel prior to filing an appeal with the MSPB.

The final session, "Investigations," takes place on May 18 and will cover investigations by the Office of Inspector General and the Office of Professional Responsibility, as well as other forms of administrative investigations. Topics include *Faragher/Ellerth* and the Antideficiency Act, authority and jurisdiction of the investigator, rights of the employee as part of the investigation, and top tips when conducting investigations and representing employees who are targets of or witnesses in investigations.

Serving as faculty are Ralph C. Conte, assistant general counsel at the Court Services and Offender Supervision Agency for the District of Columbia; Peter E. Mina, a senior associate at Tully Rinckey PLLC; and Kristin D. Alden of The Alden Law Group, PLLC.

The series is cosponsored by the D.C. Bar Administrative Law and Agency Practice Section; Corporation, Finance, and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Government Contracts and Litigation Section; Labor and Employment Law Section; and Litigation Section.

All sessions take place from 6 to 9:15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor.

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

Whitman-Walker Clinic Honors Champions of Same-Sex Union Suits

To celebrate its 25th year, the Whitman-Walker Clinic Legal Services Program will hold its annual Going the Extra Mile

reception on May 19. At the same time, the clinic will present its 2011 Joel A. Toubin Memorial Award to Washington lawyers David Boies, Theodore Olson, and Paul Smith for spearheading litigation involving same-sex marriage.

Boies, founder and chair of Boies, Schiller, & Flexner LLP, and Olson, a partner at Gibson, Dunn & Crutcher LLP, teamed up to bring a federal constitutional lawsuit against California's Proposition 8.

Smith, a partner at Jenner & Block LLP, worked on litigation against the Defense of Marriage Act in Massachusetts and the groundbreaking U.S. Supreme Court case *Lawrence v. Texas*, which declared a Texas law criminalizing homosexual sodomy as unconstitutional.

The Toubin Award, named for the deceased brother of Going the Extra Mile founding cochair and former Whitman-Walker board member Cheryl T. Weiner, is presented annually for outstanding advocacy on behalf of people living with HIV/AIDS.

Whitman-Walker's Legal Services Program, which specializes in HIV/AIDS-related and gay, lesbian, and transgender-related legal services, is highlighting the issue because marriage equality is a matter of public health and justice. Whitman-Walker lawyers as well as health care and mental health professionals have seen the devastating harm caused by the lack of legal recognition of same-sex relationships on clients' dignity, physical and mental health, and financial security.

The reception will be held from 6:30 to 8:30 p.m. at the House of Sweden, 2900 K Street NW.

For more information or to purchase tickets, contact Kate Runyon, Whitman-Walker development coordinator, at 202-797-3543 or krunyon@wwc.org, or Dan Bruner, director of legal services, at 202-939-7628 or dbruner@wwc.org.

GWAC Holds Reception for D.C. Women Judges

On May 12 the Greater Washington Area Chapter of the Women Lawyers Division of the National Bar Association, in partnership with Fulbright & Jaworski L.L.P, will hold a reception to honor women judges of the District of Columbia.

The reception takes place from 6 to 8 p.m. at Fulbright & Jaworski, 801 Pennsylvania Avenue NW.

For more information, contact Arabella di Bagno Guidi at 866-385-2744.

WBADC Pays Tribute to Women Lawyers of the Year

Sherri Blount, a partner at Fitch, Even, Tabin & Flannery, and BET Networks Chair and Chief Executive Officer Debra Lee have been named Women Lawyers of the Year by the Women's Bar Association of the District of Columbia (WBADC). Blount and Lee will be honored during WBADC's annual awards dinner on May 26.

Courtesy of BET Holdings, Inc.

Debra Lee

The honorees are being recognized for their exceptional achievements in the legal profession and/or for their extraordinary contributions to the advancement of women in the profession.

The WBADC dinner also raises money for the WBA Foundation, a charitable arm of the association that gives out grants to local organizations serving women and children. The theme for this year's dinner is "Women Helping Women," with a focus on women in-house and outside counsel pairs who have created and maintained close professional relationships, demonstrated that networking and rainmaking can work well among women, and who have personally taken a leadership role in the advancement of women.

This theme is in concert with Phase III of WBADC's Initiative on Advancement and Retention of Women: Navigating the Corporate Matrix, Advancing Women in Corporate Law Departments. It focuses not only on the advancement of women in-house counsel, but also on the role that other women—particularly women outside counsel—can play in that process.

The event begins with a reception at 6:30 p.m., followed by dinner at 7 at the National Building Museum, 401 F Street NW.

For more information or to register, contact the WBADC at 202-639-8880 or visit www.wbadc.org.

Business Entity Course Examines New D.C. Law

On May 19 the D.C. Bar Continuing Legal Education (CLE) Program will offer the course "Choosing and Forming a Business Entity in the D.C. Metro Area: The New D.C. Law," which will examine a newly enacted legal entities law in the District of Columbia that fundamentally changes almost all of the city's entity enabling laws.

This class will help participants understand the concepts and attributes of legal entities, provide an update on the changes to the D.C. law, and compare the new law (which takes effect on January 1, 2012) to existing laws in the area jurisdictions.

Nicholas G. Karambelas of Sfikas & Karambelas LLP will provide an introduction to the issues that need to be considered when choosing and forming a business entity in the D.C. metropolitan area. Participants will learn the differences between various legal entity forms and other relevant considerations, as well as the legal concepts, organizational principles, and advantages and attributes of the various legal entities.

The course takes place from 6 to 9:15 p.m. at the D.C. Bar Conference Center, 1101 K Street NW, first floor. It is cosponsored by the D.C. Bar 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.

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

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

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NO SMALL ACHIEVEMENT: STAYING IN MOTION

CHALLENGE: Anne's law practice had a steady caseload, but only one attorney: herself. That meant juggling multiple cases along with monthly payroll and bills. She needed help managing her cash flow — and a bank that could keep up.

SOLUTION: Anne had the Cash Flow Conversation with her PNC banker, who put his detailed knowledge of the legal profession to work. Together, they set up a PNC Professional Services Checking account with Online Banking. Anne was now able to see her full financial picture 24/7, even while on the go. Plus a line of credit helped cover research fees and expenses leading up to her trial dates.

ACHIEVEMENT: Anne's practice now has the financial resources and support she needs to keep it moving forward, and Anne has the peace of mind to give every case her undivided attention.

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speaking of ethics

By Saul Jay Singer

When *Tarasoff* Meets Rule 1.6

Mick Wiggins

Prosenjit Poddar comes to the University of California at Berkeley from India as a graduate student, where he meets Tatiana Tarasoff. She kisses him on New Year's eve; he thinks they have a serious relationship, she doesn't; she tells him she's not interested. He becomes depressed, thinks revenge, sustains an emotional crisis, and seeks professional help.

Poddar sees Dr. Lawrence Moore, a psychologist at Berkeley, to whom he confides his intention to murder Ms. Tarasoff. Moore contacts the police and, characterizing Poddar as a paranoid schizophrenic, opines that his client should be committed as a dangerous person. Poddar is temporarily detained, but he is released shortly thereafter.

Though Doc Moore did report Poddar to the police, he never warned Tarasoff or her family of the threat from his client. As a result of this failure to warn, Poddar was able to befriend Tarasoff's brother and use that friendship to put himself in position to stab Tarasoff to death—which he does, exactly as he told Moore he would. Tarasoff's parents sue Moore and other employees of the university.

In this landmark case, *Tarasoff v. Regents of the University of California*,[1] the Supreme Court of California found that a mental health professional has a duty not only to the patient, but also to individuals who are specifically threatened by the patient. This case, which has become synonymous with the duty of a therapist to warn, has been broadly adopted across the United States. In perhaps its most important and striking holding, the court ruled that:

> The public policy favoring protection of the confidential character of patient–psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins.

But, consider: what if Moore were an attorney? That is, assume that Lawrence Moore, Esquire, is a District of Columbia lawyer retained by student Prosenjit Poddar to represent him in a personal injury case in Superior Court. What if, during the course of Moore's initial meeting with his client, Poddar says that he needs to win as large a recovery as possible because he needs funds to hire a hit man to murder Tatiana Tarasoff, the "girlfriend" who jilted him and publicly embarrassed him?

As a preliminary matter, there can be no question that this information received by Attorney Moore is a confidence or secret under Rule 1.6 (Confidentiality of Information). The question, however, is whether there exist any Rule 1.6 exceptions that would require or permit Moore to warn the appropriate authorities (and/or Ms. Tarasoff and her family) of his client's threat.

This question squarely presents a dramatic clash of conflicting ethical imperatives.

On one hand, "the observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance."[2] Moreover, "a fundamental principle in the client–lawyer relationship is that the lawyer holds inviolate the client's secrets and confidences. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter."[3] Thus, requiring, or even permitting, Moore to disclose Poddar's confidence would not only grievously harm the client but, perhaps more importantly, undercut an essential and fundamental feature of the attorney–client relationship: open communication between attorney and client and facilitating the trust that clients repose in their lawyers.

On the other hand, "although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients . . . [the rule recognizes] the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm."[4] In addition, "the Rules do not exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules."[5] Thus, while Moore certainly owes a duty of confidentiality to his client, that ethical duty may yield to other "moral and ethical considerations," including societal obligations such as taking reasonable steps to protect the public from grievous harm.

Some states, including Arizona, Connecticut, Florida, Illinois, New Jersey, Vermont, and Wisconsin, come down strongly in favor of the broader public interest in preventing grievous harm and impose a *Tarasoff*-like *mandatory* reporting obligation on lawyers. For example, Arizona Rule 1.6(b) provides that "a lawyer *shall* reveal such [confidential] information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm" (emphasis added). Connecticut goes even further, making it mandatory for a lawyer to report even *fraudulent* acts that are likely to result in death/substantial bodily harm. Florida goes further still, requiring the lawyer to report confidential information "to the extent the lawyer reasonably believes necessary to prevent a client *from committing a crime*" (emphasis added)—i.e., even where the crime committed by the client will not likely result in death or substantial bodily harm.

The D.C. rules, however, are renowned for the heightened emphasis they place upon the duty to maintain client confidentiality. D.C. Rule 1.6 is, to coin a phrase, "the mother of all ethics rules;" it is broader than in most other jurisdic-

tions and generally it will trump other ethical imperatives.[6] The duty to maintain client confidentiality under our rules extends to any information gained through or in the course of the representation—whether from the client or even from some third party—the disclosure of which likely would be embarrassing or detrimental to the client. Thus, in the rare instances where disclosure of an otherwise protected client secret is permitted under our rules, the case must fall *squarely* within one of the Rule 1.6 exceptions.

D.C. Rule 1.6(c)(1) takes a middle-of-the-road approach to the *Tarasoff* conundrum, carefully walking the line between a rigid, unconditional approach to the enforcement of Rule 1.6 and an absolute mandate requiring Moore to report his client's threat, by enacting a voluntary standard that vests the disclosure question within the lawyer's considered discretion:

> A lawyer *may* reveal client confidences and secrets, to the extent reasonably necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily harm absent disclosure of the client's secrets or confidences by the lawyer. (Emphasis added).[7]

But this begs a number of questions: When does the lawyer's belief rise to the level of the requisite "reasonable belief" so as to permit the lawyer to breach Rule 1.6? How "likely" must it be that the threat will lead to harm? What level of due diligence must Moore undertake to ascertain the seriousness of Poddar's threat before exercising his option to report his client? Jilted young men, and other unhappy clients, sometimes say things and make idle threats as a way to express anger and let off steam, and few lawyers are trained or otherwise qualified to make these determinations—and even experienced mental health care professionals often struggle with these decisions.[8]

When these very difficult questions are presented to me on the Legal Ethics Helpline, I generally respond by walking the caller through the rule and comments, but ultimately confirming that I cannot make a decision that is inherently fact-specific, and which the rules leave to the sound discretion of the caller. Of course, a lawyer should always "counsel a client [not] to engage . . . in conduct that the lawyer knows is criminal or fraudulent,"[9] but the fact remains: while I understand very well the importance of preserving client confidences, if faced with a client's credible threat to kill or substantially harm another . . . I would disclose.

Legal Ethics counsel Hope C. Todd and Saul Jay Singer are available for telephone inquiries at 202-737-4700, ext. 231 and 232, respectively, or by e-mail at ethics@dcbar.org.

Notes

1 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal. 1976).

2 D.C. Rule 1.6, comment [2].

3 *Id.*, comment [4].

4 American Bar Association Model Rule 1.6, comment [6].

5 *See* Comment [2] to the "Scope" section introducing the D.C. Rules.

6 For one conspicuous exception, where the D.C. rules actually *command* the disclosure of a client secret in some situations where the lawyer has actual knowledge that a fraud has been perpetrated upon the tribunal, *see* Rule 3.3(d) (Candor to Tribunal).

7 A very important point: the mere fact that Moore is a D.C. lawyer does not mean that the D.C. rules will apply to his conduct in this case. *See generally* Rule 8.5 (Disciplinary Authority; Choice of Law). However, as it turns out, the D.C. rules will apply here because the matter is pending before a D.C. tribunal. *See* Rule 8.5(b)(1).

8 Thus, it is interesting to note that the California court, while imposing a mandatory disclosure requirement for psychologists, has—much as our Court of Appeals—adopted a *voluntary* disclosure rule for lawyers. *See* California Rule 3-100(B). This may be because trained mental health professionals are, indeed, in a much stronger position to assess the seriousness, *vel non*, of a client threat than we are as lawyers.

9 *See* Rule 1.2(e).

Disciplinary Actions Taken by the Board on Professional Responsibility

Original Matters

IN RE HOWARD D. DEINER. Bar No. 377347. February 25, 2011. The Board on Professional Responsibility recommends that the D.C. Court of Appeals disbar Deiner. Deiner was convicted in the Circuit Court of Arlington County, Virginia, of four felony counts of obtaining money by false pretenses in violation of Va. Code Ann. § 18.2-178, and one misdemeanor count of practicing law without a license in violation of Va. Code Ann. § 54.1-3904. Since the four felony convictions were crimes involving moral turpitude *per se,* disbarment is mandatory under D.C. Code § 11-2503(a)(2001).

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Reciprocal Matters

IN RE DORIS K. NAGEL. Bar No. 419899. February 10, 2011. In a reciprocal matter from Illinois, the D.C. Court of Appeals imposed identical reciprocal discipline and suspended Nagel for one year with fitness, with the suspension stayed pending Nagel's successful completion of the probationary period imposed by Illinois.

IN RE RICHARD G. SOLOMON. Bar No. 414054. February 10, 2011. In a reciprocal matter from Maryland, the D.C. Court of appeals imposed identical reciprocal discipline and disbarred Solomon.

Interim Suspensions Issued by the District of Columbia Court of Appeals

IN RE JOHN A. ELMENDORF. Bar No. 454508. February 9, 2011. Elmendorf was suspended on an interim basis based upon discipline imposed in Maryland.

IN RE JASON M. HEAD. Bar No. 479171. February 9, 2011. Head was suspended on an interim basis based upon discipline imposed in Virginia.

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 nonsuspensory and nonprobationary disciplinary sanctions imposed on D.C. attorneys by other jurisdictions. To obtain copies of these decisions, visit www.dcbar.org/discipline and search by individual names.

IN RE THOMAS EDWARD FRANKOVICH. Bar No. 314385. On June 25, 2009, the State Bar Court of California Hearing Department–San Francisco publicly reproved Frankovich.

Informal Admonitions Issued by the Office of Bar Counsel

IN RE GRANT E. MORRIS. Bar No. 926253. January 26, 2011. Bar Counsel issued Morris an informal admonition for failing to communicate and monitor a U.S. Equal Employment Opportunity Commission complaint he filed on his client's behalf while retained to represent a client in an employment discrimination matter. Rules 1.3(a) and 1.4(a).

IN RE GRANT E. MORRIS. Bar No. 926253. January 26, 2011. Bar Counsel issued Morris an informal admonition for failing to consult with his client about the objectives of the representation while retained to represent a client in an employment discrimination administrative claim. Rules 1.2(a), 1.4(b), and 1.5(e).

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legal beat

By Kathryn Alfisi and Thai Phi Le

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

D.C. Bar Elections Open May 2

The D.C. Bar annual election will open May 2 for positions on the Board of Governors for the 2011–2012 term, including three seats in the House of Delegates of the American Bar Association, one of which is reserved for an under-35 candidate.

Additionally, elections for steering committees of the Bar's 21 sections open May 2.

The names of the candidates appear in the election coverage article starting on page 36 of this issue of *Washington Lawyer*. Candidate biographies will be viewable in the online ballots at www.dcbar.org/elections.

Ballots and instructions for voting, by mail or online, will be distributed to all eligible voters on May 2. Members have until June 3 to vote.

Results of the election will be announced on the Bar's Web site and at the 2011 Celebration of Leadership, which includes the Bar's Awards Dinner and Annual Meeting, on Thursday, June 30, at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW.

D.C. Bar's Syracuse Receives 2011 Brennan Award

The D.C. Bar has named Maureen Thornton Syracuse as the 2011 recipient of its William J. Brennan Jr. Award, the Bar's highest honor, capping off her almost two decades of dedicated service as head of the D.C. Bar Pro Bono Program.

Syracuse, who joined the Bar in 1992, will be honored on June 30 during the Bar's Celebration of Leadership at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW.

Prior to joining the Bar, Syracuse worked as a consultant for nonprofit clients, including the National Association of Women Business Owners and the Law Firm Pro Bono Project. From 1987 to 1990, she served as executive director of the Physicians for Social Responsibility.

Syracuse, a graduate of Simmons College and the University of Chicago Law School, also worked at the Legal Assistance Foundation of Chicago and the League of Women Voters.

Ben Zweig

Maureen Thornton Syracuse

"I am truly overwhelmed by this honor. When I consider the list of previous recipients of the Brennan Award, I am humbled to be in their company," Syracuse said. "I am very proud of the D.C. Bar Pro Bono Program's accomplishments over the years, and I will share this award with our terrific staff and the cadres of volunteers who make our work possible."

Upon joining the Bar, Syracuse oversaw the Pro Bono Program's implementation of recommendations by a special review committee that the program focus on leveraging the D.C. legal community's pro bono resources. Under her leadership, the Pro Bono Program has become one of the most innovative in the country; it is also one of the largest facilitators of free pro bono legal services in the District of Columbia.

Syracuse will leave behind a legacy of pro bono work when she retires from the Bar on July 22 after 19 years of service. To help provide continuity, Syracuse will work a somewhat reduced schedule as the Bar conducts its nationwide search for her replacement.

The Brennan Award is presented by the Bar every other year in recognition of individual excellence, achievement, and commitment in the fields of civil rights and individual liberties.

The 2009 recipient was Patricia "Patty" Mullahy Fugere, a cofounder of The Washington Legal Clinic for the Homeless.

To learn more about the Bar's Celebration of Leadership, contact Verniesa R. Allen at 202-737-4700, ext. 3239, or annualmeeting@dcbar.org, or visit www.dcbar.org/annual_dinner.—*K.A.*

Board of Governors Approves Budget

The D.C. Bar's proposed 2011–2012 budget, as recommended by the Budget Committee, was approved by the Board of Governors at its April 12 meeting.

The budget calls for an increase in members' annual dues from $237 to $248 for active members, from $127 to $130 for inactive members, and from $116 to $127 for judicial members. However, these approved dues increases are below the dues levels projected in the Bar's 2008 dues ceiling recommendation that was

Bar Members Must Complete Practice Course

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

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

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

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

The preregistration fee is $219; the on-site fee is $279. Upcoming dates are May 14, June 7, July 9, August 9, September 10, and October 4. Advanced registration is encouraged.

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

approved by the D.C. Court of Appeals.

The budget includes a deficit in the amount of $10,172 for dues-funded activities and the mandatory course for new admittees. A deficit of $490,469 is expected for many activities of the Bar that are supported by nondues revenue. Most of this amount—$421,744—is attributable to the D.C. Bar Pro Bono Program. The Pro Bono Program has adequate reserves to offset this budgeted deficit if current year fundraising efforts are not sufficient. The Budget Committee proposes to cover this deficit with nondues money from the Bar's reserve fund.

The budget includes additional staff positions that are needed to address the priorities outlined in the Bar's strategic plan. New staff positions will be paid for through a mix of mandatory dues and nondues revenue. The budget also includes a 2.5 percent pool for staff salary adjustments and one-half percent for other adjustments. This projected increase reflects current market conditions among comparable membership organizations.

The Clients' Security Fund is allocated $300,000 within this operating budget, which is a decrease from the prior year budget and is based on average claims paid. The fund is replenished annually and will be brought to $750,000 for the fiscal year beginning July 1, 2011.

Finally, the Bar's Finance Committee, acting on information from an independent auditor, continues to recommend increasing the Bar's operating reserves from the current level of 2.4 months to closer to six months. This remains a long-term goal of both the Budget Committee and the Bar.—*K.A.*

Cakes for a Cause

Talsie Berkeley

David Fritsche (left), executive sous chef at The Dupont Hotel, and Joseph Yaple, chef de cuisine at the same hotel, sample and judge entries in the 11th Annual Cooking for Kids Bake Sale and Taste-Off on March 14, organized by the Washington Lawyers' Committee for Civil Rights and Urban Affairs. The event raised money for public schools in the District.—*K.A.*

D.C. Bar Foundation Makes Grants to 16 Civil Legal Services Programs

On March 30 the D.C. Bar Foundation awarded $2.81 million in Access to Justice Grants in support of 16 different civil legal services programs in the District of Columbia.

"These badly needed funds enable nonprofit legal services providers to reach more clients, establish a presence in underserved communities, and effectively leverage private resources to expand access to justice throughout the District of Columbia," said W. Mark Smith, president of the D.C. Bar Foundation.

Among the grantees are two new projects and two expansions of current initia-

Tackling Cyberbullying

Kathryn Alfisi

Curtis Etherly (center), vice president of public affairs and communication at the Mid-Atlantic Coca-Cola Bottling Company, talks to students and parents about cyberbullying at the 12th Annual Youth Law Fair on March 19 at the H. Carl Moultrie Courthouse. More than 300 students and parents took part in the event, which is a joint effort of the D.C. Bar Litigation Section and D.C. Superior Court.—*K.A.*

tives. "I think we've seen in the last five years tremendous support for the legal services network's capacity to identify and design projects to meet unmet needs in harder-to-reach communities," said Katherine L. Garrett, executive director of the D.C. Bar Foundation. "We've had real opportunities to see models that work with these funds. It's exciting to see how deeply into the poorest wards the services are now able to reach."

Garrett cited the success of the "attorney of the day" model used at the Landlord Tenant Resource Center, where a lawyer is available at the courthouse so that a person in crisis can seek immediate help. Garrett calls it a "point of crisis project" with a citywide reach. "You are able to reach citywide with a very streamlined and efficient approach. You're getting the people right when the crisis is happening."

With similar structure, Bread for the City and the Legal Aid Society of the District of Columbia (both partners of the D.C. Bar Pro Bono Program, which runs the Landlord Tenant Resource Center) decided to launch a collaborative Child Support Court-Based Legal Services Project in the Paternity and Child Support Branch of the D.C. Superior Court. The program received $245,000 in grants to address issues of getting enforceable child support orders established.

Another new project is the Generations Teen Parent Access Project, which targets another difficult-to-reach population in need of legal services. The program, which received $43,000 in funds,

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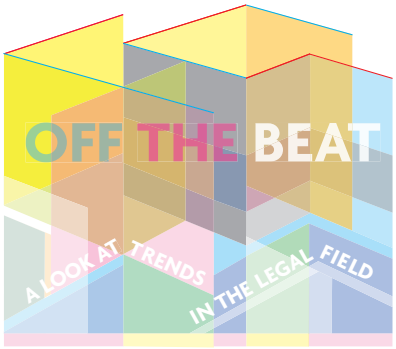

Making 'Friends' and Connections: Learning to Embrace Social Media

Friend me on Facebook. Follow me on Twitter. Connect with me on LinkedIn. Social media is everywhere, and everyone is doing it. In fact, if Facebook were its own country, it would be the third largest in the world, with more than 500 million "citizens." For many lawyers, however, deciding whether and how to integrate new media into their practices is a challenge.

Creating an account on a social media site is not the hard part. Pick a username and password—and if you are feeling ambitious, a profile picture—and boom, you are done. But then what?

Building a Brand

The key to new media is creating a branding and marketing strategy. Learn how to market the firm and actively engage people professionally, says Tasha Cooper Coleman, a social media attorney and chief executive officer of UpwardAction. "Googling" has become one of the most common forms of research. Attorneys need to strategically share information to actively shape what people are finding out about them online.

Lawyers, however, tend to make one critical mistake, according to Kevin O'Keefe, chief executive officer of LexBlog, a social media consulting firm for lawyers. "Attorneys are more interested in talking about themselves online when they need to be engaging people and listening," he says. His advice: Be client-centric. Readers can sense when someone is online solely to tout his or her own accomplishments, as opposed to providing information and participating in relevant conversations and programs.

A Web site may be a good place to list accolades, but social media sites provide an opportunity to reach out in a more conversational way, such as posting links to significant news stories, commenting on law-related topics, and replying to posts and queries. It is about creating real relationships, says Tom Foster, founder of Foster Web Marketing. For lawyers, in particular, social media is a great platform to dispel negative stereotypes about the profession.

So, Which Tool?

With a marketing strategy in hand, the next step is choosing which new media channels to use. LinkedIn is a free, business-oriented social networking Web site created for networking professionals. It is the largest Web site of its kind, and it has more than 80 million users. LinkedIn makes it easy to connect to clients, potential clients, professional peers, and industry experts, as well as to link to coworkers in the firm, share news updates, receive and give recommendations, and post résumés. For the consummate networkers, it is an ideal site to extend their professional circle.

Podcasts and Webcasts are another vehicle to share news and updates with clients and peers. Used widely in the legal industry, podcasts are digital audio files that can be downloaded onto MP3 players, smart phones, personal computers, and listened to online. Arnold & Porter LLP has a multimedia section on the firm's Web site where it offers a variety of podcasts of presentations given by thought leaders and firm members.

Blogs, an abbreviated term for Web logs, are used for both long- and short-form writing. Through blogs, attorneys can demonstrate their expertise on various topics and engage the public in conversation in the comments section. "Blogs are an excellent resource for educating the public on law-related issues," says Neil Buchannan, a law professor at The George Washington University Law School, who blogs for a number of Web sites, including Dorf on Law. He says attorneys gravitate toward blogging because they can write as little or as much as they want.

Facebook is by far the most popular social media site, with 50 percent of its 500 million users logging on daily. On Facebook, users can post pictures, write status updates, blog, and create fan pages. While the statistics are staggering, O'Keefe feels that Facebook may not be the best Web site for law professionals. "Facebook tends to be more personal and light-hearted. Let's face it, people are not joining Facebook to read about law-related issues," he says. Foster, however, notes that Facebook is the number one referrer of social media traffic in the world, a stat not easily discounted and important to an occupation often dependent on referrals.

Twitter offers social networking and microblogging services in 140 characters or less. Users' tweets are displayed on their feeds or profiles. Twitter is one of the most mobile-friendly social media sites. Because of its limited entry space, Twitter can pose a challenge to users who want to get a lot of information out immediately. However, it can be useful in announcing new blog posts and information that directs traffic back to an attorney's Web site or blog.

Finding Time

Maintaining social media accounts, blogging, and posting new Webinars or podcasts is time-consuming, which is why attorneys are often slow adopters. HootSuite and Postling are two businesses that allow users to manage all their networks in one place, track clicks, and schedule posts. The ability to measure results also will be helpful to attorneys to see whether a social media presence is actually boosting business.

Concern about confidentiality is another reason why lawyers are hesitant to start engaging with the public online, according to O'Keefe. He wryly remembers when law professionals had fears of using cell phones and even fax machines. There are ways to use new media outlets while maintaining confidentiality, most notably by never discussing client information online and keeping the conversation focused on public topics as opposed to personal case files.

Attorneys interested in educating themselves on the ever-changing world of new media can visit Web sites such as Read Write Web and Mashable, which offer tips on how to take advantage of new media news outlets.

Still have no time for social media? Hire someone, both Foster and Coleman recommend. Be ahead of the curve. It is not a fad, Coleman says. "It's a fundamental shift in the way we communicate."—*T.L. and Candace Tyler*

Kurt L. Schmoke Dean of Howard University School of Law

The Transformation of Legal Education

By Sarah Kellogg

Forces at work in the world are fundamentally transforming the legal profession. A riptide of 21st-century social and economic trends—the ascendancy of information technology, the globalization of economic activity, the blurring of differences between professions and sectors, and the increasing integration of knowledge—has driven the transformation. More systemic than cyclical, these changes have only been intensified by the 2008 economic crash.

Law schools have been somewhat reluctant partners in this drama. Many schools have made nuanced modifications in their programs, while others have retrofitted much of their curricula, adding new programs on professionalism and ethics, focusing on building practice-based skills, and expanding their international outreach.

"This is a time of change for the legal practice. The change in the economy precipitated changes that would have come inevitably," says William M. Treanor, executive vice president and dean of the Georgetown University Law Center.

"It does cause us to rethink how we prepare lawyers. Again, it's accelerating a process that had already begun. Classically, law schools taught people to think like a lawyer. That was what the Socratic Method was about. It trained people very well, but for one part of what lawyers do. It didn't train them to write, problem solve, and exercise judgment. We're looking more broadly to train people for every facet of the law," Treanor adds.

The first official warning shot for law schools came in 2007 with the release of *Educating Lawyers: Preparation for the Profession of Law* by the Carnegie Foundation for the Advancement of Teaching. The report urged law schools to revamp their curriculum to reflect the real-world needs of the legal community, including emphasizing practice-based skills such as writing briefs, interviewing clients, and understanding legal ethics.

Since then, rethinking the preparation of young lawyers has become a cottage industry. Law school calendars have been littered with forums, seminars, and panel discussions about the future. The most prominent among them has been the "contest of ideas" effort known as Future Ed between New York Law School and Harvard Law School. Paradoxically, it seems that the 200 U.S. law schools accredited by the American Bar Association (ABA) have taken 200 different routes to address the turmoil.

Yet there is a feeling among some that law schools have spent more time discussing the future than moving in a straight line toward it. "A lot of law schools are talking a good change game," says Larry E. Ribstein, the Mildred Van Voorhis Jones Chair in Law and associate dean for research at the University of Illinois College of Law, who has written regularly on the future of legal education. "At least it shows the recognition of the need to make change, but they're not actually doing it. But then, it's justifiable to not try to turn on a dime without knowing what the legal market is going to look like in five years. And nobody is quite sure of that."

Still, law schools are on a trajectory toward the future, whether they like it or not, pulled along by the restless and worried students they serve and the law firms they feed. Those schools that fail to keep pace with the profound changes upending the legal profession will find themselves out of sync with the new demands on lawyers and law firms.

While it is hard to know for sure, many believe the future of the legal profession won't be some fanciful *Star Trek*-type utopia, but rather a pragmatic, considered, and

PHOTOGRAPHS BY PATRICE GILBERT

"Everyone realized that when the economy is lean, you have to have business skills, be savvy and mature when you're dealing with people. You really want to make sure that young lawyers can fit into the business environment and understand the economics of a law firm and be able to run it. They need to be able to understand business culture."

—**Gregory E. Maggs, interim dean and professor of law at The George Washington University Law School**

evolved state, where law schools will be called on to reflect the changes in society and the profession, serving both as leaders and followers.

Ultimately, law schools in the future, like the legal profession itself, will be at once more collaborative, diverse, international, technologically friendly, and entrepreneurial than they are today.

"It is hard for us to comprehend, but today's students are likely still to be practicing law in the last half of the 21st century," wrote Thomas D. Morgan, the Oppenheim Professor of Antitrust and Trade Regulation Law at The George Washington University Law School, in his paper "Educating Lawyers for the Future Legal Profession."

"None of us knows much about what the world will look like in 2050, but the challenge of legal education is one of helping students navigate toward that indefinite future. To meet that challenge, we must think about what future lawyers will do. Conversely, as we think about coming changes in legal education, we may also get a richer sense of what kind of people tomorrow's lawyers are likely to become."

Gregory E. Maggs

Entrepreneurs Wanted

Tomorrow's law school curriculum will need to be more entrepreneurial to respond to the financial pressures on the legal profession and the opportunities wrought by innovation and globalization. New lawyers entering the practice, whether they are sole practitioners or working inside a top-100 firm, must be fully trained on day one, capable of applying the law and managing the fluctuations inside law firms.

One possible—some would say likely—prospect that could have a truly dramatic effect on law schools and the profession already exists in Australia and soon will arrive in the United Kingdom: the publicly traded law firm. Australia was the first country to sanction them; its first firm to go public was Slater & Gordon, a plaintiffs firm that netted $35 million when it was listed on the Australian Stock Exchange in May 2007.

In the United Kingdom, the Legal Services Act of 2007, much of which is expected to take effect in 2011 and 2012, encourages more competition in that country's legal market by allowing the creation of alternative business structures (ABSs), a provision that permits nonlawyers to partner with lawyers in providing legal services.

Publicly traded law firms are not so outlandish that they cannot catch on in the United States, a country where capitalism reigns. Critics have suggested these types of external investments—which would allow supermarkets, insurance companies, or banks to set up retail law firms—could pose ethical problems if nonlawyer investors attempt to influence the lawyer–client relationship. Proponents say the same ethics rules would apply to nonlawyers as lawyers, and publicly traded law firms would be no more ethically flawed than today's firms.

While Rule 5.4(b) of the ABA Model Rules of Professional Conduct prohibits lawyers from forming partnerships with nonlawyers if "any of the activities of the partnership consist of the practice of law," there will be enormous pressure to alter the ban, especially from plaintiff firms that work on a contingency basis and could use a shot of capital.[1] Most state bar associations have similar bans on nonlawyers owning an interest in a law firm, although the District of Columbia has an exception for nonlawyers who assist a firm in legal services and agree to operate by the Bar's professional code of conduct.[2]

In the future, these very open and accepted applications of business principles in the law firm will transform the relationship between lawyer and client. Very much like the business world, law firms may find that their corporate and individual clients may not be guided as much by reputation and credentials as by outcomes and value added to the work. Law students will need to be well versed in this dichotomy.

"Everyone realized that when the economy is lean, you have to have business skills, be savvy and mature when you're dealing

Katherine S. Broderick

with people," said Gregory E. Maggs, interim dean and professor of law at George Washington. "You really want to make sure that young lawyers can fit into the business environment and understand the economics of a law firm and be able to run it. They need to be able to understand business culture."

Furthermore, the evolution of the general counsel from legal matchmaker to legal arbiter is setting a new course for the profession. General counsel are no longer just charged with babysitting big law firms and their monthly bills. Instead, they are being asked to assess the whole legal marketplace and look for efficiencies and opportunities—big firms for this job, outsourcing for that one. They must be equal parts entrepreneur and lawyer, the intermediary between high-end corporate purchasers of legal services and big law firms. It is these types of new paradigms that will demand a more entrepreneurial approach to the law in the future—and a more entrepreneurial legal education.

"A lot of economic pressures are changing the practice of law, so that will have an impact on the number of opportunities open to young lawyers coming out of law schools, and that, in turn, affects what we do in law schools," says Kurt L. Schmoke, dean of Howard University School of Law. "We are all linked together in this."

Crossing Borders

Going global is the low-hanging fruit of opportunity for law schools. Globalization is remaking the face of international business, politics, and technology, prompting law schools to spin off new programs and institutes overseas to widen their outreach and pad their bottom lines.

It is imperative that new lawyers be able to operate in the global marketplace, equipped with vital cross-border legal skills and the necessary cultural sensitivities to feel at home in Shanghai, Dubai, or London. Toward that future, many law schools are offering cross-border scholarship opportunities for faculty and students, mandatory semester-abroad programs for students, and executive LL.Ms for foreign-trained lawyers.

"There's been a dramatic change since I graduated from law school in 1985," says Georgetown's Treanor. "Practices were almost exclusively domestic. Big firms may have had clients outside the United States, but now law firms have branches outside the United States. Law firms are international entities, and even if you're in government, it's very likely your work has some kind of global dimension."

And global legal training won't always be centered on corporate law, either. As borders have receded, and will continue to do so in the future, the need for lawyers who are knowledgeable about complex laws and agreements governing international

"Students need to get a much better grounding in international issues, and they should be given opportunities to work with people from all over the world. The whole global push is enormously important to us. As part of our strategic planning, we are looking to infuse more classroom offerings with opportunities for students to explore global legal issues."

— Katherine S. Broderick, dean and professor of law at the University of the District of Columbia David A. Clarke School of Law

"Everything that can be done by a computer is being done by a computer. In the past, the problem was access to information. The problem now is selection of the right information."

—**Claudio M. Grossman, dean of American University Washington College of Law**

trade, environmental protection, and human rights is expanding. New international regimes and treaties require lawyers who feel comfortable operating with a global portfolio, undeterred by the complications of working in international legal systems.

"Students need to get a much better grounding in international issues, and they should be given opportunities to work with people from all over the world," says Katherine S. Broderick, dean and professor of law at the University of the District of Columbia (UDC) David A. Clarke School of Law. "The whole global push is enormously important to us. As part of our strategic planning, we are looking to infuse more classroom offerings with opportunities for students to explore global legal issues."

One of the benefits of these types of global alliances is the increasing diversity of the student body and faculty. Female students make up about 50 percent of U.S. law school populations today and even greater percentages overseas. More globally focused law schools likely will have more diversity in terms of race, sexual orientation, and religion.

As borders have crumbled in the legal profession, they likely will do so as well between law schools. The demand to have the ABA sanction foreign law schools is escalating, and a handful of overseas law schools are lining up to be the first candidates. The Jindal Global Law School outside of Delhi, India, and the Peking University School of Transnational Law in China have announced plans to seek accreditation if the ABA opens up its process.

Like many efforts to inject international competition into the United States, this one has proponents who see only virtues and opponents who see a struggle for limited resources. It is an idea that is a nonstarter right now for many law school deans. "I think it's premature to decide whether to certify them or not," says Claudio M. Grossman, dean of American University Washington College of Law. "There are many components to this decision, and it's too soon to do it."

Going forward, collaboration—global, national, or within the university—may prove to be a guiding principle for law schools. By crossing all types of borders, law schools will be better able to leverage their resources and provide a more dynamic education experience to their students.

The good news is law schools are offering more joint degrees within the university environment, such as partnering with business, communications, and medical schools, and developing new LL.M opportunities to reach out to a new pool of international students as well as American professionals seeking more specialized training.

"One of the wonderful qualities about legal education as it has developed over the years is that it has been very adaptive and responsive in terms of providing students with the opportunity to explore a wide range of law practice specializations," says Veryl Miles, dean of The Catholic University of America Columbus School of Law.

Adapting to Technology

Law schools are not normally considered "first adopters" of technology, but they have steadily, if reluctantly, accepted the Web's creeping influence in their classrooms. Law schools may be forgiven for being technological slowpokes. Perhaps it is too much to expect of legal education, long based on the deliberative Socratic method, to swiftly remake itself with social media's hat trick: Facebook, LinkedIn, and Twitter.

In the future, law schools will have to embrace technological innovation in its many forms, and, even more importantly, acclimate their student bodies to the technologies reshaping society. Some law professors may find the idea of students tweeting or texting each other during lectures appalling, but it is a common practice in workplaces, and will become even more so in the future.

Moreover, the ubiquity of handheld communication devices has trained students to seek answers on the Internet. A scenario where law professors daily incorporate handheld technology into the classroom—training students on how best to find an answer rather than requiring them to memorize it—is right around the corner. Business schools fought a similar battle over the presence of calculators in the classroom years before, and lost.

Rapidly advancing technology for video conferencing and distance learning is opening the door to remote experts, cost savings, and a more elastic classroom that better serves students. These tools will only grow in their use, and, in the process, will shrink distances to allow for a truly global faculty and student body. Still, there remains some skepticism about efficacy of developing mentoring relationships by way of plasma screens.

"Many people think the law is being transformed by technology," says George Washington's Maggs. "In the end, some things never change. Careful reading and critical thinking are things that can be facilitated by technology, but the outcome remains the same."

"When I teach my course, I still think the most important thing is to read the assigned cases very carefully, whether they are in an electronic format or. . . on paper in a casebook. There's still no substitute for reading what the judge wrote and asking people difficult questions about it," Maggs adds.

The challenge going forward for law schools will be how to manage all the information that new technology delivers. "Everything that can be done by a computer is being done by a computer," says American University's Grossman. "In the past, the problem was access to information. The problem now is selection of the right information."

That is why law librarians will be key players on campus. The future of the law school library is not about bringing new technology in, but rather how to balance—both finances and real estate—the dual need for printed casebooks, magazines, and journals and online subscriptions to research services and publications. "The ABA still wants you to have these vast collections of books," says UDC's Broderick. "That is a financial disaster for public schools, which are charging lower tuitions and cannot afford expansive libraries. The bar wants to see a substantial collection in your library, and that includes hard copies."

But solutions abound and they point to new, collaborative directions. The law schools at George Washington, Georgetown, and the University of Pennsylvania have agreed to share

the costs of keeping their hard-copy casebooks current. Each school buys a third of the necessary printed volumes and journals, and the materials are made available through interlibrary loans, saving money and allowing for greater cooperation.

Experience v. Theory

When it comes to clinical training, law schools have always suffered in comparison to their medical counterparts in the ideal mix of theoretical and experiential training. Medical students are taught anatomy with books and lectures, but they are also put through their paces in clinics and hospitals to care for patients long before they receive their degrees.

In the future, law schools will emphasize far more the clinical components of their programs, as they look to involve their students in the business of law at earlier and earlier stages in their education. Many schools effectively have injected large doses of practical-skills training into newly launched courses, or weaved key skills such as brief writing into already established courses.

Claudio M. Grossman

"The profession itself has tried to argue that law schools should do more experiential instruction, and a lot of that is because corporate clients have indicated to firms that they don't want to pay for training young lawyers anymore," says Howard's Schmoke. "Also, firms want to know that young people know where the courthouse is and how to take a deposition. They can refine their skills once they get into a firm, but they don't want to have a young lawyer starting from scratch on skills training."

But do not prematurely declare the death of legal theory. One promise of the future is that legal theory may be more, not less, important. Certainly it will be vital to have a thorough knowledge of legal theory when trying to work on a global scale, applying the rule of law across various legal traditions. A solid foundation in legal theory will be helpful as lawyers work in collaboration with professionals in medicine and business to create new entities inside and outside law schools. And a broad understanding of theory will be key when marrying technological innovation with the practice of law.

Two prime examples of the need for a strong grounding in legal theory are the outsourcing of discovery work and the growth of online legal services. Both innovations take routine tasks and remake them to reduce costs and increase efficiency. To create and manage these types of services, lawyers need to be familiar with more sophisticated transactions and understand where the law intersects technology—all of which requires an underlying framework of legal theory. Without understanding that foundation, it would be impossible to craft a solution or innovation that is both reliable and legal.

The same likely will be true of legal ethics and professionalism in the coming years. Ethics education has not always been the highest priority of legal training, a situation that critics have lamented as professionalism took a back seat to other more contemporary courses and themes.

"Law schools fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills," the 2007 Carnegie report concluded. "Students need opportunities to learn about, reflect on, and practice the responsibilities of legal professionals. Despite progress in making legal ethics a part of the curriculum, law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice."

Because lawyers play a different role in society than chief executive officers—safeguarding civil rights, advancing the rule of law, and serving at the critical edge of ethical choices—lawyers must always be grounded in an ethical system that both guides their personal choices and provides good counsel for their clients.

Establishing an ethical foundation for young lawyers will be vital as they wrestle with new situations and relationships in a global legal market. By introducing law students to professional responsibility early in their law school careers, they will have the grounding they need to address and solve the difficult ethical decisions they're bound to confront throughout their careers. "This is a responsibility we all must respect and share," says American's Grossman.


William M. Treanor

Unsustainable Costs

The economics of law school operations have always been a delicate balance of supply and demand, and will continue to be so in the future. Law schools are dependent on tuition to finance their operations, but tuition has become a pressure point that threatens the entire enterprise.

That is why observers speculate that the traditional structure of law schools may be upended in the next five to 10 years, leaving the three-year program as only one of many options for legal training. Instead, students could choose condensed courses of study, including one- and two-year program options, or access distance-learning solutions.

"Tuition and living expenses, high as they are, typically are only part of the cost of going to school," Morgan wrote in his "Educating Lawyers" article. "Often the greater cost is income not earned in the three years of law school. The ability to complete law school in two years or less could substitute the relatively high salary of a first-year lawyer for the relatively insignificant salary of most students."

These changes are necessary to address one critical fact: law school debt is staggering and unsustainable. Between the 2001–02 and 2008–09 academic years, the amount of money borrowed by law students to cover their expenses grew considerably. In 2008–09, students borrowed $66,045, on average, to graduate from a public law school, up from $46,499 in 2001–02, according to the most recent ABA statistics. Contrast that with borrowing for private law schools, where students borrowed, on average, $70,147 in 2001–02 and $100,003 in the 2008–09 academic year.

Students have balked at the costs, especially because their wages have not kept pace with law school tuition. The salary a young lawyer commands cannot always offset the cost of a legal education. The 2010 Associate Salary Survey by the National Association for Law Placement shows that the median first-year salary for private firms was $115,000, compared to the median entry-level salary of $42,000 for an attorney at a civil legal services organization. The median entry-level salary for public defenders was $45,700.[3]

Beyond the dollars, legal officials worry that the size of debt is now impacting the choices that students make, both in deciding whether to come to law school and what types of law they will practice once they graduate.

"While [Catholic University] has been fortunate to be able to increase our tuition discount over the last several years, the discount is not sufficient to reduce the cost of education for all of our students," says law school dean Miles. "In part because of our mission of service, we attract a good number of students who enter the legal profession as a means of working on behalf of the less fortunate and disenfranchised. Students with large

"There's been a dramatic change since I graduated from law school in 1985.

Practices were almost exclusively domestic. Big firms may have had clients outside the United States, but now law firms have branches outside the United States. Law firms are international entities, and even if you're in government, it's very likely your work has some kind of global dimension."

—**William M. Treanor, executive vice president and dean of the Georgetown University Law Center**

debt loads may be limited in the types of positions they are able to pursue after graduation."

A Glut of Lawyers

Behind every discussion about the future of legal education in the United States is an equally serious but lower-profile debate about whether there are too many law schools producing too many lawyers. In the 1963–64 academic year, some 49,000 students were studying in 136 law schools in the United States; 154,549 students attended 200 law schools in the 2009–10 academic year.

Many have argued that there is a systemic oversupply of new lawyers and it will continue unabated into the future without some action by the ABA to limit the number of law schools and graduates. Others think that the market will eventually right the disparities, as law schools pare back their admissions and lower wages redirect some attorneys to use their law degrees in other professions. Talk of accrediting overseas law schools has only added to concerns about a future, as some worry that foreign-educated lawyers could swamp the U.S. market.

Yet some experts feel there are not enough law schools or lawyers in the United States or internationally to serve the growing population of clients in need of services. "There are not nearly enough law schools to represent those most in need of help and to promote progressive policy legal reforms and legislation," says UDC's Broderick.

Generally, the ABA's law school accreditation process has been attacked for not being sufficiently stringent in the accreditation and reaccredidation oversight processes. Miles, who sits on the ABA's Accreditation Committee, disagrees, noting that the marketplace has a way of righting the ship over the long term.

"In my experience, the review process is careful and rigorous in terms of assessing whether an existing or proposed school meets the standards for accreditation," Miles says. "And, it has been the response of the ABA leadership that its role in the accreditation process is to assure compliance with standards of quality for law schools and the lawyers they produce, not to limit the number of schools or lawyers. This is not to say increases in the number of schools and lawyers are not a concern, but economic forces will most likely address undue increases in the number of schools and lawyers over time."

A Final Caveat

Divining the future of law schools is admittedly a crapshoot. Five years ago, no one would have foreseen that the well-heeled law firms that call Washington home would have been forced to restructure, laying off staff and trimming partner profits (or even closing their doors, in some cases), to search for the new normal in streamlined operations.

Today, law schools are at a particularly critical point, because they must educate law students to operate in 2011's unpredictable and changing environment, while keeping a watchful eye on trends to determine where the legal profession will be in five and 10 years. No easy task.

Law schools quietly suggest that their ability to transform for a new era is limited, in part, by the strict guidelines they must adhere to for accreditation. Critics of regulation have argued that once market pressures intensify enough to force accrediting associations to change regulations, there will be a rush to remake law schools and their programs. In sum, the introduction of competition through a more deregulated system, while controversial and destabilizing, would trigger a massive reorganization among law schools and in the profession itself.

"There are too many of the wrong kinds of law schools," says Ribstein, the University of Illinois associate dean. "We need more law schools attuned to the market, and that won't happen without some competition, and that will only occur with a change in regulation."

All this talk of change ignores a critical fact, of course. Most solo practitioners and lawyers in small firms in the United States operate in much the same way they would have 50 years ago. Certainly information technology has made their practices more efficient, but it doesn't substantially alter the type of work they do or their clients. While large law firms are competing on a global scale, small firms are still competing in their local neighborhoods and cities. They might benefit from broad reforms in law schools, but then again they might not.

Perhaps the advantage of this inflection point in legal education is that it will result in new breeds of attorneys—those who focus as much on what they are doing as why they are doing it. Young lawyers who come out of the legal system in the future will have to be experts in the law and the business of law, but they also might be more in touch with their reasons for entering the profession.

"I think students are thinking more of law as a profession," says Georgetown's Treanor. "We got away from that for a while. There was a period in which people came to law school because it was seen as a ticket to wealth and power, and they were often dissatisfied as a result. Because even in the best of times, business is a much better ticket to wealth than law. I think the concept of law as a profession is one that people ultimately find more satisfying and one we may be returning to."

Sarah Kellogg is a freelance writer in Washington, D.C. She wrote last about nanotechnology in the March 2011 issue of Washington Lawyer.

Notes

1 Rule 5.4(b) of the American Bar Association Model Rules of Professional Conduct.
2 Rule 5.4(b) of the D.C. Rules of Professional Conduct (Professional Independence of a Lawyer).
3 The 2010 Associate Survey from the National Association for Law Placement, available at www.nalp.org/assoc_pi_sal2010.

'SON OF SAM' LAWS: HOW MUCH DOES CRIME PAY?

Illustration by Ron Flemmings

ON July 11, 2010, after two years of evading authorities in eight states and three countries, the "Barefoot Bandit" was caught by police in the Bahamas.[1] Nineteen-year-old Colton Harris-Moore, infamous for his shoeless crime sprees, is awaiting possible prosecution of more than 70 crimes committed during his two-year run. Allegations against him include theft of airplanes, luxury vehicles, and pleasure boats totaling more than $3 million.

On July 9, two days *before* authorities caught Harris-Moore, *The Seattle Times* reported that his mother, Pam Kohler, had hired an entertainment attorney to handle "entertainment" interests related to the case.[2] The next day, the Associated Press reported: "Mom of 'Barefoot Bandit' Gets Entertainment Lawyer."[3] It's certainly no surprise that a story of an alleged international teenage thief—who had more than 75,000 Facebook followers,[4] learned how to fly a plane by reading an aviation manual,[5] avoided capture for two years, and was named by *Time* magazine as "America's Most Wanted Teenage Bandit"[6]—would be of great interest to publishers and film producers.

It might seem more appropriate that an individual who could be charged with more than 70 crimes should be more concerned with prison time than screen time. However, with headlines such as "Barefoot Bandit: Folk Hero or Crook?"[7] and "Barefoot Bandit Busted: Arrest Draws Cheers, Sympathy"[8] appearing in the press, the way in which a person's story is told affects how the public perceives the accused. Harris-Moore and his mother were wise to act while the story was "hot."

Harris-Moore is by no means unique. Criminals have been attempting to "legally" cash in on their crimes for more than a century. One of the first such documented cases is *Riggs v. Palmer*.[9] In 1889 Elmer Palmer poisoned his grandfather, Francis Palmer, upon learning that Francis was planning to change his will and disinherit Elmer. In addition to Elmer, Francis Palmer's two daughters were each to receive an inheritance. They filed to have Elmer eliminated from the will as a result of his actions and criminal conviction. The trial court disallowed Elmer's inheritance, ruling that it would be offensive to public policy for him to receive it. However, in a dissent, Judge John Clinton Gray stated that

BY ETHAN BORDMAN

the demands of public policy were satisfied by Elmer's criminal punishment and that the law was silent on whether or not he could benefit from his crime.

Seizing the Money

Nine decades later, between July 1976 and August 1977, David Berkowitz terrorized New York City, killing six people and injuring numerous others.[10] Berkowitz referred to himself as the "Son of Sam," explaining later that the black Labrador retriever owned by his neighbor, Sam Carr, told him to commit the killings. Once captured, Berkowitz received numerous offers to have his story published.

In an effort to end the "silence" noted by Judge Gray in 1889 and to thwart criminals from profiting from their crimes, the New York state legislature passed its now famous "Son of Sam" law, authorizing the state crime board to seize money earned from entertainment deals to compensate victims.[11]

In 1985 Simon & Schuster published a book written by Nicholas Pileggi, titled *Wiseguy: Life in a Mafia Family*.[12] The book was about ex-mobster Henry Hill, whose 26-year career involved a variety of crimes, including the 1978 $6 million Lufthansa Airlines heist. (Hill's story was subsequently turned into the 1990 Martin Scorsese film *GoodFellas*, starring Ray Liotta, Robert De Niro, and Joe Pesci.) The New York Crime Victims Board determined that the book violated the "Son of Sam" law, and that the publisher was required to turn over all monies to the crime board for victims' compensation. Simon & Schuster filed suit under section 1983 of title 42 of the U.S. Code,[13] arguing that the law violated the First Amendment. At the time, the law had only been invoked a few times for criminals, among them Jean Harris, who was convicted of killing "Scarsdale Diet" Dr. Herman Tarnower; Mark David Chapman, John Lennon's assassin; and R. Foster Winans, a *Wall Street Journal* columnist convicted of insider trading.[14] (Berkowitz, for whom the law was named, was deemed incompetent to stand trial and voluntarily paid his own book royalties to the crime board.)

The case eventually was taken up by the U.S. Supreme Court, which ruled unanimously in Simon & Schuster's favor, stating that "[t]he Government's power to impose content-based financial disincentives on speech, surely does not vary with the identity of the speaker."[15] The Court further stated that the law was "significantly overinclusive" and the statute's broad definition of a "person convicted of a crime" would allow the crime victims board to take monies from any author who admitted to committing a crime, regardless of whether that author was ever accused or convicted.[16] The Court noted that these two provisions would have affected hundreds of authors, including Dr. Martin Luther King Jr. (arrested during a sit-in at a restaurant), Sir Walter Raleigh (convicted of treason), and Henry David Thoreau (jailed for refusal to pay taxes).[17] In 1992 the New York state legislature amended the law in an attempt to bring it into conformity with the Supreme Court ruling.

DAVID BERKOWITZ terrorized New York City, killing six people and injuring numerous others. Berkowitz referred to himself as the "Son of Sam," explaining later that the black Labrador retriever owned by his neighbor, Sam Carr, told him to commit the killings. Once captured, Berkowitz received numerous offers to have his story published.

Photograph courtesy of Getty Images

'Son of Sam' vs. Free Speech

Free speech concerns also were evident in California, in the case of *Keenan v. Superior Court of Los Angeles County*.[18] In 1963 Barry Keenan, Joseph Amsler, and John Irwin kidnapped Frank Sinatra Jr., then 19, from the Harrah's casino in Lake Tahoe and drove him to Los Angeles. After two days, Frank Sinatra Sr. paid $240,000 in ransom and his son was released. Soon after, Irwin bragged to his brother about the crime and his financial windfall. His brother contacted authorities later that night, and the three kidnappers were subsequently arrested and convicted.

Photograph courtesy of Associated Press

FRANK SINATRA JR. (center) was 19 when he was kidnapped from the Harrah's casino in Lake Tahoe by three men and driven to Los Angeles. He was released two days later. In describing his ordeal at a news conference, Sinatra said: "I was scared."

After serving time in prison and obtaining release on parole, the three kidnappers met with Peter Gilstrap, a reporter for the Los Angeles-based tabloid *New Times*, for an interview. Gilstrap's article, "Snatching Sinatra," generated interest, and Columbia Pictures bought the motion picture rights for $1.5 million. Prior to the article's publication, Gilstrap, *New Times*, and the kidnappers had agreed that any money from the sale of the story would be split among them. However, in 1983, two decades after the crime but prior to the sale of the movie rights, California had passed its own "Son of Sam" law, which was modeled after the original New York statute.

Frank Sinatra Jr. asked Columbia to withhold payment; the studio refused, barring a court order. Sinatra then filed a complaint alleging that the kidnappers and their "representatives" (Gilstrap and *New Times*) violated section 2225[19] of California's "Son of Sam" law, and asserting that the money should be placed into a trust for his benefit as the victim of the crime.

The trial court[20] issued a preliminary injunction prohibiting Columbia from paying any monies. Keenan then filed a demurrer on his own behalf, asserting that California's law was facially invalid under the free speech clauses of the state and federal constitution.

Keenan's claim was based solely on a comparison of section 2225 and the *Simon & Schuster* decision. In his demurrer, Keenan stated that, as in *Simon & Schuster*, because section 2225 targeted income from telling a crime-based story, it penalized content of speech. He further asserted that the statute was underinclusive, as it addressed only expressive activity, not other sources of crime-related income, as well as overinclusive, because it penalized all expressive works by convicted felons.

On December 22, 1998, the trial court issued an order overruling Keenan's demurrer, stating that "section 2225 [is] not unconstitutional as written . . . [and] . . . was narrowly drafted to overcome the over-inclusive effects found by the Supreme Court in *Simon & Schuster*."[21] The Court of Appeals confirmed the trial court's decision, focusing entirely on comparing the New York and California laws, and stated that section 2225 did not infringe upon the constitutional right of free speech.

The case was appealed to the state Supreme Court. In tendering its 2002 decision, the Supreme Court of California stated that the *Simon & Schuster* decision governed the case because of similarities between the New York and California statutes. The court was persuaded by Keenan's argument that, like the New York statute, California's section 2225 was overinclusive as it confiscated all of a convicted felon's income from expressive activity. The court said this financial disincentive "discourages the creation and dissemination of a wide range of ideas and expressive works which have little or no relationship to the exploitation of one's criminal misdeeds."[22] The opinion further stated:

> [a] statute that confiscates all profits from works which make more than a passing, nondescriptive reference to the creator's past crimes still sweeps within its ambit a wide range of protected speech, discourages the discussion of crime in nonexploitative contexts, and does so by means not narrowly focused on recouping profits from the fruits of crime.[23]

The state Supreme Court ruled that section 2225 was unconstitutional, thus reversing the lower court's decision. It concluded its decision by emphasizing, as the U.S. Supreme Court did in *Simon & Schuster*, how the statute would have discouraged several famous works from being written. The following year, the film *Stealing Sinatra* was released, starring David Arquette as Barry Keenan and William H. Macy as his coconspirator John Irwin.

Cashing In on Crime

Although "Son of Sam" laws may not prevent an individual from writing or telling his or her story, there are other ways a criminal may be prevented from profiting from criminal conduct. In 2007 O. J. Simpson authored *If I Did It*, a hypothetical account of the murders of which he had been acquitted.[24] In 1995 Simpson had been found not guilty of the murder of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman, which had occurred outside Brown Simpson's home. In the civil trial, Simpson was found liable of wrongful death and ordered to pay $33.5 million to the families of Brown Simpson and Goldman.

Regarding the publication of his book, Simpson's daughter, Arnelle Simpson, claimed she came up with the concept and was thus entitled to any monies from its sales. The Goldman family, however, believed that the publisher, Lorraine Brooke Associates (derived from the middle names of O. J. Simpson's two youngest children), was being used to shield monies paid to Simpson.

Simpson himself was quoted as saying, "This was an opportunity for my kids to get their financial legacy. My kids understand. I made it clear that it's blood money, but it's no different than any of the other writers who did books on this case."

In July 2007 a Florida U.S. Bankruptcy Court awarded the book rights to the Goldmans, allowing the family to auction the rights to help satisfy the civil judgment against Simpson. Judge A. Jay Cristol ruled that Lorraine Brooke Associates was accomplished to perpetuate a fraud. Arnelle Simpson's attorney argued that the claim by the Goldmans could only be held against O. J. Simpson, not against the publisher, because any claims against the publisher would punish Arnelle Simpson as well.

Attorneys for the Goldmans stated they had contacted Hollywood studios and publishing houses to inform the entertainment industry that the rights to the story would be available to the highest bidder. The book was renamed *If I Did It: Confessions of the Killer* once it was published. Monies from the sale of the book go to The Ronald Goldman Foundation for Justice, which offers assistance to victims of crimes.

Even though some "Son of Sam" laws have been found to be unconstitutional, the Simpson case illustrates that crime victims do have other avenues of redress. Since the *Keenan* decision, California has created an updated code,[25] known as "Son of Sam II," which permits civil suits against defendants for damages when the defendants are convicted of certain felonies. The action, which can be commenced for up to 10 years after conviction (extended from one year), includes "serious felonies" such as any crime punishable by death or imprisonment for life, attempted murder, exploding a destructive device with intent to injure, and several sex crimes. This gives individuals affected by the crime time to prepare a civil suit.

As in the case of O. J. Simpson, civil suits also have proven successful when an individual is acquitted. The same held true for actor Robert Blake, the star of the television drama *Baretta*. Blake was found not guilty in the 2001 murder of his wife, Bonny Lee Bakley.[26] However, Blake was later found liable in a wrongful death suit and ordered to pay $30 million to the family of Bakley.

Show Me the Victim

In Washington, the state from which Colton Harris-Moore escaped, the "Payment for reenactments of crimes" statute[27] prohibits the receipt of money for the portrayal of the "accused or convicted person's thoughts, feelings, opinion or emotions regarding such crime," stipulating that any such revenue should be "for the benefit of and payable to any victim or the legal representative of any victim of crimes committed."

The statute defines a "victim"[28] as "a person who suffers bodily injury or death as a proximate result of a criminal act of another person." There are, however, no allegations that Harris-Moore hurt anyone physically.[29] If it is proven or if the court considers that his actions have "harmed" people, his mother could still profit because she was never charged for any of the crimes relating to her son. Although Pam Kohler was in contact with her son during his two-year crime spree, her entertainment attorney, O. Yale Lewis, stated that conversations do not constitute "aiding and abetting."[30] Kohler never knew where Harris-Moore was calling from; she never contacted him and did not know how to contact him.

In 2000 the Court of Appeals of Washington ruled that Mary Kay Letourneau, a schoolteacher convicted of two counts of second-degree child rape, could keep monies from movies and book deals. In 1997 Letourneau, then 34, had a sexual relationship with her 12-year-old student Vili Fualaau.[31] After being sentenced to six months in jail, she received offers to have her story published. The Court of Appeals ruled that Letourneau could profit from her story. Her attorney asked the court, "[i]s there any possible way we can argue with a straight face that our law is meaningfully different than the Son of Sam law in New York that was struck down?"[32]

A French publisher contacted Letourneau's attorney, who brokered the agreement, and paid her a $200,000 advance for the rights to the story.[33] The book, *Un Seul Crime, L'Amour* (Only One Crime, Love), was coauthored by Letourneau and Fualaau, and included a prologue by Vili's mother, Soona Fualaau. As with Harris-Moore's mother, the victim, Vili Fualaau, and his mother, would both be allowed to accept proceeds from the sale of the book because they were never convicted of a crime.

In 2005, at age 43, Letourneau married 21-year-old Fualaau, the student she was convicted of raping. *Entertainment Tonight*, the television entertainment news show, paid for exclusive access to their wedding but did not pay for the wedding itself.[34] The couple was permitted to keep the money because it was compensation for an event unrelated to the crime of rape.

THE GOLDMAN FAMILY believed that publisher Lorraine Brooke Associates was created solely with the intent to shield monies being paid to O. J. Simpson. In 2007 Simpson authored *If I Did It*, a hypothetical account of the murders of ex-wife Nicole Brown Simpson and her friend Ronald Goldman.

Photograph courtesy of Getty Images

Photograph courtesy of Associated Press

COLTON HARRIS-MOORE, also known as the "Barefoot Bandit" because of his shoeless crime sprees, is awaiting possible prosecution of more than 70 crimes committed during his two-year run.

Anyone Can Write About It

In an interview with *Good Morning America* on July 25, 2010, John Henry Browne, Harris-Moore's defense attorney, stated that his client did not want anyone, including himself, to profit from his story because "[h]e felt if he told it or gave it away, it would no longer be his story."[35]

Under the First Amendment, however, permission from any subject—criminal or not—is not required to recount the events, as long as they are represented truthfully and accurately. Most states' "Son of Sam" laws only prevent the convicted and/or legal representative from profiting.

Ten days after Harris-Moore was arrested, 20th Century Fox announced that it cast the role of Harris-Moore after purchasing the rights to *Taking Flight: The Hunt for a Young Outlaw* by Bob Friel, who wrote about the "Barefoot Bandit" in the January 2010 edition of *Outside* magazine.[36]

Studios would, of course, rather get the "official" version of the story by having the individual sell his story rights. This method has several advantages; most importantly, the story is obtained directly from the subject and likely includes details and inside information never before made public. Moreover, advertising the story as "official" or "authorized" by the subject may yield better publicity, resulting in greater movie ticket and book sales. Getting the story straight from the subject also helps to avoid any potential defamatory lawsuits that an "unofficial" version might produce.

Issues regarding an individual's right of publicity or right to privacy often arise during the writing of a person's life story. Each of these rights is designed to prevent the commercial exploitation of an individual's identity. The case of *Rosemont Enterprises, Inc. v. Random House, Inc.*[37] illustrates that not even a public figure can monopolize his own life story.

In 1966 Howard Hughes created Rosemont Enterprises, to which he gave the exclusive rights to his life story, in an attempt to prevent the publication of an unauthorized biography by Random House. Hughes sued Random House, accusing the publishing company of the commercial exploitation of his name, likeness, and personality; he also claimed the book would impair the market for an "authoritative" biography he was planning to publish. Hughes further claimed that his right to privacy, under the New York Civil Rights Law, was being violated.

The court dismissed all of Hughes's claims, ruling that the "statute gives a public figure no right to suppress truthful accounts of his life" and that "factual reporting of newsworthy persons and events falls within the constitutional protections for speech and press."[38] The court's opinion concluded by noting that Hughes was attempting to prevent the conduct of Random House in publishing the book, not the content of his life story in the book itself.

Many versions of Mary Kay Letourneau's story were produced, each by a different creator. Gregg Olsen's book, *If Loving You Is Wrong: The Shocking True Story of Mary Kay Letourneau*, has been translated into 11 languages. *Mass With Mary: The Prison Years* by Christina Dress and *The Mary Kay Letourneau Affair* by James Robinson also were published. USA Network later produced the made-for-TV movie *All-American Girl: The Mary Kay Letourneau Story*, starring Penelope Ann Miller as Letourneau and Mercedes Ruehl as Letourneau's psychologist. A&E Television Networks' cable program *Biography* produced an episode titled *Mary Kay Letourneau: Out of Bounds*. Letourneau had no valid claim to any of the revenue derived from these titles.

Circumventing 'Son of Sam'

There are ways by which accused or convicted criminals have been able to circumvent their state's "Son of Sam" laws. In 1992 Amy Fisher, age 17, had an affair with Joey Buttafuoco, then 36 and married with two children.[39] In an effort to be with Buttafuoco, Fisher stopped by his home and shot his wife, Mary Jo, in the head with a .25-caliber semiautomatic pistol. After her arrest, Fisher arranged for television producers to pay $80,000[40] for her bail in exchange for the rights to her story. This was permitted because no conviction had yet occurred. Fortunately, Mary Jo survived. Fisher ultimately pled guilty to first-degree assault and was sentenced to 5 to 15 years in prison.

Television networks ABC, CBS, and NBC each broadcast its own version of Fisher's story using different sources and points of view. All three networks received very high Nielsen ratings.[41] Nielsen, the company that calculates TV ratings, bases them on the percentage of households in the United States. Ratings are tabulated each year in August to prepare for the upcoming fall TV schedule. The average rating for a show in 1992 was a 12 percent, with 1 percent representing 921,000 households.[42]

On December 28, 1992, *Amy Fisher: My Story* on NBC, which had purchased the rights to Fisher's side of the story, received a 19.1 rating. When broadcast, it became the highest-rated TV movie of the 1992–93 season. On January 3, 1993, CBS, which had bought the rights to Mary Jo and Joey Buttafuoco's side of the story, aired *Casualties of Love: The 'Long Island Lolita' Story*," which received a 15.8 rating. That same

night, the highest-rated version of the story, ABC's *The Amy Fisher Story*—which incorporated multiple viewpoints and, thus, became the "unofficial" version—received a 19.4 rating, representing 17.8 million households.

Not only was this the first time any topic was made into a movie by all three networks; it was also the first time any two networks broadcast a movie about the same topic on the same night. These ratings show how captivating real-life stories can be.

In 2006, after being sentenced to 10 years for a shooting, rapper Jamal "Shyne" Barrow's entertainment attorneys asked the court to lift the "Son of Sam" stay on a $500,000 advance from Island Def Jam records.[43] Barrow's attorneys asserted that money earned from their client's labors—in this case, recording the albums—is not covered by "Son of Sam" laws because the work had nothing to do with the shooting. It was further argued that the monies should be released to the attorneys because a person's right to counsel supersedes the compensation of the victims. A Brooklyn Supreme Court judge agreed with the argument and released $100,000 to pay Barrow's lawyers.[44]

Is Notoriety Part of the Crime?

Notoriety that results from media popularity of a person charged with or convicted of a crime raises a number of issues regarding "Son of Sam" laws. Let's consider monies paid for entertainment deals that are published or produced *before* the court's decision. In these cases, no conviction has yet occurred.

In January 2009, former Illinois governor Rod Blagojevich was removed from office by the state legislature amid federal corruption charges alleging that he plotted to sell the U.S. Senate seat vacated by Barack Obama. A little more than a month later, in March 2009, just hours before a press release announcing that Blagojevich had signed a book deal, the Illinois legislature introduced a bill designed to prevent corrupt politicians from profiting. The book offer to Blagojevich was a six-figure deal to write about his life and politics.[45]

The Elected Officials Misconduct Forfeiture Act[46] took effect in Illinois on August 18, 2009, to stop public corruption as an "extremely profitable criminal enterprise." The law states that any elected official who is terminated by law, or who resigns from office and is convicted of misconduct related to his time in office, must forfeit monies derived from the corrupt activity. The Attorney General is allowed to take "any interest in property of any kind acquired through or caused by an act or omission, or derived from the act or omission, directly or indirectly, and any fruits of this interest, in whatever form."[47] Monies would be deposited into the General Revenue Fund or the appropriate corporate county fund.

The Illinois state Senate later passed a more detailed version of the act,[48] which was introduced in January 2010 and went into effect January 1, 2011, to supplement the House bill.

Referring to the infringement on Blagojevich's First Amendment rights, Jeffrey M. Shaman, a constitutional law professor at DePaul University in Chicago stated, "I think [the law] has very serious constitutional problems."[49] Regarding notoriety from the events, Shaman said the law has no clear definition of what income is "traceable" to Blagojevich's wrongdoing.

Blagojevich signed the book deal and was paid a portion of the agreed-upon compensation *before* the state anticorruption law was passed—and *before* the law was even introduced. Blagojevich's book, *The Governor*, was released in September 2009.

On August 17, 2010, Blagojevich was convicted of one count of making false statements to federal authorities.[50] Since no law existed at the time he was convicted, he should be allowed to keep the money from the book deal, though it is up to the Illinois Attorney General to decide whether the state will attempt to get the advance from the publisher.

What about monies paid to the individual that are not directly related to the crime of which he was convicted, but are produced because of his notoriety? In November 2009, before his trial began, Blagojevich was paid an undisclosed amount for his appearance on NBC's *Celebrity Apprentice*.[51] On the celebrity version of this business-themed reality show, famous contestants play to raise money for a charity of their choice. Blagojevich hoped to win the first prize of $250,000 for the Children's Cancer Center in Tampa, Florida. He previously had been offered $123,000 to appear on *I'm a Celebrity . . . Get Me Out of Here!*, another NBC reality game show in which celebrities live in a jungle and compete for prizes.[52]

A U.S. district court judge ruled that Blagojevich was prohibited from traveling to the taping location in Costa Rica because his passport had been revoked and there was concern about his potential refusal to return to the United States for trial. Blagojevich told the court that his participation on the show was necessary so he could earn money to support his children.

Although Blagojevich himself was the ratings draw, a compromise was reached, allowing his wife Patti to travel to Costa Rica in his place. However, the fact that Blagojevich was not allowed to leave the country to film the show and earn money for his family (a lawful activity unrelated to his alleged crimes) illustrates that, in some instances, a third party—in this case, Blagojevich's two daughters—may suffer penalties as a byproduct of a person's notoriety.

Although prosecutors did not attempt to block his appearance on *Celebrity Apprentice*, which was filmed in New York, they had concerns about remarks he might make on the show and how his words could affect potential jurors. If Blagojevich had been stopped from competing, the charitable organization for which he played—which was unrelated to his alleged crimes—could have lost the opportunity to be awarded $250,000 were he to win the contest.

There are also situations where people intentionally break the law to make money, thus creating notoriety. In the 2009 "Balloon Boy" hoax, Richard Heene and his wife, Mayumi, pled guilty to the felony of attempting to influence a public servant and the misdemeanor of false reporting, respectively, after placing a fake 9-1-1 call to authorities. The Heenes claimed their son was trapped in a saucer-shaped helium balloon that the family was using for an experiment.[53] The hoax was an effort to promote a reality TV show featuring their family, which they hoped would be produced.

A few days after the incident, during an interview on *Larry King Live*, the Heenes' 6-year-old son, who was allegedly "trapped" in the balloon, said: "We did this for a show."[54] The Heenes had appeared on the ABC reality series *Wife Swap* twice before and were hoping for a show of their own. Authorities spent an estimated $46,000 in overtime pay for law enforcement and use of National Guard helicopters in their search for the 6-year-old, who the family later admitted was hiding in their attic.

Jail Time Trade-Off

In October 2010, during a political rally in Philadelphia, President Obama was startled by the appearance of a 24-year-old streaker.[55] Juan J. Rodriguez ran nude in front of Obama in an attempt to win a contest run by BattleCam.com, a 24-hour interactive reality channel. BattleCam.com offered $1 million to the first person to streak in front of the president, with the words "BattleCam.com" painted on his or her chest, while screaming

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"BattleCam.com" six times within earshot and eyesight of the president. Rodriguez was arrested for indecent exposure, disorderly conduct, and open lewdness.

After the act, a spokesman for BattleCam.com stated that he was not sure Pennsylvania law would permit paying someone to commit an illegal act. In this case, the inducement to break the law was the monetary prize; there was no need to worry about a conviction. Further, Rodriguez was not in collusion with the Web site because BattleCam.com did not force him to participate; instead, he simply responded to an offer. It may be also be considered a small trade-off to pay a fine of several hundred or even several thousand dollars and some jail time in exchange for $1 million and a few seconds of "exposure."

Follow the Law

"Rod Blagojevich does it innocently," intones the voiceover in a TV advertisement that features the former Illinois governor as he opens a briefcase full of pistachios and cracks open a nut.[56] Blagojevich, who does not speak in the ad, signed on as an endorser for Wonderful Pistachios in the company's "Get Crackin'" campaign.

In a news release, Blagojevich said "[t]he contents of the suitcase are like the accusations against me—they're nuts." Blagojevich said his compensation, which he did not disclose, will be used to pay his family's mortgage. This is another example of capitalizing on notoriety to avoid "Son of Sam" laws, since enjoying pistachios has nothing to do with lying to federal authorities.

The former governor's case illustrates that the best way to protect your interests is to follow "Son of Sam" laws carefully. Most statutes refer to profiting from the crime directly; this includes selling the client's story for the creation of entertainment projects such as books or films.

An unexpected twist in a recent case allowed a killer to inherit $241,000 from his victim. In 2008, Brandon Palladino killed his mother-in-law, Dianne Edwards, while robbing her New York home. More than a year after the murder, Palladino's wife, Deanna—the sole beneficiary of her mother's estate—died of a drug overdose. Because Brandon and Deanna had no children, he stands to inherit the entirety of the victim's estate. "Son of Sam" laws do not apply here, because Palladino's inheritance will not come from his victim, but rather from his wife—who had inherited it from the victim.[57]

It is important to remember that most statutes were written before the era of reality television. Most laws do not include the issue of notoriety that results when an individual becomes a public figure or media celebrity, whose fame is not related to the alleged crime or conviction. As long as reality TV programs continue to thrive, any individual who gains notoriety from even the smallest association with a criminal act becomes fodder for this genre, and maybe even a commercial or two.

Ethan Bordman received his master of laws degree in entertainment law from the University of Westminster in London. He earned his juris doctor from the University of Detroit School of Law and his master's degree in business administration from the Wayne State University School of Business Administration. He practices entertainment law in New York, the District of Columbia, and Michigan.

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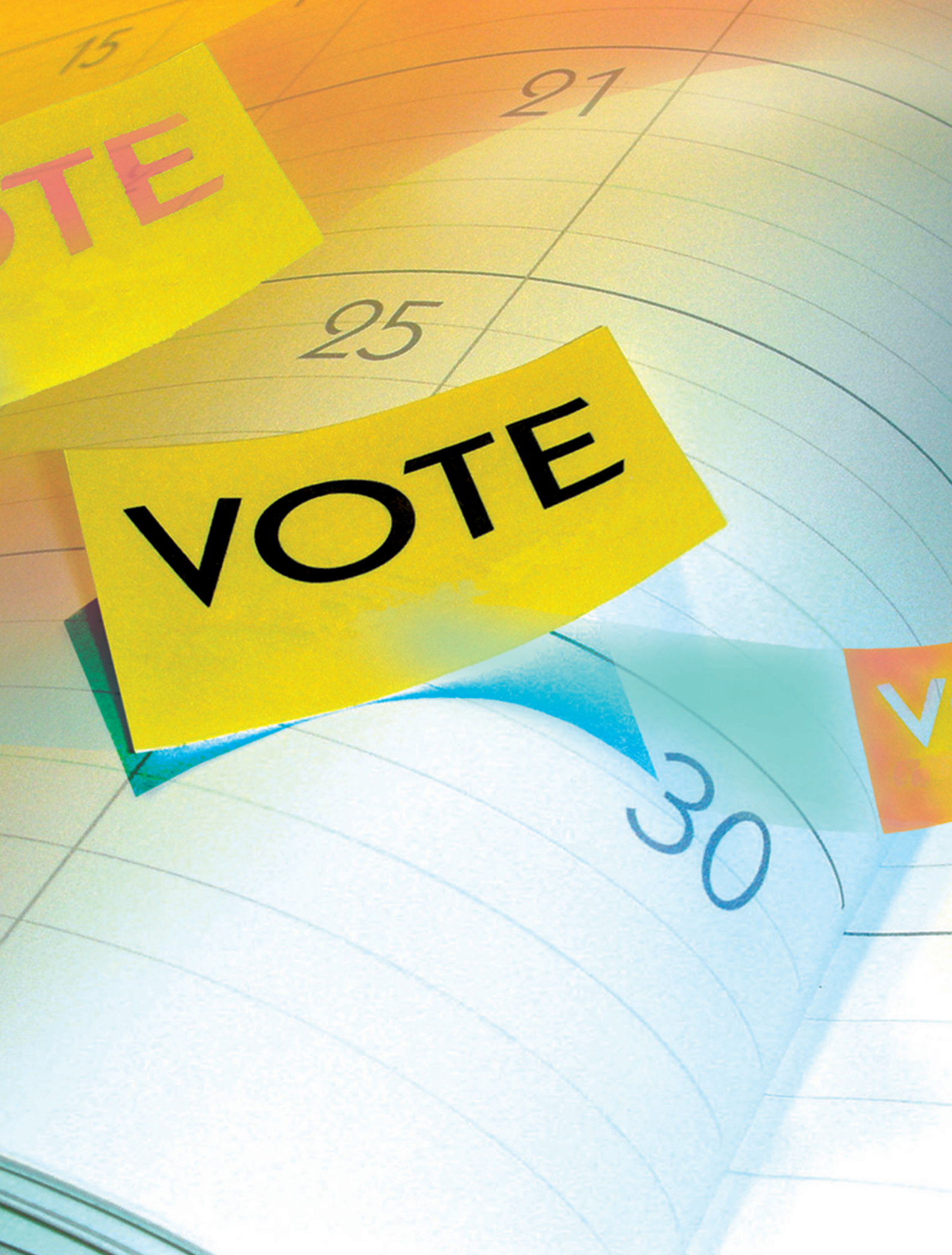
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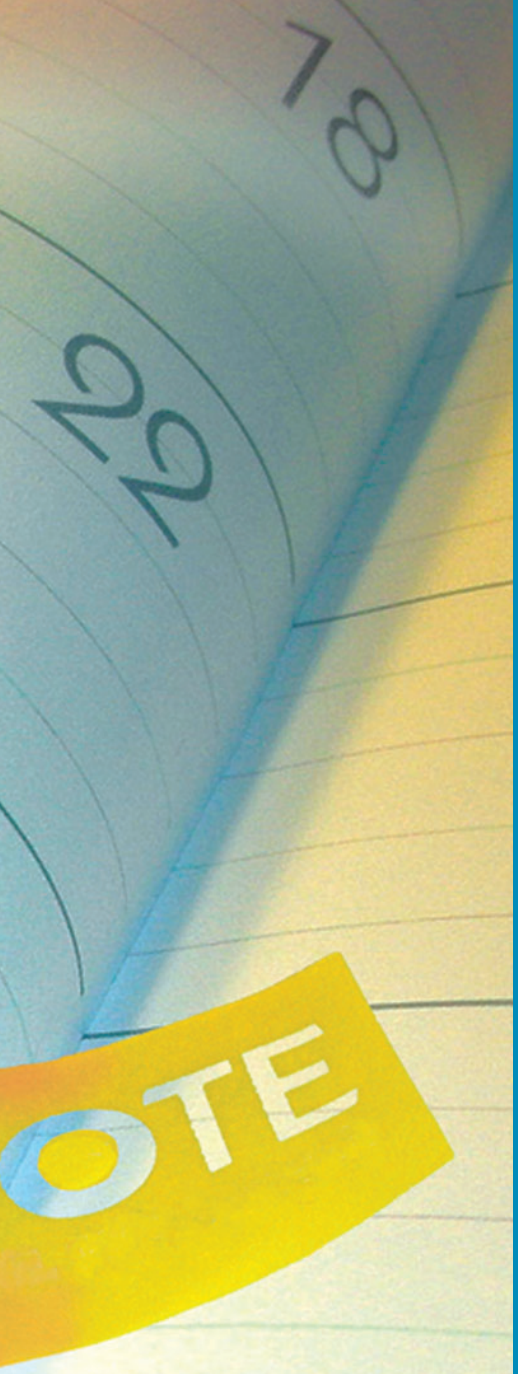

D.C. Bar Election Coverage 2011

The D.C. Bar Nominations Committee has announced candidates for office on the Board of Governors for the 2011–2012 term. The nominees are running for the positions of president-elect, secretary, and treasurer; five vacancies for three-year terms on the Bar's Board of Governors; and three seats in the House of Delegates of the American Bar Association, one of which is reserved for a candidate under the age of 35.

Ballots and instructions for voting, by mail or online, will be distributed to all active Bar members on May 2. The deadline to vote is June 3. Results of the election will be announced on the Bar's Web site and also at the 2011 Celebration of Leadership, which includes the Bar's Awards Dinner and Annual Meeting, on June 30 at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW.

Concurrently, the D.C. Bar Sections Office has announced nominees for vacancies on the steering committees of the Bar's 21 sections. Online voting will begin on May 2, with paper ballots to be mailed at roughly the same time. Section candidates lists begin on page 40. Online voting closes at midnight on June 3. Paper ballots must be received in the envelope provided with those ballots by June 3. The Sections Office will announce election results the week of June 13.

Meet the Candidates for President-Elect

Courtesy of Koonz, McKenney, Johnson, DePaolis & Lightfoot, L.L.P.

Paulette E. Chapman

Courtesy of Covington & Burling LLP

Thomas S. Williamson Jr.

Paulette E. Chapman

Paulette E. Chapman is a partner at Koonz, McKenney, Johnson, DePaolis & Lightfoot, L.L.P., where she represents people who are injured because of unsafe construction sites and other dangerous workplaces, defective consumer products, and substandard medical care.

Chapman has worked at Koonz for 22 years, representing plaintiffs in personal injury cases, since graduating from The George Washington University Law School in 1988. "When they come to me, their lives are in disarray. They are behind in their rent, behind in their car payments, and unable to return to work. I help them navigate the legal process so they can secure necessary medical and financial benefits," Chapman said.

In addition to her practice, Chapman has served as president of both the Women's Bar Association (WBA) of the District of Columbia and the Bar Association of the District of Columbia, and as an active member of numerous committees where she has gained a unique perspective of the role of bar associations in the life of the city. Chapman has been a member of the D.C. Bar Board of Governors since 2006.

"My experience leading diverse bar organizations has prepared me for the D.C. Bar president-elect position. It runs the gamut from putting on programs, increasing membership, and launching initiatives to mentoring others for leadership roles, dealing with budgets, evaluating judicial endorsements, and answering to an array of practitioners at different stages of their careers. I have been chief cook and bottle washer from the ground level up," Chapman said. "It has given me a vantage point—a bird's eye view that has evolved over time—of the concerns and pressures of lawyers from large and small firms, and from the public and nonprofit sectors."

Rapid changes in the legal profession, coupled with the impact of the economic downturn, have created uncertainty in the legal industry. Chapman believes the Bar is uniquely positioned to assist both recent law school graduates and seasoned attorneys to become better equipped at dealing with transitions, from sudden career upheavals to professional activity after retirement. Expanding the Bar's Practice Management Advisory Service program, tailored to lawyers in transition, is key.

"Lawyers are looking at ways to practice law with realistic business objectives, yet that afford creative opportunity," she said, noting the popularity of the Bar's basic training program on how to run a law office. "And they want to stay in touch with each other in real time [and in] meaningful ways."

With so many members working and living outside the District, Chapman believes it is important to offer online courses for added convenience. Exploration of social media and provision of technology tools by the Bar to enhance professional communication are also critical.

"While the Bar has to be realistic and thoughtful, it also must be nimble and recognize that lawyers desire multiple ways to communicate about the law, jobs, education, and their professional lives," she said.

Chapman also seeks to elevate the relationship between the Bar and members of its various sections, as well as with voluntary bar associations. "As the mandatory bar, it's important to foster and support the work of the Sections and other bar groups in the city," she said.

She also strongly supports continued in-depth liaison work between the Bar's Board of Governors and Sections leadership, the monthly voluntary bar leadership meetings, and attendance at the many functions that "make for a collective vibrant bar association environment."

"If members are the heart of the Bar, the soul is access to justice and pro bono services, which have the highest priority," Chapman said. "In this economic downturn, we must strive to maintain these essential services."

Chapman cites her extensive experience in fundraising, heading major annual dinners that resulted in significant proceeds for legal services providers, as well as her work with the WBA Foundation Grants Committee, reviewing grant requests and making recommendations to support worthy causes across the District. As president-elect of WBA, Chapman helped launch the Family Court Self-Help Center Pilot Project, which won the 2003 Frederick B. Abramson Award.

As a member of the Bar's Board of Governors, Chapman has served on numerous committees, including Budget, Nominations, and Executive. She is also an instructor with the Bar's Continuing Legal Education Program and the National Institute for Trial Advocacy. She serves on the board of governors of the Trial Lawyers Association of Metropolitan Washington, D.C.

Chapman received her undergraduate degree from George Mason University.

Thomas S. Williamson Jr.

Thomas S. Williamson Jr. is a partner at Covington & Burling LLP, where he focuses his practice on employment law, complex litigation, and Medicaid-related issues for state governments.

For Williamson, who grew up during the civil rights movement, becoming a lawyer meant the ability to participate in creating social change. "I aspired to not only serve individual clients but also have a role in trying to foster a more just and positive society," Williamson said.

His convictions spurred a career where he dedicated much of his time seeking to alleviate the unfair challenges many people face in attempting to access the legal system. He worked with the California Rural Legal Assistance, Inc. while in college, and he has devoted countless hours to the community through Covington's pro bono program, including establishing the firm's partnership with Cardozo High School.

"The idea of running for president-elect of the Bar is a continuation of the notion that lawyers should be mobilized to enhance access to justice and equality in society," he said. With access to justice as a top priority if elected, Williamson hopes to work with judges and the court system to better identify priority needs in the community and determine where the Bar can most effectively expand its Pro Bono Program. He would like to further the work of demystifying the legal process for District of Columbia residents to help them more easily vindicate their rights.

If elected, Williamson would also seek to ensure that the Bar continues to play an active role in working to maintain public funding for legal services providers and for the D.C. Bar Foundation's Loan Repayment Assistance Program.

"We're entering a period, which will probably be even worse by 2012, where there's going to be a cutback in funding across the board for social services. The funding that the [D.C.] Access to Justice Commission and the Bar have helped secure for the underserved will be under siege," he said. "That means we have to be vigilant and alert and committed to fighting for those funds."

Williamson plans to enhance the Bar's law practice management programs to help facilitate career transitions. As a former member of Covington's management committee, Williamson believes he can bring to bear a concrete perspective on what business challenges lawyers are facing today. "It's not going to be easy for people, but [the Bar can help give you] a sense that there are experienced lawyers who know what you're going through and can help you find a new situation or build your own practice without having to be dependent on a large firm infrastructure," he said.

Leading the Bar means understanding its constituents, and Williamson believes his diverse career gives him on-the-ground knowledge. Although he has spent most of his career at a large law firm, he has had substantial government experience, serving as deputy inspector general at the U.S. Department of Energy and later as solicitor at the U.S. Department of Labor. Williamson also spent eight months doing poverty law work at a local office of the Neighborhood Legal Services Program as an attorney on loan from Covington.

Williamson believes his football career at Harvard College, where he received his undergraduate degree and played defensive back, also provided him relevant leadership experience. "If you want to be successful in football, you need to have a playbook with a variety of options, and you need to have quality people operate in a consistent, well-coordinated way to execute your game plan," he said.

Williamson is a board member of the D.C. Bar Foundation and a member of the D.C. Access to Justice Commission. He has served as cochair of the Washington Lawyers' Committee for Civil Rights and Urban Affairs and as a member of the Bar's Board of Governors and Pro Bono Committee, the D.C. Judicial Nomination Commission, Delegate Eleanor Holmes

D.C. Bar Nominations Committee Announces Board Candidates

The D.C. Bar Nominations Committee also announced candidates for other Bar leadership positions, including secretary and treasurer.

Nominated for one-year terms on the Bar's Board of Governors are, as secretary, Rosy L. Lor of the Internal Revenue Service, Office of Chief Counsel, and Marianela Peralta of Hilton Worldwide, and, as treasurer, Jeffrey S. Gutman, a professor at The George Washington University Law School, and Morton J. Posner of the U.S. Department of Justice, Office of General Counsel, Justice Management Division.

Seeking to fill the five vacancies on the Bar's Board of Governors for a three-year term are Brigida Benitez, chief of the Office of Institutional Integrity at Inter-American Development Bank; Jeffrey L. Berger of The Berger Law Firm, P.C.; Amy L. Bess (incumbent board member), a shareholder at Vedder Price P.C.; George E. Covucci, a partner at Arnold & Porter LLP; Andrea C. Ferster (incumbent treasurer) of the Law Offices of Andrea Ferster; Ankur J. Goel (incumbent board member), a partner at McDermott Will & Emery LLP; Jennifer Choe Groves, a partner at Hughes Hubbard & Reed LLP; Glenn F. Ivey, a partner at Venable LLP; Patrick McGlone (incumbent secretary) of ULLICO, Inc.; Annamaria Steward, associate dean of students at the University of the District of Columbia David A. Clarke School of Law; and Benjamin F. Wilson (incumbent board member), a principal at Beveridge & Diamond, P.C.

There are three seats open on the American Bar Association House of Delegates, including one reserved for a candidate under the age of 35. Seeking the regular seats are Anthony M. Alexis, a partner at Mayer Brown LLP; Jonathan R. Barr, a partner at Baker Hostetler LLP; Arthur Burger, a director at Jackson & Campbell, P.C.; and Paul M. Smith, a partner at Jenner & Block LLP.

Thomas A. Bednar of the U.S. Attorney's Office for the District of Columbia; Jimmy Chatsuthiphan, an associate at Gray Plant Mooty; and David M. Shapiro of the ACLU National Prison Project are seeking the under-35 seat.

Ballots and instructions for voting will be distributed to all active D.C. Bar members on May 2. Members may return their ballots either by mail using the special envelope provided or electronically by following instructions on the ballot. In either case, the first ballot received, electronic or paper, will be the only ballot counted. All ballots must be received by June 3.

Important Changes Announced For Section Steering Committee voting

D.C. Bar members who belong to one or more of its 21 sections as of April 15, 2011 will have two options to cast their votes in this year's section steering committee elections: online or by mail.

- Online voting for the section steering committees will be available on May 2, 2011 at www.dcbar.org/elections
- Paper ballots will be mailed by May 2, 2011. Section members will receive a single mailing containing ballots for steering committees of all sections of which they are members.
- Voters will be required to cast all ballots for all section contests at the same time. All ballots must be cast by June 3.
- Once a vote is cast online, it is not necessary to return the paper ballot as it will not be counted.
- If a paper ballot is cast, once it is received voters will not be able to access online voting.
- If two ballots are submitted, whichever ballot is received first (electronic or paper) will be official.

Specific instructions for online voting as well as for voting by mail will be provided with the mailed ballots and also sent to eligible voters by email.

Norton's Federal Law Enforcement Nominating Commission, and the Lawyers' Committee for Civil Rights Under Law.

"For the Bar, it's not a one-size-fits-all mission. We need to be actively thinking about these different elements of our Bar's professional community. Just because you're doing well communicating with one segment doesn't necessarily mean you're reaching other segments," Williamson said. "There are a lot of crosscurrents that need to be managed and navigated. I look forward to that part of the challenge of the job."

Williamson attended Oxford University as a Rhodes Scholar and earned his law degree from the University of California at Berkeley.

Sections Office Announces Steering Committee Nominees

The following nominees are running for vacancies on the steering committees of the Bar's 21 sections. Section members who have not received their paper ballots by May 20, and who do not wish to vote online, should call the Sections Office at 202-626-3463 to obtain a duplicate.

D.C. Bar Sections 2011–12 Steering Committee Candidates

Administrative Law and Agency Practice (Three Vacancies): Nicholas H. Cobbs, D.C. Office of Administrative Hearings; Adam L. Hill, U.S. Department of Homeland Security; Susan B. Koonin, Business Resource Consulting, LLC; Kelly B. McClanahan, National Security Counselors; Robert L. Walker, Wiley Rein LLP.

Antitrust and Consumer Law (Three Vacancies): Craig L. Briskin, Mehri & Skalet, PLLC; Robert E. Hauberg Jr., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Amy R. Mix, AARP Legal Counsel for the Elderly; Don A. Resnikoff, Finkelstein Thompson LLP; Sonya A. Smith-Valentine, Valentine Legal Group, LLC; Wendy J. Weinberg, Legal Aid Society of the District of Columbia; Hassan A. Zavareei, Tycko & Zavareei LLP.

Arts, Entertainment, Media and Sports Law (Three Vacancies): Elliott C. Alderman, Alderman Law Office; Alonzo Barber III, Black Entertainment Television; Elizabeth D. Blumenthal, Library of Congress; Jordon D. Mathies, Mathies Law Offices, PLC; Rand E. Sacks, The Sacks

Group, PLLC; Bradley S. Shear, Law Office of Bradley S. Shear, LLC; John L. Simson, Attorney-at-Law; Michael D. Sopko, Attorney-at-Law.

Computer and Telecommunications Law (One Vacancy): Braden E. Cox, NetChoice; Elizabeth K. McIntyre, Federal Communications Commission; Glenn S. Richards, Pillsbury Winthrop Shaw Pittman LLP.

Corporation, Finance and Securities Law (Three Vacancies): Russell D. Duncan, Orrick, Herrington & Sutcliffe LLP; Keir D. Gumbs, Covington & Burling LLP; Adelaja K. Heyliger, Weil, Gotshal & Manges LLP; Ford C. Ladd, DiMuro-Ginsberg, PC; Michael K. Lowman, Jenner & Block LLP; Julie A. Smith, Willkie Farr & Gallagher LLP; Jeffrey P. Taft, Mayer Brown LLP; Elaine H. Wolff, Jenner & Block LLP.

Courts, Lawyers and the Administration of Justice (Three Vacancies): David B. Benowitz, The Law Offices of David Benowitz; Rainey R. Brandt, D.C. Superior Court; Jenifer E. Foster, D.C. Law Students in Court; Sharon E. Goodie, D.C. Office of Administrative Hearings; Thomas F. Morante, Holland & Knight LLP; Patrick P. O'Donnell, Wiltshire & Grannis LLP.

Criminal Law and Individual Rights (Three Vacancies): David B. Benowitz, The Law Offices of David Benowitz; Patricia A. Cresta-Savage, Law Office of Pat Cresta-Savage; Clifford T. Keenan, D.C. Pretrial Services Agency; Timothy J. Kelly, U.S. Department of Justice; Craig N. Moore, Attorney-at-Law; Joseph M. Owens, U.S. Army; J. Evans Rice III, Hogan Lovells US LLP; Kimberly S. Walker, Fulbright & Jaworski LLP; Kira A. West, Law Offices of Kira Anne West.

District of Columbia Affairs (Three Vacancies): Richard Amato, D.C. Office of the Attorney General; Lyle M. Blanchard, Greenstein DeLorme & Luchs, P.C.; Thomas P. Cassidy Jr., The O'Riordan Bethel Law Firm, LLP; Joel M. Cohn, D.C. Office of the Tenant Advocate; James M. Goldberg, Goldberg & Associates, PLLC; Susan D. Saunders Mckenzie, Howard University; Jarid A. Smith, Wiley Rein LLP; Nicole L. Streeter, Council of the District of Columbia.

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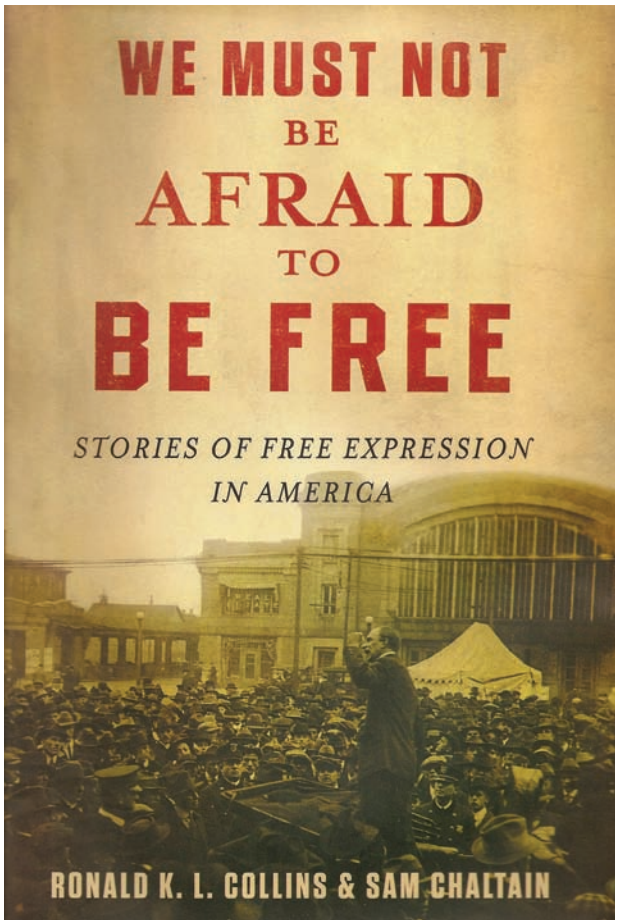
books in the law



We Must Not Be Afraid to Be Free: Stories of Free Expression in America
By Ronald K. L. Collins and Sam Chaltain
Oxford University Press, 2011

Review by Ronald Goldfarb

In *We Must Not Be Afraid to Be Free: Stories of Free Expression in America*, Ronald K. L. Collins and Sam Chaltain analyze important First Amendment issues that raised recurring conflicts in our nation's history. They do so in a storytelling fashion that provides easy yet authoritative readings, for students especially. Their case histories are familiar ones that experts and lawyers will know; they have been written about before in greater depth. But for a panorama of interesting conflicts, most not resolved now, or probably ever, this book is an easy introduction for neophytes and a fresh reminder for professionals. It is an engaging primer that includes key First Amendment cases (*Anastaplo* and *Gitlow*), precedent-setting decisions on pornography and obscenity, flag burning, hate speech, students' rights, libel and defamation, along with interesting collateral materials—a thorough list of leading First Amendment cases, an interview with the late U.S. Supreme Court Justice Hugo Black, and analysis of Professor Alexander Meiklejohn's important theories about free speech.

Their essays are succinct but inclusive. In 34 pages, the authors synthesize the line of cases dealing with hate speech. Focusing on a 1992 St. Paul, Minnesota, cross burning decision, they describe the related decisions that distinguished between point of view and threatful action, between expressions and conduct—notions not always separated by a clear line.

The era of political correctness has included sensitivity to verbal attacks on race, religion, sexual orientation, and ethnicity, which, First Amendment purists claimed, resulted in "outsider jurisprudence." When are words and images equivalent to action, and arguably are not free expression protected by the First Amendment? The line of Supreme Court cases on the subject—not all so clear in their conclusions—is presented, leaving a general principle in place, but an unpredictable future. Courts will continue to grapple with distinguishing between acts and

The era of political correctness has included sensitivity to verbal attacks on race, religion, sexual orientation, and ethnicity, which, First Amendment purists claimed, resulted in "outsider jurisprudence."

ideas, and imaginative attorneys will continue to advocate the policies for favoring one over the other.

Collins and Chaltain draw on the seminal writing of professor and philosopher Zechariah Chafee and precedential Supreme Court cases to analyze the relationship between defamation and libel and constitutionally protected free speech. They describe the career and cases of a First Amendment lawyer Elmer Gertz to tell this story, along with interesting asides about former president Richard Nixon relating to the public–private distinction courts use in measuring responsibility for libel, and the standards of care that apply in cases that balance the need for a robust debate of issues with the need for responsibility for false criticism.

The authors juxtapose biographical information about civil rights lawyer Robert Carter and Justice Black to discuss one confounding area of First Amendment constitutional law—freedom of association. Justice Black was a Ku Klux Klan member as a young Alabama politician but a civil libertarian's hero in his career on the Court; he advocated absolutism in First Amendment issues. Carter was a NAACP attorney who argued important First Amendment cases before the high court. The authors use these historic figures to relate the background of an important case, *NAACP v. Alabama*, which dealt with the First Amendment's freedom of association provision.

In the heat of the civil rights revolution in midcentury, hostile state legislatures attempted to expose and harass NAACP members by subpoenaing the organization's membership lists. Ironically, northern legislatures did the same to expose Ku Klux Klan members, and southern states relied on the precedent, approved by the Supreme Court in 1928. Carter argued to the Supreme Court in 1958 that for NAACP members to band together to fight segregation, they needed to do so anonymously. The Court ruled—Justice John Marshall Harlan II wrote the opinion; he, the grandson of the author of the dissent in *Plessy v. Ferguson*, a notable trivia of Court lore—that lawful association included the right of anonymity. Unlike the 1928 *Ku Klux Klan* case, which dealt with illegal activity, the NAACP was involved in legal activity, and thus its rights were immune from public scrutiny where the purpose was subversive.

Other recalcitrant southern states supported Alabama's position and argued to the Court that the NAACP should not be treated like "a favored child." Conservative justices feared that federal courts could be accused of improper judicial activism in their efforts to protect and enforce civil rights laws. It wasn't until 1964, after eight years of litigation, that the Supreme Court ruled in the Alabama case that the NAACP's organizational records were protected from the state's intrusion.

Their history is relevant today. There is a current line of cases dealing with anonymity where the Court again has been called upon to justify inquiries about membership lists of state referenda signators and voters' identification where anonymity was claimed to protect the privacy of those sought to be identified.

The authors' treatment of the Pentagon Papers case, a notorious incident during the Vietnam War era, will remind those of us who lived through those times and inform those who came after it, that there is an important lesson to learn, one we should remember today. Solicitor General Erwin Griswold, who argued that case in the Supreme Court, urged that national security was endangered by the press' publication of those papers describing our involvement in the war. The Supreme Court ignored his claim and ruled—as ample precedent provided—that the First Amendment prohibits prior restraint. That same, then ex-solicitor general wrote years later that no national security danger had occurred when the Pentagon Papers were published. In fact, those Papers proved the government was hiding embarrassing information about its prosecution of a costly and questionable war.

Today, the nation grapples again with the tensions between disclosure of public information and claims that publication will endanger national security. The authors use this case to explore the historic sources of the rule against prior restraint in the writings of John Locke, John Milton, Benedict de Spinoza, Sir William Blackstone, and the Supreme Court in *Near v. Minnesota* (1931). Get the debate out in the open, federal trial judge Gerhard Gesell ruled when the government sought to prohibit *The Washington Post* from publishing the Pentagon Papers, as *The New York Times* did. The stories were published, and the Republic did not fall, as the government warned. The whole litigation was called by one biographer (of Justice Black) "a theatre of the absurd."

Readers of this chapter should come away recalling the words of Justice Black in that case:

> The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic . . . paramount among the responsibilities of a free press is the duty to prevent . . . government from deceiving the people and sending them off to distant lands to die.

This engagingly written tour of First Amendment law will interest political scientists, prelaw and law students, and lawyers with a special interest in the subject. The authors present their expertise in a storytelling, literary style, and their authoritative mastery of their subject is evident.

Ronald Goldfarb is a Washington, D.C. attorney and author. E-mail him at rlglawlit@gmail.com.

attorney briefs

By Thai Phi Le

Honors and Appointments

Georgetown University Law Center Professor **Carrie J. Menkel-Meadow** has been selected as the first recipient of the Award for Outstanding Scholarly Work, presented by the American Bar Association Section of Dispute Resolution… **Earl L. Segal**, a principal at Newmark Knight Frank, has been elected chair of the board of directors of Goodwill of Greater Washington… **Thomas Leary**, of counsel at Hogan Lovells, has been honored by the *Global Competition Review* with a Lifetime Achievement Award, which recognizes an individual, in private practice or in government, law, or economics, whose career has had a substantial, lasting, and transformational impact on competition policy or practice… **Benjamin F. Wilson**, managing principal of Beveridge & Diamond, P.C., has been elected to the board of directors of the Environmental Law Institute.

On the Move

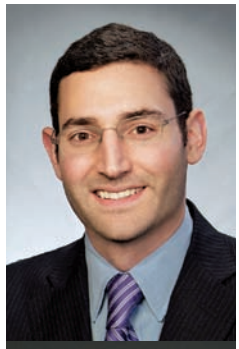
Thomas J. Poulin has been elected partner at Blank Rome LLP in the firm's commercial litigation group… **Phillip R. Marchesiello** has joined Wilkinson Barker Knauer, LLP as partner… **Deborah S. Tang** has joined Major, Lindsey & Africa, LLC as managing director… **Daniel E. Chudd**, **Lindsay C. Harrison**, and **Luke C. Platzer** have been elected partner at Jenner & Block LLP… **Liz M. Lopez** has joined Barnes & Thornburg LLP as of counsel in the firm's governmental services and finance department… **Lauren R. Silvis** and **Gordon D. Todd** have been elected partner at Sidley Austin LLP… **Vernessa T. Pollard** has been elected partner at Arnold & Porter LLP in the firm's FDA and healthcare group… **Steven Diebenow** has joined Driver, McAfee, Peek & Hawthorne, P.L. as partner in Jacksonville, Florida… **Lily Chinn, Nadira Clarke, Nessa Horewitch, Peter Schaumberg,** and **Katherine Eller Wesley** have been elected principal at Beveridge & Diamond, P.C.… **Jennifer L. Dzwonczyk** has joined Venable LLP as intellectual property partner… **Mona Tandon** has been elected of counsel at Van Ness Feldman… **Howard H. Stahl** has joined Fried, Frank, Harris, Shriver & Jacobson LLP as litigation partner… **Patricia A. Dunn** and **Aparna B. Joshi** have joined Jones Day as of counsel in the firm's labor and employment group… **Evan A. Raynes** has joined Roetzel & Andress as partner in the firm's intellectual property practice group… **Mary H. Swanson** has joined Lourdes Caposso Fernandes (known as Legal Counsel Firm or LCF) as a legal consultant/instructor to facilitate English legal writing and international transactions… **Malcolm Sandilands** has joined Dickstein Shapiro LLP as partner in the firm's corporate and finance practice… **Elliot Berke** and **William Farah** have joined McGuireWoods LLP as partner and will cochair the firm's newly created political law group… **James D. Wareham** has joined DLA Piper LLP as partner in the firm's litigation practice… **Jennifer L. Meinig** and **Rachel S. Li Wai Suen** have joined the Law Offices of Gregory L. Poe PLLC as associate and counsel, respectively… **John W. Blouch** and **Bruce W. Dunne** have joined Drinker Biddle & Reath LLP as of counsel in the firm's investment management practice group.

Company Changes

Partners at **Howrey LLP** have voted to dissolve the firm. It ceased its operations on March 15… **Edwards Angell Palmer & Dodge LLP** has merged with **Fleischman and Harding LLP.** The firm's name remains Edwards Angell… Elena Hung has founded the **Law Office of Elena Hung, PLLC** with an office at 888 16th Street NW, suite 800. The firm represents individuals, families, and employers in all immigration matters.

Author! Author!

Scott Hempling has written *Preside or Lead? The Attribute and Actions of Effective Regulators*, published by the National Regulatory Research Institute… **Roseann B. Termini**, a professor and attorney specializing in food and drug, has written "The Family Smoking Prevention and Tobacco Control Act and Public Health," which was published in volume 81 of the *Pennsylvania Bar Quarterly*… **Andrew Jezic** has coauthored the seventh edition of *Maryland Law of Confessions*, published by Thomson/West… **Paul S. Horwitz**, the Gordon Rosen Professor of Law at the University of Alabama, has written *The Agnostic Age: Law, Religion, and the Constitution*, published by Oxford University Press… **Ira P. Robbins** has written *Habeas Corpus* and *Prisoners and the Law*, volume 6, both published by Thomson West.



Ethan L. Don has joined Paley Rothman as associate.

Laura L. Flippin has joined DLA Piper LLP as partner in the firm's litigation practice.

Thomas Jerman has joined Jones Day as partner.

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

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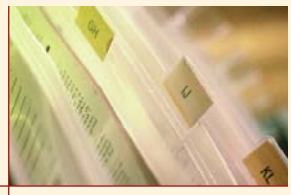

Note: Unless otherwise indicated, all D.C. Bar events are held in the D.C. Bar Conference Center at 1101 K Street NW, first floor. For more information, visit www.dcbar.org or call the Sections Office at 202-626-3463 or the CLE Office at 202-626-3488. CLE courses are sponsored by the D.C. Bar Continuing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

MAY 3

Building an Agency: The Establishment of the Consumer Financial Protection Bureau
12–2 p.m. Sponsored by the Financial Institutions Committee of the Corporation, Finance, and Securities Law Section.

Navigating Tax Sale Actions to Judgment
12–2 p.m. Sponsored by the Real Estate Housing and Land Use Section and cosponsored by the Litigation Section and Taxation Section.

Property Rights Deprivation by Sovereign States: Human Rights, Investment Law, and Enforcement
12:30–2 p.m. Sponsored by the Inter-American Legal Affairs Committee of the International Law Section. Arnold & Porter LLP, 555 12th Street NW.

What Every Lawyer Should Know About Immigration Law, Part 2: Employment-Based Immigration: Nonimmigrant Visas
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.

MAY 4

Bankruptcy Training for Pro Bono Attorneys, Part 1
9 a.m.–4 p.m. Presented by the D.C. Bar Pro Bono Program. Contact Kim DeBruhl Roberson at 202-737-4700, ext. 3289.

Basic Training, Part 1: The Solo's Characteristics and Workplace
9:15 a.m.–4:30 p.m. Sponsored by the D.C. Bar Practice Management Service Committee. Contact Daniel M. Mills, manager of the Practice Management Advisory Service, at 202-626-1312 or dmills@dcbar.org.

Broker-Dealers as Fiduciaries: What's Next?
12–2 p.m. Sponsored by the Broker-Dealer Regulation and SEC Enforcement Committee of the Corporation, Finance and Securities Law Section.

Universal Service and Intercarrier Compensation Reform: Addressing the Elephant in the Room
12:15–1:30 p.m. Sponsored by the Computer and Telecommunications Law Section and cosponsored by the Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; and Corporation, Finance and Securities Law Section. Pillsbury Winthrop Shaw Pitman LLP, 2300 N Street NW.

Introduction to Federal Personnel Law, Part 1: EEOC Practice
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Government Contracts and Litigation Section; Labor and Employment Law Section; and Litigation Section.

MAY 5

Bankruptcy Training for Pro Bono Attorneys, Part 2
9 a.m.–4 p.m. See listing for May 4.

21st Annual Judicial Reception
6–8:30 p.m. Sponsored by the Estates, Trusts and Probate Law Section. Christian Heurich House Museum, The Brewmaster's Castle, 1307 New Hampshire Avenue NW.

Fundamentals of Administrative Law Practice, Part 1: The Informal Rulemaking Process
6–9:15 p.m. CLE course cosponsored by the Administrative Law and Agency Practice Section; Arts, Entertainment, Media and Sports Law Section; Computer and Telecommunications Law Section; Corporation, Finance and Securities Law Section; Courts, Lawyers and the Administration of Justice Section; Environment, Energy and Natural Resources Section; Government Contracts and Litigation Section; Health Law Section; Labor and Employment Law Section; and Real Estate, Housing and Land Use Section.

MAY 9

Basic Estate Planning, Part 1
6–9:15 p.m. CLE course cosponsored by the Courts, Lawyers and the Administration of Justice Section and Estates, Trusts and Probate Law Section.

MAY 10

Auditors as Gatekeepers for Investors: The Legal Landscape in Our Global Financial Markets
12–2 p.m. Sponsored by the Investor Rights Committee of the Corporation, Finance and Securities Law Section.

Poker & the Law, Part 1: How Poker Can Make You a Better Litigator
12–2 p.m. Sponsored by the Young Lawyers Committee of the Corporation, Finance and Securities Law Section and cosponsored by the Administrative Law and Agency Practice Section; Antitrust and Consumer Law Section; Arts, Entertainment, Media and Sports Law Section; Family Law Section; Health Law Section; Labor and Employment Law Section; Law Practice Management Section; Litigation Section; Taxation Section; and Tort Law Section.

Fourth Annual Alan B. Levenson Symposium
5–9 p.m. Sponsored by the Federal Bar Association, D.C. Chapter. U.S. District Court for the District of Columbia, 333 Constitution Avenue NW, Ceremonial Courtroom, sixth floor. Contact Melissa Stevenson at 571-481-9100 or mstevenson@fedbar.org.

Speaking of Ethics

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

Elections

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Environment, Energy and Natural Resources (Three Vacancies): Charles L. Franklin, Akin Gump Strauss Hauer & Feld LLP; Laura R. Goldin, U.S. Nuclear Regulatory Commission; Rachel Jacobson, U.S. Department of the Interior; Kelly A. Johnson, Holland & Hart LLP; Emily M. Lamond, Orrick, Herrington & Sutcliffe LLP; Benjamin S. Lippard, Vinson & Elkins L.L.P.; Peter H. Oppenheimer, NOAA Office of the General Counsel.

Estates, Trusts and Probate Law (Three Vacancies): James L. Frazier, Law Offices of James Larry Frazier; Valerie B. Geiger, The Elder & Disability Law Center; Christopher M. Guest, Law Office of Christopher Guest; L. Laurel Lea, Furey, Doolan & Abell, LLP; Giannina "Gina" Lynn, Attorney-at-Law; M. Cecelia Steiner-Smith, D.C. Office of the Attorney General; Nicole D. Stevens, Register of Wills, D.C. Superior Court.

Family Law (Three Vacancies): Aaron J. Christoff, Nugent Christoff, PLLC; Lisa A. Freiman Fishberg, Schertler & Onorato, LLP; Christopher M. Locey, Kuder, Smollar & Friedman, P.C.; Sara S. Scott, Zamani & Scott, LLP; Avrom D. Sickel, Family Court Self-Help Center, D.C. Superior Court; Robert D. Weinberg, Delaney McKinney LLP.

Government Contracts and Litigation (Two Vacancies): Daniel E. Chudd, Jenner & Block LLP; Adelicia R. Cliffe, Crowell & Moring LLP; Jonathan L. Kang, U.S. Government Accountability Office; Lartease M. Tiffith, U.S. Department of Justice.

Health Law (Two Vacancies): Jenifer A. Cromwell, Groom Law Group, Chartered; Phillip Lyle Husband, D.C. Department of Health; Nicole A. Liffrig Molife, Arnold & Porter LLP; Steven R. Smith, Ober|Kaler; Hemi D. Tewarson, U.S. Government Accountability Office.

Intellectual Property Law (Two Vacancies): Suzanne Balsam, U.S. Department of Agriculture; Ryan C. Compton, DLA Piper US LLP; Joyce Craig, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Robert J. Kimmer, Rader, Fishman & Grauer PLLC; Sean A. O'Donnell, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; Sidney A. Rosenzweig, U.S. International Trade Commission; Kelu L. Sullivan, Baker & Hostetler LLP.

International Law (Two Vacancies): Alden L. Atkins, Vinson & Elkins L.L.P.; John C. Floyd III, John C. Floyd III & Associates; Mary O. McCarthy, The Law Office of Michael R. McCarthy; Brian A. Pomper, Akin Gump Strauss Hauer & Feld LLP; Michael S. Snarr, Baker & Hostetler LLP; Reid S. Whitten, Fulbright & Jaworski LLP.

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Litigation (Three Vacancies): Vanessa Buchko, AARP Legal Counsel for the Elderly; Lara Degenhart Cassidy, Law Office of Lara Degenhart Cassidy; Elizabeth D. Curtis, U.S. Social Security Administration; Russell D. Duncan; Orrick, Herrington & Sutcliffe LLP; Robert N. Kelly, Jackson & Campbell, P.C.; W. Brad Nes, Morgan, Lewis & Bockius LLP; John E. Reid, Tobin, O'Connor & Ewing; Keiko K. Takagi, Sughrue Mion, PLLC; Karen R. Turner, Hamilton Altman Canale & Dillon, LLC.

Real Estate, Housing and Land Use (Two Vacancies): Peter D. Antonoplos, JD Katz: Attorney-at-Law; David H. Cox, Jackson & Campbell, P.C.; Todd Lewis, The TR Lewis Law Group, P.C.; John E. Reid, Tobin, O'Connor & Ewing; David J. Walker, Saul Ewing LLP.

Taxation (Three Vacancies): Peter D. Antonoplos, JD Katz: Attorney-at-Law; George A. Hani, Miller & Chevalier Chartered; Scott M. Levine, Jones Day; Aaron P. Nocjar, Steptoe & Johnson LLP; Seth T. Perretta, Davis & Harman LLP; Alexander L. Reid, Joint Committee on Taxation, U.S. Congress; Rostyslav I. Shiller, Internal Revenue Service.

Tort Law (One Vacancy): Jordon D. Mathies, Mathies Law Offices, PLC; Thomas C. Mugavero, Whiteford, Taylor & Preston, L.L.P.

Legal Beat

continued from page 16

is run by the Children's Law Center (CLC) in partnership with the Children's National Medical Center. At the clinic, lawyers will participate in teen parent support groups so that teens can get comfortable and familiar with those offering legal services for anything from child support to public benefits.

"Teens are an incredibly important group to serve because if you get them early, you get them on the right track," said Judith Sandalow, CLC executive director. "Their children are at very high risk. Teen parents are at very high risk of abusing their children, of being homeless. It's a very precarious time. If we can give them the support they need to be good parents, we're winning both for the teens and their child."

The two new expansion projects are the Real Property Tax Project through the Legal Counsel for the Elderly, aimed at helping seniors stay in their homes, and the School Discipline Legal Services Project through Advocates for Justice and Education, which targets at-risk youth and tries to help keep them in school and out of the criminal justice system.

To see the complete list of grantees, visit www.dcbarfoundation.org; for more information about the grants, contact Katherine L. Garrett at 202-467-3750, ext. 12, or garrett@dcbarfoundation.org.—*T.L.*

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

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legal spectator

By Jacob A. Stein

A Library Card, Bruno Furst, and First Base

I obtained my first library card when I was 12 years old. It was with the Mount Pleasant Branch of the D.C. Public Library near 16th and Irving Streets. The library had a children's division apart from the main section. The card gave me (with an adult's signature) the right to take out three children's books. When I was 14, I converted my children's card to an adult's card. This entitled me to roam at will the stacks in the adult section.

Every two weeks I returned books and took out three more. When a book went unreturned beyond the due date, the library imposed a five cent penalty. I occasionally had a bad dream that I failed to return the books and I had run up a huge fine.

Woody Allen had a dream similar to mine. In his stand-up comedy days, he said he had delayed returning his Brooklyn library books. One morning he was awakened by police sirens in front of his house. He jumped from bed and looked out the window. The police were surrounding his house. One of them, using a bullhorn, yelled: "Return those overdue library books. We're coming in after you." The cops then fired a few shots in the air. Woody tossed the overdue books out of his bedroom window. The cops caught them in what is called a suicide prevention net. Then, armed with pistols, they stormed the house, determined to get the late fees.

Libraries can be dangerous places. Karl Marx used the British Museum library for his reading and writing. He had only his library card, a desk, pens, and ink. What he wrote at his small desk was a proximate cause of the Russian Revolution. Other notable writers, George Orwell, Mahatma Gandhi, and Mark Twain, did some reading and writing in the British Museum library.

The American counterpart of the famous libraries is the New York Public Library on Fifth Avenue with the lion statues sitting in front. In the 1930s Depression it was the home for a group of would-be writers whose parents were immigrants, some of whom could not read or write in English.

When I was 15, I wanted to be a good first baseman. I saw in the library a book about baseball written by Duke University's baseball coach. I read it twice. But the fact of the matter is, you don't become a good first baseman by reading a book. I got to know most of the good first basemen who played on the sandlots. None of them had a library card.

What started these digressions about the Mount Pleasant library is Joshua Foer's new book, *Moonwalking with Einstein: the Art and Science of Remembering Everything.* It is a best seller. Foer says that special memory tricks can make you a memory wizard.

> When I was 17, I became acquainted with memory tricks by reading in the Mount Pleasant library Bruno Furst's book on mnemonics.

When I was 17, I became acquainted with memory tricks by reading in the Mount Pleasant library Bruno Furst's book on mnemonics. My memory was then, and is now, no better than anybody else's. But Bruno Furst gave me the secrets.

I became pretty good. I wanted to show off. Somehow or other, in 1948, I found my way onto one of the early afternoon TV shows, doing memory tricks. On one show, I gave the population of 30 states. I was on four of these TV shows. After the fourth show, the producer told me I had no future in television. The theatrical gift was not there. You either have it or you don't. I didn't have it.

Another library book I read was *Think and Grow Rich,* written by Napoleon Hill and published in 1937. In some respects, the book is nonsense. But in other respects, it is inspirational. Recently, I saw written on the cover that *Think and Grow Rich* has sold 10 million copies.

Napoleon Hill, as a young man, entered law school but he did not have the money to finish. He turned to journalism. He was lucky enough to get an interview with Andrew Carnegie (1835–1919), the multimillionaire who came here from Scotland with nothing, and who, in 20 years, became one of the wealthiest persons in the United States. He did good things with his money.

Wikipedia reports that Mr. Carnegie built 1,689 libraries in the United States. The Pittsburgh library was the first Carnegie library. It was Pittsburgh because that is where Carnegie made his fortune.

Carnegie, so Napoleon Hill said, urged Hill to interview people who, like Carnegie, started out life with nothing and became wealthy. Carnegie said to Hill that, if he were clever, he could get from these people the "secret" of how to get rich. This "secret" is not explicit. It must be deduced. Hill may be the person who can do it and put that "secret" in a book so other industrious and ambitious people can deduce it, succeed with it, and get rich.

But most importantly, they must help others.

Napoleon deduced the "secret" because he became rich himself selling his book.

Last Saturday, I returned to the Mount Pleasant library for the first time in 65 years. It was closed. The sign said that there was a substantial renovation underway.

I intend to return a few months from now to make an inspection. As with other local libraries, the Mount Pleasant facility will have done away with the card catalogue. It will have computers, CDs, and DVDs.

But there will still be books to take down and flip through. I know that as I read a few pages, I will experience the emotion of those happy times at the Mount Pleasant library. I may even read a few pages of *Remembrance of Things Past.*

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

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Keynote Luncheon
12:30 - 2:15 p.m.
Keynote address by **Linda Greenhouse**, Joseph Goldstein Lecturer in Law, Yale Law School and Pulitzer Prize-Winning Former Supreme Court Correspondent for *The New York Times*

Closing Reception
5:15 -7:00 p.m.
Conference attendees are invited to an informal cocktail reception where they can meet and greet members of the bench and bar.

Plenary Session I – *Blindspot: The Hidden Biases of Good People*
9:15 – 12:15 p.m.

Presenter: **Dr. Mahzarin R. Banaji,** Department of Psychology, Harvard University

Plenary Session II – *Applying the Principles: Dismantling Hidden Biases and Learning Neutral Assessment of Credibility, Competency, and Evidence*
2:30 – 3:45 p.m.

Moderator: **Kimberly Papillon, Esquire,** Senior Education Specialist, Judicial Council of California
Panelists: **Honorable Noël Anketell Kramer,** District of Columbia Court of Appeals
Honorable Herbert B. Dixon, Jr., Superior Court of the District of Columbia
Kenneth L. Wainstein, Esquire, O'Melveny & Myers, Washington, D.C.
Michele A. Roberts, Esquire, Skadden, Arps, Slate, Meagher & Flom, LLP, Washington, D.C.

Plenary Session III – *Courtroom Innovations from the Heartland and Elimination of Implicit Bias in the Courtroom*
4:00 – 5:00 p.m.

Presenter: **Honorable Mark W. Bennett,** United States District Court, Northern District of Iowa

For the complete conference agenda, visit us online at **www.dccourts.gov/dcjudicialconference**.

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