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CRITICISM OF ARTICLE ON INDIAN CHILD

“Children of the Tribe,” October, page 40, sadly reports without question the Pages’ version of Lexi’s transfer to a kinship placement supported by her own attorney, the state of California and the Choctaw Nation. Worse, the article uncritically highlights the media event created by the foster parents and their counsel (and disappointinglly includes photographs). The affair violated Lexi’s privacy rights, which is why state social workers attempted to block cellphone video, and may have also violated their attorney’s duties under the ABA Model Rules of Professional Conduct: 3.4 (fairness to opposing parties), 3.6 (trial publicity) and 4.4 (respect for rights of third persons). Hopefully, readers will not learn from this article that the best way to fight a child’s placement with her family is by creating an unethical media circus.

The article misstates the law as well. Lexi would be with her Utah relatives with or without the Indian Child Welfare Act. California law weighs placement heavily in favor of relatives, not foster families, in these cases. However, only in California could a foster family appeal the placement of their ward under its unique “de facto parent” doctrine. In addition, the Multiethnic Placement Act, enacted by Congress in 1994, explicitly excludes ICWA cases from its application. Finally, the article devolves from reportage into racial politics, asserting that this tragedy only transpired because of Lexi’s racial heritage.

Lexi herself is a citizen of the Choctaw Nation. The Choctaw Nation’s citizenship requirement, like that of the United States, requires a political connection between the individual and the nation, not mere ancestry. The only reason there was a media-fueled tragedy is because counsel for the foster family pointed at the act and the Choctaw Nation to incite race-based animosity when the facts and the law were not in their favor.

Matthew L.M. Fletcher
East Lansing, Michigan

My mentor is a now-retired federal judge, one of ICWA’s co-authors. The profound lack of information on this simple piece of much-needed legislation, nearly 40 years after its enactment, is astounding. There is no way non-Native American care providers can supply the cultural, historical and spiritual upbringing a Native American child needs and deserves as their birthright.

Our culture had been decimated for generations before this law was enacted. We have a right to raise our future elders and leaders in our own culture. If the roles were reversed and we suddenly wanted to adopt white children and raise them as Native American, the media and others would be outraged.

Why is it considered OK to remove our children from their birthright cultures and raise them as something they are not? All tribes have an extensive and well-trained foster family system, beyond our extended families, in which we can raise our own children. The ICWA was written to apply to all children who can prove Native American heritage, whether the parents are enrolled or not. Where Native American children are involved, white courts have no jurisdiction—period.

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Blueprint for Success for Your Practice

New ABA member benefit offers lawyers practice tools at deep discounts

In 1999, Associate U.S. Supreme Court Justice Sandra Day O’Connor put her finger on an issue that continues to plague lawyers—time management.

“Certainly, life as a lawyer is a bit more complex today than it was a century ago,” she wrote. “The ever increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession.”

As ABA president-elect last year, I traveled around the country, asking lawyers what they need from a national bar association. They told me that the administrative burdens of running a law practice cut deeply into the time they have to do what they love—practice law.

This is particularly true for small-firm and solo practitioners who constitute 76 percent of U.S. lawyers.

During a stop in Denver, a solo lawyer told me: “I don’t have time to practice law because I have to make time to send client bills and collect them and pay my own bills.”

In Fargo, N.D., a lawyer told me his legal secretary quit to become a greeter at a car dealership. Why? She needed health insurance for herself and her family, and the solo practitioner couldn’t offer it.

These stories inspired us to generate solutions to their dilemmas. The ABA’s first goal is to serve our members with the objective of providing benefits, programs and services that promote professional growth and quality of life. In the spirit of that goal, we are proud to unveil ABA Blueprint, a dynamic online tool that provides access to services packaged to help solo and small-firm lawyers manage the complexities of their practices.

ABA Blueprint provides members and other lawyers a convenient way to obtain services essential to running small-sized practices, from billing technology to virtual assistants to insurance.

Some of the products available through Blueprint include Ruby Receptionists, a virtual receptionist service offering a special Solo Plan that is exclusive to the ABA. Also Clio, which provides cloud-based law practice management software, is offering a 25 percent discount on its Boutique subscription. Other notable products with special discounts and rebates for ABA members include LawPay, Lexicata, Quickbooks Online, and Office 365.

ABA members also will have access to member-only features including the Firm Builder, an online chat service that offers customized practice solutions based on members’ individual needs and free consultations with practice management experts.

The latest ABA Legal Technology Survey Report shows that nearly 40 percent of small-firm lawyers are using law practice management software, while 30 percent of solo practitioners report using it. The ABA hopes to expand on this trend, offering better and more economical options.

The ABA developed Blueprint with CuroLegal, a legal technology consulting and software development firm owned and operated by lawyers. It runs in conjunction with another new member benefit initiative—ABA Insurance. The affordable insurance program, administered by USI Affinity, offers competitive pricing from top carriers on life, disability, dental, vision and travel insurance, as well as student loan consolidation. We anticipate that additional types of insurance savings, such as home, auto and health, will be available in the future.

These benefits provide extraordinary value. Members get the quality services they need while potentially saving far more than they pay in dues.

But ABA Blueprint is about more than just saving money. By lightening their administrative burdens, lawyers will have more time for what they want to be doing—practicing law.

Justice O’Connor went on to write in 1999 that there was “no greater duty” and “no greater pleasure” for a lawyer than devoting time to serve a community.

ABA Blueprint is designed to make being part of our profession a little easier and more rewarding for all lawyers.

Please visit www.abablueprint.com to learn more.

Follow President Klein on Twitter @LindaKleinLaw or email abapresident@americanbar.org.
Mobile Justice
Minnesota law school takes pro bono work on the road

IN MOST PARTS OF THE COUNTRY, recreational vehicles are typically used for leisure activities. But in Minnesota, a 20-year-old RV has been retrofitted for a new purpose: to house the Mobile Law Network, a traveling pro bono law office.

In September, Mitchell Hamline School of Law in Saint Paul rolled out the 31-foot red RV, dubbed the “Wheels of Justice,” as a unique way to dispatch law students to areas beyond the Twin Cities.
Opening Statements

Mitchell Hamline dean and president Mark Gordon came up with the idea for the mobile law office in July 2015. Gordon says he had been hearing concerns about legal needs throughout Minnesota, and he was looking for a way for students to help.

“I knew I wanted something mobile, because that was a way we could reach across the state,” says Gordon. “Some people suggested we use a bus; but frankly, we were looking to do this quickly and inexpensively, and I knew it was possible to get used RVs, and that it wouldn’t be too difficult to change one into a usable space.”

It took about $40,000 in donations to purchase and then transform the RV into a two-office space, with internet access and printing capabilities.

Administrators say they know of no other law school with a current RV-based traveling pro bono office. The University of Detroit Mercy School of Law launched a similar mobile office in 2008 but has since discontinued the program.

In October, in its inaugural trip as a law office, the Wheels of Justice RV took law students to Mankato, a small city south of Saint Paul. Law students, under the supervision of licensed attorneys, advised pro se clients on family law matters.

Administrators say the law school plans further journeys in the RV to provide other types of pro bono services, including helping individuals with criminal expungements. Peter Knapp, a law professor and director of Mitchell Hamline’s clinical program, says students are getting hands-on experience helping individuals to navigate the legal system.

“When it comes to understanding how the law really works, there’s nothing like meeting clients in the real world,” Knapp says.

—Anna Stolley Persky

INDIANA JONES AT LAW
BEYOND FIGHTING BOREDOM, ATTORNEY DISCOVERS BUSINESS OPPORTUNITIES DURING HIS TRAVELS

A nighttime exploration by flashlight of the ruins of the ancient city of Palmyra prior to the Syrian civil war may not be everyone’s idea of a relaxing vacation.

But it’s just the kind of trip Chicago attorney John Goldstein seeks out on his travels. “An educational trip. Something that’s not boring or stuffy,” he says.

Goldstein has traveled to more than 140 countries, including Uganda (tracking gorillas), India (where he spent two weeks on the Ganges River) and Ethiopia (to the city of Axum, the alleged resting place of the Ark of the Covenant, a biblical artifact hunted by Indiana Jones in the Raiders of the Lost Ark blockbuster).

“I try to never miss an opportunity,” says Goldstein, who is a partner with St. Louis-based Greensfelder, Hemker & Gale. Goldstein points to unassuming professor-turned-adventurer Jones as a big inspiration. “My vacation days aren’t spent lounging on beaches—that’s fun, but I can do that at home.”

The globetrotting commercial real estate attorney also happens to be a master bridge player and serious theater buff. And while Goldstein acknowledges that his work and hobbies aren’t the kinds of things you’d expect to see intersecting in a Venn diagram, he says there is a common thread: Every legal transaction he works on is different, just like every bridge hand, global adventure or play he sees.

Goldstein divides his out-of-office time between acting as president of a Midwest district of the American Contract Bridge League; serving as vice chairman of the Joseph Jefferson Awards Committee—the Chicago theater community’s equivalent of the Tony Awards; and traveling to all seven continents.

“I wasn’t the biggest fan of law school,” Goldstein says, recalling how his boredom in the classroom spurred him to seek other forms of excitement. “But once I started practicing, I fell in love with my career. And the best part is that now I am able to generate business out of the other things I enjoy. I meet so many people from so many walks of life; I’m able to mix these worlds in a nice way.”

In fact, one of the things Goldstein likes best about his hobbies is that they allow him to interact with people he wouldn’t normally connect with during a typical workday.

“It’s not that I don’t enjoy lawyers, but it is so great to get out into the world,” he says.

—Judy Sutton Taylor
Former Law Dean Tackles Equality Initiative works to foster better race relations in sports

WHEN JUSTICE RUTH BADER GINSBURG weighs in on NFL quarterback Colin Kaepernick’s controversial kneeling during the national anthem, it’s clear the intersection of race and sports has become a flashpoint in the national discourse. A former law dean will now be tackling these sorts of issues head on in her new role as CEO of the Ross Initiative in Sports for Equality.

“I was offered an incredible opportunity to lead a national campaign to improve race relations in America at a time when there are very clear divisions,” says Jocelyn Benson, who recently resigned after four years as dean of Wayne State University Law School in Detroit.

Benson brings a notable track record in law and social justice to the RISE leadership. She is the youngest woman in U.S. history to serve as dean of a top-100 accredited law school, was named one of Crain’s “100 Most Influential Women in Michigan,” and is one of the youngest women to be inducted into the Michigan Women’s Hall of Fame.

RISE was founded in 2015 by Wayne Law alum and Miami Dolphins owner Stephen M. Ross after a bullying scandal involving team players Richie Incognito and Jonathan Martin brought scrutiny on race relations in sports. Ross, who is also a real estate magnate and philanthropist, intends RISE to be an “alliance of sports leagues and associations, organizations, educators, thought-leaders, media networks, sports professionals, athletes, coaches and others who believe in the power of sport to build a society of understanding, respect and equality.” The organization works with major sports organizations, including the NBA, the NFL and the NCAA.

While Benson will continue to teach a course at Wayne State, she says she was ready to hand the position of dean over to someone new.

“I thought I had accomplished everything I wanted as dean. I had seen my rankings increase, an increase in enrollment, an increase in caliber of students in the law school,” Benson says.

Now she is taking on new challenges. Among them are the implementation of RISE’s outreach goals and programming.

“On one hand, we work with professional athletes to provide them the resources and support that they need to improve race relations,” Benson explains, citing a recent meeting that the initiative helped moderate with the New York Giants. But RISE also is focused on early intervention, including “building leadership skills in young athletes.”

Earlier this year, RISE introduced an eight-week anti-racism pilot program focused on youth sports teams in Michigan schools. A new 10-week program will be launching soon.  

—Allison Deerr

What’s on the Shelf

Litigator expands interrogations into presidential history

What do you get when you mix a seasoned litigator, a presidential history buff and a passionate writer?

No, not a bad lawyer joke but the perfect combination of skills needed for author Talmage Boston to pull off his new book, Cross-Examining History: A Lawyer Gets Answers from the Experts About Our Presidents. In the 500-page compendium, Boston puts presidential history on the witness stand, offering readers the chance to learn more about America’s commanders in chief.

Cross-Examining History contains 31 edited transcripts of Boston’s onstage interviews, conducted all over the country with some of America’s leading presidential historians and insiders. Starting with a foreword by Ken Burns, the book is a who’s who of literary and political luminaries, including David McCullough, Jon Meacham and Henry Kissinger.

The 63-year-old Dallas attorney leverages his background as a history buff and historian to conduct insightful interviews, and he utilizes his experience as a litigator to delve deeper into analyses of how time has judged our leaders.

Boston, a shareholder at Winstead, has practiced law for 38 years, specializing in commercial trial and appellate law. He’s written four books, including two about baseball—his other passion.  

—Liane Jackson
Amazon and Goliath

New streaming series explores corporate power, BigLaw and human redemption

IS THE MODERN-DAY COURTROOM stacked against the little guy? That's the core question explored in Goliath, the new Amazon Prime show by Jonathan Shapiro and David E. Kelley. The streaming series takes “a very dark look at law in the 21st century,” Shapiro says, and reaches some dire conclusions.

Goliath is about corporate power, BigLaw and what it takes to take a stand against them. But it’s also about human fallibility, revenge and redemption. Billy Bob Thornton stars as a Billy McBride—once a powerful litigator, now a washed-up drunk. When McBride and a ragtag team take on a wrongful death suit against the biggest client of his old firm, they uncover a widespread conspiracy “pitting them all in a life or death trial against the ultimate Goliath,” Shapiro says.

“In the 21st century, large law firms have become enormous economic and technological behemoths,” he adds. “They can control outcomes in the civil sphere in a way that's unprecedented. We wanted to do a show about that.”

Shapiro is co-creator, writer and executive producer on Goliath, which is his first foray into online television. But he’s had a long career in Hollywood with shows such as The Practice. Shapiro says the streaming series allowed the team a wider berth for big issues that would have gotten short shrift on network television: depression and substance abuse among lawyers, the litigation advantages of the rich and powerful, the demise of the jury trial, and the risk to civil liberties in a time of perpetual war.

It’s deep stuff, but Shapiro says he and Kelley wanted to dig in without causing sensory overload. “We’re not doing a lecture series, you don’t want to be didactic, it’s not continuing legal education,” Shapiro says. “Here you know everyone’s back story and you care deeply about what happens to these people as a result of this court case.”

As the flawed anti-hero, Thornton keeps scenes interesting, and the sharp cast is rounded out by stars, including William Hurt and Tony award winner Nina Arianda. Shapiro, a former federal prosecutor, Kirkland and Ellis alum, and lecturer at the University of Southern California’s Gould School of Law, says he was intrigued by the idea of following a single, complex civil case over the course of eight episodes.

“I write about law because it’s something I know a little bit about,” Shapiro says. “Law is the greatest place to get stories—all the best stories are in the law, in court.”

If people like the show, Goliath will be back for additional seasons. In the meantime, Shapiro is finishing a third book and working on another series.

“It’s taken me 16 years where if I fill out a form about what I do, I now write ‘writer,’” Shapiro says. “It took me that long to accept it. You’re always a lawyer. You don’t recover from that.”

—Liane Jackson

CONGRATULATIONS to Zachary Phillipps of Stamford, Connecticut, for garnering the most online votes for his cartoon caption. Phillipps’ caption, far right, was among more than 100 entries submitted in the Journal’s monthly cartoon caption-writing contest.

JOIN THE FUN Send us the best caption for the legal-themed cartoon at right. Email entries to captions@abajournal.com by 11:59 p.m. CT on Sunday, Dec. 11th, with “December Caption Contest” in the subject line.

For complete rules, links to past contests and more details, visit ABAJournal.com/contests.
Hearsay

We’re No. 1!

DLA Piper is tops—in digital marketing and social media, that is. The firm topped an evaluation of those on the 2015 Am Law 100 list. The index ranks firms based on social media marketing performance, reach and engagement, along with “thought leadership content.”

Source: Good2bSocial’s The Social Law Firm Index (Sept. 21).

Did You Know?

Latham & Watkins has unveiled a breast-milk shipping program that allows nursing moms traveling for work to ship the precious cargo back home to their babies. The special shipping packages include a Styrofoam box that chills at the press of a button, storage bags, labels and packing tape, and it travels by FedEx.

Source: law.com (Sept. 15).

Survey Says

Female grads from the top 10 law schools ranked by U.S. News & World Report drop out three to five years after joining BigLaw at a much higher rate than those from lower-tiered law schools. Women from schools ranked 51 to 100 increased in numbers in BigLaw over time.

Source: ALM Intelligence (Sept. 15).

61 Grams

The amount of sugar contained in a bottle of some Naked Juice beverages, according to the Center for Science in the Public Interest. The CSPI is suing PepsiCo Inc. for marketing its Naked Juice drinks as healthier than they are, alleging they contain mostly high-sugar juices such as apple and orange—and more sugar than a can of Pepsi. The center alleges consumers are paying a premium for the drinks—and are being misled to believe the primary ingredients are healthier alternatives like kale or berries.

Source: Center for Science in the Public Interest (Oct. 4).
WHERE IN THE WORLD IS ANITA DHAKE? That question used to be pretty easy to answer because the 34-year-old former associate spent most of her waking hours behind a desk at Skadden, Arps, Slate, Meagher & Flom.

Now, however, she could be anywhere—Alaska, Australia, Colombia, Thailand. That’s because Dhake left her firm last fall—she prefers the term retired—to become a full-time world traveler and blogger. She’s not independently wealthy, and she didn’t win the lottery. Instead, she spent years following a time-honored financial technique called saving money. Now Dhake is helping others do the same thing through her blog, the Power of Thrift. There, she pens a variety of posts, including observations on life and love, humorous travel notes and, to the delight of her growing audience of aspiring young retirees, candid financial advice about the strategies she uses to maintain her life on the road.

Your story has been covered by Forbes, Yahoo
Opening Statements

Finance and a number of popular personal finance blogs. What do you think of all the media attention? It really makes me happy that this is a thing, but I don’t want what I did to be abnormal. I want more people to take this path. To me, it’s such a simple concept: Money lets you live whatever life you want to live. There are so many souls out there who don’t understand that. It drives me nuts when I hear someone say they hate their job but continue to waste money on stuff instead of saving for their preferred life.

On the blog, you’ve addressed the importance of having a financial strategy that values systems over goals. What do you mean by that? It might just be semantics, but it’s a different way of thinking about achievement. While chasing a goal, you’re in failure mode—not having achieved the goal until the often anticlimactic moment when you achieve it. With systems, you make it a habit. It’s what you do every day and how you live your life. You’re always succeeding because you’re doing what you set out to do. So for personal finance, a goal is to get out of debt. A system is to avoid buying stuff you don’t need.

You obviously didn’t enjoy practicing law. How did you last five years? My initial goal was only to stay as long as it took to pay off my student loans. That I stayed five years is shocking. But paychecks are hard to give up.

When you retired and hit the road, what did you do with all your stuff? I mean, I assume you had furniture, books, clothes ... . I threw a party and gave away a lot to friends. I sold a bunch more. The few things I kept, like my law school diploma, live in a box in my parents’ basement.

Where did you develop your sense of thrift? Was it how you grew up? Yes. My parents were both superthrift. As first-generation immigrants from India, they frequently recounted their struggles when they first came to the United States. Growing up, we talked about money all the time. I always knew what we could and could not afford.

Did you always know you wanted to become a full-time traveler? Ever since I was a little kid, I loved going places. I had a map in my diary, and I’d color the states I’d been to.

Are you ever worried you’ll run out of money? Not really. I’ve been tracking my expenses for years and know what I need. I’m also superflexible with life and can get by on what most people would consider a small sum of money a year. Plus, I could always go back to work. But, theoretically, my investments should cover me. I check in on them every few months to make sure my passive income is above my expenses, and that’s the only time I think of money.

How do you decide where you’re going next? I ask myself: What do I want to learn? Where have I never been? Where do people I love live who want to hang out with me? I also try to minimize, if not eliminate, my time in cold weather. I hate the cold.

Are you ever bored? Not at all! If anything, I wonder how I had time to work! I have a huge life bucket list—there’s so much to do and so much to try. I’m working on a book proposal, learning how to cook my mom’s recipes, writing for my blog, reading and traveling. When I was working, I used to come home from work and watch TV just to shut my brain off. Now I never watch TV! I’m doing what I enjoy, so I don’t need time to recharge or relax.

Do you ever get lonely? That’s the biggest thing I’m struggling with now. I am happy so much of the time, but there are times when I’m sitting alone at the airport and I just feel isolated. Whenever I get sad, I remind myself that this is my choice. I have as much control over my life as anyone, and this is how I chose to live it. If the worst thing that happens to me is the occasional feeling of loneliness at an airport, that’s pretty great.

—Jenny B. Davis
About 40 percent of people surveyed said they would not have been able to appear in court without the online option.

Home Court Advantage

Michigan program allows people to contest traffic tickets and handle other minor legal matters online instead of in court

By Anna Stolley Persky

If you’ve ever gotten a traffic ticket, you know it’s a hassle if you decide to fight it. Getting to court, waiting for your case to be called and presenting your side can take hours. You may even need to miss a day of work. But if you live in some parts of Michigan, you might be able to go to court without actually going. A growing number of courts have adopted a software
program called Matterhorn, which enables individuals to resolve a handful of legal issues online, at any time, even the middle of the night. Ohio has started using the technology, and other states are looking into it as well.

That means people can challenge tickets in the comfort of their living rooms, cars or anywhere they have access to the internet. Officials from Court Innovations Inc., which markets, implements and maintains Matterhorn, say the company is dedicated to access to justice and making that access easier.

“Matterhorn allows people to get to court without actually having to go to court. For some people, it may be their only way to have their voices heard,” says MJ Cartwright, chief executive of Court Innovations. “That’s important to us.”

**CHOOSING WHAT’S POSSIBLE**

So far, 17 Michigan state courts have set up online dispute resolution services through Matterhorn. The program can facilitate resolution of an increasingly “wide breadth” of civil and criminal infractions, notes Cartwright. Court Innovations is in final negotiations to launch the service for the first time in a family court.

Courts using Matterhorn determine what types of legal issues will be resolvable online and what types will require an in-court appearance in their jurisdictions. Some Michigan courts have opted for online traffic ticket resolution only, while others have ventured into misdemeanors and warrant resolution.

For example, Michigan’s 54-A District Court, which includes the city of Lansing, uses Matterhorn for traffic tickets and cases involving the failure to pay outstanding warrants. Court administrator Anethia Brewer says the court is looking into increasing its online program to include parking tickets and driving with a suspended license.

In October, the Matterhorn platform expanded outside of Michigan for the first time. Franklin County, Ohio, began using the platform for small claims matters. Cartwright says she expects more courts to follow suit, using the platform for a variety of dispute resolution needs.

“We are talking to quite a few different jurisdictions in Ohio and, in fact, throughout the country,” Cartwright says. “There are collections and payment systems out there, but there really isn’t another system that allows you to negotiate outstanding penalties, resolve outstanding cases, comply with judgments and all the other things we can do.”

Jason Tashea, founder of Justice Codes—a Baltimore-based company that helps Court Innovations implement Matterhorn—says the software helps courts handle high-volume cases on tight budgets. The platform does not require a monthly subscription, he says, which should appeal to cash-strapped courts. Instead, courts pay a fee to Court Innovations every time the platform is used, or “pay-per-use.”

“Courts are known for being recalcitrant to change, and slow-moving when it comes to technology, but the interest in this project is higher than others because it is so simply designed,” says Tashea (who freelances for the *ABA Journal*).

Matterhorn was born in academia. Five years ago, University of Michigan law professor J.J. Prescott and his then-student Ben Gubernick were brainstorming an online resolution program to help with the backlog of outstanding warrants in the court system. Around that time, Prescott waited four hours and missed a day of work to appear in court for a traffic ticket.

At that point, the men realized that including traffic tickets and other minor legal offenses in their online resolution concept made sense. They did their research: While some courts offered ways to pay tickets online, most did not allow for individuals to “have a voice” in the process, Prescott says. Neither Prescott nor Gubernick knew how to write computer programs. With help from a University of Michigan grant, they began the U-M Online Court Project. They hired programmers to develop a prototype for Matterhorn, which they pitched to the Michigan State Court Administrative Office. Prescott and Gubernick then launched Court Innovations to deliver the technology. Researchers at the University of Michigan are still using grant money, Prescott says, to improve and further develop online court access.

**MAKING THE CASE**

The Matterhorn platform allows individuals to argue their cases online through written submissions, which can then be reviewed by prosecutors or judges, depending upon the procedures in a particular jurisdiction. The system allows for and encourages judicial and prosecutorial discretion, Prescott says.

In some jurisdictions, individuals can use the system to explain why they can’t pay a particular penalty and then set up a payment plan or other means of resolving their outstanding balances.

“The platform allows for people to come online, find in the court’s database their outstanding issue and then communicate in a structured way about the issue,” Prescott says. “All we’ve done is built an online space for these types of communications.”

Prescott also says the program is intended to help courts resolve any backlog of unpaid tickets and fines by encouraging individuals to interact with the courts and face their outstanding bills and legal matters. Some individuals who access the system online, he says, might otherwise have ignored or tried to avoid resolving their traffic tickets, outstanding warrants or fees, or other legal issues.

“If you have an outstanding warrant, for example, because you missed a court appearance or owe money, you might be intimidated to walk into court and explain what happened. Or maybe you can’t take a day off work or your court is far away,” Prescott says. “But it’s not
always necessary for people to come in person.”

According to a survey conducted by Court Innovations, more than 80 percent of those who used the system said they were likely to recommend it to a friend or family member. About 40 percent of those who took the survey said they would not have been able to appear in court without the online option.

One user noted: “I haven’t been to court before. I wouldn’t have known what to do, where to go, what to say, so it really took a lot of stress from me to do this online.”

Michigan courts began using Matterhorn in 2014, as part of a pilot program approved by the Michigan Supreme Court. According to John Nevin, communications director for the court, the online dispute resolution platform fit right into the supreme court’s “strategic objectives” of efficiency, accessibility and innovation.

Nevin says the program has increased the efficiency of Michigan courts. For example, a study of three courts and 17,000 cases revealed a 74 percent reduction in average days to case resolution with online dispute resolution. A court in Washtenaw County using Matterhorn reduced case turnover from one or two months to just over seven days, according to Nevin.

“The online program is one example of the many ways we are modernizing our court system to make it more efficient and customer-friendly,” Nevin says. “We need to let people into the courthouse through their smartphones, not just through the door of the building. It’s the way business is done nowadays.”

Nevin sees online court programs as the wave of the future and a welcome change in the way courts do business. “It’s enough of a pain to get a ticket,” he says. “It shouldn’t be a pain to resolve it.”

Taking Shots
Should the public have access to data that police acquire through a private company?

By Jason Tashea

In 2013, Camden County, New Jersey, police started using the gunshot detection technology ShotSpotter. The way Dan Keasheon, spokesman for the department, tells it, the tool had an immediate impact.

“The first case we ever had with ShotSpotter, we recorded what were shotgun discharges out of a backyard,” Keasheen remembers. The officers went to investigate the shots and found a teenager test-firing the weapon and getting ready to head into the community. “We don’t know what he was going to do that night, but we were able to interdict anything that would have happened.”

The tool, deployed in 90 U.S. cities, is able to locate a gunshot within a 10-foot radius of its discharge and feed that information to a dispatcher or an officer in less than a minute. This matters, Keashen says, because those shotgun blasts were never called in by an individual, and the department would never have known of the incident without this technology.

ShotSpotter is, like body cameras, just one of many technologies law enforcement is adopting to capture more information with the aim of improving public safety. However, business and political interests are curtailing the public’s access to the data, which could be used to improve public safety, police accountability and citizens’ understanding of the nature of crime in their communities.

For ShotSpotter, data ownership is part of the business model. “ShotSpotter’s contracts give the firm ownership of the gunfire data by default,” explains Jennifer Doleac, an assistant professor of public policy and economics at the University of Virginia. “This means police departments cannot share the data with the public or researchers, even though taxpayer dollars are paying for those data.”

WHOSE DATA?
ShotSpotter CEO Ralph Clark says the data is proprietary, which is confirmed through a review by the ABA Journal of two contracts between the South Bend, Indiana, police department and the company.

“We don’t want the data to be given away so that other people could derive value from the process,” Clark says. He equates giving out the data for free through a public records request with “taking someone else’s Netflix subscription.”

This unique data set is not otherwise collected by government agencies. “The full universe of detected gunfire incidents isn’t available anywhere but in the ShotSpotter data,” Doleac says, adding that such information is valuable to researchers like herself.

Clark says the prohibition does not outright prevent sharing the data among other government agencies. However, if a department of public health, for example, wanted to use a police department’s ShotSpotter data for an initiative, it would be considered value added, and ShotSpotter would increase its fee accordingly.

While ShotSpotter allows a jurisdiction to purchase data outright, only New York City has done so, according to Clark. Separately, the District of Columbia has an open portal for its ShotSpotter data because of an older contract that provided data ownership.

The contract unambiguously states ShotSpotter’s ownership of the data;
However, officials from police departments interviewed for this article did not seem to understand what they owned.

Andrew Nicklin, the director of open data at the Center for Government Excellence at Johns Hopkins University (known colloquially as GovEx), helps governments secure rights to their data. He says that when governments are contracting with third-party vendors, “contracts either explicitly ignore ownership of data or [the] vendor retains ownership.”

A root problem, according to Nicklin, is that many governments do not define what data ownership means. GovEx attempts to fix this blind spot by providing boilerplate contract language, found online at labs.centerforgov.org, that helps governments retain ownership of their data when contracting services.

Capt. Dan Skibins of the South Bend Police Department, which has spent $435,000 on ShotSpotter since 2013, acknowledges the contractual limitations. “In my opinion,” Skibins says, “if I were a resident where ShotSpotter was implemented ... then I could understand why the public would want some of that information.” Skibins was unaware of any public records data requests made.

**BODY CAM BATTLE**

Even so, private contracts are not the only hurdle to ostensibly public data, particularly when it comes to law enforcement. Some U.S. legislatures are limiting public access to body camera footage.

Born from a national discussion about police misuse of force and the need for increased oversight, jurisdictions around the country have equipped law enforcement officers with body cameras. However, states such as Minnesota, New Hampshire and North and South Carolina have passed laws to restrict public access to police body camera footage.

Emily Shaw, a senior analyst at the Sunlight Foundation in Washington, D.C., says the laws being passed run the gamut from open and transparent to closed and opaque. “Legislatures have been playing catch-up over the last couple of years,” Shaw says. She notes that legislatures are challenged by trying to balance concerns related to people’s privacy, restrictions around ongoing investigations and the cost of redaction.

Shaw points to Washington as an example of a state with an expansive open records law that is applied to police body camera footage. However, she says that because of the complicated nature of the issue, there is every reason to expect that “where states can, they’ll try to shut down access.”

One state to prohibit public access to body camera footage is South Carolina. The law was signed in June 2015, a couple of months after the police shooting death of Walter Scott in North Charleston. Local police departments were given discretion to release body camera footage to the public. While footage from dash-mounted cameras in patrol cars remains accessible through a public records request, body camera footage is not.

Bill Rogers, the executive director of the South Carolina Sheriff’s Association, lobbied on behalf of the legislation. He says that Seattle’s experience with a deluge of requests for body camera footage was enough to prompt his state to require restrictions.

When asked whether the public’s restricted access was antithetical to the goal of increased transparency, Bruder says it was not. “The appropriate people can still get it,” he says, explaining that the law allows access to defendants and civil litigants to comply with existing constitutional standards and rules of discovery.

As these limitations to access evolve, so do approaches to circumvent them. Keith Porcaro, the general counsel of Social Impact Lab, a technology consultancy nonprofit in D.C., thinks there are other ways to get private data. (For more, see “10 Questions: Tech Support,” June, page 10.)

“Even though the data itself is still owned by these companies, the digital interactions with these systems and the output the systems produce may be acquireable under public records laws.”

—Keith Porcaro
Lines in the Sand
Court considers challenges to racial gerrymandering in Southern redistricting cases
By Mark Walsh

One term after the U.S. Supreme Court upheld the consideration of race in college admissions, and in a new term that already has cases on racial issues in the administration of the death penalty and in jury deliberations, one more race-infused subject will get the justices’ attention: redistricting.

The court will hear appeals on Dec. 5 from special three-judge federal panels that involve race considerations in redistricting in North Carolina and Virginia.

In the North Carolina case, McCrory v. Harris, the justices will consider whether two of the state’s 13 congressional districts, as drawn under a 2011 redistricting plan, represent unconstitutional racial gerrymanders.

In Bethune-Hill v. Virginia State Board of Elections, the court will weigh whether race was an improperly predominant factor in 12 challenged state House of Delegates districts (out of 100 districts in the state legislature’s lower house).

They’re the latest in a long line of redistricting battles to reach the high court, which has less flexibility on whether to hear such challenges than it does in most other areas of the law.

“It’s worth recognizing what an exclusively delicate position these state legislators are in,” says Paul D. Clement, the Washington, D.C., lawyer and Supreme Court specialist who will represent both states before the justices. “It’s almost impossible for a state legislature to redraw the map without drawing a challenge.”

The cases arise out of redistricting that occurred after the 2010 U.S. census, a time when Republicans gained control of both legislative chambers in 25 states and the governor’s mansion in 29 states. In several states, Republican legislative mapmakers sought to pack African-American voters into a handful of districts, generally to make other districts stronger for Republicans.

“There must have been some kind of memo that went around in Republican circles because basically you see this same pattern of behavior in Alabama, South Carolina, North Carolina, Virginia and probably other states,” says Paul M. Smith of Jenner & Block, who wrote an amicus brief on behalf of the Campaign Legal Center and other groups on the side of the challengers in the cases.

“The basic goal in redrawing these lines was to add the African-American population where possible to the existing African-American districts or, at a minimum, keep the population at a level that was much higher than it needed to be,” Smith says.

REMAPPING THE DISTRICTS
In North Carolina, lawmakers drew a remap after the 2010 census that increased the black voting-age population in two districts in an effort to create majority-black districts. In Congressional District 1, the BVAP increased from 47.8 percent...
to 52.7 percent. In Congressional District 12, the BVAP increased from 43.8 percent to 50.7 percent.

Challengers say this was an effort to pack African-American voters into the two districts, which led to easy victory for black candidates in 2012 elections. The state had no black-majority districts under its remap following the 2000 census.

“This case presents, as the district court appropriately put it, a ‘text-book example of racial gerrymandering,’ said Marc E. Elias, a partner with Perkins Coie, in a brief for the challengers. "This is no surprise: The state of North Carolina wrote the book on racial gerrymandering," (Elias could not be reached for comment. The prominent attorney for Democratic Party interests also was the general counsel to Hillary Clinton's presidential campaign.)

A special three-judge federal court panel struck down the state's redistricting plan based on the conclusion that Congressional Districts 1 and 12 were racial gerrymanders that violated the equal protection clause.

For District 1, the panel ruled unanimously that race predominated in drawing the district's lines, and considerations under Section 2 of the Voting Rights Act of 1965 didn't justify the racial predominance because there was a lack of evidence of racial bloc voting as required under the Supreme Court's precedents.

The district court divided 2-1 regarding District 12 in North Carolina, with the majority ruling race predominated against political concerns. The dissenting judge would have held that politics dominated against race in the district's drawing.

In the Virginia case, the state legislature drew a map after the 2010 census that created 12 state House of Delegates districts with the black voting-age population of at least 55 percent.

Virginia still was a covered jurisdiction under Section 5 of the Voting Rights Act, before the Supreme Court's 2013 Shelby County v. Holder decision. That ruling in an Alabama case struck down Section 4 of the Voting Rights Act, the provision that established the coverage formula for Section 5—which required states and locations with a history of discrimination in voting to gain federal approval of changes, including redistricting and election procedures. (See “Voting Blocks,” November, page 34).

State lawmakers contend they had to draw the 12 districts with high BVAP levels to avoid racial regression and to win preclearance for their plan. (And the Department of Justice precleared the plan in 2011.) Still, the plan was challenged as a racial gerrymander by voters. A three-judge panel upheld the plan.

While the adoption of a 55 percent BVAP goal was “significant evidence" of racial predominance, the court said that strict scrutiny applies only when, quoting Justice Sandra Day O'Connor in a redistricting case, “the state has relied on race in substantial disregard of customary and traditional districting practices.”

The court evaluated each district at issue and found that in 11 of the 12, race hadn't been a predominant factor. In the 12th district, the court found that the state had required “drastic maneuvering” to meet the 55 percent BVAP target, but it upheld the district because it said the use of race was narrowly tailored to meet the preclearance requirement.

One judge dissented, arguing that the state's use of a “one-size-fits-all” BVAP target suggested that race predominated in all 12 districts.

POLITICAL CONSIDERATIONS

Elias, whose firm also represents the challengers to the Virginia state districts, wrote in a brief that the district court majority reached a "counterintuitive conclusion” that the 55 percent BVAP goal did not result in racial predominance in 11 of the 12 challenged districts. “Ultimately, the majority's analysis turns a blind eye to the concrete harms of unjustified race-based districting,” Elias wrote.

Clement, in defending the Virginia remap, argued that a broad consensus existed on the need to maintain the 12 majority-minority state House districts to avoid preclearance problems, and that the legislature did not deviate from traditional districting principles to achieve its goal.

“To the contrary, the challenged districts retained, on average, more than 72 percent of their cores—a level above the statewide average,” Clement wrote in a brief. “And the few seeming abnormalities in the districts’ lines are readily explained by traditional criteria, such as incumbency protection, increasing compactness and contiguity, or political considerations.”

Law professors and other analysts inevitably turn to an issue not squarely presented by the cases—political gerrymandering.

“On partisan gerrymandering, there is already a majority of justices who think that it is unconstitutional, but it's just nonjusticiable because they haven't figured out what the test ought to be for doing that,” says Martin S. Lederman, a professor at Georgetown University Law Center.

Clement agrees. “In the world we live in, the court has kind of said, ‘Well, we're not going to say it's OK, but we haven’t come up with any justiciable standards," ” he says.

Richard H. Pildes argued an Alabama redistricting case two terms ago and won a decision that required closer lower-court scrutiny of an alleged racial gerrymander in the state legislative redistricting.

“In these cases, the Supreme Court has to define the path between using race to draw election districts in a way that is required by the CRA and using race in a way that goes significantly beyond that and is unconstitutional,” says Pildes, a professor at New York University School of Law.

The North Carolina and Virginia cases will be heard by an eight-member Supreme Court. With the lower court decisions largely split between striking down and upholding the challenged plans, a deadlock would leave redistricting laws unsettled as time ticks closer to the next round of line drawing.
Motion Applied
Your body language during trial can be just as important as what you say
By Allison Leotta

Studies indicate that more than 90 percent of human communication is nonverbal. That explains the idea that you can tell who won a presidential debate by muting your television and watching the body language of the candidates. Who smiled, straightened and glowed? Who fidgeted, slumped and scowled?

Likewise for lawyers who argue their cases at trial, demeanor is almost as crucial as eloquence is. But law schools don’t have classes in body language, and a surprising number of trial lawyers never learn this lesson. In 12 years as a federal prosecutor, I saw many lawyers’ bad habits— and worked to cure my own. Here’s a bit of what I learned.

ALL THE COURTHOUSE IS A STAGE
Above all, remember that if the jurors are in the courtroom, they’re watching your performance. That means you must stay in character, even if you don’t have a line. Your audience—the jurors—is watching you from the moment they walk in, long before you say anything. Their only entertainment is watching you. They can’t check their phones, talk to one another or even lift their rears from their assigned seats. They’ll notice everything you do and draw conclusions about who you are.

So consider your neutral face. Is it really neutral? Or does it look like you just argued with your spouse?

The phrase resting bitch face now is part of the Twitter lexicon, used to describe people— usually women—who look cranky when they’re not smiling. It’s often accompanied by a picture of poor, pouty Kristen Stewart. Yes, this term is sexist, and I hate it. As a female litigator, I’ve experienced the double standard that inspired it. But regardless of whether it’s fair or right, this double standard can tank your case.

The key to good courtroom demeanor for men and women is to appear trustworthy. If jurors think you’re unpleasant, they’re less likely to trust you.

SUBTLE SMILES SAY A LOT
This is why many successful trial lawyers—men and women—deliberately keep a small, calm smile on their face throughout trial. Does that sound awkward? Then practice in the mirror. You don’t want to look like a crazy person. But you might discover that a subtle, practiced smile looks friendlier and exudes more confidence than your natural expression does at rest.

There’s truth to that 1980s deodorant slogan “Never let them see you sweat.” Your star witness buckles under cross-examination? Smile your subtle, practiced smile. Unexpected testimony shocks you? Subtle smile. If you frown or rock backward in surprise, a juror might conclude that you think your case has been undermined. If you keep your neutral, subtle smile, it instead says: “Everything’s going my way, just as I expected, all part of my master plan.”

It’s amazing, actually, how much your body can say without a word passing your lips. A tall spine and good posture say you’re confident. Eye contact communicates that you’re truthful. Conversely, a hand over your mouth while you’re talking can suggest you’re lying.

KILL ’EM WITH KINDNESS
Be nice to everyone in the courtroom. Kindness makes the world a better place, and it makes you a happier person. But if that’s not enough to convince you, consider this: Kindness makes you more likely to win your case. When jurors think you’re a good person, they’ll give you the benefit of the doubt and ascribe good motives to what you say. If they think you’re nasty or dishonest, they’ll discount everything that comes out of your mouth.

There are many reasons to be kind to your paralegal, but a bonus is that the jury will notice. Be nice to the stenographer (who also has the power to make things go your way, or not, in the transcript). And, especially, have a positive relationship with the courtroom clerk. The clerk checks in the jurors every morning, brings them pencils and leads them to the jury room. This person inevitably forms a stronger bond with them than anyone else in the courthouse. If the jurors see that you’re the clerk’s friend, you’re the jurors’ friend by association. If the clerk hates you, the jurors probably will, too.

Being nice applies to opposing counsel, even if you truly think he or she is the worst person in the world. In your fervor to represent your client, it’s easy to demonize your opponent in your head. But your personal villain might be the jurors’ favorite character. I saw a trial in which the defense attorney argued that the prosecutor, who was blind,
was making objections solely so she could walk up to
the bench with her seeing-eye dog and elicit the jurors' sympat
by. If you’re a jerk to anyone, the jurors likely will think
you’re just a jerk in general.

Look out for the jurors in the box. If Juror No. 3 is having
a coughing fit, suggest a break or ask the judge if the juror
can have a cup of water. Bless sneezes. An attorney who
represents the National Enquirer told me about a trial
in which the tabloid was sued by Clint Eastwood. During
the actor’s testimony, an elderly juror sneezed. Eastwood
stopped in the middle of his sentence and turned to the
juror, meeting her rheumy brown eyes with his piercing
blue ones. “God bless you, ma’am,” he said. As she melted,
the attorney for the magazine knew he’d lost the case.

You probably already have facial tissues, plastic cups
and a pitcher of water ready for yourself. But if your
cross-examination is so tough that a fragile witness
breaks down in tears, pause to give them a tissue or a
cup of water. It can soften your hard edge. As with many
of life’s difficult moments, small gestures can go a long way.

TEND TO YOUR TONE

I could write a whole article about tone of voice. I
struggled for years to find mine. I was torn at different
points between seeming too young, too academic or too
strident (another female pitfall). You want to come across
as smart but not smarmy, warm but not cloying, passionate
but calm. It’s a difficult balancing act for anyone, but it’s
especially tough for young lawyers and female litigators.

Eventually, I found my sweet spot, talking to jurors as
I would to my mother-in-law: a smart, empathetic woman
I loved and admired and who brought out the best side of
me. Think about someone in your life such as this. Stephen
King writes his books toward an imagined “ideal reader.”

Make your closing argument toward an “ideal juror” who
you respect and like and who brings out the best in you. If
you’re not sure you’re hitting the right tone, try to practice
your opening on your own mother-in-law. The advice you
get from a nonlawyer can be eye-opening.

Of course, we hope that trials aren’t battles of personali
ties. We hope that jurors will listen to the merits of the case,
examining the facts, evidence and expert testimony without
bias. But inevitably, jurors will filter your facts through the
emotions that you sparked in them. Poet and author Maya
Angelou observed that “people will forget what you said, ...
but people will never forget how you made them feel.” If you
consider how your body language makes the jurors feel, you
will encourage them to feel the best that they can about your
legal arguments.

Allison Leotta, a former federal prosecutor in Washington,
D.C., is the author of five novels, including A Good Killing,
which O, the Oprah Magazine named one of the year’s
best summer books.
Watch What You Say

Disciplinary ruling against attorney raises questions about how far criticism of judges can go under ethics rules

By David L. Hudson Jr.

When an attorney in Louisiana filed appellate pleadings that alleged misconduct by the trial judge in a case, it was the attorney—not the judge—who found herself in ethics hot water with the state supreme court.

But some leading ethics and First Amendment experts—and even two dissenting justices of the Louisiana Supreme Court—suggest that the disciplinary action against attorney Christine M. Mire was inappropriate under the language of Rule 8.2(a) of the ABA Model Rules of Professional Conduct. The Louisiana Rules of Professional Conduct follow Model Rule 8.2 word for word. (The ABA Model Rules are the primary basis for binding ethics rules in almost every state, although California sets forth its rules using a different format from the Model Rules.)

According to pleadings filed with the Louisiana Supreme Court, Mire filed an appeal in the Louisiana Court of Appeal that included vigorous criticisms of Phyllis Keaty, a district court judge who presided over a family law case in which Mire was representing one of the parties. (Judge Keaty now is a judge on the state appeals court.)

Mire thought Judge Keaty failed to disclose the extent of her family’s relationship with a litigant on the other side of the case. (The appeals court later ordered Keaty removed from the case because of a “community interest.”)

Mire filed a motion that asked Judge Keaty to recuse herself from the case, which Keaty refused. When Mire requested a copy of the hearing record, she received a recording that contained a statement that she thought was not actually made at the hearing.

The recording apparently had been spliced at the exact location where Judge Keaty had talked about her connection with the litigant on the other side. Mire thought the recording and the transcript of the hearing had been altered intentionally.

On the basis of Mire’s pleadings, the Office of Disciplinary Counsel filed charges, including an allegation that she had violated Rule 8.2(a) of the Model Rules, which states: “A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.”

The rule echoes the standard in libel law articulated by the U.S. Supreme Court in New York Times Co. v. Sullivan, decided in 1964. In that decision, the court held that public officials who sue for defamation must show that a defendant made false statements with “actual malice”—knowing the statement was false or acting in reckless disregard of its truth or falsity.

Mire contended that her statements were protected by the First Amendment. The Louisiana Supreme Court, however, determined that Mire knew or should have known the statements were false. In its opinion in In re Mire, decided in February, the court concluded that “objective evidence establishes respondent [Mire] either knew her statements were false or made them with reckless disregard for the truth.”

The state supreme court further found that “no evidentiary support” existed for the allegation that Judge Keaty added statements to the record that were not originally made at the hearing. The court found “even more disturbing” the statements Mire made that the appeals court was covering up Keaty’s actions.

The court ordered Mire’s license to practice suspended for one year and one day with six months deferred and two years of probation. That order also took into account Mire’s alleged misconduct in a bankruptcy case.

DON’T BLAME THE MESSENGER

But two of the state supreme court’s seven justices wrote notable dissenting opinions. Justice John L. Weimer cautioned that the court should not “create an environment in which an attorney, who is duty-bound to report concern about our judicial system, will become too timid in lodging a concern due to fear of being disciplined.” Weimer wrote that “a reasonable person could justifiably disbelieve that the court’s recording equipment went haywire at the exact moment of Judge Keaty’s purported disclosure.”

Weimer agreed that Mire’s statements were “unprofessional,” but he said the court should not subject her to professional discipline. He cited U.S. Supreme Court Justice Hugo L. Black’s famous statement in Bridges v. California, a 1941 decision: “For it is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions.”

Louisiana Justice Jefferson D. Hughes III also dissented from the majority opinion in In re Mire. “Alteration of the transcript of a recorded judicial proceeding is a serious, perhaps criminal, matter,” he wrote. “This court does justice no favor by punishing the whistleblower.”
The case raises a key question about the extent to which attorney speech, especially when it involves criticism of a judge or the judiciary in general, should be protected under Model Rule 8.2(a) and its state progeny.

The Louisiana Supreme Court applied the so-called objective reasonableness standard, contends Dane S. Ciolino, who represented Mire before the high court, when it should have incorporated a subjective standard that focused on whether the attorney knew the statements were false.

"The Louisiana Supreme Court and other courts have suggested that Rule 8.2(a) permits a lawyer to be disciplined for merely negligent statements under an objective knew-or-should-have-known standard," says Ciolino, a law professor at Loyola University in New Orleans, where he teaches professional responsibility.

"That is not what the plain language of Rule 8.2(a) says, nor is it consistent with the standard of Times v. Sullivan. The overarching problem in this case is that the court ignored the plain language of Rule 8.2(a), which premises discipline on making a statement about a judge knowing it to be false—or at least making it with reckless disregard of the truth. Mere negligence should not be enough."

**DISCIPLINE GOES TOO FAR**

Ciolino also maintains that a factual basis for Mire's statements existed. "The tape was altered in a way that suggested some possible malfeasance by the judge's court reporter," Ciolino says. "There was a factual basis for Ms. Mire's claims of corruption."

Constitutional law expert Erwin Chemerinsky agrees that the Louisiana Supreme Court's Mire decision raises serious concerns.

"It is always troubling when a lawyer is disciplined for criticizing a judge or a court," says Chemerinsky, the dean at the University of California at Irvine School of Law. "Rule 8.2(a) is adopting the New York Times v. Sullivan standard, which requires that the statement be false, and that the speaker knew the statement was false or acted with reckless disregard of the truth. The Supreme Court has said that this requires a subjective awareness of probable falsity. This is not the standard followed by the Louisiana Supreme Court."

Mire petitioned for a rehearing of the court's February decision, which the court denied in May. Justice Weimer said he would have granted review and wrote an opinion that explained his view: "The original opinion in this matter has created a dilemma that can only be resolved by... having an attorney surrender constitutionally protected rights to free speech and compromise a client's representation."

The Louisiana Supreme Court's decision "stands for the principle that lawyers have a reduced level of free speech rights," Ciolino says. "The Constitution should apply to lawyers just as much as nonlawyers. Ultimately, the U.S. Supreme Court will have to resolve whether courts can diverge from the Times v. Sullivan standard and the plain language of Rule 8.2(a), to discipline a lawyer for a merely negligent misstatement about a judge."
The Question of Voice

How to bring a more conversational style to your writing

By Bryan A. Garner

The other day a lawyer asked me: “Isn’t one of the hardest things about editing well learning to improve the writing while not changing the writer’s voice?” I said no: When editing most lawyers’ work, I have little regard for the writer’s voice because most lawyers haven’t cultivated a discernible voice. What all legal writers should strive for is to be the voice of reason.

I’d hate to see editors constrained by some notion of not changing voice. In my office, I want everyone making the same types of edits that any professional editor of nonfiction would make—anyone on the copy desk of The Atlantic, Harper’s, The New Yorker or The Wall Street Journal.

If the average legal writer’s work were subjected to this type of rigorous editing, lots of hyphens would be inserted in phrasal adjectives (as in last-straw job-performance discharge); lots of hyphens would be deleted in what should be solid prefixed terms (such as nonstatutory, posttrial and semireirement); lots of vague words would be sharpened (a number of people becomes about 30 people); all repetitions would be artfully disguised or made to seem nonrepetitious; all heavy, sentence-starting connectives (Accordingly, Consequently, However) would be replaced by strong monosyllabic connectives (So, Hence, But [no comma following these]); all legalistic verbiage would be struck completely (look up verbiage if that statement puzzles you); all verbose phrasings would be relentlessly tightened up (prior to the time when becomes before, and so does prior to itself—and persons who, through political elections, seek to serve in public office becomes political candidates); all jargon would be replaced by plain-English equivalents (pursuant to disappears in favor of under or some other straightforward wording); lots of sentences would be broken up while others would be combined, all with the idea of putting the most emphatic word or phrase at the sentence’s end; the syntactic blunder of needlessly separating subject from verb would be cured, especially by moving a modifying phrase to the beginning of the sentence; most parenthetical case explanations would be removed to ensure both that the piece shows adequate paragraph development and that points about cases aren’t buried in parentheses; every instance of is, are, was and were would be scrutinized skeptically with an eye to replacing it with an action verb; the characters would be given a single sensible name (without alternatives), as different as possible from the other names; acronyms would be replaced by real words to the extent feasible; unnecessary disruptions in chronology would be cured; and all emotionally charged characterizations of adversaries would be deleted so that the tone is cool and calm and factual. A brief, fully comprehensible summary would appear in the first paragraph without any reference to reasons stated below.

PLENTY TO POLISH

Most paragraphs would be shorter than the preceding one. There almost certainly wouldn’t be a 326-word sentence. It’s just that there’s so much work for skillful editors to do.

Oh, and many (hardly all) instances of passive voice would vanish. As you might have noticed in the long third paragraph above, almost every clause is in passive voice (a be-verb followed by a past participle: be replaced). That’s because the actor (a hypothetical professional editor) has already been identified (there’s passive voice again!), and the emphasis is on the object that is being subjected (again!) to an action (professional editing). The actor becomes unimportant in constructions of that kind. So we can’t be simple-minded in our approach to passive voice: No absolute rule applies.

But the average legal writer uses passive voice unthinkingly: “The RICO claim that is purportedly to be amended by Defendant could have been presented...”
earlier.” You recognized two passive constructions there, right? Be amended and been presented. A professional editor would want something like this: “The RICO claim that Bilsky seeks to amend is one he could have presented earlier.”

Or consider this one: “Whether the Brims’ gift to the library must be returned because the Brim Lecture Hall has been renamed is an entirely different matter that in no way addresses the actions that were taken by the university prior to the time when the complaint was filed.” Did you count the four passive-voice constructions? This writer’s “voice” isn’t worth preserving. It’s a mediocre voice. Let’s try this edited version instead: “Whether the university must return the Brims’ gift because it has renamed the Brim Lecture Hall is a matter entirely distinct from the university’s predilection actions.” No passives there.

An unknowledgeable, inept editor might object that has renamed is passive or that is a matter is passive. Not so. The same editor is likely to object that it is an unclear pronoun in that revised sentence and that university should replace it and appear a second time in the sentence (third time if you count the possessive form). The result would be intolerably clunky. And by the way, there’s no syntactic confusion in the revision. No reasonable reader would think so.

You see, editing is a skill not unlike hitting a golf ball or playing a musical instrument. The skillful observer can see how well people perform almost instantly—can immediately distinguish a dozen gradations of skill from the bungler to the virtuoso.

3 KEY EDITING TACTICS

My good friend and mentor John R. Trimble, the University of Texas English professor emeritus, teaches that all good editors do three things to a writer’s style: tighten (by combating verbosity), sharpen (by combating vagueness) and brighten (by combating dullness). A fourth, error correction, isn’t so much a matter of style as preventing various types of outright blunders—everything from factual mistakes to solecisms.

I recently put the question of voice to Trimble, the author of a superb book called Writing with Style. He answered: “Certainly in the nonfiction that lawyers produce, there’s little room for ‘voice’ (as in personality) apart from what you nicely called the ‘voice of reason.’ But legal prose can certainly aspire to having some snap and aphoristic economy, since such prose helps command our attention and signals a keen intelligence. Commonplace prose suggests a pedestrian mind that’s content to simply go through the motions. We hire lawyers to really sell our arguments, not drone them.”

So when I ask people to edit, as I often do, I ask them to tighten, sharpen and brighten. And tighten first. One early read-through should be devoted to nothing but eliminating needless words. Let’s say a brief-writer has written this 32-word sentence: “Mr. Dunkirk wholly fails to plead Octon Life Insurance Co.’s knowledge of any alleged falsity, nor does Mr. Dunkirk plead any intent on the part of Octon Life Insurance Co. to defraud.” That’s bloated. We could cut it down to 15 words: “Dunkirk does not allege that Octon Life knew about any falsity or intended to defraud.”

And if we change does not to doesn’t, the prose gets a little snappier and more conversational.

But then we may cross the line of what voice the writer considers stylistically acceptable. Trimble, for example, considers a contractionless style only marginally acceptable. He wants smooth, natural-sounding prose that’s true to the human voice. People speak with contractions. Readability studies show that contractions enhance both comprehension and ease of reading. So it’s no surprise that most good nonfiction produced today contains plenty of contractions.

On the other hand, most legal writers have been conditioned to think of contractions as verboten. They’ll write: “They do not allege this because they cannot” instead of “They don’t allege this because they can’t.” You feel the difference? The former feels robotic.

But many superb legal writers use contractions freely. Judge Frank Easterbrook, Judge Neil Gorsuch, Justice Elena Kagan (only in dissents), Judge Alex Kozinski and Chief Justice John G. Roberts Jr. are just a few examples. Start noticing contractions when you read any kind of nonfiction that you enjoy.

Contractions can play a big role in creating an agreeable voice. I recently wrote a book with a dozen illustrious appellate judges as co-authors: a 920-page treatise called The Law of Judicial Precedent. With 13 different writers contributing to a single book without signed sections, the challenge was to make the voice consistent throughout. In signing on to the project, my co-authors agreed that I would have final say on all matters of style.

Apart from tightening, sharpening and brightening through 250-plus drafts, I inserted contractions wherever I felt the idiomatic need. Perhaps more than any other change, that one gave the book a consistent tone throughout. And it led to other good edits. Remember: One good edit leads to another. The goal was to have the book speaking as the voice of reason—but always an approachable, companionable voice.

One last thing about good editing: It’s an act of friendship, not an act of hostility. Professional-level edits—the kind that would occur on the copy desks of major newsmagazines—make the writer look smarter. So if a skillful editor revises your work, be grateful, never resentful.

Bryan A. Garner (@BryanAGarner) is the president of LawProse Inc. and editor-in-chief of Black’s Law Dictionary. His most recent book, The Law of Judicial Precedent, was co-written with a dozen appellate judges, including Judge Thomas M. Reavley, for whom he clerked in 1984-1985.
#Attention
Law professor’s forum sheds light on racial injustice

By Stephanie Francis Ward

FEW PEOPLE OUTSIDE OF ACADEMIA are familiar with intersectionality. But many understand—and embrace—the hashtag #blackgirlsmatter, which is a more descriptive way to point out that some people who experience oppression have multiple social categorizations and frequently are forgotten in social justice movements.


Black girls are suspended from school six times more often than white girls are. But discussions about school discipline and race often center on black boys, who are suspended three times more often than white boys, according to data in the report from the Department of Education.

Other hashtags include #breakingthesilence, which draws attention to community leaders developing and advancing agendas for gender-inclusive racial justice; and #whywecantwait, a response to the 2014 White House program My Brother’s Keeper, which centered on opportunity gaps for men of color but did not include women.

One of the group’s most well-known hashtags, #sayhername, focuses on police brutality against black women, and it ties in with 2014 protests. In 2015, the AAPF released the report Say Her Name: Resisting Police Brutality Against Black Women.

“Social media has been absolutely critical. I think many people have heard of ‘Say her name’ in a shorter time than ‘intersectionality,’” says Crenshaw, a professor at the UCLA School of Law and Columbia Law School.

“I have a wonderful, diverse and young staff at the AAPF who pretty much work around the clock trying to figure out how we promote the idea that social justice requires us to be intersectional in our thinking and in our scope of vision,” she says.

BEYOND ASSUMPTIONS
People tend to assume police violence involves male parties, Crenshaw says, and media coverage frequently centers on stops gone bad in which an officer claims to feel unsafe.

“When women are killed, people don’t see those same frames playing out, and they don’t know what to do with the story,” she explains. “Social media makes it possible to go underneath a story, which sometimes abruptly ends.”
The *Say Her Name* report includes the stories of numerous black women who were killed by police or died in custody. Among them are Sandra Bland, the 28-year-old who died in Texas police custody, and Aiyana Stanley-Jones, 7, who was shot and killed by police in 2010. Joseph Weekley, a Detroit officer, said he accidentally shot the child during a struggle with her grandmother. The grandmother denied that, and another officer testified that there was no struggle. Weekley returned to restricted (not in the field) active duty in 2015 after five years of off-duty status and two court mistrials.

Inspiration for the AAPF, which this year celebrated its 20th anniversary, came from the 1995 Million Man March, media coverage of boxer Mike Tyson's 1992 rape conviction, and the 1991 controversy over Anita Hill and Justice Clarence Thomas. Crenshaw attended Thomas' confirmation hearings to support Hill, a law professor and former government lawyer who testified that Thomas sexually harassed her on the job.

Thomas described the hearings as a high-tech lynching. A *New York Times/ CBS News* poll found that people favored his confirmation by a 2-to-1 ratio, and among blacks a higher ratio favored Thomas.

“That experience showed how easy it was to mobilize African-Americans to support Clarence Thomas and oppose Anita Hill through a demand for racial solidarity that excluded Anita Hill and virtually every other black woman who had experienced sexual abuse,” Crenshaw says. “It was another example of intersectional failure—the failure to be aware of how black women experience discrimination, including historical racism and sexism.”

**WOMEN AND LEADERS**

Black women founded one of today's most well-known social justice groups, Black Lives Matter, and Crenshaw says some of them also identify as queer. It's encouraging that women who are queer are leading Black Lives Matter, she says, noting that black women always have led racial justice movements. But their work often is overlooked by historians, the media and those who provide financial support.

“At the moment, we have women in leadership, but what the media picks up are things we're more familiar with, like stories of men killed by police and racial profiling based on race and gender,” Crenshaw says.

A 1984 graduate of Harvard Law School, Crenshaw was drawn to the institution by an admiration for Derrick Bell, its first black tenured professor and an originator of critical race theory. She also found inspiration from Harvard criminal law professor Alan Dershowitz.

“He was not a mentor at all,” she says. “I took his criminal law classes and was fascinated about how he put together a career of handling cases at the margins of law and integrated that back into his research and teaching. I thought that was one of the best jobs I'd ever seen.”

The daughter of Ohio educators active in the social justice movement, Crenshaw became known for introducing intersectionality to feminist theory in the late 1980s. When thinking about what to name her think tank, Crenshaw wanted something that would make clear that gender affects both men's and women's lives, which is why she didn't include “women” in its name.

“We are very keen to say that we are not just a group of African-Americans, and we are not just a women's group,” Crenshaw says. “The work we do has embraced all social groups.”
New app gives teenagers quick legal information

WHAT IF YOU’RE CAUGHT WITH AN OPEN CONTAINER of alcohol in your vehicle? How loudly can you play your car radio? What are the penalties if you’re caught texting and driving? Legal issues around employment, landlord-tenant disputes, voting rights, contracts, identity theft, Selective Service requirements, social media harassment—and cars—likely are top of mind among teenagers. By accessing an app rolled out this year by the Florida Bar, they can learn more about such topics.

DIGITAL CONNECTION

Called #JustAdulting, the app, produced in partnership with the Florida Law Related Education Association, replaces a paper pamphlet aimed at providing teens with legal information they have to have while they make the transition to adulthood. Bar leaders say the paper pamphlet did not connect well with a generation trying to bring it into their world more closely through digital means.

“It’s so much more user-friendly,” says Sheri Hazeltine, chair of the Florida Bar Law Related Education Committee and a Delray Beach-based attorney. “It’s not in pretty literature that you have to go find at the library or in the principal’s office.”

After debating whether to organize the app’s interface alphabetically or to start with the most popular subject, the partners decided to do both, with an A-to-Z listing on the left-hand panel of the interface and popular subjects in the middle, says Annette Boyd Pitts, executive director of the Florida Law Related Education Association.

The #JustAdulting app “will be easier to update than a print brochure and can be done much more quickly,” Pitts says. “This is the way to go with this kind of information.”

BEHIND THE SCREEN

Along with the app, the developers created a live presentation, complete with a quiz show that’s been disseminated through the state’s Justice Teaching program. To date, Miami-based attorney Richard Patino and his wife, Jannette, who is the vice president of community outreach for the Patino Law Firm, have visited three high schools in Miami-Dade County.

While such presentations predate the app, the newly rolled out electronic format has made it considerably easier to connect with high school audiences, Jannette Patino says. Richard Patino says the presentation contains questions and answers that students often think they know more precisely than they really do.

“I won’t move on to the answer until I get several answers from the kids,” he says. “If there are no hands being raised, I poke them a little bit. Once a kid gives an answer, half the room starts saying, ‘That’s wrong.’ Why is that wrong? You get a little debate going.”

At the end of the class sessions, the Patinos encourage students to download the app to their phone.

“That’s something they’re impressed with—‘I now have this resource on my phone,’ ” Jannette Patino says. “It’s almost like they have a lawyer at their fingertips.”

Users total well into the thousands already. During the initial rollout in early spring, the app received 29,700 total page views, including 24,000 unique page views, at an average of about 2½ minutes per page, according to analytics provided by Pitts.

Other state bar associations have inquired about how they might develop a similar app, and the developers made a presentation on #JustAdulting in Savannah, Georgia, at a National Association of Bar Executives meeting on Oct. 20. The app also received a national award at the ABA Annual Meeting in San Francisco in August.

“Most bars have similar kinds of materials, a brochure or booklet on becoming an adult,” Pitts says. “We’re just trying to bring it into their world more closely through this digital resource.”
Fishing for Bias

Wildlife research techniques can help find gaps in the court record

By Jason Krause

Wildlife research techniques can help find gaps in the court record. By Jason Krause

RICHARD LEO IS ONE OF A HANDFUL of nationally recognized experts in the psychological science of how people are influenced and make decisions under duress. When defense attorneys began to call on him to testify in cases in which a confession might have been coerced, he says, prosecutors often fought vigorously to exclude his testimony.

“A few of us who were around in the early days can tell you even though the overwhelming majority of experts in our field were admitted to testify, prosecutors ... used their influence to try to prevent this kind of testimony,” Leo says.

Now Vanderbilt University law professor Edward Cheng says he’s discovered that publication bias in court records can conceal how often experts are allowed to testify, and he’s found a way to prove it.

“The published case law suggested that these experts were not legitimate, when in fact they were involved in a lot of cases,” Cheng says.

He began to research the question more than a decade ago after moderating a discussion in New York City with scholars who work in the field of wrongful convictions. He told the panel he could find no cases that admitted experts in the field into a New York criminal case. Panel experts said they testified regularly in such matters. Cheng knows Vanderbilt University law professor Edward Cheng says he’s discovered that publication bias in court records can conceal how often experts are allowed to testify, and he’s found a way to prove it.

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“At first, I was embarrassed that I was talking to these nationally recognized experts, and I had failed to adequately research their work,” he says. “But later, I realized that the real problem may be with the data.”

Publication bias is an insidious problem in scientific, medical and social science journals. Academics have found that scientific literature often ignores research unless it has a statistically significant result. Cheng claims a similar bias is found in legal opinions, especially around evidentiary rulings in criminal cases.

“I began to see that court opinions were over-reporting one type of outcome while failing to reflect others,” he says. “The problem is trying to prove something exists when there are no good records.”

To find out what’s going on, Cheng used a statistical method that’s used in ecological studies to compare wildlife samples to quantify the size of an animal or fish population. He used databases, including Westlaw, LexisNexis, Bloomberg BNA, Fastcase and Daubert Tracker, to compare reported cases that involved such expert testimony.

By comparing the various data sets, he was able to estimate how many times these experts actually testify in court.

“You only need fancy statistics like this when the data is really bad,” he says. “If we had more information, like lists of all expert witnesses or transcripts of their testimony, we wouldn’t need to resort to this approach.”

When Cheng crunched the numbers, the real admissibility rate for experts in this area was significantly higher than what is found in the case law. The model estimates that an observed 16 percent admissibility rate actually might be closer to 28 percent.

“When there is a fight over testimony, it is more likely to generate a written opinion, so if another judge or lawyer is looking at the body of the case law, they see more cases of exclusion rather than admission,” he says. “That means all the factors cut the same way, toward exclusion.”

MORE DATA, PLEASE

The heart of the problem is that evidentiary rulings rarely are recorded in trial court opinions. However, when there is a challenge to an evidentiary ruling, it often will be recorded in subsequent appellate rulings.

“There might be a handful of cases in which the court tackles the questions of whether exclusion was an abuse of discretion, which gets reported,” Leo says. “But it means hundreds of other cases in which experts are allowed to testify are never recorded.”

Cheng thinks more court records must be made available to the public. Leo suggests a national database of expert witnesses. But he wonders whether any group has the impetus, funds or other means to correct the issue. “There seems to be a clear imbalance in the way the legal system publishes records,” Leo says. “Unfortunately, I don’t see anyone within the system who is motivated enough to correct it.”
TWO STUDIES THIS FALL INSPIRE VERY DIFFERENT IMPRESSIONS of the state of the legal profession, at least in its opening stages.

OPTIMISTIC LAW SCHOOL APPLICATIONS INCREASE
Percentage of admissions officers

46% 78%
2014 2016

A KAPLAN TEST PREP SURVEY FOUND law school admissions officers more optimistic that law school applications would increase for 2016. Buoyed by estimates of an increase in applicants and predictions that “60 or 70” of the top-tier schools (by U.S. News rankings) would see enrollment growth, 78 percent of the 111 law schools participating in the survey expressed confidence that they would be among those showing an increase in applications. That compares to only 46 percent of those responding to a 2014 survey.

BUT IF MORE STUDENTS ARE APPLYING to enter law school in 2016, their predecessors seem to be finding fewer jobs upon graduation. Statistics from the National Association for Law Placement show a 7.6 percent drop in law firm jobs secured by the class of 2015. NALP reports a decline of more than 3,000 jobs found by graduates, though a decline in the number of graduates left the overall employment rate at 86.7 percent, the same as the previous year.

FIND MORE DATA AND OTHER PRACTICE STATS AT ABAJOURNAL.COM/LAWBYTHENUMBERS.
Pro Bono Times Two
Serving legal aid needs the digital way By Victor Li

THE LEGAL INDUSTRY ALREADY HAS been heavily affected by technology and the “Uber-ization” of the marketplace. It follows that pro bono work also would be affected.

Take the organization Bay Area Legal Aid. It has chosen to focus more on technology as a way to better serve its clients. But being overworked and under-resourced means it has had to forge partnerships with tech companies and other law firms to build up its technological capabilities.

Alex Gulotta is the executive director of Bay Area Legal Aid. When Gulotta wanted to assess his organization’s existing tech infrastructure last year to determine what kind programs or platforms were needed, he found a company willing to do it. The price tag was the only problem.

“We were looking at a $150,000 bill, and that was with a discount,” Gulotta says. Instead, he reached out to some area law firms and found four (Fenwick & West; Morrison & Foerster; Orrick, Herrington & Sutcliffe; and Wilson Sonsini Goodrich & Rosati) that were willing to do the work for free.

Then last winter, Bay Area Legal Aid teamed up with Rocket Lawyer to launch a pilot program that’s aimed at helping low-income Bay Area residents get legal help through Rocket Lawyer’s platform. That program might begin in 2017.

In the meantime, Gulotta says, the legal aid organization forged a partnership with One Legal to handle all its e-filing and process services. “The value of the pro bono services they have provided to us through their portal is approaching $50,000 per year,” Gulotta says.

PRO BONO WITH NO STRINGS

The Pro Bono Network has been focused on being the self-styled Uber of legal aid. The Chicago-based organization formed in 2011 with the objective of allowing lawyers to perform pro bono work on an as-needed basis without making a long-term commitment.

Executive director Donna Peel came up with the idea after transitioning out of her full-time job as an antitrust attorney with the Department of Justice to stay at home and raise her two children.

She wanted to do pro bono work, but living in the Chicago suburbs, she found it difficult to commute to the city for meetings with legal aid agencies. She wanted to work during school hours, but often found herself doing work on weekends and at nights because a lot of the agencies hosted training sessions and meetings after school hours.

Peel thought the last thing the legal industry needed was a high barrier for entry for the many part-time or retired lawyers such as her who want to help. An ABA study in 2013 found that 59 percent of the lawyers who responded thought having more opportunities to perform limited scope representation would encourage more lawyers to do pro bono.

So Peel started the Pro Bono Network to work with legal aid agencies to provide attorneys on demand. “We are not taking law-making cases that law firms might want,” Peel says. “We are working in areas where there are thousands of people in need.”

“We spend a lot of time ‘on-ramping’ [lawyers] into the legal aid landscape,” she says. “Through PBN, they will have vetted opportunities that work for their schedules, local trainings, no required appearances after 2 p.m., backup, and one person to call at PBN who can triage a lot of questions on behalf of the legal aid agencies. We also provide them with office space and translators.”

Peel says one-third of Pro Bono Network volunteers are women at home who are on career break or have left work entirely. The rest include retired lawyers, part-timers and even some full-time lawyers who like the model.

Much of the attorneys’ work is to help procure U-Visas, given to nonimmigrant foreign citizens who are victims of crime or abuse and are willing to cooperate with law enforcement. PBN lawyers have been active in working with criminal expungement clinics, divorce matters, tenant work and representation of incarcerated mothers.

“Many of these clients simply need a lawyer to advise on a brief or provide short-term representation,” Peel says. “That makes it easier for lawyers to volunteer, since they won’t be making a long-term commitment.”
IN THE MOVES

THE HEAVIEST LIFT FOR LAWYERS WHO ADVISE WINDFALL RECIPIENTS MIGHT BE TO PROTECT THEM FROM THEMSELVES
BY G.M. FILISKO
Kelly advises lottery winners, people who’ve inherited money and those who have built their own fortune. “I represent a client who was successful in his own right, and we did a regular estate plan,” she explains. “Then he called one day and said, ‘My relative left me $50 million.’ All of a sudden, it shifts your planning.”

Other clients include a Long Island couple who are about to strike it rich through their own labor. “He’s been working at a company he and a group of friends created,” Kelly says. “After about 10 years, they’ve picked up their heads and realized all their hard work has been paying off. They’ll have a liquidation event in the next year that will result in $100 million to their family.”

Also among Kelly’s clients are a couple who were part of a classic workplace lottery pool that won about $58 million after taxes. “They were blue-collar, normal, down-to-earth, lovely people who didn’t think this would happen to them,” she says. “Their share was about $12 million.”

As the couple worked through the process of claiming and protecting their winnings, they consulted Kelly about whether they could truly afford certain things. “They were asking if they could afford to pave their driveway,” she recalls. “And they treated themselves to a boat.”

“Fortunately, the people I’ve worked with aren’t the ones who go Kardashian on me. They’ve been smart enough to take a beat and see how the money would impact their lives.”

“It’s like they’ve said: ‘I’ve got millions of dollars in my account, but what does this really mean? How wealthy am I? Am I this rich?’ That was very endearing.”

RICHES TO RAGS

What’s common—regardless of the source of the funds—is that the sudden wealth might take some getting used to. Research on outcomes for windfall recipients is sparse. But a 2009 Vanderbilt Law School study found that winning the lottery didn’t do much to prevent people who were struggling financially from eventually filing for bankruptcy. Some winners used their new riches to take more risks or buy material things; others simply didn’t know how to manage large sums of money.

Lawyers who’ve built an expertise in advising these fortunate few agree that they face serious challenges to preserving their new wealth. The taxman always demands a cut. So-called friends and family members pile up requests for loans, gifts or investments in their no-way-you-can-lose idea that’s truly a dud. Or recipients simply break their own bank with reckless decisions.

“We always walk through with clients my parade of horribles, and it’s not only in one sitting that we do this,” explains Marc H. Lamber, a partner at Fennemore Craig in Phoenix who represents clients in personal injury claims that often result in large recoveries. “I tell them all the things I’ve seen over the years. I also direct them to speak with tax advisers. But it follows the cliche that ‘you can lead a horse to water, but you can’t make it drink.’”

The goal for these lawyers is to provide solid direction for clients whose lives will never be the same. “Money can be life-changing in good and bad ways,” says Eido M. Walny, founder of the Walny Legal Group in Milwaukee. “The goal of planning is to maximize the opportunities for good things to happen and to limit the opportunities for bad things to happen. But that can be a challenge easier said than done.”

The sources of newfound largesse probably are broader than most people realize. Jason M. Kurland bills himself as the ‘lottery lawyer’ because those winners make up the vast majority of his practice.

The money that Kurland’s clients have won is staggering. He represented the winner of a $336 million jackpot, another $254 million winner and many, many takers in the $1 million to $10 million range. “Right now, I represent three who are getting their checks in the next week, and those will be $5 million to $6 million,” says the East Meadow, New York-based partner with Certilman Balin Adler & Hyman.

The sums are so mind-boggling that Kurland’s partners have become
It's a different story for Steven M. Cohen, a partner and the litigation chair at HoganWillig in Buffalo, New York. The most common source of a windfall for his clients is a medical-malpractice or personal injury claim, although he and other lawyers who counsel clients with newfound wealth often blanch at the term windfall. “It implies it’s not justified,” he says. “I prefer to label it as ‘clients suddenly with a large sum of money.’”

With Kelly’s guidance, her careful couple continue to do well, as have the vast majority of clients these lawyers advise. Kelly suspects that might be because half the battle for clients with sudden wealth is recognizing they have to have expert advice to manage it well.

TAXES, SCHMAXES

It might seem like tax planning is a huge part of advising clients with new money, but it might be the easiest part. “Taxes are what they are,” Kurland says. “Up front, I try to explain what the taxes are. On the lottery, the lottery officials withhold a lot of money. If clients win $10 million, they’re not getting $10 million; depending on what state they’re in, they’ll get a fraction of that.”

Walny, like Kurland, is philosophical about the tax implications. “The nice thing is people are generally comfortable with taxes,” he says. “So that’s not a difficult conversation to have with them.”

What’s harder to get clients to grasp is that their family might not act honorably. That doesn’t always sink in with clients who love their relatives and might genuinely want to share their wealth to raise everybody’s standard of living.

In the early 1990s, Cohen represented a woman who recovered $1.45 million in a lawsuit. She’d always lived paycheck to paycheck and taken care of her extended family, despite the fact that they weren’t very kind to her. “Suddenly, people who had treated her very poorly started treating her nicely,” he says. “She was so thrilled to be treated nicely that all of the sudden, everybody’s lifestyle improved. One year and two months later, all her money was gone.”

Then there was a young man who became addicted to narcotic painkillers after an accident, and his parents often bailed him out of the scrapes he’d gotten into to feed his addiction. Cohen helped him recover $6.6 million in a lawsuit regarding his injuries. “As soon as he got his recovery, his parents started to lay into him with guilt,” Cohen recalls. “The son bought them a new house and new vehicles—even a car that was too big for his mother to drive. Two years later, all the money was gone. I’ve seen powerful guilt tactics applied to clients that would make a statue cry.”

Supposed friends also surface to see what they can wrest from clients. “People you never knew were your friends will start to become your friends,” Walny says. “The person you haven’t talked to since third grade will rekindle that relationship from 30 years ago.”

“Outside parties are thinking, ‘You have so much more than me; what difference does it make to you if you give me $10,000?’ If you start giving the money away that way, before you know it, a lot of money starts flowing out the door. It’s difficult to be disciplined enough to say, ‘I can’t. I won’t do this.’”

Then you have to watch for those who just want an investor in their surefire business venture. Walny notes that it sounds less off-putting to say, “Would you invest in this business project?” than “Would you loan me money?” Yet the results are the same—clients giving money they’ll never see again.

As if all that weren’t enough,
clients also must beware unscrupulous advisers.

“It’s not just friends, family members and charities that come out of the woodwork, but it’s also financial advisers,” laments Sharon L. Klein, president of the Wilmington Trust’s New York metro region in New York City. “Some get compensated on how frequently they sell products, and that’s another way clients could be preyed upon.”

**SILENCE IS GOLDEN**

Lawyers also strongly advise clients to avoid such situations altogether by staying mum and even disappearing. Whenever possible, Cohen bakes that into his representation by including confidentiality clauses in settlements. Secrecy often is easier to maintain for clients who get an inheritance or legal recovery. Those who win the lottery aren’t always able to do that if their state requires that winners parade before the media.

Even for those clients, Klein suggests strategies to avoid the limelight. They typically have a year to collect their proceeds, so Klein suggests they take that time to figure out their future. Where do they want to be, and what do they want to do with their lives? Ideally, if clients are likely to relocate, Klein advises them to do that quietly, ending up in a community that will reflect the wealth they now have, so they raise fewer eyebrows as their lifestyle changes.

For those who aren’t able to stay quiet, lawyers recommend leaning on advisers as a secondary line of defense.

“The biggest thing is to surround yourself with qualified advisers,” Walny suggests. “That way, the client can honestly say, ‘I don’t handle direct management of this money. You need to talk to my financial adviser or manager or lawyer.’ We don’t have a relationship with the people asking for money, so we take out the emotional side of the transaction."

This also is where lawyers’ expertise at setting up complicated financial structures provides additional safeguards.

“Asset protection, whether it’s against known or unknown creditors, is critical,” Walny says. “This wealth affects people in different ways.

Sometimes their worst enemy is themselves. Sometimes it’s friends. Sometimes it’s the smart aleck at the bar who wants to pick a fight with you, so he can sue you.”

Walny says he sets up legal instruments to be complicated for two reasons. One is to allow clients plausible deniability when they deflect a request for money. Another is to build a defensive wall against creditors.

“Asset protection isn’t about putting impenetrable bubbles around assets,” Walny says. “It’s about building walls—and many of them—so that if creditors come along, even if they can scale one or two walls, they’ll settle.”

**“PARENTS DON’T WANT THIS TO AFFECT THE PRODUCTIVITY AND CONTRIBUTION TO SOCIETY THEIR CHILDREN WILL MAKE.”**

—SHARON KLEIN
VALUES VS. LIFESTYLE

Sometimes the worries of wealth spring from inside the household. Klein says this is a big concern for many of her clients. “One of the major themes I always hear in the sudden-wealth scenario is that parents don’t want this to affect the productivity and contribution to society their children will make,” she says.

Nancy Smith, who is not one of Klein’s clients, inherited a multimillion-dollar fortune from relatives (the ABA Journal is using a pseudonym to protect her family’s privacy). She and her husband worry that making the wrong moves could change her son’s character. “I worry about him,” she admits. “He’s a really good kid.”

The couple spend money to give their son experiences instead of things. They give him an allowance, which he has to budget, and they’ve told him he’ll have to buy his first car. They never reveal to him how much money they have and aren’t above fibbing to keep their son grounded. His mother says she occasionally utters “We can’t afford it” in response to a request for something that doesn’t fit their plan.

“He’s growing up, and his character is building,” she says. “We’re very cognizant of the fact that we could spoil him and turn him into a brat and create somebody who doesn’t have a work ethic. We guard against that assiduously.”

Her son is no dummy, and he’s asked about their lifestyle, on occasion prompted by his friends’ comments. “My response is that we’re not rich,” she says. “We’re comfortable, and there will always be people richer, poorer, smarter, less smart, more popular or less popular. It’s just how the world works. We’re somewhere in the mix. He doesn’t need to know.”

They’ve set up a trust for their son’s education, in addition to another for his expenses once he’s older. He’ll get a distribution when he turns 25, another when he’s 30 and then another at 35. “He’s not going to be a rich 25-year-old kid who can buy the Ferrari and take his friends to Ibiza,” Smith says.

Charitable trusts or foundations that force family members to communicate with and listen to one another often are effective tools. Klein creates entities that require children to give away a portion of the assets each year to beneficiaries that all children agree to benefit.

“If you have a common value and they...
can hear and respect others’ opinions, that goes a long way toward keeping them together as a family,” Klein asserts.

PICKING UP THE SLACK

More often than they like, lawyers who advise the suddenly affluent must use their expertise to undo the mistakes of other lawyers who took on work beyond their ability.

“Many times I’m hired by that lawyer,” Kurland says. “The lawyer will say, ‘I have this client, and I’m not sure what to do.’ They’re just like I would be if a matter was outside my experience.”

But Kurland and Walny both have seen other lawyers fail to take that necessary step.

“It’s a big problem among lawyers,” Walny says. “Lawyers all think they can do anything. They think: ‘How hard could this be?’ Or maybe the lawyer is that third-grade buddy of the person who just won the lottery: the lawyer offers to help and makes a mess. And if you’re dealing with someone who’s unscrupulous, you can be robbed by your own lawyer or banker.”

Mistakes can trigger tax and legal liability and jeopardize clients’ fortunes. Walny had one client who suddenly landed several million dollars and sought assistance from an inexpensive lawyer. The client was about to marry and was concerned about protecting his money from creditors, including his future wife in the unfortunate event of divorce.

“The attorney took documents for a revocable trust and simply reworked them to create an irrevocable trust,” Walny recalls. “You can’t just take a Volkswagen and put fancy tires on it and race it in the Indy 500. This lawyer charged a very small amount but caused umpteen tax problems and handcuffed the client in terms of the assets he owned. And the trust would have had no effect on a potential divorce. The lawyer created an absolute mess.”

Kurland lets clients choose how to pay for his services, although contingency fees are out of the question.

“That would be way too much,” he says. “We can do hourly. Or sometimes they like to know it’s a capped number, but [with] that they can have my ear and call me whenever they want. If it’s as simple as setting up a trust and helping them claim the money and never seeing them again, that’ll be one fee. Or maybe they’ll want me involved in every decision they make—they don’t know how to spot the scams—and on every single call, whether it’s with relatives or financial planners. Depending on what they want me to do, the fees will be different.”

However, clients who are unaccustomed to shelling out big sums for professional advice can be hesitant. Walny’s potential client whose first lawyer created the irrevocable trust couldn’t fathom the cost that Walny estimated to fix the jam the client was in.

“The client came to me and said, ‘I get the sense this might have been a
little light; can you fix it?” he recalls. “I told him the problem was serious, and that it was going to be difficult to undo. It was possible, but it would be pricey. We estimated the work at $10,000 to $20,000.

“The client said, ‘The other guy charged me $500. How can you charge me so much to fix it?’ He ultimately bugged out. He couldn’t comprehend that price. He was in denial about the whole problem.”

That’s happened to Walny more than he likes, and it nags at him. “For me, the bad ones are the ones who people are, and that’s sometimes clients’ biggest downfall.

Kelly’s theory is that money is an amplifier. “If you have a stable relationship, it stays stable,” she says. “If there are cracks, it amplifies them, just as frost would do damage if it got into your front stoop.

Cohen calls stable clients “rational budgeters.” They analyze their new status and make reasonable upward adjustments. They essentially live happily ever after. Other clients have what Cohen describes as “pent-up deprivation.” It’s often devastating because these clients either blow through their money by buying things, or they do it by failing to consider the long-term costs—such as taxes, insurance or maintenance—for that already-pricey second or third house or car.

“These people have been deprived their entire lives, or perhaps even struggling, and as soon as they get their windfall, they go on a spending binge,” Cohen says. “They also seek to share their wealth to show off a little or thank those who’ve helped them. They have a lifestyle explosion. There are very few people on this planet who can sustain a lifestyle explosion on a day-to-day basis.”

Among those with pent-up deprivation are the dreamers. This type of client will always have wanted to do something, whether it’s own a country store or build a magnificent structure (both are real-life examples among Cohen’s clients).

“They start a construction project, but it’s a little foolhardy,” Cohen says. “If they’re pigheaded, they don’t take advice. We’ve had people $16 million into a project who didn’t have enough money to finish it.”

Fennemore Craig partner Lamber has seen clients be similarly impulsive and make mistakes that can’t be undone. The most damaging is destroying an annuity created to preserve the funds for the long term, which can trigger stiff penalties and huge losses.

“I’ve seen—in rare instances, but I have seen it happen—where the money has been prematurely dissipated,” he says.

“That’s disappointing. You're dealing with a client who tried to do things right, understood the risks and tried to avoid them, and ultimately couldn’t.”

Some clients even go into deep depression after becoming wealthy. They’ve been unhappy but blamed it on living hand to mouth. When they no longer have to live that way, they’re stunned to find that they’re not happier.

“That happens from time to time,” Cohen says. “We refer them to counselors.”

**PROFITABLE TALES**

Luckily, these lawyers have—and love to share—the much more common happy endings for their clients. With Walny, it’s the client who blew Walny’s socks off one day.

Walny had set up a relatively complicated plan that involved a series of trusts and business entities to protect the client’s assets and minimize the tax burden. Walny and the client, who was more sophisticated than most people were but wasn’t a financial or legal expert, headed to a bank to set up the accounts. But the banker couldn’t grasp Walny’s plan.

“I’m generally good at talking to people about what we’ve set up, but maybe I didn’t have enough coffee that morning,” Walny recalls. “The banker wasn’t understanding what I was saying. The client said, ‘Let me take a stab at it.’ The client did a fantastic job of explaining each trust, why we did it, and the roles each person was going to play. It showed that along the way, we’d done a good job of explaining to him and his family in a way they could synthesize. He’s one of the clients I’m proudest of.”

Successes for clients whose suffering has led to their newfound wealth can be even more profound. One of Lamber’s clients was a child who sustained serious injuries and whose educational and physical needs couldn’t be met in a public school.

The legal recovery allowed the parents to enroll the child in a private school with vast resources. “This child recently graduated,” Lamber says. “It’s a remarkable story.”

Another family used their recovery to pursue a change in the law that governs the loading and unloading of passengers on buses.

“This is where you’re really touching people because it’s going far beyond one family,” Lamber says. “They succeeded relative to a particular type of accident, where a loophole was closed. It’s their belief and mine that this change will save lives. They lost someone, and there’s no way that can ever be good. But they’ll always know they changed that law.”

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G.M. Filisko is a lawyer and freelance writer based in Chicago.
The nation’s jails are housing more mentally ill people than hospitals—yet some institutions are reversing the trend through programs that emphasize treatment instead of punishment.
The audience sitting in the gymnasium bleachers is charged with excitement as the graduation speaker approaches the podium. Student artwork hangs on the cinder block walls nearby, along with handwritten signs that declare “The harder I work, the luckier I get” and “Failing to prepare is preparing to fail.”

The graduating class of 86 men is dressed in two-piece khaki scrub branded with DOC on the back. They are detainees inside the Cook County Jail and all have a serious mental illness.

There are no family members here to celebrate with them, just Cook County Sheriff Tom Dart and warden Nneka Jones Tapia, who sit in the first row with guards and mental health professionals behind them.

The speaker, a man with a shaved head and tattoos on his arms and face, speaks of his father’s death, his mother’s drug use and his anger, gang involvement, depression, addiction and, most importantly, his transformation since starting a photography class at the jail’s 2-year-old Mental Health Transition Center.

“It’s time for me to let go of the fake me and embrace the real me,” the speaker says. “Thank you, Sheriff Dart. You are our gatekeeper.”

Everybody in the gym stands, clapping and hooting.

CARE AND TREATMENT

The ceremony celebrating completion of photography and drumming classes illustrates how Dart is trying to bring programs and treatment to low-level offenders with mental health issues—an approach that is catching on throughout the country. Dart’s goal is to help move them out of the criminal justice system and into treatment through a wide-ranging spectrum of programs. A handful of counties are adopting a similar holistic approach. “We are putting sick people in jail,” Dart says. “Would we do that with another disease? We are criminalizing mental illness instead of treating it.”

In 1976, the U.S. Supreme Court ruled in Estelle v. Gamble that prisons are constitutionally required to provide adequate medical care to inmates. That makes detainees the only group of Americans with a right to health care, and that includes mental health care. In recent years, moves by Dart and others who run jails have worked to support that right.

In his 10-year tenure, Dart has made unconventional moves, including hiring Tapia as warden, the first clinical psychologist to serve as executive director of a major U.S. jail. “What she brings to it is another skill set,” Dart says. “It is a nuanced way that she has added additional emphasis on [mental health]. I have an additional person who completely gets it.”

“He’s the type of guy that gets ideas when he is brushing his teeth,” Tapia says of Dart.

Those ideas include crisis intervention training for sheriff’s department officers and 911 dispatchers, increasing the use of electronic monitoring for low-level offenders, especially those with mental illness, and diverting arrestees with behavioral health issues from jails or emergency rooms. He also wants to create daily...
programs for low-level offenders, such as group therapy, individual counseling, job training and art therapy like cooking, drumming, gardening and photography.

Despite the good intentions of these programs, Cook County Jail still is an institution steeped in problems. In 2008, the U.S. Department of Justice cited the jail for violating inmates' constitutional rights, including excessive use of force by staff, inadequate fire safety and sanitation, failure to protect inmates from harming one another, and inadequate medical and mental health care. The jail remains under federal watch.

The jail is one of America's largest pretrial detention centers where those arrested and unable to make bail remain, presumed innocent, until their cases are adjudicated. About 2,200 of the 8,800 detainees have a mental health diagnosis, prompting many to call it America's largest mental health institution. By comparison, Bellevue Hospital Center in New York City is considered the nation's largest mental health hospital with 330 psychiatric beds.
Overcrowded jails housing mentally ill people are not unique to Chicago. Across the nation, about 383,000 inmates with serious mental illness sit in jails and state prisons. That's 10 times as many people as in state hospitals, according to the nonprofit Treatment Advocacy Center. "It is an omnipresent tragedy that there is an overrepresentation of people with mental illness in jails," says Dr. Fred Osher, the Charleston, South Carolina-based director of health systems and services policy at the Council of State Governments Justice Center.

Many who have been arrested do not receive regular psychiatric care or counseling on the outside, often because of a lack of adequate insurance. "Their violating the law often is linked to their mental health issues. That’s different from people who are making bad choices," says attorney Jennifer Vollen-Katz of the John Howard Association of Illinois, a Chicago-based nonprofit devoted to prison reform. "If we are more mindful of that, we might get closer to getting people into the right systems where we address their needs."

THE SHERIFF’S CRUSADE

With graying hair and rimless eyeglasses, Dart looks more like an English professor than a sheriff. He wears beige chinos and a blue checked shirt, his holster and gun visible on his back, and his sheriff’s badge on his belt. A flip phone hides in his pocket, and several colorful, braided-yarn bracelets made by his five children rest on his wrists.

Despite his law enforcement responsibilities and his crusade to improve mental health treatment, the 54-year-old sheriff does not have a background in mental health, medicine or even police work. (He has, however, received the same firearms training as law enforcement.) The Chicago native is a Jesuit-educated, voluntarily inactive lawyer who served in the state legislature before being elected sheriff and focusing on mental health. It has been an issue as long as he has been sheriff, Dart says. "But it’s only been the last two or three years that the world has woken up to it."

Although he is not the only one taking this approach, Dart has perhaps been the loudest American sheriff on the issue of mental health, writing op-eds in the Chicago Tribune and Wall Street Journal. "The voice that [Dart] has given—that this is a major crisis, that it is a tragedy on our hands—is huge," says Gilbert Gonzales, director of the Bexar County Mental Health Department in San Antonio.

"If I am going to be in charge of all these ill people, then I have to treat them like patients," Dart says.

At 9:30 on a Monday morning, a slight, 20-year-old man stands at a counter. Charged with possession of a firearm and cannabis, he’s deep inside the main building of the Cook County Jail, an 87-year-old, 4 million-square-foot compound. Intake sits in the labyrinth of deliberately unmarked tunnels connecting the complex of buildings that cover 96 acres. There’s no natural light here, making it dark despite the white walls inside the pens. Down the hall, two men with profound mental illness sit in solitary cells behind metal fencing, each shouting at their florid hallucinations.

Maggie Bojko stands on the opposite side of the counter. A behavioral health specialist with the sheriff’s office, she has a conversation with the man as part of a mandatory mental health screening for all new arrestees. She asks why he carries a gun. "For protection. This is Chicago."

“You been here before?” Her voice is kind and warm.

“No. This is my first time.” He swallows hard, looking wide-eyed and boyish.
TOUCHING STORIES
Detainees, along with jail officials, listen to stories from their peers about challenges and transformation. “It’s time for me to let go of the fake me and embrace the real me,” one inmate said.

“Do you have mental health issues? Depression? Bipolar?” she asks.

“I am not bipolar, but I am schizophrenic.” He pauses, timidly. “A little bit.”

They talk about counseling and medication—he has neither. His mother is his only family support. Bojko hands him a hot-pink card with numbers for suicide hotlines and 24-hour social service agencies. This move—the first of many offerings of help for mental illness—plants the seeds for the support he’ll need when he gets out.

The man says thank you and swallows hard again, then walks away, waiting for the sandwich he’ll receive before seeing the pretrial judge that afternoon.

“Historically, this is a population we couldn’t even get near, couldn’t get to interact with because they went right to court,” says Elli Montgomery, Cook County director of mental health advocacy and policy. “The sheriff is making sure we will offer support to help with basic needs—housing, medical, job training, rides and religious services.”

Though Cook County has a 12-year-old mental health court, a minute percentage of people with mental health issues go there, says Cara Smith, Cook County’s chief strategy officer. The reason is that getting into mental health court requires defendants to plead guilty and be willing to go into treatment, and they cannot be charged with a violent crime, among other restrictions. “With the restrictions, it doesn’t seem to help the people who need it most,” Smith says.

RESOURCE CRISIS
The U.S. has never had a national mental-health system. That responsibility falls on the states, which 100 years ago funded the first asylums and mental health hospitals. In the 1960s, deinstitutionalization became a buzzword as the facilities faced political and financial pressure to close. Patients were released from state institutions with plans for community treatment in smaller centers. It sounded ideal, but community services never kept up with demand. Many people ended up on the streets, unable to receive public services for treatment or afford private care.

Fifty years later, resources remain scarce and continue to dry up. To this day, when communities suffer hard times, mental health funding usually falls victim to cuts. From 2009 to 2012, state funding for mental health dropped by $1.6 billion—$187 million in Illinois alone, according to the National Alliance on Mental Illness.

So jails often become de facto mental health service providers, forcing administrators to figure out how to handle the situation. Dart admits he has no master vision for the jail’s mental health program. “I truly am making it up every day. I can’t wait for a grand plan here,” he says. “Grand-plan thinking is what is killing us. It’s paralysis. I just start doing it.”

Dart gets what he wants. He can reallocate resources toward supporting mental health issues without requiring approval for line-item changes in his budget. “I really have to answer to no one but the voters,” he says.

Cook County encompasses the politically charged city of Chicago, where Mayor Rahm Emanuel has shuttered half of the mental health clinics in recent years. (If Dart, a Democrat, throws his hat into the mayoral race, Emanuel will likely be his foe in a town where the primary often determines the election.) Cook County itself sits within the financially troubled state of Illinois, which operated without a budget for more than a year, choking off funding for many agencies. As a result, services for those with mental illness from the city and state are vanishing.

“Our state can’t even come up with a budget,” says Cook County Commissioner Richard Boykin. “It’s done irreparable harm at the social services level. Several providers have closed their doors or laid off workers. People shouldn’t have to be incarcerated to get services.”

NATIONAL EFFORTS
Faced with little support from state governments, the holistic mindset of Dart and a few others is a slow, yet growing movement around the country. In August, the American Bar Association passed revisions to the 10-part Criminal Justice Mental Health Standards, originally written in 1984, that recognize the need to change with the times. The new standards reflect changes in the law and best practices, ranging from the roles defense attorneys, prosecutors and judges play in cases involving people with mental illness to the addition of specialized courts and the need for service networks for defendants.

“The document recommends education for all stakeholders in the field and aims to change the system,” says Associate Administrative Judge Steve Leifman of the 11th Judicial Circuit of Florida in Miami-Dade County, who sits on the ABA committee that revised the standards.

Meanwhile, a collaboration among the National Association of Counties, the Council of State Governments Justice Center and the American Psychiatric Foundations aims to share those lessons with others working to move in the same direction. This is happening through the Stepping Up Initiative, a year-old group that encourages counties to work with state and local agencies and others to develop a new way of handling mentally ill...
detainees. At press time, 308 counties had passed resolutions supporting the group’s efforts.

However, even though counties have common goals and face similarly tight financial constraints, each county must negotiate specific political priorities in its multipronged approaches. “No one county has the special sauce yet,” says Osher, a leader at Stepping Up. “Everyone does things a little different and has to find their own way.”

To develop programs that address specific local needs, county officials must look at a variety of numbers—arrests, locations, available services and more. “We are spending a good amount of time and energy analyzing data. It really opens up your eyes,” Dart says. For example, Cook County used data to map out areas where law enforcement officers go most frequently to handle mental health cases. “Then, we layer over that services available,” Dart says, “so we can get more critical analysis of where services should be.”

Data also helped the county see the stumbling blocks, such as fees for expunging or sealing arrest records. According to the sheriff’s office, 17 percent of the more than 70,000 people who enter Cook County Jail every year get released as a result of having their cases dropped or being found not guilty. “Many of the people arrested have mental health issues and they are poor people. We need people to have jobs, and a mark on their record can be a roadblock,” Dart says.

He pushed for Illinois House Bill 6238, which creates a pilot program in Cook County to remove the $120 fee for expunging and sealing arrest records. The bill also opens up who can qualify to have their name cleared. It was signed by Illinois Gov. Bruce Rauner in August.

TEXAS HOLD ’EM

Data analysis also led to changes in Texas.

Gonzales, the mental health director in Bexar County says that in the early 2000s, “the get-tough-on-crime laws and the lock-em-up mentality that arrested everyone with a drug issue and even a small amount of marijuana filled San Antonio’s jails and emergency rooms beyond capacity.”

Desperate for solutions, county officials examined the data—from the number of homeless to police response time and the cost of processing detainees through the system. They found that the jails, hospitals, courts, police and mental health department often dealt with the same people—those with mental illness.

If various agencies could coordinate efforts, the county would save money. And if people with mental health or alcohol issues could be diverted out of jails and ERs and into specialized treatment, they’d be better off—and potentially more productive citizens. To that end, Gonzales helped bring together a multidisciplinary consortium of more than 60 community stakeholders.

“Getting buy-in can be incredibly frustrating, to put it mildly,” says Gonzales, who has led the communitywide jail diversion services. “But we rely on data. We can show how a difference is being made. We can show cost-benefit ratios that make sense. And it’s hard to argue with something that’s working.”

With $6 million in state funds, the county built the publicly funded Roberto L. Jimenez MD Restoration Center, offering services to stabilize people with mental illness—including a 48-hour inpatient psychiatric unit, an outpatient unit, a detox center and sobering services. The center sits across railroad tracks from the publicly and privately funded Haven for Hope, a rehabilitation campus and low-barrier homeless camp.

Now, police screen those they arrest for nonviolent, minor-offense mental health issues, the first of four levels of screenings. If any red flags are raised, such as previous suicide attempts or self-inflicted injuries, arrestees are brought to the restoration center for treatment instead of being taken to jail, says Gonzales, also a clinical psychologist. Those who are indigent immediately also are assigned a public defender and a licensed mental health counselor.

The once-overcrowded jail now has empty beds, and the streets of San Antonio have fewer homeless people, Gonzales says.

MONEY TALKS

Substantial savings come from getting police back on the streets within minutes, instead of hours after an arrest, Gonzales notes. The process of intake at the center frees up officer time. In Bexar County, it costs $2,295 for booking and placing an arrestee in jail. “If the officer can take the individual who is charged with a misdemeanor and bring them to treatment, the cost is about $350 and they are less likely to return to jail,” Gonzales says.

As the number of detainees dropped and the loads of police, judges and hospital emergency rooms lightened, the county has saved an estimated $10 million...
“We were actually able to close one of the local jails,” he says. “This enabled the county to save $12 million and we are investing some of that money into other programs. Rarely is there cost savings, just shifting.”

Another of Miami-Dade’s reforms involves working with nonviolent offenders deemed incompetent to stand trial. “Typically, if you are incompetent, you go to forensic restoration to become fit to stand trial, which costs $60,000 to $70,000 per person. In Florida, we spend $135 million to restore competency,” Leifman says.

Whatever the outcome of their cases, those arrested often leave the system with little if any access to mental health treatment. This tends to result in the revolving door between homelessness, mental health facilities and jail.

The Miami-Dade program involves community reintegration. “It is one-third cheaper, one-third quicker and we have very little if any recidivism,” Leifman says. “They stay with the same provider that we hook them up with, and we work with them to get them into recovery.”

**INTO THE COMMUNITY**

In the discharge lounge of Cook County Jail, the efforts to set up mental health support that began during the intake process are spelled out. A caseworker spends about 2½ hours covering the basics with each person being released—housing, medical needs, prescriptions. They also get a crisis hotline number and information covering topics such as how to get a bus pass and state ID.

The caseworker also makes sure the person has health insurance lined up. About 15,000 detainees have signed up for CountyCare, a low-income Affordable Care Act expansion of Medicaid. This ensures that their treatment plan after jail—including group therapy, doctors’ appointments and medication—will be covered, according to Dart.

The caseworkers make arrangements for rides by a friend or family member to make sure the detainee goes to someone’s home or a shelter instead of directly back to the streets. And once detainees are released, the county provides free rides to doctor appointments and job interviews using a donated van. “Previously, we would just let them go and that was that. I think that was the height of foolishness,” Dart says. “We stay with them, even after they leave.”

Every other Monday, some “alumni” of Cook County’s Mental Health Transition Center come back to the jail—on their own terms. This is part of a support group started under Dart; and today, six men show up to review how things are going. “Those guys who come back and do check in, they are the ones doing really well,” says Sharon Latiker, a community outreach manager.

One man has a job interview lined up. Two are studying to become ministers and invite the others to listen to their first sermons. Another is celebrating 18 months of sobriety. The lessons they learned while in the program during detention—to stay away from people, places and things that trigger high-risk behavior—are reinforced.

Former detainee David was released six weeks earlier after serving 10 months for assault. He says he now focuses on gratitude, that he already has all he needs to be happy. “Entitlement does not make you happy. Asking for happiness, wanting more does not make you happy,” David says. “Be grateful. We are released. Be grateful.”

“That is powerful. That gives me chills,” says Lee, an alum who wears a white T-shirt and black shorts. “Cold-blooded truth.”

“The Mental Health Transitional Center has changed me,” David says. “This program has saved me.”

Julianne Hill is a freelance writer based in Chicago.
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The blog is not a slog. Even as more people express themselves online in fleeting notes and images, law bloggers enjoy their more reflective discipline.

To mark a decade of the Blawg 100, the ABA Journal polled bloggers in its online directory, which now lists more than 4,000 legal-practice websites. Long-form legal writers in the State of the Legal Blogosphere Survey still find rewards in enhanced reputation, professional development and personal enjoyment.

More than half the survey’s 391 respondents have been blogging for more than five years, so signs of fatigue would be expected. “After 13 years of blogging, it is increasingly difficult to come up with fresh topics,” says an anonymous solo practitioner.

Still, law bloggers display the persistent urge to expand their own knowledge. In return, they appreciate their role filling a knowledge gap in a wide range of legal specialties. “For many people, their first step in legal research is to go to Google, not Westlaw or Nexis,” says Nashville, Tennessee, lawyer Todd Presnell, who blogs at Presnell on Privileges. “If you’re beginning to research an issue, blogs can be very helpful to focus your research quicker. Likely, somebody has looked at this issue and written about it.”

Nearly three-quarters of respondents read law blogs at least several times a week. Typically they post to their blogs weekly, and 93 percent plan to maintain or pick up the pace.

Law bloggers are an expert group. Nine in 10 are practicing attorneys or work in legal services, with a smattering of academics, law students, marketers, librarians and consultants.

Blogging exerts a special pull on small-firm practitioners. Half are in law firms or legal departments with 10 or fewer employees. With fewer ways to interact with peers, they look to blogging to extend their network.

Keith R. Lee launched Associate’s Mind, a blog for young lawyers, in his senior year at Birmingham School of Law. He continues the blog, although he’s now a partner in a three-partner practice in the Alabama city. But he contends that law bloggers no longer represent a community of lawyers. “Almost all new legal blogs are marketing schlock,” he says. “Most of the people who would have started a blog 10 years ago are on social media now.”

Not all bloggers try to measure their impact. Only half follow their metrics or social sharing activity. While 63 percent believe their blog brings in clients, 28 percent really don’t know.

Those who mind the metrics and venture into search engine optimization find blogs effective. “My blog is my No. 1 source of new clients,” says Baltimore environmental lawyer Stuart Kaplow. “It has exceeded my wildest expectations.”

Whether for personal satisfaction, networking, prestige or lead generation, bloggers find a solid return on their investment. “It’s impossible to calculate ROI for blogging,” says internet lawyer Doug Isenberg of the GigaLaw firm in Atlanta, “but I do it primarily to keep myself abreast of important developments in my area of the law, plus for credibility and visibility. And it’s fun!”

—Stephen Rynkiewicz
ALL ABOUT ADVERTISING LAW
Venable’s group blog covers advertising laws of concern to broadcasters and marketers, with special attention paid to implications of Federal Trade Commission and Federal Communications Commission rulings. This year, they ran a very informative series called “Golden Rules,” all about the advertising and sponsorship issues raised by the Olympics.

ARBITRATION NATION
“This blawg provides recent news on all sorts of interesting arbitration decisions nationwide and does so accurately, intelligently, concisely and with a sense of humor and, sometimes, savvy political commentary. This may be the best ADR blawg, period. I have not seen a better one, and I read an awful lot of ADR news and edit the ABA ADR website for the Litigation Section.”
—Mitchell Martinello, Noveck & Macey, Chicago

ART LAW & MORE
The field of art law is often more swashbuckling than it’s given credit for. Posts on Art Law & More contain details about forgeries, heists, hidden masterpieces, colonial cultural looting, mysterious graffiti artists and Nazi-era thefts. But it’s not all criminal law; the blog, published by the London firm Boodle Hatfield, also covers things such as museum contracts, public works and the potential effects Brexit could have on the art market.

ASBESTOS CASE TRACKER
This blog “is very well-written by skilled attorneys especially knowledgeable about and devoted to the particular subject matter—asbestos litigation,” writes Zachary S. Goldberg of Goldberg Corwin in New York City. “The material covered is always very current, usually describing a significant decision handed down within the past 24 to 48 hours.”

ASSOCIATE’S MIND
Alabama lawyer Keith Lee has made helping newbie lawyers the focus of much of his writing. (Lee is also the author of the ABA-published The Marble and the Sculptor, a book for those transitioning from law school to law practice.) But you don’t have to be a young practitioner to appreciate his mind, which also ponders questions like the legality of “murderbots” and Pokémon Go’s legal pitfalls as well as crunches numbers to report on law school enrollment trends.

ATTORNEY@WORK
The bloggers of Attorney@Work truly fulfill the promise of their slogan: “One really good idea every day for enterprising lawyers.” Law practice management may not be for the faint of heart, but the tips and tricks offered by this blog can make it easier.

BEFORE THE BAR–ABA FOR LAW STUDENTS
The ABA Law Student Division is invested in helping would-be lawyers succeed early. This blog offers tips on various issues, including the Uniform Bar Exam, handling student loans, conducting oneself professionally, social networking and even managing study habits. Recent grads will also find useful career advice.

BELABOR THE POINT
“I’d be pushing up the HR daisies without the solid information this blog provides,” writes Jeffrey Biegelsen of the Starrett Building Co. in Fort Lauderdale, Florida. “I cannot quantify how much money this has saved my organization.” The blog also has a Spanish-language version: Café con Labor.

BESPACIFIC
“No one better has her finger on the pulse of the legal information world than Sabrina Pacifi, law librarian and author of the blog BeSpecific,” writes blogger Robert Ambrogi. “Launched in 2002, BeSpecific is one of the longest-running legal blogs and, remarkably, Sabrina seems more prolific today than ever. She posts multiple items every day, covering the gamut of law, technology and knowledge discovery and topics ranging from cybersecurity to legal research to government regulation to civil liberties to IP and more. For me, BeSpecific is one of my daily must-reads and has been for 14 years straight.”
BEST PRACTICES FOR LEGAL EDUCATION

This is, as the blog’s header emphasizes, “a place to discuss” what works in legal ed. It’s truly a blog about teaching law. Law professor contributors blog about their classroom experiments and what lesson structures seem to work for students; they share lists of experiential learning resources; and they talk about what they’re learning from their students. And they also keep readers informed on the latest American Bar Association guidance.

THE BETTER CHANCERY PRACTICE BLOG

“In Mississippi, the chancery court can often be a confusing place,” writes Amarette Speights of the O’Neal Law Firm in Madison. “Chancellors have a very broad range of power and can pretty much make up the rules as they go. But this is not an insignificant traffic court, this is our family court. Our land court. Our youth court. Our drug court. As such, I love that Judge [Larry] Primeaux gives us regular guidance as to how to practice. Coming from someone with his experience ... I love it. Plus, he is quite funny, and once a week, he just posts amusing items.” Readers also love the blog’s repository of checklists—lists of factors that apply in various types of chancery court cases.

BIG LAW BUSINESS

Published by Bloomberg Law, this is a newsy site, full of the latest BigLaw mergers and case decisions, as well as a wider look at the international legal market. The blog is great for readers looking to stay informed at the national and international level. It’s also notable for its coverage of news affecting in-house counsel of major companies.

BIG MOLECULE WATCH

For more than a year now, Goodwin Procter has been exhaustively covering all U.S. legal developments related to biosimilars—biologic drug products that closely match but are not identical to their brand-name counterparts. “It has very crisp and precise information,” writes Meghal Mistry, a manager at Zydus Cadila in Ahmedabad, India.

BRIAN LEITER’S LAW SCHOOL REPORTS

Go to this blog for a look at the state of the legal education field from one of its insiders. Leiter, a University of Chicago Law School professor, does an excellent job of compiling data from scores of surveys and sources to give readers an idea about the prevalent trends affecting law schools, law professors and law students. Frequent contributor Michael Simkovic, a Seton Hall law prof, has also done some interesting posts this year about lawyer earnings.

CAAFLOG

CAAFlog states as a motto of sorts: “Military justice blogs are to blogs as military music is to music.” That said, this is where to go for coverage of the U.S. Court of Appeals for the Armed Forces and the courts of each military branch. And check out this blog if you want to read about the court-martial case of Army Sgt. Bowe Bergdahl (the subject of season 2 of the popular Serial podcast), from the perspective of bloggers with military law expertise.

CADY BAR THE DOOR

Brooks Pierce attorney David Smyth writes with drama about federal securities law enforcement, insider trading and criminal news-of-the-weird that hits the appellate courts. As former assistant director of the Securities and Exchange Commission’s Division of Enforcement, he knows what he’s talking about.

CANNAP ROSO BLOG

As an increasing number of states legalize the sale of marijuana for at least some purposes, lawyers are needed to sort out the legal needs of cannabis growers, users and distributors. The blog’s “State of Cannabis” series examines the status of drug laws in each state, ranking them on their openness to the cannabis industry.

CARTEL CAPERS

Trust this antitrust blog: Robert Connolly, a Justice Department veteran now in private practice, reads cartel prosecution documents and discusses the cases from the Antitrust Division’s point of view—although not necessarily without criticism for the approach the DOJ takes in a given case. He also compares and contrasts different countries’ approaches to enforcing competition law.
CA3BLOG
"This blog gives me practical, concise summaries of all notable (all published and many unpublished) 3rd Circuit decisions as soon as the decisions are issued. The blogger is a practicing lawyer who obviously has a deep understanding of federal appellate practice. His comments include accurate summaries and thoughtful analysis of the key points. He also identifies questionable aspects of the decisions and areas ripe for litigation."
—Valerie Burch, the Shagin Law Group in Harrisburg, Pennsylvania

CFPB MONITOR
Who watches the watchers? In the case of the Consumer Financial Protection Bureau, the answer is the CFPB Monitor. The blog, produced by the firm Ballard Spahr, aims to inform companies of the bureau’s latest decisions and how they might be affected. In addition to the mortgage lenders and debt collectors who are normally thought of as targets for the CFPB’s oversight, the blog also addresses the specific concerns of auto finance companies.

COMPELLING DISCOVERY
This blog “keeps readers apprised of changes and evolutions in state and federal discovery rules of civil procedure,” writes Johnathan Leavitt of Saggese & Associates in Las Vegas. Some posts highlight and analyze the rare Nevada Supreme Court ruling addressing discovery issues. In other posts, lawyer-blogger Michael Lowry shares discovery-related gaffes he sees in Nevada cases.

CONSTITUTIONAL LAW PROF BLOG
Law pros Steven Schwinn and Ruthann Robson provide same-day coverage and analysis of the most newsworthy constitutional law cases at the U.S. Supreme Court, U.S. Court of Appeals and state supreme court levels. Robson’s “Daily Read” posts note interesting stories in the mainstream media and law reviews, and she adds her own thoughtful commentary.

CONSTITUTION DAILY
The National Constitution Center hosts this blog to foster discussion about the role of the Constitution in the United States and illuminate the workings of the U.S. Supreme Court. From the blog, you can also find links to live and archived videos of Constitution Center events, a weekly podcast, an interactive Constitution and the occasional history lesson.

CREDIT SLIPS
This blog—which covers consumer law, credit and bankruptcy—marked its 10-year anniversary this year. It’s where Massachusetts Sen. Elizabeth Warren, who went on to establish the Consumer Financial Protection Bureau, was blogging until her first Congress. And the blog is still going strong. Law prof contributors cover important bankruptcy rulings, summarize and share their scholarship and talk about how current bankruptcy-related events are changing what they’re teaching and how they’re teaching it.

DASHBOARD INSIGHTS
“The difference between technology companies and automotive companies is getting smaller and smaller,” Foley & Lardner’s Jeffrey A. Sobel writes. As zero-emission and fully autonomous vehicles move closer to reality—not to mention Toyota’s two patents related to flying cars—liability and regulatory issues abound. And these bloggers want to talk about them.

DEFROSTING COLD CASES
If you were a fan of Making a Murderer, consider delving into Defrosting Cold Cases, which compiles evidence for both wrongful convictions and crimes for which no one has yet been brought to justice.

DEWEY B STRATEGIC
Since 2011, Jean P. O’Grady has been a voice for the rarely sung but invaluable information professionals in the industry. Emerging technologies have changed the landscape for law librarians; O’Grady’s blog provides guidance on the newest tools available to the profession and on opportunities for librarians to be a driving force for innovation.

DIVORCE DISCOURSE
Lee Rosen’s blog may have the word divorce in its name, but its usefulness extends beyond family law practitioners. Any attorney who runs a law practice can benefit from the practical, concrete advice Rosen gives readers for marketing and managing a firm.

EMPIRICAL SCOTUS
The U.S. Supreme Court is notorious for inscrutability and unpredictability, a reputation encouraged by many justices. But Empirical SCOTUS provides a new window into understanding the court by crunching numbers. Blogger Adam Feldman analyzes contemporary and historical cases—and the lawyers, law firms, justices and other participants—to determine everything from which firms are filing the most cert petitions to whether the Roberts court can still be considered conservative.
THE EMPLOYER HANDBOOK

"Eric Meyer does an amazing job of presenting employment law information by discussing entertaining cases and giving useful takeaways for HR professionals and other attorneys," writes Brooke Kozak of Shaw Valenza in Sacramento, California. "I love both the snarky style and the substance. It’s my can’t-miss blawg—first thing I read every morning. And it makes me laugh."

EMPLOYMENT & LABOR INSIDER

Lawyer Robin Shea's loyal following of human resources professionals love her Friday posts—complete with punchy headlines—that keep them up-to-date on their field. Posts take close looks at cases that make the appellate courts or hit the mainstream media. She’s also given to fun but informative listy posts like "Five things about religion in the workplace that you may not have known" or "25 quick takes (no kidding!) on the EEOC’s proposed national origin guidance."

EVIDENCEPROF BLOG

University of South Carolina law professor Colin Miller posts on studies about eyewitness suggestibility, proposed legislation related to penalties for withholding or falsifying evidence and much more. Miller also posts about Adnan Syed—his murder case was the subject of the first season of Serial—who was granted a new trial based on new evidence unearthed by the podcast.

EXCESS OF DEMOCRACY

Pepperdine University law professor Derek T. Muller takes his blog’s name from a speech given during the Federal Convention of 1787, and he writes about how our democracy is reflected in election law, legal education, the U.S. Supreme Court and other organs of government. He also compiles an annual 10-year retrospective on the fates of various Supreme Court clerks, offering an illuminating glimpse at what careers can await those who land those coveted positions.

FAULT LINES

A group blog hosted by Mimesis Law, Fault Lines provides plain-speaking, irreverent takes on criminal justice issues. Contributing writers provide a wide range of views on how the criminal justice system should function and debate each other on issues brought into focus by current events and cases.

FCPA PROFESSOR

Law professor Mike Koehler’s "coverage of the U.S. and global enforcement of anti-bribery laws is unsurpassed in its breadth and depth," writes Warren Faure, senior environmental counsel at Sun Chemical Corp. Robert Wilhelm, a legal editor at Bloomberg BNA, writes that the blog “doesn’t just give lip service to DOJ press releases. Koehler goes behind the rhetoric and digs into the actual nuts and bolts of [Foreign Corrupt Practices Act] prosecutions."

FDA LAW BLOG

Hyman, Phelps & McNamara’s blog masters cover the Food and Drug Administration’s regulation and enforcement actions, the FDA’s reports to Congress, the guidance documents it releases, and complaints filed against the administration. The bloggers also maintain a spreadsheet tracking FDA-related legislation.

FMLA INSIGHTS

"As employment counsel, I review all of the [Americans with Disabilities Act] reasonable accommodations as well as [Family Medical Leave Act] issues. For that reason, this blog is a critical resource to me and my staff. I tell all of our EEO and HR employees to sign up for the newsletter and to use this blog for information concerning FMLA and ADA issues."
—John Kim, NYC Health and Hospitals

FOURTHAMENDMENT.COM

The evidentiary rules of search and seizure—and the police power to carry out those searches—have been a recent hot-button issue in the United States. Criminal defense lawyer John Wesley Hall’s site provides meticulous descriptions of Fourth Amendment decisions across the nation, as well as links to articles and blog posts with interesting takes on law enforcement and the militarization of police.

THE GEN WHY LAWYER

Millennial lawyer Nicole Abboud found that practicing law in a traditional firm made her deeply unhappy. She launched a solo practice and created the Gen Why Lawyer Podcast and website to talk with other young lawyers about the ways in which they’re shaking up the profession. The podcast also includes tips on career advancement and managing your practice.
GIGALAW BLOG
What's in a name? For businesses and individuals trying to register internet domains, the answer is “plenty.” Doug Isenberg provides a look at the latest regulations and disputes over domain names, as well as other internet law and copyright topics, including DMCA takedown notices.

THE GINGER (LAW) LIBRARIAN
Jamie J. Baker, a law librarian and legal writing instructor for Texas Tech University School of Law, runs a blog that is a mix of research tips and links to articles of interest—and some adorable cat photos. One of the challenges facing librarians in general is how to preserve and archive data and make it accessible for scholars, researchers and the general public—something that's also of paramount interest to e-discovery folks. Baker frequently discusses articles addressing this dilemma.

GOLF DISPUTE RESOLUTION
The game of golf can have an astonishing variety of legal implications, from real estate and property disputes to tort cases, contract negotiations, bankruptcy decisions and even custody disputes. All are lovingly cataloged by attorney Rob Harris. With the election year shining a bright light on candidates' business interests, litigation over Donald Trump's chain of golf courses has provided much fodder for Harris.

GRAND JURY TARGET
“Great blog about developments in the white-collar world. Less of a deep dive into the legal issues in specific cases, but more of general reporting on case,” writes Assistant U.S. Attorney Brandon Essig. Washington, D.C., solo Sara Kropf “makes great effort to recognize successes of fellow practitioners. As a federal prosecutor, this blog run by a white-collar defense lawyer is an excellent way to see what the other side is thinking.”

HERSTON ON TENNESSEE FAMILY LAW
“I read Herston on Tennessee Family Law almost every day, and it’s my main source for keeping up with developments in my main area of practice: family law. In fact, I sometimes start there when considering my own cases. It usually points me in the right direction to start my research. The blog is well-written, consistently updated with the latest opinions and advertisement/clutter-free.” —Julie Dyess, solo practitioner in Clarksville, Tennessee

IN CUSTODIA LEGIS: LAW LIBRARIANS OF CONGRESS
Blog posts—sometimes complete with historical photos from its own prints and photographs division—cover everything from recent Law Library of Congress reports to fun historical facts from its rare books and special collections division. “Tends to motivate you to learn more about a specific subject—and to use one's reader card more often at Library of Congress,” writes Theodore Defosse, a senior archival specialist at the U.S. Government Printing Office.

INSIDE PRIVACY
Covington & Burling bloggers address the struggles of courts and governments around the United States and the world to apply existing privacy laws to evolving technology—and the struggles of entities that face liability when their data security measures aren't up to snuff. Posts also cover relevant congressional legislation, White House policy directives and industry best practices related to cybersecurity.

IP NEWS FOR BUSINESS
Trademark, copyright and patent laws can feel like murky waters for many businesses. Written by Golan Christie partner Beverly A. Berneman, this blog focuses on providing succinct examples of how businesses ran into intellectual property disputes and what the results were. One of our favorite elements is her pithy “Why You Should Know This” section at the bottom of most of her posts, which provides excellent context for how the specific IP outcomes could affect others.

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JOST ON JUSTICE
U.S. Supreme Court watcher Kenneth Jost’s weekly posts handicap the high court’s upcoming decisions and thoroughly analyze what SCOTUS has handed down. Jost also covers appellate cases that look ripe for review by the justices and other current events that raise constitutional questions.

JOTWELL
Want a peek at what legal scholars are working on without having to read a dry law review article? Jotwell—an acronym for Journal of Things We Like (Lots)—is a space for law professors and legal scholars to discuss their topics of study in an approachable way. Sponsored by the University of Miami School of Law, the blog is also broken down into sections by topic for easy browsing.

JURIST—PAPER CHASE
Here, law faculty and law students from the University of Pittsburgh cover hard legal news—quirky news is eschewed on principle. And don’t expect the tight U.S. focus embraced by most of the mainstream media: A given post is just as likely to cover a prosecution or the actions of a legislature from a nation halfway across the world as a stateside federal court ruling.

LAWFARE
This 6-year-old blog, published in cooperation with the Brookings Institution, has some profile. FBI Director James Comey did a guest post when the bureau was seeking Apple’s help in unlocking the iPhone of the San Bernardino, California, shooting suspect. Conflicts like that one are at the heart of Lawfare’s mission: to explore “hard national security choices” the nation faces when actions it takes or contemplates to protect citizens run counter to its laws.

THE LAW FOR LAWYERS TODAY
Do you have an ethical dilemma, or do you just like thinking your way through touchy hypothetical situations? The mission of Law for Lawyers Today is to be a resource for lawyers and firms, keeping them up-to-date on the newest ethics rules and being on the forefront of emerging legal ethics issues. From Microsoft’s acquisition of LinkedIn to the wild popularity of Pokémon Go, the blog tries to anticipate possible conflicts and offer its readers ways to minimize their risk.

LAWPROSE
For any lover of language, Bryan A. Garner’s LawProse is an invaluable resource. From the eternal “lay” or “lie” conundrum to more arcane issues of textualism such as “last-antecedent canon vs. series-qualifier canon,” the archives of LawProse probably have an answer.

LAW SCHOOL CAFÉ
Ohio State University law professor Deborah Merritt’s blog takes the crises in legal education and the legal profession head-on—declining law school enrollment, heavy debt loads for law school graduates, fewer lawyer jobs—and explores what the legal academy can be doing about it.

LAW21
Guess who’s back? After signing off the legal blogosphere for more than 18 months, Canadian management consultant Jordan Furlong started posting again in July and hit the ground running: tracking the technology that more innovative law firms are using, opining on the future of the partner-associate model, and questioning whether the legal industry has truly been “disrupted.”

THE LAWYER WHISPERER
“...practical advice on a range of real-world scenarios and includes topics where market knowledge is hard to come by for practicing lawyers (versus recruiters who are steeped in these issues day in day out),” writes Erin MacLeod, a senior corporate attorney at Ancestry, about legal career strategist Julie Brush’s advice blog. “Plus, her writing style is entertaining as well as informative.”

LEGAL CHEEK
London-based Legal Cheek covers all the bases for Blighty—commentary on the legal issues of the day, timely law firm news, law school news and career advice—with a fun tabloid feel. The blog also has comprehensive rankings of the top 60 London law firms and the top 50 barristers’ chambers (by salary, by number of women—you name it).

THE LEGAL GEEKS
Does Professor Xavier of X-Men violate privacy by reading minds? Could Anakin Skywalker have claimed legal insanity for his acts as Darth Vader? These questions and more are given a thorough legal analysis by the bloggers. Blog co-founder Josh Gilliland also has a long-running podcast, The Legal Geeks, in which he and his guests discuss the newest legal questions posed by pop culture.
THE LEGAL GENEALOGIST
Judy G. Russell is a master of paperwork. That’s not surprising, given her qualifications as a JD and genealogist. Her blog offers a fascinating take on how old legal records cast light on the lives of people long since passed. But she also addresses myriad other legal issues related to the work of genealogists, including copyright, privacy laws, records access and the laws regarding DNA tests, as well as explaining the science behind that testing.

THE LEGAL WHITEBOARD
Writing on the Whiteboard can be a bit sporadic, but we admit we like to check in with this blog for its numbers rather than its words. University of St. Thomas law prof Jerry Organ takes the time to crunch the numbers on Law School Admissions Test scores, law school enrollment and even American Bar Association employment numbers, identifying important trends.

LETTERS BLOGATORY
Boston litigator Ted Folkman covers international judicial assistance, which Folkman describes as “getting judicial authorities in one state to take actions on your behalf in aid of a proceeding in another state.” You can get a feel for this topic by checking out his “Case of the Day” posts. He has also been covering the Chevron/Lago Agrio litigation for years. And at the time of Merrick Garland’s nomination to the U.S. Supreme Court, he evaluated Garland’s stands on international issues.

LITIGATION & TRIAL
We’ve enjoyed reading this blog for years. Sometimes, plaintiffs-side tort litigator Max Kennerly takes readers on fun trips through high-profile civil cases—the Trump University case and Hulk Hogan’s lawsuit against Gawker, for instance—writing about the actual law involved or bad decisions made by participating lawyers. Other posts discuss legislation or science that would affect some of the clients Kennerly represents in pharmaceutical lawsuits.

LYLE DENVINSTON LAW NEWS
Lyle Denniston left SCOTUSBlog earlier this year, after working as its U.S. Supreme Court correspondent for 12 years. But anyone who misses his insightful reporting can still read his work on his personal blog, Lyle Denniston Law News. Though some of the entries are cross-posted from his new employer, the National Constitution Center’s Constitution Daily, Denniston’s own blog includes additional pieces about legal issues outside his customary Supreme Court beat. As a legal reporter since 1948, Denniston has an incredibly valuable vantage point on the legislative and judicial trends of the day.

MARLER BLOG
Bill Marler has consistently earned a place on our Blawg 100 list, and it’s not just because the tales of food poisoning outbreaks recounted on his blog keep us up at night. We feel he has truly proven how blogs can help lawyers with niche practices become sought-after experts.

MINNESOTA LITIGATOR
Those who read Seth Leventhal’s blog “improve not only their own legal knowledge but also strengthen the Minnesota bar as a whole,” writes Christopher Boline of Dudley & Smith in St. Paul. It’s a strong statement, but we agree. Some of his posts ask big questions: Why can judges be reluctant to sanction lawyers? Does the way the legal system determines the reasonableness of fees make sense? Other posts cover civil litigation that is making headlines in his state or cases that are just offbeat. Check out his amusing blow-by-blow coverage of litigation between Unitherm and Hormel over a precooked bacon process.

NOT GUILTY NO WAY
Criminal defense and immigration lawyer Mirriam Seddiqu writes what she feels about the state of American law in general and the criminal justice system in particular—and her posts aren’t always predictably politically correct or profanity-free. Seddiqu sometimes shares her perspective as a Muslim-American woman on topics, and in fact, she launched the American Muslim Women Political Action Committee this year. She also started a podcast this year with the same title as her blog.
ON THE CASE
Reuters reporter Alison Frankel runs the On the Case blog and focuses her reporting on big-ticket litigation and Securities and Exchange Commission news. If you want to keep up with the legal wranglings of tech giants from a perspective outside Silicon Valley, On the Case is a blog to follow.

OPEN LAW LAB
For the visual thinkers among you, Open Law Lab hopes to make the law more accessible. Creator Margaret Hagan’s mission is to use the principles of design to help make the law more engaging and understandable. Proponents of access-to-justice causes and attorneys wanting to make their law practice more streamlined and efficient will find great material here.

PARDON POWER
P.S. Ruckman Jr.’s Pardon Power blog is the most thoroughly researched and updated chronicle of historical and contemporary pardons we’ve come across. Ruckman, a great proponent for the use of pardon powers as a tool for criminal justice reform, provides a look back at the clemency actions of previous presidents as well as current news updates.

PATENTS POST-GRANT
The patent may be issued, but there is often much lawyering left to do. Alexandria, Virginia, lawyer Scott McKeown covers the U.S. Patent and Trademark Office’s post-grant proceedings (including cases before the Patent Trial & Appeal Board and the U.S. Court of Appeals for the Federal Circuit), its decisions and its rule-making.

PERSUASIVE LITIGATOR
If you’re a trial lawyer, understanding jury psychology can provide crucial insight into how you should be approaching your case. The jury consultants behind Persuasive Litigator offer advice on convincing techniques and explanations for jury behavior that might otherwise seem baffling.

PIRATED THOUGHTS
This is a lighthearted IP blog with a pop culture bent, written by Michael Lee of the New York City firm Morrison Lee. Pirated Thoughts covers issues like video game creators trying to sue the makers of cheating software; TV shows fighting to protect the naming rights of a fictional burger bar; and multinational companies trying to protect their brands by making borderline-ludicrous trademark attempts.

PRAWFSBLAWG
The group blog Prawfsblawg provides a smorgasbord of information valuable to law professors. Topics range from its authors’ most recent legal research, to how to advance in academia, to the implications of recent case decisions and legislation. Though founder Dan Markel died tragically in 2014, the other professors who blog on Prawfsblawg have kept up the quality and frequency of posting.

PRESNELL ON PRIVILEGES
Nashville, Tennessee, litigator Todd Presnell offers facts and analyses about rulings from federal and state courts around the country on attorney-client privilege issues. The decisions (as well as privilege-related lawsuits, legislation and op-eds) that he doesn’t get a chance to blog in-depth, he squeezes into a “Monthly Privilege Roundup.”

PRISON LAW BLOG
A new addition to our list, Prison Law Blog captured our attention by serving an audience of criminal justice workers, attorneys, prisoners and prisoners’ loved ones. It’s a great resource for the latest court decisions that could affect the lives of inmates or prison administrators and for prisoners who are attempting to do work on their own or others’ cases. The majority of the focus is on federal prisons, but state prison laws are also discussed.

PROCEDURALLY TAXING
“This blog contains a wealth of substantive expertise presented in a digestible and conversational manner. It is admittedly very focused on a specific area of law—federal income tax procedure—but in that regard is a valuable resource to anyone working in that area. Updates address issues that are both emerging and long-standing, and the archives are a great library of information from some top academics and practitioners in this area of law. I read it just about every day.”
—Dave Rohlfing, staff attorney, Alaska Business Development Center Taxpayer Clinic, Anchorage

RACE AND THE LAW PROF BLOG
This blog, launched last fall, highlights legal scholarship and calls for papers that tackle racial themes. Posts address issues like race and policing, anti-Muslim violence and voter suppression. In other posts, the law prof-authors discuss the experiences of immigrants to the United States—in some cases sharing their own experiences and hardships.
REBECCA TUSHNET’S 43(B)LOG
Imitation may be the sincerest form of flattery, but it can also be a violation of trademark law. Rebecca Tushnet has been chronicling astounding accounts of trademark violations and false advertising cases on this blog since 2003, making her one of the most lasting and prolific bloggers on our list.

REINVENTING PROFESSIONALS
Ari Kaplan’s frequent posts are in fact podcasts—10- to 15-minute interviews that focus on technology’s impact on the legal industry. Among his interview subjects are leaders of companies who develop legal document products, practice management software or e-discovery tools; as well as cybersecurity experts, BigLaw knowledge officers and small-firm lawyers who leverage technology in their practices.

RETAIL LAW ADVISOR
Bloggers from Goulston & Storrs cover new innovations and trends in retail in the United States and around the world. They include the use of selfies for market research and fraud prevention, cashless restaurants and the use of geolocation via Wi-Fi for stores to send promotional text messages to shoppers inside their establishments—and the attendant legal issues.

SARAH PORISS, ATTORNEY AT LAW LLC
Connecticut lawyer Sarah Poriss’ posts focus as much on what she can do to help her clients—a group of whom she says she took to the movies earlier this year—as what they can do to help themselves. She focuses mainly on mortgage issues and foreclosures as well as credit-card debt. “Practical and well-written material that helps both lawyers and Sarah’s potential client base,” writes San Francisco lawyer Albert Stoll.

SCREW YOU GUYS, I’M GOING HOME
In a blogosphere bursting with employer-side blogs, Florida practitioner Donna Ballman continues to champion the worker’s perspective in very chatty, readable posts, although her blogging pace has slowed quite a bit in recent years. Read about state legislation related to paid sick leave, noncompete agreements, breast-feeding discrimination and more.

SECURITIESLAWBLOG.COM
Laura Anthony’s blog “superbly navigates the complex securities regulation environment regarding, among other things, securities disclosure, going-public matters and [Securities and Exchange Commission] filings,” says Clermont, Florida, lawyer Frederick Lehrer. Anthony also publishes LawCast videos on securities industry news at least as often as she writes posts.

SHARIASOURCE
This is the eponymous blog of the initiative of Harvard Law School’s Islamic Legal Studies Program. The aim of the initiative is to tap Islamic policy experts around the world for resources and analysis on Islamic law. The aim of the blog is to knock ideas around. Footnoted posts discuss misconceptions about Sharia, compare and contrast Western law with Islamic law, and even explore regulation of halal food.

SIDEBARS
George Washington University law professor (and former prosecutor) Randall Eliason’s posts delve into the big white-collar crime cases of the day, sometimes exploring the lawyers’ tactics. This year, he also did a two-part series, “In Defense of the Grand Jury.”

SOCIALLY AWARE
It seems like every week, we hear stories of how someone’s interactions on social media went awry. In this MoFo blog, there are plenty of cautionary tales, but also advice on how to ethically handle social media as an individual or business owner. Socially Aware also tackles issues such as internet fraud, copyright disputes, federal regulations, data security and cyberbullying.

SPACE THOUGHTS
For every attorney who has ever looked up into the night sky and dreamed of going to space—and those who eventually devoted their careers to space law—Space Thoughts produces original posts on aerospace efforts and legislation around the globe and acts as a roundup of significant articles published elsewhere. The blog is written by attorney Michael J. Listner of the Space Law & Policy Solutions think tank, who has announced plans for a quarterly publication, The Précis, to keep subscribers up-to-date on special issues in space law.

STRATEGIC LEGAL TECHNOLOGY
Lawyer and knowledge management consultant Ron Friedmann has been blogging for 13 years. He covers law-tech conferences day by day, discusses new technologies and their impact on law firms, and otherwise shares his frank opinions about what clients actually want and what forward-thinking law firms need to do to keep them.

SUIT BY SUITS
Lawyer-blogging from Zuckerman Spaeder covers disputes between companies and their executives—often in the context of criminal investigations into possible corporate wrongdoing. Can a “suit” be fired for taking the Fifth or otherwise not cooperating with an investigation? If your client is accused of misappropriating trade secrets and his or her computer is seized, what recourse is there? If former company directors or officers face legal claims, can they demand the company advance legal fees?
TECHNOLOGY & MARKETING LAW BLOG
This year, Santa Clara University law prof Eric Goldman put his Forbes blog Tertium Quid—written more for a lay audience—on pause and refocused on this one he’s been writing since 2005. Posts cover topics such as lawsuits related to keyword advertising, online contracts, and court rulings related to the Defend Trade Secrets Act and the Communications Decency Act.

TEXAS AGRICULTURE LAW BLOG
Everything’s bigger in Texas, and that includes the legal battles. Environmental laws, animal safety, real estate and property issues, food safety and fracking are all issues that Texas farmers and ranchers have to contend with, and this blog does a great job of analyzing how recent court decisions or state legislation can affect them. Texas has long been on the cutting edge of energy law, and this blog also offers excellent examinations of how energy companies and agriculturists are dealing with their often-competing interests.

TRADEMARK & COPYRIGHT LAW
This Foley Hoag blog has a fun mix of new and relevant copyright and trademark rulings, explorations of atypical historic cases, and links to the law firm’s other relevant intellectual property publications and webinar recordings. If you don’t think this area of the law is interesting, this blog will prove you wrong.

TRADEMARKOLOGY
Pick the wrong name for your business or product, and you will face legal consequences. This blog, written by Stites & Harbison lawyers who help their clients choose such names and defend them in court, focuses largely on litigation related to contested names. The increasing proliferation of trademark applications and particularly interesting ones—such as hoops star Stephen Curry’s efforts to trademark four iterations of his name on the day of game six of the NBA finals—also catch the eyes of these bloggers.

TRIAL INSIDER
Anyone with a stake in decisions coming out of the San Francisco-based 9th U.S. Circuit Court of Appeals or Northern California should be following Trial Insider. Blogger Pamela A. MacLean offers focused coverage of the cases and opinions coming out of the region, and attorney Katie Burke provides perspective on family law decisions.

2CIVILITY
Published by the Illinois Supreme Court Commission on Professionalism, the blog tackles issues of ethics and civility in the profession, such as harassment, mentoring and the implications of new legal technologies. It also offers candid advice about how law schools can set their students up for ethical practices long before they take the bar exam, and how young lawyers can meet the standards of decorum expected of them.

UNDERSTANDING THE AMERICANS WITH DISABILITIES ACT
The ADA can be difficult for the layperson—and even law enforcement—to fully understand. Attorney William Goren lays out how the ADA is applicable in a variety of situations, from what a service establishment can be required to provide to what police should bear in mind when arresting someone with a possible mental illness. His posts are well-researched and detailed without being incomprehensible for readers.

THE VENTURE ALLEY
A must for any venture capitalists, investors or startups, Venture Alley is edited by DLA Piper’s Trent Dykes and Megan Muir. From the difficulties of choosing a corporate name to deciding whether to launch internationally, the contributing authors walk readers through the steps that should be considered. The tone is technical and should be highly informative to the entrepreneurs it’s aimed at.

VERDICT
If you’re looking for robust opinion pieces contributed by a wide range of legal experts, Verdict should be in your bookmarks. Run by Justia, the blog offers analyses of issues from across the legal spectrum and updates throughout the workweek.

THE WHITE BRONCO
“Dan Werly’s blawg ... is a must-read daily. If you enjoy reading sport law cases and current news on NFL and NBA contracts, then this is the blawg for you. Dan posts the reports and sports cases that are the most difficult to find. Plus, he gives detailed information about each case presented through sharing court documents and actual contracts. As a sport law professor, the White Bronco is a vital tool for keeping myself and students current.” —Courtney Flowers, assistant law professor at Texas Southern University

WORKPLACE CLASS ACTION BLOG
This Seyfarth Shaw blog is worth reading for any employer-side labor law attorneys or in-house counsel. In addition to giving readers summaries of the outcomes of various lawsuits, the blog publishes Seyfarth’s Annual Workplace Class Action Litigation Report, which compiles vital information for corporate counsel about what companies can and should be doing to stay ahead of lawsuits.
For many lawyers in small firms and solo practices, legal technology represents the ultimate catch-22. Technology can help lawyers operate more efficiently by streamlining many of the routine administrative tasks vital to the operation of a law practice. But that also can be mind-numbing and time-consuming to carry out. In many cases, lawyers find that dealing with these administrative chores becomes a barrier to engaging in the substantive practice of law.
Meanwhile, combing through the myriad available technological tools and services can be an even more time-consuming endeavor. As a result, many lawyers feel stuck in the status quo, unable to carve out time to determine how to save time.

That was a common complaint lawyers voiced when they met with Linda Klein of Atlanta, whose listening tour during her year as ABA president-elect featured meetings with small groups of lawyers throughout the United States. Her travels took her to big cities and rural outposts, and she heard from ABA members, nonmembers, and state and local bar leaders.

“Lawyers in small firms were especially worried that they had so many other burdens they couldn’t operate their practices as efficiently and successfully as possible,” says Klein, who began serving a one-year term as ABA president in August.

She remembers speaking to a solo practitioner in Denver who had almost no time to practice law because he was drowning in a sea of routine administrative tasks, such as billing and collecting. “I took that to heart,” Klein says. “I used to be a managing partner of a medium-size firm, and I remember all those administrative burdens. But I had help. When you’re at a small firm or solo practice, then it’s all on you.”

ROOM TO GROW

Klein has moved quickly to mobilize the ABA to help lawyers address these problems. She created the Working Group on Emerging Member Benefits, which developed a project called ABA Blueprint. The project, launched Nov. 3, is a one-stop source of information to help lawyers determine what programs or services would best fit their needs.

Developed in conjunction with CuroLegal, Blueprint has two options. The first, a “universal solutions” model, is a one-size-fits-all option for problems most solo and small-firm practitioners face. The second is a more individualized option in which lawyers answer questions via an automated chatbot-style interface about their practices and what kind of help they’re seeking to enable Blueprint to suggest more customized solutions.

“There’s a strong demand for a tool like this,” says Chad Burton, CEO of CuroLegal, which describes itself as a next-generation legal technology consulting and software firm that is owned and operated by lawyers. “We work with firms all the time looking for this type of help—especially in the smaller-firm world. When you are trying to actually practice law, it’s not your job to keep up-to-date with each and every vendor.”

In addition to technology, Blueprint provides services that relate to marketing, retirement and insurance, with more on the way. “We have a good list of potential future concepts and features, but we’re going to get feedback first and see what our users are looking for,” Burton says. “This will be a truly agile project.”

Thomas Grella, a shareholder at McGuire, Wood & Bissette in Asheville, North Carolina, chairs the member benefits group. He identifies several areas for possible Blueprint expansion.

“We want to expand our services to include encryption, email organization and cybersecurity,” says Grella, a member of the ABA House of Delegates representing the Law Practice Division. “We’re also developing a pro bono resource area where people can find out more about what kinds of work in that area they can do.”

Grella emphasizes the interactive nature of Blueprint. “If you want to see if there are CLEs out there for you, it doesn’t just direct you to the ABA CLE center,” he says. “It will actually ask you things, like what kind of law you practice, how much time do you have and whatnot, and then direct you to specific CLEs to fill up your commitment.”

SOLVING THE TECH CONUNDRUM

Grella also understands the plight of small-firm or solo lawyers caught in the tech conundrum, and he thinks a tool such as Blueprint can help. With a background in computer programming, Grella has played a major role in all tech-related decisions at his firm, especially during his 12-year stint as managing partner.

“We dealt with the same problems as small firms do,” says Grella of his 24-lawyer firm. “I understand the experience of having to educate myself in order for the firm to make correct decisions on technology. It’s difficult when you’re trying to run a practice.”

Blueprint is a web-based tool that works on mobile devices as well as desktop computers. On top of being an ABA member benefit, it is a recruitment tool. And while nonmembers may use Blueprint, certain services and discounts are available only to ABA members. Nonmembers have to sign up if they wish to get customized, individualized solutions to their problems. “The discounts in Blueprint are significant,” Klein says. “The more you choose, the more you save. You might even cover your ABA dues.”

Klein thinks Blueprint has the potential to help improve access to justice. “If lawyers were relieved of some of these administrative burdens, then they would have more time to do pro bono projects,” she says. “They could even charge less and be more accessible to modest-income individuals. Most lawyers I spoke with told me they wanted to be able to devote more time to do pro bono or low bono projects. Most people went to law school to help people.”
An Explicit Step

ABA leaders praise the Department of Justice for introducing a far-reaching training program to recognize and eliminate implicit bias within its ranks

By Victor Li

In June, as Paulette Brown was nearing the end of her term as ABA president, she got a nice farewell present from the U.S. Department of Justice.

Having been in contact with various Justice Department officials, Brown knew the DOJ was planning on introducing mandatory training for all federal prosecutors designed to prevent implicit bias—defined as "unconscious or subtle associations that individuals make between groups of people and stereotypes about those groups"—from affecting their decision-making. What she hadn't expected was the department's announcement that all its employees, including agents, would be required to receive this training, and that the training process would begin almost immediately.

A statement issued by the Justice Department said this decision would affect more than 28,000 employees, including over 23,000 federal agents from entities such as the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration and the FBI, as well as some 5,800 federal prosecutors.

The department's training program was an important acknowledgment of the impact of implicit bias on law enforcement agencies and communities during a summer when news reports highlighted a number of shootings of unarmed black men by white police officers.

"Our officers are more effective and our communities are more secure when law enforcement has the tools and training they need to address today's public safety challenges," said Attorney General Loretta Lynch in the news release announcing the program. "At the Department of Justice, we are committed to ensuring that our own personnel are well-trained in the core principles and best practices of community policing. Today's announcement is an important step in our ongoing efforts to promote fairness, eliminate bias and build the stronger, safer, more just society that all Americans deserve."

Brown was pleasantly surprised by the announcement. "I was elated because, based on what I had heard, I was under the impression that it would take a longer period of time before it was actually launched," says Brown of Morristown, New Jersey. She praises the training program for being comprehensive and dealing with the issue in a "nonsuperficial" way. "They hired outside consultants to assist in designing the program, and they're very serious about it," she says. "I would say it's not a program that just hits the main concepts one time and then you're done. It goes beyond that. They want to make sure their employees fully grasp the issue and understand how it can affect their decision-making in a very real way."

A HIGH PRIORITY

Brown had made the elimination of all bias, both implicit and explicit, in the legal industry one of her primary goals during her one-year tenure as ABA president, which ended in August. Early on, she appointed the Diversity & Inclusion 360 Commission to create sustainable action plans to increase diversity and eliminate bias within the legal profession. Among its projects, the commission created implicit-bias training videos and toolkits for judges, prosecutors and public defenders.

While that commission was a one-year project, new ABA President Linda A. Klein of Atlanta says it is important for the association to continue its efforts to reduce implicit bias in the profession. "We all have implicit biases to some degree that can cause us to unconsciously assign people into categories based on age, gender, race or other qualities," she says. "Understanding such bias is important if we are to make fair and just decisions, which is why the American Bar Association has worked to raise the awareness of implicit bias. The ABA is committed to ensuring that our justice system is equitable and impartial. Educating attorneys about implicit bias helps achieve that goal."

Effective training to address
Reinforcements
Are on the Way

The ABA supports efforts in Congress to bolster legal services for homeless veterans through public and private partnerships

By Rhonda McMillion

At first blush, legal assistance might not appear to be one of the most pressing needs facing veterans who are homeless or at risk of becoming homeless. But like so many first impressions, that one is wrong.

Although the Obama administration proclaimed in July that an initiative launched in 2009 has resulted in a nearly 50 percent decline in the number of homeless veterans, the latest annual survey produced by the Community Homeless Assessment, Local Education and Networking Groups indicates that the greatest unmet needs of homeless veterans have remained fairly constant.

According to the groups’ survey, four of the top 10 reported unmet needs of homeless veterans over the past five years require the assistance of a lawyer. Those four needs are issues related to child support, driver’s licenses, outstanding warrants and fines, and foreclosures and evictions.

Recognizing the problem, the ABA is urging Congress to enact legislation to expand availability of legal services for homeless veterans and veterans at risk of homelessness.

“Resolving these issues is critical to ending homelessness because they operate as total barriers to housing, employment, benefits and services,” stated ABA President Linda A. Klein of Atlanta in a letter sent in September to Rep. Joyce Beatty, D-Ohio, who has introduced the Veterans Legal Assistance Act (H.R. 6046). Klein, who has made improving legal assistance to veterans one of her presidential priorities, emphasized in her letter that the “federal government cannot remove these barriers, but a lawyer can.”

The bipartisan legislation, whose chief co-sponsors are Reps. Steve Stivers and Pat Tiberi, both Ohio Republicans, would authorize the secretary of the Department of Veterans Affairs to enter into partnerships with public and private entities. Homeless veterans and those at risk of homelessness are provided with legal services relating to housing, including eviction defense, and representation in landlord-tenant and foreclosure cases; family law, including court proceedings for child support, divorce, estate planning and family reconciliation; income support, including assistance in obtaining public benefits; and criminal defense, including matters symptomatic of homelessness, such as outstanding warrants, fines and driver’s license revocation.

The legislation would require the partnerships to be equitably established across the United States to include rural communities and tribal lands. In addition, the VA secretary would be required to consult with veterans’ service organizations and other entities to coordinate outreach relationships. The bill also would require groups entering into partnerships to submit periodic reports to the secretary on the legal services they have provided.

A CONCERTED EFFORT

“Clearly, we must do more to help our nation’s veterans,” Beatty said when she introduced the legislation. “One way to do so immediately is by expanding access to free, high-quality legal services.”

Klein pointed out that most of the work in the legal community to help homeless veterans has been carried out by volunteer lawyers, specialized nonprofits and cash-strapped civil legal aid offices. She emphasized that it “will take both the VA and the legal community working together in an even more concerted way to meet the need of veterans. Allowing increased private-public partnerships with the VA to improve these veterans’ access to legal help would take a desperately needed step toward ending the scourge of veteran homelessness in America.” Klein called the legislation a “powerful tool to make this collaboration real.”

Beatty’s bill is one of numerous pieces of legislation introduced during the 114th Congress that seek to help homeless veterans. Appropriations legislation enacted in late September includes full-year funding for two programs providing for some legal services to homeless veterans: $320 million for Supportive Services for Veteran Families and $227 million for the Grant and Per Diem Program.

In addition, President Barack Obama signed a bill reauthorizing several VA programs that aid homeless veterans, including those providing assistance for veterans’ reintegration, help for female veterans and their children, and referrals for treatment and rehabilitation services.
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**AMENDMENTS TO THE ABA CONSTITUTION AND BYLAWS**

The Constitution and Bylaws may be amended only at the Annual Meeting upon action of the House of Delegates. The next meeting is Aug. 14-15, 2017, in New York City. The deadline for any ABA member to submit proposals is March 10. Proposals will be published in the July 2017 ABA Journal. For details, visit ABAJournal.com/magazine, Your ABA, ABA Announcements.

Mary T. Torres
ABA Secretary

**2017 REGULAR STATE DELEGATE ELECTION**

The Board of Elections gives notice that 18 states will elect State Delegates for three-year terms that begin at the adjournment of the 2017 Annual Meeting. The deadline for filing nomination petitions is Dec. 5. The states conducting elections, and the election rules and procedures can be found at ambar.org/stateelection, scroll down to the Elections Module and click State Delegate.

**2017 BOARD OF GOVERNORS ELECTION**

The Secretary hereby gives notice that at the 2017 Midyear Meeting, the Nominating Committee will announce nominations for district and at-large positions on the ABA Board of Governors for three-year terms beginning at the conclusion of the 2017 Annual Meeting. The deadline for filing nomination petitions is Jan. 6. For the list of district and at-large positions, and election rules and procedures, go to ambar.org/bogelection and click Board of Governors Election.

**NOTICE BY THE SECRETARY**

The Nominating Committee will meet during the 2017 Midyear Meeting in Miami on Feb. 5, 2017, beginning with the business session at 9 a.m. and immediately followed by a forum to hear from candidates seeking nomination at the 2018 Midyear Meeting. This portion of the meeting is open to Association members. The Committee will then vote in closed session on nominations for officers and members of the Board of Governors of the Association for terms beginning at the close of the 2017 Annual Meeting. Contact Leticia D. Spencer at 312/988-5160 or leticia.spencer@americanbar.org with questions.

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**An Explicit Step**

*Continued from page 66*

Implicit bias requires more than just a few hours in a classroom, says David A. Harris, a leading national authority on racial profiling who took part in an August program held during the 2016 annual meeting in San Francisco on how prosecutors can offset the impact of implicit bias. Harris had a background role in developing the Justice Department’s program and conducts his own training programs on implicit bias.

“In a typical training session, we start with awareness, and that can be done in an hour or so,” says Harris, a professor at the University of Pittsburgh School of Law. “But if you want to understand how implicit bias operates, as well as how it affects your decision-making and how it can affect you without you knowing it, then you must go further. Real training like that can take days.”

**INTEREST IS GROWING**

So far, Harris says, mandatory training programs for implicit bias are not widespread, although there is growing interest. He notes that, even before the Justice Department announced its staff training program, it proclaimed in March 2015 that six cities would host pilot sites for the National Initiative for Building Community Trust and Justice, designed to foster better relations between police departments and the communities they serve by combating implicit bias while promoting procedural justice and reconciliation.

The six cities chosen for the pilot program were Birmingham, Alabama; Fort Worth, Texas; Gary, Indiana; Minneapolis; Pittsburgh and Stockton, California. The ABA House of Delegates adopted a resolution by the Diversity & Inclusion 360 Commission in February encouraging states to modify their mandatory or minimum CLE requirements to include “programs regarding diversity and inclusion in the legal profession of all persons, regardless of race, ethnicity, gender, sexual orientation, gender identity or disabilities and programs regarding the elimination of bias.”

Within a few years, predicts Harris, “we’ll get to the point where this is a standard part of the curriculum. The only question will be whether it’s deep enough so that it’s more than just another addition to the curriculum.”

Brown hopes implicit-bias training will be mandatory in a majority of police departments and other law enforcement agencies in the near future. “I am an eternal optimist,” she says. “I think what happens, in so many instances, is that people have some sort of trepidation of things they are not fully familiar with. Once they see it, they understand that it’s not threatening, and it’s really just a learning process for information that we all need to know.”
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The Senate Convenes the First Impeachment

By the end of the 1700s, the United States had evolved into a land of genuine opportunity—one fully stocked with patriots and patriarchs, farmers and factory workers, tradesmen and traders, pioneers, adventurers and hustlers.

William Blount, born to a plantation-class family in North Carolina, could be described in many of these terms. A veteran of the Continental Army, a representative to the Continental Congress and one of the original signers of the Constitution, Blount was a friend of the nation’s first president, an esteemed voice in the nascent nation. But he also was an opportunist—an inveterate land speculator whose public responsibilities often were complicated by management of his highly leveraged holdings.

In 1790, George Washington named Blount governor of the newly formed Southwest Territory, an immense tract of frontier west of the Blue Ridge Mountains destined to become Tennessee. Blount owned vast acreage in the territory. Years earlier, he also had been instrumental in opening it to speculators like himself. In 1783, Blount introduced the “Land Grab Act,” which authorized the sale of non-Indian lands in the region as well as legislation that granted tracts to war veterans. Blount helped establish the cities of Knoxville and Nashville from the resulting settlements, and he negotiated a significant treaty with the Indians. He also was instrumental in setting the region on the path to statehood. When Tennessee was formally admitted in May 1796, Blount went to Philadelphia to represent the state as a U.S. senator.

On July 3, 1797, however, Blount was confronted in the Senate chambers with an extraordinary letter that detailed a plot devised by him and several other land speculators to help Britain gain control of Florida and Louisiana, then held by Spain. But as a result of its defeat by the French in the War of the Pyrenees, it was thought that Spain would soon give up those interests to France, thereby blocking access to ports on the Mississippi River and drastically reducing the value of millions of acres of Tennessee land held on fragile credit by Blount and other speculators.

The plot proposed attacks by territorial militias—supported by British navy forces and friendly Indian nations—on New Orleans, Pensacola and the Missouri town of New Madrid. But the motley group of plotters he assembled proved unequal to the task. A Philadelphia physician, Nicholas Romayne, was dispatched to England to recruit investors. John Chisholm, a crude and colorful Tennessee woodsman, was sent to engage British government support. But Romayne was never enthusiastic about the plan, and the hard-drinking Chisholm was too willing to discuss it. By the time a Knoxville merchant turned over the Blount letter to authorities, the plot was all but dead.

Confronted with the letter, Blount was equivocal. Yet within four days, the House of Representatives recommended his impeachment on charges of “high crimes and misdemeanors.” On July 7, Blount returned to the Senate and refused to testify, and the following day the Senate voted to expel him.

But the matter of impeachment still existed. To escape potential criminal charges, Blount posted bond and fled to Tennessee, leaving the Senate to ponder deep into 1798 the implications of the plot and the legal boundaries of a first-ever impeachment. Romayne and Chisholm were arrested and confessed, and Blount’s own documents—seized during the investigation—revealed the plot in great detail.

Finally, on Dec. 17, 1798, the Senate convened a “High Court of Impeachment” to try several charges against Blount. Again, he did not appear before the Senate, but his lawyers argued that Blount could not be tried there. He no longer was a senator, and the very process of impeachment denied him his right to an actual criminal trial.

On Jan. 11, 1799, after about a week of debate, the Senate agreed, voting 14-11 to dismiss the impeachment proceedings. Blount died in March 1800, never having faced criminal charges.
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