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CERT AND CORRECTIONS IN THE HIGH COURT

Mark Walsh’s Supreme Court Report in the June issue, “Random Review: Should the high court consider extra cases through a chance-centered selection process?” (page 20) discusses a poor solution to a real problem.

Federal appeals courts do make mistakes that are not cert-worthy, but it makes little sense for the Supreme Court to devote effort to cases correctly decided or in which no party wants to fight another appeal, as would occur under a random review process.

Instead, the Supreme Court could consider adding a corrections docket. Petitions could be limited to a few pages in length, containing a summary of the issue and short argument as to why the U.S. Court of Appeals got it wrong.

If the petition is accepted, fuller briefing and argument could be requested. The existence of a corrections docket should have a positive impact on the quality of appellate decisions in cases that are not cert-worthy and bring issues before the Supreme Court that it would not consider under current certiorari standards.

Erin Campbell
Cincinnati

MORE ON LEGISLATION ABOUT PROTESTS

Regarding “Paying for Free Speech,” June, page 18, about laws to regulate public protests: Cities, counties and states keep wasting time and money on feel-good legislation that makes for great sound bites. Most of these new laws will be overturned at the state and federal levels, as the onerous protest restrictions were in Ferguson, Missouri, a few years ago.

It amazes me that many of the people who create these laws are also lawyers who should damn well know better. It also amazes me that these same governmental entities will spend high-six to seven figures defending idiotic and unconstitutional laws—only to be shot down at each and every level, occasionally including the Supreme Court. Yet they continue to complain that their jails are overcrowded and their law enforcement is chronically underfunded.

I’m all for peaceful protest and redressing grievances against the government when appropriate. (We the protesters determine when protests are appropriate—not the government.) Such rights are granted to everyone on American soil under the First Amendment and the Bill of Rights.

If a protest becomes violent or destructive, there are already laws on the books to cover those criminal violations and prosecutors willing to bring the perpetrators to “justice.”

Enough with the feel-good stupidity already.

Michael J. Jurenko
Sugar Land, Texas
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President’s Message || By Linda A. Klein

Fighting the Good Fight
Standing up for our principles is all part of a year’s work

Ruth Bader Ginsburg’s words come to mind as I conclude my term as president of the American Bar Association: “Fight for the things that you care about, but do it in a way that will lead others to join you.” Fighting for what is right is paramount. Building consensus along the way can make all the difference. That’s what lawyers do. We are advocates. Advocates for our clients, but we must also be advocates for the principles that unite us as a profession and a nation. This year presented opportunities to stand up for those principles.

When the integrity and legitimacy of our judiciary was attacked, we spoke out and offered educational resources at ambar.org/ProtectOur Judiciary.

When funding for the Legal Services Corporation was threatened with elimination, we mobilized supporters with social-media tools like DefendLegalAid.org.

When tensions between law enforcement and communities boiled over, we produced resources for bar associations to foster dialogue at ambar.org/PublicTrust.

When the Department of Education changed the rules on the Public Service Loan Forgiveness program, pulling the rug out from under dedicated public service lawyers, we fought back and filed a lawsuit against the government.

A top priority was to fight for military veterans who fought to preserve our rule of law. Legal problems such as evictions, child-custody disputes and credit trouble hit veterans particularly hard. Lawyers can help and change lives in the process.

The ABA Veterans Legal Services Initiative, led by 20 experts, worked creatively to ensure that veterans receive the legal assistance they deserve. Legal software developer CuroLegal, with support from ARAG legal insurance, developed a free online legal needs checklist for veterans.

The initiative also received significant support from the Jones Day law firm to develop VetLex, a comprehensive database to facilitate referrals to pro bono and low bono lawyers for veterans with legal needs. Our veterans initiative worked to promote medical-legal partnerships to provide legal assistance in VA medical clinics. Programs are now running in 17 states, up 55 percent in just one year.

We worked to develop a certification of law specialty in veterans legal issues to help with benefits claims.

One has been launched at the William & Mary Law School’s Puller Veterans Benefits Clinic. Law school clinics are helping bar associations and other schools start new clinics. And the initiative produced CLE programs on veterans’ treatment courts and other issues involving veterans’ legal needs.

The ABA House of Delegates adopted policy urging lawmakers to collaborate with lawyers to remove legal barriers to veterans’ access to assistance. At the ABA’s annual grass-roots lobbying event in Washington, lawyers advocated for legislation authorizing improved access to justice for homeless veterans. And organizations throughout the country held about 150 pro bono events providing legal services for veterans as a part of this year’s Celebration of Pro Bono. Our fight for veterans will continue next year. I invite you to also work with us. Learn more at ambar.org/veterans.

This year we also fought on behalf of solo and small firm lawyers who want to spend more time practicing law and less time handling administrative burdens. We created ABA Blueprint (abablueprint.com), a one-stop shop that provides an online suite of law practice management services, from billing assistance to technology solutions to virtual assistants, as well as expanded insurance offerings, all at steep discounts for ABA members.

After a successful Law Day celebration of the 14th Amendment, joined by 35 governors, the president and the chief justice, we advocated for the disabled to enjoy the rights extended by the amendment.

We spoke truth to power about due process as the immigration executive orders were issued, and when public defenders were so overworked they could not provide an adequate defense. In other words, we remained true to our values.

Having so many lawyers joining with us was uplifting and gratifying. I appreciated your input and advice. After our Annual Meeting in New York (and do not miss it, we have great things planned), our new president will be Hilarie Bass, who I know will continue advocating for access to justice and other important issues.

In the future I know I can count on you. Together, we will keep fighting for our profession, for the rule of law, for our judiciary and our justice system. It’s up to us – lawyers – to make that happen. It always has been. And it always will be. Thank you for the privilege of serving as your ABA President.

Follow President Klein on Twitter @LindaKleinLaw or email abapresident@americanbar.org.
BIGLAW embraces the remote work trend

WITH AN EMERGING WORKFORCE focused on career paths offering better work-life balance, BigLaw firms are changing the ways they attract new talent and meet the demands of the modern professional. One of the newest perks: the virtual office. But in an industry reliant on face-to-face communication and notorious for a culture of working long hours, the change in remote work policies for lawyers has been a gradual one, marked by firms wetting their feet with regional beta tests before rolling out companywide initiatives.

After its own successful beta test, Morgan, Lewis & Bockius announced plans this year to allow its associates in the U.S. and the U.K. to work remotely up to two days a week. Jackson Lewis and Baker McKenzie have also launched new flexible work programs. In a press release, Jackson Lewis describes its remote work program as a “win-win” that will help the firm continue to attract and retain top talent “without sacrificing productivity, responsiveness or engagement.”

Top on the list of concerns for firms considering remote work programs are cybersecurity and productivity. Steve Falkin, managing director of IT strategy at HBR Consulting in Chicago, helps firms create flexible work cultures through mobility solutions and secure remote access. According to Falkin, technology can solve many of the barriers that might have prevented firms from embracing remote work in the past. “Today’s lawyers have varying work styles, and technology should support that to the greatest extent possible,” Falkin says. “Allowing lawyers to have flexibility in the type of devices used to access firm systems—and ensuring they can work at times and in the manner that best fits their lifestyle—is key.”

Baker McKenzie already had technology in place to allow for flexible work arrangements before launching its new program, bAgile. Peter May, chief talent officer, says the firm hopes a more formalized program will ensure its flexible work options are available to everyone—not just the people who were already utilizing them. “We ... wanted to create a more formal and comprehensive framework that went beyond remote working. This is about educating our people about what’s possible,” May says.

Some firms have expanded their remote programs to include staff. Sarah Leonard is a legal assistant participating in an “agile work program” offered by a large global law firm in Washington, D.C. She says she started utilizing her firm’s flexible work program in December because the commute from her home in Southern Maryland was “extremely taxing.” Leonard now works one day a week from home using a laptop provided by the firm and a virtual private network.

When she started at the firm, Leonard says, the agile program was just being implemented for nonattorney staffers. “Presently, a large majority of attorney assistants take advantage of the program in some fashion, either by working from home, working custom hours or...
Opening Statements

working longer hours and having a day off. This schedule has positively benefited me both financially and emotionally," she adds. “One day a week I’m able to wake up, walk across the hall to my office and take my dog to work.”

In the most recent survey by the Diversity & Flexibility Alliance, a D.C. think tank, 26 of the 28 participating law firms had formal flexibility policies. But despite this fact, the survey found many attorneys may perceive flexible work options to be detrimental to their long-term career advancement, with only 1 percent of equity partners and 5 percent of associates utilizing such programs.

Despite the number of firm lawyers actually taking advantage of flexible work programs, such policies may still help firms attract new talent. A PwC study in partnership with the University of Southern California and the London Business School showed work-life balance to be a top priority of millennials. PwC’s NextGen reported 64 percent saying they would like to occasionally work from home, and 15 percent of men and 21 percent of women saying they would give up some of their pay and slow the pace of promotion in exchange for working fewer hours. —Allison Deerr

Problem Clients

For two decades, a Utah lawyer has quietly studied violence against attorneys

A MURDER-SUICIDE RIGHT BEFORE

the attorney’s eyes. At least two instances of opposing parties hiring hit men to kill a former spouse's lawyer. Telephoned threats to hurt a counsel’s young daughter on her way home from school.

That’s not at all like Stephen Kelson’s day job as a business litigator, mediator and arbitrator at Christiansen & Jensen in Salt Lake City. But studying violence and threats against attorneys has been a side interest for Kelson for two decades—and he’s one of the few Americans who’s investigated the issue.

“If you go out and look, there really is no method to determine the rate of violence against attorneys,” Kelson says. “It happens, but it rarely gets recorded unless there’s something that really catches the media’s attention.”

Kelson’s interest in the topic dates back to the summer of 1997, when he worked for South Africa’s National Association of Democratic Lawyers just a few years after apartheid ended. The association was making a presentation to the country’s Truth and Reconciliation Commission—a body created to look into human rights abuses under apartheid—about how the legal profession had been treated. They found plenty of cases of intimidation and violence, Kelson says.

A few years later, while attending Brigham Young University’s law school, Kelson heard from a professor that there were no studies about how attorneys deal with threats and violence. Kelson took up the subject and eventually published a law review article on it. After he graduated and began working for the Utah court system, he conducted a small survey in one district. Then he convinced the Utah State Bar to do a statewide survey. From 2006 through last year, he’s done surveys in 25 states.

Kelson says he stuck with the surveys, even while building his law practice, because there just wasn’t any evidence out there on violence. Early on, he says, there was anecdotal evidence that violence against attorneys was increasing, but only the U.S. Marshals Service was keeping track—and then only of threats to federal judges.

“I thought that was interesting,” Kelson says, “but I also wanted to try and create a baseline that potentially researchers can go back to.”

Kelson’s surveys show that violence happens against attorneys in all practice areas, but especially against those who work in criminal law or family law. Those are practice areas that can be highly emotional, he notes, because they deal with deeply personal issues like parental rights.

“There’s a substantial loss they feel, and they look to blame someone,” he says. “It’s very easy to blame the judge; it’s very easy to blame the attorneys, whether they’re your own or on the other side.”

How lawyers deal with this varies, he says. Some go out and buy guns (a choice Kelson says was reported more often in the Southwest). Some talk to mental health professionals. Some “puff up” and issue threats back, he says—but “if you’re dealing with the wrong person, you’re only going to make the conflict worse.”

Kelson believes the best defense against violence is to avoid it entirely when possible by declining or withdrawing from cases with problematic parties. He also suggests that lawyers remove their home addresses from public listings, separate office reception areas from work areas and create “warning words,” so that front-line staff can subtly communicate that someone being admitted could be a problem.

“If it seems like an emotionally unfit client and that it’s going to be a problem, it’s just not a case I’m going to take,” he says. —Lorelei Laird
Virtually Training Lawyers
Maryland uses a high-tech tool to recruit pro bono attorneys

At a recent fundraiser for the Maryland Volunteer Lawyers Service, a spokeswoman for the organization roamed the March Madness-themed party with a virtual reality headset made of cardboard. She encouraged guests to place it over their eyes, transporting them into a 360-degree courtroom training experience, and eagerly awaited feedback. Did this perspective make it easier to fathom the experience of a pro bono attorney? Would it encourage you to join up?

Like many pro bono legal services, the MVLS faces a perennial shortage of volunteer attorneys, and affordable legal resources are scarce across the country. In 2016, the United States was ranked 94th in the world for the accessibility and affordability of civil justice, according to the World Justice Project. Community legal services pick up much of the slack.

But among an already-stretched pool of volunteers, MVLS staffers have observed even fewer are comfortable in court—especially newer attorneys. “People shy away from volunteering if they think they might have to go in front of a judge for the hearing,” says William Buschur, a volunteer with the service and technology group co-chair in the Young Lawyers Section of the Maryland State Bar Association.

To take a stab at the problem, Matthew Stubenberg—the service’s IT director and the other tech group co-chair—teamed up with the section to create a virtual reality training series that he says demystifies the courtroom experience and entices newer, or courtroom-shy, attorneys to sign up. The trainings are designed to take attorneys “from zero to ready” for a range of cases they might encounter as volunteers. Buschur shot and edited the videos.

Now available on YouTube, the VR trainings show mock hearings in expungement, guardianship, family law and consumer protection courts. The videos can be downloaded onto a smartphone and slipped into Google Cardboard headsets, which are available for as low as $5 a pop. They can be handed out at conferences or mailed to volunteers, exposing new lawyers to pro bono opportunities.

“We may have 100 attorneys doing expungements, for example. Maybe 10 go to a hearing, but we only have five attorneys that are comfortable doing hearings,” says Stubenberg, who has also created an expungement assistance app.

Buschur notes that early in a legal career it can be difficult to get courtroom experience: “A lot of the time you’re at a big firm, at the bottom end of the totem pole. You’re lucky if you get to go into a courtroom for a live hearing.”

Speaking from his own experience as an MVLS volunteer, Buschur says, “it’s easy to run yourself through loops trying to think of what might happen at a hearing if you’ve never had one before. But it’s usually a lot simpler than they might think,” with some hearings lasting just a few minutes.

Stubenberg adds that, unlike 2D video, with VR “you have the freedom to look around and identify what’s important” in the courtroom from a lawyer’s perspective. He also wants volunteer lawyers to feel like we have their back, that we’ve thought of everything to prepare them for court—something that’s harder to achieve with pamphlets and run-of-the-mill training, he says.

The MVLS is the first organization to partner on the project, which is funded by the Young Lawyers Section. But it’s not intended solely for volunteers. The Maryland Office of the Public Defender is working with Stubenberg on its own set of VR training videos for new lawyers.

And the team has designs on expanding beyond Maryland. Stubenberg and Buschur have their sights set on the areas of law with the most need. These days, that’s the federal immigration docket.

“There’s a huge need for immigration attorneys pro bono. So we want to partner with an organization doing that kind of work,” Buschur says. “Right now, that is the goal.”

—Annalies Winny
My Life of Hard-Won Achievement

by Christina Guerola Sarchio

Making it Work is a new column in partnership with the Working Mother Best Law Firms for Women initiative in which lawyers share how they manage both life’s challenges and work’s demands. Visit workingmother.com for more.

As a first-generation American, seeing my parents work long hours, including holidays and weekends, for very basic pay instilled in me the work ethic, self-sufficiency and perseverance that have greatly helped me in my career. Given how hard they worked and the challenges they faced as immigrants from Spain, I always felt that any obstacles placed in my path paled in comparison. While it hasn’t always been easy and I have faced a variety of challenges as a Hispanic woman, a military spouse and a working mom, it certainly has been rewarding.

I was fortunate in that I had great success early on in my career as a prosecutor in the Manhattan district attorney’s office. The DA’s office was a melting pot where no one paid attention to your background, gender or ethnicity; they just cared about whether you could try a case, work under pressure and ensure that nothing fell through the cracks. It was an environment I thrived in, and it helped me develop confidence in my ability as a lawyer.

That confidence was tested, however, when I moved to a small law firm and, for the first time, experienced racism and sexism firsthand. While I had seen my parents encounter discrimination, I could not believe that lawyers—educated individuals who took an oath to uphold the law—could not see beyond my gender and ethnicity. Working there was demoralizing. But I kept at it, believing I just had to work harder to prove myself.

Eventually, I realized no matter what I did or how hard I worked, I wasn’t going to change their narrow minds. I decided it was no longer worth the effort. And while I considered going back to government practice, believing that perhaps I was just not meant to succeed in a law firm setting, I decided to give it one more try at a larger firm with a seemingly greater commitment to diversity. I have remained in private practice ever since. While you can never fully escape from people’s biases and misconceptions, I found the secret to success is to identify people—and, importantly, clients—who appreciate what I bring to the table, value diversity and treat others with respect.

During the course of my 20-plus-year career, I have seen many lawyers face their own unique challenges at some point in their careers. Sometimes because of discrimination, sometimes because of personality conflicts, and sometimes just because. Too often, I see talented women and minority lawyers try to put up with a bad situation, believing as I once did that they just need to work harder. But this eventually wears them down and leads them to abandon law firm life, if not the practice of law.

In situations like these, I try to encourage people to seek out mentors and champions, and not be afraid to stand up for yourself. With women in particular, the struggle to balance family and career can be overwhelming at times. It takes creativity, flexibility and the willingness to both ask for and accept help when you need it. But it also takes recognition that sometimes it is just not a good fit where you currently are, and it in no way reflects any failing or lack of ability, and certainly doesn’t call for withdrawing from law practice.

In the end, I wouldn’t trade those earlier painful experiences for anything because they helped get me where I am today. I’m on the board of one of the most inclusive firms in the country, have great clients and am constantly reminded why I chose this profession. As they say in A League of Their Own: “If it wasn’t hard, everyone would do it. It’s the hard that makes it great.”

Christina Guerola Sarchio is a member of Orrick, Herrington & Sutcliffe’s board of directors and focuses on general business litigation, class actions and white-collar criminal defense.
Hearsay

88%

The percentage of law firm leaders who say they have “chronically underperforming lawyers,” with weak business-development skills being the top factor. The survey of managing partners and firm chairs also found 52 percent believed their equity partners weren’t busy enough; 62 percent said the same about nonequity partners; and 25 percent felt associates didn’t have enough work—all a result of dilution of demand for legal services.

Source: Altman Weil’s Law Firms in Transition (May 23).

Did You Know?

U.S. organizations spend 166 percent more on legal services per dollar of revenue compared to their global counterparts. A new report by Acritas shows the real estate, banking and technology sectors spend the most.

The findings are from a survey of about 2,200 chief legal officers and general counsel across multiple industries worldwide.

Source: legalexecutiveinstitute.com (June 21).

Scuttlebutt

A builder is suing Zillow over the website’s Zestimates, which can estimate property values at less than the asking price. The suit is seeking class action status on behalf of Illinois homeowners, claiming Zillow is violating state appraisal law. Zillow has denied its Zestimates are appraisals, saying they are “a starting point” generated through computer-automated estimates.

Source: marketwatch.com (May 23).

27 Years

The amount of time Deborah Jean Bryant’s sex discrimination suit against the Washington, D.C., Department of Corrections has been pending in the court system. Bryant prevailed on claims she was denied a promotion after refusing a supervisor’s advances. She was awarded damages, but disputes over back wages and interest have dragged on. The case has been before 10 judges so far, and the Washington Post reports it “is likely among the most protracted in the history of American jurisprudence.”

Source: washingtonpost.com (May 29).

A collection of essays by and about lawyers overcoming obstacles, reaching goals, and leading lives that are full to the brim and rich with challenges, successes, and opportunities. These are stories of hope and lessons learned; stories with advice and unique perspectives.

Buy your copy today at ambar.org/herstory
Bar and Baton

This LA solo brings together the city’s most musical lawyers in a philharmonic he founded

In January 2009, solo practitioner Gary S. Greene sent out a call to the legal community in Southern California. He wanted to form an all-volunteer orchestra, and he wanted it to be composed entirely of lawyers and judges. The response was overwhelming, and the Los Angeles Lawyers Philharmonic was officially established. It’s been so successful that Greene has since founded two additional musical groups: Legal Voices, a 100-member chorus, and Gary S. Greene, Esq., & His Big Band of Barristers, a Glenn Miller-style band. In June, the philharmonic and chorus performed their 8th Annual Concert Extraordinaire fundraiser, headlined by legendary entertainer Dick Van Dyke. As the founder, musical director and conductor of the LA Lawyers Phil, Greene has won numerous awards, including one proclaiming him to be “the only lawyer from whom judges take direction.”

10 QUESTIONS

How did you get the idea for an orchestra made up of lawyers?

My idea of a lawyers’ orchestra goes back to the 1970s. I always thought, ‘I am a lawyer; I am a musician; there must be other musicians who are lawyers too.’ Nine years ago, I was at an event where I was introduced to a judge who played trumpet, and I thought, ‘Let me put the word out to the legal newspapers and bar associations, just to see if there are other lawyer-musicians out there.’ Within a week, I had more than 100 responses, and I was amazed that on that list were people who graduated from Juilliard, New England Conservatory, Berklee College of Music, Cleveland Institute, Thornton School of Music and other music conservatories where they had majored in their instruments. When I realized we had so many advanced musicians, I knew I was on to something.

What are the lawyers like who play in the philharmonic? Are there commonalities between them?

We have people from every aspect of law—prosecutors, defense attorneys, public defenders, business and real estate attorneys, personal injury attorneys, family law and estate planning attorneys, bankruptcy, copyright and patent attorneys, corporate counsel, members of large law firms and solo practitioners, judges, justices, law students and legal staff. They are all people who have a passion for music. Many of them had tried to enter the music field; and then they realized they wanted to make a living, so they turned to law school.

I’ll bet they love being together, getting to be part of a group so dedicated to both law and music.

It’s probably the best networking organization around! We all come together once a week, and we all work together in harmony. So many people come up to me after rehearsals and say, ‘Thank you, I needed that after the day I’ve had.’ Music is a relief that allows us to go back to our offices totally refreshed. It makes us better people and better lawyers.

I know you’re a violinist and a conductor, but did you grow up in a musical family?

Yes—everyone in my family was involved in music. My late uncle, Ernst Katz, founded the Jr. Philharmonic Orchestra of California in 1937, and he conducted the orchestra into the beginning of its 72nd season. When I was young, I was concertmaster of the orchestra, and I worked closely with him. I was not only trained musically but also learned every aspect of running an orchestra. This was essential in starting the lawyers’ orchestra. I passed these skills on to my daughter, Debra Marisa Greene Kaiser, who is the executive director. Of the thousands of youth who played in the Jr. Phil, a number went on to law school and now play with me in the LA Lawyers Phil.
It sounds like there couldn’t have been a more perfect person to form a lawyers’ orchestra—you already knew how it was done and how to run it. Right! That’s the background I had—how to create an orchestra and keep it going. It takes a lot of dedication.

Especially since you’re still actively practicing law. Tell me about your practice.

Today, most of my practice is personal injury and real estate. I went to law school not to practice law but to go into politics. And I did—I was elected, but I wasn’t satisfied; and I wasn’t crazy about fundraising. So I opened my own practice out of school. My practice has been mostly litigation, but I take on fewer cases now because of the extreme time commitment I give to music. Yet I have always made time to do pro bono work and take on interesting cases, like when I represented a witness in the O.J. Simpson criminal case.

How do you find time for it all?

I am very fortunate. I don’t need a lot of sleep—only about four or five hours.

Many renowned entertainers have headlined your concerts, like Dick Van Dyke, June Lockhart, Paul Anka, Betty White, Richard Chamberlain, Pat Boone and Florence Henderson. How did you get such famous people to donate their time and perform with the group?

That goes back to my uncle. The youth orchestra he started focused on kids, but that wasn’t exciting enough for the media—in the beginning he got little coverage for his concerts. He happened to be very close friends with actress Mary Pickford, and he started a tradition of having stars appear with the Jr. Phil and conduct the orchestra in the celebrity Battle of Batons. Over time, many of them became friends of mine too, and so I called on them to perform with the Lawyers Phil.

I’ll bet it’s great for ticket sales, especially since all three musical groups are all-volunteer organizations that raise money for charity. Has that always been the goal—to give back to the community?

It’s in our mission statement to perform concerts to benefit those who cannot afford legal services and other charitable organizations, and that’s what we’ve always done. We’ve raised more than $50,000 for the LA County Bar Association’s Council for Justice and Beverly Hills Bar Foundation. That’s a pretty sizable amount for an organization that doesn’t have a budget of its own, and it’s only a fraction of what’s been donated at charity events where we’ve played.

Plus, there’s the added value of all of the time that your lawyer-musicians have donated to practice and perform.

Everyone, including myself, donates his and her time. I mean, what are you going to pay a lawyer to be a musician? If you paid our rates as lawyers, can you imagine what the going rate for that concert would be?

—Jenny B. Davis

CONGRATULATIONS to Tom Frenkel of Carbondale, Illinois, for garnering the most online votes for his cartoon caption. Frenkel’s caption, far right, was among more than 120 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, Aug. 13, with “August Caption Contest” in the subject line.

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

“Counselor, I believe the witness has testified that she succumbed to lies, not lice.”
—Tom Frenkel of Carbondale, Illinois
Not the Last Act

The closing of Ringling Bros. hasn’t stopped advocates from trying to ban performing animals at other circuses

By Arin Greenwood

For the animals that performed for the Ringling Bros. and Barnum & Bailey Circus, the show won’t go on. But the operators of dozens of circuses around the country still featuring animals can expect advocates to continue pushing for new laws to prevent abuse or ban such acts altogether.

Ringling Bros. took down its big top for the last time in Uniondale, New York, on May 21 after more than 145 years. “The Greatest Show on Earth”—storied and controversial—came to an end after years of lawsuits, public pressure and measures aimed at ending what animal rights advocates described as systemic abuse of animals, mainly the circus’ elephants and big cats.
Legal efforts to stop Ringling Bros. from alleged mistreatment of animals began in 2000 when a group of animal welfare organizations, along with a former circus employee, brought suit against the circus and its parent company, Feld Entertainment Inc.

The suit, filed in the U.S. District Court for the District of Columbia, claimed that the methods used to train the circus’ Asian elephants were so cruel as to violate the Endangered Species Act—which prohibits “harming,” “harassing” and “wounding” animals belonging to the protected species.

The suit alleged a pattern of objectionable treatment, including beating baby elephants, removing babies from their mothers, keeping elephants confined in chains for as many as 20 hours a day and causing pain with bullhooks as a training technique.

Litigation lasted for nearly a decade and took an unexpected turn. The animal rights advocates lost in federal court, in part because the circus employee who was listed among the plaintiffs was being paid by the animal groups while also serving as a witness.

Ringling countersued, bringing racketeering allegations against the plaintiffs for paying its co-plaintiff. It ended in 2014 with the Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals, the Animal Welfare Institute and other plaintiffs settling on $15.75 million to cover Feld Entertainment’s legal costs.

THE BEGINNING OF THE END

While Ringling Bros. may have felt vindicated, the circus remained in peril because of what came out in earlier lawsuits. In 2011, testimony from the unsuccessful litigation was cited by People for the Ethical Treatment of Animals in a complaint against the circus to the U.S. Department of Agriculture, the federal agency charged with enforcing the Animal Welfare Act.

That complaint led to Feld Entertainment agreeing to pay the USDA $270,000 in fines, though it did not admit wrongdoing or violations of any regulations. In a 2011 statement, CEO Kenneth Feld said he looked forward to working with the USDA to ensure the animals were healthy and received the highest quality of care. “Animal care is always a top priority at Ringling Bros., and we remain committed to complying with all requirements,” Feld said. The bad press would nonetheless take its toll.

Not long after that settlement was announced, cities across the country began enacting animal protection legislation aimed at performance animals. Los Angeles became the first city to ban the use of bullhooks in 2013. Dozens of other communities followed suit, passing similar ordinances; then Rhode Island and California passed statewide bans.

These measures clearly reflected growing public concern about animal mistreatment. A 2015 Gallup poll found that 69 percent of Americans were concerned about the treatment of animals used in the circus. That same year, Ringling Bros. announced it would be phasing the elephants out of its show by 2018 because of changed sensibilities regarding the treatment of animals and an increasingly unfriendly legal landscape.

In January, however, the circus announced that it planned to shut down because of declining ticket sales. “The business model was no longer sustainable for the company,” Feld Entertainment spokesman Stephen Payne says.

The Animal Welfare Institute’s general counsel, Georgia Hancock, says that while the Ringling Bros. litigation “didn’t exactly go the way I originally planned,” she regards the final result as progress.

“The evidence and testimony of animal cruelty that came out of the case surely played a role in influencing the public’s entertainment purchasing decisions, including choosing to not buy tickets to the circus,” she says. “At the end of the day, the circus is closed, and we have to celebrate that.”

At least 25 circuses around the country continue to use animals in their acts, according to a list published by the advocacy group Born Free. Some of those circuses have faced not only protests from animal rights groups such as PETA but also fines by the USDA for various violations in the handling and care of their animals.

CALLS FOR MORE PROTECTION

The push toward more protection for circus animals is far from over. In April, Los Angeles banned the use of wild animals in entertainment, including circuses, altogether. The city council there voted unanimously for the measure. San Francisco and a number of other jurisdictions—about 60 in all—previously had passed such bans.

“The times are changing and the public is increasingly concerned about the use of wild or exotic animals for entertainment,” says Los Angeles city council member David Ryu. The ordinance, he adds, “responds to valid concerns about animal welfare and public safety problems inherent in the use of wild animals for entertainment.”

Matthew Liebman, director of litigation for the Animal Legal Defense Fund, says he expects to see ordinances like the one in Los Angeles spread. Indeed, New York City’s council voted 43-6 to pass its own measure on June 21.

Massachusetts lawmakers have proposed a statewide ban on the use of wild animals for entertainment. The U.S. House is also considering a bill. The bipartisan Traveling Exotic Animal and Public Safety Protection Act would primarily ban circuses touring with wild animals.

These ordinances “are riding the rising tide of public opposition to the exploitation of wild animals for entertainment,” Liebman says. “The public no longer finds it amusing to watch wild animals be demeaned.”

And public opinion is having an effect on the industry. “In response to stronger laws and dwindling popularity, some circuses are eliminating elephant and other animal acts,” says Nicole Paquette, vice president of...
The Docket

wildlife protection for the Humane Society of the United States. “Others, including Ringling Bros., have simply closed down.”

NEXT UP: THE BIG CATS
The same week that Ringling was removing its last tent, the HSUS published an undercover video taken during a traveling circus act called ShowMe Tigers, featuring eight of the big cats.

The society says the video documents tigers being lashed with whips, cringing, cowling and showing other signs of stress in response. This constitutes mistreatment of the tigers, according to the HSUS, which has filed a complaint with the federal government for violations of the Animal Welfare Act.

ShowMe Tigers is operated by trainer Ryan Easley, who has denied the abuse allegations. He told a Wisconsin newspaper that his tools are not used to hit, whip or inflict pain on the tigers but rather serve as audible cues. The crack of a whip, according to Easley, is meant to alert the animals that it’s time to move.

After releasing the video, the Humane Society of the United States called for stronger animal protection legislation to prevent such animals from being forced to perform.

“It made me cry—just to hear a daughter who’s been waiting 20 years for a father,” says Felman, who represented Washington in his bid for clemency. “To have any part at all to play in putting her father’s prison sentence had been commuted. But he thinks she realized what was coming. “As soon as I introduced myself and told her who I was, she just started crying,” recalls Felman, a partner at Kynes, Markman & Felman in Tampa, Florida.

Fulton Washington was sentenced to life for a drug crime when his daughter was 10 years old. Despite having no hope of his release, Erica emailed and visited him regularly for 20 years—eventually becoming a social worker who helps former prisoners.

“The most satisfying moments I’ve ever experienced as a lawyer,” says Osler, who represented him. Osler made many similar calls as a leader and volunteer for Clemency Project 2014—the massive pro bono effort created to help former President Barack Obama commute excessively long prison sentences. They were, Felman says, “the most satisfying moments I’ve ever experienced as a lawyer.”

Nearly 900 federal prisoners were released thanks to Clemency Project 2014, also known as CP14. The project sought to shorten long prison terms handed down under outdated, inflexible sentencing practices. The Justice Department called on the private bar to help prisoners submit applications, and the ABA Criminal Justice Section was among the groups that answered.

The project ended with Obama’s second term on Jan. 20. But over the project’s lifespan of less than three years, he commuted the sentences of 1,705 prisoners, 894 of whom were represented by CP14 volunteer attorneys. Those attorneys—almost 4,000 of them—had about 2½ years to process 36,000 applications. Despite its relatively short timeline, it might be the largest pro bono project in American history.

“It’s one of those things that bring great joy and crushing disappointment,” says law professor Mark Osler, who runs the Federal Commutations Clinic at the University of St. Thomas School of Law in Minneapolis.

Earlier this year, Rudy Martinez, who had been serving life without parole for a drug trafficking conviction before Obama commuted his sentence last August, visited Osler, who represented him. Osler learned that Martinez became a voracious reader in prison, where he took 175 classes. During his visit, Martinez met Osler’s son. “Suddenly they’re having this great conversation about Cervantes—this guy who’d done 27 years in prison and my son, who’s the junior at Yale,” Osler says.

SEEKING VOLUNTEERS
When CP14 was announced, the Justice Department sought applications from nonviolent, low-level offenders with no significant ties to organized crime. They had to have served at least 10 years with a record of good conduct. Most important, the DOJ specified that the prisoner must be serving a sentence that, by law, would be substantially shorter if imposed today. In practice, says former CP14 project manager Cynthia Roseberry, the typical person who met all the criteria was a drug offender who received “an extraordinary amount of time” before recent sentencing reforms.

“As a matter of fairness, it seemed to the president that those people should not be serving significantly longer in jail just because of when they got sentenced,” says W. Neil Eggleston, the last White House counsel under Obama.

Because tens of thousands of people could be eligible, the Justice Department called on private attorneys to help find and present the best cases pro

NATIONAL PULSE

Lawyers volunteered for what may have been the largest pro bono project in history

By Lorelei Laird

Attorney James Felman had never spoken to Erica Washington before he called to tell her that her father’s prison sentence had been commuted. But he thinks she realized what was coming.

“When CP14 was announced, the Justice Department sought applications from nonviolent, low-level offenders with no significant ties to organized crime. They had to have served at least 10 years with a record of good conduct. Most important, the DOJ specified that the prisoner must be serving a sentence that, by law, would be substantially shorter if imposed today. In practice, says former CP14 project manager Cynthia Roseberry, the typical person who met all the criteria was a drug offender who received “an extraordinary amount of time” before recent sentencing reforms.

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bono. That effort became CP14, run by Roseberry and volunteers from the National Association of Criminal Defense Lawyers, the ABA Criminal Justice Section, Families Against Mandatory Minimums, the American Civil Liberties Union and a group of federal public defenders.

Leaders from those groups helped wrangle volunteers and review petitions before submitting them to the Justice Department. Every volunteer’s work went to a screening committee—which Felman describes as a kind of coach, since most volunteers weren’t sentencing experts—and then a steering committee to ensure all cases met the government’s criteria.

SLOWED BY BUREAUCRACY

That’s one reason CP14 was criticized as being too bureaucratic. Osler, who handles commutations frequently as a law professor, was actively involved in CP14, helping to train volunteers and organize a law clinic at New York University. But he believes it could have been done better because CP14 added more bureaucracy to a DOJ process he thought was already bad at getting meritorious cases to the president.

Northern Illinois University political science professor P.S. Ruckman Jr. adds that Obama could have done it all in one step by granting amnesty—a mass pardon, like those granted to Vietnam-era draft dodgers in the 1970s. The Constitution permits this; in fact, it gives presidents the power to structure their clemency grants any way they like, without any need for congressional approval or judicial review.

But Ruckman says administration officials were nervous about getting “one Willie Horton kind of episode”—in which politicians who show mercy to prisoners are blamed for any crimes those prisoners later commit. They chose a much more complicated process that helped fewer people.

Clemency 14 really just kind of amounted to outsourcing of the process and more bureaucracy and more waiting,” Ruckman says. Felman doesn’t believe any of CP14’s reviewers were unnecessary.

He says most of the volunteers needed help because they weren’t experts in federal sentencing, and CP14 felt an obligation to check that each petition met the government’s criteria.

If there were too many layers of review within CP14, they didn’t keep the project from vetting every case brought to it. By Roseberry’s count, it ultimately submitted 2,581 petitions—one for each applicant who leaders thought was qualified.

Roseberry says CP14 attorneys tried to err on the side of inclusiveness. For example, the government criteria excluded prisoners convicted of violent crimes, raising questions about whether crimes such as firearms possession count as violent. The project asked pro bono lawyers to examine the individual circumstances of each case. When they weren’t sure, they allowed the DOJ to decide.

PRESIDENTIAL REVIEW

At the other end of the process was Eggleston, then the White House counsel. He says his team also scrambled to make a recommendation to the president on every petition, particularly near the end of Obama’s presidency, when petitions increased dramatically. Eggleston estimates that they worked on 1,500 petitions in the last year of the term. Eggleston’s own staff was freed up to help, as the need for duties such as selecting judges faded. And he kept hearing from lawyers elsewhere in the White House who volunteered, even though it meant working nights and weekends. In fact, they thanked him for the opportunity. “I think this project was enormously rewarding for the lawyers in the White House,” he says.

Eggleston says that was true for the highest-ranking lawyer in the Obama White House—the former president himself, who would call Eggleston in to debate the details of individual petitions. During his busy last week, Obama made time to review and grant 540 commutations, according to the DOJ.

The story Eggleston thinks best illustrates Obama’s commitment happened in April 2016, when seven clemency recipients (some from past administrations) visited the White House. Ostensibly, they were there to talk to staff about their experiences after prison and how to improve the justice system. But around noon, Obama walked into the room—and took them all to lunch.

“He was probably with them for an hour or so. And an hour is a huge amount of the time for the president of the United States. And he just wanted to hear their stories,” says Eggleston, now a partner at Kirkland & Ellis. “He cared a lot personally about this project.”

...
“This is huge,” says Charles W. “Rocky” Rhodes, a professor at South Texas College of Law Houston. “This is going to cause great uncertainty going forward in complex litigation against multiple defendants in federal courts and in state cases with plaintiffs in one state and a defendant in another state.”

Rhodes has written extensively about personal jurisdiction and joined a Supreme Court amicus brief on the side of the plaintiffs suing Bristol-Myers Squibb.

Andrew J. Pincus filed an amicus for the U.S. Chamber of Commerce, the American Tort Reform Association and other groups in support of Bristol-Myers Squibb. He agreed that the decision would be felt widely.

“I think the most immediate impact is on these mass actions,” says Pincus, a partner at Mayer Brown and a Supreme Court litigation specialist. “The court is making it very clear that in those cases that you would have to be able to assert personal jurisdiction with respect to each of the plaintiffs claims. The idea that if you can assert personal jurisdiction for a couple of claims, you can assert it for a couple of hundred more won’t fly anymore.”

Bristol-Myers Squibb was only one of the decisions before the court this term that narrowed jurisdiction and effectively limited where plaintiffs may bring their claims.

In TC Heartland v. Kraft Foods Group Brands, a patent dispute that involved brands of flavored water, the high court ruled that under a federal patent venue statute, the definition of “residence” refers only to the state of incorporation for a U.S. company.

Justice Clarence Thomas wrote the 8-0 opinion, which rejected about 25 years worth of interpretations of the patent-venue law by the U.S. Court of Appeals for the Federal Circuit. The court specializes in patent matters, among other things, and the law had allowed patent suits to be brought virtually anywhere in the country. (See “Troll Hike,” July, page 20.)

In BNSF Railway Co. v. Tyrrell, the court ruled 8-1 that the Montana courts could not exercise personal jurisdiction in suits filed in that state against the railroad regarding work-related injuries because the injuries did not occur from work that happened in or related to Montana.

The May 30 decision interpreted the Federal Employers’ Liability Act, with Justice Ruth Bader Ginsburg writing for the majority that “the 14th Amendment’s due process clause does not permit a state to hale an out-of-state corporation before its courts when the corporation is not ‘at home’ in the state and the episode-in-suit occurred elsewhere.”

NARROWING JURISDICTION

But the Bristol-Myers Squibb case was greeted as the personal
Curbing Mass Actions

Justice Samuel A. Alito Jr. wrote for the majority in the Supreme Court. He said the court’s settled principles on specific jurisdiction that go back to International Shoe Co. v. Washington in 1945 determined the case.

In International Shoe, the justices held that a state court may exercise specific jurisdiction over a nonresident defendant only where the defendant has certain minimum contacts with the state such that the suit does not offend “traditional notions of fair play and substantial justice.”

Alito said the California high court had found specific jurisdiction “without identifying any adequate link between the state and the nonresidents’ claims.”

“The nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California,” Alito said. “The mere fact that other plaintiffs were prescribed, obtained and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the state to assert specific jurisdiction over the nonresidents’ claims.”

Justice Sonia Sotomayor wrote as the lone dissenter and said she feared the consequences of the majority’s ruling “will be substantial.”

“The majority’s rule will make it difficult to aggregate the claims of plaintiffs across the country whose claims may be worth little alone,” she wrote. “It will make it impossible to bring a nationwide mass action in state court against defendants who are ‘at home’ in different states. ... And there is nothing unfair about subjecting a massive corporation to suit in a state for a nationwide course of conduct that injures both forum residents and nonresidents alike.”

Robert S. Peck, president of the Center for Constitutional Litigation, wrote an amicus brief in support of the plaintiffs for the American Association for Justice (formerly the Association of Trial Lawyers of America). He agreed with Sotomayor about the likely impact on similar litigation.

“His will make a significant number of mass actions difficult to bring against a single defendant in a single state court,” he says.

Peck essentially agreed with an observation by Alito that a relatively large number of plaintiffs could band together in larger states, such as Texas or Ohio, to sue a corporate defendant in their home states.

But in a small state like New Hampshire, that’s something else,” Peck says.

Pincus of Mayer Brown says the court’s decision places “some guard rails” on where such suits may be filed. “I think it’s a good thing to promote some fairness for the system,” he adds.

SpOTTING THE PATTERNS

Soon after the Supreme Court decision, a Missouri state judge in St. Louis declared a mistrial in a suit against Johnson & Johnson regarding allegations that the New Brunswick, New Jersey-based company’s talcum powder could cause ovarian cancer. Two of the three women in that suit were from outside Missouri. Johnson & Johnson has faced other Missouri suits about the same issue.

Peck finds it ironic that the Supreme Court recognized as long ago as 1957 that modern transportation and communications were making it much less burdensome for a corporate defendant to defend itself in a state where it engages in economic activity. Yet its most recent jurisdiction decisions have made it harder on plaintiffs to sue across the country. “It does seem out of kilter,” Peck says.

Some legal analysts viewed the decisions on jurisdiction as part of a pro-business pattern under the court led by Chief Justice John G. Roberts Jr.

“One thing we’re seeing from the Roberts court in general, especially with respect to procedure issues, is a formalist perspective that is territorial, that restricts the availability of places to bring suit,” says Rhodes of South Texas College of Law.

But Pincus notes that decisions such as Daimler, TC Heartland and Bristol-Myers Squibb were not 5-4 rulings with the conservative bloc in the majority. They were nearly unanimous.

“It’s hard to say this is an agenda item of one faction of the court,” Pincus says.
Practice

Alas, Poor Atticus!

Trials are supposed to be all about winning

By Philip N. Meyer

President Donald Trump's winning story, his throughline during his campaign, was easily reduced to a slogan: “Make America great again.” The slogan calls up imagery about America, about our patriotic sense of American exceptionalism and the feelings of nostos—the longing for a nostalgic emotional return to a mythical time and place located somewhere within our past.

The slogan has a second implicit narrative component. It is about how we make America great again. Trump calls forth familiar storylines about defeating adversaries, fighting our way back, overcoming obstacles and achieving our goals victoriously. These themes have resonance in the collective American psyche and in our popular culture (think, obviously, of Rocky or any John Wayne/John Ford Western). Nor is Trump the first politician to draw upon the popular story. But crucial pieces are missing from Trump's narrative: Unlike the popular Western, this political variant does not specify the identity of a singular villain. Of equal importance, the story only promises future victory; it does not end in victory itself. Indeed, seeking victory in wealth, status or power is a perpetual, never-ending quest.

Most important, in the classic American Western, the protagonist's character is forged by the struggle against evil—heroism is ultimately measured by a character's willingness to sacrifice themselves to preserve community in a dangerous and lawless territory.

I do not denigrate the power and effectiveness of Trump's narrative throughline. The fact that it is obvious, shrewdly repetitive and reducible to a sound bite increases rather than diminishes its power. The emotional core, simply put, is that the American story is all about winning. As any litigator knows, this storyline is profoundly relevant to tales about litigation in literature, popular culture and the courtroom, as well.

HOW DOES THE STORY END?

Here's an anecdotal litigation story: The not-so-young associate argues a major appellate matter before the state supreme court. He has spent infinite hours researching a complex testamentary case and endless hours writing the brief, strategizing all the possible legal and factual arguments. The substantive issues do not matter so much here.

But this is an impossibly complex case, factually and legally, that would make Charles Dickens' head spin and make Jarndyce v. Jarndyce pale by comparison. It also is a big-money case in an all-or-nothing situation as to who will walk away with a multimillion-dollar estate. At oral argument, the bench is hot and the justices seem fully engaged, especially the usually circumspect chief justice. With his wizened senior partner sitting courtside, the associate gives it his all.

After the argument is over, the associate asks the senior partner: “So, how did I do?” The partner says, “It’s too early to tell.” He’s right, too. In litigation practice, the ending of the story—the winning or losing—provides the meaning of the tale. Litigation stories, as in sports or American politics, are all about winning.

Likewise in American pop culture, including in our American literary tradition, we love our winners. And we typically have less tolerance for, or interest in, our losers. Ernest Hemingway's novels are all about winning. His heroes might ultimately die, but first they achieve gloriously self-defining victories: They'll blow up the bridge, kill the charging rhino or land the impossibly large fish before they go under. And the hero reveals their heroic and self-sacrificing character during the struggle.

F. Scott Fitzgerald, however, told stories about romantic losers. Gatsby, for example, never prays Daisy away from Tom. Even Dick Diver loses Nicole before he retreats into American obscurity in Tender Is the Night. Fitzgerald's heroes come up short of their dreams; his stories are about romantic aspiration, not outcomes or achievement.

It is not coincidental that Hemingway sustained his popularity throughout his long career. But after the self-indulgent Roaring '20s were over, Fitzgerald's popularity as a chronicler of his time took a dive. The Great Gatsby, Fitzgerald's enduring novel, never sold in his own time. The point: Hemingway's and Fitzgerald's popularity in their own time had much to do with the nature of the stories they told—and Americans generally prefer stories about winning.

LOSERS TO WINNERS

Nowhere is the often-hairbreadth distinction between stories of winning and losing more apparent than in our popular cultural stories about litigation and law. Think of what are typically rated the two greatest courtroom movies: The Verdict and To Kill a Mockingbird. The Verdict
(1982) was rated No. 1 for the decade 1975-1984 in the ABA Journal’s August 2015 list of most important legal films of the past century. Although Atticus Finch in To Kill a Mockingbird (1962) was once hands-down presumed to be the greatest fictional lawyer (according to a 2010 Journal feature), the movie version dropped to No. 3 in the ratings for 1955-1964 in the Journal’s 2015 list. Why does The Verdict featuring Frank Galvin, the self-loathing, unethical and alcoholic plaintiffs lawyer, maintain its popularity? I suspect because The Verdict is a movie about winning.

Although the greatest lines, I think, in David Mamet’s Academy Award-winning screenplay are Galvin’s quasi-religious meditations on justice in his closing argument, the throughline is about Galvin’s transformation from loser to winner, as revealed in several crucial scenes.

In the first, without dialogue, Galvin is transformed (galvanized) by professional purpose when he first visits his paralyzed victim-client in her hospital bed. In the second, his moral compass is readjusted: With the deck stacked against him, Galvin forges the absolute (galvanic) will to do whatever it takes to win after his corrupt doppelganger girlfriend speaks as if from the shadows within himself; she implores him that she can’t stand or afford to be with another loser.

Galvin then has a second transformative moment (emerging from his bathroom panic attack). He embraces his darkness with renewed gusto, doing whatever he must do to win—he cheats, he lies, and even punches out his doppelganger girlfriend after he discovers that she’s a paid employee of the defendant’s villainous and powerful attorney. Miraculously, despite Galvin’s ethical lapses and illegal conduct, the audience never turns against him because he is a winner. Galvin’s personal redemption is wedded to victory, regardless of the cost.

Curiously, Mamet initially proposed an ambiguous ending that would come after Galvin’s closing argument, leaving the verdict in doubt—the moral balance left in the hands of the juror-audience. The producers, however, knew better. Only one commercial outcome was viable.

**Promise of Victorious Outcomes**

Contrast The Verdict with the movie To Kill a Mockingbird and Gregory Peck’s redemptive portrayal of Finch. In 2010, the Journal published a tongue-in-cheek termination letter to Finch on behalf of the Academy of Motion Picture Arts and Sciences, anticipating our current predilection for reductionist stories measured by outcomes. The letter, penned by Richard Sweren, producer of Law and Order, began: “Dear Mr. Finch: We regret to inform you that your services as a film hero will no longer be required by this organization.”

Sweren identifies Finch’s multiple failures, including his ultimate failure to “win an acquittal for your client, Mr. Robinson, despite overwhelming evidence of his innocence.” He concludes (with mocking delight): “Moreover, it seems foolhardy to persist in revisiting dated injustices that have now been remedied in our open-minded, post-racial society. And in these challenging economic times, no one profits when audiences don’t feel cheerful and reassured as the final credits roll. ... We trust you will find continued service in the literary world, where consumers may still appreciate quaint, out-of-fashion stories and are known to be more forgiving of a hero’s personal deficiencies.”

Sweren’s right, too. The storylines that capture the popular imagination these days, at least in politics and commercial movies, assuage our losses and momentarily fill our neediness with, at least, the promise of victorious outcomes. We apparently need even more now to think we are winners and by force of will can reshape fate and control our own destiny. For now, this storyline trumps others.

Still, I recall fondly Fitzgerald’s famous lyrical final lines from Gatsby, suggesting American redemption stories for romantic losers, as well: “Gatsby believed in the green light, the orgastic future that year by year recedes before us. It eluded us then, but that’s no matter—tomorrow we will run faster, stretch out our arms farther. ... And one fine morning—

“So we beat on, boats against the current, borne back ceaselessly into the past.”

Philip N. Meyer, a professor at Vermont Law School, is the author of Storytelling for Lawyers.
A Tradition of Jailhouse Lawyers
Amateur attorneys fill vital need for inmate access to the courts
By David L. Hudson Jr.

In the 1960s, Tennessee prison officials placed inmate William Joe Johnson in solitary confinement for assisting other inmates with legal petitions. The Tennessee State Penitentiary had a rule that prohibited inmates from advising, assisting or otherwise contacting other inmates to help in legal matters with or without a fee. However, the inmate known as “Joe Writs” ignored this rule and continued to file legal papers for other inmates. He took his battle all the way to the U.S. Supreme Court, culminating with a stunning legal victory in Johnson v. Avery (1969).

The Supreme Court ruled that because the state of Tennessee did not provide an adequate alternative for inmates to access the courts, the prison officials’ broad rule that banned inmates from assisting other prisoners was unconstitutional. “Tennessee does not provide an available alternative to the assistance provided by other inmates,” the court explained.

The case opened the door for prisoners’ rights and access to the courts—a tradition that remains in place today, despite continued institutional efforts to restrict the practice.

CELEBRATED IN THE SLAMMER

Some jailhouse attorneys have attracted widespread attention for their legal acumen. Florida inmate and convicted pool hall thief Clarence Earl Gideon successfully petitioned for Supreme Court review, emphasizing that Florida state courts erred in refusing his request for an attorney. The high court accepted Gideon’s case and appointed him a high-powered Washington, D.C., lawyer named Abe Fortas. The court ruled in the inmate’s favor in the celebrated decision of Gideon v. Wainwright (1963), which extended a defendant’s right to counsel to the states. Ironically, Fortas later became a Supreme Court justice and authored the court’s decision in Johnson v. Avery.

New York inmate Jerry Rosenberg advised the leaders of the Attica prison uprising and became, in the words of biographer Stephen Bello, “America’s greatest jailhouse lawyer.” Incarcerated for 46 years, Rosenberg earned two law degrees from correspondence schools while he was behind bars. “Of all the jailhouse lawyers, he was the greatest and the best known,” defense lawyer Ronald L. Kuby told the New York Times regarding Rosenberg’s death in 2009.

Jailhouse lawyers still serve a vital need in prisons, which have seen a reduction in legal resources in recent years. Convicted Nebraska bank robber Shon R. Hopwood famously filed Supreme Court petitions for fellow inmates, including one for John Fellers that ultimately led to a Sixth Amendment victory in Fellers v. United States (2004). In his memoir, Law Man: My Story of Robbing Banks, Winning Supreme Court Cases and Finding Redemption, Hopwood recalls modestly that he was “becoming a decent jailhouse lawyer.” Hopwood pursued a JD after he was released from prison in 2008 and is now a professor at Georgetown University Law Center.

“Following the Supreme Court’s 1996 ruling in Lewis v. Casey, prisoners were left with an attenuated right of court access,” says Alex Friedmann, managing editor of Prison Legal News. “Prison law libraries alone, in the facilities that still have them, do not provide meaningful access because many prisoners are functionally illiterate, mentally ill or unfamiliar with legal research.

“Asking a prisoner with no legal training to litigate their own case is like asking someone with no medical training to remove their own appendix. Thus, jailhouse lawyers who are familiar with the law and legal research fill an important need within prisons. They assist prisoners in obtaining access to the courts where such access would otherwise be impossible,” Friedmann adds.

Hopwood says, “Jailhouse lawyers are hugely important to access to the courts [because] there is no way prisoners—many of whom don’t have a high school education, let alone college—are able to learn the law quickly enough to meet legal deadlines,” particularly in habeas corpus cases.

ACCESS AGAINST THE ODDS

In a May 23 ruling, a federal district court in California reiterated that a Spanish inmate must submit his court filings in English. The court wrote that it wouldn’t provide a translator or translate the court filings from Spanish to English. The court emphasized that one way prisons could aid access to justice was through jailhouse lawyers. The court explained in Ruiz v. Mobert: “The use of jailhouse lawyers is one recognized avenue available to ensure that
non-English-speaking and/or illiterate inmates have meaningful access to the courts."

However, prison officials generally do not view jailhouse lawyers as valuable purveyors of knowledge. Instead, they are often treated as meddlesome nuisances. "Jailhouse lawyers continue to face retaliation from prison staff for providing legal assistance to fellow inmates," says Joseph Payne, editor-in-chief of *A Jailhouse Lawyer’s Manual*. "By providing this assistance, jailhouse lawyers frequently risk losing prison privileges, having their property seized or destroyed, or even solitary confinement."

For example, Pennsylvania inmate Thomas Wisniewski alleged that prison officials removed him from his position as an inmate legal reference aide at the State Correctional Institution in Huntingdon, Pennsylvania, in retaliation for helping other prisoners with legal matters. He contended this violated his First Amendment rights.

According to Wisniewski’s lawsuit, prison officials removed him from his job, interfered with his access to legal materials, and engaged in other retaliatory conduct because he assisted another inmate with filing a grievance and possessed other related papers. A federal district court summarily dismissed his lawsuit. However, on May 16, a three-judge panel of the 3rd U.S. Circuit Court of Appeals at Philadelphia reinstated his claims in *Wisniewski v. Fisher*. The appeals court panel reasoned that removing an inmate from a job simply for filing a grievance or helping other inmates is improper. His amended complaint adequately alleged a connection between his provision of legal assistance and the retaliation he suffered.

Hopwood says jailhouse lawyers often face pushback. "I didn’t personally face retaliation, but that’s because I didn’t litigate civil rights claims against prison officials until my last year in prison," he says. “The staff basically left me alone, as long as I litigated criminal cases.”

**UNUSUAL, UNAUTHORIZED PRACTICE**

At least one inmate has been charged with the unauthorized practice of law. Serendipity Morales, a prisoner at the Marble Valley Regional Correctional Facility in Rutland, Vermont, was charged with six counts of UPL for assisting other inmates. Morales didn’t charge for her services, but she also didn’t possess a formal legal education.

The Vermont Supreme Court was skeptical of the charges and rejected them in *In re Morales* (2016), particularly because “incarcerated inmates are especially disadvantaged in trying to get legal information and advice.” The state high court recognized prisoners frequently file pleadings without lawyers’ advice.

"Individuals in prison with some legal knowledge have, for years, frequently helped less sophisticated inmates with legal matters, usually without facing prosecution for the unauthorized practice of law," Justice Beth Robinson wrote for the court. "Many important prisoners' rights cases were initially filed by prisoners who were not represented by lawyers."

The state high court added that "in contrast to a layperson who is not incarcerated, many inmates cannot seek a second opinion from another lawyer, research a legal question online, or visit a law library."

“Serendipity’s case was so great because she didn’t ask to be paid, even in canteen soup,” says Morales’ attorney, public defender Kelly Green of the Prisoners’ Rights Office in Montpelier. “She just loves the law and helping her fellow inmates. To me, the charges were offensive because by assisting other inmates to navigate the legal system, Serendipity was being pro-social, one of the goals of the criminal justice system.”

New York inmate Jerry Rosenberg, renowned as the greatest jailhouse lawyer in America, earned two law degrees from correspondence schools while incarcerated for 46 years and advised the leaders of the Attica prison uprising.
Space Matters
How architecture affects communication during meetings
By Bryan A. Garner

This month, Bryan Garner on Words takes up an unusual subject: how architecture promotes or hampers communication. Every organization has face-to-face meetings, and where you hold them can influence their success or failure. Here are some pointers on arranging a meeting space that maximizes participants’ attention and comfort. They are based on my experience teaching more than 3,000 CLE programs in a great variety of settings—everything from conference rooms to football stadiums to rented bars.

Design decisions subliminally influence people’s experience at work—even their job satisfaction. The relative success or failure of meetings, whether with clients, colleagues or outside speakers, depends in part on how the space makes people feel. Let’s say your organization’s leadership has said that dedicated meeting space is crucial to the group’s mission. You’ve been tapped to build or modify the space. Here are a dozen points you might consider.

**Design a room that’s squarish, not an elongated rectangle.** A squarish room can be arranged so the speaker is close to more of the participants and can make good eye contact. A long, narrow room, by contrast, produces feelings of distance and alienation from the speaker. Although it’s possible to have successful meetings in such a room, some participants will inevitably feel isolated. The longer the meeting, the more intense those feelings will be. Remember: Never design a room based on furniture, such as a typical board table. The furniture should match the function, not vice versa.

**If you’re forced to ignore that advice and have a rectangular room, don’t custom-make a massive conference table inside.** Whether it’s a firmwide meeting or a CLE presentation, you’ll want to be versatile in setting a room. A long, wide table—even if it bows out in the middle—doesn’t let everyone see the speaker. I’ve taught in rooms with a single table seating 30 on each side and three at each end. If the presentation is less than an hour and the presenter is skillful, people can be quite happy in that environment. But longer presentations can have everyone struggling to maintain attention and energy.

**Invest in smaller, two- to three-person tables.** For presentations requiring a writing surface, you’ll want tables that aren’t too deep. (The deeper they are, the more distance created between the speaker and each successive row of participants.) You might think about handsome but easily movable tables that don’t require tablecloths. If you acquire 8-foot-by-2-foot tables, three people can sit at them; if 6-by-2, then two. Elbow room means just as much here as on a plane: Would you prefer economy or first class?

Then learn how to arrange the tables creatively: sometimes classroom-style, sometimes in a large U, sometimes in a complete square with the speaker in the middle.

**Avoid pillars that break up the space.** If the space you’re planning is interrupted by visual blockers, you’ll spend your entire tenancy planning around them. The room’s versatility will be severely hampered, forcing speakers to remain absolutely immobile or else risk becoming invisible to some participants. For professional speakers, both options are undesirable. And if the meeting is to be highly participatory, columns quickly become obstacles to communication.

**Ensure that doors open and close silently.** This is an absolute imperative. Make sure that the doors are utterly silent. Avoid a mechanism that causes the door to shut itself noisily: Hardware has evolved to combat this problem, so use it. Nor should you hear a click every time the latch engages. You must tell the space planners that doors are to be completely silent, while remaining lockable and secure. When I first started teaching CLE full time, I read up on how to give successful seminars. To my surprise, several books went into some detail on how to silence noisy doors. They recommended carrying your own WD-40 for hinges, taping latches so they remain permanently recessed during meetings, and taping napkins to the tops of doors to prevent slamming. I’ve done all three over the years. Unduly concerned, you say? Not at all. The world’s best speaker can’t thrive in a room with intermittent bangs.

**Install flooring that allows people to come and go silently.** This means carpet. Don’t put hard flooring into a large conference room. As soon as you do, people will start wearing tap shoes.

**Plan to use a nearby room for serving food, preferably not the meeting room itself.** Many firms think they’re smart by putting their biggest conference room next to a break room or kitchen. Sometimes a screen will rise to reveal a smorgasbord at breaks.
How clever. Here’s the problem: The food preparers are typically noisy, even shouting instructions at one another; and the screens provide no sound barrier. Even a sign reading “Quiet, please: Meeting in progress” will have no real effect. Envision your managing partner having a talk interrupted by stridulous voices from the kitchen.

If the food is consumed in the meeting room, you’re left with either the distraction of clearing plates—possibly while the meeting resumes—or the lingering odor of leftovers disposed of in the room itself.

So if you can, plan to have a system in which you can say: “Lunch will be served in conference room C down the hall.”

**Install a functional and versatile sound system that runs microphones separately from computer sound.**

So-called smart sound systems that try to connect everything are often just dumb. Call me a Luddite, but knobs are good. Touch screens requiring logins to adjust sound are bad, especially when raising the volume for computer sound simultaneously raises the mic volume. Requiring IT assistance for every adjustment disrupts the presentation and squanders everyone’s time and energy. Make your sound system easy—and, most of all, versatile.

**If you’re installing a projector, do it sensibly.** First, let’s note that many people are using LED screens these days, and they’re putting several of them around conference rooms. They’re excellent, and I’m a fan.

But there’s nothing wrong with a projector. Get the highest lumens possible. If mounting it on the ceiling, place it to have the shortest possible “throw.” Ideally, the speaker can stand almost right underneath the device while it projects directly behind the speaker. If it’s too far from the screen, the projector shines in the speaker’s eyes and the speaker has to stand in the corner to keep from being blinded and from casting a shadow on the screen.

**Give ample thought to lighting.** Natural light is best, of course—preferably entering each room from two directions. But that’s not always possible for every room. Fine. Think about lighting sources. LED lights won’t give off heat, and they come in warm and cool tones. Consider hiring a lighting consultant. Ask for maximal illumination with dimmability. Avoid inadvertent dark spots. Remember that the brightest lights won’t wash out a projector with sufficient lumens.

**Make sure the HVAC is well-equipped to handle the space, and if possible the room should have its own thermostat.** It doesn’t make everyone happy, but a meeting room should remain on the cool side. If you adjust the room to make the coolest-blooded comfortable, it will be too warm for most participants—and that’s death to a meeting. Books on meetings advise to have 15 percent of the participants too cold: that way, 80 percent will be comfortable and only 5 percent too warm. With a little experience, cool-blooded folks know to wear layers.

The point, though, is that ideally the experienced speaker or organizers should be able to make instant adjustments to room temperature. If you’re dependent on a central engineering staff who might not respond to your request for an hour, your meetings will suffer.

**Buy a couple of four-legged wooden stools.** What’s the one prop a good speaker needs? A simple four-legged wooden stool, about 30 inches tall without a back. It’s unobtrusive and lets the speaker sit occasionally while still being high up enough to be seen by the seventh row. Adding a music stand for notes creates a clean, uncluttered stage. A simple stool can actually improve mediocre speakers by helping them engage more with the group.

What has this column had to do with words? Everything. For the spoken word to be effective, the setting must be right.

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*Bryan A. Garner, the president of LawProse Inc., is among the most experienced CLE presenters in the United States. The author of more than 20 books and editor-in-chief of Black’s Law Dictionary, he has teaching appointments at the law schools of the University of Texas, Southern Methodist University and Texas A&M.*
Eighty-one percent of people use social media to connect with one another, engage with news, share information and entertain themselves. This number is up from just 5 percent in 2005, and it includes the more educated and affluent at all age levels.

Not using social media is akin to being unconnected from the rest of the world. No internet. No email. No cellphone.

It’s saying: “I’m not looking to receive information from people I trust, to learn from a growing network of industry leaders or to achieve all I can by building a name for myself. Leave me alone.”

Whether it’s blogging, Twitter, Facebook or LinkedIn, lawyers are using social media, professionally and personally. Ethics rules are not an impediment.

Unfortunately for lawyers and the public we serve, not enough lawyers are using social media. And the vast majority of lawyers using social media are doing a darn poor job of it.
GET RELEVANT

Every day, lawyers, bar associations and law schools talk about making legal services more accessible. They first ought to talk about making lawyers relevant to the public.

Fred Headon, an assistant general counsel at Air Canada, told a Chicago audience of lawyers last fall that lawyers are making themselves irrelevant to most people by refusing to communicate like everyone else—on social media.

The only thing lawyers and legal associations talk about more than access to legal services is lawyers starving to get a job as a lawyer. This is at a time when getting a job and building a book of business has never been easier.

The internet, and especially social media, is the great equalizer for the average law student and lawyer. Never before could lawyers make a name for themselves as fast. Never before could lawyers build relationships with their target audience as quickly.

Having a strong name in a niche and building good relationships are how the best lawyers get work. You’ll not see these lawyers advertising or building websites to chase traffic and stats. The internet has not changed that. Relationships and reputation rule.

DEVELOP A STRATEGY

Utilizing social media is not about setting up a blog and starting to use LinkedIn, Facebook or Twitter. Do that and you’re just wasting your time.

Be strategic. Establish clear goals. What type of work would I love to do? What type of clients would I love to do work for? And be careful when you wave the magic wand, as you are likely to get what you wish for.

Measure success not with traffic, clicks, hits, subscribers and followers. Measure success with the bottom line. What is my target for increased revenue as a result of relationships I will have developed and the name I’ll have built through social media?

Don’t sell yourself short. Many lawyers have increased their annual revenue by $1 million or more, some by $2 million to $4 million, through blogging and social media.

BE SOCIAL

Social media, by name, is social. Social media is not a broadcast or distribution channel.

Law firms and marketers use social media as if it were television advertising: What can we push at people? How many people can we reach? How many followers can we get?

Who’s looking at our stuff?

But the internet was invented as a communication medium, a medium where computers (people) could talk with one another. Social media is more conversation than marketing.

We’re not talking shotgun communication. Going where your audience of influencers, clients, prospective clients, referral sources and business associates are “hanging out” is the key. That room doesn’t exist until you frame it.

And once in that room: Listen, don’t shout.

Imagine going to a networking event with clients, prospective clients and influencers and shouting out “content” with a bullhorn. And having someone there with you running around showing content into people’s pockets.

You’d have reached your target audience and achieved a high penetration rate of delivering content. But you’d look like a darn fool.

Listen. Just as you would offline: Listen first, engage second.

FRAME THE ROOM

The easiest and most effective listening tools to use are Feedly and Twitter. They’ll enable you to frame the room where you’ll do your networking.

Feedly is a free news aggregator that compiles updates from a variety of sources. A lawyer may monitor sources such as blogs, newspapers and trade publications, as well as monitor subjects such as codes, agencies, company names and terms of art.

Twitter enables a lawyer to listen to leaders in relevant areas—bloggers, reporters, clients, prospective clients and associations. Twitter lists may be used to facilitate the grouping of content and sources.

By strategically using Feedly or Twitter or both for listening, you’ll have created a room in which to network, to build relationships with influencers—reporters, bloggers, association leaders, conference coordinators—and to establish a name they trust.

After listening, engage. Engage by sharing what you hear or read, always giving proper attribution to the source. Attribution comes from including the source’s Twitter handle in your tweet, with a simple “h/t” (hat tip), or citing them in a blog post or a share on LinkedIn or Facebook.

The source will see you, they’ll begin to follow you, and they’ll be apt to share those items you blog and share. Maybe you’ll meet up for coffee, lunch or a beer.

Others with similar interests will begin to see you—and see you hanging out with the leaders in your field.

Not only will you become influential in the eyes of others; the machines (algorithms) at Google, Facebook, Twitter and LinkedIn will see you as influential, making it more likely that you and what you say and share will be heard.
GIVE LOVE

Social media is about giving love to others, not getting your content to others. Whether sharing others’ content on Twitter, citing third parties in a blog post or posting others’ pieces on LinkedIn or Facebook, you’ll make your source feel good and let the world know you’re looking to be a resource, not a shill marketing your wares.

Imagine having a Twitter list of the companies you’d love to represent and the principals of those companies. When they tweet something they’re proud of, perhaps a nonprofit effort by their employees, you retweet it and give them big kudos.

They’ll be shocked that a lawyer noticed and took the time to give them a shoutout. Your retweet may be passed around the company and get you a personal thank-you—a thank-you that prompts you to connect on LinkedIn with a company executive and invite them to lunch.

Sharing the content of others builds social media equity. When you pen a blog post or share something on Facebook, others will share it. They like you because of all you’ve done to help others.

BLOGGING SMART

Blogging is the core of your social media. Only with your blog can you establish yourself, via the net, as a go-to authority in your niche while strategically nurturing relationships.

Focusing on a niche you can get passionate about is key. Blogging on employment law, unless it is solely to update existing clients, is a waste. Blogging on the Family and Medical Leave Act is a different story.

Just ask Chicago’s Jeff Nowak, a Franczek Radelet partner and publisher of FMLA Insights. He has picked up multibillion-dollar clients who were fans of his blog.

Social media requires getting outside of your firm and its website. In the case of a blog, that means having your blog on a separate site apart from your website. This builds credibility and authenticity.

Engaging those you’ve read or read about is a powerful way to blog. You’re listening to the influencers via Feedly or Twitter. Now cite them, share what they wrote and offer your take.

Let them know you shared their story via a hat tip in a tweet or email. You’ll get known and be trusted. You’ll soon have them citing your blog posts.

Look to the future, not to resurrect a stagnant practice area. Where are the opportunities, the doors left open?

If there’s not a probate litigation blog in your state, maybe that’s an opportunity. Ask Miami’s Juan Antúnez, a shareholder at Stokes McMillan Antúnez and publisher of the Florida Probate & Trust Litigation Blog, about what he’s been able to do.

Keep posts brief and in a conversational tone. Write as you would speak at a dinner among business associates.
Never have anyone blog for you, unless you send others out to networking events for you.

**TWITTER VALUE**

Twitter enables you to establish yourself as an intelligence agent in niche areas of the law.

Your Feedly folders include blog posts and articles relevant to your work. Add Buffer, a software application that enables you to schedule your tweets, and you have a one-click solution to tweet what you are reading.

Include the Twitter handle of the blogger, reporter or subject so that they see you. It’s their seeing you that builds your name and nurtures relationships.

You’ll build a following on Twitter as people see you as an intelligence agent, a sort of Associated Press on the Consumer Financial Protection Bureau. You’ll have funneled the most relevant news for those interested.

Dennis Garcia, assistant general counsel at Microsoft in Chicago, sees Twitter as invaluable to lawyers for learning, networking, getting news, being an evangelist and building a strong reputation.

Garcia cannot imagine a practicing lawyer not using Twitter. And here’s a recipe for failed efforts: Your firm is looking for technology clients while employing attorneys who don’t use Twitter well.

**FACEBOOK FRIENDLY**

Facebook is the most powerful — yet underutilized — social network for lawyers. While almost 2 billion people use Facebook, most lawyers are afraid to touch it.

Yet a recent study found that almost as many people use Facebook professionally as LinkedIn.

The best way for me to get hold of leading executives, including law firm leaders, is Facebook Messenger. It’s where we have gotten to know each other personally and naturally.

It feels natural to message the president of Bloomberg BNA and the CMO of Jones Day, asking to get together for business as I fly from Seattle to New York City. They’ve become my friends, in part because of Facebook.

When befriending someone on Facebook or considering a friend request, ask whether they would add value to your life. It may be family pictures; it may be the news and information they share. Facebook is much more than accepting friend requests from people who just change their profile picture every few months.

Share what you’re passionate about on Facebook. It may be sports, family, business and your team at work. Those are mine.

Let the algorithms, the most powerful in social media, decide who sees what. Facebook can display any one of 1,500 versions of a news feed to users. Those who use Facebook see what’s valuable and relevant—not junk—as a result.
Think you can’t build a name and relationships on Facebook? Ask Staci Riordan, a partner at Nixon Peabody’s Los Angeles office who, with a blog and Facebook, invented the fashion law niche and is now representing the top brands in fashion worldwide.

I’ll never forget the day she told leading lawyers in New York City that she wouldn’t be caught dead on LinkedIn; her clients were on Facebook.

It’s not all about the type of work you do, either. New York City-based Lew Rose, managing partner of Kelley Drye & Warren, weaves Facebook magic by giving shoutouts to associates, sharing pictures of cocktails with friends and telling stories with his wife.

**BECOMING LINKED**

LinkedIn is much more than a résumé and Rolodex. With its robust mobile app, LinkedIn has become an effective social networking solution.

Share word of your blog posts in your status updates. Look to see who likes and comments on your posts. Rather than just think it’s cool to see likes and comments, as every lawyer does, get out and meet the folks via LinkedIn.

Is there an in-house counsel who commented on your post? How about a local financial planner who could refer work to you as an estate-planning lawyer?

Reach out and connect with them on LinkedIn. Ask them for lunch or coffee. You need not say, “I saw you liked or commented on my post.” They’ve already taken a liking to your view on things.

Share and comment on the posts of others on LinkedIn, doing the same thing. Remember that the end game is not content: Content is relationship currency.

Connect with most every business person or legal professional you meet. LinkedIn gets to know who you would like to meet and who would like to meet you. LinkedIn is offering to go out and seed relationships, yet most lawyers blow it off.

**DON’T RUSH AND DON’T WAIT**

Start slow. Social media is an art and a skill acquired over time. Don’t try to master everything from blogging to Facebook. You may never use all the media. Set a goal of one year to have a working understanding of social media.

Remaining unconnected is not an alternative. Doing so is selling yourself, your firm and your family short.

There has never been a better tool to learn, to build a name and to nurture relationships, all in less time, than social media.

Kevin O’Keefe, a 2009 ABA Journal Legal Rebel and a leading authority on the use of blogging and social media for professional and business development, is CEO of Seattle-based LexBlog, a managed platform for the law used by more than 15,000 lawyers worldwide.
Congratulations to the 2017 Honorees

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Right on the Money
Tips on how to get your clients to pay the bill
By Marc Davis

AFTER MANY ATTEMPTS to get a client to pay a bill seriously in arrears, attorney Charles Krugel showed up at the client’s place of business and asked for the money.

“It was the most extreme thing I’ve ever done to be paid,” says Krugel, a Chicago-based labor and employment lawyer. “It was very effective. The client was embarrassed, he apologized for the slow payment and explained why the bill wasn’t paid on time.”

Getting slow-pay or no-pay clients to pony up can usually (but not always) be assured with some simple steps in advance of taking them on, according to Krugel.

“Before I take on a client, I do some due diligence, which usually takes an hour,” he says. “I use the internet and [databases] to see if the prospective client has the ability to pay or has been sued or has a suit pending against them.”

Krugel also requires a retainer of 50 percent of the highest estimate of the potential cost. “That way, I’m pretty certain they’ll pay in full, sooner or later,” he says.

Although Krugel doesn’t have a client contract, he sends an email that spells out terms and costs of his services to prospects, asking whether they...
agree to the specifics. If the email response is yes, it constitutes a binding legal contract, according to Krugel.

PARTNERS AND PIT BULLS
Heidi Machen of San Francisco, who practices employment, government regulatory, contract and landlord-tenant law, has had slow-pay clients. But she also has “a tenacious assistant who is a very effective collector,” she says.

“I usually don’t have trouble,” Machen says. “I regard the client as a business partner, and I explain this, saying I’ll do my part, and I expect you to do your part, which includes timely payment of my bill.”

Machen has brought only one lawsuit for non-payment in eight years of solo practice. “I filed a claim in small claims court,” she says. “But before the case was heard, a third party paid the bill.”

Discussing payment terms and strategies with a prospective client is an effective way of avoiding problems, according to Machen. She requires a retainer fee and provides an installment plan for payment but does not accept credit cards. As a client incentive to pay promptly, Machen will sometimes waive a few hours of billable time.

“If I have to send a second bill to a late payer, I add a late fee, which is specified in the contract,” she says. “If the bill is paid within a week, I drop the late fee.”

Sometimes, however, a client can’t pay. In lieu of payment from one delinquent client, Machen accepted a valuable sculpture.

Chad Ruback, a Dallas appellate lawyer, once accepted a lien on a Humvee as collateral for an unpaid client debt. Ruback says he knew the client would pay because “he loved that car and didn’t want to lose it.”

“I send bills often, rather than waiting to bill monthly,” Ruback says, suggesting that a billing cycle of every two weeks is a good idea. “That way, clients won’t be socked with a large bill at the end of the month, which may be difficult to pay.”

A big law firm probably wouldn’t allow billing that frequently, according to Ruback, who previously worked for a larger firm. “That’s why I like being in solo practice. I have flexibility, and I can choose who I represent.”

One longtime client of Ruback’s was a “notorious slow payer,” he says. “To get paid promptly, I arranged a plan with the client’s agreement to bill daily. The following day, the client’s assistant shows up at my office with a check.”

Ruback also provides an installment plan for payment and has never turned over a delinquent account to a collection agency.

“Some lawyers I know who have done that have been sued for malpractice or had grievances filed against them,” he says.
WHENEVER A NEW INDUSTRY emerges, litigation inevitably follows. Chicago personal injury lawyer Bryant Greening realized that as he noted that the exploding ride-booking industry had given rise to a long parade of liability issues and legal questions that would rival the taxi lines at O’Hare International Airport.

At the heart of it all, according to Greening, is the fact that companies such as Lyft and Uber are still somewhat new. And the influx of new vehicles on the road, plus tens of thousands of drivers who had not previously worked in the driving sector, has left passengers and drivers unsure of the rules.

“I saw a lot of people on Twitter and on various blogs that were uncertain of what the rules, regulations and legalities were and are for ride-shares,” says Greening, an associate at Aleksy Belcher in Chicago. “I realized that there was a niche area that was not represented and wanted to fill that void.”

In January 2016, Greening and firm partner Matt Belcher set up LegalRideshare. The firm is an independent entity, but both lawyers continue to work at Aleksy Belcher. The new firm purports to focus solely on legal matters that relate to the ride-booking industry.

“I didn’t realize the myriad complications and interrelated activities that make up the ride-share industry, from the trust we place in the app to deliver us a safe driver to sitting next to a safe passenger when we try to make our way across the city,” Belcher says. “It is a very interesting sociological as well as legal issue.”

DRIVING AHEAD

Although plenty of personal injury attorneys advertise to people injured in car crashes that involve a ride-booking service, Greening and Belcher realized it was only part of the available market.

“From the perspective of the companies, there’s a question as to whether or not the drivers are employees or contractors,” Belcher
says. "If a person really is a contractor, then they should be allowed to advertise their services on their own, rather than be exclusive to either Lyft or Uber." Greening says the firm is currently in federal district court in Chicago on behalf of several drivers who claim they have a First Amendment right to advertise their services on their own.

Another issue of concern is assaults. At press time, online tracker Who’s Driving You reported there were more than 220 alleged sexual assaults and 63 alleged assaults by Lyft and Uber drivers since 2013.

And that doesn’t include violence between passengers. Services such as Lyft Line and UberPool allow riders to share a car or van with random passengers, and sometimes things will go badly.

“One of the more interesting cases we have now is where a passenger assaulted another in a carpool and lacerated her face,” Belcher says. “It’s an interesting phenomenon. We trust that the ride-share company will deliver us a safe driver and safe co-passengers, yet the entire ride-share industry contradicts the way I was brought up, which is you never get into a car with a stranger.”

Greening says his main priority is to run LegalRideshare, while Belcher plans to move between the nascent firm and Aleksy Belcher.

“The goal today is to become the go-to firm for every member of the Chicago ride-share market,” Greening says. “Long term, our goal is to do whatever we can to protect the ride-share community. So if that means we have to go nationwide, then we’ll consider it.”

Belcher says the firm model is certainly scalable, depending on the level of demand in other parts of Illinois and, eventually, the country. “Obviously, our experience in Chicago is different than it would be in Champaign or Peoria,” he says. “Is there the same need for our services? I certainly think so. Ride-share services provide a lifeline for places underserved by public transportation or taxicabs.”

“The entire ride-share industry contradicts the way I was brought up, which is you never get into a car with a stranger.”

—Matt Belcher
The Presence of Segregation is the Absence of Democracy

Jim Crow Must Go

To all the little girls watching right now, never doubt that you are valuable, powerful, and deserve every chance in the world.
When Stephen Bingham and Timothy Jenkins remember traveling to Mississippi in 1964 to take part in the Freedom Summer, with the stated goal of registering African-Americans to vote, they recall being exhilarated. It was an exciting time for the civil rights movement and the two—along with thousands of other volunteers from the NAACP, Southern Christian Leadership Conference, Congress of Racial Equality, Student Nonviolent Coordinating Committee and the rest of the rich alphabet soup that is part of historical lore—felt energized and inspired by the hurly-burly of protests, marches, demonstrations and organized political activities that made them feel as if they were helping to bring about important social change.

They also remembered being terrified. Jenkins, a student body president at Howard University who had been on the SNCC executive committee, was thankful that he arrived in Mississippi in one piece. The Pennsylvania native, who had almost grown up in the civil rights movement by volunteering for the NAACP during high school, was traveling with fellow SNCC activists Charles Sherrod, Charles McDew and J. Charles Jones (the “three Charleses”) when the car carrying them accidentally ran over a dog in Alabama.
"The person who owned the dog complained that we had killed her dog, and a tremendous crowd surrounded us and demanded we had to pay for the life of this dog," Jenkins says. "It was the first real confrontation I had in the South."

He believes the incident could have had a much more violent result had it not been for a bystander—a retired judge who came to their rescue. "He indicated that there was no way we could've avoided hitting it and it wasn't our fault," says Jenkins. "Then he hustled us into our car and we drove away."

Not all of their colleagues were as lucky, as Bingham recalls. The Yale University student had been training in Ohio in preparation for the Freedom Rides in Mississippi. He remembers three fellow volunteers—James Chaney, Andrew Goodman and Michael Schwerner—leaving for the Magnolia State a few days before he was to depart. They were killed near the town of Philadelphia, Mississippi, by members of the White Knights of the Ku Klux Klan. Known as the Mississippi Burning case, the murders sparked national outrage and triggered a massive federal investigation that resulted in several convictions in 1967, as well as a belated one in 2005 for accused mastermind Edgar Ray Killen.

"That killing was intended as a message to the rest of us," Bingham says. "They were telling us: 'Y'all better not come down here.'"

But Bingham, Jenkins and the many others in their shoes weren't deterred. They were driven by a cause greater than any single one of them, and they were determined to bring about change through legal means.

Perhaps it was destiny, then, that Bingham and Jenkins would become lawyers. "I never went into law with the hope of making lots of money," Bingham says. "Instead, I began to see law as a tool for social change, and it was reinforced by the work that lawyers were doing concerning civil rights."

Jenkins agrees, saying the civil rights movement "made it clear that law was a place of great impact on what happens in society. ... It was an easy thing for me to decide to become a practitioner."

With political and social strife at the highest they've been in generations, several movement lawyers from the 1960s and '70s believe they can use their life experience to educate and inspire today's social activist lawyers and demonstrators.

'A SIGN OF THE TIMES'

After graduating from Yale Law School in 1964, Jenkins went about as far away from civil rights as a lawyer could.

In those days, Pennsylvania attorneys were required to do an apprenticeship, and his was at the Philadelphia firm of Norris, Green, Brown and Higginbotham. A former lawyer at the firm had joined the pharmaceutical company Smith, Kline and French Laboratories (now part of GlaxoSmithKline) and offered Jenkins a job. Newly wed and a father, Jenkins was looking for a steady income, so going to Smith Kline was a no-brainer. But it also affected his view of lawyers.

"It became clear to me that lawyers were not the movers and shakers I thought they were," Jenkins says. "Lawyers are, typically, brought in at the tail end to clean up the details after major decisions have already been made. It really diminished my enthusiasm."

Jenkins soon found himself gravitating back toward civil rights. Reflecting on his days with Norris Green, he realized that law could still be used as an instrument for shaping policy.

"Most of their practice was not focused on trying cases," he says. "Instead, it was more about helping institutional clients and shaping their policies." Jenkins took that model and used it to provide legal representation to organizations that had sprouted up in the civil rights era, including co-ops, housing and teachers' groups and other professional organizations.

"When I graduated from Yale, I was coming out at a time when the Black Power movement was unfolding," Jenkins says. "The black community was articulating its needs to have our own laborers, businesses, accountants, teachers..."
unions and so on. I also did a lot of work in the South for farmers who wanted to create their own land development enterprises.”

Jenkins also helped found the National Conference of Black Lawyers in 1968. The organization’s initial clients included the likes of Angela Davis, Assata Shakur, members of the Black Panthers and several inmates from the Attica prison riots. He says that, between his own cases and the ones he worked on for the NCBL, there were times when he’d have as many as 300 cases going at once.

“Many of the clients I represented were cause-oriented, not just commercial or civic organizations but activist organizations,” Jenkins says. “I was never completely free of the activist orientation.”

Likewise, Bingham drifted toward radical causes after graduating from the University of California at Berkeley School of Law in 1969. He was selected as a Reginald Heber Smith fellow, awarded to top law grads to allow them to perform public service on behalf of the poor. It also allowed him to get creative with the way he took on cases.

“We were allowed to experiment with new forms of representation and not be in a straitjacket with traditional public assistance work,” Bingham says. Instead, he served as an in-house counsel with a tenants union in West Berkeley. “We were known as Tenants Organized for Radical Change in Housing, or TORCH,” he recalls with a chuckle. “I guess that was a sign of the times.”

Bingham also joined the National Lawyers’ Guild, where he found many kindred spirits. Through the guild, organized as a liberal alternative to the American Bar Association, one of Bingham’s most important relationships was with fellow radical lawyer Paul Harris.

Their friendship came in handy when Bingham was accused of smuggling a pistol into San Quentin State Prison in 1971 to his client, Black Guerrilla Family founder George Jackson. In the ensuing melee, Jackson, two other inmates and three corrections officers were killed while six inmates escaped. Bingham was charged for his role in what became known as the San Quentin Six case and, fearing for his life, decided to flee the country. After over a decade on the lam, he turned himself in and, with Harris as his defense attorney, was acquitted in 1986.

IN HIS BLOOD

Unlike Bingham, being a radical was in Harris’ blood. His uncle, Fred Fine, was a leading member of the Communist Party USA, while his father volunteered to fight in the Spanish Civil War against Francisco Franco and the Nationalist forces. Growing up during the McCarthy era, Harris was too young to understand what was going on, but he knew his family was suffering.

“My father was blacklisted out of the labor movement,” Harris says. “My mom lost six jobs in seven weeks. My uncle was indicted under the Smith Act and went underground for four years. The FBI would show wanted posters of my uncle [and my mother would] get fired. It was horrible for my parents and grandparents.”

Harris was never a Communist himself (though he says he joined some Marxist groups in college), but he was clearly influenced by party tenets. Nowhere was this more apparent than when he set up the San Francisco Community Law Collective in the Mission District immediately after graduating from Berkeley Law in 1969.

Describing it as “communist—with a lowercase c,” Harris says the law collective was based on the idea that communities could have legal representatives similar to in-house counsel to serve them whenever legal issues came up. The radical twist was its compensation structure: All employees were paid equally, regardless of whether they held a JD.

“Our model was for a completely multiracial law office that would work hand in hand with community groups,” says Harris. “We weren’t really looking to do big political cases. We just wanted to empower people so that they could bring about long-term changes.”

But the big political cases soon found their way to Harris’ desk. Leonard McNeil, a collegiate All-American football player at
California State University at Fresno, was drafted by the Philadelphia Eagles in 1968. His number also came up in a different, far more serious draft—the military one.

“He fled to Canada after getting a draft notice,” says Harris, who notes that McNeil had been active in civil rights demonstrations in college and claimed that the Eagles refused to sign him because they believed he was a Black Panther. “He came to me because we were known as experts in draft law—and because we were leftists.” Harris got the charges dropped, and McNeil went on to an active political career, including 12 years on the San Pablo city council and one term as mayor.

Harris had worked with the Black Panther Party and says he had respect for its members after seeing the positive things they had done in the community, including taking seniors to the bank to help them cash Social Security checks, setting up free breakfasts and developing programs to help people with sickle cell anemia.

Contact with the Panthers brought Harris into a case involving their minister of defense, Huey Newton. Newton, who had attended law school in San Francisco, was facing murder and assault charges and had decided to abscond to Cuba.

“I was asked to go to Cuba and meet with Huey and get him to come back and face the charges,” Harris says. “I told him that he’d probably win the murder case but lose the assault. Huey told me: ‘Paul, I love Cuba, but I’d rather spend the rest of my life in prison in my home country than live in exile.’ ”

Harris defended Newton on the assault charge and, contrary to his initial prognosis, got an acquittal. He did not take on the murder case, however. Instead, it was a fellow Berkeley Law alumnus who would handle it.

AGAINST THE GRAIN

That lawyer, J. Tony Serra, likes to call himself an “anti-lawyer lawyer.” Serra went to Stanford University for undergrad before graduating from Berkeley Law in 1961. Serra had dreams of being a big-time mob lawyer, but he was soon swayed by something else that was going on at the time: the Summer of Love.

Located about an hour from Boalt Hall, the Haight-Ashbury area became ground zero for the free love movement, and Serra was immediately hooked. His attraction to what was going on in Haight-Ashbury went beyond hippie culture. “Out
of it all came a fusing of Eastern ideology and Eastern religion with Western ideology,” Serra says. “We were all working together.”

Perhaps that’s why he sounds as if he’d love to go back in time. Calling it the “golden age of law,” Serra waxes nostalgic for those days.

“We always romanticize our youth,” says Serra. “That’s when we were strongest, most mentally able and most innocent. I was a radical lawyer in an era where I could win consistently, and the Constitution was respected and fulfilled to a degree that certainly was much more prominent than presently.”

Nevertheless, he’s tried hard to uphold the ideals that he stood for in the ‘60s, even as the decades have progressed. While on an LSD trip, he took a vow of poverty, and he still lives a frugal lifestyle. He tries to keep his fees as low as possible so that he can help as many poor clients as possible.

He says he typically charges $25,000 for a death penalty case, knowing he could get nearly 10 times that working as a public defender. Even then, the money is enough to help defray the costs of other cases.

“You must strip yourself of impure motives if you want to be successful in any realistic venture,” Serra says. “If I’m thinking about money, then I can’t defend my clients effectively.” That extends to giving money to Uncle Sam: Serra is a well-known tax resister and even spent 10 months in federal prison in 2005 for evasion.

He has another reason for living a Spartan lifestyle. Decrying the materialism he sees from many in the profession, Serra believes it’s hypocritical for lawyers to say they believe in a cause only to chase money. “They pretend they believe in a correlation between income inequality and racism, and then they go to expensive restaurants and go yachting on weekends,” says Serra. “They want it both ways.”

When Serra defended Newton on charges that he had shot a prostitute to death in 1974, it was Serra’s first high-profile case. He remembers how Black Panthers stood in the courtroom, and in the halls outside of it, cheering him on as he made his arguments in open court, calling out as if they were in church. He also formed an indelible bond with his clients, one that continued to influence him long after Newton was killed in 1989.

“Huey was one of the most magnificent people I’ve ever met,” says Serra. “He taught me so much. For a short but intense period, we were like brothers.”

Serra, who went on to represent other radical defendants, including members of both the Black Panthers and the White Panthers, as well as the Symbionese Liberation Army, says he’s learned from all his clients. “They were all brilliant people, very analytical and self-sacrificing,” Serra says. “I got close to all of them—not just because I represented them in court and won, but because we became friends. Their ideologies framed my ideology.”

Like other radical lawyers, Serra has found himself in the cross-hairs of two police witnesses to the public in a criminal trial. He called on a fellow California radical to get the charges dismissed.

FOCUSED ON POT
That someone—who has devoted his life’s work to pursuing legalization of marijuana—is Bruce Margolin. He claims pot is not really part of his lifestyle and stresses that he’s not promoting marijuana use; he’s promoting changing the law. The Los Angeles lawyer, who graduated from Southwestern Law School in 1966, says he’s been driven by a very basic legal maxim that the punishment should fit the crime.

“Early in my career I got a case where there were 20 kids busted in a hippie house in California for pot possession,” Margolin says. “I represented all of them. There was one guy who was going to be convicted and was going to go to jail, and I was shocked about that. I couldn’t believe that’s how the system worked. It seemed too harsh for me.”

To Margolin, who grew up in a Marine family and was looking to rebel, marijuana was the ideal outlet. He began to research marijuana and could find nothing that convinced him it was harmful or dangerous. So he decided to push for its legalization while setting up his practice to help marijuana defendants.

“I realized that I needed to change the law,” says Margolin, who put ads in the newspaper to see who would join him in his cause. “One of the editors got ahold of me and started talking to me about my career. I mentioned that I had represented about 100 people on marijuana charges and only one went to jail. I soon became very well-known in the area of defending marijuana cases.”

Margolin has been executive director of the LA chapter of the National Organization for the Reform of Marijuana Laws since 1973. He also ran on a marijuana-legalization platform during the 2003 California recall election that saw Arnold Schwarzenegger become governor. Margolin’s lawyer advertising contains multiple references to marijuana: His phone number is 1-800-420-LAWS (420 is a slang term for marijuana). And his website bears the phrase “No one belongs in jail for marijuana.”

“Maybe one day we’ll find out something really harmful about marijuana and maybe then I’ll feel bad about my work,” says Margolin. “But it hasn’t happened yet.”

In 1970, Margolin ran for the California State Assembly and lost by 5 percentage points. After the campaign, he decided to put his legal career on hold to travel the world and, in his words, try to find the meaning of life. During his travels, he had befriended Richard Alpert, an academic who, along with his colleague Timothy Leary, had been fired from Harvard University after conducting controversial experiments with students involving LSD and other mind-altering substances.

“I went to India and took a meditation course,” Margolin says. “When I went back to my hotel, Richard Alpert was there. He taught me that, if you have a boon or power, you should use it.”

Margolin took that to mean that he should resume practicing law. That decision paid off for Alpert’s
friend Leary. The professor had become even more notorious since his Harvard days, and at one point Leary was described as “the most dangerous man in America” by none other than President Richard M. Nixon. Leary had been on the lam for a couple of years after escaping from a minimum security prison while serving a 10-year sentence for marijuana possession. He was arrested in Kabul, Afghanistan, and extradited to the U.S., where he was locked up in Folsom State Prison next to Charles Manson for a time. Alpert then called Margolin and asked him to defend Leary.

“My job was to make people understand why he was in jail,” Margolin says. “It was really just a marijuana possession case.” Despite that, he came up with an intricate defense that included an LSD-induced flashback, as well as fears that Nixon and his administration would kill Leary. Leary was convicted, but he received a reduced sentence and was ultimately released from prison in 1976.

‘CO-OPTED BY CAPITALISM’

These movement lawyers have seen plenty of changes over the last half-century. But 2016 was a reminder that their work isn’t finished.

Margolin may have believed the hardest part of his lifelong struggle was over in November when California voters enacted Proposition 64 legalizing recreational marijuana. But on that same night, voters across the country elected Donald J. Trump to be president. Almost immediately after his victory, Trump nominated then-Alabama Sen. Jeff Sessions to be his attorney general. Sessions, a longtime opponent of marijuana who once said that “good people don’t smoke marijuana,” could make Margolin’s life interesting over the next few years.

“He makes me sick to my stomach,” says Margolin, who has defended Linda Lovelace, Christian Brando and members of Guns n’ Roses in marijuana-related cases. “I don’t know what he’s going to do.”

Harris, though retired, is hoping to mold the next generation of movement lawyers through his Center for Guerrilla Law. The main idea behind the center is similar to the law collective he set up all those years ago, he says. “It goes back to representing community groups and being house counsel for those institutions. The law has this notion of objectivity, but it’s not. The law serves the status quo in every country, but in the U.S. it also protects dissent, and that gives you breathing space as a lawyer.”

As dissent and organized protests become more commonplace in the Trump era, both Harris and Serra are heartened by what they see as a more active, committed, engaged and radical populace, even more than what they had seen in the ’60s and ’70s.

“We have a president who is seizing power at a time when the courts are upholding the law and the Constitution,” Harris says. “It’s very easy to get co-opted by capitalism.”

Bingham agrees, saying that working at a big law firm can be advantageous for young lawyers because of the level of training. He also suggests that cause-oriented big-firm lawyers act as if they’re living on a public interest salary. “It’s hard to do this on your own, so I would tell students to find others and live together and pool their resources so they won’t be tempted to use their money to buy nice cars or whatever,” says Bingham. “For me, I liked living collectively. When rents going up, it’s not a bad idea.”

Jenkins, meanwhile, encourages cause-oriented lawyers not to sweat the small stuff. He recommends that today’s lawyers look beyond the typical approach of trying to solve one problem at a time and, instead, take the long view.

“Instead of using a whack-a-mole approach and trying cases in isolation and as they come up, lawyers should look for long-term solutions,” Jenkins advises. “They should look for institutional solutions instead of individual solutions.”

But the main thing today’s lawyers have to remember, according to Serra, is that being a good lawyer trumps everything.

“You can’t be a loose cannon or a big mouth without backing it up with case law, memos and arguments in court that are credible and persuasive,” Serra says. “You’ve got to be good, man!”
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The Charlotte School of Law faces an uncertain future, but it is not alone.

“I had a couple of interviews, and when people talked to me about where I went to law school, they cringed.”
— Barbara Strang
For 15 years, Barbara Strang worked for the state of North Carolina, mostly in indigent services, investigating capital murder cases. She grew up with a father who practiced criminal defense law. Becoming a lawyer, she thought, would be a good career change.

The 2015 graduate of the Charlotte School of Law—which was placed on probation by the ABA last November for being out of compliance with admissions standards and then lost access to federal student loan money—has yet to find out whether that’s true. She failed the bar exam and hasn’t retaken it, mostly because she’s not sure that the time and money would be worth it.

“I had a couple of interviews, and when people talked to me about where I went to law school, they cringed,” says Strang, who now works in due diligence with a Wells Fargo credit investigations group. She enjoys the work but says her wages aren’t enough to live comfortably and pay back the more than $200,000 in law school loans that she owes.

She and other CSL graduates are seeking federal loan forgiveness, which is a possibility—if the for-profit law school goes out of business. While that’s still to be determined, the grads don’t have to make payments. But the interest continues to accrue.

Last year, the Department of Education, then under the Obama administration, cut off federal loans to current CSL students. The federal loans were released at the end of the school year, but only for some students. And it’s not just the students and graduates: The law school itself is caught in a grim scenario.

Out of the country’s six for-profit law schools that have ABA accreditation, three, including Charlotte, are part of the Infilaw System, a consortium owned by the private-equity company Sterling Partners. Arizona Summit Law School, another Infilaw school, was put on probation by the ABA in March.

As was the case with Charlotte, the council of the ABA Section of Legal Education and Admissions to the Bar found that the Phoenix-based school was not in compliance with admissions standards based on students’ Law School Admission Test scores and undergraduate GPAs. On the LSAT scale from 120...
to 180, Charlotte’s median score was below 150 over the past five years, according to ABA data.

Arizona Summit and the third InfilLaw campus, Florida Coastal School of Law in Jacksonville, also had median LSAT scores under 150. Florida Coastal is not on probation, but in January it was found to be out of compliance with the DOE’s debt-to-income ratio requirement placed on for-profit schools. It could lose access to law school loans if the ratio does not improve by next year.

All the InfilLaw schools have announced actual or planned affiliation agreements with nonprofit universities in the past year. Whether they come to fruition remains to be seen. As of mid-June, when most students are gearing up for fall classes, the CSL website said no applications for the summer or fall terms were being accepted.

Also in June, the University of North Carolina’s board of governors committee, which handles state authorization and licensure for nonpublic institutions that grant post-secondary degrees, found that Charlotte is not in compliance with state standards regarding financial resources, planning or stability.

As a condition of its state license, the decision states, the law school must submit an ABA-approved teach-out or remedial plan no later than Aug. 10. Also, the decision directs the law school to admit no new students, and it must obtain a tuition guaranty bond of at least the equal amount of the prepaid tuition from students who may participate in the proposed teach-out plan.

Perhaps somewhat surprisingly, Charlotte characterized the state finding as “largely positive” in a press release, and it claimed that it planned to continue pursuing participation in the federal loan program and its ABA accreditation.

LIKE A CAR DEALERSHIP

Charlotte and its sister law schools might seem like outliers, but they are not. A surge of problems has swept over these campuses—a stagnant job market for new lawyers, growing concern about law school costs and onerous student debt, disappointing bar passage rates, declining law school applications, and allegations of reduced entrance standards to fill law school seats. The surge is hitting many law schools, both public and private.

Two nonprofit law schools, at Indiana Tech and Whittier College, have announced they are closing—Indiana Tech’s closed in June. It’s something that was undreamed of when law school was so popular that some universities used some of their law school tuition income to help finance the rest of their programs.

According to ABA data, 146,288 people were enrolled in accredited law schools during the 2011-2012 academic year. By 2016, that number had decreased to 110,951. Although the 2011 bar passage rate for ABA-accredited law schools was 74 percent, it decreased to 63 percent in 2016, the National Conference of Bar Examiners reports.

ABA employment data shows that 61.8 percent of people who graduated from accredited law schools in 2016 had full-time, long-term jobs that required a JD 10 months after graduation.

Although the need for change is clear, little is being done. Perhaps that’s due to self-interest, some critics say, speculating that for-profit law school boards are only interested in maximizing profits. Some also accuse nonprofit law school faculty and administrators of fighting change to maintain their status quo.

“The idea that nonprofit law schools aren’t as interested in profits as for-profit law schools is not accurate,” says Clare McCann, a senior policy analyst with the political think tank New America in its Washington, D.C., office.

“These problems exist in all sectors, and there’s some really questionable behavior from institutions that are struggling to keep the doors open.” Previously a senior policy adviser with the DOE during the Obama administration, McCann worked on issues that included law school accreditation.

Paul Campos, a professor at the University of Colorado at Boulder Law School, predicts that five to 10 law schools will join those once part of Indiana Tech and Whittier by closing in the next few years. Comparing law schools’ listed tuition prices with grants and scholarships given, he found that between 2011 and 2015, tuition revenue decreased by 30 percent.

Campos says there’s now a comparison to be made between car dealerships and law school admissions offices. “At many schools, you’re a sucker if you pay full

“The idea that nonprofit law schools aren’t as interested in profits as for-profit law schools is not accurate.”
— Clare McCann
HOOKED ON LOANS

“Tuition,” he says. “They’re basically saying: ‘What do I need to do to put you in a law school seat today?’”

For-profit colleges tend to do better in Republican administrations.
— David Deming

Even as difficult as it’s been since the law school bubble burst, “it still seems there are enough people who will go to law school and pay high tuition—as long as they get student loans,” says law professor James E. Moliterno of Washington and Lee University, “even when statistics tell them the chances of getting the kind of employment to pay those loans back is pretty small.” Moliterno is the author of The American Legal Profession in Crisis: Resistance and Responses to Change, a book released in 2013.

There are questions about how the Trump administration’s Department of Education will view Charlotte in its fight for federal funding. For-profit colleges tend to do better in Republican administrations, says David J. Deming, a professor at the Harvard Kennedy School. But it’s been hard to predict what will happen with the current president.

The DOE’s acting general counsel suggested in March that Charlotte apply for reinstatement of federal student aid, according to an April 14 letter that Chidi Ogene, the school’s president, sent to Education Secretary Betsy DeVos. The department released the second disbursement of direct loan funds to the school on May 5, a DOE spokesperson told the ABA Journal. Only students with fall-spring financial packages received the funds, according to students. Those who attended summer school had three choices: Pay spring semester tuition out of pocket, withdraw from classes by May 9, or take a zero-interest institutional loan from the law school.

The institutional loans could not be consolidated with federal loans and could raise a recipient’s monthly payment by more than 50 percent. The law school’s website lists annual, full-time tuition as $42,320.

R. Lee Robertson Jr., president of the Charlotte School of Law Alumni Association, is hopeful that the release of the federal loans is a signal that the school will remain open indefinitely. To others, that sounds like a nightmare. The school’s North Carolina bar passage rate for the February exam was 25 percent. Also, the state attorney general’s office recently announced it was investigating the law school for civil fraud.

In its 2016 notice to Charlotte, the DOE accused the school of being dishonest with current and potential students about its ABA accreditation status, which is why the department pulled its access to federal loan money. When contacted by the Journal in April, M. Victoria Taylor, a Charlotte spokeswoman, said the school was not giving interviews.

STUDENT WOES

According to 2017 graduate Matt Blevins, a big problem for CSL students came in 2015, when the school changed its below-C curve from 20 to 45 percent.

“They were bringing in all these people, and almost half of them are gone each year,” he says. “You get kicked out if you drop below a 2.0. These people uprooted their lives, took out full loans and have nothing to speak of after a year.”

Blevins knows of 20 students who flunked out and were immediately readmitted—as first-year students. “They didn’t get to keep any credits, even if they passed the classes,” he says, adding that out of those 20 readmitted, only three avoided getting kicked out again.

Around the same time that Blevins attended Charlotte, applications to law schools were decreasing nationally. Some law schools admitted students with lower LSATs and undergraduate GPAs, says David Frakt, an Orlando, Florida, attorney and 2014 dean finalist at Florida Coastal.

It became clear, he says, that the ABA wasn’t doing much admissions standards enforcement then, instead opting to see what happened with bar passage rates. “Inflaw schools knew they had a four-year window where they could let in absolutely everyone,” Frakt says. “They made out like bandits.”

The Section of Legal Education and Admissions to the Bar is the federally recognized accrediting body for education institutions that offer a JD degree. Barry Currier, managing director of the legal education section, would not comment about criticism that the section is too lax on law schools.

“In the past few years we have, as a matter of course, placed more emphasis for our standards on outcomes, such as bar passage rates and employment data, than inputs,” he wrote in an April email to the Journal. “The council and the accreditation committee pay close attention to schools’ bar pass rates and enter into compliance dialogues with those schools where problems arise. Those matters are confidential under our process.”

IS CSL NEEDED?

Margaret Kocaj, who graduated from Charlotte Law in May, is a longtime resident, which is one reason she opted to attend the city’s only law school. Kocaj owns a tax preparation business, and she plans...
to work as a solo practitioner.

“I truly believe that Charlotte needs a law school. There are a lot of people it can serve,” she says.

Practicing lawyers in town see things differently, says F. Lane Williamson, president of the Mecklenburg County Bar, which includes the city of Charlotte. The state has 23,325 lawyers, according to the 2016 ABA national lawyer population survey. Williamson says many in small firms and solo practices find it increasingly hard to make a living.

North Carolina residents might need attorneys, he says, but competition is stiff for clients who can afford to pay one. The median household income in North Carolina is $47,830, according to 2015 U.S. census data (the latest figures available), while the national median household income is $55,775.

“One of the resentments some lawyers here have about Charlotte School of Law is that they turn out these graduates who drive down the market in certain practice areas, like traffic offenses and family law,” says Williamson, a former superior court judge and discipline hearing commission chair for the state bar.

The state has seven law schools, and four of them report that 50 percent or less of their 2016 graduates had full-time, long-term jobs that required JDs, according to ABA employment summary data.

Nationally, 39,984 people graduated from U.S. law schools in 2015, the National Association for Law Placement reports. Ten months later, only 33,469 found employment, including jobs that did not require a law degree.

“We’re talking about a legal market after a recession. A lot of law firms are firing associates, and less people are thinking about hiring legal counsel,” says Constance Iloh, an assistant professor of higher education at the University of California at Irvine. Iloh’s scholarship addresses educational access and equity, focusing on for-profit higher education and community colleges.

“All of these institutions, not just for-profits, need to be realistic about how many students they enroll, given the market,” she says. “And they need to be very intentional about trends in the legal profession, especially in this time when there aren’t many jobs.”

MOVING OUT

Andrew Howe, who was slated to graduate from Charlotte in May, has had a hard time deciding where he wants to finish law school. In January, he planned to transfer to the Wake Forest University School of Law, thinking it would be better for his career. According to ABA employment data, 73.3 percent of Wake Forest’s 2016 graduates had full-time, long-term jobs that required JDs. At Charlotte, 23.5 percent of its class of 2016 got such jobs.
Howard a former band teacher and father of two who has about $72,000 in law school loans, which he took out for living expenses. By June, he was thinking he might stay at Charlotte and finish, if it remains open. He has a job clerking with Robertson & Associates and an offer to practice law there if he graduates from Charlotte. The law firm is owned by Richard L. Robertson Sr., whose son is president of the school's alumni association.

“I just need to get done,” says Howard, who had taken a leave of absence from the school in January. “In a perfect world, I would do something different, but with a family, including two little ones, I have to accept whatever detrim may come from holding a CSL degree and use that as motivation to outwork others.”

By June, he says, he was able to remove emotion from the decision. “It has been an evolving process,” Howard says. “But I’m thankful to be moving toward an end.”

Howard received a full-ride scholarship to attend Charlotte, which is one reason he went there—that and the fact that it’s close to his home.

“Everyone knew there was some issues—obviously their bar passage rate is public knowledge,” Howard says. “But I don’t think anyone could fathom that this could take place. The pitch they gave us was: ‘We don’t have great bar passage rates, but we’re still a good law school. We’re accredited, and you can learn what you need to go on and do great things.’”

Howard also was accepted at Appalachian School of Law in Grundy, Virginia. Sandra McGlothlin, the school’s dean, says it has 13 transfer students from Charlotte, many of whom were 3Ls. There wasn’t a GPA cutoff, she says, but the school did not accept students who scored under Appalachian’s median LSAT score of 143.

If their completed classes fit what Appalachian offers and the students earned a C or better grade from the class, the credits transferred, says McGlothlin, whose school has accepted more CSL students for the fall term.

Out of Appalachian’s 42 graduates in the class of 2016, 15 had full-time, long-term jobs that required JDS, according to ABA employment summary data. The school’s bar passage average for 2015 was 58 percent, according to its Standard 509 Information Report for 2016.

**LOW STANDARD?**

ABA Standard 316 outlines a few ways that a law school can meet its requirements. The simplest is that, for the five most recent years, at least 75 percent of those graduates who took a bar exam passed it. If for three of those years the 75 percent rate is reached, that also is acceptable.

Some schools demonstrate compliance by having a first-time bar passage rate within 15 percentage points of the first-time bar passage rate of the state (or governmental jurisdiction for Puerto Rico and the District of Columbia) for which the school is required to report. In doing these calculations, schools have to account for at least 70 percent of their graduates, beginning with the state in which the highest number of graduates took the bar exam.

Many think the standard is too lax—indeed, no accredited law school has ever been found to be out of compliance with it. The Section of Legal Education and Admissions to the Bar recently presented a revision to the standard that would require 75 percent of a law school’s graduates pass a bar exam within a two-year period. In February, the proposal failed to get approval from the ABA House of Delegates.

Shortly before that vote, the deans steering committee of the Association of American Law Schools urged the legal education section to withdraw the revision. Out of 3,247 applicants who graduated from ABA-accredited law schools and took the California bar exam last July, only 62 percent passed. Law schools with bar passage rates under 75 percent included the University of California at Davis School of Law and the University of California’s Hastings College of the Law in San Francisco.

“The California bar results, if they become the ‘new normal’ for graduates of ABA-accredited law schools in California, could potentially imperil the accreditation of a very large number of law schools—law schools whose history and profile have demonstrated over many decades an ability to educate and graduate successful law students by any reasonable measure,” the Jan. 13 letter from deans steering committee reads.

In March, the Los Angeles Times published an opinion piece by David Faigman, dean at Hastings. He argued that the “cut score” (how it sets the line for passing and failing) for the California bar was too high.

Faigman and Judith Daar, interim dean of Whittier Law School, were among more than 90 people who signed the document. Whittier’s July 2016 California bar passage rate was 23 percent.

Diversity in the profession was another concern opponents of the proposal mentioned. According to information submitted by William Patton, a professor emeritus at Whittier, 33 percent of African-American law students in California attend the state’s five schools that would be most at risk if the accreditation proposal is implemented. He also found that 29.8 percent of the state’s Latino law students attend those five schools.

Data shows significant ethnic disparities with first-time bar passage rates, says Aaron Taylor, executive director of the AccessLex Center for Legal Education Excellence in Washington, D.C.

Taylor says one solution could be giving schools the five years to meet the 75 percent passage standard. Another could be cutting the compliance window to three years with a more stringent requirement regarding passage rate minimums.

“Everyone wants to have a more diverse legal profession in theory, but no one wants to do the work to make that happen,” says Taylor, who has a doctorate in higher education. “It’s a thin line between providing opportunities and exploiting people.”

Also, some suggest, poor-performing law schools should use diversity as a shield.

“I’m offended by that,” said Raymond Pierce at an October meeting of the legal education section’s council. “I think a bar pass rate is a fair, accurate assessment for
any law school. If 25 percent of your students can’t pass a bar with four chances, it does call into question your admissions.”

Pierce, a council member of the legal ed section, was speaking at the meeting where the council approved the proposed revision. He previously was the dean of the North Carolina Central University School of Law, which is associated with a historically black college.

“If anything, the [proposed] two-year time frame will only cause all law schools at [historically black colleges and universities] to work harder, and that’s not going to be anything new,” Pierce said.

THE FEDS STEP IN
A scolding from a federal panel that oversees higher-education accreditors, which in June 2016 accused the legal ed section of being “out of step with a crisis,” has added pressure for change.

The National Advisory Committee on Institutional Quality and Integrity recommended that the ABA’s accreditation power for new law schools be suspended for one year. It argued that accreditors failed to implement its student achievement standards and probationary sanctions while also not meeting its audit process and analysis responsibilities regarding students’ debt levels.

Last September, the Department of Education announced it would not implement the recommendation. Department staff did not find enough evidence that the ABA was out of compliance with its mandates.

A few months after the national advisory committee’s finding, the ABA granted full accreditation to the University of Massachusetts School of Law at Dartmouth. The school’s bar passage rate for July 2016 first-time test takers was 69.4 percent. Out of all the school’s graduates who took the Massachusetts bar last July, there was a 50.9 percent passage rate.

But the school met the current bar passage standard. Its first-time passage rate was within 1 percentage point of the school’s peer institutions. Its ultimate bar passage rate, which includes test taker data outside Massachusetts, was 83.6 percent, says Eric Mitnick, the school’s interim dean. Annual in-state tuition at the school is $26,466.

It’s possible, the legal ed section’s Currier wrote, that a law school with a 51 percent passage rate for first-time bar exam takers would not be out of compliance with the standard because it has five years to reach the required pass percentage. Such a school also could be in compliance under the proposed revision, Currier added, because over two years schools would have four bar administrations to meet the standard.

“One of the shortcomings of the current Standard 316, which the council’s reform of the standard would go a long way toward curing, is how long the period is that...
must be considered in determining whether a school is or is not in compliance with the standard,” Currier wrote.

**ANTITRUST ISSUES**

Because there appear to be more law school graduates than available jobs, the question arises: Why not put new accreditation on hold? That simple solution likely would amount to an antitrust violation, according to lawyers who practice in the field. The Department of Justice sued the ABA for antitrust violations in 1995. “Our theory was that the law school accreditation process was captured by faculty of law schools,” says James Tierney, a partner at Orrick, Herrington & Sutcliffe in Washington, D.C., who represented the DOJ. “They were using the process to feather their own nests.”

The filing alleged that legal educators used the accreditation process to fix their salary levels and other working conditions, and a boycott was directed at for-profit schools and students from non-ABA-approved schools.

“The concern wasn’t that lawyers were running the accreditation process. We weren’t even trying to eliminate the ABA as the accreditor,” Tierney says. “We were just saying that this process was captured by a narrow group, and they were using the process to protect their own proprietary interests.”

The case settled in 1996, and the ABA agreed to adopt structural changes meant to ensure that law school accreditation was not controlled by law school faculty. The association also created a special committee focused on finding a balance between antitrust and educational concerns for the accreditation process.

The consent decree was lifted in 2006, according to Currier, and the ABA section’s council agreed to continue to follow provisions listed in the agreement.

**JOBS VS. ACCREDITATION**

Tying accreditation to gainful employment could address more recent law school concerns, says Paul Gaston, a professor of English and higher education administration at Kent State University.

“Gainful employment figures are not the only indicators of a law school’s effectiveness—and they may not even be the most revealing—but gainful employment rates coupled with bar passage rates offer an objective standard that is significant and easily understood,” Gaston says.

Michael Carrier, an antitrust professor at Rutgers Law School, agrees. “I would think that the ABA could have a goal of accreditation, giving consideration to student debt and students graduating without jobs, to set a higher bar that law schools would have to meet in order to receive approval,” Carrier says.

“Going back to the decree, my sense is that the ABA crossed the line at that point. Some things it was requiring did not really seem justified on competition grounds and perhaps raised some concerns,” he says.

Others argue that changes in legal education should come from schools, not accreditors. “We reduced our JD program by 40 percent when the demand was rising,” says Ron Cass, the dean of Boston University School of Law from 1990 to 2004. “We did that for reasons that had nothing to do with bar passage but our sense of what would position the school to be a really good school, and give our students the best chance of getting really good jobs.”

The proposed revision for Standard 316 is still under consideration by the legal education section’s council. Under ABA rules, the House of Delegates can send proposed revisions back to the council twice for review with or without recommendations. But the council makes the final decision on law school accreditation—no matter what the ABA’s governing body says.

In March, the council heard a report about the actions taken by section delegates to the House and agreed that it would return to the matter, according to Currier. The proposed revision is not on the House agenda for the ABA Annual Meeting being held Aug. 10-15, he says.

**GO WITH THE GRE**

The council also is considering whether a standard on admissions testing should be revised. The current Standard 503 directs law schools that use admissions exams other than the LSAT to demonstrate that those exams are valid and reliable.

The council is now considering whether LSAT alternatives should be accepted and, if so, how a process should be established to determine whether the other tests are valid and reliable.

Harvard Law School announced in March that it plans to accept the GRE or the LSAT for admissions testing, joining the University of Arizona’s James E. Rogers College of Law.

Over the last five years, ABA Standard 509 reports show, the number of Harvard Law applications has yo-yoed, with a decrease of more than 12 percentage points between the highest and lowest totals. But in 2016, applications increased by about 5 percentage points over the previous year.

Bloomberg.com suggested that the admissions test shift is likely a move to draw more foreign students, who took the GRE because they planned to study science or math.

Meanwhile, Blevins, the recent graduate of Charlotte Law, teaches public speaking at a North Carolina community college. He says he has no interest in seeking federal loan discharge.

“The money is inconsequential to me,” Blevins says. “It’s a significant amount. But if I just discharge my loans and don’t get the degree, I just wasted three years of my time.”

In terms of having wasted his money, Blevins isn’t sure. He told the Journal shortly before graduating that if he didn’t get to finish law school, he was “going to regret it.” “But at this point, as long as I... pass the bar, I’d probably do it again.”
IN THE MOVIES AND ON TELEVISION, judges have played key roles in dramas, comedies and legal thrillers. Everyone seems to have a favorite—from the eccentric Judge Harry T. Stone (Harry Anderson) in TV’s Night Court to the serious and strict Judge John Taylor (Paul Fix) presiding over the trial in To Kill a Mockingbird. And just as lawyers are sometimes portrayed with dramatic license, cliche and exaggeration, so too are judges. Yet at the same time, we’ve seen judges who reflect the realities of what it’s like to wear the robe and weigh important decisions every day. So we thought: Who better to tell us about their favorite television and movie judges than real jurists?

We asked a group of judges, along with a law professor, to nominate their favorites and then write essays telling us why. We got stories of judges who inspired, demonstrated important values, and showed humanity and humility.
I have long had a warm spot in my heart for the cantankerous Judge Chamberlain Haller in the movie My Cousin Vinny. In many ways, he’s an anomaly: a Yale Law School graduate who winds up on the bench in a small town in Alabama; a strict enforcer of the rules of procedure who nonetheless gives Vinny quite a bit of leeway. Prone to take himself a bit too seriously, he sees the dignity of the court—indeed of the entire state of Alabama—as depending on his strict enforcement of procedural rules in his courtroom. For all of that, he is not lacking in humanity and gets some of the best lines (other than Vinny). When he’s frustrated with Vinny’s inability to enter a plea for his client, he sounds a bit like that other great Southern figure of authority, Captain in Cool Hand Luke. “Once again, the communication process has broken down between us. It appears to me that you want to skip the arraignment process, go directly to trial, skip that and get a dismissal. Well, I’m not about to revamp the entire judicial process just because you find yourself in the unique position of defending clients who say they didn’t do it.”

Even then, he is not without a sense of humor:

Vinny: “Your honor, may I have permission to treat Ms. Vito as a hostile witness?”

Mona Lisa Vito: “You think I’m hostile now, wait ’til you see me tonight.”

Judge Haller: “Do you two know each other?”

Vinny: “Yeah, she’s my fiancée.”

Judge Haller: “Well, that would certainly explain the hostility.”

Brought to life by the incomparable Fred Gwynne, Judge Haller stands as a reminder that dignity and a bit of stuffiness are not inconsistent with doing justice in the courtroom.
Judge Philip Banks, or “Uncle Phil” (James Avery) from the sitcom *The Fresh Prince of Bel-Air* (1990-1996), embodies the balance we all hope to strike between influencing our profession and staying true to ourselves. Uncle Phil went from farm boy to ambitious student, prominent lawyer and, finally, at the height of his career, judge. He reminds us that though we may physically depart from our humble roots, the lessons we have learned and the bonds we have formed in our youth are foundational for our career growth. Just as Uncle Phil regularly tosses the loveable but irritating Jazz (played by Jeffrey A. Townes) from the house, we may periodically feel the urge to fling a few ambitious, yet exasperating, litigants from our courtrooms. We are, nevertheless, honored and proud public servants. We are privileged to enjoy the benefits of our status; however, at our core is a deep and zealous love for not only our profession but also our families and communities. And our duties do not end when we step off the bench. Just as Uncle Phil counseled his occasionally naive and often mischievous nephew, Will, through young adulthood, we also serve our legal community by mentoring new budding and precocious lawyers and law clerks, forming a strong foundation for the future of our legal system.

Fans of James Avery’s character Judge Philip Banks, who ranked No. 34 in *TV Guide*’s “50 Greatest TV Dads of All Time,” could also spot the actor in other popular TV shows of the ’80s and ’90s, including *Dallas, LA Law, Night Court* and *Webster* as Judge Barshall.
Like myself, Judge Elizabeth Donnelly (Judith Light) from Law & Order: Special Victims Unit began her career as one of the few women in the profession. In the episode “Persona” (2008), Donnelly describes the difficulties she faced early in her career, recounting an incident where a mistake she made as a prosecutor wounded her confidence and multiplied the difficulties she faced making a name for herself. She teaches all of us—particularly women in a male-dominated profession—that the trials we face mold us into the people we will become, and that we owe it to ourselves and the upcoming generation of new female lawyers to persevere despite hardships. Donnelly is also a moral compass on the show, steadfast in her commitment to the law. Her work exemplifies a goal we all try to achieve: judicial independence. As do many of us, the judge forms bonds with and biases against the attorneys and parties who frequent her courtroom. Yet, when the law so requires, she has proven capable of ruling against her friends, ruling in favor of those who displease her and recusing herself when necessary. Furthermore, as do many judges—especially those of us who have served as trial judges—Judge Donnelly has faced threats that could jeopardize her impartiality. For instance, the episode “Zebras” (2009), reminds us of the sobering fact that our position may put us at risk, however remote, of harm from even the most unsuspecting sources: in this case, a disgruntled investigator.
One of my favorite judges from the movies is Judge H. Lee Sarokin (Rod Steiger) in the film The Hurricane, the story of Rubin “Hurricane” Carter, a boxer wrongly convicted and imprisoned for murder. Everyone knows federal judges can be rough and tough. Steiger’s strong performance as Judge Sarokin no doubt gave the impression that Carter was going to lose his case. This was indicative throughout Steiger’s initial hard-edged responses prior to arguments made on behalf of Carter.

And this assumption that Carter would lose his case continued as Judge Sarokin began reading his decision. But, as he continued to read, it finally appeared Carter was going to win, though the judge initially revealed his decision in a low-key manner.

But the words alone, and Steiger’s delivery, crested in such a crescendo, it made one jump for joy. These are the occasions when it’s worthwhile being a judge.
The movie ... And Justice for All became one of my favorites when it was first released. Initially, based on my naivete about the criminal justice system, I viewed it one way; but as my career aged, my perspective changed. Once I viewed the movie as a comedy, almost a cliche of criminal justice and a parody of the courts. As my experience grew, I saw a sensitive story involving a good lawyer, Arthur Kirkland (Al Pacino), trying to help people. He was assisting people navigating the hurdles of punishment or victimization inflicted by the court system.

Now I have a new appreciation of this film from the perspective of being a judge in a busy criminal district court in a city with high crime. I see the story as more tragic and troubling now, compared to when I was a younger attorney, because of the two judges in the film. They are my favorite judges in any movie—but for paradoxical reasons, as they are not the judges I would ever want to emulate or appear before.

Each judge is a beautiful example of what power can do to some people's sense of self and their use of it. Judge Francis Rayford (Jack Warden) is the "crazy" judge. He carries a holstered gun under his robe and has used it in court to control disruptive antics. He may be considered suicidal (or an extreme risk-taker): whether he's eating lunch outside of his chambers on the fourth-floor building ledge or testing whether he can fly his personal helicopter farther than his fuel might last before a crash landing.

As a viewer, I wondered whether Judge Rayford was always like that or he became that way because of what he has seen in his career. Can the heavy mantle of his judicial duties—the power and discretion and how he has used it, or not been able to use it—make him this way? Or is he fearless and courageous and has been that way for so long that it is now prevalent in every aspect of his life? Does he appear to be an adrenaline junkie or crazy because he is not afraid for his own safety? Despite these traits, Judge Rayford presents as the good judge.

Kirkland, the lawyer, is seeking justice for an innocent client but cannot get cold-hearted Judge Henry T. Fleming (John Forsythe) to exercise his discretion to give his client a deserving break. He is not asking the judge for anything unlawful but to just allow for mercy. Fleming does not cooperate, as he believes no one is innocent. Kirkland is sent to jail when he tries to physically strike the judge for his refusal to rule for his client.

Later in the movie, Judge Fleming is charged with a serious sexual crime and blackmails Kirkland into representing him at trial because it would benefit the judge for the jury to see his innocence proclaimed by a lawyer who publicly expressed his enmity for him.

Not only is Kirkland placed in a tenuous position by Judge Fleming, but he learns that this client is guilty. The movie shows what being a lawyer in the criminal justice system for a long time can turn you into, just like it did to those judges. It brings Kirkland to a defining moment in the best-ever courtroom monologue, as played by Pacino: "You’re out of order! You’re out of order! The whole trial is out of order! They’re out of order!"

If you have spent any time in a busy criminal courtroom, maybe you’ve wanted to shout that, too.
Dan Haywood (Spencer Tracy), a U.S. judge sent to Nuremberg, Germany, to preside over the trials of four Nazi judges after World War II, and Ernst Janning (Burt Lancaster), the eminent scholar and jurist on trial for his life, are opposites in their approaches to law and life. They illustrate the complexities of being a judge and the strength of character it requires. Haywood demonstrates fidelity to the highest calling of the judge, while Janning loses his way.

A “country judge,” Haywood finds himself somewhat unprepared for the spotlight on this international tribunal. However, his thoughtful devotion to the law guides him through the bewildering complexity of the moral decision-making his job requires. He ultimately reduces the legal problem before him to the question of the judge’s duty: to do justice according to the spirit of the law and, if one cannot, to resign one’s position rather than to be complicit in evil.

Like Haywood, Janning has spent his life in service to the law. But he failed to understand that he cannot serve a government that is corrupt and evil. He recognizes that he should have resigned but instead chooses self-preservation, telling himself that it is equivalent to his duty to the letter of the law. He tells Haywood that he never knew that his choice to enable the Third Reich to murder its citizens legally would result in war crimes. As Haywood discerns, any judge who tells himself that is on the way to destruction. He tells Janning, “It came to that the first time you sentenced a man to death you knew to be innocent.”

Haywood knows that judges might be called upon to be the last defense against dictatorship and that, if they are, they must be ready. His deliberation and understanding demonstrate that he is the most effective kind of judge because he holds himself to the same standard that he applies to others—to put devotion to the spirit of the law ahead of one’s own self-interest or one’s party. He understands the consequences of that standard and foresees the results if a judge deviates from it—not just one’s own downfall, but the destruction of the legitimate legal system.
Judge Henry X. Harper (Gene Lockhart) in the holiday comedy *Miracle on 34th Street* is a rather ordinary New York City judge who finds himself in the middle of an extraordinary case. He must decide whether to involuntarily commit Kris Kringle (Edmund Gwenn), a man who believes he is Santa Claus. Like many state court judges, Harper is elected and depends on voter approval to keep his seat. Nevertheless, he tries to uphold the rule of law and do his duty rather than put his personal interests first. He’s among my favorite fictional judges because he remains faithful to his duty, rather than yield to political considerations. When Harper learns about the request to commit Kringle, he thinks the proceeding will be simple. But Kringle’s attorney Fred Gailey (John Payne) challenges the state’s request, which raises a conflict for the judge. Deciding in Kringle’s favor might mean leaving a delusional, possibly violent man in society. Committing him would mean alienating voters—parents whose children really like this man, toy manufacturers and people whose jobs rely on the holiday industry. Yet Judge Harper knows he must put his duty to the law and public first. The judge’s campaign manager (actor Jerome Cowan as Charlie Halloran) warns that this case could become an electoral disaster, and he urges Judge Harper to get off the case because he cannot imagine a situation that will please everyone. He does not ignore Halloran’s warnings, but he demonstrates that devotion to the law is, and should be, the goal. By strategically calling for recesses and retreating to his chambers, Harper gives the parties time to calm down. He also gives himself time to consider options. He waits to see what evidence both sides can present and whether Kringle is “the one, the only Santa Claus.” Thus, he plays his proper role as fact finder. Harper renders his verdict: “Since the United States government declares this man to be Santa Claus, this court will not dispute it. Case dismissed.” Parents, children and voters are happy.
Jeff Yungman’s office is a good place to chill. There’s a SpongeBob SquarePants lamp on the desk and a Peanuts Christmas clock on the wall. Every hour, a different carol plays. A Woodstock poster signed by Richie Havens and Grace Slick hangs on another wall, and more than 300 CDs jam the bookcases. There’s always music. Jazz, rock and, of course, the Christmas carols—plus Hawaiian music every Friday.

“People come in frustrated or angry or scared about what their legal issue is, and my office relaxes them,” he says.

The office and the lawyer are both very welcoming, which may be why the Homeless Justice Project at One80 Place in Charleston, South Carolina, is so effective.
SOCIAL JUSTICE FOR ALL

The Homeless Justice Project provides civil legal services to homeless veterans, individuals and families, making One80 Place one of the few shelters in the country that has daily legal assistance on-site.

In his mid-60s, Yungman sees this as the greatest achievement of his life. But it was hardly a straight path to this success.

Yungman started his career as a street cop in New Orleans. He loved the city, and he loved his job. Somewhere along the line, though, he realized that he cared more about social justice than about criminal justice.

So he went back to school. A couple of years later, Yungman graduated from Tulane University with master’s degrees in social work and public health. He focused on child protection and homeless youths before moving to Charleston with his family. Years later, Yungman was clinical director at One80 Place when he heard that a new law school specializing in public law was opening in Charleston.

One80 Place provided clients with strong support in social services but had no access to free legal services—something Yungman knew a sizable portion of his clients needed.

At age 52, he began studying at the Charleston School of Law. Then as a 2L, Yungman and the dean of students, Abby Edwards Saunders, opened the school’s first legal clinic—at One80 Place.

After bar admittance, Yungman worked as clinical director at the shelter and provided legal services until 2008, when a grant from the South Carolina Bar Foundation led to the founding of the Homeless Justice Project and Yungman’s full-time employment as a lawyer.

About 3,000 people have wandered into his office since then, seeking legal counsel and finding a lawyer with an unquenched zest for service.

An enthusiastic supporter of homeless courts, Yungman hosted Charleston’s first hearing in May at One80 Place. It went very well, he says.

“Everyone showed up on time—the judge, the public defender, the clerks, the city solicitor—everyone but the client,” Yungman recalls.

Yungman persuaded the court staff to wait while he jumped into his car to fetch the client. “We’re used to going out to find our clients. The people we deal with don’t have the same sense of time as we do.”

When the two returned, the case proceeded. The client, charged with trespassing at the Charleston Visitor Center, had completed his stipulated action plan. The city solicitor spoke so passionately in support of homeless courts that listeners were teary.

“The judge dismissed the charges, shook the client’s hand, and everyone applauded,” Yungman says.

REMEMBERING A STREET ANGEL

Of course, not all cases have such a satisfactory resolution. Life on the streets is hard, and people often don’t seek attention for the problems they are facing.

“I’ve seen more death than I ever expected here,” Yungman says. “I’ve been to more funerals than I can count. Sometimes, I’m named the next of kin because they have no one else.”

He remembers fondly one of his clients, now deceased.

Everyone called him “Hat” for the yellow plastic construction helmet he wore. But Hat wasn’t a builder. He was a street angel.

A husky military veteran, Hat was an instantly recognizable character on the streets of Charleston. He never missed the free food at the Hot Dog Ministry. Every Tuesday, he showed up at the cement slab under the I-26 bridge overpass. And he always stayed afterward to clean up.

Through a civil legal process, Yungman got Hat off the streets and into a small studio apartment. Then, Hat’s hoarding tendencies went into high gear.

He stuffed bags of blankets and clothes into his room. He piled more bags of water bottles and canned food on top. It got to a point where he couldn’t fit inside his home and had to go back to sleeping on the streets.

Hat’s landlord learned of the situation and started the eviction process.

Yungman worked with Hat, gained his trust and finally got his permission to begin removing the bags from his apartment.

“I packed over 100 bags of stuff into my son’s van and stored it in my garage,” he says.

The eviction process was abated, and Hat retained his apartment. He was a kind man, Yungman says. He just couldn’t adjust to society after military service. When he died, the church was packed and the mayor spoke at his funeral.

Behind Yungman’s passion for his work is a simple philosophy for life. It’s best expressed by Kurt Vonnegut, whom Yungman names as one of his heroes: “There’s only one rule that I know of, babies—goddamn it, you’ve got to be kind.”

“That’s why I do this job,” Yungman says. “We’re not here for ourselves. We’re here to help others.”
Margaret Brent was an unusual woman for her time. In 17th-century America, she was unmarried, a businessperson, a Catholic and a prominent figure in the Maryland settlement, which she emigrated to from England with two brothers and a sister in 1638. She owned land, grew tobacco and made loans to settlers.

Brent appeared in court to argue for herself and her brothers in business matters and to settle debts. In 1647, she was appointed the executor of the late Gov. Leonard Calvert’s estate and given power of attorney for his older brother, Cecil Calvert, the second Lord Baltimore. (The first Lord Baltimore was their father, George.)

Leonard Calvert’s death came at a turbulent time for the Maryland settlement, and Brent’s careful management of his estate helped secure the settlement’s survival. By selling some of Cecil Calvert’s cattle without his knowledge or consent to pay off debts, she achieved peace for the colony—but earned his lifelong enmity.

In 1648, she requested the right for two votes in the Maryland Assembly—one for herself as a landowner and one on behalf of Calvert—becoming the first recorded woman in the American settlements to ask for the right to vote.

Brent was not given the vote, and she eventually moved to Virginia to escape Calvert’s ire regarding his lost cows. But she died a wealthy woman at about age 70 in 1671, and she is considered the first female lawyer in the New World.

It was in this enterprising woman’s honor that the Commission on Women in the Profession established the Margaret Brent Women Lawyers of Achievement Award in 1991. In the 26 years since, the honor has been presented to some of the most powerful and influential women in the country, including Justices Ruth Bader Ginsburg and Sandra Day O’Connor. In 2004, ABA President Linda A. Klein received the award. The Margaret Brent Women Lawyers of Achievement Awards Luncheon has become a staple of the ABA Annual Meeting.

Sisters in Indomitable Spirit

ABA honors trailblazers with award named for the first female lawyer in America

By Lee Rawles
This year, five lawyers were selected to receive the award. “We are honored to recognize this spectacular group of women,” says Michele Coleman Mayes, chair of the women’s commission, in a statement. “We applaud their achievements, knowing that their efforts will inspire a new generation of women lawyers.”

The commission will honor this year’s award recipients during the Aug. 13 luncheon at the annual meeting in New York City.

MEET THE HONOREES

Nancy Duff Campbell lives in Washington, D.C., where she recently stepped down as co-president of the National Women’s Law Center, which she helped found in 1981. In the 49 years since she earned her law degree from New York University School of Law in 1968, she has participated in landmark litigation and legislation to secure the rights of single parents, low-income families and military women. Before helping found the NWLC, Campbell was a professor at Georgetown University Law Center and Catholic University School of Law. In announcing Campbell’s nomination, the commission wrote: “She has worked tirelessly to recruit highly qualified women lawyers for positions in the federal government and has used her connections and advocacy skills to ensure greater diversity in high government ranks.”

Judge Bernice Bouie Donald of Memphis, Tennessee, is the first African-American to serve on the 6th U.S. Circuit Court of Appeals at Cincinnati. But her elevation to that court in 2011 was not the first time she broke barriers. Donald was one of the first students to integrate her Mississippi high school in the 1960s. In 1982, she was the first black woman to be elected a judge in the state of Tennessee. In 1988, she became the first black woman in the nation to work as a federal bankruptcy judge. She also was the first African-American woman to hold an officer position at the ABA and served on the ABA Journal Board of Editors. She tells the Journal she was “immeasurably humbled” to receive the Margaret Brent award. “I have faced much adversity throughout life, but I choose to take each situation as a challenge to make the world around me a better place,” Donald says. “I strive to serve as an example to all women to show that they, too, can achieve their dreams—no matter the obstacles. To me, this award means that all girls, women, mothers, sisters and daughters of all walks can dare to dream, and not only dream but achieve.”

Judge Lynn Nakamoto is the first Asian-American judge in any Oregon state or federal court when she was appointed to the Oregon Court of Appeals in 2011. When she ascended to her current position as a justice on the Oregon Supreme Court in 2015, she became the first Asian-American to serve the state’s top court. Nakamoto, who was the first member of her family to graduate from college, has long been a mentor to women and Asian-Americans. She was a founding member of the Oregon Minority Lawyers Association in 1991 and worked as a managing partner for the Portland law firm Markowitz Herbold before becoming a jurist. She is the namesake for the Oregon Asian Pacific American Bar Association’s award for lawyers who have “demonstrated leadership, professionalism, mentorship, a pioneering spirit and a deep commitment to diversity and the promotion of Asian Pacific Americans in the Oregon legal community.”

Lauren Stiller Rikleen established the Rikleen Institute for Strategic Leadership to help industries nurture and promote “a thriving, diverse and multigenerational workforce.” Rikleen operates her institute from Wayland, Massachusetts, and also is a visiting scholar at the Boston College Center for Work & Family. Rikleen’s first book, Ending the Gauntlet: Removing Barriers to Women’s Success in the Law, was released in 2006 after two years of research about gender bias in the legal industry. “Throughout my career, I have written about and worked toward the removal of institutional impediments to women’s equality in the workplace, as well as changing workplace culture to promote stigma-free flexibility,” Rikleen says. She is currently a member of the Journal Board of Editors. “As an active ABA member, I have attended Brent luncheons for many years. Knowing what this award means within the ABA makes it incredibly special.”

Nadine Strossen was the first female president of the American Civil Liberties Union and led the organization from 1991 to 2008. Now a professor at New York Law School, Strossen says one of her most inspiring moments as a law student at Harvard University was attending a guest lecture by fellow Brent award honoree Ginsburg. “She was then serving as the founding director of the ACLU Women’s Rights Project, and she ignited my interest in the ACLU as the ideal avenue for promoting ‘liberty and justice for all,’” Strossen says. Still a member of the ACLU’s National Advisory Council, Strossen is a staunch First Amendment advocate who is working on a book about using free speech to counter hate groups.
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Border Searches Could Expose Confidential Client Info

The ABA urges the DHS to revise procedures for searching lawyers’ electronic devices

By Rhonda McMillion

Serious concerns about protecting the attorney-client privilege and confidentiality of client information at the nation’s borders have prompted the ABA to urge the Department of Homeland Security to ensure that proper policies and procedures are in place at the nation’s borders to prevent the erosion of these important legal principles.

“The ABA understands and supports the critical role that DHS, CBP [U.S. Customs and Border Protection] and ICE [U.S. Immigration and Customs Enforcement] play in protecting our national security,” ABA President Linda A. Klein wrote in a May letter to DHS Secretary John Kelly and Acting General Counsel Joseph Maher.

“Just as border security is fundamental to national security, so too is the principle of client confidentiality fundamental to the American legal system,” Klein added.

She said the association is troubled about directives that permit CBP and ICE officers to search and review the content of lawyers’ laptop computers, cellphones and other electronic devices at U.S. border crossings without showing reasonable suspicion. These devices, she emphasized, typically contain client information that’s inherently privileged or otherwise confidential.

CLASSIFIED INFORMATION

The lawyer-client relationship, which includes the lawyer’s strict ethical duty to preserve the confidentiality of communications with the client, is a cornerstone of our civil and criminal legal systems, Klein said in her letter. Furthermore, she said the lawyer’s duty to preserve client confidentiality is very broad and covers material that’s protected by the attorney-client privilege and the work product doctrine, as well as other nonprivileged information the client wishes to keep private.

The ABA has consistently fought to preserve the attorney-client privilege, the work product doctrine and the confidential lawyer-client relationship. Klein said the ABA worked closely with the National Security Agency and other federal entities in 2014 to ensure that their procedures “protect the confidentiality and attorney-client-privileged status of lawyer-client communications intercepted or otherwise received by the NSA or other agencies” during surveillance activities.

In response to the ABA’s request at that time, the NSA assured that it was firm in its commitment to the “bedrock legal principle of attorney-client privilege,” and the agency agreed that it was vital for proper policies and practices to be in place to prevent the erosion of the privilege.

Although the CBP and ICE directives include some requirements for special review and handling of materials that appear to be legal in nature or are identified as protected by attorney-client or work product privilege, Klein said these requirements are not sufficiently clear or comprehensive enough.

She pointed out that courts have generally permitted “routine cursory border searches of travelers’ computers and other electronic devices as an exception to the Fourth Amendment prohibition against warrantless searches without probable cause.”

But the 9th U.S. Circuit Court of Appeals at San Francisco has concluded that an intrusive forensic search of a computer hard drive is not routine and requires reasonable suspicion to be permissible.

Klein also cited legal precedent from the U.S. District Court for the Southern District of Texas: During routine border searches, customs officials may not take the “nonroutine step” of reading an attorney’s privileged documents without a warrant or a subpoena.

PROTECTING PRIVILEGE

Klein suggested the Department of Homeland Security revise the CBP and ICE directives to state that when a lawyer travels across the border with a device identified as containing privileged or confidential client information, officers can perform only a routine, cursory physical inspection. Electronic documents on the device can’t be read, duplicated, seized or shared unless the officials first obtain a subpoena based on reasonable suspicion or a warrant supported by probable cause.

Klein emphasized that the ABA looks forward to working with the DHS to ensure the public has appropriate confidence that its officials “respect the critical role that privileged and confidential communications between lawyers and their clients play in our free society.”

This report is written by the ABA Governmental Affairs Office and discusses advocacy efforts by the ABA relating to issues being addressed by Congress and the executive branch of the federal government. Rhonda McMillion is editor of ABA Washington Letter, a Governmental Affairs Office publication.
ABA Notices

2018 REGULAR STATE DELEGATE ELECTION
Pursuant to §6.3(a) of the ABA’s Constitution, 17 states will elect State Delegates for three-year terms beginning at the adjournment of the 2017 Annual Meeting. The states conducting elections and election rules and procedures can be found at ambar.org/2018statedelegateelection.

2017 STATE DELEGATE ELECTION (VACANCY)
Pursuant to §6.3(e) of the ABA’s Constitution, the states of Tennessee and Virginia will elect a State Delegate to fill vacancies due to the nominations of Randall D. Noel of Tennessee and Allen C. Goolsby of Virginia, who were nominated and will be elected to the Board of Governors. The terms commence immediately upon certification by the Board of Elections and expire at the conclusion of the 2019 Annual Meeting. Go to ambar.org/2017statedelegateelection vacancy.

NOTICE BY THE SECRETARY:
MEETING OF THE MEMBERSHIP
This is to notify members of the American Bar Association that the meeting of the membership will be held in conjunction with the Nominating Committee Business Session and Coffee with the Candidate Forum, Sunday, Aug. 13, at 9 a.m. in the Trianon Ballroom, 3rd Floor, at the New York Hilton Midtown, New York City.
Mary T. Torres, ABA Secretary

NOTICE BY THE SECRETARY:
NOMINATING COMMITTEE MEETINGS
The Nominating Committee will meet during the 2017 Annual Meeting in New York City on Sunday, Aug. 13, beginning with the business session at 9 a.m. in the Trianon Ballroom, 3rd Floor, at the New York Hilton Midtown Hotel. Immediately following that session, the Nominating Committee will hear from candidates seeking nomination at the 2018 Midyear Meeting. This portion of the meeting is open to Association members. If you have any questions regarding the foregoing, please contact Leticia Spencer at 312-988-5160 or Leticia.Spencer@americanbar.org.
Mary T. Torres, ABA Secretary

ABE ANNUAL MEETING OF THE MEMBERS
The Annual Meeting of the Members of the American Bar Endowment will be held on Monday, Aug. 14, 2017, at 8:45 a.m. at the New York Hilton Midtown, Ballroom Level, in the Grand Ballroom. In addition to the election of Board members, ABE members will be asked to vote on amendments to the ABE bylaws. Two proposed alternatives will be before the members. One set of amendments is being proposed by the ABE Board of Directors and the other set is being proposed by some individual members of the ABE.

ABE Proposal: The proposed bylaws amendments if adopted would (i) permit the ABE to more easily communicate and provide notice to its members by allowing the ABE to post meeting notices on the ABE website and deliver them by email; (ii) increase the size of the Board of Directors to fourteen (14) to allow for representation by two (2) members appointed by the President of the ABE and two (2) members appointed by the Board of Governors of the ABA; (iii) continue the role of the members of ABE in the election process for Board members who are not the two appointed by the ABA President and the two appointed by the Board of Governors and in filling any mid-term vacancies; (iv) retain the authority of the ABE Board to appoint its officers; and (v) retain the requirement that amendments to the Bylaws be approved by the ABE members.

Proposal by Certain ABE Members: The proposed bylaws amendments, if adopted, will (i) permit the ABE to more easily communicate and provide notice to its members by allowing the ABE to post meeting notices on the ABE website and deliver them by email; (ii) reduce the size of the ABE Board of Directors to nine (9); and (iii) give the ABA Board of Governors or its designee the right to (a) elect the members of the ABE Board of Directors; (b) elect ABE’s officers from amongst the members of the ABE Board; (c) fill vacancies on the ABE Board; and (d) amend the ABE Bylaws, thereby removing the right of the ABE members to elect ABE Board members and approve an amendment to the ABE Bylaws.

The two nominees for election as Directors of the American Bar Endowment are Jonathan Cole, of Baker Donelson, Nashville, Tennessee, and Palmer Gene Vance II of Stoll Keenon Ogden PLLC, Lexington, Kentucky, each being nominated to serve for a second term.

See abendowment.org for the full text of the notice of ABE Members Annual Meeting, slate of nominees for the elected Board member positions, and the full text of the bylaws amendments proposals.
PHOTOGRAPHS BY AP PHOTO, COURTESY OF LIBRARY OF CONGRESS

The Woman Behind America’s Social Safety Net

In White House historical photos, she is directly behind the president, standing in a plain, dark dress and a short-brimmed hat—the only woman in a very crowded Cabinet Room.

No reporters were present as Franklin D. Roosevelt signed the Social Security Act of 1935. But there were plenty of cameras. And there were plenty of men: New Deal luminaries who had familiar names, such as Barkley, Wagner, Dingell and La Follette—even Kentucky legislator Fred Vinson, who later became chief justice of the United States.

The legislation established government insurance for old age and unemployment, which even after the Great Crash was regarded with deep suspicion by those wary of a “Russification” of government. Even so, Roosevelt intoned familiar themes of Great Depression populism: “Hope of many years’ standing ... startling industrial changes ... some measure of protection ... the loss of a job ... poverty-ridden old age.”

But when he handed the first ceremonial pen to Frances Perkins, it wasn’t an act of chivalry. She was Roosevelt’s secretary of labor and the major force behind the act.

Before she was the first woman to serve in a presidential Cabinet, Perkins bore the résumé of the do-gooder socialite: chemistry and physics at Mount Holyoke College; economics and political science at the Wharton School and Columbia University; a socially significant position in New York City as head of the Consumers League.

But in 1911, lunch with friends was interrupted by commotion at a nearby factory. The Triangle Shirtwaist Factory fire that day killed 146 people, and she arrived to witness dozens of women who leaped to their deaths from a workplace inferno several stories above the street.

Resolved by the experience, Perkins left the league to head New York City’s Committee on Safety and, later, the state Industrial Commission. Gaining a reputation as an able executive and a staunch workplace advocate, she was tapped by then-Gov. Roosevelt to head the state’s newly created Department of Labor. There, she helped forge the most stringent state regulation of wage and working conditions in the nation. By 1933, as she entered what would be a 12-year tenure as U.S. secretary of labor, Perkins carried a portfolio of ideas that would inform the New Deal agenda.

During that time, women often had power as radicals or anarchists. But while she worked with New York legislators, Perkins adopted a modest style of dress and manner calculated to render powerful men less hostile and more responsive, as though abiding their mothers. It worked there and at the White House.

On top of her departmental duties, Perkins insinuated her way onto myriad New Deal committees that wrestled with labor and social issues: minimum wage and workplace standards, job creation, child labor curbs and rules to govern organized labor. But as chair of the Committee on Economic Security, she gambled for a durable social safety net on pure political instinct.

By late 1934, Roosevelt was facing conservative resistance to his New Deal programs in Congress and the courts. Moreover, it would take years before those who had immediate needs would see any benefit from the social security Perkins favored. Roosevelt confided to others that the timing might not be right for old-age insurance.

Perkins was furious and confronted him, arguing that the nation’s dire condition might provide the political opportunity for a bold initiative. When Roosevelt gave her a Christmas deadline, Perkins invited the committee to her home, placed a bottle of scotch on a parlor table, and told them they were not to leave until they had framed a legislative proposal.

The results provided for a system of employment taxes and state grants to fund old-age benefits, unemployment insurance and disability assistance, and child welfare. Debated throughout the summer, it passed both houses by wide margins and was signed into law on Aug. 14, 1935.

Eight decades later, more than 66 million Americans, 90 percent of them elderly or disabled, receive Social Security benefits each month.
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