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**Letters**

**JOURNAL PRAISE**
I read the “Editor’s Note,” January-February, page 1, that you are moving to fewer issues. Just wanted you to know that the Journal has improved 1,000 percent over what it was. You are doing a really good job. Thank you.

*Brenda P. Murray*
*Washington, D.C.*

**‘NOT A SOLUTION’**
While we appreciate the attention the Journal has paid to the issue of people wrongfully imprisoned or otherwise held with no legal order to detain and agree that a prison is not the place for anyone in psychiatric crisis (“Breakdown,” January-February, page 37), we believe that there are better alternatives to adding psychiatric hospital beds. The National Association for Rights Protection and Advocacy is a group of attorneys, advocates, people with psychiatric histories and others who advocate for least restrictive services and individuals’ right to make their own treatment decisions.

There are more accurate information sources about the legal rights of people with psychiatric diagnoses than the Treatment Advocacy Center. Sources of more reliable data include NARPA, the National Disability Rights Network (the national non-profit membership organization representing the network of congregationally mandated, legally based disability rights agencies) and the Bazelon Center for Mental Health Law.

Adding more hospital beds is not a solution to the problems mentioned in the article. The Real problem is often a lack of affordable housing and insufficient funding for home- and community-based supports and services for individuals, including peer support and alternatives, such as the Hearing Voices Network.

*Ann Rider*
*Tacoma, Washington*

**GARNER RULES**
Some of what Bryan A. Garner’s article “Plain Talk,” January-February, page 24, advocates are of questionable utility. A convoluted sentence that expresses an inherently complicated concept can sometimes be simplified only with a loss of critical detail or by replacing one long sentence with many short sentences in order to define terms and to cover all the qualifications and exceptions. Pick your poison, as a very succinct statement goes.

This issue arises in other fields as well. Einstein’s theory of general relativity can be expressed in a very elegant equation, one form of which is \( G_{\mu\nu} + 8\pi G/c^4 T_{\mu\nu} \). But the equation conveys no information whatsoever without an understanding of the meanings and significance of all those letters and symbols.

Rudolf Flesch’s final point in the article is troublesome. Since there is no official arbiter of English grammar, usage and pronunciation, Mr. Flesch posits that the governing principle is majority rule. But there is obviously no practical method of polling everyone who speaks or writes English, and even if there were, the notion of a uniform majority rule would be misleading because developments occur over time in different directions, in different regions, within different distinct groups, for different purposes. In light of those considerations, quizzes on pronunciation have a “gotcha” feel to them, since as long as there is no loss of clarity, there is little practical need to care which syllable is stressed in the oral pronunciation of a word. On the other hand, an idea’s meaning can be muddled, and precision can be lost when traditional rules of usage are broken or abandoned, as in Mr. Flesch’s example of blithely getting rid of the subjunctive. The sentence, “If I was the King of England, a horse has six legs,” is a true statement, at least as a matter of formal logic, while, “If I were the King of England, a horse would have six legs,” is a highly dubious proposition.

*Robert Kantowitz*
*Lawrence, New York*

**IMMIGRANT RIGHTS**
With regard to “Web 100,” December, page 36, thank you for increasing awareness of human rights and immigration law by adding RAICES [Refugee and Immigrant Center for Education and Legal Services] to your list of best legal Twitter accounts. This organization is on the front line, protecting the rights of families and children! Thanks!

*Jean Longwill*
*Portland, Oregon*

**Letters to the Editor**
You may submit a letter by email to abajournal@americanbar.org or via mail—Attn: Letters, ABA Journal, 321 N. Clark St. Chicago, IL 60654. Letters must concern articles published in the Journal. They may be edited for clarity or space. Be sure to include your name, city and state, and email address.
‘LANGUAGE NUT’
Thank you for Bryan A. Garner’s wonderful article, “Contract ‘Busts,’ ” December, page 22. I’m a 30-year lawyer and a 20-year contract lawyer. And though I freely admit being guilty of many of the drafting transgressions you described, in the last few years I have seen the error of my ways, and I’ve been working against such busts, one contract at a time. I was an English major in college, and I’m still something of a language nut (I’m a volunteer adult writing-skills teacher and a big fan of *The Elements of Style*). Things like the difference in meaning between “may” and “shall” are quite meaningful to me, and I’ve always had a problem keeping “lessor” and “lessee” straight.

Kudos and congratulations for your hard and very important work with LawProse.org.

Dan Tatum
Dallas

FREE SPEECH
In Bob Carlson’s President’s Message, “America: The Resilient Land of the Free,” November, page 8, he manages, in one paragraph, to both extol and condemn free speech, hardly missing a breath. How can he be an honest proponent of free speech while providing examples of speech that he refuses to tolerate? I am sad to see that our organization has elevated to its presidency a man who apparently believes that only speech that he supports is to be allowed or defended. I am hopeful that his constituency is more in the camp of Voltaire, who said, “I detest what you write, but I would give my life to make it possible for you to continue to write.”

I, of course, will defend to my death President Carlson’s right to express his self-contradicting views in a single paragraph so that those reading the views can fairly evaluate them.

George M. Walker
Mobile, Alabama

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President’s Message || By Bob Carlson

Immigration Matters
A fairer process is needed for those seeking entry to the United States

"Give me your tired, your poor, your huddled masses yearning to breathe free."
These words from an Emma Lazarus sonnet, engraved on a plaque on the pedestal of the Statue of Liberty, are not policy or law. Yet they embody the ideals and spirit of America, a land of immigrants.

Despite the countless ways that immigrants have advanced our country and have helped to fuel innovation and growth, the United States cannot welcome everyone who yearns to breathe free. Our nation needs to regulate and control immigration, have secure borders and keep people safe. But developing clear, comprehensive, practical and humane immigration law is possible—and long overdue.

Policies that separate children from their parents or deny legitimate asylum-seekers due process violate both our values and established law. The ABA has made this clear in a letter sent to the U.S. Attorney General and Secretary of Homeland Security. The ABA has suggested guidelines and compiled thoughtful and well-researched publications such as the recently updated "Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States."

While crafting comprehensive immigration law in a divided society can be difficult, it is imperative. One place to start is immigration courts.

An independent judiciary is a hallmark of our democracy. It encompasses the principle that all people are entitled to fair and impartial legal proceedings where important rights are at stake. Immigration courts decide issues that are life-altering.

Immigration courts, however, lack the safeguards that other parts of our justice system have. Structural and procedural issues have resulted in a backlog of more than 800,000 cases even though in recent years Congress has added resources, including a sizable increase in the number of judges and support staff.

Immigration courts currently exist within the Justice Department. Their personnel and operations are subject to direct control of the attorney general. Immigration judges can be removed without cause and can be at the mercy of whatever policy the attorney general wants followed. It can change from administration to administration. This structure creates a fatal flaw to an independent, impartial judiciary.

Restructuring the immigration adjudication system into an Article I court is the best solution to promote independence, impartiality, efficiency and accountability. Article I legislative courts are established by Congress, and judges would only be subject to removal for cause and not without judicial review. The U.S. Tax Court—where judges are nominated by the president, confirmed by the Senate and serve terms of 15 years—could act as a model. The idea has been endorsed by the National Association of Immigration Judges for more than two decades.

Another problem is representation. Access to counsel and legal information are critical in ensuring fairness and efficiency in the immigration system, yet only 37 percent of people in removal proceedings and just 14 percent of those detained are represented by counsel. The odds of winning an asylum case without legal representation are one in 10 while those with a lawyer win nearly 50 percent of their cases.

The ABA supports the right to appointed counsel for vulnerable populations in immigration proceedings, such as unaccompanied children, and mentally ill and indigent immigrants. Budgetary challenges make this unlikely to happen soon, so access to as much information about the process is critical.

The ABA, supported by its Commission on Immigration, will continue to advocate for fairness and full due process for immigrants and asylum-seekers in the United States and ensure an equitable, effective process for adjudicating immigration cases. This serves the interest of both the government and individuals within the system.

Our efforts to solve the problems must not undermine the fundamental principles that exemplify America and our justice system. Welcoming immigrants has been a strength of America since its founding.

As President George Washington said: “The bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions; whom we shall welcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment.”

Follow President Carlson on Twitter @ABAPresident or email abapresident@americanbar.org.
CAMPAIGNS COUNT ON POLITICAL LAWYERS TO GET THE VOTE RIGHT

WHEN AN ELECTION IS DOWN TO THE WIRE with razor-thin margins separating two candidates angling for victory, who’re you gonna call?

“I am the crazy person who went to law school to do exactly this,” says election law specialist Dara Lindenbaum, senior counsel at Sandler Reiff Lamb Rosenstein & Birkenstock in Washington, D.C.

Lindenbaum, who most recently served as general counsel for Stacey Abrams' Georgia gubernatorial campaign, is part of a small bar of political lawyers who act as the first line of defense (or offense) in the critical days leading up to election night and in the immediate aftermath.

The hotly contested 2018 midterm elections were full of controversial races across the country at every level, and political lawyers were either entrenched on campaign teams or on speed dial. In Georgia, the Abrams campaign foresaw the tough battle against opponent Brian Kemp, whom it accused of voter suppression tactics in his role as Georgia’s secretary of state.

The campaign pre-emptively retained a local attorney who could draft papers and go to court. It also implemented a voter protection squad and had a litigation team standing by. In total, between 300 and 400 lawyers
were working on the campaign through Election Day. “Because of the resources we had in Georgia, we were able to find out what was happening in every county,” Lindenbaum notes. “That doesn’t happen in every election.”

Veteran political lawyer Allegra Lawrence-Hardy served as Abrams’ campaign chair. She says it helps to have an array of experience—dealing with the media, familiarity with local attorneys and judges, and leading boots on the ground. Most importantly, preparation is key.

“There’s post-election litigation, but there’s also day-of,” Lawrence-Hardy says. “We had machines that weren’t working—people had to be ready to go, be here at 7 a.m. on Election Day, and please wear a suit.”

Lawrence-Hardy previously worked on the Bush v. Gore recount in 2000, and the Georgia race was a startling deja vu.

“I would be getting ready for press conferences or typing up a memo and say to myself, Am I really still talking about counting all votes?” she says. “There’s not hanging chads, but we’re still begging people to count votes. Doesn’t sound like much progress.”

Like Lawrence-Hardy, Lindenbaum has been involved in many close elections where the vote counting process was suspect. “It is incredible. It can be disheartening when you see the process up close. We have volunteer lawyers who simply can’t believe this is how elections are run. You’re seeing how the sausage gets made, and it gets ugly.”

Lindenbaum says she loves her practice, but for the sake of democracy, “If elections ran better and I had to find a different line of work, that would be fine.”

Lindenbaum works alongside Sandler Reiff partner John Hardin Young, who in 1994 literally wrote the book on strategies for contested elections, The Recount Primer. Young is a past chair of the ABA Standing Committee on Election Law and says the committee aggressively works to promote fair elections through a variety of outreach efforts, including town halls, reports and encouraging lawyers to volunteer as election officers.

“The best way to ensure fair elections is to be on the front lines,” Young notes.

While the Jim Crow days of literacy tests and poll taxes are in the past, Young points to the prevalence of more subtle voter suppression techniques, such as closing polling locations and making it difficult to figure out where to vote; instigating a heavy police presence; or requiring burdensome proof of residency.

“We put impediments in the way of seniors and the poor in registration and voting that we shouldn’t,” Young says. “The fight still goes on.”

And election lawyers will be there for every skirmish. Despite Abrams’ controversial loss, Lawrence-Hardy understands the importance of her work.

“I believe in the constitutional promise—I couldn’t be a lawyer if I didn’t believe in it,” she says. “So helping our state fulfill the promise—it’s hard to imagine a more noble use of my law degree.” —Liane Jackson
PURSUITING INTEGRITY IN FORENSIC SCIENCE

‘MAKING A MURDERER’ TEAM CO-FOUNDS NEW CENTER

A TEAM OF LAWYERS in Wisconsin has launched a center to fight the use of problematic forensic evidence in court. Two co-founders of the Center for Integrity in Forensic Sciences, Dean Strang and Jerry Buting, are well-known in pop culture from their roles in the hit Netflix docuseries Making a Murderer. A follow-up season was released in October.

CIFS claims to be the country’s first nonprofit dedicated to strengthening forensic sciences as a way of improving the reliability of criminal prosecutions. The organization is the brainchild of Keith A. Findley, a professor at the University of Wisconsin Law School who co-founded the Wisconsin Innocence Project.

“Residents” of the Center for Integrity in Forensic Sciences, Keith A. Findley

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“Residents” of the Center for Integrity in Forensic Sciences, Keith A. Findley

“Our concern is that over the last couple of decades in the criminal justice system, many of the forensic disciplines we have traditionally relied upon lack fundamental validation and have in many cases produced results that are wrong,” Findley says, noting that studies indicate many of the tools used in criminal convictions—including fingerprints, bite mark comparison, microscopic hair analysis, handwriting analysis and tire track comparison—have issues with reliability and are subject to biased application.

CIFS has an advisory board of scientists, legal academics and forensic science experts. The project kicked off with a November symposium at Washington University Law School in St. Louis. Findley recruited colleagues Strang and Buting to join CIFS. The two attorneys represented Steven Avery, one of the defendants in the homicide featured in Making a Murderer, which premiered in 2015. Findley also appeared in the series.

CIFS, which will focus on education, litigation and policy work, is among the latest efforts to address faulty forensic sciences in the court system. Forensic evidence was the topic of a 2009 report by the National Research Council. And in 2013, the Department of Justice, in partnership with the National Institute of Standards and Technology, established the National Commission on Forensic Science to tackle the issue. The commission was disbanded in 2017.

The ABA, through the Criminal Justice Section, recently set up a Forensics Ethics Task Force, which is developing resources for lawyers in need of advice on the use of forensic evidence. Task force co-chair Matthew Redle says he’d welcome contributions from the new center.

“It’s not as though there haven’t been a lot of efforts going on in this area. If they want to jump in and start working on the issue, too, that’s quite all right,” Redle says. “The more, the merrier.”

The center, currently in fundraising mode, is launching a course at the University of Wisconsin this fall that will bring law and science students to study forensic disciplines. There are plans to file amicus briefs in significant court cases and to establish a strike force of volunteer lawyers as a resource.

Among those applauding the center’s call for more rigorous research is David Faigman, chancellor and dean at the University of California’s Hastings College of Law.

“There are definitely tons of ways for forensic science to go bad,” he says. “Any effort that tries to transform it is an effort worth pursuing.”

—Cheryl V. Jackson
Opening Statements

The Languages of Laughter
Former criminal defense lawyer Elizardi Castro builds on his Puerto Rican heritage as a bilingual comedian

DO YOU APPRECIATE the taste of tostones? Can you toggle between Spanish and English, even in the same sentence? Have you ever had the chorus of “Mi Burrito Sabanero” stuck in your head for days? If you’ve answered yes to any of these questions—and you’re now infected with a “tuki tuki” earmark—you’re probably Puerto Rican. That means comedian Elizardi Castro is going to make you laugh—in two languages. Castro is the creator of Made in Puerto Rico, a high-energy bilingual comedy show about island life, culture and pride. Castro has been performing this one-man show for more than a year, selling out venues across the country, and in March, he’s presenting it at an off-Broadway theater in New York City. Castro connects with his audience so effectively in part because of his last job: He was a criminal defense lawyer in Orlando, Florida. Castro often incorporated a bit of Spanish language into his advocacy, and he’s kept that theme going through his career switch from practicing to performing.

You were born in Puerto Rico and moved to New York when you were 9, but frequent visits to the island allowed you to maintain your connection to the island’s language and culture. Did you always intend to incorporate that connection, and especially the language duality, into your comedy?

Ever since I started writing, it was always bilingual. Growing up, I felt like I had to choose. Speaking Spanish was not encouraged. Being in comedy has allowed me to freely live in both worlds, and to freely communicate in both languages. English is my first language, but Spanglish is really the language where I feel most comfortable—it allows me to express myself both intellectually and emotionally. People misunderstand Spanglish to mean mixing the words, but it’s really where I begin in English and finish in español or vice versa. When I was a lawyer, if I was to use a Spanish word in court, I knew that every person on that jury who was Latino was mine. They were absolutely mine. The fact that I can bounce back and forth, especially with a Hispanic audience, it’s really where my joy is.

Have you ever performed in Puerto Rico, and do you toggle between languages in those shows, too?

I’ve been in parts of shows in Puerto Rico, and I did all my sets in Spanglish. It’s controversial because they always say, “You should do it all in Spanish!” But my point was to use the English to make us feel like we’re one, whether we’re in Puerto Rico or the states. I was pleasantly surprised as to how many people understood what I was saying when I spoke English. When I was able to get that laugh in English when I was in Puerto Rico, it was probably one of the best feelings I’ve had in my career.

Have you been back since Hurricane Maria?

We went about three months after Maria, and I am going back [soon]. When I was there after Maria, my family was well, but they didn’t get electricity until nine months after. What was stunning was how well they were doing. They never complained, they were never down about it, they were just resilient.

I stay away from politics. I also don’t talk dirty or ridicule people. My comedy is cultural, it’s observational, it’s personal. If what’s out there is so negative, and I focus on that, it’s like that’s all there is. I get that that needs to be made fun of, but I trust that there are other comedians to do that. There’s so much more that can be highlighted. When it comes to my culture, it needs to be highlighted, it needs to be celebrated.

Did you grow up wanting to be a comedian?

I had always had that desire to perform, but my father had always pushed me for me to be a lawyer. I grew up scared of my father, so becoming a lawyer was a
good idea!

When did you start to heed the call of your inner performer?

When I was a prosecutor in Orlando in ’02, I stated writing stories in my office when I wasn’t in court. I put on a show for my family and friends in my apartment complex, and it got a really good response. Shortly thereafter, I switched to criminal defense, and because I was a solo, I was able to better manage my time, so I started writing more and more. I submitted a play to a fringe festival and it got a good review, and things just started to take off.

You’ve credited voir dire for developing your comedy skills—how so?

When you do a trial, that jury is your audience, and you have to perform. But you really learn to talk to people doing voir dire. That’s where you can learn how to craft your lecture to the specific people in front of you. You don’t just get to learn who they are and what they do for a living, you get to really talk to them, and if you’re funny, you can use humor to connect with them. I loved voir dire so much I would forget that the point was to exclude people! That’s really where I started. When I crossed over to stand-up, I thought, this is really just one long voir dire! And I don’t have to worry about someone going to prison!

Did you ever regret leaving the firm you founded to become a performer?

Never.

In addition to writing and performing your stage shows, you’ve got a YouTube channel with videos ranging from car karaoke to cooking demonstrations to travel shorts about different destinations in Puerto Rico, all of which you’ve written, shot and edited—plus you do a weekly podcast. How do you get it all done?

That all comes from my training as a lawyer. It’s how I studied and how I prepared for trial. I don’t have many friends in the comedy world because none of them work like I do. They have a hard time understanding that for me, comedy is a serious business. Whether it’s a podcast or a short film or a show, I prepare like I prepare for trial. I don’t slack. I am busier now than I was when I had my own law firm, and that’s something I never thought I would say.

I heard you’ve extended a personal video invitation to a certain U.S. Supreme Court justice to be your guest at your upcoming show this spring …

Yes! I’m inviting Sonia Sotomayor to come and see my off-Broadway show in March. For this Puerto Rican lawyer who grew up in the Bronx to come to the show, that’s a dream for me. I’ve always wanted to perform this show for her. We have similar values, and her relationship with her grandmother is very similar to my relationship with my grandmother in Puerto Rico. I know she would love it, and I would just love for her to be as proud of me as I am of her.

— Jenny B. Davis
Opening Statements

MY PATH TO LAW

Landmark Life Pursuing LGBT Rights

By Sharon McGowan

#MyPathToLaw is a guest column that celebrates the diversity of the legal profession through attorneys’ first-person stories detailing their unique and inspiring trajectories. Read more #mypathtolaw stories on Twitter.

As the child of a New York City police officer, perhaps it was in my DNA that I would walk a “path to the law.” Long before Law & Order became must-see TV, the theme song to Hill Street Blues could be heard in our traditional Irish Catholic household every Thursday evening. And so telling my father that I had accepted a summer internship at the American Civil Liberties Union was a bit of a shock to his system. But certainly less of a shock than my telling him a few minutes later that I would also be interning at the National Center for Lesbian Rights in San Francisco, and that I was gay.

The next few years were challenging ones with my family, and I wondered whether we would reach a point where my parents could talk about my path to the law without welling up with tears (not the happy kind). But I felt a deep calling to use my law degree to pursue justice and social change and hoped that, over time, my parents would be able to take pride in my work.

In the meantime, I found support and mentorship from a new family—the family of LGBT civil rights litigators. Nan Hunter offered me the opportunity to work with her and Courtney Joslin to update the ACLU’s publication The Rights of Lesbian, Gay, Bisexual and Transgender People.” NCLR’s Shannon Minter and Kate Kendall showed me how much fun one could have doing work that, on many days, was really difficult and emotionally taxing. Mary Bonauto of GLBTQ Legal Advocates & Defenders demanded excellence from me as her law fellow, but she also encouraged me to think expansively about where and how I might best acquire the skills that I would need if I wished to follow in her footsteps as an LGBTQ civil rights litigator. Her sage advice resulted in my joining the Washington, D.C., office of Jenner & Block, where as luck would have it I was able to join the dream team—led by Jenner’s Paul Smith and Lambda Legal’s Ruth Harlow—that won the landmark U.S. Supreme Court case Lawrence v. Texas, which struck down anti-sodomy laws in Texas and by extension invalidated similar measures criminalizing gay relationships in other states.

On that sunny June morning in 2003 when Justice Anthony Kennedy read from his decision in Lawrence, I sat in the courtroom with dozens of other members of the LGBT legal community, where there were few dry eyes to be found. I knew that I shouldn’t have needed Kennedy to tell me that I was a person of equal worth and dignity in order to believe it. But hearing those words mattered deeply. And not only to me. While my relationship with my parents had arrived at a better place by that point, I know that what happened in the Supreme Court that morning mattered deeply to them as well. Among other emotions they felt that day, they could take deep pride in the fact that their gay daughter had played a small role in moving our country a little closer toward fulfilling its promise of liberty and justice for all.

Shortly thereafter, I returned to New York City to join the ACLU. My father was working in NYPD headquarters at that point, and whenever I would visit him, he’d joke that it was fine if I told everyone that I was gay, but that I should please keep my voice down when talking about where I worked. To be fair, my father was the commanding officer of the NYPD hostage negotiation team by that point in his career, and he had tremendous respect for the ways in which the ACLU sought to hold the NYPD accountable. But in those moments, I appreciated the grace with which my parents handled the fact that my life had turned out somewhat differently than they may have hoped or expected.

With that said, I know that few things have filled my father with pride as much as my joining the Civil Rights Division of the U.S. Department of Justice, something that I would have never imagined possible when I came out to my parents in the 1990s. Being able to stand at a lectern and say that I was “representing the United States of America” was a privilege and an honor that I will carry with me for the rest of my life. But to an even greater degree, working from the inside to help the federal government change course with respect to its position on marriage equality and LGBT rights more broadly...
exemplified for me just how important it is for there to be folks “on the inside” who believe that their law degree can and should be used in service of pursuing justice.

In early 2017, it became clear to me that I would need to leave federal service in order to continue advancing civil rights in a meaningful way, and I was drawn back to my roots in the advocacy world. As the chief strategy officer and legal director of Lambda Legal, the nation’s oldest and largest LGBT/HIV litigation organization, I stand arm-in-arm with an outstanding team of lawyers not only within my own organization, but also from other national, state and local civil rights organizations, and with incredible partners in the private bar.

We are living in difficult times, to be sure, and it is easy to feel overwhelmed and overpowered by the assaults being leveled on communities for whom we care deeply. In those dark moments, I find some comfort in remembering how unmoored I felt on that day when I came out to my parents, knowing that today I can write this as a wife, a mother and an out-and-proud LGBT advocate whose parents now brag to their church friends when their daughter appears on PBS NewsHour talking about transgender rights.

My, what a path mine has been. And I cannot wait to see where it leads me next.

Sharon McGowan is the chief strategy officer and legal director of Lambda Legal, which is committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and individuals living with HIV.
A spate of mass shootings has prompted bar associations to offer pro bono services to survivors and victims’ families.

By Angela Morris

Family law attorney Rene Stuhr Dukes, a woman of faith, believes God put her at her computer the moment her local bar association sent an email seeking volunteers to help survivors and families of victims of a mass shooting in her home city of Charleston, South Carolina.

The email arrived several weeks after the June 17, 2015, killings at Emanuel African Methodist Episcopal Church, which is known as Mother Emanuel. The Charleston County Bar Association had created a committee to help survivors and victims’ families, and it sought lawyers to handle probate and family law matters as well as other legal needs that could emerge.

Dukes, who regularly takes on pro bono cases, was eating lunch at her desk when the email landed, and she wrote back within five minutes, agreeing to assist with a family law matter. That speedy response led her to the most meaningful case of her career, which still makes her tear up three years later.

Dukes, a nonequity member at Rosen Hagood, helped a woman with an urgent, complicated child custody matter that took her and her legal assistant 300 pro bono hours to resolve in a yearlong battle. “It was such a blessing. They were amazing people,” she says about her client and family.

The Rev. DePayne Middleton-Doctor, 49, was one of the nine victims killed inside the church by a self-described white supremacist—since convicted of federal hate crimes and sentenced to death. Middleton-Doctor had four daughters. After her funeral, her ex-husband took custody of their two youngest, ages 13 and 11 at the time. Dukes represented the girls’ maternal aunt, with whom the girls preferred to live. She was able to persuade a judge to give custody of the girls to the aunt despite the law favoring biological parents in such matters as long as they’re deemed fit.

It was a sad situation, but Dukes says she found meaning in helping the client’s family and playing a part in their healing by carrying the burden of their legal matter.

Dukes credits the Charleston County Bar Association for creating a pro bono program for Mother Emanuel’s survivors and the victims’ families. “I wish we didn’t have to have these pro bono organizations,” she says.

A wide array of legal issues arise for survivors and victims’ family members in the wake of mass shootings. Probate matters are common—easier when the victim had a will, and harder with young or low-income adults who commonly don’t have them. When parents are killed or debilitatingly injured, they need lawyers to sort out child custody or guardianship matters. People impacted by mass shootings can get government crime victim...
compensation funds but may need help navigating the bureaucracy to obtain them. They may come into money donated by the public and require attorneys to ensure they get the funds they’re entitled to receive.

The frequency of mass shootings has prompted a growing web of bar associations across the nation to independently create pro bono programs to help those affected. Attorneys are flocking to volunteer. The lawyers who lead these pro bono efforts have started unofficially collaborating by sharing forms and documents, explaining what’s on the horizon and sharing the best methods to deal with the grim reality.

“It’s a sad state of affairs that this is such a big concern,” says Kim Homer, executive director of the Orange County Bar Association in Florida, which responded to the 2016 mass shooting in Orlando’s Pulse nightclub, where the shooter killed 49 people and injured 53. “After the Pulse shooting, we understood how difficult it was as a bar organization and a legal aid organization to respond to something of this magnitude, so we proactively now have reached out.”

Homer is not the only one offering a lifeline or looking for one; bar and legal aid leaders are helping each other. In Nevada, lawyers called their peers in Orlando and Charleston for advice about handling the October 2017 Las Vegas Strip massacre during the Route 91 Harvest outdoor music festival, where 58 people were killed and 546 were wounded. Next, Las Vegas lawyers helped the San Antonio Bar Association to respond to the Sutherland Springs church shooting in 2017. To pay it forward, the San Antonio bar leader passed on the same resources—FAQ documents—to Houston Bar Association volunteers who helped teenagers after the 2018 Santa Fe High School shooting.

“People shouldn’t necessarily have to start from scratch each time. It’s even crazy this is necessary. There could be best practices pulled together so people have a guidebook rather than just responding and doing what everyone thinks is best,” says Brad Lewis, director of the Nevada Supreme Court Access to Justice Commission, which jumped into action the day after the Las Vegas shooting took place.

Lewis and his colleagues created several FAQ documents explaining common legal issues that arise after a mass shooting; a legal checklist; and financial planning tools that have been passed around, edited and distributed to victims and survivors in subsequent mass shootings.

“It had a lot of great information in it of issues to look for and places to turn for help. We were able to personalize it. It was literally the starting point,” says Baker Botts partner Keri Brown of Houston, who helped coordinate the bar’s Houston Volunteer Lawyers to assist in Santa Fe.

**READY TO VOLUNTEER**

The pro bono programs that local bar associations and legal aid organizations create after mass shootings often find that lawyers flock to their cause, volunteering in droves.

Sarah Dingivan, managing attorney for the San Antonio Bar Association’s Community Justice Program, says she has a 100-name list of attorneys who volunteered to help after the Sutherland Springs shooting, and she’s called on half of them to help with anything from answering families’ legal questions over the phone to taking on full cases.

“It made me very proud to be an attorney,” Dingivan says.

Yet this work takes an emotional toll, especially on intake staff, Homer says. To help lawyers cope, she says bar associations must set up counseling—as Homer did in Orlando after Pulse.

“Even this far removed from it, it’s still very emotional to me,” Homer says, “I wish I pushed [counseling] harder and maybe set an example by doing it myself.”

When a mass shooting hits a city, the government usually sets up a victims’ assistance center. Local bar associations find their first roles in these centers.

It’s critical for local lawyers to staff a booth at the center from the beginning and stay for several weeks, says Mary Anne DePetrillo, executive director of the Orange County Bar Association’s Legal Aid Society, who worked at such a booth after Pulse in 2015. After those critical weeks, DePetrillo says they must create the structure for a long-term response. The legal aid society was able to establish legal malpractice insurance for pro bono attorneys.

The Orange County Bar Association focused on recruiting volunteers, attracting 223 local attorneys and 100 out-of-town lawyers.

**LEGAL ISSUES VARY**

The aftermath of the Pulse shooting presented a unique set of legal issues because it involved young Spanish-speaking, LGBTQ and immigrant victims and survivors, DePetrillo explains. Some of them were estranged from family because of conflict over their sexual orientation, which gave rise to disputes over which family member could collect a victim’s body, or who was allowed to visit in the hospital. Also, some survivors were living in the country illegally, and lawyers helped them get crime victim U visas.

With a school shooting, such as in Santa Fe, many of the victims are children and don’t have estates or significant assets, which minimizes probate issues—one of the most common legal matters when shootings target adults. Probate matters were widespread after Sutherland Springs, Las Vegas and Charleston.

Family law matters were also common in those shootings. Christine Miller, director of community initiatives and outreach at the Legal Aid Center of Southern Nevada in Las Vegas, explains that if a parent dies or is injured long-term, other caregivers need full-time custody or temporary guardianship of that person’s children.

“In one case, it was a dad. He was there with his young kids, and while they weren’t injured, just being in the situation, his life flashed before his eyes,” Miller says about a man at the Las Vegas Strip shooting. “And he realized life can be gone in a moment’s notice. He wanted to make plans.”
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Families of victims and survivors of mass shootings are eligible to receive crime victim funds from the government for funeral expenses and medical bills, and the public often donates large sums that provide nonearmarked money for whatever the person wants.

For example, some people impacted by Charleston’s shooting have launched nonprofit foundations that assist low-income children with access to literacy or sports activities. Pro bono lawyers help their clients access these funds. Some public donation funds happen through crowdfunding websites. Sometimes cities or other entities partner with banks to handle the donation collections.

In Santa Fe, Brown, who coordinated the Houston Bar Association’s response, explains that some survivors were on Medicaid, which has strict income eligibility requirements, and they feared that accepting the donation funds would disqualify them.

Pro bono lawyers created special needs trusts to accept the funds without disqualifying their clients from their health care.

One of the Las Vegas funds garnered $31.4 million, and it was disbursed in March 2018 to 532 claimants who received funds ranging from $17,500 to $275,000 each, commensurate with their level of injury, according to CNN.

With such large checks coming, Miller says she and her colleagues worried about scammers. They coordinated with a professor at the University of Nevada–Las Vegas William S. Boyd School of Law to launch a network of pro bono financial advisers for their clients.

Miller says that every local bar must create a plan to respond to a mass shooting.

“When something like this happens, it’s unexpected, and all of a sudden, you’re faced with—not only the emotions hit—but having to jump in action to assist people,” she says.

“If you have some structure, even if it’s bare bones, that would be wonderful.”

Shredded Heat

California is relaxing one of the nation’s most restrictive laws on police personnel records

By Lorelei Laird

In 1976, the Los Angeles Police Department shredded four tons of citizen complaints against the police with “the specific intent,” a judge said, “of depriving criminal defense attorneys of potential evidence to which they were legally entitled.”

Remarking on the destruction of those documents, Los Angeles Municipal Court Judge George Trammell said that such behavior “should shock the conscience.” His comments came before he dismissed misdemeanor charges against multiple defendants who had requested such records.

The shredding of citizen complaints was in reaction to a 1974 California Supreme Court ruling that criminal defendants had a right to discovery of documents showing a history of police misconduct. Law enforcement had fought the case bitterly and was not pleased by the flood of discovery requests that resulted. The city attorney’s office, which prosecutes misdemeanors in Los Angeles, had therefore advised the LAPD to get rid of the evidence, citing low morale at the department.

Judges like Trammell were dismissing affected cases as a sanction.

By 1978, both the shredding and the dismissals were becoming local scandals. So the California legislature clamped down that year on access to police personnel records, with a bill expressly intended to limit discovery and stop what the attorney general’s office—which drafted the bill—characterized as “fishing expeditions” and harassment of officers. For the past four decades, releases have been up to a judge’s discretion and so strictly limited that even prosecutors have had trouble getting information.

Effective Jan. 1, that changed. A new California law, SB 1421, makes certain police personnel records available through California’s public records law—not just to defense lawyers or prosecutors, but to anyone who asks. The information available is limited to specific kinds of misconduct and will be scrubbed of most personal information. But some police misconduct lawyers still see it as a win.

“You’ll get them sooner [rather] than later, and I think importantly so, even if no lawsuit has been filed,” says John L. Burris, a civil rights lawyer in Oakland, California. “And it’s in the public interest. So I think it’s important.”

A ‘CAREFUL BALANCING’

Under the 1978 law, anyone who wants information on police misconduct must ask a judge through what’s called a Pitchess motion, named for Peter Pitchess, the Los Angeles County sheriff who fought the personnel records case up to the California Supreme Court. That process allows parties seeking information to request personnel records or records involving excessive force, dishonesty, theft or general “moral turpitude.”

Judges decide not only whether to release the records, but also what specific information from those records is relevant enough to release. To do that, they examine the material in chambers, accompanied only by someone from the police agency and their designees. Anything released is limited to the five years prior to the alleged crime or police misconduct incident at the center of the case. The records can’t be made public, used outside of that court.
proceeding or even shared with the side that did not request the records. Strict limits on disclosure of police personnel records are not uncommon—but the Pitchess process put California among the strictest, according to Jonathan Abel, who surveyed personnel records disclosure laws in a 2015 Stanford Law Review paper.

“As a general statement, I think California is unique in how restrictive it was,” says Abel, a visiting assistant professor at the University of California at Irvine Law School.

In some of the more restrictive states, defense lawyers and others have responded by creating their own databases of police misconduct information, such as the Citizens Police Data Project in Chicago. It’s not uncommon for police departments or prosecutors’ offices to maintain their own databases as well. Abel’s paper, “Brady’s Blind Spot,” points out a good reason for that: Prosecutors have obligations to disclose exculpatory information under Brady v. Maryland. They might also prefer to know whether a law enforcement witness is impeachable. Pitchess makes that harder, he says.

Police agencies and their allies don’t usually see it that way. David Mastagni, a lawyer at Mastagni Holstedt in Sacramento, which has an extensive practice defending law enforcement officers, calls this a “careful balancing” between the interests of defendants or litigants and law enforcement. Without it, he says people might be able to dig up irrelevant but embarrassing information, such as the officer’s cheating on a spouse. Brian Marvel, president of the Peace Officers Research Association of California, a police union, adds that law enforcement leaders sometimes use discipline systems to retaliate against officers for things like union involvement.

“A lot of times, departments will start a variety of charges on an officer, especially for somebody that they don’t want in the department anymore,” he says.

But lawyers who are routinely on the other side say those concerns don’t outweigh the problem with Pitchess: Judges routinely disclose little or nothing. One such lawyer is Jerry Steering of Newport Beach, whose practice primarily consists of suing the police. He says Pitchess motions are “a scam and a lie.”

Judges will “only order that you get the name, address and phone number of a person who made a complaint against the cop,” he says. “You don’t get the person’s statement, you don’t get the police report if there was an arrest, no internal affairs report.”

Although judges have discretion to disclose more in response to a Pitchess motion and sometimes do, Steering’s experience is widely reported by California defense lawyers. Burris, who also has an extensive police misconduct practice, says it’s been easier for him in criminal cases, where he generally gets names of complaining citizens and the types and dates of the complaints. It’s different in civil court.

“We have found that … the judges in civil cases were less inclined to give out useful information” under Pitchess, he says.

**SUSTAINED COMPLAINTS**

SB 1421 is an attempt to address that. It permits any member of the public to request records from law enforcement or prison guard agencies under the California Public Records Act. Those records are limited to reports of officer-involved shootings; use of force by an officer leading to death or great bodily injury; sustained complaints of sexual assault; and sustained complaints of dishonesty in reporting, investigating or prosecuting a crime.

Neither side is embracing the new law wholeheartedly. Burris says the requirement that certain complaints be sustained is a limitation that Pitchess doesn’t have.

“Most police departments do not find against the officers in highly controversial cases, such as a shooting case, a death case,” he says. “And maybe cases where perjury is found.”

Steering is even more cynical. He says he’s met one honest officer in 34 years of suing the police.

This bill won’t help much, he says.

“It’s just for shooting cases,” he says. “It’s not for your run-of-the-mill, resisting arrest, battery on a peace officer case. The agency will just say it’s not great bodily injury.”

On the other side, Mastagni says he’s concerned that SB 1421 could expose witnesses in criminal cases to retaliation, thus discouraging cooperation. The bill calls for their names to be redacted from publicly released information, but with the advent of body cameras, their faces could be public record.

“We’ve seen some of this where the identity has been released and they’ve had people swarming on their houses, and they’ve had to come out and publicly apologize for calling the police,” he says.

There are other restrictions; officers’ personal information and the names of witnesses are to be protected, and in the case of active investigations, agencies can make a showing that releasing records would interfere. Marvel, the police union president, says some of these provisions are the result of conversations he and others had with state Sen. Nancy Skinner, a Democrat from Berkeley, early and often about what the bill should contain.

“I know we have some specific issues regarding this bill,” Marvel says. “But Senator Skinner was much more approachable in wanting to have those types of conversations.”

Skinner herself says those conversations were part of why she was able to pass the bill, where previous attempts to replace the Pitchess process had failed.

She also believes her bill benefited from those past efforts as well as increased public interest in police accountability because of high-profile shootings like that of Stephon Clark in Sacramento. And some police chiefs themselves endorsed the bill, she says.

“They felt frustrated that when there were incidents and the community was demanding a right to know … they weren’t really able to release anything public about that,” she says. “So it was creating a wider gulf of mistrust between communities and law enforcement.”

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**The Docket**

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Too Tasteful to Trademark?

Court considers whether vulgar-sounding streetwear brand name is protected by First Amendment

By Mark Walsh

In 1990, Los Angeles artist and entrepreneur Erik Brunetti launched a fashion line of T-shirts and other products with a sharply edgy name and logo. The brand quickly helped define “streetwear,” apparel that was popular with skateboarders and counterculture hipsters.

The brand was “fuct,” and it was soon being sold around the world, including in major stores such as Urban Outfitters, and getting attention for items such as a shirt parodying the Ford Motor Co. logo by replacing its four letters with Brunetti’s brand name.

The brand “embodies the archetypal American counterculture” and “established the norm for subversive T-shirt graphics,” Brunetti wrote in an essay in an artsy book about the brand published by Rizzoli New York in 2013. “It has come to represent a sort of paradigm or emblem that professes the relentless questioning of authority.”

It seems unlikely that Brunetti conceived that he and his brand would one day be involved in a case on trademark law before the U.S. Supreme Court, but that is where he will be in April, in Iancu v. Brunetti. The justices will decide whether a provision of the federal Lanham Act that bars the registration of “immoral” or “scandalous” trademarks is facially invalid under the free speech clause of the First Amendment.

“This is one of the cases in which some damage to the structure [of the trademark process] could be done,” says Rebecca Tushnet, a professor of the First Amendment at Harvard Law School who has written widely on trademark and other intellectual property law topics.

A ‘PHONETIC EQUIVALENT’

Brunetti waited more than two decades to seek federal trademark registration for his subversive brand. That was in 2011, when the brand was perhaps past its prime but when Brunetti was seeking international trademark protection under the Madrid Protocol, an international trademark treaty that went into effect in the United States in 2003.

The U.S. Patent and Trademark Office, which is not known as a bastion of the counterculture, viewed Brunetti’s brand name as a vulgarity that ran afoul of the so-called scandalous-marks provision.

One opinion by the trademark office concluded that Brunetti’s brand “will be perceived by his targeted market segment as the phonetic equivalent” of the past tense of the most extreme and (perhaps) widely used curse word in English usage.

Brunetti appealed the office’s denial to the U.S. Court of Appeals for the Federal Circuit, the specialized Washington, D.C.-based court that handles patent and trademark matters. In the meantime, the Supreme Court in 2017 decided Matal v. Tam, a challenge to a separate provision of the Lanham Act that bars the registration of “disparaging” trademarks.

In Tam, which was pressed by the leader of an Asian-American rock band that sought to register its name, the Slants, the court ruled 8-0 that the disparagement provision violated the First Amendment, but no rationale commanded a majority of the court.

After the high court’s Tam decision, the Federal Circuit overruled the trademark office in Brunetti’s case. The court agreed with the office that Brunetti’s brand was “scandalous,” but it held the scandalous-marks provision facially invalid.

“There are words and images that we do not wish to be confronted with, not as art, nor in the marketplace,” Judge Kimberly A. Moore wrote for the court. “The First Amendment, however, protects private expression, even private expression which is offensive to a substantial composite of the general public.”

The Trump administration appealed to the Supreme Court, emphasizing that the ruling could lead to the registration of any number of vulgar terms and lewd sexual images.

“The scandalous-marks provision does not prohibit any speech, prescribe any conduct or restrict the use of any trademark,” U.S. Solicitor General Noel J. Francisco told the justices in a brief. “Nor does it restrict a mark owner’s common-law trademark protections. Rather, it simply directs the USPTO to refuse, on a viewpoint-neutral basis, to provide the benefits of federal registration to scandalous marks.”

SHIFTING VIEW OF SCANDALOUS

The case is casting light on the Patent and Trademark Office’s handling of trademark applications under the scandalous-marks provision.

The office asks whether a substantial composite of the general public would find the mark scandalous, which the office generally defines as “shocking to the sense of truth, decency or propriety; disgraceful; offensive; disreputable; ... giving offense to the conscience or moral feelings; ... or calling out for condemnation.”

The trademark office’s examining attorneys will typically rely on dictionary definitions, news articles and
blog posts to learn what the public understands about the mark in question.

The Federal Circuit in Brunetti’s case said the office’s “inconsistent application of the immoral or scandalous provision creates an ‘uncertainty [that] undermines the likelihood that the [provision] has been carefully tailored.’”

The appeals court noted that the office had registered the mark “Fugly” for use on clothing but refused registration for the same term for use on alcoholic beverages. The office approved “No BS! Brass” for an entertainment service but rejected “No BS Zone” for internet training. “The PTO has been inconsistent on the scandalous provision,” says Anne Gilson LaLonde, a Vermont lawyer who is the author of Gilson on Trademarks, a treatise first published by her father, Jerome Gilson, in 1974. “But this provision is not any more vague than the line-drawing that has to be done by the PTO.”

LaLonde was the co-author with her father of a 2011 law journal article cited by the Federal Circuit in the Brunetti case that highlights the trademark office’s handling of numerous trademark applications under the scandalous-marks provision.

The definition of scandalous has changed over time, LaLonde notes. In the 1930s and ‘40s, the trademark office often used the provision to refuse to register marks of a religious nature, such as “Madonna” for wine and “Agnus Dei” for metal tabernacle safes.

In more recent decades, seemingly every conceivable sexually explicit and excretory-related word and image have been submitted for registration—and rejected. The trademark office has also rejected terms such as “Cocaine” for a soft drink and “W.B. Wife Beater” for a brand of sleeveless men’s undershirts.

But some applicants have been able to convince the office that their mark refers to a meaning other than a scandalous one. Thus, “Big Pecker Brand” won registration for a line of T-shirts based on the idea that it referred to a bird’s beak. And “Acapulco Gold” was accepted for a suntan lotion despite that term’s association as slang for marijuana.

While most variations of the F-word are rejected, the office did register the mark “FCUK,” which ostensibly stands for French Connection United Kingdom and is widely seen on shirts from the apparel chain.

**URBAN DICTIONARY SAYS ...** When it comes to Brunetti’s brand, “there is an emotional component to the case,” LaLonde says.

The trademark office consulted the Urban Dictionary, which defined Brunetti’s term as a past tense of the verb form of the F-word. And the office examined Google images of some of Brunetti’s products and concluded that they displayed themes of “misogyny” and “extreme nihilism.”

Brunetti has asserted that to the extent that his brand name means anything, it means “Friends U Can’t Trust.” The Trademark Trial and Appeal Board said that explanation “stretches credulity.”

Brunetti said in a legal declaration that his brand name does not refer to the F-word, and neither the name nor any product images refer to sexual intercourse.

His brand “does make comments about current political and societal issues, sometimes obvious and sometimes subtly,” he says in the legal document. “But those comments are not scandalous, immoral or vulgar.”

John R. Sommer, an Irvine, California, lawyer who has represented Brunetti throughout his quest for federal registration, says he realizes that the Supreme Court will be deciding on the facial validity of the scandalous-marks provision and not whether Brunetti’s brand should get approval.

“This case is about whether the government decides what kind of speech gets the benefits of registration,” says Sommer, who specializes in trademark issues and serves as general counsel for the streetwear brand Stüssy.

The government is drawing impermissible lines based on viewpoint in its registration decisions under the scandalous provision and not mere subject-matter distinctions, he says. “The scandalous clause cannot be reasonably interpreted as limited to profanity, excretory and sexual references,” as the government contends, Sommer says.

Tushnet says the Supreme Court will have to wrestle with that difficult question under the Lanham Act.

“Even after 70 years,” she says, “we have not come up with a good way to distinguish between subject-matter and viewpoint discrimination.”
Face Fear—Don’t Fake It
Are you a lawyer with public speaking anxiety? You are not alone

By Heidi K. Brown

While researching fear in lawyering, I read Mastering Fear, a book by former Navy SEAL Brandon Webb. In the book, he describes his friend Neil Amonson, an Air Force combat controller, pilot, skydiver and BASE (building, antenna, span and earth) jumper. Amonson is afraid of heights. Reading about Amonson, I had a knee-jerk response: How can a warrior who jumps out of planes be afraid of heights? And then I realized my reaction mirrors the stereotypical question posed to many lawyers who are afraid of public speaking. How can you be a lawyer if you’re afraid of public speaking?

I was a litigator for 20 years, and I was chronically terrified of public speaking. I felt ill before every combative negotiation, deposition and courtroom experience. There wasn’t anyone to talk to about my fear. If I expressed hesitation toward a performance-oriented activity, the motivational response often was, “Just toughen up. Grow a thicker skin.” For years, I bought into the notion that I was a fraud, an impostor. How could I be a litigator or even any type of decent lawyer over the years just doesn’t work. At least it didn’t for me.

For years, I had heard mantras such as, “Just practice! Preparation eliminates public speaking anxiety!” Or, “Just do it! Everyone is nervous. If you’re not nervous, it means you don’t care enough.” Or the worst one: “Fake it till you make it!” I tried faking it, mirroring others’ behavior, forcing extroversion, overpreparing, overpracticing, for years. None of that worked to diminish destructive fear. What did work was stopping to look at who I am as an individual, digging into the reality of what drives my fear of public speaking and adopting new mental and physical strategies for stepping into performance events authentically.

For me, no amount of substantive and procedural preparation, rote rehearsal or mustered-up bravado was ever going to work until I directly dealt with the roots of my anxiety: fear of judgment and criticism. Ignoring our negative mental soundtrack and automatic physical responses to stress doesn’t help us learn how to manage those tangible foes in a constructive way. I trudged forward pretending I knew what I was doing. I didn’t.

Lawyers with extreme public speaking anxiety should never feel, or be made to feel, like they are in the wrong profession or need to do something else with their lives. Instead, with increased self-awareness and adoption of conscious mental and physical techniques, we can empower ourselves to step into public speaking scenarios and shine. Here is what worked for me.

DITCH THE CLICHES

First, it is important to give ourselves permission to reject the soundbite messages to simply overprepare, overpractice, fake it and view our nervousness as the world’s greatest motivator. While that advice certainly might work for some folks, for others, those simplistic slogans are just not viable long-term solutions. Instead, to amplify our advocacy voices, we must invest in both mental and physical reflection and then convert our enhanced self-knowledge into conscious action.

On the mental side, it was essential for me to identify and transcribe—verbatim—the toxic soundtrack that accompanied me into every performance-related lawyering scenario, such as depositions and negotiations. The abusive self-talk was remarkable: They’re going to think you’re incompetent. You’re going to blush and turn red, and they are going to sense weakness. What in the world made you think you could be a litigator anyway? Who are you to have an opinion about the law? Nasty unhelpful stuff, every single time I stepped into a performance event.

The next step is to identify the potential original sources of these messages,
Perhaps long-ago and even perhaps well-intentioned caregivers, coaches, teachers, mentors or authority figures. As public speaking expert and author of Speak Without Fear, Ivy Naistadt, cautions, this is not a “blame game.” We are not going to call up these folks and announce, “You ruined my life!” Rather, it’s a pivotal moment in this transformative process when we can realize that the harmful messages many of us replay in our minds today as lawyers probably came from missives we heard, interpreted and entrenched in our brains years ago. The messages are outdated and no longer relevant to our current lives in the law. It’s time to delete and overwrite them.

The next step for me was to highlight other areas in my life in which I feel and possess swagger. I feel powerful when I hop on a plane to travel to a foreign country alone. I feel strong when I put on Everlast boxing wraps and gloves and climb into the ring with a boxing trainer. Recognizing other venues in our lives in which we feel intrepid helps us reframe our approach to daunting lawyering activities. Now in performance scenarios when the usual boring and outdated mental soundtrack kicks in, I “stop, drop and roll.” I catch myself before I tumble down the self-doubt slope, channel the swagger I feel in my travels and boxing lessons and launch new accurate statements: I worked hard on this. I’m prepared. I have a substantive and procedural plan. I deserve to have a voice. I’m entitled to say this in my own way. Some people question such positive self-talk as too touchy-feely, but these statements serve an important purpose. They are a 30-second reboot to get our brains back on track and focused on the intellectual task at hand.

**GETTING PHYSICAL**

Physical reflection is just as important as the mental side. For years, I was oblivious to how my physical body instinctively reacted to fear-inducing lawyering scenarios. Upon reflection, I noticed I automatically folded inward, made myself small, crossed my limbs, subconsciously tried to become invisible or protect myself from a perceived threat. Worse, because of my robust blushing response, I routinely wore turtlenecks and scarves to hide my “weakness.” None of this helped my blood, oxygen or energy flow in a productive manner. Instead, I was hot, sweaty and overheated. I needed a new physical approach. I studied the pre-game and warmup routines of athletes and other performers. I watched a great TED Talk by social psychologist Amy Cuddy about “power poses.” I constructed a new physical performance checklist that I now run through every time I enter a performance scenario. (I also ditched the constractive wardrobe choices.) Initiating my new mental checklist, I stand or sit like an athlete in a balanced open stance. I breathe. I do one of Cuddy’s power poses (my favorite is sitting or standing with my arms on my hips like a superhero; trust me, no one notices). When my omnipresent nerves kick in, my legs instinctively cross, and I begin to hunch, I “stop, drop, and roll” and notice what my body is doing. I deliberately open back up. Sometimes I have to repeat this “opening up” routine three or four times, but it works to calm down my heart rate. I channel my inner athlete and rock star.

I still get nervous almost every time I’m about to give a speech on an issue I care about or make an important presentation to smart and aggressive lawyers. But instead of just trying to rely on dogged preparation, incessant rehearsal or faking my way through it—which only reinforces feelings of fraudulence—I am 100 percent myself. Yes, I still turn red and blotchy, and I sometimes get sweaty.

And no, my delivery is not always smooth. Rather than obsessing about outcomes, though, I focus on following through on assessing whether I satisfied my “performance process” checklist as recommended by sports psychologist and author Bob Rotella. More often than not, I make deeper human connections in my public speaking engagements than I ever did when I just barreled ahead faking courage. And more importantly, I actually enjoy the aftermath.

If you’re a lawyer with public speaking anxiety, you’re not alone. Our profession needs your genuine voice, even if it quivers. And if you’re a lawyer who knows other attorneys who are struggling with public speaking anxiety, let’s try a different tack to help them. Let’s stop promoting pretense and instead be our best authentic selves.

Heidi K. Brown is an associate professor of law and director of legal writing at Brooklyn Law School. She is the author of The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy (ABA, 2017) and Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy (forthcoming, ABA, 2019).

“**LAWYERS WITH EXTREME PUBLIC SPEAKING ANXIETY SHOULD NEVER FEEL, OR BE MADE TO FEEL, LIKE THEY ARE IN THE WRONG PROFESSION.”**

—HEIDI BROWN

Social psychologist Amy Cuddy assumes one of her signature “power poses.”
LAWYERS MAY REFER CLIENTS to fee financing companies, even if they own a financial interest in the lender or broker, according to a November opinion from the ABA Standing Committee on Ethics and Professional Responsibility.

Formal Opinion 484 intends to clarify attorney-fee financing used to help close the access-to-justice gap. While some in the business of facilitating loans welcome the opinion, others see it as nothing new.

"By some estimates, more than 75 percent of low-income and middle-income individuals have legal needs that go unmet for financial reasons," says Barbara S. Gillers, chair of the ABA Standing Committee on Ethics and Professional Responsibility. "Formal Opinion 484 is important because it addresses a way to increase access to legal services for those persons who may wish to or need to finance legal fees in order to retain counsel. The opinion protects clients by identifying lawyers' obligations when they refer clients to financing companies or brokers."

The opinion lays out various ways that fee financing services are already being used by attorneys. For example, clients can apply for a loan directly from a financing company to cover their lawyer's fees, which the client then pays back to the lender with interest rates between 5 and 15 percent.

In another instance, a lawyer will pay an initial fee to a finance company so he or she can submit loan applications from clients. If a client receives a loan in this scenario, the lawyer receives the money minus a 10 percent finance fee. Similarly, a lawyer can help a client set up what is essentially a retainer or voucher through a lender minus a service charge.

In other arrangements, the loaned money may go directly to the client, and the attorney will be notified, often through an online portal—a service the attorney pays for. There are also "same as cash" programs, where the attorney has the tools in her office to help the client apply for the loan. If a loan is created, the financial relationship remains between the lender and the client.

Lastly, the opinion says that a lawyer may work with a financial brokerage company that helps find legal fee financing options.

In the above examples, the attorney making the referral does not have an ownership or financial interest in the loan and has explained the arrangement so the client can make an informed decision.

Additionally, the opinion makes clear that these arrangements are permissible only if other Model Rules of Professional Conduct are met, including:

• Model Rule 1.2(c) (Scope of Representation and Allocation of Authority Between Client and Lawyer)
• Model Rule 1.4(b) (Communications)
• Model Rule 1.5(a) and (b) (Fees)
• Model Rule 1.6 (Confidentiality of Information)
• Model Rule 1.7(a)(2) (Conflict of Interest: Current Clients)
• Model Rule 1.9(a) (Duties to Former Clients)

The opinion does not touch on nonrecourse loans like litigation financing, which is a cash advance to a litigant in exchange for a percentage of the judgment or settlement. Being that this opinion only covers instances where a lawyer is being paid by money a client borrowed, the committee notes that Rule 5.4(c) (Professional Independence of a Lawyer), does not apply.

ARMS-LENGTH TRANSACTIONS

Nonrecourse financing, which often falls outside of state regulations on consumer loans and may have rates of 44 percent or higher annually, has led to litigation and divergent outcomes in recent years. In Colorado, the state supreme court in 2015 found the state's Uniform Consumer Credit Code applied to these types of loans. In 2018, the Supreme Court of Georgia found that the
Industrial Loan Act and Payday Lending Act did not apply to nonrecourse litigation loans.

Regarding traditional consumer loans, if a lawyer recommends a fee financing or brokerage company that he or she has an ownership or financial stake in, then the lawyer must disclose the relationship, ensure fair and reasonable terms, advise the client to seek independent legal advice on the transaction and obtain the client’s informed and written consent, according to the opinion.

It also states that if a lawyer charges a higher fee to account for any transactional costs or subscription fees the lawyer must pay the lender, the fee must be reasonable and disclosed to the client. Additionally, the opinion cautioned that lawyers should not “recommend the finance company or broker to the client even though fee financing is not in the client’s interests because the client’s arrangement of financing best assures payment or timely payment of the lawyer’s fee.”

From an ethics standpoint, Anthony Sebok, co-director of the Jacob Burns Center for Ethics in the Practice of Law at the Benjamin N. Cardozo School of Law in New York City, doesn’t understand the need for the new opinion.

“I don’t actually know why it was written, in the sense that it seems to confirm what other bar committees have said,” says Sebok, who is an ethics consultant for litigation finance company Burford Capital. “It’s not a major development in either reasoning or setting out new, deeper thoughts about this particular practice.”

For example, bar associations in Arizona, Florida, Maine and North Carolina have all tackled legal fee financing to some extent.

Sebok says it’s unknown how often loans like this are used or how much is lent for legal services each year. However, with online direct-to-consumer loan providers such as Avant and Upstart making this process easier, including for those without good or traditional credit scores, the practice is becoming more common.

ACCESS TO JUSTICE?

James Jones Jr. and his wife, Kristina Jones, co-founders of San Francisco-based Court Buddy, an online platform that connects clients to unbundled legal services, see the opinion as a good thing for improving financial access to justice. While the platform didn’t initially connect clients to loans, Kristina Jones explains that they saw users of their tool turn down a $350 court appearance fee because they needed a couple of pay cycles to cover the cost, for example.

“It didn’t sit well with us that we were having to turn people away,” she says.

Now they connect their users to a microlender for loans ranging from $50 to $1,500. The loans are provided at 10 percent interest for three, six or 12 months. Court Buddy does not take a cut of the loan, and the founders would not disclose the name of the lender. The company won the ABA Brown Select award for legal access in 2017.

Opinion 484 “is a recognition that this is an option that consumers need to have with respect to closing the access-to-justice gap,” says James Jones, who practiced law for 10 years before co-founding the company.

Bob Lovinger, president of Port St. Lucie, Florida-based Flexxbuy, a lender platform that helps businesses, including lawyers, find loans for clients, says some lawyers considering his platform would play it safe and check with their local bar for guidance. But not every bar was versed on the subject.

Now, Lovinger says he’ll be able to use the new opinion to help sell attorneys on his company’s services and help the industry.

“When there’s uncertainty, some lawyers that are very careful will say, ‘You know what? I’m going to play it safe and not go forward,’” Lovinger says. “I think [the opinion] clears it up and basically gives attorneys the green light.”
WOMEN, ESPECIALLY MOTHERS, carry a dis-proportionate share of the cognitive load when it comes to child rearing and running the house-hold. This additional burden can lead to increased stress, especially for lawyers who are already under tremendous pressure.

An important strategy for managing stress and maintaining well-being is self-care. Self-care is defined as any activities that you do for yourself where you take steps to identify your own needs and meet them. It’s about regularly doing activities to nourish yourself. It means setting aside time to take proper care of yourself, and treating yourself as kindly as you treat others.

I talk about self-care as part of my Better Lawyering Through Mindfulness workshops, and often the participants in the room who need self-care resist the most. There’s an expectation that a good lawyer who is also a mother is not allowed to have any time outside those two roles—that any time spent caring for herself is time being “selfish.”

Even though the words “self-care” and “selfish” sound similar, they are actually opposite in meaning. When I practice self-care, I am taking the time to charge my own battery or fuel my tank so that I can perform better. As the saying goes, you can’t pour from an empty cup. In contrast, when I am being “selfish,” I am taking something away from another for my own gain or benefit.

This confusion in concepts often leads to feelings of guilt. This, in turn, can lead to a vicious cycle where the lawyer-mother continues to give without an opportunity to rest, rejuvenate and restore herself.

For at least the first five years of having children while practicing litigation full time, Stephanie Sparks, a partner at Jackson Walker in Dallas, was “convinced that self-care was just not possible for lawyers.” She fell into the trap that many lawyers fall into. “My mindset was that I would have to get caught up with all of my to-do lists at the office plus all of my to-do lists for my children before I could even contemplate doing something as frivolous as self-care.”

Unfortunately, there is never an ideal or convenient time for self-care, as Sparks eventually realized. “I continually thought that if I could just get to the end of a school year or a fiscal year or the case I was working on, then I could start taking care of myself. Of course, that never happened.”

For Sparks, incorporating self-care activities happened gradually. “It was an accumulation of many different events and a realization that something had to change or else I could not keep everything going.”

Emily Little is director, legal counsel, at Alliance Data in Powell, Ohio. She says, “By the end of 2017, I was as heavy as I’d ever been, exhausted and needed a different approach.” She remembers the date when she began her self-care journey. On Dec. 31, her kids “had spectacular meltdowns, and I just needed an hour away. There was a yoga class during nap time near my house, so I went.”

It’s important to note that there’s no prescription for what you should do for self-care or when. It’s all about understanding your own needs. Sparks realized something had to change when she started running out of steam. “I took baby steps—making doctor appointments that I had needed for years, trying workout classes and reading books for pleasure. I had to choose to prioritize these activities and literally schedule them in my Outlook calendar.”
“It was an accumulation of many different events and a realization that something had to change or else I could not keep everything going.”

—STEPHANIE SPARKS

Tamara B. Pow, managing partner of Strategy Law in San Jose, California, carves out time for self-care on weekends because “I can’t find time during the week. I go on long trail runs with girlfriends Saturday and Sunday mornings and sign up for half-marathons and other races to force myself to keep training.”

Mary Sackett, legislative aide to Supervisor Damon Connolly in Marin County, California, says her solution for self-care is 5:30 a.m. workouts with friends. “I find that this is the only time that cannot be taken away from me by work, my kids or my husband’s schedule. On Fridays, I schedule a 5:30 a.m. hike and constantly increase the number of invitations, usually resulting in three or four people.”

These activities are not just about getting exercise. They allow Sackett to feel connected to her community and fellow moms at her children’s schools. “I hear the latest, we share challenges and work through issues.” The early-morning routines help her to feel good and feel connected without the guilt “because I didn’t take time away from my children or my husband.”

Some mothers get help from their partners so they can find time for themselves. “My kids are now 2 and 5, and I am finally able to take some time for self-care,” says Elizabeth Shubov, a solo practitioner in Beverly Hills, California. “Lately, I have been going to yoga a few times a week and to the gym. My husband and I trade off with the kids on weekends when we can allow each other some time.”

LIFE-CHANGING

Often, self-care practices lead to compounding positive effects—when you exercise, you have more energy, your mind feels clearer, you’re better able to focus and you’re more productive.

“I finally realized that if I take care of myself, then I can better take care of my family and clients,” Sparks says. “As cliche as it is, yoga has truly changed my life,” Little says. “It has helped me lose weight and given me some time to myself, but also it gives me a place of self-reflection and an opportunity for a mental break, calmness, that I hadn’t found anywhere else in my life. Ultimately, I think I liked the way I felt after a yoga class and as a result just started prioritizing it. Before I knew it, it created a much bigger impact on my life than I could have anticipated.”

Shubov learned that fitting in self-care is always a balancing act. “When kids get sick or work is really busy, or both, all balance goes out the window. There are moments as a parent when my needs don’t and shouldn’t come first. I am on a continual journey to accept that and care for myself and my family in the best way possible for all of us. In doing so, I’ve learned to trust that interruptions in my self-care routines are temporary, and it is up to me to prioritize that time again once schedules return to normal.”

Many mommy lawyers I interviewed shared that they do feel guilty when taking time for themselves. Oakland, California-based Tracy Scanlan, director of client development and legal affairs for Paragon Legal, says, “It’s hard to find time to actually enjoy my family, let alone find time for myself. Sometimes I do feel guilty for taking some time for myself instead of folding yet another load of laundry. But I try to remind myself that if I never slow down and just became a martyr for my family, that wouldn’t help anyone.”

There is no single or easy solution for every lawyer who is also a mother and suffering fatigue. But the common thread is recognizing that self-care is both healthy and necessary. How you engage in self-care is entirely a personal decision.

Jeena Cho consults with Am Law 200 firms, focusing on strategies for stress management, resiliency training, mindfulness and meditation. She is the co-author of The Anxious Lawyer and practices bankruptcy law with her husband at the JC Law Group in San Francisco.

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The Wisdom of Vocabulary

Test your knowledge of these not-so-everyday words

By Bryan A. Garner

Young Carolyn Dineen King was introduced to Johnson O'Connor’s vocabulary-building books when she was still in junior high school. She relished them and developed a prodigious knowledge of words. She says her vocabulary was probably bigger when she was in high school than it is now. She doubtless couldn’t then have imagined that she would go on to become one of our most celebrated federal judges, as she is currently a senior judge of the New Orleans-based 5th U.S. Circuit Court of Appeals.

On the bench, she’s always been fairly restrained in her written vocabulary. Maybe that’s partly because when she was an associate at Fulbright & Jaworski, at the age of 25, she was chastened by a partner at the firm: She had used the word pejorative in a draft brief, and he cut it, calling it a “Smith College word.” Despite that memorable moment, she credits her interest in vocabulary, and O’Connor’s books in particular, as an important influence early in her life.

O’Connor (1891–1973) wasn’t just a writer of vocabulary books. He was an early advocate of aptitude testing: a psychometrician. Even today, the eponymous research foundation that he started is a thriving business. But among language lovers, he’s best known for his work in understanding how vocabulary augmentation is a major key in unlocking human potential. O’Connor’s experiments showed, he wrote, that “an extensive knowledge of the exact meanings of English words accompanies outstanding success in this country more often than any other single characteristic.” He even found a strong correlation between the size of one’s vocabulary and one’s lifetime income.

More recent studies show that the main advantage of knowing more words, and knowing their conventional senses, is that you can read any kind of text with greater comprehension. That, too, is probably an indicator of success, but 21st-century researchers have been more interested in what is scientifically provable than in claims of self-improvement.

But back in the 1940s and 1950s, O’Connor found that the most successful lawyers scored high in vocabulary—if we define success as having a high degree of worldly prosperity. Not everyone with a big vocabulary has a high income, he wrote, “but the relation between the two is close enough to show that a large vocabulary is one element, and seemingly an important one.”

O’Connor was good at motivating his readers, especially when he noted that vocabularies can always be consciously enhanced regardless of any inborn qualities.

For purposes of this column, I’ve decided to take words that O’Connor used in the 1940s to test American adults, some college-educated and some not. The following words are listed by difficulty, from easiest to hardest: the first was known to 40 percent, and the last was known to only 7 percent. The percentage of American adults who knew each word is shown in brackets after the possible answers. Test yourself honestly, without peeking.
The point isn’t to use words like these all the time—though an occasional instance, if you’re fluent and unself-conscious in conversation, would certainly make you an exceptional speaker. (These don’t seem like big words to people who already know them—only to those who don’t.) Again, you needn’t use them. But you’d benefit from knowing them. Without knowing them, you can hardly read an issue of The Atlantic or Time magazine with full comprehension, or any similar publication. And forget about The Adventures of Sherlock Holmes: You’d be missing much of each story if you’re unfamiliar with such words.

Of course, these aren’t words to be paraded before juries, who’d undoubtedly be puzzled. But if you limit your recognition vocabulary only to words that everybody knows, O’Connor would say you’re similarly limiting your opportunities in life.
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Bryan A. Garner

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Wyoming likes being first. It was the first government to grant suffrage to women (1869), the first U.S. national park was established there (Yellowstone, 1872), and the state Legislature was the first to create a limited liability corporation entity (1977).

Now, the Cowboy State is at it again. In March 2018, then-Gov. Matt Mead signed into law a series of bills, including some legislative firsts, to entice the blockchain industry to the country’s least-populous state.

“In this era of rapid innovation, many companies are developing products and ideas without clear legal clarity. Blockchain is among those emerging industries with tremendous promise,” Mead’s office said in an emailed statement in late 2018. “However, without some regulatory guidance, these companies operate at risk.”

Wyoming isn’t alone. Vermont, the second-least populous state, also took the plunge last year by betting big on blockchain and creating favorable laws that attempt to clear up legal ambiguity.

Over the last few years, blockchain—also referred to as distributed ledger technology—has caught the attention of businesses, investors and government regulators. A survey last year from Juniper Research in the United Kingdom found that 65 percent of large firms—those with over 10,000 employees—were either considering or deploying a blockchain application. A recent study from a professor at Boston College’s Carroll School of Management found that since January 2017, about 4,000 initial coin offerings—fundraising mechanisms to support the creation of blockchain projects—raised $12 billion.

Wyoming and Vermont relax regulations and pass favorable laws relating to blockchain, hoping they can attract tech entrepreneurs

By Jason Tashea
Business of Law

For Wyoming, catching this wave is part of a larger plan to diversify the state’s economy. “No one has thought about Wyoming as a tech state, and for good reason,” says Wyoming state Rep. Tyler Lindholm, who sponsored some of the blockchain bills. “We pretty much do coal and cattle, and that’s about it.”

The state’s new laws exclude virtual currency from money transmitter rules, define some tokens—means to access a blockchain—as outside of securities regulations and allow for electronic networks to be used in the creation and maintenance of corporate records. The hope is that these rules will lower regulatory hurdles and clear up ambiguity so that blockchain-based businesses and business practices can flourish.

With more legislation on the way, Lindholm hopes these efforts will foster new industries. However, it isn’t clear if being first will be enough.

“I have no doubt that these amendments will, in the short run, boost Wyoming LLC filings by blockchain businesses,” says Susan Pace Hamill, a law professor at the University of Alabama School of Law and co-author of “The Story of LLCs: Combining the Best Features of a Flawed Business Tax Structure,” published as a chapter in the book Business Tax Stories in 2005. “However, in the long run other states will, once again, copy Wyoming, so in the end I don’t see this causing Wyoming LLCs to dominate the LLC filings in this industry any more than Wyoming LLCs dominate LLC filings generally.”

Lindholm says over 180 new businesses with blockchain-related terms in their names were created in Wyoming within three months of the laws being signed. The state’s corporate privacy laws make it nearly impossible to know what these companies actually do.

If Wyoming’s enticement is defined by deregulation, Vermont makes the case for legal structure.

“What we were trying to do was provide the ability to opt into a structure rather than wait for the courts to impose something on top of you,” says Oliver Goodenough, a professor at Vermont Law School who wrote a 2017 financial technology report that accompanied a blockchain-related bill sponsored by his wife, a Vermont state senator.

Last year, the state’s General Assembly passed the legislation, which created two new entities, including blockchain-based limited liability companies. The new structure offers the opportunity to memorialize the liability and fiduciary duty unique to some blockchain businesses. Previously, Goodenough says, miners (those that help “mint” a cryptocurrency) and nodes (those that host a copy of a blockchain) were potentially a partnership without a legal structure. Now, a BBLLC provides legal flexibility for companies to define the governance role miners and nodes have.

While these states embrace an incubating role, it’s not done in a vacuum.

In the first half of 2018, Ernst & Young reported, 86 percent of the leading ICOs listed on a popular cryptocurrency exchange in 2017 fell below their initial listing price. While that crop suffered, during the same period, ICOs claim to have raised $15 billion.

“In the first half of 2018, Ernst & Young reported, 86 percent of the leading ICOs listed on a popular cryptocurrency exchange in 2017 fell below their initial listing price. While that crop suffered, during the same period, ICOs claim to have raised $15 billion.

Not just combating turbulent markets, entities formed in Vermont or Wyoming “will have to interface with regulators outside of the state,” which may create conflicts, says Clyde Tinnen, a partner at Withers Bergman in Connecticut.

Additionally, some states have opted to remain on the sidelines because they expect the federal government to act, which would pre-empt the state laws. Tinnen argues that if the federal government becomes proactive about regulating cryptocurrency as a security, Wyoming’s deregulation could “set up people for failure.”

Over the last year, the Securities and Exchange Commission has increased enforcement actions against ICOs but has stopped short of issuing new rules. Through its leadership, the agency has issued statements saying that some ICOs or cryptocurrencies may be securities. With an uncertain future at the

“I have no doubt that these amendments will, in the short run, boost Wyoming LLC filings by blockchain businesses. However, in the long run other states will, once again, copy Wyoming.” – Susan Pace Hamill

“What we were trying to do was provide the ability to opt into a structure rather than wait for the courts to impose something on top of you.” – Oliver Goodenough
A move by some law firms to hire CEOs without law degrees reignites a debate about turning over the reins to business professionals

By Danielle Braff

According to Angela Hickey, as CEO of Levenfeld Pearlstein, she works long hours, does the heavy lifting and is responsible for charting long-term strategies for the Chicago-based firm. One thing she cannot do is practice law.

Hickey was named CEO in 2018, after working for four years as the firm’s executive director and previously as its director of finance since 1999. According to Hickey, the lawyers at her firm stick to legal work while the nonlawyers handle the nonlegal stuff, and everyone works together harmoniously.

“Lawyers are trained to be lawyers and not to be businesspeople,” says Hickey, who doesn’t like the term nonlawyer. “It was and remains a sound business model to engage business professionals to run the firm—the pace and change and the breadth of knowledge required to stay relevant and competitive in the legal industry demands full energy and focus of business professionals.”

This trend took off in 2009, when Paul Eberle led the Whyte Hirschboeck Dudek firm as one of the first nonlawyers to take on such a substantial role. He became CEO of Husch Blackwell in 2018 after the two firms merged. Another firm that went to a nonlawyer as leader was Pepper Hamilton, which hired Harvard Business School graduate and certified public accountant Scott Green as CEO in 2012. Meanwhile, in 2017, Twitch co-founder Justin Kan, who does not have a JD, founded the law firm Atrium and currently serves as CEO.

However, having nonlawyers in charge of law firms arrives with much controversy. In 2014, the Texas bar’s ethics committee stated that Texas law firms couldn’t use titles like CEO for nonlawyers because the word officer within chief executive officer means that the nonlawyers have control over the lawyers. The opinion led to objections from more than 50 of the state’s largest law firms, with many noting that it was commonplace for big law firms to have chief marketing officers or chief technology officers who were nonlawyers. The committee then issued a revised opinion in September 2015 stating that firms can issue such titles as long as they make clear they do not have control over the firm’s legal practice.

“Some lawyers will argue they don’t want to be managed by someone who doesn’t understand what being a lawyer entails; they only want to work for someone who has experience building a book of legal business, which they believe will translate into helping the firm as a whole grow,” says James Goodnow, a Phoenix-based attorney, legal analyst, and partner and managing partner of Fennemore Craig.

The other natural cap on nonlawyer management of law firms is the ethical bar on ownership of a firm by nonlawyers,Goodnow says. CEOs tend to expect equity to be part of their compensation package, but law firms in the United States can’t generally offer that equity, which limits the pool of potential nonlawyer managers.

“The U.K. and other countries have begun experimenting with nonlawyer equity ownership and investment, and so far, their legal markets haven’t collapsed into an unethical morass, but opposition to that kind of deregulation remains pretty stiff in the U.S.,” Goodnow says.
Business of Law

Still, there are plenty of arguments for the positive effects of having a nonlawyer leader. Since law schools don’t typically teach lawyers how to run a company, it’s difficult for many lawyers to run their businesses. Some firms address this issue by cultivating leaders through committees, training and education—but this isn’t the norm, Goodnow says.

“NFL owners don’t gather the team together and make them elect one of themselves to double as the head coach,” Goodnow says. “Being a coach is a full-time job, as is being a player, and the team is full of people with disparate skills.”

Just because you’re good at one skill is no guarantee that you’ll be qualified to manage the team.

That’s why Gwendolyn Sterk, an attorney in Orland Park, Illinois, brought in a business development and marketing manager as soon as she opened Sterk Family Law in 2015.

The dedicated manager strategizes and executes a traditional marketing plan and is constantly doing extensive outreach to connect with various professionals so the firm can continue to develop and grow its educational messaging, Sterk says. The duties are essentially divided (the lawyers concentrate on the law but do a little continuing education and marketing on occasion).

There are also some practicalities to consider for implementation. Hickey says there must be recognition that strong leadership is needed to keep the partners at bay so the C-level employees can do their jobs.

“The investment will pay returns, but it is a long-term strategy and must be approached as such,” she says. “In many firms, a complete governance reorganization is warranted to support this structure.”

Back to Billables

Jackson Lewis quietly ends a major policy change that eliminated hours totals as a tool for evaluating associates By John Roemer

Four years ago, labor and employment firm Jackson Lewis, one of the largest firms in the country in terms of both gross revenue and attorney headcount, took a considerable leap that would strike at one of the pillars of the law firm world.

In November 2014, the firm announced it would eliminate the billable hour metric as a tool for gauging associates’ performance and awarding bonuses. Instead, associates would be assessed on their ability to work with a team, efficiency, responsiveness to clients, pro bono work and other subjective factors instead of on the cold analytic precision of fee statements that fractured hours into six-minute intervals.

A broader goal was to abolish the problem of elevating quantity over quality, which had produced the paradox that associates were paid to keep hours high even as partners sold clients the notion of lean, economical lawyering.

“Paying our people to bill more time does not align with our clients’ interest,” Chairman Vincent Cino said in a 2015 interview with the New Jersey Business Journal. “We want our associates to work more effectively and work as a team, and so do our clients.”

Cino even talked about going even further and eliminating all billable hours. In that same interview, he mentioned that he had considered doing just that, only to encounter pushback from corporate clients concerned that the move would muddle their data-driven legal services audits.

Instead, the billable hour has been reborn—Phoenix-like. “After receiving feedback from our clients and associates regarding the removal of billable hours as an evaluative tool, we ultimately readjusted our firmwide bonus policy to provide more clarity to the program and again include billable hours as an assessment factor,” firm spokeswoman Lara Hamm stated via email on behalf of the firm’s newly installed co-chairs William Anthony and Kevin Lauri.

“Our paramount focus continues to be on providing clients with access to experienced, high-quality lawyers who are knowledgeable about their industry and the issues they face, while providing value through creative and competitive rate structures,” Hamm said the firm readjusted its policy in January 2017 and brought back billable hours as an assessment factor.

That infuriates outspoken critics of billable hours like lawyer and Northwestern Law School adjunct professor Steven Harper, author of The Lawyer Bubble: A Profession in Crisis and a former Kirkland & Ellis partner. “For years, I’ve been tilting at that windmill,” he says of his jeremiads against how firms charge clients. For instance, he wrote a 2013 New York Times op-ed arguing that the billable hour “serves no one. Well, almost no one. It brings most equity partners in [big] firms great wealth. Law firm leaders call
it a leveraged pyramid. Most associates call it a living hell.”

Harper sees nascent signs of change but no real reform. Many big firms, he notes, “have now incorporated various fixed-fee and upside bonus concepts in connection with the delivery of legal services to clients.” However, he also points out: “I can think of no firms that have abandoned the billable hour as an associate evaluation tool. Tragic, but true. I think most firms have become lost in a world of misguided metrics.”

There is an exception or two. The man Harper describes as his mentor, former Kirkland colleague Fred Bartlit, left to form litigation boutique Bartlit Beck in 1993. The firm now has more than 80 lawyers in Denver and Chicago and, according to Bartlit, has never billed for an hour’s worth of work. Instead it charges what it calls “success based fees.”

“We think we should get paid more if we win and less if we lose,” Bartlit says. “We have a better way.”

Meanwhile, Holland & Knight, a 1,300-lawyer international firm, has scrapped billables for members of its public policy and regulation group in Washington, D.C., which is composed of about 100 lawyers and nonattorney lobbyists serving 160 or so clients, according to group leader Rich Gold. “Clients like it,” Gold says. “We’re just ahead of the curve. There’s a lot of envy from other firms, and I’ve done a bit of a road show around town. But I hear, ‘Oh, my management will never buy that.’”

Holland & Knight has no immediate plans to replicate the initiative firmwide, Gold says, explaining: “Our industry has spent 50 years perfecting this metric. Still, history bends toward justice, and I believe ending the billable hour is where things eventually will go.”
SOME LAW SCHOOLS OFFER TECHNOLOGY PROGRAMS TO STAND OUT FROM THE PACK WHILE HELPING STUDENTS FIND JOBS, BUT SOME QUESTION WHETHER IT WORKS
Rather than spend seven hours labeling almost 2,000 trial exhibits by hand, Daniel Sanders thought it would be more efficient to set aside two hours and write a program to automate the task.

But his supervisor at the plaintiffs firm he clerked for in law school was apprehensive about relying on such an unfamiliar process. The exchange, Sanders says, sums up much of his experience as a young lawyer trying to build a career in tech law. Sanders, a 2017 graduate of the Illinois Institute of Technology’s Chicago-Kent College of Law, spent three months applying for positions in privacy law and data security with scant responses and no offers.

He eventually got a part-time job working as a litigation associate with a Chicago firm, followed by full-time work with alternative legal services provider Axiom drafting contracts. By December, Sanders had left that position and is now pursuing a solo practice.

Neither of his jobs paid enough to support himself and pay back law school loans. The average amount students borrow at Chicago-Kent is $107,540, according to school-reported information published by Law School Transparency, a group that focuses on law school reform.

“I’ve applied to JD-required, JD-preferred and JD-not-required jobs. To be honest, I really don’t know how much my law degree helps me, because most of the time I don’t hear back,” Sanders says. Sanders’ law school class had 223 graduates, and by 10 months after graduation nearly 76 percent of them had full-time, long-term jobs that required candidates who have passed the bar or preferred candidates with JDs, according to ABA employment data. Nationwide, the percentage of graduates of ABA-accredited law schools with comparable employment is 75.3 percent. The ABA does not release salary information with the employment data.

The data is similarly fuzzy when it comes to measuring the success of law school technology programs—at least when it comes to getting a job after graduating law school. The promise of these programs is twofold: Students will be prepared for a rapidly changing job market and the school will be differentiated from its many competitors. Indeed, it’s easy to find press releases and marketing materials advertising law school technology programs that prepare students for the changing practice of law.

Twenty-four law schools responded to an ABA Journal inquiry about when they launched technology programs, 12 of which started
programs in the past eight years. Of those 12 schools, nine were outside of U.S. News & World Report’s top 20 law schools. Some schools with post-2011 programs were located in states with more than five law schools, as well as cities with several competing law schools, where differentiation with technology offerings could help attract more students. That includes New York’s Cornell Law School, Chicago’s Northwestern Pritzker School of Law, Boston’s Suffolk University Law School and the University of California’s Hastings College of the Law.

But some recent graduates—as well as attorneys with hiring responsibilities—say that there are few tech jobs for new lawyers, largely because the profession isn’t ready for this new cadre of tech-savvy grads.

“Why are people doing this? It has a lot to do with the fact that law school applications dropped by 40 percent after 2009,” says David Wilkins, a Harvard Law School professor and a member of the ABA’s Commission on the Future of Legal Education. “What legal technology is actually going to be used for, versus the hype, is something that we’re just beginning to figure out. So it’s very difficult to figure out what you will be training people for.” Wilkins, director of Harvard Law School’s Center on the Legal Profession, believes there will be a job market for lawyers who have project and process management training. “But nobody has figured out what the market is yet.”

COMPETITIVE ADVANTAGE?

Law schools outside the U.S. News top 20 often ask about starting legal technology programs, says Ben Kennedy, a Washington, D.C., consultant who focuses on strategic planning for colleges and universities. He adds that provosts may be more likely to fund legal tech programs than something more traditional, like bar preparation courses.

“The link between bar passage and increasing net-tuition revenue is more indirect, and it may look to a provost like a rankings play,” Kennedy says. According to him, part of the reason there’s been a drop in LSAT test takers is because of automation. Attorney fee increases came with the BigLaw hiring frenzy in the early 2000s, and corporate clients pushed back. At the same time, new technology made automation possible for some tasks traditionally done by young lawyers.

Stephen Poor, chair emeritus of Seyfarth Shaw, argues that this change has led to a gulf between academic programs and employers. “The law schools have struggled to understand what the skill sets are that they need to provide, the market has struggled to understand the skill sets they need,” Poor says. “Everyone’s trying to figure it out—and no one’s got it figured out at this point.”

For instance, Evan Absher graduated from the University of Missouri-Kansas City School of Law in 2015 at the top of his class. In addition to his academic achievements, he helped start a course on the intersection of law, city policy and technology, and he was a member of the law school’s legal clinic for entrepreneurs, which gives legal advice to small businesses and startups. Despite all of that, he did not get any BigLaw job offers while he was in school.

“That was disappointing, although it was probably for the best. I always had a sense of if I didn’t do something different and unique, I would probably not find a job,” says Absher, who has an undergraduate degree in theater.

Before he graduated from UMKC Law—where the average amount borrowed by law students is $97,419, according to Law School Transparency—Absher was hired by the Ewing Marion Kauffman Foundation, a nonprofit that invests in education and entrepreneurship. He works for the organization as a senior program officer. His responsibilities include grant making and running a large conference for mayors that focuses on entrepreneurship and growth in major cities.

Regarding the availability of legal technology jobs for young lawyers, Absher says that law firms tend to be Luddites.

“Law firms don’t have interest in changing because it means that everything they built could go away. So you have a profession that in general has all the structures to make it resistant to change,” he says.

PLENTY OF SUPPLY

Even so, the number of law school legal technology programs has grown significantly over the past decade.

Chicago-Kent is one of 40 law schools included in the Law School Innovation Index created by Daniel W. Linna Jr. while he was a professor of law in residence at Michigan State University College of Law and director of its Center for Legal Services Innovation. The index tracks things like legal-service delivery
innovation, and law and technology courses, but not job outcomes for students who participate in the classes and programs. Linna says that is something schools are beginning to measure, but he also finds that employment outcome reporting requirements for ABA-accredited law schools don’t recognize the value of some JD-preferred positions.

And he asserts that someone who can get a big-firm job paying $190,000 annually is not an “average” law student.

“For most students at a lower-ranked school, they may be comparing an entry-level lawyer job paying around $50,000 to a nontraditional legal job, such as a legal solutions architect, that pays much more,” adds Linna, now a visiting law professor at Northwestern University. “So, in that instance, what’s the basis to conclude that the nontraditional job, which would today be classified as ‘JD advantage,’ is less than the JD-required job?”

The JD-advantage job reporting is the challenge in employment data collecting, says Barry Currier, the ABA’s managing director of accreditation and legal education. The Section of Legal Education and Admissions to the Bar does not collect salary information, he says, and Linna’s point about potential salary differences between JD-required and JD-advantage jobs is true for various industries, not just legal technology.

“A job as a consultant at a big New York City investment bank, that’s a JD-advantage job, and it may pay more than a first-year associate job,” Currier says. According to an annual National Association for Law Placement study, 13.9 percent of the jobs for the class of 2017 were in business and industry. Out of that group, 7.2 percent of the positions were in the “technology/e-commerce” category, and 2.7 percent were with law-related technology companies. The study also examined salaries and found that the salary average for class members working in what’s described as “legal/law-related technology” companies was $61,666—however, one-third of respondents made $50,000 or less, and only 10.4 percent made over $80,000. The average salary for people in technology or e-commerce companies that were not law-related was $94,408.

The program at MSU is being rebranded as the Center for Law, Technology & Innovation, says Carla Reyes, who has served as its executive director since July 2018. The center will have three parts—the Legal RnD Lab, the Innovation Hub and a Research Node.

According to Reyes, out of 202 graduates who went through MSU’s legal technology program between 2012 and 2017, 97.5 percent have full-time, long-term jobs that either require or prefer law degrees.

The school’s overall employment rate for 2017 graduates in long-term, full-time jobs that either require bar passage or prefer JDs is 76.62 percent, according to ABA employment data. The average amount borrowed at the school is $94,540, according to Law School Transparency.

Law schools that have strong technology programs can encourage students to use their learning for problem-solving, and the programs...
can put students in situations where they must be flexible, creative and resilient while working in teams, says Alli Gerkman, senior director of the University of Denver’s Institute for the Advancement of the American Legal System. That’s valuable from a professional standpoint, she adds, but it’s unclear what the programs mean for employment outcomes because few schools share the information for graduates who come through the programs.

“I have not seen much measurement, and they haven’t been more specific in regards to jobs. Are they hoping to have students have more access to jobs, or to better jobs?” she asks. “I fear that many of these programs, while maybe they have done a good job in terms of creating solid learning environments for students, they have not done as good of a job in figuring out what employers who hire new lawyers are looking for.”

In New York City, Jonathan Askin created and runs the Brooklyn Law Incubator & Policy Clinic at Brooklyn Law School. With the clinic, which he started in 2008, he says he wanted “to try and train the next generation of lawyers to understand the full spectrum of issues that would face next-generation digital startups.”

At the time, he saw lawyers as wallflowers at the technology revolution. When lawyers did get involved at a hackathon or with a new technology project, he says they were often naysayers and would tell everyone what was wrong with the project.

With that in mind, he tries to provide broad, hands-on experience in contract, litigation and policy issues relating to the tech startup world. He covers more traditional intellectual property topics but tries to keep the coursework current with newer technology like blockchain and 3D printing.

“We have grown and morphed as the New York tech community has grown and morphed,” Askin says. “We have the same luxury of going into a law firm for 50 years.”

So he sought to meld the two subject matter areas.

“There seemed to be a fit somewhere for having a technology background and then having legal training,” says Dirkx, now knowledge management counsel at Littler.

While Chicago-Kent did not then have the same legal technology curriculum offerings it does today, Dirnx says that while he was there, the school’s IT undergirding the education was strong. He thought he would focus on intellectual property and licensing law.

for graduates doing what they want to do. According to the law school’s employment summary, out of the class of 2017, more than 80 percent had full-time, long-term jobs that were bar-pass required or JD-preferred. The average amount borrowed at the school is $118,519, according to information published by Law School Transparency.

**NOT ENOUGH DEMAND**

Jason Dirkx, a 2011 graduate of Chicago-Kent, has worked at the Chicago office of Littler Mendelson since 2013 and has had prior tech-related jobs in BigLaw. Dirnx was a software developer before law school, and he started law school during the Great Recession. He saw class after class of summer associates have their job offers deferred.

In part, his motivation in law school was informed during his time as a software developer, where he saw uninformed opinions and decisions being made on technical issues. So he sought to meld the two subject matter areas.

“There seemed to be a fit somewhere for having a technology background and then having legal training,” says Dirnx, now knowledge management counsel at Littler.

While Chicago-Kent did not then have the same legal technology curriculum offerings it does today, Dirnx says that while he was there, the school’s IT undergirding the education was strong. He thought he would focus on intellectual property and licensing law.
After graduation, he first worked for a legal technology startup and then took a job focused on technology and process management at Seyfarth Shaw. Even with a scholarship from Chicago-Kent, Dirkx is still paying off his student loans. Nevertheless, he thinks the JD was worth it.

"Do you necessarily need it? Probably not, but it certainly helps," he says. "It opens doors that are harder to get through if you don’t have a JD."

Dirkx’s pre-law school education in computer science likely helped his career path as well.

While people like Dirkx who have computer science backgrounds may not have a hard time finding legal tech work, it can be surprisingly harder for people without such an education—even if they graduated from an Ivy League law school.

Matt Stichinsky, a 2013 graduate of Cornell Law School, started at Simpson, Thacher & Bartlett as a corporate associate and then switched to litigation. Ultimately, he decided he wanted to work for startups and tech companies, and Simpson Thacher’s primary work representing credit and banking companies wasn’t the right fit. His attempts to lateral to large law firms with technology startup groups were unsuccessful.

"For entry-level positions, if you are lucky enough to go to a pretty good law school and do well, there are a lot of opportunities for you," Stichinsky says. "But I think that once you’ve gone out in the field, even for under three years, it becomes exponentially more difficult to get those jobs."

Stichinsky wound up going back to Cornell for an LLM in law, technology and entrepreneurship. He finished that degree in 2017 and now does venture capital work with early-stage and emerging growth companies as an associate with Buhler Duggal & Henry, a New York City boutique law firm.

He has school loans from both his law degree and his LLM, and he says that his time back at school shaved approximately two years off his class level in terms of pay. According to Law School Transparency, the average amount borrowed by Cornell Law School students is $148,955.

Stichinsky’s salary does allow him to support himself in New York City and make school loan payments, but he doesn’t know when he will get the loans paid off.

"If I would have stayed in corporate practice at Simpson, three or four years down the line I would have had a much easier time lateralizing over to a firm like this one or moving to a much bigger tech startup," he says. "I wouldn’t have had the additional loans to pay off, and it would have made the transition a lot easier."

Scott Rechtschaffen, Littler Mendelson’s chief knowledge officer, says that he’s open to hiring a new law school graduate for his department but has not as of yet. Citing scheduling conflicts, the firm ended a program where it hired technology interns from Georgetown Law Center. But Littler does have a Harvard Law School student intern working with data analytics and knowledge management. (Editor’s note: One of the authors of this article, Jason Tashea, is an adjunct professor at Georgetown Law.)

Regarding what he’s looking for with new lawyer hires, Rechtschaffen wants people who understand the practice of law and have experience with things like document automation software and Expert Advisors systems.

"I think we are at an inflection point where law schools will start turning out students with a greater interest and understanding of technology. As we start to hire them, they will demonstrate value to law firms," Rechtschaffen says.

While some firms are beginning to find utility in lawyers with technological backgrounds or knowledge, some legal software firms have different views.

"What I look for when I’m hiring is an expert in software development or an expert in user interface design or an expert in project management," says Nicole Bradick, CEO of Theory and Principle, a boutique legal software company in Portland, Maine. "If they are a law school graduate who happens to know some programming skills or happens to know something about user design, that’s not valuable to me."

Bradick’s company works with law firms, legal aid providers and nonprofits to develop web-based tools.
that aim to improve internal work processes and improve client access to legal services.

At her company, she is the only law graduate on staff, and she says that knowledge of the law isn’t important to her hiring process: The client is often the subject matter expert, while her team fills in the technical needs of the project.

Conversely, for Jake Heller, the CEO of San Francisco-based legal research company Casetext, having employees trained in law and technology means significantly less training and costs.

“JDs can serve in literally any role in the organization,” he says. At Casetext, one-third of his 29-person staff are law school graduates and fill roles like data scientists and especially salespeople because “those folks can use their history and background as a part of a law firm to translate the need of why this technology is important.”

Hiring a graduate who studied both law and technology “means that we have to train less on the basics,” he says. “At the end of the day, it saves a company time and money.”

As for compensation, Heller would not share salaries generally but did say Casetext pays on par with the industry.

Stephanie Ligon Martinez, a 2016 Chicago-Kent graduate, works in sales with IronClad, a contracts software company in San Francisco. She previously worked for Casetext.

For entry-level legal technology sales positions, Martinez says, you can generally earn between $100,000 and $200,000 annually, with a split between base salaries and commissions.

In February, Martinez was hiring salespeople for IronClad. She would consider new law school graduates for the positions, but they would be competing with non-JDs who have experience in legal technology sales. She estimates that 20 percent of the people who work at IronClad are former lawyers.

HELP WANTED

Dan Katz, a Chicago-Kent law professor who directs its Law Lab, says that the school hasn’t tracked employment numbers yet but plans to offer an 18-credit certificate in legal innovation and technology introduced in fall 2017. The program currently has 15 students who will take analytics, project management courses and a hands-on practicum component.

“We may be sowing seeds that don’t bloom until some period in the future,” he says.

At the moment, Katz believes that the unique offerings of his program will allow strong students to “short circuit” the typical law school in the job market. He compares it to law schools that invested in strong intellectual property programs to provide their students a leg up.

While he’s doing his part, he says that the industry cheerleaders of these programs are going to have to step up if they want them to succeed.

“We need the labor market to reward the institutions that have decided to go forward with this,” he says. “If you want to see these types of things at law schools, you have to vote with your wallet.”

To prime a viable employment pipeline, the Institute for the Future of Law Practice has brought together academic programs, corporations and law firms. Initially called the Tech Lawyer Accelerator at the University of Colorado School of Law, the nonprofit is an educational boot camp and job placement program to bridge legal education and the legal technology and operations fields.

Students in the IFLP program spend three weeks after their first year of law school learning about accounting and finance, data analytics and legal operations. Some universities offer academic credit for this work. Afterward, they are placed in a 10-week internship with an employment partner like Cisco Systems, Perkins Coie or legal technology company Neota Logic, where students make a minimum of $1,000 a week.

William Henderson, the interim director of development at IFLP and law professor at the Indiana University Maurer School of Law, says that the initial feedback he received from employers was that the 10-week internship was too short. So, the program expanded its offerings.

Now students can also participate in a seven-month paid placement during their 3L year, which may pay the equivalent of a $70,000 to $80,000 annual salary. Henderson says this offering is like “a residency baked into the third year of law school.”

Since the 2014 launch of IFLP’s forebear, TLA at Colorado Law, the program has had 89 participants, and 60 have so far graduated from law school. Employment data provided by IFLP indicates that all but one participant is currently known to be employed, two-thirds are in public or private positions practicing law, while the other third is scattered across clerkship, fellowship and industry positions. The program does not collect salary information.

Originally only offered in Boulder, Colorado, boot camps are now also
being held in Chicago and Toronto
where partners Northwestern Pritzker
School of Law and Osgoode Hall Law
School, respectively, are located.

In 2016, Stephanie Drumm was a
second-year law student at Colorado
Law and took part in the TLA
program.

She interned at Bryan Cave, where
she worked with an early-stage
startup for three months and then
took her experience into the firm to
help institutionalize processes to help
other clients.

At the end of her internship, the
firm hired her to stay on through
her third year and ultimately gave
her a permanent job after gradua-
tion, where she is now a partner-track
associate.

TLA and the internship “made a
huge difference being able to sur-
vive through law school and pay bills,”
Drumm says. The $30 per hour she
made while on the internship allowed
her to take out fewer loans. Today,
she says she’s considered a firmwide
expert on handling capitalization
tables in Excel, a skill she learned at
the boot camp.

Drumm says that the financial
understanding she gained through the
boot camp has been invaluable for her
practice, which includes due diligence
review of early-stage startups.

“You don’t learn about business
financials and operations in law
school,” Drumm says.

In 2019, Henderson anticipates
having over 90 students from 18
schools take part in IFLP’s boot
camps. There will be 14 paid slots for
students seeking seven-month place-
ments, and the rest will be in 10-week
placements.

Even though programs like IFLP
show promise, this type of program-
ing may be a double-edged sword for
some early-adopting programs.

Katz worries his program may lose
some of its edge as higher-ranked
schools focus on this subject-matter
area.

“If we’re really, really right about
this, then being first isn’t necessarily a
huge advantage,” he says.

And, while many academics as well
as practicing lawyers say that more
will change with regard to how the
profession uses technology, no one
knows when that will happen.

“It’s not inappropriate to say a
bunch of schools have gone and made
different types of offerings around
these topics,” Katz says, “and the jury’s
out about what it’s all going to mean
and how it’s all gonna play out.”
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A WAVE OF HIGH-PROFILE BAD BEHAVIOR HAS PUT SCRUTINY ON JUDGES

BY WENDY DAVIS
JUDGE JOHN MURPHY was presiding over a criminal calendar in Brevard County, Florida, when he grew incensed with public defender Andrew Weinstock, who had refused to waive a client’s right to a speedy trial.

Murphy became so angry that, in one of the most famous judicial outbursts, he challenged Weinstock to a fight.

“You know if I had a rock I would throw it,” Murphy, a retired colonel in the U.S. Army Special Forces who served in Afghanistan, told Weinstock. “If you want to fight, let’s go out back and I’ll just beat your ass.”

The two men then went to the hall, where a fracas ensued.

Weinstock would later say he was punched by Murphy, while Murphy would insist that Weinstock was the aggressor. The scuffle only ended after a courthouse deputy separated the two men.

Upon Murphy’s return to the courtroom, he presided over eight criminal cases—without a defense lawyer present.

More than 18 months later, the Florida Supreme Court removed Murphy from the bench.

“Judge Murphy’s grievous misconduct became a national spectacle and an embarrassment to Florida’s judicial system,” the justices wrote in an opinion issued in December 2015.

The incident—which was captured on video and can still be seen on YouTube—may have been unusually public, but Murphy isn’t the only jurist to engage in questionable conduct. Across the country, judges are creating embarrassing headlines when they are accused of abusive behavior toward lawyers and litigants.

R-E-S-P-E-C-T

“Judges hold a position of authority within our legal profession,” says Jayne Reardon, executive director of the Illinois Supreme Court Commission on Professionalism. “In the judicial canons, judges are called upon to be leaders when it comes to civility.”

State and federal codes of judicial conduct require judges to be patient, respectful and courteous to
everyone in the courtroom. Despite these admonitions, Reardon, who works to promote integrity and civility in the profession, believes the tenor and discourse among judges, lawyers and litigants have deteriorated as norms of acceptable behavior outside the courtroom have shifted. “What is civility in this day and age is subject to interpretation,” Reardon says. “To try and get back to a situation where we embrace civility and collegiality as a profession is a ways off.”

But Reardon says there’s a lot at stake: public trust in the judicial branch and legal system, respect for the courts, and confidence in the rule of law. Reardon says it’s incumbent on judges to model professionalism in their courtrooms, respect all parties and shut down incivility when it starts.

“We call on judges not only to exemplify courteous behavior and civility but also to require that of other courthouse personnel and lawyers who come before them,” she says.

But it’s no secret that judges don’t always exhibit those qualities. Some of the most high-profile examples of judicial bullying have occurred in criminal cases, where emotions on all sides often run high.

“Unfortunately, the system is full of bullies, even in very high places,” Abbe Smith, a professor at Georgetown University Law Center, observed in a Hofstra Law Review essay. “Criminal defendants are regular targets and so are their lawyers. Getting slapped down, dressed down, and put down is part of the job.”

Smith wrote that in one of her first cases, a judge in Philadelphia criticized her for bringing up a U.S. Supreme Court case. “Are you citing a U.S. Supreme Court case in this courtroom? Do you know where you are?” he asked her.

Smith, who directs the criminal law and prisoner advocacy clinic at Georgetown Law, says she was “probably struck mute for four, five seconds,” before answering that the law set out by the Supreme Court applied in all courtrooms.

Benes Aldana, who serves as president of the National Judicial College, an ABA-sponsored institute for the continuing education of judges, suggests arbitrers take this approach: “Start out with Aretha Franklin’s advice of ‘respect,’ and carry it throughout the whole proceedings.”

Aldana, a former chief trial judge for the U.S. Coast Guard and a member of the ABA Judicial Division and Litigation Section, says the burden is on judges to maintain decorum in the courtroom and to ensure civility. The NJC offers a variety of classes and workshops to help judges navigate the emotions and responsibilities of the job.

“Bullying is never OK,” Aldana notes, while acknowledging the pressure judges face on a daily basis. “It starts out with basic respect. You’re in an adversarial process from the beginning to the end. But even though I say in the courtroom the burden is on the judge, lawyers also have responsibility, the clerks, the entire courtroom.”

ABA Judicial Division Chair Toni

“In the judicial canons, judges are called upon to be leaders when it comes to civility.” —JAYNE REARDON

“Unfortunately, the system is full of bullies, even in very high places.” —ABBE SMITH

PHOTO BY SAM HOLLENSHEAD/GEORGETOWN LAW; COURTESY OF ILLINOIS SUPREME COURT COMMISSION ON PROFESSIONALISM

PHOTOS COURTESY OF THE ABA AND CUNY LAW SCHOOL; ALIMOND STUDIOS
E. Clarke, a judge in the Circuit Court for Prince George’s County, Maryland, agrees that civility is a shared responsibility and is bringing attention to the issue through the creation of the William D. Missouri Civility Award, an annual honor named after a revered jurist who embodied courtesy in the courtroom. The award will be presented posthumously at this year’s ABA Annual Meeting to Judge Missouri, who served for 25 years in the Maryland court system and died in 2017.

“If you talked to any lawyer who was in front of him, he was fair, he was never mean to lawyers and he wouldn’t tolerate them being mean to each other,” Clarke recalls. “I don’t think anyone dared to disrespect him. He was civil ... he treated everyone with respect.”

Clarke adds that while some judges may have an issue with demeanor, in her experience, “I’ve seen lawyers do some ridiculous stuff,” but despite this, “I think most judges do their best to be fair and impartial.”

‘BLACK ROBE DISEASE’
And when they do go too far, judges can be admonished, face censure or be recalled.

“There are judges who run the gamut from simply overly stern to downright abusive,” says Charles Gardner Geyh, a law professor at Indiana University Maurer School of Law.

But Aldana argues that in an age of political polarization, the public and campaign donors have become more attuned to the judiciary, resulting in more scrutiny of judicial performance. And with a 24/7 news cycle and cameras in the courtroom, bad behavior caught on tape can go viral and destroy careers.

“YouTube has examples of recent events where judges have lost their temper,” Aldana says. “In our civility courses, we not only talk about ways to deal with civility in the courtroom, but the whole mindfulness of our own personal well-being as a judge.”

Steve Zeidman, a professor at the City University of New York School of Law and director of the criminal defense clinic, has dealt with the ire and irritability from judges that is common in the antagonistic and often tragic field of criminal defense work.

He says judges will express their antipathy by writing out orders if lawyers talked too long or interrupt defense counsel to ask questions such as, “Is that all?”

“There is such a focus on speed and efficiency that when defense lawyers try to slow things down to have a conversation about the facts or the law, they are inevitably seen as obstructionist,” he says.

Zeidman adds that judges also can display a temper with criminal defense attorneys when their clients
reject plea deals.
When Zeidman was a young defense lawyer in Manhattan, he encountered a judge who reacted vindictively when he learned that a defendant was rejecting a plea deal: The judge scheduled the case to go to trial the day before Zeidman was slated to take a trip to Mexico. Zeidman says he rescheduled his trip and took the case to trial, and his client was acquitted.

He says he later mentioned in a written evaluation of the judge that he was “vengeful, spiteful and tried to ram a plea down a defendant’s throat.”

The judge apparently learned of the evaluation. Zeidman says he was stopped by the judge in the hallway one day and told, “What goes around comes around.”

Zeidman, who served on the New York Mayor’s Advisory Committee on the Judiciary from 2008 to 2010 and from 1996 to 1999, says that judges are often evaluated based on their efficiency—meaning the number of cases they dispose of in a given time period. This focus on moving cases along may contribute to some judges’ impatience on the bench, he says.

Of course, judges face pressures beyond just needing to move their cases along.

“The job of a judge is very isolated, very demanding—very difficult,” says Juanita Bing Newton, a judge for the New York State Court of Claims who now serves as dean of the New York State Judicial Institute at the Elisabeth Haub School of Law at Pace University, which trains judges throughout the state. “Imagine you are sitting there and have the lives of children in your hand,” she says. “Or have to decide whether or not to set aside a verdict in a multimillion-dollar malpractice case.”

She adds that judges, like everybody else, have stress in their lives. “They have mortgages to pay—have issues with family and home,” she says, adding that the institute offers sessions for judges on wellness and coping with stress.

But beyond simply manifesting stress, some judges also exhibit “black robe disease”—the courthouse
“When I became a public defender, never in a million years did I expect I would end up in handcuffs.”
—Zohra Bakhtary

Lingo describing judges who abuse their authority.

“Black robe disease is very real,” says Larry Turner, the Gainesville, Florida, attorney who represented Murphy at his judicial conduct hearing, and who was also a judge for eight years.

He says it’s easy for judges to lose perspective after they’re on the bench. “All of a sudden everybody is kissing your ring and laughing at your jokes,” Turner says.

“No one tells you when you do something wrong,” he adds. “After a while, you just don’t have any real concept of what kind of job you’re doing.”

“‘Robe-itis’ is the more scientific term,” Aldana says with a laugh. “I think judges need to be aware that even though they’re the judge, the position doesn’t belong to them. It’s one of the things I try to tell new judges is that humility is the No. 1 trait you need to have as a judge.”

One criminal defense lawyer who experienced the wrath of a judge firsthand is Clark County, Nevada, public defender Zohra Bakhtary.

At a hearing in May 2016, Bakhtary was arguing that her client shouldn’t be sent to jail when Justice of the Peace Conrad Hafen told her to stop talking.

“Zohra, be quiet,” he said, according to a transcript of the proceeding.

When she attempted to continue arguing, Hafen said, “Do you want to be found in contempt?”

She started to answer, but was only able to get in a few words before Hafen told her again to be quiet. “Now. Not another word,” he said.

When she again tried to interject, Hafen ordered her handcuffed. He then proceeded to sentence Bakhtary’s client to six months in jail on a misdemeanor petty larceny count. (The client was later freed by a different judge.)

Hafen released Bakhtary a few minutes later. Four days after the incident, Hafen said, “Do you want to be found in contempt?”

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Several months later, Clark County Judge Gloria Sturman reversed the contempt finding.

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inappropriate remarks in court. Among other instances of questionable conduct, he commented on a public defender’s accent and asked if she was a citizen of Mexico.

When she said she was a U.S. citizen, Kreep said, “I wasn’t planning on having you deported.”

He also referred to people by nicknames he gave them. Among the people nicknamed by Kreep were three interns in the San Diego Public Defender’s Office—whom he called “bun head,” “Ms. Dimples” and “Shorty,” who was actually 6 feet 7 inches tall.

Kreep’s creation and use of the nicknames “created an atmosphere in the courtroom that was too informal and lacked appropriate decorum” and didn’t convey appropriate respect, the Commission on Judicial Performance wrote in an opinion filed in August 2017. While the judicial commission allowed Kreep to keep his job, voters weren’t as forgiving. In November 2018, Kreep lost his bid for re-election.

**TURNING THE OTHER CHEEK**

Even where a situation goes entirely off the rails, it’s not a given that judges will be removed.

In Murphy’s case, for instance, the Florida Judicial Qualifications Commission recommended only a public reprimand, suspension without pay for 120 days, a $50,000 fine and other sanctions that stopped short of removal. But the Florida Supreme Court took the rare step of removing Murphy from the bench.

The judges said Murphy’s “egregious conduct demonstrates his present unfitness to remain in office.”

**THE JOB OF A JUDGE IS VERY ISOLATED, VERY DEMANDING—VERY DIFFICULT.”**

—JUDGE JUANITA BING NEWTON

“Furthermore,” they wrote, “where a judge’s actions erode public faith in the courts, removal is appropriate.”

But Turner says there’s more to the story than what was seen on video. He says Murphy’s use of the phrase “I’ll just beat your ass” meant he planned to verbally scold Weinstock, not physically attack him.

**“YOU JUST GO IN THERE WITH YOUR HELMET ON.”**

—CHARLES GEYH

Weinstock said he was hit twice by Murphy. But Murphy said he only took “defense actions,” and that Weinstock was the one who started the physical fight.

Lawyers who appear in court regularly and bear the brunt of judicial outbursts as part of their jobs are much less likely to lodge official complaints than litigants.

In California, the most populous state in the country, the Commission on Judicial Performance received 1,251 new complaints about 878 different judges in 2017. Attorneys initiated only 4 percent of those complaints, while 86 percent came from litigants or their family and friends.

And in New York, the state with the most active lawyers, the state Commission on Judicial Conduct received 2,143 new complaints in 2017, with 1,832 coming from criminal defendants or civil litigants, and 53 from attorneys.

One reason why lawyers don’t complain is they simply develop thick skins.

“Obviously you become calloused at some point,” says Las Vegas-area attorney Dominic Gentile, who represented Bakhtary in her successful proceeding to vacate Hafen’s contempt finding. “If you don’t become calloused, particularly as a criminal defense attorney, you’re going to do a lot of bleeding.”

Additionally, some attorneys worry that complaining will backfire against themselves or their clients.

Georgetown’s Smith adds that public defender’s offices sometimes hesitate to complain about judges who bully lawyers if the judges are perceived as issuing fair rulings.

She says the people in charge of a public defender’s office will often ask themselves whether a judge who has exploded in court is “somebody we should complain about,” or whether it would be better to “put up with the outburst because it’s a good judge.”

Attorneys have another reason for not complaining—they often work regularly with the same judges and learn to choose their battles wisely. Like many of his colleagues, Geyh, who practiced law in Washington, D.C., says that even when he saw judges who were abusive, he never protested.

“It never occurred to me to complain, because the judge is going to stay on the bench and will just remember you as the guy who complained,” Geyh says. “Judges develop reputations as stern, crotchety and so forth. You just go in there with your helmet on.”
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Leading law practice management software providers have differing views when it comes to allowing third parties to design and customize their own integrations. By Sean La Roque-Doherty
As the 2018 Clio Cloud Conference got underway in New Orleans last October, more than 50 companies competed in the inaugural Clio Launch/Code competition to see who could come up with the most creative and innovative integrations for Clio. Tali, a voice-based time tracking system, took home the $100,000 prize and was among five finalists that included ClientSherpa, Logikcull, myFirmData and Your Firm App.

However, the real winner may very well have been the contest’s sponsor. Established in 2008, the British Columbia-based Clio has grown large in relation to its competitors in the legal practice management software field and in the number of integration partners.

“Clio is the 800-pound gorilla of practice management,” says Robert Ambrogi, attorney, media and technology professional and author of the blog LawSites. Clio boasts 150,000 users in 90 countries, more than 300 employees and 125-plus app integration partners. After Clio, “it’s difficult to gauge market share, as none of these companies reveal customer numbers,” Ambrogi says.

For Clio co-founder and CEO Jack Newton, the company’s growth has been fueled, in part, by its willingness to allow third-party integrations. “Clio can do a lot with its resources but can’t do it all,” he says. “There’s a long tail of features and functionality the legal marketplace needs. No single company can and should try to satisfy those sets of requirements.”

Legal practice management software is most efficient when it integrates with other applications and shares data. Law firms must reuse the data created in LPM software for other tasks, such
as managing Outlook email, automating document production and maintaining the law business with third-party accounting applications. It will save time and labor for high-value legal services.

LPM software providers use an application programming interface to communicate with third-party software. An API is a customizable software interface that, among other things, ensures data integrity when users extract information from LPM software to other software.

How software providers use and allow third parties to consume their APIs impacts LPM business and software development. API consumption also has ramifications for two legal industry trends.

First, competition among LPM providers is heating up. In the 2017 and 2018 ABA TechReports for Practice Management, legal professionals’ adoption of practice management tools had hit a plateau.

Second, law firms are looking to make their operations more efficient. Firms must assess how LPM software integrates with other technologies and fits their plans for cloud computing, mobile and social applications, and the use of big data and artificial intelligence—even blockchain.

The ABA Journal reached out to four top providers of LPM software-as-a-service to discuss its API offerings: MyCase, PracticePanther, Rocket Matter and Clio. We found the API offerings ranged from MyCase, which keeps a tight rein on their API, to Clio, which embraces an API economy. In an API economy, a company exposes its digital services through APIs for third-party developers to create customer-focused apps.

**INTEGRATION STATIONS**

Dividing the cloud-based LPM market into two categories seems easy: 1) software that integrates with third-party applications to address customers’ business and practice needs, or 2) all-in-one software that attempts to satisfy all customers’ needs without combining with third-party software. But the truth is more nuanced, Ambrogi says.

Some LPM companies explicitly pursue third-party integrations. “The leading example is Clio, which strives to be a complete ecosystem of applications for practicing lawyers,” Ambrogi says.

Clio has an open API specification. The API, developed with Ruby on Rails, gives customers and developers secure access to data in a Clio account. Besides the open API and documentation, Clio provides a dedicated support line and hosts a public Slack channel for developers to collaborate and share data. There is also a Ruby Client library for Clio’s API on GitHub.

Newton laid out examples of using integration partners, such as Alt Legal and Brevoir River Studios’ PrimaFacie software, to satisfy some user requirements. Alt Legal designs workflows for intellectual property lawyers to submit documents to the United States Patent and Trademark Office and track USPTO deadlines. PrimaFacie offers a case management system for immigration lawyers and a library of auto-filling immigration forms.

“It is fair to say Clio would never independently develop functionality that is specifically tailored to IP lawyers because that market is not large enough to impact our broader customer base,” Newton says. Moreover, when it comes to specialty areas of law, “Clio would rather partner with someone that has domain expertise,” he notes.

“You could not launch a product like Clio today without a certain level of integration,” adds Andrew Gay, Clio’s manager of product partnerships. The question is not whether to integrate. “The question is how far you go, and how much control you’re willing to give up,” Gay says. “You can’t exist today without some level of integration, because lawyers like their Office 365 and Google Calendar.”

In contrast to Clio are products like MyCase and Rocket Matter that have chosen to control their API offering to customers and third parties. “MyCase is not particularly focused on third-party integration, although the company considers integration an option,” says Nicole Black, legal technology evangelist for MyCase and a regular contributor to ABAJournal.com. The Goleta, California-based company’s software integrates with essential third-party products such as Dropbox, Google Calendar, Microsoft Outlook Calendar and QuickBooks Online. “At the end of the day, in deciding whether to integrate or build a feature, [MyCase’s] goal is to provide a cohesive, stable and secure experience for our customers,” Black says.

Like MyCase, Rocket Matter tightly controls the use of APIs to connect and share data with select technology partners. The Boca Raton, Florida-based company has more integrations than MyCase. “Where we can, we build the functions ourselves,” says Larry Port, Rocket Matter CEO. “But when it comes to a major piece of stand-alone software, if we tackle it, we will dilute our software across the board. The more you expand the offering, it’s like adopting more children—it becomes untenable over time.”

Jared Correia, founder and CEO of Red Cave Law Firm Consulting, thinks that the vast majority of LPM providers are starting to choose integrations and are setting up a platform rather than offering simple...
Although Rocket Matter does not open its API like Clio, the company modernized its software in 2012 with an API infrastructure to quickly respond to customer needs.

Like Clio, Rocket Matter publishes information on its API. “If a firm wants custom reports, information out of their account or to connect a back-end accounting package, they can do it,” Port says. Rocket Matter is not missing out on letting customers tie things together with an open API. The company has numerous technology partners and integrations. “We rarely miss a sale because we don’t have an integration or can’t connect to something,” he says.

According to Black, MyCase has a process to understand the roots of customer needs, see how widespread those needs are among all customers and look at the broader market. The company’s goal is to “add value for the most number of customers that we can,” Black says. “Clio develops the core features and functionality that 80 percent of lawyers need,” Newton says. If it does not meet that threshold, Clio will probably not build it, according to Newton. Gay added that the company is clear internally about the features it includes that are core to the Clio experience. “The apps that live around the core edges of Clio are practice-specific and productivity tools,” Gay says.

PracticePanther “prioritizes natively building the software in-house,” Helberg says. The company draws the line between providing fully integrated software and third-party integrations when it believes the feature is a “must-have,” or another company is doing a lights-out job with that feature.

Each of the LPM providers offers a core package that includes secure messaging, billing and invoicing, calendar and event management, contact and matter management, document automation and management, time and expense tracking, task management, trust accounting, reporting, workflows, client intake, payments and portals, and mobile apps for Apple iOS and Google Android. Depending on the provider, core software offerings can include conflict checking and customer relations and lead management.

Ambrogi observes that the lineup of features varied little among the product offerings but emphasized that each product handles functions differently. For example, MyCase supports a mail agent in its software to receive messages into matters rather than building apps or integrations with individual mail clients such as Outlook. One of the most significant variations Ambrogi sees is an accounting program. He notes that some platforms have robust accounting, others have basic or no accounting, and others integrate with QuickBooks, Xero or other accounting software.

Port agrees with Ambrogi. “The big divide regarding integration is whether there’s a full accounting package,” Port says. Rocket Matter integrates with QuickBooks Online but is looking to expand its accounting integrations. “Once QuickBooks sunsets its desktop version, law firms are going to look at other accounting packages,” Port adds.

Law firms expect LPM software to synchronize with accounting software of some kind, or support built-in accounting software.

“That wasn’t the expectation several years ago,” Correia says. There’s also a growing expectation for LPM to provide or sync with customer relationship management software. “No one has done CRM well,” states Correia, who argues that this was one of the reasons Clio acquired law firm CRM and lead management software provider Lexicata. Meanwhile, Black points out that this is why MyCase continues to build out its lead management functionality.
PROS AND CONS OF LPM INTEGRATION

Customer requirements determine LPM software offerings, but providers satisfy those needs with in-house development resources or integrate with third-party developers. Whether to use in-house resources or an integration partner impacts an LPM provider’s business and software development.

“LPM providers that use a third-party integration model have the potential for greater growth,” Ambrogi says. Unlike Salesforce, “practice management companies face the problem of one size does not fit all law practices,” Ambrogi adds. By providing core functionality and integrating with third-party apps such as Alt Legal and PrimaFacie, Clio’s potential market grows exponentially.

“One advantage of integration and using third-party software are the channel sales coming into your product,” Correia adds. For example, a law firm may look for LPM software that integrates with its choice of accounting or CRM packages.

“An integration model also provides a mix of ideas,” he argues. One company, one product and one set of executives become stagnant over time. “When a company has API and integration partners, it has people on the outside pushing the company in different directions, and that can be helpful in software development.”

The reason companies don’t do integrations is because they want to retain control over their systems, he adds. When third parties develop your software, they may not build it in the same way you do.

MyCase, PracticePanther and Rocket Matter agreed that building software in-house requires more time and resources than integrating with a third-party developer.

“Building in-house requires the full team’s participation on the design, scope, feature set and ultimate development—integrating with a third party just requires connecting to an existing API,” Helberg says.

“Companies that choose to keep development in-house have the advantage of offering an integrated product in which all the features are natively compatible with each other,” Ambrogi says. Third-party software can sometimes be “glitchy,” he says, adding a single integrated software is more likely to have all its features work well with each other. “That significantly improves the user experience and enhances a company’s ability to provide customer support.”

Black and Port agree that integration partners could introduce complexity. “There’s a lot less complexity and more stability when integrations are used only when necessary,” Black says. Integrations can cause issues if they’re not managed well—such as security issues, inconsistent customer service and support, and different end-user experiences.

“But sometimes they are the right solution for a particular customer need,” she adds.

An open API needs to be “well-thought-out and requires a meaningful initial development effort,” Newton states. Then it’s an “ongoing effort to support the API,” he adds, “requiring careful planning and attention from a product road map perspective.

“If you don’t have a platform or open API, you can do anything you want.” But the moment you publish an API and customers consume it or third parties develop it, “there are implicit promises that go along with that,” Newton states. For example, supporting an API for a given time. When a new API version is available, you need to communicate to partners with a deprecation plan for the old API and an upgrade plan for the new.

When companies such as Clio support third-party integrations, they get other people to develop their software, Correia says. That saves development costs and human capital.

Integrators can also watch a company like Lexicata mature over several years and when the time is right, acquire them. That saved Clio from developing CRM software in-house and shows the advantage of the platform approach. “You can cherry-pick partners for acquisition,” he says.

Integration also impacts the pricing model, Correia says. For MyCase, PracticePanther and Rocket Matter, the more features built into the software, the less it costs the customer. With the Clio integration model, customers can add apps to complete their software requirements, but the additional subscription costs add up. That’s the “downside of integration,” he says.

You might get a lawyer or law firm that analyzes its needs and may not need document management or another feature. In which case the firm would look for LPM software that doesn’t have a DM feature to get a lower subscription cost or price point. “But few lawyers get to that granular level of discussion,” Correia says. “The average law firm uses 20 percent of the features of any given software, including LPM.”

THE DATING GAME

There are many ways for LPM providers to reach out to third-party developers. The simplest is organic. “Reach out to people and have people reach out to you,” Correia says. For example, all the LPM providers we talked to reached out to Google, Microsoft and QuickBooks for integrations.

Other ways to acquire technology partners include referrals from customers, direct marketing campaigns and trolling industry trade shows like ABA Techshow and Legalweek for startups. “Hackathons are also an excellent source to find people who are developing good software,”
Correia notes.
Attracting third-party developers is a matter of market share and openness. "The main thing attracting developers to Clio is scale," Newton says. "Clio is the fastest way to build awareness and get a product in front of customers." According to Gay, Clio has developers that launch apps on the Clio platform and in less than 24 hours report they have their first customer.

With the Lexicata acquisition, Clio put a spotlight on its App Directory. "The acquisition provides an obvious exit for Clio integration partners," Correia says. It further encourages software developers to build products on Clio's platform. Clio and PracticePanther promote their open API on their websites and invite third-party technology partners to apply for access. MyCase and Rocket Matter take the initiative and reach out to third-party developers as needed. But like a dating game, not everyone who applies or gets that phone call gets access to an LPM provider's customers. It's a selective process.

Rocket Matter does not actively recruit people to build on its API. "Some have come, but it's not something we actively do," Port says. PracticePanther "receives inbound requests from third-party integration partners on almost a daily basis due to its size and reputation in the market," Helberg says. The company vets the requests and integrates with partners that have "compelling software solutions that solve customer needs, such as LawToolBox," he adds. LawToolBox is a calendar integration for court deadlines that integrates with PracticePanther and Rocket Matter and works with Clio.

THE LONG GAME
MyCase is not going to change its approach to integration, according to Black. The company's integration responds to customer input and needs. "At the end of the day, our goal is to provide the features that our customers need to run their firm successfully," Black says.

"Rocket Matter's API exposes everything you could want from the system—and we consume it ourselves," Port says. But like MyCase, Rocket Matter differs from Clio regarding integration. "Our user base is savvy, but they're not wanting to spend their time maintaining apps," he adds.

"PracticePanther will continue to add features and integration partners to benefit law firm customers," Helberg says. And he's excited for new features and integrations to come to the legal landscape, stemming from artificial intelligence, blockchain and automation.

Last year was the tipping point for Clio. "The success we've had in the last year is the overnight success six years in the making," Newton says. After the 2013 launch of Clio's API and the company's continuing investment in its platform, Clio reached critical mass, attracting attention and increasing the number of companies looking at Clio's platform as the single go-to-market strategy. "That's the vision that we started with six years ago: Someone will build a stand-alone business on top of Clio," he states.

Clio is getting traction with mid-size law firms with 50 to 100-plus attorneys, according to Newton. These larger firms are adopting Clio and its API to integrate the LPM software with larger systems, such as enterprise resource planners or a legacy time and billing system.

Lawyers and law firms drive the available features in LPM, but managing third-party integrations is not for every law firm. Although Clio, MyCase, PracticePanther and Rocket Matter integrate third-party applications in their LPM offerings, only Clio offers a directory of third-party apps.

Cloud-based LPM software is a long way from an API Economy. But as Clio moves into new territory, attracting larger firms, the app software model may take hold, and other providers may follow suit.

Lexicata to Grow on Clio
In October 2018, Clio purchased Lexicata, which integrated with Clio for four years before the acquisition. Lexicata acquired more than one-half of its customers through its Clio integration. According to Newton, the Lexicata acquisition was designed to deliver a suite of services that solve the end-to-end client journey from lead management to customer management. The company aims to offer the fruits of its acquisition through a new product offering called Grow. There's little doubt that Grow will integrate with the Clio Referral Network. Referrals are a significant source of new clients for law firms.
Choosing LPM Software: A Buyer’s Market

Law firms have many choices for LPM software. It’s a buyer’s market. Besides the cloud-based applications featured in “Sharing Economy,” page 54, the market bears much competition from the likes of CASEpeer, Centerbase, Filevine, Legal Files, Orion Law Management Systems, Perfect Practice, Tabs 3 Software, Thomson Reuters Elite and Zola Suite.

No one software fits all law practices because firms come in all shapes and sizes, with various practice areas and irregular in-house technical support.

In the ABA’s Legal Technology Resource Center’s 2018 Legal Technology Survey Report, over 90 percent of attorney respondents said they were satisfied with the features and functions of their law practice management software. That response isn’t surprising, considering the average law firm, according to Jared Correia, founder and CEO of Red Cave Law Firm Consulting, uses only 20 percent of the features of any given software.

That 20 percent is one end of the 80/20 rule, or the Pareto Principle, which states that 80 percent of effects result from 20 percent of causes. The principle applied to software development proff ers that 80 percent of software users use only 20 percent of its features.

With the Pareto Principle, and the time and labor required to change LPM providers, most law firms would rather continue with their current software than switch to something new unless the new software is a substantial improvement to what they are currently using.

However, there are few differences in the core offerings of Clio, MyCase, PracticePanther and Rocket Matter (See chart “LPM Core Features/Functions,” page 61).

LPM providers differ on how they implement features, whether features are included in core offerings and the extent of third-party software integrations. For example, Clio and PracticePanther power their client payments feature with LawPay. MyCase and Rocket Matter have their own payment features. Clio fulfills conflict checking via a third-party app not included in the core offering. The other providers develop software or perform the task with search, such as MyCase, but add it to their core offering.

Over the years, LPM providers have expanded their core features to respond to customer requirements and expectations of what LPM software should offer. According to the Internet Archive Wayback Machine, in 2008, Clio featured document management, scheduling, time tracking and billing (time reconciliation and invoice generation). Today Clio’s core package adds client portals, document assembly and...
Nicole Black, legal technology evangelist for MyCase, states the case for all providers: “When you listen to customer feedback, you understand the challenges small firms face, how to prioritize product development to meet those challenges and ensure you're delivering real value to customers as you evolve the software.”

Like Clio, MyCase, Practice Panther and Rocket Matter have added features over time in response to client requests. MyCase and Practice Panther keep the prices of their core offerings in line with Clio. Rocket Matter has the most features and the highest rate at $55 per user per month.

Firms should not only consider how many features they get for a base price but also if they use those features. Firms should assess their needs across all practice areas and compare them to LPM core offerings. Will firms use all, some or just 20 percent of LPM features? Will firms grow into using the latest core features, such as client intake, collection and customer relations, or do they already own software to accomplish these tasks?

Lastly, law firms should assess how their existing software can consume client and matter data in LPM software to output efficient work products and optimize the delivery of legal services. For this, firms need to look at how their existing software can integrate with LPM software.

Some integrations are turnkey and included with core offerings. Other integrations require third-party apps or add-ins that increase the base software price.

Firms should also investigate how much development work is needed to integrate existing software and the resources the firm must expend to implement and maintain the integrations.

<table>
<thead>
<tr>
<th>LPM CORE FEATURES/ FUNCTIONS</th>
<th>CLIO</th>
<th>MYCASE</th>
<th>PRACTICE PANTHER</th>
<th>ROCKET MATTER</th>
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<tr>
<td>Billing/Invoicing</td>
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<td>Contact management</td>
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<td>Matter management</td>
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<td>Client intake</td>
<td>C/CG</td>
<td>C (forms)</td>
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<td>Client payments</td>
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<td>Apps</td>
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<td>Customer relations, lead management</td>
<td>C/CG</td>
<td>C</td>
<td>C</td>
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Index:
- Apps = Clio App Directory offerings
- C = Core offering
- LPM = Law Practice Management
- LP (Powered by LawPay)
- CG (Powered by Clio Grow)
The ABA House of Delegates got a glimpse of the future at the 2019 ABA Midyear Meeting in Las Vegas with a sneak peek of the association’s new branding.

Executive Director Jack L. Rives presented delegates with the new logo design, which had been approved by the Board of Governors the day before. While the current ABA logo has been in use for more than 40 years, a new logo could assist the association in proving its value to both potential and current members, Rives said.

“How do you change an iconic logo?” Rives asked. “Carefully. You don’t need to make it a revolutionary change, you can do it evolutionarily.”

Rives pointed to several issues with the current ABA logo, including that it’s difficult to read and does not place enough emphasis on “bar.”

“Even though we’ve gotten used to it, those in the business say it is not artistically pleasing or designed all that well in the beginning,” Rives said.

There’s also the issue of differentiating the ABA from organizations with similar names and acronyms. Rives said there are more than 5,000 associations in the country that begin with the word “American” and end in “association.”

A user who visits ABA.com would reach the American Bankers Association, while a user visiting ABA.org would reach the American Birding Association.

NEW LOGO’S IMPACT

The ABA worked with marketing agency Finn Partners, which went through dozens of possibilities before recommending the new logo design. Burkey Belser, managing partner of Finn Partners, told the Board of Governors that his team received a positive response to the new design from four focus groups in various parts of the country.

“It’s contemporary, it pays homage to the past while moving forward to the future, and highlighting the look is the subtle colors that are used,” Rives said. “This was their recommendation, and when you look at the logo that was proposed and compare it with the current logo, you will see how much more powerful the proposed logo is.”

Rives said that the use of the new logo will coincide with the launch of the new membership model May 1.

The new membership model is designed to address a decline in dues-paying memberships and revenues, Rives said. Between 2008 and 2018, dues revenue dropped from $86 million to $67 million.

The new membership model will implement a sensible dues structure, said Rives, in part by transitioning from the previous 157 different dues price points to five dues price points by fiscal year 2020. The new dues structure was approved by the House in August during the 2018 ABA Annual Meeting. The ABA will also unveil more member benefits, including personalized content for members and a CLE marketplace that will include 650 courses by early 2020.

“We are going to do a lot to improve the member experience,” Rives said. “We are going to make it very apparent that people get a lot more than what they pay for with their ABA dues.”
ABA House of Delegates rejects changes to bar passage standard for law schools

By Stephanie Francis Ward

The ABA House of Delegates voted 334-88 against a proposal to tighten a bar passage rate standard for accredited law schools at the ABA Midyear Meeting in Las Vegas.

Language in Resolution 105 called for at least 75 percent of a law school’s graduates to pass a bar exam within two years of graduation. Under ABA rules, the House can send a potential revision—in this case for Standard 316—back to the council of the Section of Legal Education and Admissions to the Bar twice for review with or without recommendations, but the council has the final decision on matters related to law school accreditation.

As was the case in 2017, when the House of Delegates first rejected the proposal, criticism centered on what the change would mean for diversity in the profession. Two years ago, some groups called for disparate impact studies before going forward with any changes. The council responded in November 2018 with a memo addressing diversity concerns about the proposed revision, including a voluntary survey with responses from 92 law schools.

Paula Brown, who focused much of her term as ABA president in 2015-16 on promoting diversity and inclusion in the legal profession, spoke against the resolution.

“I have listened very carefully to many of the arguments that have been advanced by the council, and to be direct and frank, they just don’t hold water,” said Brown, a senior partner at Locke Lord and the firm’s chief diversity and inclusion officer. “The council has the right to ignore what we say. That does not absolve us of the responsibility to give them a very clear and strong message that we will not stand by while they decimate the diversity in the legal profession.”

Robert Grey Jr., ABA president in 2004-05, also spoke against the resolution.

“They have not delivered facts that are compelling for us to change our vote from the first time to the second time,” said Grey, a retired senior counsel with Hunton Andrews Kurth.

Daniel Thies, a new member of the council, spoke in favor of the resolution. He told the assembly there was no reason why the proposed revision would have a disproportionate impact on people of color. According to him, out of the 15 law schools that would have a problem meeting the two-year 75 percent requirement based on 2015 data, only two are historically black colleges and universities. There are six law schools associated with HBCUs, according to the resolution’s report.

“So those schools would only have to make small changes to their programs or admissions policies in order to comply. Like all regulated entities, the regulated will respond,” said Thies, an attorney with Webber & Thies in Urbana, Illinois. “I want to stress that even for those who might have problems, they don’t have their accreditation pulled tomorrow. Give and take, back and forth, and they get two years to come back into compliance.”

No accredited law school has ever been out of compliance with the current version of Standard 316, and there are various ways to meet its current requirements. One is for at least 75 percent of graduates from the five most recent calendar years to have passed a bar exam, or for the school to have a 75 percent pass rate for at least three of those five years.

A school can also be in compliance if just 70 percent of its graduates pass the bar at a rate within 15 percentage points of the average first-time bar pass rate for ABA-approved law school graduates in the same jurisdiction for three of the five most recently completed calendar years. After the resolution was voted down, Barry Currier, the ABA’s managing director of accreditation and legal education, released a statement.

“Because this is the House’s second rejection of this proposal, the council’s options are to abandon the effort to revise the standard; propose a different revision; or reaffirm and implement the changes. The timetable for the council’s consideration of the matter has not been set,” Currier said. “The council understands this is a complex matter. Revisions to the existing standard on bar passage outcomes provide more straightforward and clear expectations for law schools and provide regulation and process that are more appropriate for today’s environment.

“Most students go to law school to become lawyers. Becoming a lawyer requires passing the bar exam. How well a school’s graduates perform on the bar exam is a very important accreditation tool to assess a law school’s program of legal education.”

Kyle McEntee, executive director of Law School Transparency, a group that focuses on law school reform, told the ABA Journal in an email that he was disappointed the resolution did not pass.

“Standard 316 is good policy. I hope and expect the Section of Legal Education to adopt the standard,” he wrote. “Then, finally, it can hold law schools accountable for failing to prepare its graduates for entry to the legal profession.”
ABA Events

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Through June 2019
Mastering the Art of Commercial
Real Estate Deals Webinar
Section of Real Property, Trust and Estate Law • CLE Credit

March 6-8
33rd Annual National Institute on White Collar Crime
Location: New Orleans
Criminal Justice Section • CLE Credit

March 11-15
ABA/IPT Advanced State Income, Sales/Use & Property Tax Seminars
Location: New Orleans
Section of Taxation • CLE Credit

March 22-23
Admiralty and Maritime Law Conference
Location: New Orleans
Tort Trial & Insurance Practice Section • CLE Credit

March 28-30
Business Law Section Spring Meeting
Location: Vancouver, British Columbia
Business Law Section • CLE Credit

April 3-5
19th Annual U.S. and Europe
Tax Practice Trends Conference
Location: Paris
Section of Taxation • CLE Credit

April 3-5
Motor Vehicle Products Liability Conference
Location: Coronado, California
Tort Trial & Insurance Practice Section • CLE Credit

May 1
Law Day: Free Speech, Free Press, Free Society
Location: Washington, D.C.
Division for Public Education
ABA ‘will bend the moral arc towards justice,’
President Bob Carlson says

By Lorelei Laird

The ABA sets the gold standard for the American legal profession, ABA President Bob Carlson told the ABA House of Delegates at the ABA Midyear Meeting in Las Vegas—and it will never stop championing due process and the rule of law.

Carlson, a shareholder at Corette Black Carlson & Mickelson in Butte, Montana, said the ABA’s forte is its united voice for American lawyers—even if sometimes the association is “a very large, raucous family.” Even lawyers who aren’t members are touched in some way by the ABA, he said, via law school accreditation, the ABA Model Rules of Professional Conduct, the advocacy work of the ABA Governmental Affairs Office or membership in the bar groups with delegates in the House.

“We share values as lawyers no matter where we’re from, no matter what kind of law we work in or what our politics may be,” he said.

Politics was a theme in Carlson’s speech, starting with a reference to the government shutdown that ended Jan. 25. He thanked the government employees who went without pay, particularly those in public safety roles who worked without pay for more than a month, and he urged Congress and President Donald Trump to prevent another shutdown.

“Failure to fund our federal courts and institutions of justice is an attack on due process and the rule of law,” he said to applause.

Carlson touted the ABA’s work on issues relating to the courts and the rule of law, particularly in immigration. He also approvingly quoted Chief Justice John G. Roberts Jr., who said in November that we do not—as Trump had suggested—have “Obama judges or Trump judges,” but a dedicated group of judges doing their best to dispense justice.

“At times, it seems that compromise is beyond reach, and our great experiment in democracy will fail. But our institutions have helped us weather political scandal and extremism,” he said. “In the end, the rule of law has prevailed.”

Carlson also touted several of the ABA’s initiatives—first and foremost, pro bono work. Public service is crucial, he said, and the ABA offers many opportunities to provide pro bono, including the Disaster Legal Services Program—a project of the Young Lawyers Division—Pro Bono Week and the ABA Standing Committee on Pro Bono and Public Service.

Another initiative that got a mention is the ABA’s Working Group to Advance Well-Being in the Legal Profession, an attempt to address the consistently high rates of mental health and substance abuse problems in the profession.

Carlson urged the audience to take advantage of the resources the ABA offers and raise awareness of the problem because “we cannot afford to lose this battle.”

Carlson also paid tribute to John Bouma, a member of the House of Delegates who died in January. Bouma served as chair of the Snell & Wilmer law firm for 32 years.

Carlson closed by promising that the ABA will always speak out when lawyers are under attack.

“It will do this from a position of strength, bolstered by the work done in this House,” he said. “We will bend the moral arc towards justice.”

ABA Notices

2020 REGULAR STATE DELEGATE ELECTION

Pursuant to Section 6.3(a) of the ABA’s Constitution, 18 states will elect State Delegates for three-year terms beginning at the adjournment of the 2020 Annual Meeting. The states conducting elections and election rules and procedures can be found at ambar.org/2020-statedel.

DELEGATE-AT-LARGE ELECTION

Pursuant to Section 6.5 of the ABA’s Constitution, six Delegates-at-Large to the House of Delegates will be elected at the 2019 Annual Meeting for three-year terms beginning with the adjournment of that meeting and ending with the adjournment of the 2022 Annual Meeting.

Candidates are to be nominated by written petition. The deadline for petitions for the 2019 election in San Francisco, California, is May 15. For rules and procedures, go to ambar.org/delegate-at-large.

GOAL III MEMBERS-AT-LARGE ON THE NOMINATING COMMITTEE

The ABA President will appoint one Goal III Minority Member-at-Large and one Goal III Woman Member-at-Large to the Nominating Committee for the 2019-2022 term. These appointments will be made from broadly solicited nominations from the diversity commissions, sections, divisions and forums, state and local bar associations, and the membership at large. If you are interested in submitting a nomination or have questions, contact Leticia Spencer (leticia.spencer@americanbar.org, 312-988-5160) c/o Office of the Secretary, by May 3.

AMENDMENTS TO THE ABA CONSTITUTION AND BYLAWS

The Constitution and Bylaws may be amended only at the ABA Annual Meeting upon action of the House of Delegates. The next meeting is Aug. 12-13 in San Francisco, California. The deadline for any ABA member to submit proposals is March 8. Proposals will be published in the July/August ABA Journal. For details, go to ambar.org/AmendmentsNotice.

Mary L. Smith,
ABA Secretary
Signing Up for Service
Schiff Hardin partner and former Green Beret leads firm’s pro bono pilot program for veterans
By Lyle Moran

When one of Mir Ali’s colleagues at Schiff Hardin contacted him last year to ask whether he thought the firm would be interested in joining a national network of attorneys providing pro bono legal assistance to veterans, Ali responded: “Absolutely.”

Ali, a veteran himself, then pitched the opportunity to partner with the Veterans Consortium Pro Bono Program to Schiff Hardin’s pro bono coordinator. She gave her immediate approval.

The firm publicly announced the new collaboration led by Ali in November, and Schiff Hardin lawyers have started representing veterans and their loved ones in appealing denials of benefits by the U.S. Department of Veterans Affairs.

“We are off to the races,” says Ali, an ABA member since 2011.

Ali, a Chicago-based partner who handles a variety of litigation matters, says his own military service has aided him with the pro bono work.

He was on active duty in the U.S. Army for seven years, including two combat deployments to Afghanistan between 2005 and 2007.

Ali commanded a team of U.S. Army Special Forces soldiers, commonly known as Green Berets, and he received two Bronze Stars for service and another for valor. He was also awarded the Purple Heart after sustaining wounds from shrapnel while directing troops during combat in Afghanistan.

Now, he and a “pilot team” of three other lawyers are handling cases before the U.S. Court of Appeals for Veterans Claims based in Washington, D.C. The work includes ensuring that the VA is considering all records and evidence of combat injuries or other service-connected injuries when making compensation decisions.

“It is very rewarding for us to be able to assist those folks that don’t know how to navigate the legal system and obtain the compensation they are fully entitled to under the law,” Ali says.

COMRADES IN COURT
Ali says his experiences are helpful in connecting with the veterans he and his colleagues are assisting.

“When you hear the stories about how they were wounded, whether it be in combat or moving equipment, I think you can relate to that,” Ali says. “You have done that same type of work and seen people injured.”

Schiff Hardin associates Tracy Adamovich, Samuel Bonnette and Christopher Bruno are the other members of the firm’s pilot team handling cases through the consortium. Adamovich and Bonnette are also Army veterans.

Adamovich, who deployed to Iraq as a chief of casualty operations officer for a year starting in February 2004, says it’s been gratifying to have the opportunity to help fellow veterans with their legal needs.

Since Ali had previous experience taking on a case through the consortium, Adamovich was able to turn to him for some practical advice.

“Mir has been the forerunner,” says Adamovich, a New York City-based associate. “He really does take a leadership role in everything he does.”

Paula Ketcham, Schiff Hardin’s pro bono coordinator, says Ali is a natural leader and a great fit to head up the partnership with the Veterans Consortium.

The firm encourages its lawyers to follow their passions when taking on pro bono projects, she says.

“Mir followed in the tradition of many Schiff lawyers in identifying pro bono work that resonates with his experience, values and expertise,” says Ketcham, a Chicago-based partner. “His passion for this work is inspiring and will inspire others.”

If the Schiff Hardin pilot team’s members continue to have positive experiences working on cases through the consortium, the firm hopes to grow the number of its attorneys taking part in the program.

VOLUNTEERING FOR VETERANS
Since its inception in 1992, the Veterans Consortium Pro Bono Program in Washington, D.C., has recruited, trained and mentored attorneys taking part in the program.
more than 4,000 volunteer attorneys. The program has also handled more than 50,000 veterans’ requests for legal assistance and won thousands of cases in court for veterans and their families.

Courtney L. Smith, the consortium’s director of volunteer outreach and education, says the program’s veterans spend an average of five to seven years trying to obtain their VA benefits prior to needing representation before the U.S. Court of Appeals for Veterans Claims. These delays and the need for veterans to access legal services are what prompted many of the ABA’s own programs, like the Veterans Claims Assistance Network and the Military Pro Bono Project.

Smith says the long battles can cause frustration for veterans and their family members, a feeling that volunteer attorneys like Ali can help reverse.

“Having a volunteer step in and say they will carry the load from here gives them renewed hope,” she says. “They get excited about their cases again.”

Smith says the pro bono legal assistance is also “an additional ‘thank you for your service’ that our volunteers give to our veterans.”

“We are truly thankful for Mir and his team for their partnership in working with veterans who come through our program,” she says.

For Schiff Hardin, the collaboration is a natural fit given that it has its own veterans’ inclusion network called Military Appreciation at Schiff Hardin, or MASH.

The initiative is designed to help Schiff Hardin retain veterans and hire new ones, and Ali has played a significant role in MASH’s work by speaking to veterans at law schools and taking part in military appreciation events.

For example, on Veterans Day in 2017, the firm hosted a well-attended gathering where Ali, Adamovich and Bonnette told their colleagues about what it was like to serve in the military.

“It was one of the best events we have had here,” says Schiff Hardin partner Andrew Sawula, chair of the firm’s veterans subcommittee.

He says it has been a true honor to work with Ali, whom he calls a “great team player,” on veterans issues at the firm.

Sawula also expressed confidence that Ali’s leadership of the firm’s pro bono legal efforts for veterans would be just as fruitful as his work with MASH.

“When he does something, he fully commits,” Sawula says. “I have no doubt it will be a great success.”

You can go to vetsprobono.org if you are interested in learning more about the Veterans Consortium Pro Bono Program. To learn about opportunities and resources to serve veterans through the ABA, visit the ABA Military and Veterans Legal Center at abamilvets.org. ■

Mir Ali stands with his children at the veterans memorial in Lisle, Illinois.
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Your ABA

Success Stories

House OKs resolutions on criminal justice, LGBT rights, immigration issues

By Lorelei Laird, Lee Rawles and Amanda Robert

The ABA House of Delegates had much on its agenda at the 2019 ABA Midyear Meeting in Las Vegas.

The policymaking body of the association passed a slate of criminal justice resolutions, including ones on clarifying expungement procedures, tightening child abuse laws and ensuring female prisoners have access to feminine hygiene products. Two late-breaking resolutions and their reports condemned the federal government shutdown that ended in January and opposed disaster-relief funds allocated by Congress being redirected to fund other items like a border wall. Delegates also voted to condemn the federal government’s "zero tolerance" policy for people caught crossing the border illegally and to urge that the federal judiciary take measures to ensure that illegal-entry defendants are represented by counsel.

Some delegates were moved to stand and speak in favor of resolutions, as ABA President-elect Judy Perry Martinez did for Resolution 113, which opposed laws that discriminate against LGBT people exercising their right to parent. Martinez told the House about the experience of her niece and her niece’s wife. In the process of becoming foster parents, the couple had a home visit from a woman who was plain about her personal beliefs.

“She advised them that she was Baptist but regardless of what she believed, she was going to fulfill her duties and do what the law required,” Martinez said. “She followed the law with respect, fairness and equality.”

Martinez’s niece and her wife have now fostered 20 children and are on track to adopt their third child this spring. Martinez urged the House to help create more such stories by voting for the resolution. Overwhelmingly, it did.

RESOLUTION ROUNDCUP

• Two resolutions proposed by the Young Lawyers Division were approved to make the legal profession more family-friendly. Resolution 101A called for lactation areas to be established in courtrooms, and Resolution 101B urged courts to grant continuances for attorneys who are taking parental leave, as long as reasonable conditions are met.
• Resolution 104 encourages courts to take a consistent approach to the “fair use” doctrine. It asks that repackaging and distribution of a copyrighted work not be deemed a "transformative" act in favor of fair use, regardless of whether the copyrighted material is delivered more efficiently or in a market the owner has not yet entered.
• Two gun-related resolutions were passed. Resolution 106A opposes laws authorizing teachers and other nonsecurity school employees to carry guns at pre-K through grade 12 schools. It also opposes the use of public funds to arm and train them. Resolution 106B and its report aim to reduce suicides by letting people voluntarily opt in to a list of people to whom guns should not be sold. People would be able to take themselves off the list, but there would be a waiting period.
• Resolution 107A supports requiring a warrant based on probable cause for seizures and forensic searches of electronic devices carried by American citizens and lawful permanent residents at border crossings. It urges legislation to set this standard for searches and seizures of devices and for protection of attorney-client privilege.
• Resolution 107B asks legal employers not to require mandatory arbitration of unlawful discrimination, harassment or retaliation claims “based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or expression, marital status, genetic information or status as a victim of domestic or sexual violence.” The resolution builds on a measure approved at the 2018 annual meeting that urged legal employers not to require mandatory arbitration of sexual harassment claims.
• Resolution 112 seeks to eliminate inconsistent pet breed bans found across military branches. It falls in line with past ABA support of national trends in breed-neutral dangerous dog legislation that targets behavior rather than appearance.
• Resolution 114 urges Congress to enact legislation affirming that discrimination based on sexual orientation or gender identity is sex discrimination under the Civil Rights Act, and that religious freedom laws don’t authorize otherwise illegal discrimination.
• Resolution 116 urges nations to enact international compacts on refugees and immigration; discourage criminal prosecution of immigrants, refugees and asylum-seekers; protect members of those groups from bias and discrimination; and address the root causes of displacement. It was the first House of Delegates resolution the ABA Rule of Law Initiative has ever sponsored.
CONGRATULATIONS to Ryan T. Pumpian of Atlanta for garnering the most online votes for his cartoon caption. Pumpian’s caption, below, was among more than 185 entries submitted in the Journal’s December cartoon caption-writing contest.

“It’s a warrant for your arrest; says you failed to appear.”
—Ryan T. Pumpian of Atlanta

JOIN THE FUN Send us your best caption for the legal-themed cartoon below to captions@abajournal.com by 11:59 p.m. CT on Sunday, March 17, with “March Caption Contest” in the subject line.

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

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IT WAS THE SUMMER OF 1971 in Rust Belt Indiana, and in a small house in working-class Auburn, the tensions between Ora Spitler McFarlin and her youngest daughter were as familiar as the sound of the Bee Gees.

Linda Kay Spitler, 15, was hanging out with an older crowd. Some of them were boys. She stayed out late; occasionally all night. Ora was strict and fought constantly with her daughter. She knew what could happen. Linda's sister had her first child as a high school senior, and Ora was determined that it would not happen to Linda.

Ora met with a lawyer who helped her draw up an unusual document. It purported to be a court petition, but it read like a hold harmless agreement—authorizing doctors at the local hospital to perform a tubal ligation.

Though Linda's school progress was in keeping with her age, the document alleged she was “somewhat retarded.” It proposed the surgery was in Linda's “best interest” because it was “impossible for [Ora] to maintain and control a continuous observation of the activities of said daughter each and every day.”

On July 9, 1971, the document was submitted to DeKalb County Circuit Judge Harold D. Stump, who signed it the same day. There was no hearing or other docketed event, only an ex parte meeting with the judge, Ora and her lawyer. There was no guardian ad litem appointed, no voice or notice given to the young teen and no statutory authority cited by the judge to explain his signature.

Six days later, Linda was admitted to DeKalb Memorial Hospital for what she thought was merely an appendectomy. There was no hearing or other docketed event, only an ex parte meeting with the judge, Ora and her lawyer. There was no guardian ad litem appointed, no voice or notice given to the young teen and no statutory authority cited by the judge to explain his signature.

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