COMMUNITY • CAREER • PROFESSION • PRACTICE MANAGEMENT • SERVICE

WASHINGTON LAWYER

THE DISTRICT OF COLUMBIA BAR MAGAZINE

OCTOBER 2016

MERRICK GARLAND

Chief Judge,
U.S. Court of Appeals
for the D.C. Circuit

THE GOVERNMENT PRACTICE ISSUE

DIVIDED WE STAND

IS OBSTRUCTIONISM THE NEW NORMAL?

ANSWERING THE CALL

FINDING OPPORTUNITY IN PUBLIC SERVICE

THE END OF PRIVACY

WHEN GOVERNMENT SURVEILLANCE TRUMPS PERSONAL PRIVACY

DCBAR.org

901 4th Street, NW

Approximately **32,000 SF** for Lease

Available Late 2017 / Early 2018

Features:

- Class A office building
- Corner location with an expansive glass line and high ceilings
- Rooftop deck with 3,000 SF of outdoor space and 1,500 SF of indoor space
- LEED Silver Building
- Located in the heart of Mt. Vernon Triangle
- Walkable to 4 Metro stations: Gallery Place (Red), Judiciary Square (Red), Mt. Vernon Sq./Convention Center (Yellow/Green), and Union Station (Red)
- Parking in the building

Partial 1st Floor:	3,000 SF
Partial 1st Floor:	3,500 SF
Partial 6th Floor:	10,500 SF
Entire 7th Floor:	15,000 SF
Rent:	Negotiable

For more information, please contact:

Nicole Miller
202.624.8542
nmiller@savills-studley.com

Demetri Koutrouvelis
202.624.8509
dkoutrouvelis@savills-studley.com

Rick Rome
202.624.8518
rrome@savills-studley.com

#GOCASUAL FORJUSTICE

Rally your office to stand up for equal access to justice by dressing down at work.

Join the DC Bar Foundation in providing access to justice to help DC residents in need improve their lives, protect their families, and strengthen their communities.

Participate in our 8th Annual

GO CASUAL for JUSTICE

October 24 – November 18

Start a workplace team and give today at www.dcbarfoundation.org.

DC BAR FOUNDATION

WE INVEST IN JUSTICE

DCBF

Proceeds from GO CASUAL FOR JUSTICE help the DC Bar Foundation provide access to justice through strategic investments in the District's civil legal aid network through funding of innovative legal aid programs, training of civil legal aid attorneys, and helping legal aid attorneys pay off their law school debt.

CONTENTS

OCTOBER 2016 VOLUME 31, NO. 2

Justice Ginsburg on Merrick Garland: "He would be a great colleague." Page 22

Cover image courtesy of Getty Images

You can help deliver equal access to justice

CFC®
Combined Federal Campaign
of the National Capital Area

Attention Federal Employees

Your **Combined Federal Campaign contribution** helps our neighbors who can't afford an attorney to…

- Rebuild their families
- Stay in their homes
- Protect their rights
- Access vital benefits
- Understand the law
- Navigate the courts

As a federal employee and member of the D.C. Bar, you have the power to help deliver on our legal system's promise of equal justice for all.

Nearly 20,000 District residents receive free legal services each year from the D.C. Bar Pro Bono Center provided by our volunteer attorneys. We have a vital impact on the lives of the people we serve—families trying to keep a roof over their heads in the face of foreclosure or eviction—disabled workers seeking public benefits that they have been wrongly denied…parents pursuing fair and reasonable child custody arrangements.

Your voluntary contribution helps make this work possible; not a penny of D.C. Bar membership dues is used to support the Pro Bono Center.

Support the D.C. Bar Pro Bono Center by designating **#79670** on your CFC pledge card.

Choose the D.C. Bar Pro Bono Center at **cfcnca.org** and show some love today.

Show Some Love

Designate **#79670**

DC BAR
PRO BONO CENTER

ADVANCEMENTS AT THE BAR

BAR BULLETIN

E-BRIEF HAS A NEW LOOK!

We have updated the look of the monthly email of news and events to Bar Bulletin. The look is not the only change. This e-newsletter will send you weekly information on new content, events, member benefits, and more. Log into your D.C. Bar account to update your profile and make sure you are hearing from us.

READ *WASHINGTON LAWYER* ONLINE

The paperless edition is available at washingtonlawyer/dcbar.org/october2016. We'll send you an email to let you know when a new issue of the magazine is published on dcbar.org.

D.C. BAR LEGAL BRIEF

Daily opt-in email with curated content tailored to our members from a wide range of media outlets featuring five primary categories:

- Late-Breaking Legal News
- Technology
- Business Practices and Professional Development
- Laws, Cases, and Regulation
- D.C. Bar News — specific Bar content

AND WHILE YOU ARE ONLINE...

Explore the other great content dcbar.org has to offer — articles, infographics, audio, and videos, all geared toward engaging with you, our members, and providing more value for you.

CONNECT WITH D.C. BAR

LinkedIn: linkedin.com/company/dc-bar

Facebook: facebook.com/dcbarhq

Twitter: twitter.com/DC_Bar

YouTube: youtube.com/TheDCBar

WASHINGTON LAWYER
OCTOBER 2016 VOLUME 31 NO. 2

Headquarters

The District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210; 202-737-4700; Toll free 1-877-33DCBAR (1-877-333-2227); www.dcbar.org

Editorial
editorial@dcbar.org

Advertising Sales
202-737-4700, ext. 3268; vcotton@dcbar.org
202-737-4700, ext. 3330; rmobley@dcbar.org

Washington Lawyer is furnished to members as part of their D.C. Bar dues. Changes of address must be in writing.

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

THE PITTS HOTEL, BACK THEN

I read with interest the July/August article "Legends in the Law: Patty Mullahy Fugere." In response, I am writing to put into more balanced context the reference on page 30 to the Pitts (Motor) Hotel — "There was one hotel downtown called Pitts Motel, and boy, was it appropriately named!"

While the quote describing the property — located on Belmont Street near the corner of 15th Street NW in the mid-1980s when it served as a homeless shelter — was no doubt accurate and provided a "print sound bite" to underscore deplorable conditions at the time, in a larger context it is unfair given the original purpose and history of the facility.

I recall that around 1970, the Pitts brothers, African Americans from Louisiana, opened Pitts shortly after the 1968 riots as a mid-town hotel focused on black tourists as well as locals.

The focal point for locals was the Red Carpet Lounge, a stylish night club/restaurant with live entertainment, which quickly became the "go-to" venue for politicians, professionals, athletes, and media personalities — both black and white — and was at the time as good as it gets. If memory serves, Pitts' management was also involved in community affairs.

There remains a sizable number of people of a certain age who will always remember Pitts fondly as stylish, integrated, and accommodating to all at a difficult time in our city.

John Perazich
Washington, D.C.

We want to hear from you: email us at dcbarvoices@dcbar.org or Tweet us #dcbarvoices

TWEET AT US!

MEMBERS' GRATITUDE IS ON DISPLAY

DC Bar Pro Bono
@DCBarProBono
154 clients were helped @ Advice & Referral Clinic in Shaw & Anacostia! Thanks 2 all volunteers & @DC_Bar President!

Kyle Culver
@CulverKyle
No better ways to convince lawyers to be ethical than to give them ice cream.

DC Barista
@DCBarista
Judge Judith Rogers — thank you for your steadfast and principled leadership and serving as a role model for all of us! @DC_Bar @WBADC

DC Courts
@DC_Courts
Congratulations to @DC_Bar's Pro Bono Center for winning the Harrison Tweed Award http://bit.ly/295xjMO #Access2Justice #accesstojustice

BUILDING A LAW SCHOOL-TO-BAR PIPELINE FOR STUDENTS

Questions or comments? asteward@dcbar.org to reach Annamaria

"Education is the most powerful weapon which you can use to change the world."

—Nelson Mandela

As the academic year begins and D.C. law schools welcome new students with lofty or practical aspirations, the landscape of the legal profession continues to change. Nationally, the tide has turned and law school applications have increased nearly 2 percent from last year. Locally, our law schools have held steady and/or experienced slight growth in their admissions after collectively graduating nearly 1,700 juris doctor students in July.

Graduation from law school is an important milestone. Recent graduates benefitted from the D.C. Court of Appeals' decision to adopt the Uniform Bar Examination (UBE), a standardized examination developed by the National Conference of Bar Examiners consisting of the Multistate Essay Exam, the Multistate Performance Test, and the Multistate Bar Exam that gives bar takers more flexibility in where to become admitted to practice law without having to take multiple state bar exams. In its first execution of the UBE, the Court of Appeals' Committee on Admissions administered the exam this past July to 636 applicants, 340 more than those who sat for the exam in July 2015.

While the impact of the UBE on the D.C. Bar is unclear (these test takers may choose to be licensed in any of the 25 jurisdictions that adopted the UBE), we hope they will opt to join the D.C. Bar community.

While the choice of where to become admitted to practice is becoming more flexible, American Bar Association (ABA) law school standards may soon become more rigid. At its August annual meeting, the ABA heard comments on proposed revisions to three of its law school accreditation standards: Bar Passage (Standard 316), Admission (Standard 501), and Attrition (Standard 501-3). The proposed revised standards aim to reduce the amount of time graduates have to take and pass the bar from five years to two years from graduation, require schools to publish and adhere to "sound admission policies," and place a burden on schools with a non-transfer attrition rate greater than 20 percent to demonstrate that they have complied with the admission standard.

The most contentious was the proposal to amend Standard 316. Those in favor argued for the less variable, more straightforward, and stronger standard for bar passage, while representatives from 22 minority-serving institutions vehemently opposed the changes, arguing that schools with significant numbers of nontraditional students who have complicated schedules and low-income students who may not be able to afford to take and pass the bar within two years will be detrimentally affected. By the time of this publication, these standards will have been considered by the ABA Council of the Section of Legal Education and Admissions to the Bar.

Our D.C. law student population is holding steady, graduates have more flexibility in choosing where to become admitted and practice under their law licenses, and law schools may face greater pressure in ensuring that admitted students finish law school and pass the bar. The D.C. Bar is convening a roundtable for law school deans to discuss issues pertaining to law students, legal education, and employment (initial and transitional). It is our hope that the D.C. Bar will be an asset to students and law schools by building a pipeline for law students into the Bar.

Annamaria Steward
D.C. Bar President

Annamaria and other Bar BOG members offer their law school survival tips at dcbar.org/news.

Note: Each UBE jurisdiction sets its own UBE passing score for admission. Four of the 25 jurisdictions will begin administering the UBE in February 2017. A fifth jurisdiction will begin administering the UBE in July 2018. Photo credit: Courtesy of Annamaria Steward.

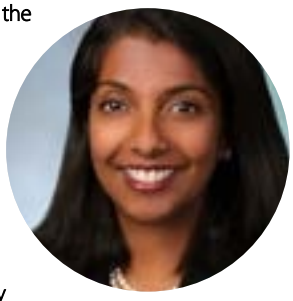
Q: GOVERNMENT LAW PRACTICE: WHAT'S THE MOST REWARDING PART OF IT?

Compiled by Jeffery Leon

SONALI GUNAWARDHANA

Of counsel, Wiley Rein LLP

A: "I initially started my government career as a trademark attorney at the U.S. Patent and Trademark Office. It was a rewarding position, but I always wanted to work for the Food and Drug Administration as I was intrigued by how pharmaceutical companies received approval to market new drugs. I was delighted to make the transition to the FDA, taking a regulatory counsel position in the Office of Compliance in the Center for Devices and Radiological Health. At the FDA, I wanted to ensure that medical products being investigated were done in line with governing regulations so that Americans could rely on new and innovative products that provide incredible medical benefits. It was an enlightening experience to work on the regulatory pathway for various novel medical products that truly promote public health, and the position challenged me to become a better regulatory attorney."



CATHERINE PAGANO

Senior government relations representative, U.S. Postal Service

A: "What attracted me to a career in government is the wide variety of challenging work. This includes procurement, labor and employment law, policy and statutory analysis, finance, government relations, facilities, and environmental protection and sustainability. I also wanted to support important policies, since governmental agencies are often on the cutting edge of policy work. For example, President Obama's March 2015 executive order asked the federal government to maintain its leadership in sustainability and greenhouse gas emission reductions, and I enjoy participating on the USPS Climate Change Adaptation Workgroup. In the local, state, and federal areas of government, attorneys are directly involved in helping clients to provide vitally needed services, and I enjoy serving in this capacity."

HELEN SERASSIO

Special counsel, Federal Transit Administration, U.S. Department of Transportation

A: "Growing up in Utah I was surrounded by natural beauty, and I knew I wanted to help protect it. As an attorney in environmental and transportation law, D.C. is the place to be to enact national policy. Being in the federal government, you're at the table influencing and helping to transform policy and impacting people's lives on a fundamental basis. I find my work incredibly fulfilling, and every day I leave my job feeling like I've done something that impacts people. It's an honor that not everyone gets to do."

ANDREA MUELLER

Attorney advisor, Financial Law and Lender Oversight, U.S. Small Business Administration

A: "I became a government attorney because I wanted my work to make a positive impact on a national scale. I always knew that I wanted to use my law degree to help resolve problems and work collaboratively to achieve common goals. My position as an attorney advisor at the U.S. Small Business Administration allows me to do just that, as every day I work with clients within the agency to carry out programs that have the potential to improve people's lives. Whether it's a microloan to help an entrepreneur start a small business, or a disaster loan to help someone rebuild their home, I like knowing that my work on these programs is helping to make a difference for the better."

What questions would you like to ask fellow Bar members?
Email us at editorial@dcbar.org

KEYS TO LANDING THAT IN-HOUSE COUNSEL GIG

Want to go in-house, but stumped on where to start? Katherine Mineka, associate general counsel for WGL's Washington Gas, recently sat down with the Bar to offer four key strategies for a successful interview:

DO YOUR HOMEWORK

Go beyond the "About Us" part of a company's website What are its mission and values? Read its annual report. Check out its 10-K report. Know what's going on in its industry. Don't be afraid to ask who's conducting your interview and research their background. If you don't know the names, find out who the general counsel is in case you meet with them.

FIGURE OUT HOW YOU CONNECT TO THE MISSION

"You're going to get asked the question not only why you want to go in-house, but also why you want to work here," says Mineka. There is no right answer, but your response will show that you're not looking for just any job—you want to work for them.

BE PROFESSIONAL AND PERSONABLE

Seems simple, right? Remember an in-house counsel must work collaboratively and easily with others. Sometimes you might even have to leave the legal jargon at home. "Often someone on the business side is at the interview to see that you can interact with someone not on the legal side," says Mineka.

THINK AHEAD

Once you've gotten a sense of the organization's business and priorities, think about the legal issues it might face down the road. "Be prepared to be engaged in a legal discussion specific to the organization," says Mineka.

Want more tips? Visit dcbar.org/news

SOCIAL MEDIA FOR THE GOVERNMENT ATTORNEY

By Thai Phi Le

Brand yourself on LinkedIn. Tweet out your opinions. Connect with me, follow us, Instagram the moment. If you're not on social media, you're behind. These are the refrains professionals have heard for years.

As you enter a government office as an employee, however, the rules change. While many agencies are now using social media to engage with the public, individual accounts are usually discouraged or even prohibited.

That doesn't mean these tools are rendered useless for government attorneys, says Dan Mills, assistant director of the D.C. Bar Practice Management Advisory Service. They remain great tools to hear about important issues affecting your job.

HERE ARE SOME IMPORTANT DOS & DONT'S:

DO check if your agency has a social media policy before you post to avoid jeopardizing its reputation and your job.

DON'T talk on behalf of the agency unless given clear permission by your public information officer.

DO follow thought leaders on Twitter in your field and in areas that interest you to keep up to date on relevant news, especially if you cannot use social media. "It will keep one from becoming too insulated, which often happens to government lawyers," Mills says.

DON'T ignore or simply delete a post that becomes controversial. Nothing disappears forever. If a major issue arises, report it immediately to the right people in your organization who can devise a strategy to address it.

DO read up on privacy restrictions for all platforms so you know the audience reading your comments. Check them often as Facebook, LinkedIn, and Twitter privacy policies are prone to change. In addition, many people switch their engagement levels from public to private depending on their posts.

OCTOBER

EVENTS · NETWORKING · CLE · SECTIONS

5

HOW TECHNOLOGY IS CHANGING THE LEGAL LANDSCAPE

D.C. Superior Court Judge Herbert Dixon demonstrates ways lawyers can utilize technology to enhance their courtroom experience. Program hosted by the D.C. Bar Sections Office.

5&6

LEGAL MARKETING TECHNOLOGY CONFERENCE

San Francisco, CA Dedicated to the technologies law firm professionals use to connect with clients. imatechconference.com

POLITICS LAW PRIMERS

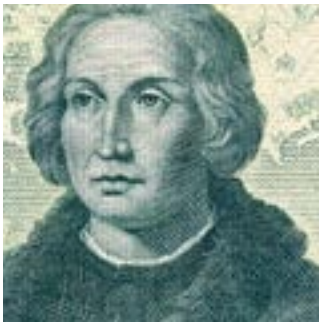
A not-to-miss event this election season! Hear a panel of experts discuss the basics of campaign finance, gift and pay-to-play rules, and the hot issues for clients and lawyers to consider. D.C. Bar Conference Center.

6

10

COLUMBUS DAY

Courts are closed



18

CHANGING CURRENTS IN EMPLOYMENT LAW 2016

Recent Trends & Developments

Brush up on cutting-edge issues changing employment law with this D.C. Bar CLE course. Practitioners from both sides of the aisle explain the law and give practice pointers. For a Q&A with panelists, visit dcbar.org/news.

MANDATORY COURSE

Register today at dcbar.org, keywords: Mandatory Course.

2016 FEDERAL LITIGATION & QUI TAM CONFERENCE

Washington, D.C.

Federal judges and federal court practitioners from across the country meet to discuss the latest issues in federal practice and qui tam law. Hosted by the Federal Bar Association, www.fedbar.org.

23-29

NATIONAL PRO BONO WEEK

Events around the country shine a brighter spotlight on the increasing need for pro bono services to help the vulnerable, as well as to celebrate the attorneys who dedicate their time to decrease the access to justice gap. Visit celebrateprobono.org.

22

25TH NATIONAL MAKE A DIFFERENCE DAY

The largest national day of community service, a perfect time to check out the D.C. Bar Pro Bono Center's volunteer and donation opportunities. makeadifferenceday.com

FOR DETAILS ON ALL THE BAR HAS TO OFFER THIS MONTH, VISIT **DCBAR.ORG/MARKETPLACE**

GOVERNMENT & GAVEL

Life, law, and service in the JAG.

By Tracy Schorn

JOHN D. MARTORANA

JAG ARMY RESERVIST,
ASSISTANT ATTORNEY GENERAL,
OFFICE OF THE SOLICITOR GENERAL,
CRIMINAL & JUVENILE APPEALS,
OFFICE OF THE ATTORNEY GENERAL, D.C.

Where has your government service taken you as a JAG?

I was activated out of the 151st Legal Operations Detachment, a reserve JAG unit to serve with the United States Army Central, an active duty three-star command responsible for a 20-country area of operations in the Middle East, from July 2013 until September 2014.

What was memorable about the experience?

While serving at the United States Army Central as a JAG, senior trial counsel, I was the lead prosecutor on several high-profile criminal trials, including ***U.S. vs. Wilson,*** an international double homicide in Qatar, and ***U.S. vs. Williams***, a serial rape case in Kuwait. Both cases involved 50-plus witnesses and complex criminal and constitutional law issues, including the admissibility of foreign autopsy reports without a witness under the Confrontation Clause, and expert testimony on event data recorder technology and the phenomenon of spatial disorientation.

Did your work involve supporting troops or helping with a humanitarian mission?

Our team traveled throughout the Middle East investigating a variety of crimes and serious misconduct, which also afforded us the rare opportunity to reinforce relationships between all U.S. military components, Army and Army Reserve partners, key foreign leaders, and ambassadors, ultimately supporting a life-saving, life-sustaining force for our nation throughout those regions.

What surprised you?

Like most deployed service members, we worked very long days, 16- to 18-hour days, six days a week. The nature of the environment fostered a high level of professionalism and camaraderie, which reinforced the value I have for the rewarding privilege of serving my country.

What were your impressions?

I was very impressed with the skill level and resilience of my fellow warriors, all tenacious citizen-soldiers. We also shared the same value system, which allowed for extraordinary teamwork on complex military justice matters in an austere environment. Deployments like mine allow us to maintain a high state of military readiness at all times and provide an extraordinary opportunity to develop and sharpen our legal trial and advising skills.

What do you most enjoy about your job?

Being a lawyer, while serving my country as part of the greatest team on Earth — my two life accomplishments [outside of my own family] that I am proudest of. But more specifically, I enjoy advocating for the command's interests in court, working with victims, handling the legal challenges presented, practicing law on the ground in a deployed environment, advising commanders, and ensuring good order and discipline within the ranks.

What was the most challenging thing about being deployed?

Being away from the people I love most — my family. While the Army Reserve provided resources for them, this mission helped me to truly value the time I spend with them."

Photo of John and his daughter Isabel courtesy of John D. Martorana

RIVA PARKER

LABOR AND EMPLOYMENT LAW ATTORNEY, U.S. ARMY OFFICE OF THE JUDGE ADVOCATE GENERAL

Tell us about your job.

I'm a labor and employment litigation attorney with the Department of the Army. My job is to help senior leaders sort out which rules apply to civilians, manage employees, and implement new personnel policy, and to defend the Army if someone thinks we didn't get it quite right.

How did you become a civilian JAG?

Before joining the government, I was a white collar criminal defense and securities litigation associate at K Street and big law firms. I loved my job then, and would never have left it. I found my way to government essentially by accident — I married an Army officer and started following him around from duty station to duty station.

After leaving D.C. and Virginia, I discovered that state bar requirements meant that I could only practice for the federal government. (This is changing, as states are adopting reciprocal recognition for military spouse attorneys.) My litigation experience was well suited for employment litigation; my compliance counseling background fit well with labor counseling, and I was fortunate to be hired as a labor counselor in Fort Sill, Oklahoma. When we moved back to D.C., I considered rejoining a large law firm, but ultimately found I love federal practice too much.

What's the best part of your job?

I love helping Army leaders take care of workplace issues so that they can focus on the mission. I love the passion and work ethic of my colleagues, all of whom could have any job they choose, but choose to serve their country.

Photo courtesy of Riva Parker

THIS MONTH IN LEGAL HISTORY

OCTOBER 6, 1991

On October 6, 1991, law professor Anita Hill accused U.S. Supreme Court nominee Clarence Thomas of sexual harassment. The controversial nomination hearings began a national conversation on sexual harassment in the workplace. Thomas was approved by a full Senate vote of 52–48 on October 15.

OCTOBER 15, 1966

On October 15, 1966, the National Historic Preservation Act was signed into law. NHPA preserves historical and archaeological sites in the United States. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. NHPA is the most far-reaching preservation legislation ever enacted in the United States. The act requires federal agencies to evaluate the impact of all federally funded or permitted projects on historic properties (buildings, archaeological sites, etc.) through a process known as Section 106 Review.

For more JAG profiles, visit dcbar.org/news.

THE END OF PRIVACY

When government surveillance trumps personal freedoms

By Anna Persky

"[I]t may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties."

—Justice Sonia Sotomayor in ***U.S. v. Jones***

It has been three years since former National Security Agency (NSA) contractor Edward Snowden leaked classified information about the U.S. government's secret global surveillance programs. At the time, the American public was shocked by the extent to which the NSA had been collecting and stockpiling private information.

Since then, Snowden has been called a patriot by some, a traitor by others. At present, he lives in exile in Russia.

As a result of Snowden's leaks to the news media, the public learned that the NSA had been quietly using its telephony metadata program to gather phone records. In addition, the public learned how the NSA gathers user data from tech companies such as Facebook, and how it infiltrates links connecting Yahoo! and Google data centers.

"Edward Snowden is a hero to some and a villain to others, and that will never change," says Michael Sussmann, a Washington, D.C.-based partner in the privacy and data security practice at Perkins Coie LLP. "The legacy of his leaks is and will remain greater public knowledge about our government's national security-related surveillance, and greater government and provider transparency regarding the extent of that surveillance."

Critics say the NSA and other government agencies are violating the Fourth Amendment and other guaranteed rights of U.S. citizens by collecting and utilizing their personal information. Privacy advocates have filed legal challenges to the constitutionality of the government's surveillance programs.

But the government has said its programs are necessary to protect the security of Americans from terrorism and to help law enforcement efforts. In April, Director of National Intelligence James Clapper told journalists that the government's surveillance programs are a "prolific producer of critical intelligence to this country and our friends and allies."

Surveys indicate that Americans remain fearful of the threat of terrorist attacks. In fact, a Pew Research Center study conducted in December found that 56 percent of Americans were more concerned that the government's anti-terror policies have not gone far enough to protect the country, compared to 28 percent who were more concerned that the policies have gone too far, affecting civil liberties.

Meanwhile, some tech companies are publicly resisting federal efforts to gather digital data from their customers. For example, Microsoft filed a lawsuit against the U.S. Justice Department, arguing that it's unconstitutional for the government to keep tech companies from telling customers when federal agents have examined their data.

"There is a massive issue of how to respond to the development of technology, to the ability of the government or companies to gather up information about people easily and cheaply," says David Cole, a professor specializing in constitutional law and national security at Georgetown University Law Center in Washington, D.C. "We do almost everything online and the government can easily access that — when we search for something on Google, our credit card transactions. We leave a digital trail everywhere."

Cole says the question we need to ask ourselves is, "how much privacy are we willing to sacrifice for national security or law enforcement purposes?"

THIRD-PARTY DOCTRINE

A central question to any debate on government surveillance concerns one's reasonable expectation of privacy.

Under the third-party doctrine, individuals who voluntarily give information to third parties have no reasonable expectation of privacy. But what does that mean, asks Cole, in the digital age?

"Now we share everything with third parties when we do something online," says Cole. "We leave a digital trace with some third party, which makes it available to the government under a traditional third-party doctrine rule."

In the past few years, judges have come to a variety of conclusions about our expectation of privacy in our e-mails, texts, phone conversations, and Internet searches. Notably, in June a federal judge for the Eastern District of Virginia ruled that anyone who uses a computer connected to the Internet doesn't have a reasonable expectation of privacy.

The case, *U.S. v. Matish*, involved the FBI's infiltration of a child exploitation site to plant malware on visitors' computers. The FBI had obtained a warrant to hack into the defendant's computer and extract information from it.

But U.S. District Judge Henry Coke Morgan Jr. found that the FBI didn't actually even need a warrant to hack into computers through the use of malware.

"[H]acking is much more prevalent now than it was even nine years ago, and the rise of computer hacking via the Internet has changed the public's reasonable expectations of privacy," wrote Morgan.

The Electronic Frontier Foundation (EFF), a digital rights group, said in a written statement that the "implications for the decision, if upheld, are staggering: law enforcement would be free to remotely search and seize information from your computer, without a warrant, without probable cause, or without any suspicion at all."

The United States Supreme Court has indicated a desire for citizens to retain an expectation of privacy, even when modern technology is concerned. In 2012 the Supreme Court found in *U.S. v. Jones* that when police officers installed a GPS tracking device on a suspect's car without a warrant, they conducted an unlawful search under the Fourth Amendment.

In her concurrence, Justice Sonia Sotomayor suggested that "[i]t may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks."

Citing Justice Sotomayor's concurrence, Cole suggests that the Supreme Court could revisit the scope of the third-party doctrine in the context of government investigations or surveillance.

"There are so many easy ways for the government to get information about a lot of people. It might be time to update the Fourth Amendment to ensure that these easy ways aren't being exploited by the government," says Cole.

THE END OF PRIVACY

"We need to be able to live in the Internet world and retain some privacy from the government."

'NO-BRAINER'

When privacy advocates talk about what they describe as intrusive government surveillance, they are generally talking about its use under a handful of laws, including the USA Patriot Act and amendments to the Foreign Intelligence Surveillance Act of 1978.

One of the biggest areas of dispute concerned the wide breadth of investigative tactics allowed under the Patriot Act. Created in 2001, in the aftermath of the September 11 attacks on the World Trade Center and the Pentagon, the Patriot Act was intended to improve the investigative tools available to the government in its fight against terrorism.

But, more recently, privacy advocates such as the EFF and the American Civil Liberties Union (ACLU) have increasingly decried the use of section 702 of the Foreign Intelligence Surveillance Amendments Act. Under Section 702, the NSA intercepts the conversations of U.S. citizens who happen to engage in conversations with foreign nationals.

"Section 702 was designed to fill a gap between the government's settled authorities to conduct warrantless foreign intelligence surveillance of noncitizens overseas and its more limited authority to conduct warrant-based foreign intelligence surveillance of individuals within the U.S. — who have Fourth Amendment rights," says Stephen Vladeck, a University of Texas School of Law professor specializing in constitutional law and national security law. "Ostensibly, Section 702 is designed to allow the government to conduct foreign intelligence surveillance of noncitizens reasonably believed to be outside the territorial United States when communicating through the U.S. structure."

Vladeck says it's a "no-brainer to me that the government has a strong, legitimate interest in conducting such surveillance." The problem, he says, is the "incidental" collection of communications of U.S. citizens.

"The real controversy surrounding Section 702 is the extent to which the surveillance it authorizes will necessarily sweep in U.S. persons' communications — which the government would usually need a warrant to collect directly," says Vladeck.

Section 702 is scheduled to sunset on December 31, 2017. In May, the Senate Judiciary Committee held a hearing on reauthorizing the law.

PRISM & UPSTREAM

Two of the government's most controversial surveillance programs were enabled by Section 702. The Prism program gathers messaging data from Google, Facebook, and other tech companies that is sent to and from a foreign target under surveillance. Upstream permits the NSA to copy Web traffic on the Internet and query that data for particular terms associated with a target. The FBI can also access information stored in databases created by the NSA.

In July, a three-judge panel from the 9th U.S. Circuit Court of Appeals for the Ninth Circuit heard arguments in a case involving the use of Upstream against a naturalized U.S. citizen. Mohamed Mohamud was sentenced to 30 years in prison for trying detonate what he thought was a massive fertilizer bomb during Portland's 2010 annual Christmas tree-lighting ceremony.

Both the EFF and the ACLU filed amicus briefs in the appeal, arguing that the FBI unconstitutionally obtained information through Prism and Upstream.

ACLU staff attorney Patrick Toomey, who argued the case before the appellate panel, says that the government gathers massive amounts of electronic evidence from the communications of foreigners without a search warrant. Then, says Toomey, FBI agents can pick through the information in secondary or backdoor searches to gather evidence pertaining to domestic investigations of U.S. citizens.

"The government should not be allowed to say it is targeting foreigners on the front end, but then on the back end [is targeting] Americans with a backdoor search," says Toomey.

Toomey also says that government surveillance programs under Section 702 could have a chilling effect on "conduct we view as valuable as a society."

"The surveillance at issue implicates the privacy of all Americans, anyone who communicates with someone overseas, journalists, human rights researchers, university researchers can all be affected," says Toomey. "There is a wide swath of what we think of as protected First Amendment activity put at issue by the surveillance."

As *Washington Lawyer* went to press, the panel had not yet ruled on the case.

In another case challenging government surveillance, the EFF has filed a class action suit on behalf of Carolyn Jewel and other AT&T customers to stop government surveillance of their communications. The lawsuit alleges that AT&T has routed copies of Internet traffic to a secret room in San Francisco controlled by the NSA.

"The ability to have a private conversation is one of the cornerstones of a free country," says Cindy Cohn, executive director of the EFF.

Cohn adds that, from a lawyer's perspective, "if you think about the attorney–client privilege, it ought to disturb you that there is a government agency that has access to all the communications that flow through key telecommunications switching stations."

COMPANIES FIGHT BACK

In December, Syed Farook, a county government worker in San Bernardino, California, and his wife slaughtered 14 of Farook's coworkers. The pair died in a gun battle with police.

After the attack, the FBI attempted, but initially failed, to unlock Farook's iPhone. Apple made news by

Members of "Team Edward" show their support for former NSA employee Edward Snowden.

refusing to comply with a judge's order that it help the FBI break encryption on the phone so it could be accessed without wiping Farook's data.

Apple argued that helping the FBI unlock one phone would set a precedent for the government to gain easy access to phones in the future. Also, doing so would risk the security of iPhone users, Apple said.

"The U.S. government has asked us for something we simply do not have, and something we consider too dangerous to create. They have asked us to build a backdoor to the iPhone," Apple CEO Tim Cook said of the company's decision to fight the order.

"The same engineers who built strong encryption into the iPhone to protect our users would, ironically, be ordered to weaken those protections and make our users less safe."

The Justice Department responded that it was "unfortunate that Apple continues to refuse to assist the Department in obtaining access to the phone of one of the terrorists involved in a major terror attack on U.S. soil."

Eventually, the FBI dropped the lawsuit, announcing that it no longer needed Apple's assistance in unlocking the iPhone.

But, in the aftermath of the battle between the FBI and the government, Congress has introduced legislation mandating that companies receiving a court order in an encryption case provide help in unlocking secured data.

In another case pitting a tech company against the government, Microsoft had filed a lawsuit over a warrant for customer e-mails stored in a data center in Ireland. The case attracted widespread interest, with nearly 100 organizations and companies filing briefs supporting Microsoft.

In July, the U.S. Court of Appeals for the Second Circuit ruled that the government can't force Microsoft to turn over e-mails or other personal data stored overseas.

Justice Department spokesman Peter Carr said in a statement that lawfully accessing "information stored by American providers outside the United States quickly enough to act on evolving criminal or national security threats that impact public safety is crucial to fulfilling our mission to protect citizens and obtain justice for victims of crime."

But Brad Smith, Microsoft's president and chief legal officer, said the ruling was a victory for those who value privacy rights.

"We hope that today's decision will bring an impetus for faster government action so that both privacy and law enforcement needs can advance in a manner that respects people's rights and laws around the world," said Smith in a statement.

Anna Persky is a regular contributor to *Washington Lawyer*.

See article on David Cole at dcbar.org/news.

TWEETS

ANSWERING THE CALL

Finding opportunity in public service

By Sarah Kellogg

June Kress, the Council for Court Excellence.

Whether you're a rookie lawyer looking to gain trial experience with a stint in the U.S. Attorney's Office or a mid-career attorney eager to sit on the local bench, the call of public service can be a strong and compelling one in the District of Columbia.

In fact, ambitious lawyers may have a better chance in Washington, D.C., to move into the ranks of federal prosecutors or even judicial posts thanks to the sheer number of positions available through the federal government and its many departments and agencies.

The hurdles to becoming an assistant U.S. attorney (AUSA) are lower than those to become an associate judge in the Superior Court of the District of Columbia, due more to process (U.S. Senate confirmation) than scale. Yet, both avenues provide unparalleled opportunity for lawyers seeking to advance their careers.

There's no getting around the fact, however, that Washington, D.C., is a crowded field from which to launch — there are 7.8 attorneys for every citizen, more than three times the national average.

Remarkably, in a town dominated by politics, ascent to the local bench or being hired by the U.S. attorney is connected more to merit rather than money or power, experts say. Even the most politically disconnected candidates can apply and be selected to serve — as long as they have the qualifications and experience to do so.

A SEAT ON THE BENCH

For those interested in landing a judgeship on the D.C. Superior Court and the D.C. Court of Appeals, it's good to know that Washington doesn't elect local judges, as many states do. Instead it has a unique requirement—the U.S. Senate must confirm the nominees for the District's local courts.

The process begins with the D.C. Judicial Nomination Commission (JNC), which has 60 days to collect applications after the announcement of a vacancy, review the applicants' credentials, and then nominate three people. Those names are then sent to the White House for review, and the president has 60 days to select a nominee for Senate confirmation.

Attorneys would be wise to visit the JNC Web site or read its informational publications thoroughly before beginning the application process, because key information such as timelines for filing, technical requirements (residency and Bar status), and expectations are clearly outlined there. The JNC emphasizes transparency.

"Many judges I talk to say the reason they first applied is because somebody encouraged them to do so," says Katherine L. Garrett, executive director of the JNC. "I want to make us so visible and present that everybody who is qualified and able and remotely interested doesn't need to wait to be asked. I want them to know what the process is and have all the information they need at their fingertips because then we'll have an even better bench."

Eligible candidates for associate judgeships must have five years' experience in the practice of law in D.C. preceding the nomination, which can include serving as a law school professor or an attorney in the U.S. or D.C. government. They must also be U.S. citizens, an active member of the unified D.C. Bar, and a bona fide resident with an "actual place of abode in the District."

"You must muster a strong application," Garrett says of the process. "We do a background check and outline in advance the areas we will look at. You don't want to stand out for issues you failed to identify. You want to stand out for the substance of your application."

"With each set of applicants, there are a few who seem to have been tripped up by some of the questions or areas of investigation," she notes. "Generally, it gets ironed out. We provide resources — both online and in person — to flag common mistakes and oversights, and strongly encourage people to tap them."

Between 1994 and 2015, about 30 percent of nominees recommended to the president by the JNC came from the private and nonprofit sectors, and some 70 percent from local or federal government positions.

Regular court observers have noted that the District has a graying bench, signaling an increase in retirements in the not-too-distant future. Currently, there are some 120 judges on the two local courts, as well as 24 magistrate judges assisting the Superior Court in handling local cases, such as landlord–tenant disagreements, small claims, probate, and family matters.

The D.C. Courts should not be confused, of course, with the federal courts, the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia. The federal courts have entirely different selection procedures.

"Parts of the process for applying to be a local judge are mysterious and others are not," says June B. Kress, executive director of the Council for Court Excellence, a Washington, D.C.-based nonprofit that works to improve the administration of justice in the local and federal courts. "There are certain timelines that are very clear cut and have to be met by the applicant and the JNC. The part of the process with no timelines attached, which is unknowable, is the Senate confirmation. It can be problematic with the delays in confirmation."

ANSWERING THE CALL

Kress says recent confirmation delays for the D.C. Superior Court — some of which dragged on for years — impacted the operations of the court as judges scrambled to do their work with fewer hands on deck. She said those kinds of delays can make the prospect of a court appointment considerably less attractive for experienced attorneys.

"It's very hard for private practice attorneys with high-profile clients to put their professional lives on hold for months or even years," she says. "These folks have to bring in business to their firms, and they have commitments that cannot be delayed."

If the Senate Committee on Homeland Security and Governmental Affairs recommends a nominee, the name moves to the full Senate for a vote. When confirmed, Superior Court and Appeals Court judges serve 15-year terms. They may be reappointed to successive terms after being evaluated by the D.C. Commission on Judicial Disabilities and Tenure.

Another opportunity for judicial service is to consider applying to become a Superior Court magistrate judge. The magistrate judges tend not to be as high profile, and they handle mostly early stage criminal and civil cases, as well as sensitive family court matters.

The eligibility requirements are the same as those for associate judges, and candidates submit applications to D.C. Superior Court. Two committees — the citizen-composed Superior Court of the District of Columbia Magistrate Judge Advisory Merit Section Panel and the Committee on the Selection and Tenure of Magistrate Judges, which is comprised of associate judges—recommend applicants to the chief judge. After background investigations, the chief judge nominates a candidate and, with the approval of a majority of sitting Superior Court judges, appoints a new magistrate judge. No Senate confirmation is required.

"I do think the magistrate judges are the closest to the people," says Addy R. Schmitt, counsel at Miller & Chevalier, Chartered, and chair of the citizen Merit Selection Panel. "They're not writing opinions in civil matters. They're really interacting with folks who have never had experience with the legal system and are often unrepresented."

Magistrate judges are selected based on their experience practicing in Superior Court, their temperament, and their ability to manage complex processes and people. "There are absolutely people who see magistrate judgeships as a way into Superior Court," says Schmitt. "That's not a silly thing to do. There are a lot of magistrate judges in Superior Court who have gone on to be associate judges. There's a reason for that. You have proven you can do the work and you can handle the workload."

BECOMING AN AUSA

Serving as an AUSA in the Office of the United States Attorney for the District of Columbia is a more coveted position than in many of the other 94 U.S. Attorney Offices, say veterans of the office. Because Washington, D.C., has no local district attorney, the office is charged with prosecuting federal crimes as well as all serious local crimes.

"The U.S. Attorney's Office was a great way to learn how to become a trial lawyer," says Steven J. McCool, a former AUSA and partner with Mallon & McCool, LLC. "The job carried a great deal of responsibility, not only to your client, the United States, but also to the people charged with crimes. It was a fantastic experience, and I wouldn't trade it for anything."

D.C. has the largest U.S. Attorney's Office in the country with some 350 AUSAs. Details about the application process can be found online at the U.S. Attorney's Office for the District of Columbia. In a jurisdiction such as Washington, D.C., the office receives hundreds of applications for each vacancy, and the process can be lengthy.

"You have to be very patient and very flexible," says Justin Dillon, a former AUSA and partner at KaiserDillon PLLC. "The process can take a lot of time, and you know it's because they're having to go through a lot of applications. But once I was called in for an interview, the process went fairly quickly."

Before starting the application process, former AUSAs recommend that lawyers and law students consider their most likely career paths. They need to decide whether they're interested in the civil or criminal division, and whether they want to make a four-year commitment to the job — a requirement for both divisions.

"The divisions are very different work, and they are very different in how they hire," says Schmitt a former AUSA, noting that both arenas provide a top-notch opportunity for lawyers interested in strengthening their skills. "There isn't really any busy work here."

The Civil Division in the District only practices in the federal District Court and the D.C. Circuit Court. It doesn't hire recent law school graduates because the caseload is significant and there is a good deal of trial practice and motions required. The Civil Division also tends to look for lawyers who have been in private practice or are coming from another government legal position.

The Criminal Division is considered more of an outpost for basic training in the law. Attorneys go through three weeks of boot camp-like training, practicing in mock trials and giving opening statements. Criminal Division recruits start in classes and those classes tend to be large.

"It is the best training ground in the entire federal government for becoming a trial lawyer," says Dillon. "It doesn't give you sophisticated white collar crime,

"We have a really deep and very strong Bar from which to make appointments. We're not wrestling with issues that other jurisdictions might face when trying to identify candidates. That is one reason why it's so competitive in the District."

Katherine Garrett, Judicial Nomination Commission

unless you're in securities and fraud. But you really get a chance to know the courts, and connect with a diverse set of citizens in the city. I've dealt with 16-year-old shooting victims and 60-year-old defendants."

And it's not a bad stepping-stone up the career ladder. AUSA alumni can be found in all of D.C.'s top law firms and on the local and federal benches, thanks largely to the breadth of litigation experience AUSAs gain, as well as the solid grounding they get in federal law.

There are other options for ambitious young attorneys looking to gain a great deal of trial experience in a relatively short period of time. "The U.S. Attorney's Office isn't the only way you can become a seasoned trial lawyer or to figure out whether you want to become a trial lawyer for the rest of your career," says McCool. "The local public defender service is a great training ground. It really is a good place to learn, as is the D.C. Attorney General's Office."

The Office of the Federal Public Defender for the District of Columbia represents indigent defendants before the U.S. District Court for the District of Columbia. Its staff attorneys, known as assistant federal public defenders, handle a variety of caseloads, including federal misdemeanors, felonies, parole and probation violations, grand jury representations, and direct appeals to the U.S. Court of Appeals for the District of Columbia.

The D.C. Office of the Attorney General represents the interests of the District government and its citizens, and the office's complement of 225 attorneys work throughout the D.C. government. These positions have been popular because the work addresses a wide variety of legal issues at the city, state, and federal level.

STARTING EARLY

Like in most career choices, experienced lawyers recommend that applicants begin the process of considering their options as early as possible. It's in those early years in law school or immediately after graduation that people are able to access a wide selection of training opportunities, including judicial internships and clerkships.

"I would recommend clerking for a trial judge who tries a lot of cases, or looking to get an unpaid internship with a judge during the school year," says McCool. "Another good option is the trial clinic in your law school. If you think this is what you want to do, then you need to start taking those steps as early as possible in law school."

Those words of wisdom could apply to lawyers seeking local judgeships, as well. Experience counts when pursuing an appointment to the bench, especially in the District where the competition is intense.

"We have a really deep and very strong Bar from which to make appointments," says Garrett, of the JNC. "We're not wrestling with issues that other jurisdictions might face when trying to identify candidates. That is one reason why it's so competitive in the District."

Sarah Kellogg is a regular contributor to *Washington Lawyer*.

Check out previous coverage of judicial shortages at dcbar.org/washington-lawyer.

LOOKING FOR A LEG UP?

HERE ARE **5 TIPS** TO SMOOTH THE PROCESS

1. ***Know your objective.*** Determine your career objectives and how a public posting might fit into your plan.
2. ***Investigate the job first.*** Talk to someone who has been through the process, not necessarily for a recommendation, but to understand the requirements and expectations of the position.
3. ***Read the materials.*** The Web site, brochures, and the application are a font of information for both court and prosecutor positions, and they can help you maneuver more smoothly through the process.
4. ***Be systematic.*** Review your paperwork — educational, work, and Bar history — before you begin the process. Know where the holes are and plug them.
5. ***Be patient.*** Judicial nominees can wait years for a conclusion to their nomination, and AUSAs have been known to wait for nearly a year to find out the status of their application. Know that it takes time.

DIVIDED WE STAND

Is obstructionism the new normal?

By Tracy Schorn

"Under the Constitution, the Senate has the power to do what it is doing, namely irresponsibly refusing to do its job, but its choice to do so is neither wise nor fair."

David Cole, Georgetown University Law Center

On June 21, 2016, after months of evaluation, the American Bar Association gave U.S. Supreme Court nominee Merrick Garland, chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, its highest possible rating: "Well Qualified." The vote was unanimous.

Among the hundreds of interviews with legal professionals assessing Garland's competence and character were the following affirmations: "You cannot find anyone with greater personal integrity or anyone more dedicated to public service." "He is a true jurist and I wish there were more judges like him." "He does not have an agenda. He follows the law. He applies the law to the facts."

As to Garland's integrity, the report cited a few comments, among them: "Garland has no weaknesses" and "He may be the perfect human being."

Yet apparently even perfect people cannot get approved through the Senate. The Republican refusal to vote on Garland's nomination has been well reported. Senate Majority Leader Mitch McConnell (R–Ky.) deferred the decision to the "American people," saying whomever they choose as the next president should pick the Supreme Court nominee, not the current sitting president. Republicans also argued their inaction was justified by the Constitution and that the Senate could refuse its consent.

The Garland nomination impasse has come to personify the dysfunctional partisanship that has gridlocked Washington. While a Supreme Court vacancy in the last term of a presidency is pretty rare, it's not unheard of. According to PolitiFact, it has happened three times since 1900 — once to a "lame duck" president (Lyndon Johnson), and twice to presidents who lost reelection bids (Herbert Hoover and William Taft). All three times, the exiting president made nominations. Moreover, three presidents — Dwight Eisenhower, Franklin Delano Roosevelt, and Woodrow Wilson — all nominated Supreme Court justices while they ran for (and won) reelection.

The inaction of the current Senate, according to Lena Zwarensteyn of the American Constitution Society, is "political, not constitutional."

"Nothing in the Constitution provides an argument or justification for the Senate's complete failure to do its constitutional duty to provide 'advice and consent' on the president's nominees. Article 2, Section 2, of the Constitution provides that the president 'shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court.' The language assumes relatively active participation by the Senate in terms of providing advice and consent, not the option to take a pass," Zwarensteyn says.

David Cole, who teaches constitutional law at Georgetown University Law Center, interprets the Senate's obligation to provide advice and consent differently. "My sense is that the power to act includes the power to not act," he says. However, Cole finds the Senate's refusal "a sad commentary on the state of politics today," given that there isn't a "single objection to [Garland's] candidacy on the merits."

"Under the Constitution, the Senate has the power to do what it is doing, namely irresponsibly refusing to do its job, but its choice to do so is neither wise nor fair," says Cole.

Even Supreme Court Justice Ruth Bader Ginsburg has weighed in on the Garland nomination. "I think he is about as well qualified as any nominee to this court," Ginsburg said in July. "Super bright and very nice, very easy to deal with. And super prepared. He would be a great colleague."

Asked if the Senate had an obligation to assess Judge Garland's qualifications, her answer was immediate. "That's their job," she said. "There's nothing in the Constitution that says the president stops being president in his last year."

JUDICIAL NOMINATIONS IN LIMBO

While the Garland nomination may be the most publicized case of political obstructionism, "[this sort of] inaction took root under Clinton and has only gotten worse," says Russell Wheeler, a visiting fellow at Brookings Institution and former deputy director of the Federal Judicial Center. The current grinding pace of or outright inaction on judicial appointments is unprecedented, according to Wheeler.

"There are 71 district court vacancies, many more than in Reagan's, Clinton's, and Bush's final year in office, when, as now, the opposing party ran the Senate," Wheeler says. "Opposing party senators used to have the view that the president got elected so he gets to appoint judges. And when our party takes over the White House, we'll expect the same deference from the other party. That's all gone away. Now it's a dog-eat-dog fight. It didn't start with Obama and it won't end with him."

How slow is today's judicial nomination process? Since the Republicans took over the Senate in 2015, only 18 district judges and two circuit court judges have been confirmed, the fewest judicial confirmations in more than a half-century. The table below shows the confirmation rates during the 7th and 8th years of the current and three most recent two-term presidents as of July 15.

Confirmations

Jan 1, 7th Year – July 8, 8th Year	District Court	Court of Appeals	Total
1987–1988	52	15	67
1999–2000	49	14	63
2007–2008	44	10	54
2015–2016	18	2	20

* Note that in each case, the Senate and White House were/are controlled by different parties. Source: Russell Wheeler/Brookings Institution and Federal Judicial Center database

DIVIDED WE STAND

The number of judicial vacancies and "judicial emergencies" are higher now that when Obama first took office. As currently defined by the Judicial Conference of the United States, a judicial emergency in district courts is any vacancy where weighted filings exceed 600 per judgeship, or any vacancy in existence for more than 18 months where weighted filings are between 430 and 600 per judgeship, or any court with more than one authorized judgeship that has only one active judge. A judicial emergency in circuit courts is any vacancy where there are more than 700 adjusted filings per panel, or any vacancy in existence for more than 18 months and where adjusted filings are between 500 to 700 per panel. As of August 2016, there were 32 judicial emergencies in district and circuit courts.

"Even in the contentious presidencies of Lyndon Johnson and Richard Nixon, they had a confirmation rate for district and circuit judge nominees of well over 90 percent in an average of 25 days or less. Both had problems at the Supreme Court level, but lower court confirmations proceeded apace," says Wheeler. By comparison under Obama:

EVERYTHING'S BIGGER IN TEXAS

Of all the states, none suffers more judicial vacancies languishing than Texas, which has a nearly 20 percent vacancy rate among its district courts — out of 52 judicial positions, 10 are vacant. And most of these vacancies are measured in years, not months or weeks. Texas also wins for the most judicial emergencies of any state (10).

Ask Judge Sam Sparks of the U.S. District Court for the Western District of Texas about his docket and he's matter-of-fact: "There should be five district judges in Austin. There are two."

"We try a lot of cases here in Texas. Lots of the senior [semi-retired] judges come down and help out. There's not much point in going senior or not. You take the same volume of cases," he says.

But while Austin is down three judges, Sparks says it's worse in other parts of Texas. "They took seven years to replace a federal judge in San Antonio," he says.

	Vacancy to Nomination		Nomination to Confirmation		
	Number	Median Days	Number	Confirmation Rate	Median Days
District Judges	321	353	268	83%	215
Circuit Judges	68	230	55	81%	229

Source: Russell Wheeler/Brookings Institution and Federal Judicial Center database

You don't have to go as far back as Nixon to see better confirmation rates, however. The average wait for a vote for both circuit and district court judges was 49 days under George W. Bush.

Sparks was confirmed in 1991. While he says it's "never easy," what's different was, back then "your state's senators worked together" and the Senate deferred to those senators' judgment about who was best for the bench in their state. Sparks was recommended by Republican Senator Phil Gramm, and Senator Lloyd Bentsen, a Democrat, "helped walk me through."

The current contentiousness in Congress "is a sickness" that Sparks feels is part of a larger climate of disrespect for the courts. "Reagan knew the importance of the judiciary and made it a priority," he says.

Contrast that with today. "Every year, except three years ago, Congress voted not to give judges cost of living increases. That's a symptom of Congress's lack of respect for the judiciary. I took a large reduction in income when I took this job [from the private sector]," says Sparks.

Wheeler concurs. The personal and material costs of putting a law practice aside, the long waits between vacancy and nomination, and nomination and less-than-certain confirmation, "will make potential nominees, especially those coming from private practice, think twice about being considered," says Wheeler.

And while judges may be underpaid and overworked, the biggest losers are the American people, especially civil litigants, waiting for their day in court.

Because of the Speedy Trial Act, federal judges are required to give priority to criminal cases over civil ones. When there is a surge in criminal cases or a judicial emergency, judges are forced to delay civil cases. This can mean years-long delays for those with matters such as civil rights cases, consumer fraud or predatory lending complaints, environmental cases, and immigration hearings, among others.

Fewer judges hearing fewer cases can mean plaintiffs feel compelled to take inadequate settlements to end the expense and uncertain delays of litigation. Delays also cost defendants by forestalling the dismissal of frivolous lawsuits and requiring the payment of huge lawyer's fees in the meantime.

The result of an overwhelmed and understaffed judiciary, says Wheeler, is "loss of confidence in the government to perform one of its basic functions."

Judge Merrick Garland

HOW DID WE GET HERE?

When did judicial appointments become political footballs in an endless grudge match? Some commentators point to November 2013 when Harry Reid (D–Nev.), then the Democrat floor leader, deployed the "nuclear option" of eliminating filibusters for most nominations by presidents. This allowed Reid to push Obama's nominees through the Senate on a majority basis and bypass the traditional 60-vote threshold for overcoming filibusters.

Reid argued that he used the rare parliamentary move because Republicans had filibustered some of Obama's nominations. The power play, however, enraged Republicans. Since Republicans took over the Senate in 2015, could today's judicial gridlock be payback?

Mike Lofgren, a former Republican U.S. congressional aide and author of ***The Deep State: The Fall of the Constitution and the Rise of a Shadow Government***, says the gridlock is more than mere partisanship. Lofgren spent 28 years working in Congress, the last 16 as a senior analyst for the House and Senate budget committees.

"It began as a tactic to obstruct President Obama's agenda, but it has evolved into something much more serious — an abhorrence of government in and of itself," says Lofgren.

Lofgren finds the antipathy for government "pretty ironic when you consider that some of these individuals have never had another job outside of public office."

Since President Obama took office, the polarization between the parties has reached beyond judicial nomination objections, but to political appointments, as well. The Congressional Research Service found that Obama has had the fewest presidential nominees confirmed in decades: 198, compared with 345 for George W. Bush, and 268 for Bill Clinton.

Lofgren says the poison of obstructionism has trickled down into areas of government that were hitherto considered apolitical. "Even routine authorizations like highway funding, that everyone is supposedly in favor of, are subject to this cannibalistic, slash-and-burn mentality," he says.

Lofgren also points to staffing decisions of a Congress that, he says, prefers press releases to substance. "There are far fewer professionals on staff, and a lot more press secretaries putting out press releases. There are fewer support staff, as well, and this hamstrings Congress is doing the actual work of oversight," says Lofgren.

Has obstructionism become a self-reinforcing cycle? Or is there a more cynical political stratagem at play?

We try a lot of cases here in Texas. Lots of the senior [semi-retired] judges come down and help out. There's not much point in going senior or not. You take the same volume of cases.

Judge Sam Sparks, U.S. District Court for the Western District of Texas

"Taft was confirmed as chief justice on the same day he was nominated. If Obama got nominated to the Court — don't hold your breath — do you think he would be confirmed on the same day?"

Russell Wheeler, Brookings Institution

"[The Republican party] is in a downward spiral, which has culminated with the Trump nomination," says Lofgren. "The problem with wanting to destroy things is that it does not work with complex institutions. [Political obstructionism] has crippled Congress's ability to perform its legitimate functions."

HAVE WE ALWAYS BEEN SO DIVIDED?

According to the Pew Research Center, partisan hostility has increased substantially in the last 20 years. "In each party, the share with a highly negative view of the opposing party has more than doubled since 1994," the center said in a June 2014 report. More of the American electorate is moving away from the center and, as a result, "ideological overlap between the two parties has diminished."

According to the study, 92 percent of Republicans are to the right of the median (middle) Democrat, compared with 64 percent 20 years ago. And 94 percent of Democrats are to the left of the median Republican, up from 70 percent in 1994.

It's not just that people identify more strongly with their respective parties, the report states, but extreme partisans believe the opposing party's policies "are so misguided that they threaten the nation's well-being."

The messy business of government, however, is predicated on deal making. Talking across the aisle cannot happen without a certain amount of civility.

"Civility is just a synonym for using ordinary human decency in political debate. When civility becomes stigmatized as 'political correctness,' reasoned debate, and the inevitable political compromises that are the outcomes of such debate, become almost impossible," says Lofgren.

So when was the golden age of bipartisanship anyway? Some may point to the Civil War era when Abraham Lincoln (a Republican) had a Democrat, Edwin Stanton, as his Secretary of War.

Wheeler of the Brookings Institution points to 1921 when "Taft was confirmed as chief justice on the same day he was nominated. If Obama got nominated to the Court — don't hold your breath — do you think he would be confirmed on the same day?"

Lofgren opines that the last age of cooperation was under Reagan. "Look at 1983, the Beirut Marine barracks bombing. It was a disaster that could've been a Benghazi. Instead, you had Goldwater and Democrats getting together to figure out what went wrong. Everything from rules of engagement to command structure to medical evacuations. They held serious, probative hearings aimed at finding practical solutions. Compare that to the Benghazi circus today. Benghazi is the flip side of that," he says.

LOOKING FOR A WAY FORWARD

Can we get that spirit of bipartisan cooperation back? "It's a different world now," says Wheeler. "I don't know how we'll be able to ratchet it back."

Lofgren argues that we'd better . . . or else. "[Obstructionism] is what happens with an insurrectionist way of approaching politics. In the 1850s it was the Secessionists' way or no way."

Lofgren references Lincoln's Cooper Union speech of 1860, confronting the pro-slavery South's threat to break up the Union if the North refused to give in to its demands:

Your purpose, then, plainly stated, is that you will destroy the Government, unless you be allowed to construe and enforce the Constitution as you please, on all points in dispute between you and us. You will rule or ruin in all events.

Read D.C. Bar member Jamie Gorelick's take at dcbar.org/news.

Senator Mitch McConnell

"Civility is just a synonym for using ordinary human decency in political debate. When civility becomes stigmatized as 'political correctness,' reasoned debated, and the inevitable political compromises that are the outcomes of such debate, become almost impossible."

Mike Lofgren
Former Republican U.S. Congressional aide

AN UNUSUAL FIRST MONDAY

By Sarah Kellogg

The U.S. Supreme Court is back in session the first Monday of October, down a justice and facing a demanding term of work. The justices take the bench on October 3, and the first oral arguments begin October 4, but the empty chair on the bench remains the focus of national attention and speculation.

Nominated by President Obama to replace the late Justice Antonin Scalia, Merrick Garland, chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, will have seriously bested the previous record on the confirmation wait list with a total of 198 days, as of October 1. Garland was nominated on March 16, and the U.S. Senate continues to decline to consider his nomination.

Justice Louis Brandeis, who was appointed by President Wilson in 1916, moves to No. 2 on the wait list, after holding the record of 125 days for 100 years. Garland passed the Brandeis record on July 20.

President Reagan's rejected nominee, former U.S. Solicitor General Robert Bork, holds the record for the longest period between nomination and rejection by the Senate. He lingered 114 days before the Senate voted down his nomination.

DOUBLE THE PUBLIC SERVICE

Government attorneys doing pro bono work

By Erika Winston

Why did you become an attorney? The responses lawyers give range from money and prestige to the thrill of courtroom litigation, but one answer comes up more frequently than all others: "To make a difference." It's a common thread that runs through the fabric of the legal profession, and this is especially true among individuals who spend their days in public service as attorneys for the federal government.

Many federal lawyers would like to do even more. Unfortunately, there is a widespread belief that government attorneys are prohibited from taking on pro bono cases. This could not be further from the truth. Many federal attorneys not only are allowed to take on pro bono matters but also are encouraged to do so. Furthermore, there are vast resources available to help government lawyers to participate in pro bono work while remaining in compliance with government and agency rules.

FEDERAL GOVERNMENT STEPS UP

Prior to 1996, most federal agencies discouraged or prohibited their attorneys from taking on pro bono cases. Recognizing the valuable service that government lawyers could provide, President Bill Clinton issued an executive order that specifically directed the managers of federal agencies to encourage and facilitate volunteer work among government attorneys.

Tasked with implementing the initiative, the U.S. Department of Justice created the Federal Government Pro Bono Program, starting with a few agencies staffing local clinics throughout Washington, D.C. Today attorneys from more than 40 federal agencies volunteer their personal time and energy to provide much-needed pro bono representation.

Laura Klein, manager of the Federal Government Pro Bono Program since 2002, has worked tirelessly to expand the program while putting in place resources to assist government attorneys with the challenges of taking on this important commitment. According to Klein, a federal attorney considering pro bono work generally faces two main regulatory issues. The first is conflict of interest.

"Federal attorneys cannot engage in any action where the federal government has a direct and substantial interest," Klein says. This means that many areas of practice are off limits for pro bono representation, including immigration, Medicare actions, and Social Security claims. Particularly within the District of Columbia, criminal cases also can pose conflict issues because the Office of the U.S. Attorney prosecutes all local and federal crimes.

But, according to Klein, there is no shortage of practice areas for government lawyers who wish to pursue pro bono work. "Our attorneys handle consumer, domestic violence, employment, family law, housing, and personal injury defense cases. We draft wills and powers of attorney and serve as guardians ad litem," she explains. "We make sure that our attorneys find opportunities that do not pose conflicts. Our program tries to do the homework for them and bring the opportunities on a silver platter."

The second constraint for government attorneys is the requirement that they handle pro bono matters in their personal capacity. "The agency is not actively involved in the matter in any way," states Klein.

This means that the malpractice insurance that covers federal attorneys in their daily jobs does not extend to their pro bono casework. But, Klein says, local legal services providers that offer pro bono opportunities for government attorneys routinely provide such insurance. "We rely heavily on local service agencies to provide malpractice [coverage] for pro bono work," she says.

Another challenge for government attorneys working pro bono in their individual capacity is the limitation placed on the use of agency resources. In private law firms, attorneys providing pro bono work have access to the resources of their employer, such as the office computer and printer; can actively work on the case during office hours; or even solicit help from their administrative assistants. None of these actions are allowed by federal agencies. Thus, federal attorneys must donate their own time and resources to fulfill their pro bono commitments.

Klein acknowledges the challenges these restrictions can create, and she works hard to find ways to assist attorneys by relying on the resources of local legal services organizations and also utilizing some good old creativity.

"Being able to walk my clients through the process was rewarding. I was able to help them feel more relaxed in that process because they didn't have to worry about losing their kids due to some procedural or legal misstep."

Karen Shimp, U.S. Securities and Exchange Commission

PRO BONO CENTER CONNECTS NEED TO HELP

In the District of Columbia, the D.C. Bar Pro Bono Center is a major source of pro bono opportunities for federal attorneys.

Lise Adams, assistant director of the Pro Bono Center, says the organization is the largest provider of pro bono legal assistance in the District, serving nearly 20,000 D.C. residents in the last year alone. Through the Center's Advocacy and Justice Clinic, which assists clients whose earnings are at or below 200 percent of the federal poverty guidelines, attorney volunteers take on full client representation for the duration of a case on an individual basis or as co-counsel. Adams says federal attorneys often take on more cases than any other classification of pro bono lawyers, averaging 40 to 50 matters a year.

On the second Saturday of every month, the Center also offers two walk-in Advice and Referral Clinics out of Bread for the City's Northwest and Southeast locations. "These clinics are overseen by Pro Bono Center staff members and staffed by pro bono lawyers," says Adams. "Government attorneys volunteer at both sites every month. It offers them a time-limited volunteer opportunity."

Adams appreciates the federal pro bono program for helping to increase the number of attorney volunteers, and hopes that even more government lawyers will participate once they realize that support and assistance are available to them throughout the duration of any matter." We have a wealth of resources to support government attorneys, including trainings, information about the rules and regulations, videos, and expert mentors on all cases . . . to provide the guidance and support they need," she says.

ATTORNEYS COMMIT TO PRO BONO SERVICE

Katrina Rouse is among those who appreciate the support provided by the D.C. Bar Pro Bono Center. A trial attorney with the Department of Justice, Rouse has taken on seven pro bono matters in her personal capacity in the last five years. "The D.C. Bar does a great job of providing mentors in particular practice areas of law and I have really benefitted from that," Rouse says.

The former New York City school teacher and Stanford Law School graduate started doing pro bono work while still in law school. She says participating in her school's education and human rights clinics helped to prepare her for the pro bono work that she enjoys handling today. "I was really excited to find out that government attorneys could take on pro bono work in our personal capacity. I have made a personal commitment to take on one case a year," Rouse says. The quick settlement of a landlord–tenant case has allowed her to surpass that goal.

For Rouse, pro bono work provides her with trial experience that her daily job does not offer. It also has allowed her to develop professional relationships with other government attorneys, and most importantly, it gives her the opportunity to give back.

"It's about committing to the idea that everyone deserves legal representation in certain situations, and their lack of finances shouldn't bar them from receiving that representation. As a D.C. resident, I find it gratifying to help people in my community with legal issues," she says.

Kristina Srica, a special assistant to the director of enforcement in the Justice Department's Antitrust Division, also feels compelled to provide pro bono service, working for years with the Federal Pro Bono Program. Upon moving to the D.C. area from New York, she inquired about opportunities for volunteer work, leading her to the Pro Bono Center's brief advice legal clinics and serving as co-counsel in an extensive child custody case.

"It can be really challenging due to the amount of personal time you may have to spend on the case, but it was a very rewarding experience and I think we really made a difference for our client," she says.

For government attorneys who are seeking a more predictable time commitment, Srica suggests volunteering at one of the area legal clinics. "You are able to give on-the-spot advice and then leave. You are really making a huge difference without a huge time commitment," Srica says. She also advises attorneys interested in handling pro bono cases to do some homework ahead of time. "Research what the practice area entails and consider the best and worst possible scenarios," she adds.

DOUBLE THE PUBLIC SERVICE

"It can be really challenging due to the amount of personal time you may have to spend on the case, but it was a very rewarding experience and I think we really made a difference for our client."

Kristina Srica, U.S. Department of Justice

Srica plans to take on more pro bono cases in the future. "Being a public servant was always my goal. This is a way for me to feel like I'm helping and using my law degree to help somebody," she says.

Karen Shimp also describes her pro bono experience as gratifying. Throughout her career as a special trial counsel at the U.S. Securities and Exchange Commission (SEC), she has handled numerous pro bono cases while also donating her personal time to the D.C. Bar Pro Bono Center's Advice and Referral Clinics.

"In general… I did family law cases and I was always blessed to have amazing clients who cared about their children and were trying to do their best in a very difficult situation," Shimp says. "Being able to walk my clients through the process was rewarding. I was able to help them feel more relaxed in that process because they didn't have to worry about losing their kids due to some procedural or legal misstep. They could focus on their kids and what was needed for them."

As the pro bono coordinator for the SEC, Shimp encourages other government lawyers to consider pro bono work. "I am the point person when people have questions about anything pro bono. I also field ethical questions about restrictions or conflict of interest guidelines," she says.

One of Shimp's biggest challenges is getting federal attorneys to conquer their fears and take on that initial case. "The first time can be scary and intimidating, especially when it is in an area of law where you are unfamiliar," Shimp says. She assures attorneys new to pro bono work that they will get through the process and all of its challenges. "You are going to be fine and you are hopefully going to have a really great experience and be back at my door within a year or two for another case."

Client appreciation is a great motivator to do pro bono work, Shimp says. "You can't get that in most of our day-to-day jobs."

As pro bono coordinator, Shimp is in regular contact with Klein, and she couldn't be more complimentary. "Laura has single-handedly set up an amazing infrastructure. She is also always looking for places where there is a critical mass of federal attorneys and ethics rules that are amenable to them taking pro bono work," she says.

One such ethics rule is D.C. Court of Appeals Rule 49, which allows federal attorneys who are barred in other jurisdictions to perform pro bono work within the District. This opens the door of opportunity for attorneys barred in other jurisdictions to assist the residents of their city. According to Klein, similar rules have recently passed in Maryland, Colorado, and Illinois.

For federal government attorneys interested in pro bono work, Klein says the first step is to reach out. "Don't assume… You will be pleasantly surprised to learn what's possible," she says. Klein suggests contacting the pro bono representative in your agency first to receive guidance about any specific restrictions within your organization. Lawyers also can contact Klein's office at Laura.F.Klein@usdoj.gov for assistance.

Adams of the D.C. Bar Pro Bono Center puts it plainly: Federal attorneys play a critical role in bridging the access to justice gap and in the Center's efforts to provide legal assistance to those in need. "We owe our success largely to federal government lawyers and their commitment to government service," Adams says.

For more information on the D.C. Bar Pro Bono Center visit www.dcbar.org/pro-bono.

Erika Winston, J.D., M.P.P., is a freelance contributor to *Washington Lawyer*.

Frederick Douglass AWARDS DINNER

and

40th Anniversary Celebration

Thursday, Nov. 10, 2016

JW MARRIOTT WASHINGTON, DC
1331 Pennsylvania Ave. NW

6:00 pm – Reception
7:00 pm – Program and Award Ceremony

Join the Southern Center for Human Rights

in honoring

Richard Dieter
Death Penalty Information Center

FREDERICK DOUGLASS HUMAN RIGHTS AWARD

The Founders of the Southern Center for Human Rights

Joseph Ingle

Anthony Dunbar

L.C. Dorsey

David Lipman

Michael Raff

CHARLES J. OGLETREE, JR. FOUNDERS AWARD

LEADING SPONSORS

KING & SPALDING

COVINGTON
COVINGTON & BURLING LLP

SOUTHERN CENTER FOR HUMAN RIGHTS

For sponsorship and ticket information visit www.schr.org/event/20th_annual_dinner, or contact Terrica Ganzy at 404-688-1202 or tganzy@schr.org.

ABNER J. MIVKA

REMEMBERED WITH FONDNESS

This summer witnessed the passing of one of the D.C. Bar's true legends, Abner J. Mikva. U.S. congressman, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, and White House counsel, law professor, and proud husband and father, Mikva dedicated his life to public service.

"[In college] I read a book that had an incredible impact on me. It was Irving Stone's fictionalized biography of Clarence Darrow. I was impressed that Darrow could use his legal talents to free innocent people from jail and fight for noble social causes . . . This romanticized version of Darrow's life captivated me. I began to think of the practice of law as providing an opportunity to do good and, at the same time, to do well.

"And now, I can look back and say that I was right. I'm delighted that I made the decision to become a lawyer."

Disclaimer: The views and opinions expressed here are those of the individuals and do not reflect the policies or positions of their respective agencies and employers.

That moment when members found out they were being awarded the Beatrice Rosenberg Award for Excellence in Government Service...

PAUL KOFFSKY

U.S. DEPARTMENT OF DEFENSE

2011 Recipient

"I knew Bea Rosenberg, as my father and Ms. Rosenberg served together for years in the Criminal Division of the U.S. Department of Justice. When I visited my dad at his office, I would make it a point to see Ms. Rosenberg as well. She was always gracious and had something of substance to offer me; it was never a casual conversation with her. To win the Rosenberg Award is an honor under any circumstances, but to win an award named after somebody who's one of my professional heroes is even more meaningful.

Since being privileged to receive the Rosenberg Award, I have worked on a wide variety of matters. These include initiatives such as the Force of the Future for military and civilian personnel in DoD; opening all military positions and units to women; the implementation of the repeal of "Don't Ask, Don't Tell," efforts to eradicate the scourge of sexual assault in the military; reorganizations affecting major components of the department; and, most recently, assisting on Secretary of Defense Ash Carter's decision to allow transgender military personnel to serve openly."

KATHRYN A. ELLIS

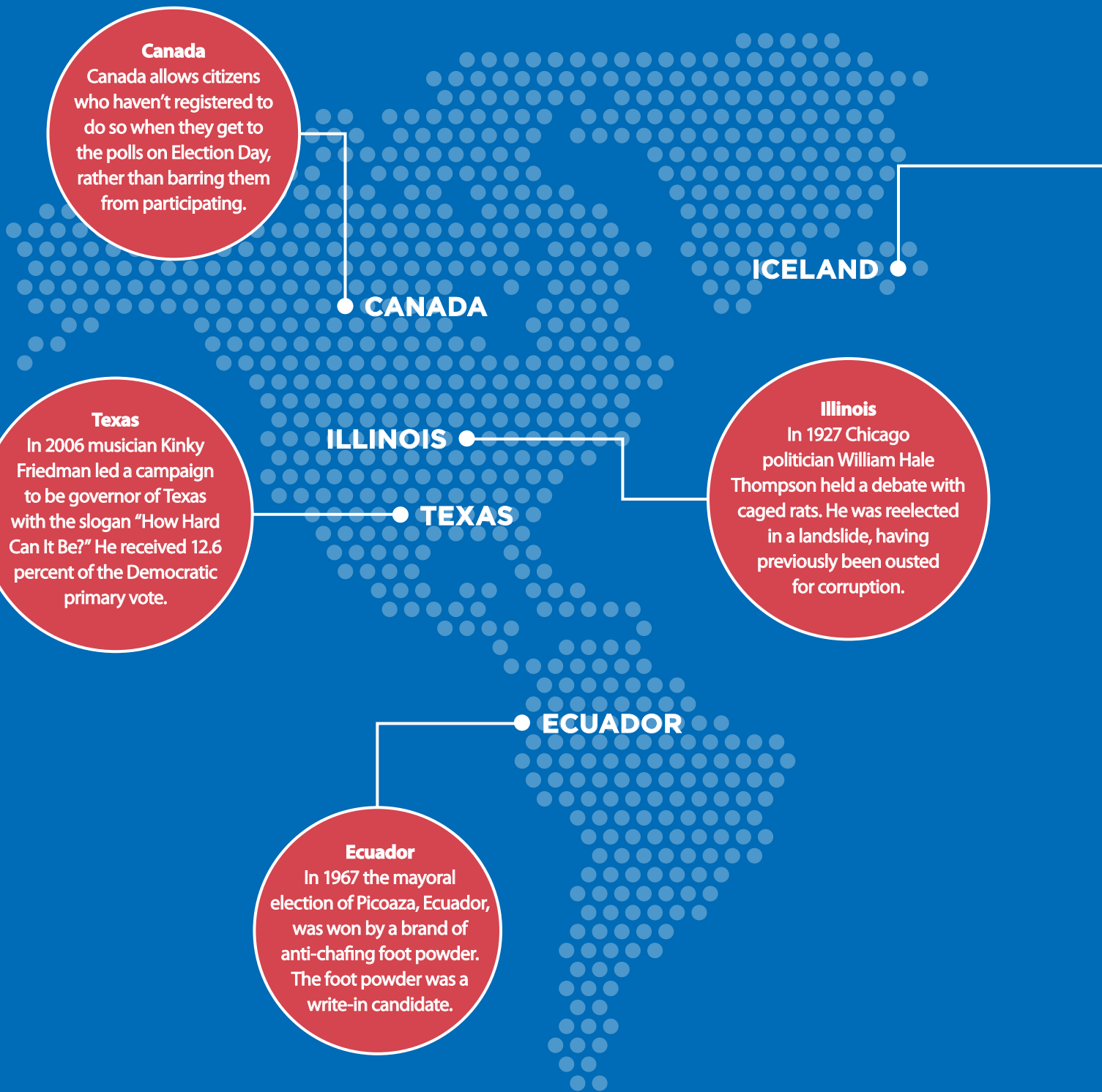
U.S. DEPARTMENT OF EDUCATION

2005 Recipient

"It was a total surprise when [then-Bar President] John Keeney Jr. called me to ask if I would accept the Bea Rosenberg Award. It was such an honor to have been nominated, let alone be selected by the Awards Committee. I work at the intersection of law and national policy, and I have been privileged to spend my career as a government attorney at the Departments of Education and Health and Human Services working with wonderful people—lawyers and non-lawyers—who are dedicated to the mission of their agencies. I currently serve as the assistant general counsel for educational equity and agency dispute resolution specialist at the Department of Education, and it continues to be my responsibility to live up to the legacy of Ms. Rosenberg."

Watch 2015 Rosenberg Award winner Daniel Koffsky receive his award.

VOTING AROUND THE



WORLD

For more quirky laws, visit dcbar.org/news.

WHEN LAW & LITERATURE MEET

By Ronald Goldfarb

Joseph M. Hassett

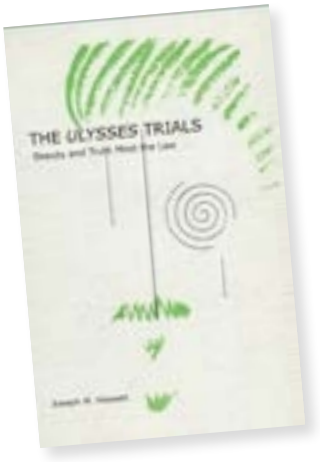


Photo courtesy of Hogan Lovells

The age-old obscenity debate reignited.

Joseph M. Hassett, a Washington, D.C., lawyer and literary critic, analyzes the history of James Joyce's publication of *Ulysses* nearly a century ago, and the law of obscenity it engendered. His reportage of the publications, first a serialization in *The Little Review* by two unknown art advocates, the book later (1934), explains how in both instances they became objects of litigation. *The Ulysses Trials* will interest experts, though it is a bit rarified for general readers. The odd role of John Quinn, an early — and questionable — legal advocate and art patron, is interesting. The value of this book is its analysis of the historic and persistent roots and consequences of the law of obscenity.

Courts and juries have wrestled with the questions what is obscene and who gets to decide? Post Office officials, questionable discerners of literary standards, denied passage to America of *Ulysses* chapters in *The Little Review*. The famous decision of federal trial court judge John Woolsey written nearly a century ago (upheld by the Second Circuit) was adopted by the U.S. Supreme Court in *Roth v. United States* in 1964, and refined in later cases. Hassett takes readers back to Plato and Aristotle in discussing "the war between law and literature." He reports the thoughts on the subject of historic figures — Ezra Pound, Oscar Wilde, Yeats (William Butler and Jack Butler), Sylvia Beach, and Learned and Augustus Hand (let's not forget Joseph Goebbels and the Nazis' infamous book burnings). The prolific jurist Richard Posner adds to the discussion of art and beauty, which underlies debates over controversial books: His fundamental point is that what is "too bawdy" for one generation (or place) may change with the times. Where does that insight leave us?

Ultimately, we are left with a question of judicial and legislative semantics, a politically and legally profound one, rooted in unscientific social standards. The librarians in a small town in Texas and in bustling Greenwich Village bookstores will differ on definitions of obscenity, as will wise and learned judges and literary "experts." Readers are left to ponder whether the definitive view of the late Justice Hugo Black on the absoluteness of the First Amendment is the better answer to this recurring and divisive issue: Words are words –- neither pristine nor evil in themselves, but only in the minds of readers. Thus, the law should leave them alone, so readers may choose to read or not to read them.

Visit ronaldgoldfarb.com

ASK THE ETHICS EXPERTS

By Erika Stillabower

Q: I am an attorney who previously worked in a nonlegal capacity as a water quality expert at the U.S. Environmental Protection Agency, where my main focus was providing scientific expertise to assist in the rule-making process. Now that I am in private practice, a client has asked me to review the applicability of a regulation to his proposed manufacturing site. The regulation is one on which I previously advised while at EPA. Since I was not providing legal advice while I was at EPA, am I correct that Rule 1.11 (Successive Government and Private or Other Employment) simply does not apply to me and that, as such, I do not have a conflict in undertaking to represent my current client?

A: Rule 1.11(a) certainly *does* apply to you, but the good news is that you do not have a conflict under the Rule.

Rule 1.11(a) is not limited to work performed "as a lawyer" but, rather, applies to lawyers who serve in any capacity as a "public officer or employee." Thus, a lawyer employed in a nonlegal position which did not require admission to the Bar is still subject to the proscriptions of Rule 1.11(a) when he or she changes jobs. However, Rule 1.11(a) applies only when the matters worked on as a government employee "involv[ed] a specific party or parties." *See* Rule 1.11(g).

Ordinarily, rule-making and policy work, as noted in Comment [3] to the Rule, are not considered "matters" for purposes of Rule 1.11. *See* LEOs 297, 344. In other words, you are likely free to take on the new representation, not because you were "not working as a lawyer" while at EPA, but because, absent other considerations, participation in the rule-making process as a government employee does not create future conflicts for lawyers. Of course, former government employees should always consider any limitations imposed on future employment by other sources of law or agency rules. Moreover, D.C. lawyers who are assessing the applicability of Rule 1.11(a) may wish to review LEO 315 for its analysis of the "personal and substantial participation" standard in connection with government employment.

DISCIPLINARY SUMMARIES

Disciplinary Actions Taken by the Board on Professional Responsibility

Hearing Committees on Negotiated Discipline

In re Thomas M. Tamm. Bar No. 958744. July 11, 2016. The Board on Professional Responsibility's Hearing Committee Number One recommends that the D.C. Court of Appeals accept Tamm's petition for negotiated discipline and publicly censure Mr. Tamm for violations of Rule 1.6.

Disciplinary Actions Taken by the Board on Professional Responsibility Original Matters

In re Catherine E. Abbey. Bar No. 436925. July 12, 2016. The Board on Professional Responsibility recommends the D.C. Court of Appeals disbar Abbey. While retained to represent a client in a personal injury matter, Abbey engaged in reckless misappropriation and failed to promptly notify and/or disburse entrusted funds to a third party. Rules 1.15(a) and 1.15(c).

In re Kelly A. Cross. Bar No. 500189. July 29, 2016. The Board on Professional Responsibility recommends the D.C. Court of Appeals suspend Cross for three years with fitness. Rules 8.4(b) and 8.4(c).

In re Dorrance D. Dickens. Bar No. 450751. July 28, 2016. The Board on Professional Responsibility recommends the D.C. Court of Appeals disbar Dickens with restitution of $1,434,298.50 as a condition of reinstatement, with interest at the legal rate. This matter arises out of Dickens' alleged theft of at least $1,434,298.50 from estates related to three different clients, while employed at the Luxenberg & Johnson (later, Luxenberg, Johnson & Dickens). 1.1(a), 1.1(b), 1.3(b)(1), 1.3(b)(2), 1.4(a), 1.4(b), 1.7(b)(4), 1.15(a) (misappropriation), 1.15(c), 8.1(b), 8.4(b), 8.4(c), and 8.4(d).

In re Laurence F. Johnson. Bar No. 934398. July 29, 2016. The Board on Professional Responsibility recommends the D.C. Court of Appeals suspend Johnson for 90 days, with 60 days stayed, in favor of one-year probation with conditions. Johnson violated multiple violations of the Maryland Lawyers' Rules of Professional Conduct arising from his handling of two separate immigration matters. Specifically, in the first matter, Johnson failed to timely submit an application necessary to obtain permanent resident status for his client. In the second matter, Johnson failed to appeal a decision that denied the client's request for voluntary departure from the United States and ordered his "removal" (i.e., deportation), continued to charge fees for the unfiled appeal, failed to inform the client that the appeal had not been filed, commingled client funds (an advance of unearned fees) with his own funds, had the client sign a statement that purported to prospectively limit the client's liability for malpractice, failed to provide necessary background information about the case to successor counsel, and was dishonest with his client to cover up an omission.

In re Deborah Y. Luxenberg. Bar No. 215657. July 28, 2016. The Board on Professional Responsibility recommends the D.C. Court of Appeals suspend Luxenberg for six months. Luxenberg, who practiced law in the District of Columbia under the firm name Luxenberg & Johnson (later, Luxenberg, Johnsons & Dickens) employed Dorrance D. Dickens, who engaged in the theft of at least $1,434,298.50 from estates related to three different clients. The Board found that Luxenberg failed to make reasonable efforts to ensure that her law firm had measures in effect giving reasonable assurance that all lawyers in the firm conformed to the Rules of Professional Conduct; failed to take remedial action when she knew or

reasonably should have known about Dickens' failure to keep a client reasonably informed as to the status of her matter at a time when its consequences could have been avoided or mitigated; and failed to take remedial action when she knew or reasonably should have known about Dickens engaging in the practice of law in Maryland without a license to do so. Rules 1.3(a), 5.1(a), and 5.1(c)(2).

Disciplinary Actions Taken by the District of Columbia Court of Appeals

Original Matters

In re Robert E. Coughlin II. Bar No. 480261. July 7, 2016. The D.C. Court of Appeals granted Coughlin's petition for reinstatement.

In re Dana Johnson. July 28, 2016. The D.C. Court of Appeals dismissed Johnson's petition for reinstatement.

In re Daniel M. Wemhoff. Bar No. 420233. July 14, 2016. The D.C. Court of Appeals suspended Wemhoff for 30 days, stayed the suspension and ordered that Wemhoff be placed on probation for one year, with the condition that he undergo an assessment by the assistant director of the Practice Management Advisory Service, or his designee, implement any recommendations that the PMAS may make, and sign a limited waiver permitting the PMAS to confirm his compliance with this condition, and his cooperation in the assessment process. The disciplinary proceeding arose out of Wemhoff's representation in a civil action. Specifically, Wemhoff disclosed his client's confidences and secrets without authorization or other justification; knowingly disobeying an obligation under the rules of a tribunal; and engaged in conduct that seriously interferes with the administration of justice. 1.6(a), 3.4(c), and 8.4(d).

Reciprocal Matters

In re James M. Cutshaw. Bar No. 437386. July 28, 2016. In a reciprocal matter from Louisiana, the D.C. Court of Appeals imposed functionally equivalent reciprocal discipline and suspended Cutshaw for 30 months with fitness, *nunc pro tunc* to June 13, 2014. In Louisiana, Cutshaw consented to discipline and stipulated that he had violated Rule 8.4(b) (commission of criminal act adversely reflecting on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

In re Charles S. Rand. Bar No. 396942. July 28, 2016. In a reciprocal matter from Maryland, the D.C. Court of Appeals imposed functionally equivalent reciprocal discipline and indefinitely suspended Rand with fitness. Rand may file for reinstatement after five years or after he is reinstated to practice law in the state of Maryland. In Maryland, Rand was found to have failed to keep his client informed as to the status of the representation, failed to provide invoices to the client, failed to surrender the client's file after termination of the representation, made misrepresentations to disciplinary authorities, engaged in dishonesty, and engaged in conduct prejudicial to the administration of justice.

In re Sierra David Sterkin. Bar No. 500164. July 28, 2016. In a reciprocal matter from California, the D.C. Court of Appeals suspended Sterkin for two years, stayed in favor of a six-month suspension, *nunc pro tunc* to June 9, 2016, to be followed by a three-year probationary period subject to the conditions imposed by the state of California. The California discipline stemmed from Sterkin's convictions for resisting police officers and making criminal threats, as well as his successful completion of an alternative disposition program in coordination with the California State Bar's Lawyer's Assistance Program.

In re Christopher R. Walsh. Bar No. 425192. July 28, 2016. In a reciprocal matter from Minnesota, the D.C. Court of Appeals imposed functionally equivalent reciprocal discipline and suspended Walsh for six months with fitness. In Minnesota, Walsh was found to have delayed client matters, failed to communicate with clients, made a false statement to opposing counsel, and chronically violated court orders and court rules, resulting in clients' lost claims.

Interim Suspensions Issued by the District of Columbia Court of Appeals

In re Robert G. Broderick. Bar No. 1004403. July 7, 2016. Broderick was suspended on an interim basis based upon discipline imposed in Superior Court, Judicial District of Stamford/Norwalk, Connecticut.

In re Menacham E. Lifshitz. Bar No. 428625. July 28, 2016. Lifshitz was suspended on an interim basis based upon discipline imposed in the Appellate Division of the Supreme Court of New York for the First Judicial Department.

In re Toan Q. Thai. Bar No. 439343. July 7, 2016, 2016. Thai was suspended on an interim basis pursuant to D.C. Bar R. XI, § 9(g), pending final action on the Board on Professional Responsibility's May 13, 2016, recommendation of disbarment.

Informal Admonitions Issued by the Office of Disciplinary Counsel

In re Ignacio Ricardo Fernandez de Lehongrias. Bar No. 1019153. June 30, 2016. Disciplinary Counsel issued respondent an informal admonition. While appointed to two criminal cases in 2015 in the District of Columbia Court of Appeals, in both cases, respondent failed to file the brief or respond to Court orders to do so. Rules 1.1(a), 1.1(b), 1.16(a)(2), and 8.4(d).

In re Daniel Hornal. Bar No. 1005381. June 29, 2016. Disciplinary Counsel issued Hornal an informal admonition for assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law; and making a false or misleading communication about the lawyer or the lawyer's services. Rules 5.5(b) and 7.1(a).

In re Rocquelle A. Jeri. Bar No. 466663. June 20, 2016. Disciplinary Counsel issued Jeri an informal admonition. Jeri engaged in a conflict of interest when he represented a former client's husband in a substantially related matter, without informed consent. Rule 1.9.

In re Harry Stanley Max. Bar No. 1021553. June 24, 2016. Disciplinary Counsel issued Max an informal admonition. While representing two clients in a personal injury matter, Max caused a firm employee to notarize client releases, although the respondent knew that the clients had not appeared before the notary and she did not witness them signing the releases. Rule 8.4(c).

In re Tiffani D. Sloan. Bar No. 980759. July 13, 2016. Disciplinary Counsel issued Sloan an informal admonition. Sloan was sanctioned by the Bankruptcy Court for filing a Chapter 13 petition in violation of Fed. R. Bankr. P. 9011 (b)(3). Immediately after Sloan filed the petition and accompanying exhibits, the court issued several notices advising Sloan of her numerous filing deficiencies, which she failed to correct or file a timely objection to. In addition, the trustee filed a motion to dismiss based upon Sloan's client's ineligibility under 11 U.S.C. § 109(h) and a notice to object. Rules 1.1(a), 1.1(b), 3.1, and 8.4(d).

George A. Teitelbaum. Bar No. 370926. July 1, 2016. Disciplinary Counsel issued Teitelbaum an informal admonition. Teitelbaum, as attorney for the special administrator of an estate, accepted a fee without seeking and obtaining the required court approval. His client disbursed the assets of the estate, including paying Teitelbaum's his fee, prior to submitting a request for compensation. Teitelbaum failed to provide competent representation, failed to charge a reasonable fee and engaged in conduct that seriously interfered with the administration of justice. Rules 1.1(a), 1.5(a), and 8.4(d).

In re Donald B. Terrell. Bar No. 416562. July 8, 2016. Disciplinary Counsel issued Terrell an informal admonition. While retained to represent a client in an employment matter, Terrell failed to provide the client a writing setting forth the basis or rate of the contingent fee, and scope of the representation. Rules 1.5(b) and 1.5(c).

In re Brenda C. Wagner. Bar No. 267385. June 16, 2016. Disciplinary Counsel issued Wagner an informal admonition. While retained as counsel to the personal representative in an estate matter, failed to provide skill and care commensurate with that generally afforded to clients by other lawyers in similar matters; failed to represent a client zealously and diligently within the bounds of the law; failed to act with reasonable promptness; failed to keep a client reasonably informed about the status of a matter; and seriously interfered with the administration of justice. Rules 1.1(b), 1.3(a), 1.3(c), 1.4(a), and 8.4(d).

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

PARTNERS' PERSPECTIVE

By Jeffery Leon

Prosecutors and criminal defense attorneys discuss the impact of their work.

ROBERT BENNETT

Hogan Lovells

The decision to move from being a prosecutor to a criminal defense attorney was due to my family. It wasn't any dissatisfaction with being a prosecutor — it was the best job I ever had — but I had a young family and I wanted to provide for them.

I think the biggest adjustment in this change was, as a prosecutor, you don't always recognize the consequences of charging somebody. You really see it as a defense lawyer, how it tremendously impacts your client, their family, and their colleagues, and I think that's something you see over time. If I were a prosecutor again, I would probably think a little more about what impact [it] is going to have if I indict somebody or cause them to be indicted.

KIRA WEST

Law Office of Kira A. West

When I was a trial lawyer, I prosecuted everything under the sun, with the exception of bank fraud and terrorism. I became interested in being a defense lawyer when a childhood friend of mine was indicted over tax issues. Seeing his struggle was so infuriating to me because he was innocent, so I assisted him on his case and thought, Wow, this is kind of fun! So I opened my own practice in Texas. I enjoy being a defense lawyer, but it's also very meaningful to me because the people I represent are by and large indigent, and they don't have the same advantages or opportunities that other people have. When a person I represent reaches redemption, it gives me great satisfaction, and I'm thankful that I get to do this work every day.

KEVIN MUHLENDORF

Wiley Rein LLP

I spent 12 years in government working at both the U.S. Securities and Exchange Commission and the U.S. Department of Justice before I made the transition to private practice. Wiley Rein was a great opportunity I couldn't pass up, and I felt that [the] breadth and depth of [my] experience could add real value to clients. It has really surprised me how rewarding it is to be able to help clients through their problems.

Working as a defense lawyer, you quickly discover the collateral consequences of government investigations and realize how much power you had as a prosecutor. Even folks who have no real civil or criminal exposure are worried about their reputations and even their livelihoods. In my work I think a lot about what I would've done as a prosecutor and anticipate similar moves when I'm defending a client.

PEGGY BENNETT

Coburn & Greenbaum PLLC

After graduating from law school and passing the New York bar [exam], I started my career as a public defender in the Criminal Defense Division of the Legal Aid Society in Manhattan. I loved it, but found it frustrating at times because as a defense attorney you can only defend what someone else has charged. I felt like it would be a great experience to be on the other side as someone making the charging decisions, so I joined the United States Attorney's Office for the District of Columbia as an assistant U.S. attorney, and later I joined a private practice. I believe that to be a really good attorney and to honor the profession, you should be able to both prosecute and defend vigorously because both are important. The system doesn't work without either of them, and defense attorneys and prosecutors have to be aware of the impact their decisions have on their clients and the individuals they are prosecuting.

For additional interviews, visit dcbar.org.

Statement of Ownership, Management, and Circulation
(As Required by 39 U.S.C. § 3685)

1. Publication Title: Washington Lawyer. **2. Publication Number:** 0890-8761. **3. Filing Date:** September 8, 2016. **4. Issue Frequency:** Monthly (July/August combined). **5. Number of Issues Published Annually:** 11. **6. Annual Subscription Price:** $0. **7. Complete Mailing Address of Known Office of Publication:** District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. **8. Complete Mailing Address of Headquarters or General Business Office of Publisher:** Same. **9. Full Names and Complete Addresses of Publisher, Editor, and Managing Editor:** Publisher, District of Columbia Bar; Editor in Chief, Jenny Martin; Associate Editor, Andrea T. Williams; Managing Editor, Tim Wells. **10. Owner:** District of Columbia Bar, 1101 K Street NW, Suite 200, Washington, DC 20005-4210. **11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities:** None. **12. Tax Status:** Has Not Changed During Preceding 12 Months. **13. Publication Title:** Washington Lawyer. **14. Issue Date for Circulation Data:** September 2016. **15. Nature and Extent of Circulation:** Average No. Copies Each Issue During Preceding 12 Months/No. Copies of Single Issue Published Nearest to Filing Date: a. Total Number of Copies: 99,631/98,983; b. Paid Circulation: (1) 99,096/98,689; c. Total Paid Distribution: 99,096/98,689; d. Free or Nominal Rate Distribution: (1) 43/44, (4) 70/68; e. Total Free or Nominal Rate Distribution: 114/112; f. Total Distribution: 99,209/98,801; g. Copies Not Distributed: 422/182; h. Total: 99,631/98,983; i. Percent Paid: 99.9/99.7. **16. Publication of Statement of Ownership:** Publication required. Will be printed in the October 2016 issue of this publication. **17. Signature and Title of Editor, Publisher, Business Manager, or Owner:** Tim Wells, Managing Editor. Date: September 8, 2016.

ATTORNEY BRIEFS

By Tracy Schorn

HONORS AND APPOINTMENTS

Outgoing Washington Lawyers' Committee Executive Director **Roderic V. Boggs**, who stepped down after 45 years of service, received the 2016 Wiley A. Branton Award for a lifetime of civil rights advocacy… **Jeffrey J. Lorek** was promoted to the rank of major, and the position of deputy chief, Labor Relations Law Branch, Air Force Legal Operations Agency… The following attorneys were elected fellows of the College of Labor and Employment Lawyers: Jones Day's **Eric Dreiband**, Ogletree Deakins' **Brian E. Hayes**, Blank Rome LLP's **Deborah P. Kelly**, the Equal Employment Opportunity Commission's **Christopher Kuczynski** and **Cathy Ventrell-Monsees**, and Hunton & Williams LLP's **Susan F. Wiltsie**… **Edward G. Sponzilli** of Norris McLaughlin & Marcus, P.A. has been appointed chair of the New Jersey State Bar Association's Higher Education Committee… Holland & Knight LLP partner **Alby Salaman** has been elected president of the Washington, D.C., Estate Planning Council. **Richard Duvall**, also a partner at the firm, was elected chair of the board of the American Red Cross, National Capital Region… **Valerie M. Nannery** was selected as the 2016-2017 Supreme Court Fellow assigned to the Federal Judicial Center.

ON THE MOVE

Vincente L. Martinez has been elevated to partner at K&L Gates LLP. **Linda C. Odom** joined the firm as partner and **Tala S. Gardner** joined as counsel… **Jonathan W. Gottlieb** has been promoted to partner at Sutherland Asbill & Brennan LLP… **John E. Bowman** will serve as cochair of Dinsmore & Shohl LLP's financial institutions group… .**Catherine Denny** and **Andrew Kirtley** have joined the D.C. Tenants' Rights Center as staff attorneys… Clinton Brook & Peed has promoted **Gregory M. Lipper** to partner … **James Tierney** has been promoted to partner at Orrick LLP… **D. Michael Stroud Jr.** has joined the United States International Trade Commission as a congressional relations officer…**Jonathan Jeffress** and **William Pittard** have been elevated to partner at KaiserDillon PLLC… **Samar S. Ali** has joined Bass, Berry & Sims PLC's international business practice… Kacvinsky Daisak Bluni, PLLC (KDB) has promoted **Dr. Judith Toffenetti** to partner and **Paul Skwierawski** to of counsel… **Kerry Scanlon** has become head of McDermott Will & Emery LLP's labor & employment litigation practice in Washington, D.C.… **Jonathan Jeffress** has been elevated to partner at KaiserDillon PLLC… **Andrew I. Gavil** has joined Crowell & Moring LLP as senior of counsel… Kilpatrick Townsend & Stockton LLP has announced the following moves: **Larry Prosen** has been promoted to partner, **John Bergin** to of counsel, and **Christian Henel** and **Daniel Broderick** to associate… **David Applebaum** has joined Akin Gump LLP as partner… **Andrew Hurst** has been elevated to partner at Foley & Lardner LLP… **Bernadette M. Rappold** has joined Greenberg Traurig, LLP's environmental and litigation practices… **Lisa Prager** and **Lara Covington** have joined Holland & Knight LLP as partner… **Andrew J. Narod** and **Amy Magdanz Rose** have joined Bradley Arant Boult Cummings LLP as associate… **Glenn J. Figurski, Amy M. Glassman, Reid F. Herlihy**, and **P. Andrew Spicknall** have been promoted to partner at Ballard Spahr LLC… **Nicholas Tsoudis** has joined Invesco Ltd. as chief compliance officer of WL Ross & Co., LLC and Invesco Private Capital, Inc. in New York… **Paul E. Pelletier** has joined Pepper Hamilton LLP as partner… **Jessica Phillips** has joined Boies, Schiller & Flexner as counsel… **Harry L. "Hank" Gutman** has joined Ivins, Phillips & Barker, Chartered as of counsel… **James E. "Jamie" Brown** has rejoined the firm as partner.

COMPANY CHANGES

Thomas, Thomas & Hafer LLP has opened a new office at 700 12th Street NW, Suite 700, Washington, DC 20005.

AUTHOR! AUTHOR!

Michelle Wade of the aviation law firm Jackson & Wade, L.L.C. has written the article, "Practical Tips for Regulatory Compliance With a Company Jet," which was published in the July 2016 edition of *Business Law Today*… *Donald Mitchell* has written the book *Wampum: How Indian Tribes, the Mafia, and an Inattentive Congress Invented Indian Gaming and Created a $28 Billion Gambling Empire.*

D.C. Bar members in good standing are welcome to submit announcements for this column. When making a submission, please include name, position, organization, and address. Please e-mail submissions to attorneybriefs@dcbar.org.

LINDA KLEIN

senior managing shareholder at Baker Donelson LLP, became president of the American Bar Association in August.

PRESTON QUESENBERRY

has joined Loeb & Loeb LLP as of counsel in the firm's nonprofits and tax-exempt organizations practice.

GUNJAN TALATI

has been promoted to partner at Kilpatrick Townsend & Stockton LLP.

MEDIA BYTES

By Tracy Schorn and Thai Phi Le

Where the law intersects with culture and lifestyle.

LOOTED ART, LAW AND RESTITUTION

Ever wonder if graffiti can be copyrighted, who determines "cultural heritage," or whatever becomes of those claimants in Nazi-looted art cases? Check out *The Art Law Report* (http://blog.sandw.com/artlawreport) for a great read on these and other legal issues surrounding art ownership. The blog, which provides "timely updates and commentary on legal issues in the museum and visual arts communities," is run by Sullivan & Worcester LLP and edited by Nicholas M. O'Donnell, a partner in the firm's litigation department. Check out the site for its wealth of reporting on the art world, especially the legal restitution struggles for art confiscated during World War II.

A DEEP DIVE INTO THE LATEST LEGAL ISSUES

Launched in 2005, award-winning podcast *Lawyer 2 Lawyer* (http://legaltalknetwork.com/podcasts/lawyer-2-lawyer) is one of the longest-running podcasts examining current events and recent rulings. Hosts Bob Ambrogi and J. Craig Williams invite leading industry professionals to debate legal issues of the day. The episode in August goes inside the Netflix runaway hit documentary series *Making a Murderer*, with guests Dean Strang, former defense attorney for Steven Avery, and Peter Linton-Smith, a former television news reporter who covered the Avery trials.

THE NEWS IN DOODLES

Every minute headlines change. A new article pops into your feed or a friend e-mails you a link to another story. You're staring at pages upon pages of type. That's where editorial cartoons step in. Part caricature, part news, these drawings have long been a newspaper tradition by offering levity, but pointed opinions about what is happening in our world. To get a thorough compilation of some of the funniest political cartoons, both new and old, check out www.cartoonistgroup.com. Search for "Supreme Court" and you'll see those big-headed caricatures of your favorite justices. Conservative or liberal, no SCOTUS justice is spared from commentary.

JOIN THE CLASS OF 2017

JOHN PAYTON LEADERSHIP ACADEMY

THE JOHN PAYTON LEADERSHIP ACADEMY

Are you interested in honing your leadership skills? Do you want to get more involved with the D.C. Bar, but don't know where to start? It's time to apply for the 2017 John Payton Leadership Academy. Applications, due by December 2, are available on the D.C. Bar Web site.

Learn to run effective meetings, build consensus, think strategically, and solve problems — these are critical skills that any effective leader must develop and use. Over the course of three full-day sessions at the Bar's headquarters, Leadership Academy participants will cultivate these skills and more as they learn about their leadership strengths and styles. Sessions also include presentations by and interactions with prominent Bar leaders.

In addition, participants spend a half-day at the D.C. Bar Pro Bono Center's Advice and Referral Clinic. Attendance at all sessions is mandatory.

The 2017 Leadership Academy will be held on March 10, March 31, and April 21. Pro bono service will be completed on April 8.

To apply for the 2017 Leadership Academy, visit dcbar.org, keywords: Leadership Academy

TAKING STOCK OF YOUR CAREER

By Victor L. Velazquez,
D.C. Bar Chief Operating Officer

Mapping a professional journey.

Whether you're a solo practitioner, a general counsel for a large firm, an attorney in government, or working in any one of the highly diverse segments that represent our 100,000-plus members in all 50 states and in more than 80 countries, it's important that you establish a roadmap for your professional journey ahead.

Strategic planning for organizations is an attempt to identify future opportunities and challenges, and to align resources and devise tactics to address them. For an individual, especially a legal professional, a similar exercise is of tremendous value. It may not result in a series of detailed documents like those that now govern the D.C. Bar following its strategic planning process that yielded a vision for 2020, but it should provide you a glimpse of some priorities and objectives for your professional journey.

Prior to establishing such roadmap, here are five key areas to focus on as homework:

COMPETENCIES

Not simply technical skills, but what can differentiate you in a field where others may possess the same skills.

INFLUENCE

How you are able to achieve outcomes that are rooted not in hierarchy or *quid pro quo* situations, but rather in your ability to garner support from others.

PERFORMANCE

Can you define desired outcomes and success and rate yourself on those dimensions rather than simply effort?

GROWTH

Your ability to continually improve dimensions of your professional self by recognizing that there's improvement to be had.

IMPEDIMENTS

Self-defined constraints, circumstances, or other obstacles to achieving more professionally.

Establishing an inventory for these five areas will give you an initial glimpse of the possibilities that lie ahead. It may also provide some insights into where you stand today versus why you believe that is the case.

With each area of focus, expend the energy to write more than a few short bullets. Express thoughts in long form at first, if helpful, so you can develop a comprehensive understanding for each one.

Competencies can be narrowly defined as, for example, "strong litigation skills," or can be expressed as a more holistic set of thoughts. What are your abilities to envision future states? How comfortable are you operating in ambiguity? A job or project or task may be highly specific, but a professional roadmap for an organization or individual is likely to have a fair amount of ambiguity as you think beyond six months or a year.

COMMUNITY & CONNECTIONS

By Jeffery Leon and Tracy Schorn

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

1. STEWARD KEEPS HER PROMISE

Annamaria Steward (fourth from left) made a pledge to volunteer at the D.C. Bar Pro Bono Center's Advice & Referral Clinic every month during her year as D.C. Bar president. On July 9 Steward kicked off her year by volunteering at the Shaw clinic. She was joined by former Bar presidents Andrea Ferster, Andrew Marks, Tim Webster, and Kim Keenan, and the Bar's current president-elect, Patrick McGlone.

2. ONE LAST HURRAH

Roderic V.O. Boggs (left), who is stepping down as executive director of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, shares the stage with his replacement, Jonathan Smith, during the organization's 2016 Wiley A. Branton Awards luncheon on June 22 at the JW Marriott Hotel.

3 MORIN REPLACES SATTERFIELD AS CHIEF JUDGE

The District of Columbia Judicial Nomination Commission has selected Robert E. Morin (pictured), 63, as the new chief judge for the D.C. Superior Court. He replaced Judge Lee F. Satterfield, who served two four-year terms as chief judge. Morin has served on the Superior Court since 1996, when he was appointed by President Clinton, and previously he served as presiding judge of the court's Criminal Division. Morin assumed the office on October 1.

4. FASTCASE HONORS MAZZAFERRI, SHIPP

Fastcase legal research service has selected Katherine A. Mazzaferri, chief executive officer of the D.C. Bar, and Wallace E. "Gene" Shipp Jr., who serves as disciplinary counsel, as recipients of its Fastcase 50 Award. Mazzaferri was singled out for her three decades of leadership at the D.C. Bar, elevating its stature and programming, and expanding its membership from around 35,000 at the beginning of her tenure to more than 100,000 members today. Shipp was honored for his long career in legal ethics and attorney discipline, having served in the Office of Disciplinary Counsel for more than 35 years.

View the 2016 winners at fastcase.com.

5. D.C. BAR'S LISTENING TOUR CONTINUES

The D.C. Bar has completed two additional stops to its BARometer, its multi-city networking and listening tour. In June, D.C. Bar members gathered in Chevy Chase, Maryland, and Chicago to network and shares stories with other Bar leaders. The BARometer soon will make its way to the West Coast.

Learn more about D.C. Barometer at dcbar.org.

6. BAR HOSTS SHANGHAI DELEGATION

On July 22 the D.C. Bar hosted a visit by a seven-person delegation from Shanghai University Law School. A representative from the International Judicial Academy accompanied the delegation. The purpose of the delegation's visit to the United States and to the Bar was to learn about the U.S. legal system. D.C. Bar President Annamaria Steward greeted the delegation at the Bar's headquarters. Bar staff Karen Savransky and Crystal White of the Executive Office and Saul Singer of Regulation Counsel presented information to the delegation.

For full coverage or other D.C. Bar news, visit www.dcbar.org.


1.

2.


3.


4.


4.


5.


5.


6.

WALLACE E. 'GENE' SHIPP

The Disciplinary Counsel for the District of Columbia, will step down mid-2017 after serving 35 years in office. He leaves us with these words of wisdom:

"We are a profession because we are required to be highly educated in the law. We had to pass the bar exam to be admitted. While many in our ranks are running a law practice, serving in government, or working in a nonprofit, we all are required to be ethically responsible to the public we serve, to our opponents, and to the courts that licensed us."

Photo courtesy of the Office of Disciplinary Counsel

1101 K Street, NW

savills Studley

Approximately **52,375 SF** for Sublease

Features:

- Class A office building built in 2006
- Bright windowed space with K Street, 11th Street and 12th Street views
- Efficient office intensive space with built-in furniture in most offices
- Parking in the building

Partial 1st Floor:	7,284 SF
Entire 2nd Floor:	27,495 SF
Partial 3rd Floor:	17,596 SF
Rent:	Negotiable
Term Through:	5/31/2021 (longer term available through the Landlord)
Availability:	Flexible

For more information, please contact:

Nicole Miller
202.624.8542
nmiller@savills-studley.com

Demetri Koutrouvelis
202.624.8509
dkoutrouvelis@savills-studley.com

Rick Rome
202.624.8518
rrome@savills-studley.com