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THE NATIONAL LAW JOURNAL

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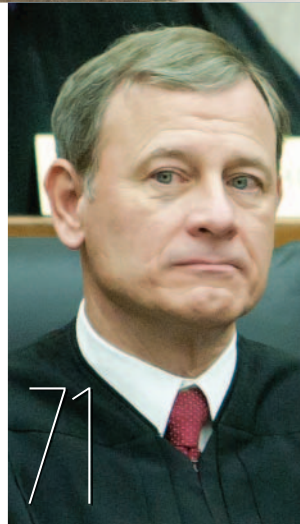
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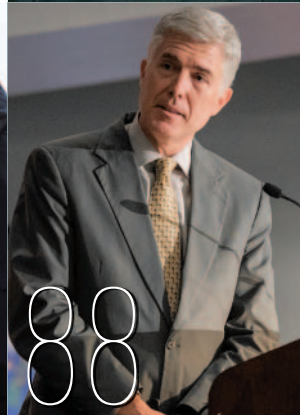
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editor's note

Lawyers Past and Present Discuss Impeachment

IMPEACHMENT. THESE DAYS IT'S IMPOSSIBLE

to go an hour without hearing the word on cable news, along with evolving analysis on how the U.S. House might proceed with its inquiry of President Donald Trump.

In brainstorming about our November cover issue, we wanted to delve into the perspectives lawyers can lend on how the impeachment process unfolds. What gems can key attorneys from past impeachment proceedings offer us about the grueling hours and the massive amount of documents involved? What happens behind the scenes? And what are constitutional law scholars saying about the road ahead?

Fortunately, Jacqueline Thomsen, who joined our Washington, D.C., office in August, was eager to dig in.

"It was great to learn more about the impeachment experiences of these attorneys that make them expert voices on the proceedings we're seeing play out right now," said Thomsen, who covers courts and the legal side of politics. For more, check out our cover story.

Next, we are excited to announce our 2019 Appellate Hot List. The appellate luminaries featured in this year's special report won key matters before the U.S. Supreme Court and federal courts of appeal, staying true to their practice philosophies along the way.

They recount how they tackled appeals involving everything from racial gerrymandering to RICO. They also share what they believe are the most satisfying elements of appellate practice.

For Williams & Connolly's Lisa Blatt, the answer is pretty simple: "Winning." Blatt, at press time, has argued 37 cases before the U.S. Supreme Court, more than any other woman in U.S. history.

These esteemed advocates also weigh in on the most valuable lessons they learned as young attorneys. Hogan Lovells' Neal Katyal in 2017 surpassed Thurgood Marshall's record for the most Supreme Court arguments by a minority lawyer with 35. At press time, Katyal has argued 39 cases. He shares this: "Take risks. Prepare relentlessly for them. But take them."

And WilmerHale's Danielle Spinelli offers this: "Stretch beyond your comfort zone [and] don't hesitate to take the lead even if the leaders you see don't look like you."



Indeed. For more jewels from these appellate heavyweights, check out our special report.

Elsewhere in this month's issue, read about the latest in legal moves from government to private practice in Revolving Door, and from around the globe in Movers.

As always, we love to hear from you. Email me at the address below or tweet me @lhelemNLJ. Thanks for reading!

Lisa Helem
lhelem@alm.com

THE NATIONAL LAW JOURNAL

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THE NATIONAL LAW JOURNAL (ISSN 2163-8756) is published 12 times a year by ALM Media Properties, LLC, 150 East 42 Street, Mezzanine Level, New York, NY 10017. For subscription inquiries call 1-877-256-2472 or write to The National Law Journal, Customer Service, PO Box 70162, Philadelphia, PA 19176-9628. Periodicals postage paid at New York, NY and additional mailing offices. POSTMASTER: Send address changes to The National Law Journal, ALM Customer Service, 150 East 42 Street, Mezzanine Level, New York, NY 10017.

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regulatory round-up



Hunsaker Takes Step Toward Confirmation

Danielle Hunsaker, a former clerk for Judge Diarmuid O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit, got a step closer in September to filling the seat left open on the court when O'Scannlain took senior status in 2016.

Hunsaker said in her prepared remarks before the Senate Judiciary Committee on Sept. 25 that being confirmed as O'Scannlain's successor would be "a highlight for me in my life," although she said "the prospect of filling his shoes is daunting." Hunsaker, whose father worked in Oregon's timber and construction industry and whose mother homeschooled her, answered largely friendly questions about her textualist approach to statutory interpretation from Republican Senators on the committee.

President Donald Trump tapped Hunsaker for the Ninth Circuit in August. If confirmed by the full Senate, Hunsaker would be the eighth Trump nominee to take the bench on the nation's largest federal appellate court, which has been a frequent target for criticism by the president.

Her questioning, where she shared the witness table with Second Circuit nominee William Nardini, took a little less than one hour.



BROWN V. BOARD OF EDUCATION HELPED TO "RIGHT A HISTORIC WRONG" AND "ABANDONED THE NOTION [OF] SEPARATE BUT EQUAL."

But Hunsaker, the presiding judge on the Washington County Circuit Court of Oregon, did sway from the approach of many of Trump's judicial nominees by responding affirmatively to a standard question from Democratic Sen. Richard Blumenthal of Connecticut about whether *Brown v. Board of Education* was correctly decided by the U.S. Supreme Court. Hunsaker said that in most instances it was inappropriate for nominees to discuss their thoughts on the high court's precedent since their job is to apply it rather than critique it. But she noted that *Brown* is an exceptional, historic case, calling it a "gem in American jurisprudence." The decision, she said, helped to "right a historic wrong" and "abandoned the notion [of] separate but equal."

"Absolutely, *Brown* was correctly decided," she said.

Hunsaker, who practiced at Larkins Vacura Kayser in Portland before taking the state bench in 2017, also clerked for Judge Paul Joseph Kelly Jr. of the U.S. Court of Appeals for the Tenth Circuit and U.S. District Judge Michael W. Mosman of the District of Oregon earlier in her career. —Ross Todd

TRUMP TAPS 2 MORE 9TH CIRCUIT NOMINEES

President Donald Trump on Sept. 20 took steps to further cement his mark on the U.S. Court of Appeals for the Ninth Circuit, an appellate court he has frequently criticized for ruling against his administration's policies.

The White House announced that the president intends to nominate veteran San Diego prosecutor Patrick Bumatay and former Nevada Solicitor General Lawrence VanDyke to seats set to come open as Ninth Circuit Judges Carlos Bea of California and Jay Bybee of Nevada take senior status. Both sitting judges have indicated to the president that they will take on the reduced senior role, once their replacements are nominated and confirmed.



Longtime prosecutor Bumatay currently serves as an assistant U.S. attorney in the appellate and narcotics sections of the Southern District of California. He previously served as

counselor to the attorney general on issues including the opioid crisis and cross-border organized crime. Early in his career, Bumatay clerked for Judge Timothy Tymkovich on the Tenth Circuit and U.S. District Judge Sandra L. Townes of the Eastern District of New York.

VanDyke, who served as Nevada's solicitor general from 2015 until earlier this year, currently serves as a deputy assistant attorney general for the Environment and Natural Resources Division at the U.S. Department of Justice. A former associate at Gibson, Dunn & Crutcher, VanDyke clerked for Judge Janice Rogers Brown at the D.C. Circuit earlier in his career. —Ross Todd



REVOLVING DOOR: OUT

Arnold & Porter Hires Kedem for Appellate Team

Allon Kedem, an assistant to the U.S. solicitor general for the last five years, left the office in September to become a partner in the appellate and Supreme Court practice of Arnold & Porter.

Kedem is a former clerk to Justice Anthony Kennedy in 2009 and 2010 and then became one of Justice Elena Kagan's first law clerks in 2010 and 2011. He has argued 11 cases before the high court for the government and prevailed in eight.

Kedem's move is a signal that John Elwood, who joined Arnold & Porter as head of the appellate practice in June, is growing the team. Elwood, formerly at Vinson & Elkins, was part of a "musical chairs" switcheroo that saw Lisa Blatt, who previously headed Arnold & Porter's Supreme Court practice, jumping to Williams & Connolly, replacing Kannon Shanmugam, who leapt to Paul, Weiss, Rifkind, Wharton & Garrison in January.

"The firm is very serious about investing in this practice. It really works for them," Elwood said. "It's something that is very useful to the various other practice groups in the firm and for bringing in work as well." Elwood hired Kedem at the Justice Department's Office of Legal Counsel in 2007 and they have stayed in touch since.

Elwood added, "Allon has the distinction of being the only person who I ever picked up the phone for and told [Justice Kennedy] that you have to hire this person. Allon was, I thought, the perfect lawyer and so I felt very strongly that he



ALLON KEDEM

"IT GIVES YOU A LITTLE BIT MORE CREDIBILITY IF YOU CAN SAY THAT YOU KNOW WHAT YOU'RE TALKING ABOUT IN THE PRACTICAL SENSE."

should be hired." Elwood had clerked for Kennedy in 1996 and 1997.

Elwood said Kedem joins a team that includes partners R. Stanton Jones, Elisabeth Theodore, and R. Reeves Anderson, plus associates or counsels William Perdue, Anthony Franze, Sam Callahan and Sally Pei.

In an interview, Kedem said Elwood's role at Arnold & Porter was a significant factor in deciding to join the firm, after interviews with other firms. "He's just a great lawyer and a great person, and will make a wonderful colleague," Kedem said. He said the time was right for a "new challenge."

With his experience in the SG's office, Kedem said he brings to the firm expertise on False Claims Act cases, Native American law, as well as arbitration and securities litigation among other areas.

He also said he learned the importance of hands-on research for cases before the Supreme Court. In 2018, he argued in *United States v. Sanchez-Gomez*, a dispute over physical restraints imposed on defendants in pretrial nonjury proceedings. Before the argument, Kedem said he and other government lawyers went to the federal courthouse in Washington and had U.S. marshals use the restraints on them.

"It gives you a little bit more credibility if you can say that you know what you're talking about in the practical sense," Kedem said.

—Tony Mauro

BAKER BOTTS ADDS FORMER DEPT. OF ENERGY LAWYER IN HOUSTON



GEORGE FIBBE

Baker Botts beefed up its energy litigation and regulatory strength by hiring **George Fibbe**, who comes from the U.S. Department of Energy, but also previously served as general counsel for a renewable energy company.

Fibbe, who joined Baker Botts as a litigation partner in Houston on Sept. 17, was the deputy general counsel for litigation, regulation and

enforcement at the DOE for more than two years. Because of that background, Fibbe will spend some of his time in Washington, D.C., doing energy regulatory work.

Before his stint at the DOE, Fibbe was general counsel of Houston solar company Sunnova Energy Corp., a Baker Botts client, from 2014 to 2017, and head of litigation for BHP Billiton's petroleum business from 2013 to 2014.

Before that, Fibbe was a partner at litigation boutique Yetter Coleman in Houston.

As general counsel at Sunnova Energy, Fibbe said, he was impressed by Baker Botts' work as outside counsel, so he could not pass up the opportunity to join the Texas firm. Another plus, he

said, is the firm's expertise across the energy sector, not just in oil and gas.

Van Beckwith, chairman of Baker Botts' litigation department, said in a press release that Fibbe brings wide experience in regulatory litigation and enforcement because of his government service. Additionally, because of Fibbe's time in the corporate setting, he brings an "invaluable perspective" of the legal risks that renewable, E&P and mid-stream companies face, Beckwith wrote.

At the DOE, Fibbe oversaw commercial litigation and environmental and administrative law cases, and also supported the agency's energy efficiency and renewable energy office.

—Brenda Sapino Jeffreys

Credit Karma GC Discusses Path to In-House

BY PHILLIP BANTZ

CREDIT KARMA INC. GENERAL COUNSEL

Susannah Stroud Wright has drawn from her experiences as a Big Law attorney, prosecutor and lawyer for Tesla Inc. and its subsidiary SolarCity Corp. to help build a robust compliance program for the personal finance company.

Wright joined Credit Karma in 2017 as the San Francisco-based firm's first chief lawyer. She arrived at the company after having served as an associate GC for Tesla and as a deputy GC for SolarCity.

Before she went in-house, Wright had two stints in Big Law—first at Alston & Bird and later with Gibson, Dunn & Crutcher—separated by three years of service as a prosecutor for the Fulton County District Attorney's Office in Georgia.

Wright spoke with the National Law Journal's Phillip Bantz about her winding path to the in-house world and the compliance lessons she learned along the way. The conversation has been edited for clarity and length.

NATIONAL LAW JOURNAL: You've had an interesting career. What spurred that last move from Big Law to the in-house world?

SUSANNAH STROUD WRIGHT: If you had asked me way back when if I would have ever found myself in-house, much less as a chief legal officer, I would've said you were out of your mind. That was never on the planned path. But what happened is a series of opportunities. That's one thing I try to tell the folks that I mentor and work with. Don't feel that you have to adhere to a strict five-year plan.



"IF YOU HAD ASKED ME WAY BACK WHEN IF I WOULD HAVE EVER FOUND MYSELF IN-HOUSE, MUCH LESS AS A CHIEF LEGAL OFFICER, I WOULD'VE SAID YOU WERE OUT OF YOUR MIND. THAT WAS NEVER ON THE PLANNED PATH."

—SUSANNAH STROUD WRIGHT

The most important thing is being open to opportunities and focus on what matters most to you and where you love to develop skills. Making the switch, when I first went in-house at SolarCity, it came out of the blue. I actually went in talking to Seth Weissman, the general counsel there ... perhaps thinking that I would get him as a client while I was at Gibson. He was an excellent salesperson. What I found out about going in-house is it appealed to so much of what I loved, which was working with people,

persuading people, helping solve really big problems and building things.

NLJ: What do you bring from your experiences as a prosecutor and in Big Law to the GC role?

SSW: Having been a prosecutor and having done trial work and also doing trial work at large firms and investigations, I have a big-picture outlook of understanding what is something that's really going to matter to regulators or to others. What are the things that are embodied in the spirit

“WHAT I REALLY WANTED TO DO HERE AT CREDIT KARMA WAS HAVE A FORMALIZED WAY OF DEVELOPING [PRODUCT COUNSEL] AND MAKING SURE THERE WAS THAT CLOSE PARTNERSHIP AND WE HAD AN EFFICIENT MEANS OF DOING THAT.” —SUSANNAH STROUD WRIGHT

of the law that are the big-picture items that we need to absolutely make sure we’re zeroed in on. For a lot of the industries that I’ve been working at in-house, the law is unclear in a lot of areas. These are disruptive industries that are doing brand new things, things that a lot of the existing laws were not created to address. So there can be a lot of confusion and lack of clarity. A lot depends on thinking about, “OK, what’s in the best interest of our members and the consumer. What’s really the right thing to do here?” Having been on the side of prosecuting people who have done something really wrong, I have a good sense of where a lot of those lines are and I understand what a regulator is going to care about the most.

NLJ: At Credit Karma, compliance and regulatory oversight is a significant part of your role. What are the primary compliance-related challenges that you’re facing at the moment and how are you addressing those challenges?

SSW: We’re always making sure that we’re complying with the consumer protection laws in place. Everything we put in front of our members, we want to make sure that it’s clear, simple and easy to understand. The other big area that’s always top of mind is on the security side. How are we making sure that we are keeping all of our members’ data safe? We spend an enormous amount of time, energy, money and resources on security. And then also ensuring that with all the changes to privacy regulations that there’s nothing we need to worry about. We’re very

fortunate that the company was built with the concept of privacy by design in its very core.

NLJ: Credit Karma embeds in-house lawyers called product counsel within the company’s product teams to ensure compliance. How does that work?

SSW: We have those product counsel for our different product verticals. For instance, with our new savings product, the savings product counsel will be embedded with that team and working with them day in and day out on the launch of that product. They’re involved from day one. Because we are so highly regulated, we always need to make sure we have a clear idea of what the rules of the road are before we try and go down a certain path. That’s where the product counsels really become essential in helping as we’re developing a product road map. What our product counsel do is they provide advice on the structure of the product. They work with our regulatory counsel on what the regulatory requirements may be, what are the particular areas that might present challenges. And also sometimes they’re serving as a bit of a traffic cop to make sure that we’re getting advice from the right subject matter experts. Our product counsel also become the point of contact for our business partners. They know that that’s the person to go to who can help them get answers for any type of question that comes up. The product counsel is there in all the meetings from the first step, so they really understand what the business is trying to do, rather than being on the

tail end where someone comes at the last minute saying, “Can you sign off on this?”

NLJ: Did you have to hire additional in-house lawyers to serve as product counsel or were they recruited from the existing team?

SSW: We had some folks when I got here who were focused on certain product verticals, and we just formalized that program a bit more. We have grown the legal team over the past two and a half years in a variety of areas, including the product counsel area.

NLJ: What spurred the idea to have product counsel?

SSW: It was something that I had seen work really effectively at SolarCity and Tesla, and it kind of developed organically over time where we’d have folks on the legal and compliance team be the go-to people for certain issues, certain products. They had developed a lot of expertise in a particular product. What I really wanted to do here at Credit Karma was have a formalized way of developing that and making sure there was that close partnership and we had an efficient means of doing that.

NLJ: How has your role changed or evolved since you joined Credit Karma?

SSW: When I first joined, a lot of it was about building up the team and setting up infrastructure and getting the right guardrails in place. Now it’s really thinking about how can we scale even better. Thinking about the future and how do we proactively get involved so we can help identify those invisible potholes, knowing where the company is going and helping to plan not just for what’s right in front of us but planning for the next five years.

Phillip Bantz covers in-house counsel news for ALM. Follow him on Twitter @PhillipBantz.

cover story



IMPEACHMENT: THE VIEW FROM THE LAWYERS

Attorneys who worked on proceedings of the past weigh in on the demands of the process and how they navigated an arena with little guiding precedent.

BY JACQUELINE THOMSEN

WHEN DAVID DORSEN JOINED THE SENATE SELECT COMMITTEE ON Watergate in 1973, it was less than a month before the panel's historic hearings began airing on national television.

For lawyers like Dorsen, who stayed largely behind the scenes during the Senate probe, there was pressure not to just keep up with the pace of the investigation, but to make sure the right questions were asked of the right witnesses. The stakes were high as the staff looked into a matter as significant as potential wrongdoing by President Richard Nixon.

Illustration by Sam Ward



PRESIDENT RICHARD NIXON

“ DORSEN SAID STAFF WORKING ON WATERGATE WENT OUT OF THEIR WAY TO TRACK DOWN ALL LINES OF INQUIRY—AT ONE POINT EVEN INTERVIEWING THE HOLLYWOOD ICON JOHN WAYNE AFTER FORMER WHITE HOUSE COUNSEL JOHN DEAN SAID HE WAS ASKED TO “DO SOMETHING” ABOUT AN IRS AUDIT OF THE ACTOR.

The time crunch was so tight that Dorsen at one point had to tell Sen. Sam Ervin, D-North Carolina—who chaired the select committee—that one of the hearings would have to be adjourned after opening statements. Lawyers weren’t ready to question the witness.

“He forgot, and I had to remind everyone not to question him,” Dorsen recalled. “As a professor might be one step ahead of his students, we were less than that ahead of the television.”

Lawyers who have worked on past impeachment proceedings against Nixon and President Bill Clinton remember pressures like these from their time working on the inquiries. And they advise attorneys tasked with handling the impeachment inquiry of President Donald Trump to keep those demands in mind.

‘NORMS, NOT RULES’ GOVERN

Attorneys involved in impeachment proceedings for Nixon and Clinton said they had to essentially come up with procedures and legal arguments from scratch, as the last presidential impeachment was Andrew Johnson’s in 1868.

And as they found themselves in court, litigating issues like what evidence could be given to Congress, they created new road maps that have guided the way for future impeachment proceedings. But that doesn’t mean the law surrounding impeachment is settled by any means.

“Whatever side you’re on, you have to be very creative as a lawyer to make the most persuasive arguments,” said Mark Alexander, dean of the Villanova University Charles



PRESIDENT DONALD TRUMP

“ WHEN YOU HAVE AN ADMINISTRATION THAT IS LESS NORM BOUND, THEN A LOT OF THIS BECOMES MUCH MORE UNSTABLE AND FAR MORE FRAGILE. AND WE SAW THAT IN THE MUELLER INVESTIGATION, AND SO WE’RE PROBABLY GOING TO SEE THE SAME KIND OF THING HERE.” —**MELISSA MURRAY**

Widger School of Law. “And there’s a lot that’s just not defined on impeachment.”

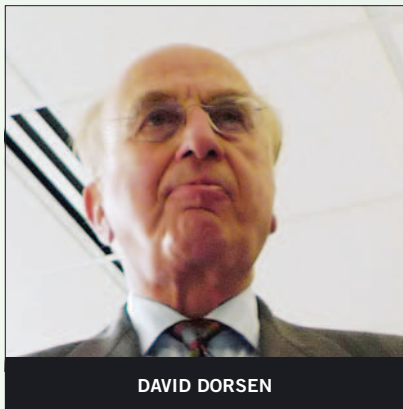
As the House of Representatives embarks on its latest impeachment inquiry into Trump, attorneys emphasized the need for counsel on all sides to act thoroughly and methodically as they investigate allegations that Trump pressured Ukrainian authorities to investigate his political rival, former Vice President Joe Biden and Biden’s son, Hunter.

Dorsen said staff working on Watergate went out of their way to track down all lines of inquiry—at one point even interviewing the Hollywood icon John Wayne after former White House counsel John Dean said he was asked to “do something” about an IRS audit of the actor.

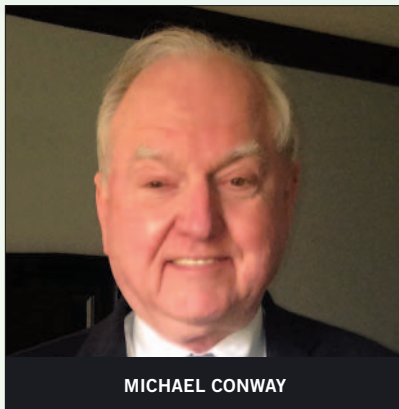
While the Wayne audit ultimately didn’t factor any further into their investigation, Dorsen said it was important for the committee to make sure it followed up on every potential act of presidential misconduct.

“We spent hundreds of hours literally searching for things like that, that never had an impact ultimately,” Dorsen said. “But it’s part of the job of an experienced investigator and prosecutor. I hope they know enough about that in the present setup to do the kinds of things that we did, whether they panned out or not.”

Even with past examples to look back on, experts say there’s plenty of legal territory on impeachment to explore. That includes how impeachment proceedings are conducted in the first place.



DAVID DORSEN



MICHAEL CONWAY



PAUL ROSENZWEIG

“When you have an administration that is less norm bound, then a lot of this becomes much more unstable and far more fragile. And we saw that in the Mueller investigation, and so we’re probably going to see the same kind of thing here,” said Melissa Murray, a constitutional law professor at New York University School of Law.

“Maybe it’s the case that the norms hold because the specter of impeachment is so much more profound than perhaps any other kind of ordinary oversight investigation,” she said. “But most of this work is governed by norms, not rules.”

Michael Gerhardt, a constitutional law professor at the University of North Carolina, noted that impeachment is an inherently political process, even as it borrows heavily from legal proceedings. But the political nature doesn’t mean impeachment should be led solely by politicians, he said.

“Yes, presidents and their lawyers understand that part of this game is to sort of manage the political side of impeachment, which is gigantic. But there’s, at the same time, a legal side that has to be dealt with more professionally,” said Gerhardt, who testified in the Clinton impeachment hearings as a bipartisan witness.

RUSHING TO KEEP UP WITH WATERGATE HEARINGS

Dorsen, who later joined the defunct law firm Sedgwick, said lawyers on the Watergate committee put in long hours to keep up with the demands of the investigation.

Attorneys on the team wanted to be thorough and recognized the gravity of the moment, he said. That meant the staff often showed up early. They often worked late and on weekends.

The extra hours didn’t go unrecognized.

One weekend, the committee’s chief counsel Samuel Dash locked the doors to the room where they had been working. His goal was to prevent burnout and force the team to take a break, Dorsen said.

“We just couldn’t get in, and we were chomping at the bit,” he said.

When the Senate committee wrapped up its investigation, the House Judiciary Committee was waiting in the wings to decide whether to push forward with impeachment. House Judiciary staffers—including a young attorney named Hillary Rodham—began their work on the inquiry by drafting a legal memo on the history of impeachment and how it should be conducted.

The Judiciary Committee held hearings and called witnesses, but it was more focused on combing through the evidence gathered to build the case against the president.

Michael Conway, an attorney on the committee, said he and other staffers spent hours combing through the evidence and writing down facts on index cards. The statements on those cards would later serve as the foundation upon which articles of impeachment were drafted and filed.

The committee had to show whether Nixon committed a “high crime or misdemeanor,” the Constitution’s grounds for impeachment. Several Republicans joined Democrats on the committee to advance three articles of impeachment against Nixon, while two others were rejected.

Nixon, as we know, resigned before those articles could make it to the House floor, after the release of secret tapes revealed him discussing covering up the White House’s connection to the Watergate break-in.

For the committee’s lawyers, the president’s resignation brought work to a screeching halt.

Conway, now a retired litigation partner with Foley & Lardner, said he was struck by how normal the scene outside the White House was as he passed it on his way home the night of Nixon’s resignation.

“There are no protests, no demonstrators, there’s nobody. It’s just an ordinary summer night,” Conway said.



PRESIDENT BILL CLINTON

“And yet the most dramatic change in our democracy had just happened.”

KEN STARR & THE CLINTON INFO ‘DUMP’

Paul Rosenzweig was bored in his role as counsel for the House Transportation Committee when he was offered a spot on independent counsel Kenneth Starr’s investigation on Bill Clinton in the fall of 1997. The probe, housed on Pennsylvania Avenue just outside the Department of Justice, was set to wrap up within the next year or so, but the team was analyzing its findings for a final report, an area in which Rosenzweig said he excels, so he took the job.

Everything changed when it broke that Clinton had an affair with White House intern Monica Lewinsky and that he may have lied about it under oath.

“All of a sudden, it went from a place that not many people were joining to a place that everybody was trying to be,” Rosenzweig said of Starr’s team.

Adam Goldberg, then a special associate counsel in the Clinton White House, who focused on crisis management and working with the media, said the initial strategy of the Clinton team was to “dump every bad piece of information out there.”

The independent counsel at first focused on topics including real estate dealings, campaign finance and the handling of the White House’s travel office, but the Clinton White House began resisting requests for information and evidence once the Lewinsky allegations came out. “The strategy and approach was night and day,” Goldberg said of the White House’s later response to information requests.

Rosenzweig said lawyers on Starr’s team had to get more creative about how they were going to get their hands on evidence the Clinton White House argued was privileged.

“There was a lot of pulling on our chins and saying, ‘What if? How about this?’” Rosenzweig said. “Much of which went by the wayside, because in that sort of situation, you really aren’t in a good position to ground your argument in a firm history.”

“So eventually we settled on a series of arguments that wound up winning, and maybe make it easier for the next generation of people to do,” he added.

Starr’s team, in a series of court cases that remain under seal, generally claimed that executive privilege couldn’t be applied to the Clinton-Lewinsky matter because it involved personal issues and not official White House duties.



KENNETH STARR

By the time he left the investigation, Rosenzweig said he had in-depth knowledge of areas of the law that don't come up very often, like separation of powers or when executive privilege can be asserted.

"I remember saying to my wife something along the lines of 'well, that's two years of legal expertise I'll never get to use again,'" he said.

'RELIEF' AND 'SADNESS'

Goldberg said the Clinton White House's combative stance against impeachment continued when the House and Senate became the focal points of the battle.

"Even if the allegations could be proven, they didn't rise to the level of impeachment because they were not impeachable offenses," Goldberg said of the White House's argument. "These were about private proceedings and a private affair, not what the founders had in mind."

Goldberg said the lawyers who were not in the Senate chamber for the trial—the first to be held since President Johnson's in 1868—were in a room nearby, where they could watch the proceedings.

He said on the first day of the trial, they walked into that chamber to find a basket of cookies from Republican Sen.

Rick Santorum, who had been vocally anti-Clinton on other matters but committed himself to impartiality during the impeachment trial. Santorum would vote to remove Clinton from office.

While the House impeached Clinton, the Senate voted against his removal and the president got to serve the remainder of his term.

For Goldberg, who left the White House before the verdict came down, the outcome was bittersweet. After working vigorously to defend the president from the initial investigations, Goldberg said he felt frustrated that Clinton's personal conduct got in the way of the administration being able to carry out the rest of its agenda.

"So many in the White House for years had labored to get him past investigations, many of the investigations were completely bogus," Goldberg said. "And then to have this happen, it was hard. So when that verdict came down, it was a relief and it was just sort of sadness."

Jacqueline Thomsen, based in Washington, is a reporter covering D.C. courts and the legal side of politics. Contact her at jathomsen@alm.com. On Twitter: @jacq_thomsen



A SPECIAL REPORT

APPELLATE HOT LIST

The appellate luminaries featured in our 2019 special report won key matters before the U.S. Supreme Court and federal courts of appeal, staying true to their practice philosophies along the way. Here, they recount how they tackled appeals involving everything from racial gerrymandering to RICO. For more on their stories, read on. —*Lisa Helem*





Pratik Shah

AKIN GUMP STRAUSS HAUER & FELD

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** *Azar v. Ahlita Health Services*: After a decade-long effort, Akin Gump achieved a major Supreme Court win against the U.S. [Department of Health and Human Services]. We broke new legal ground by securing notice-and-comment rule-making protections under the Medicare Act, with billions of dollars at stake for hospitals that treat a disproportionately large share of low-income patients. Our focus on plain-text arguments while debunking the government's parade of horrors led to a 7-1 Supreme Court victory creating important rule-making rights for all regulated parties—health care providers and beneficiaries alike.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We focused on areas in which

our appellate bench, working closely with our substantive expert practitioners, has developed market-leading expertise: health care, IP, Indian law, labor and bankruptcy. That has allowed us to tackle the most complex matters.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Discovering a new argument that can turn around a case. Although appellate lawyers are constrained by the record and waiver principles, we have found and developed winning jurisdictional arguments.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** If your non-lawyer spouse, significant other or friend doesn't find your argument persuasive, then neither will a judge at oral argument.

Submitted by Pratik Shah, partner and co-chair of the Supreme Court and appellate group at Akin Gump Strauss Hauer & Feld.



Elisabeth Theodore

ARNOLD & PORTER KAYE SCHOLER

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** We convinced the Supreme Court to hold that adding a citizenship question to the [U.S.] Census violated the Administrative Procedure Act because the government's justification was pretextual. Our firm litigated the case from trial all the way to the Supreme Court, including largely batting back the government's emergency request to the Supreme Court to stay all discovery. And we didn't stop litigating the case after oral argument: we discovered crucial citizenship question-related evidence in a separate, gerrymandering case we were handling and quickly mobilized to get that evidence before the Supreme Court just weeks before the term ended.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We have an incredible bench of

lawyers who work together as a team to win high-stakes appeals. We have a new practice group chair, John Elwood, and Allon Kedem recently joined from the Solicitor General's Office.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Coming up with innovative theories and arguments and pulling out victories in cases where no one expected you to win. We often get called in to appeal after adverse decisions, and in particular I love developing and executing strategies to get trial losses reversed.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** To focus on your audience. A well-crafted brief isn't just about great legal arguments, but about telling a story so that the judges want your client to win.

Submitted by Elisabeth Theodore, partner at Arnold & Porter Kaye Scholer.

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** We persuaded the Supreme Court to overturn 45 years of [Freedom of Information Act] precedent. A newspaper demanded sales information for 321,000 retail locations participating in SNAP (formerly “food stamps”). The government refused to disclose it, but lost at trial and abandoned the case. Our client intervened, invoking FOIA’s Exemption 4, which exempts “confidential” commercial information. Precedent deemed information “confidential” only if disclosure would generate “substantial competitive harm,” which the Eighth Circuit found speculative. The Supreme Court reversed, holding that FOIA requires no “competitive harm” showing at all.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? My top-notch appellate colleagues combine business smarts and sophisticated legal strategies to deliver successful results for clients. We create the best possible team for each client.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Nothing is more satisfying than improving the law while helping extraordinary clients solve seemingly intractable problems at the end of a long litigation process.

■ **WHAT’S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** I began my clerkship at the Supreme Court prepared to think the worst of justices who “opposed” my boss. But I quickly saw that all nine justices genuinely liked, respected and admired each other. They taught civility’s importance by example.

Submitted by Evan Young, a partner at Baker Botts.



Evan Young

BAKER BOTTS

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** [We] won an important patent case in the Supreme Court for our client Return Mail, which had sought compensation from the U.S. Postal Service for unauthorized use of its patent. The lower court allowed the Postal Service to challenge the patent’s validity at the Patent Trial and Appeal Board. But our outstanding patent attorneys teamed up with our terrific appellate strategists to convince the Supreme Court to grant certiorari and reverse. The court’s ruling, 6-3, protects patents from federal agency challenge under the America Invents Act’s post-grant review provisions because agencies are not “persons” under those provisions.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? [Our] prominence in many practice areas meant that our appellate victories were rooted in substantive expertise that could not be matched.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Satisfaction in appellate work includes wrangling with lofty legal issues of the day, but also working to frame a litigation strategy, from trial through appeal, that focuses on how best to advance the interests of a particular client.

■ **WHAT’S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Stick to the highest ethical standards even when they seem not to matter; pursue opportunities of the greatest significance regardless of their prestige.

Submitted by Beth Brinkmann, partner and co-chair of the appellate and Supreme Court litigation group at Covington & Burling.



Beth Brinkmann

COVINGTON & BURLING

appellate hot list



Kurt Glitzenstein

FISH & RICHARDSON

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** [The U.S. Court of Appeals for] the Federal Circuit unanimously affirmed our posttrial success vacating a \$200 million jury verdict against our client Gilead Sciences in a patent infringement case with Merck involving Gilead's blockbuster Sovaldi and Harvoni hepatitis C drugs. After a jury awarded Merck \$200 million in damages, amounting to one-tenth of Merck's \$2 billion claim, the district court erased the verdict, finding Merck had forfeited its right to assert its patents against Gilead because of litigation and business misconduct constituting unclean hands. Our strong writ[ing] and oral advocacy convinced the Federal Circuit to affirm both that result and the \$14 million legal fee award to Gilead. The Supreme [Court] denied certiorari.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We focus on brief writing, where most appeals are won or lost, and then select the right person to argue each appeal, whether that is an appellate specialist new to the case or the trial attorney who lived the case.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Patent appeals present a mix of complex facts and technology and demand both procedural rigor and a command of nuanced law. It's exciting to frame these issues into novel winning arguments, which often redefine patent law.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** A lawyer's credibility is one of his or her greatest assets with courts, clients and colleagues.

Submitted by Kurt Glitzenstein, litigation practice group leader at Fish & Richardson.



William Jay

GOODWIN PROCTER

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** In *Helsinn Healthcare v. Teva Pharmaceuticals USA*, we took over the case after the cert grant and persuaded the Supreme Court to affirm the Federal Circuit—unanimously. Affirmances are unusual in patent cases, and a unanimous affirmance means we changed the minds of several justices who had voted to grant cert. The other side tried to make the case all about how to read a recent statute; we told a more detailed story emphasizing the long history of the relevant statutory term, and showed the [Supreme] Court that the answer was implicit in more than a century of its own cases.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We've worked hard to develop each of our young partners as appellate

advocates who can and do lead matters themselves. Developing more top-flight advocates has allowed us to gain prominence in more areas, from ERISA to IP to financial services.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** It's thrilling to be part of a conversation with appellate judges as they reason through a legal problem, and know that you can help them solve it by anticipating their questions and being prepared with candid, effective answers.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Read good writing, including nonlegal writing. And read as many appellate decisions as you can to get a feel for which kinds of arguments persuade appellate judges and which don't.

Submitted by William Jay, a partner and co-chairman of appellate litigation practice at Goodwin Procter.

DIEGO M. RADZINSKI

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.**

In *Rimini Street v. Oracle*, the Supreme Court confronted the narrow but significant question whether the authorization to award “full costs” in the Copyright Act includes expert fees and e-discovery expenses. The court had previously held that the term “costs” in other statutes was limited to a defined set of statutory costs; the question here was whether the modifier “full” expanded that authorization. We demonstrated that the phrase “full costs” historically meant all statutory costs—just as “full moon” means all of the moon but not Mars. Reversing the Ninth Circuit, the Supreme Court unanimously agreed with our submission.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We emphasize teamwork in our

appellate practice. While one lawyer appears at the lectern, many more are involved in strategy, research, writing and editing, and other aspects of a successful appeal.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** We help clients with their most pressing legal and business issues, which often have ramifications for the company, an industry or the entire economy. It is extremely rewarding to play a role in the development of the law.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** “Tell the story.” One of my mentors taught me that as a junior associate, and I pass along the same advice to younger lawyers. Legal issues have to be contextualized to resonate with the audience.

Submitted by Mark Perry, partner and co-chair of the appellate and constitutional law practice at Gibson, Dunn & Crutcher.



Mark Perry

GIBSON, DUNN & CRUTCHER

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.**

We successfully petitioned for certiorari in the “Peace Cross” case, where the Fourth Circuit ordered this nearly 100-year-old cross to be torn down. We represented a moderate governmental entity that wanted to keep the cross, but not to create any precedent that would undermine the separation of church and state. We took a careful middle-of-the-road position and won 7-2. It’s the most united the Court has been in decades on church/state issues, and it came directly from our deep study of Justice [Stephen] Breyer, who was the swing vote in the 2005 pair of cases that had the most similarity to the Peace Cross case. Our win in the Supreme Court census case was pretty cool, too.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? Hiring the best, second-guessing ourselves relentlessly, stress-testing our practices, and giving our young attorneys a huge number of oral arguments (including four SCOTUS oral arguments for them). We are proud of the fact that a quarter of the line attorneys in the U.S. Solicitor General’s Office right now were Hogan Lovells associates before they joined the office.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Appellate practice is about the meaning of the law, and the most satisfying thing is to help further our tradition of the law being the law, not some political tool.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Take risks. Prepare relentlessly for them. But take them.

Submitted by Neal Katyal, partner at Hogan Lovells.



Neal Katyal

HOGAN LOVELLS

appellate hot list



Elbert Lin

HUNTON ANDREWS KURTH

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** Our appellate team is particularly proud of our First Amendment victory in the Fourth Circuit in *In re Murphy-Brown*, in which we overturned a sweeping gag order on an expedited petition for writ of mandamus. But we would be remiss if we did not mention the grant of certiorari from the Supreme Court in *County of Maui v. Hawai'i Wildlife Fund*, a Clean Water Act case set for argument this fall. Our successful petition exemplified the formula we try to bring to every appeal—deep subject-matter expertise filtered through a practiced understanding of how generalist appellate jurists decide cases.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** Every successful appeal boils down to making the complex simple. We

have a couple dozen pages and sometimes a few minutes of speaking time. Knowing what need not be said can be as important as knowing what must be said.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Oral argument is the most fun part of appellate practice, but there is nothing more satisfying than a well-crafted reply brief. In the relatively staid appellate world, a great reply is the closest we come to a mic drop.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Find your own voice. There are important ground rules for appellate practice—write simply, stop talking when asked a question, know the record. But there's no single correct style of advocacy, and it's more effective to stay true to yourself.

Submitted by Elbert Lin, partner, co-chair of issues and appeals at Hunton Andrews Kurth.



Ishan Bhabha

JENNER & BLOCK

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** We won an important Seventh Circuit victory for FanDuel, in which the court ruled that fantasy sports operators do not violate individual athletes' "right of publicity" when they use athletes' names and statistics in fantasy sports games. This ruling vindicated critical First Amendment principles in the age of the internet and was important for a host of industries including media, entertainment and gaming. Our diverse team collaborated closely on this matter, and we achieved this win because of the outstanding and equal contributions of each team member, from the most junior associate to the senior partner.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We approach our cases with the rigor and creativity that comes from

having diverse and collaborative case teams. In writing and arguing, we craft narratives that make clear why our arguments are not only legally correct, but also fair and just.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** There is no greater thrill than standing up during oral argument and being forced to defend and explain your ideas. I had my first [U.S.] Supreme Court argument last December, and it was the best 30 minutes of my legal career.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** The best younger lawyers are those who know the facts and the law cold and then have the confidence to stand their ground, particularly when their ideas differ from those of more senior colleagues.

Submitted by Ishan Bhabha, partner at Jenner & Block.

DIEGO M. RADZINSKI/ALUM

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** We represent[ed] Merck in a case involving failure-to-warn claims. Pharmaceutical manufacturers can prevail by proving the [Food and Drug Administration] would have rejected the warning. In *Merck v. Albrecht*, however, the Third Circuit required manufacturers to prove this defense to a jury, by clear and convincing evidence, effectively gutting it. [U.S.] Supreme Court review seemed unlikely without a split. But [we] asked the court to rein in the lower courts' disregard for preemption, not to resolve a split. After the FDA took Merck's side, the court granted certiorari and unanimously reversed. By putting preemption back in judges' hands, the court eased manufacturers' path toward victory.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? We've always built a deep bench. Last term, four firm lawyers argued six Supreme Court cases. We've also continued to hire talented associates, including [a] number of Supreme Court clerks, and helped them develop through their own argument opportunities.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Appellate work requires a deep dive into the law and facts, but then simplifying everything into short briefs and oral arguments. It's both an intellectual challenge and an honor to practice that craft for clients.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Always focus on what your audience needs to know, not what you'd like to say.

Submitted by Shay Dvoretzky, a partner at Jones Day.



Shay Dvoretzky

JONES DAY

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** Although the headline-grabbing win for our team was *Rucho [v. Common Cause]*, my most satisfying Supreme Court victory was *Herrera v. Wyoming*, holding that an 1868 treaty between the Crow Tribe and the United States was not abrogated by Wyoming's admission to the Union. We knew going in that victory would likely require an unusual lineup and overruling a century-old decision, and we focused our advocacy on those objectives. Our efforts paid off when Justice [Neil] Gorsuch joined the four more liberal justices in overruling the precedent and holding 5-4 for us. Seeing our strategy succeed for Crow members was immensely gratifying.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We combine mastery of the

record and the case law with creativity, common sense and compelling writing. We find the path to the win, and we write briefs that never lose sight of that path.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Winning a seemingly "unwinnable" appeal. You scour the materials until a theory emerges; you articulate that theory in briefing; you defend that theory at argument; and the court accepts it. Winning easy cases is expected; winning hard cases is awesome.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Never decline an opportunity—to write a brief, to argue in court, to call a client, to give a presentation, to moot a colleague. By taking every opportunity earlier, you are making your own opportunity later.

Submitted by George Hicks, partner at Kirkland & Ellis.



George Hicks

KIRKLAND & ELLIS

appellate hot list



Nicole Saharsky

MAYER BROWN

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** Mayer Brown has been a pioneer in helping business clients implement arbitration provisions and enforce them as an alternative to costly, time-consuming judicial resolution. This past Supreme Court term, Mayer Brown argued and won *Lamps Plus v. Varela*—making it less likely that businesses will be subjected to unwanted class arbitration. *Lamps Plus* is the fourth significant victory that Mayer Brown has earned over the last eight years before the Court on arbitration issues arising under the Federal Arbitration Act.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** Breadth and depth: We had eight cases in the Court last term, across a wide variety of substantive areas. In each case, we put together the

best team from within the firm and dug in to the facts and the law to present the best possible case through the briefs and oral arguments.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** It's especially rewarding to handle cases with real-world impact. It feels good to work hand-in-hand with clients to solve some of their most pressing problems.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Don't cut corners. To do a good job on a case, you need to put in the time and do the work. That was the approach my colleagues and I always took in the Office of the Solicitor General, and it is the same approach our appellate lawyers take at Mayer Brown.

Submitted by Nicole Sabarsky, partner and co-leader of the Supreme Court and appellate practice at Mayer Brown.



Paul Hughes



Michael Kimberly

MCDERMOTT WILL & EMERY

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** In *Kisor v. Wilkie*, we asked the Supreme Court to overrule or limit *Auer [v. Robbins]* deference. After granting our petition, the court unanimously reversed the court of appeals, delivering an unequivocal victory for our client. Although the justices were divided as to whether *Auer* should be formally overruled, all agreed with our fundamental point that *Auer* deference—especially in our case—was badly broken and required significant reform. Justice [Neil] Gorsuch said that *Auer* deference is now a “paper tiger.” *Kisor* will require agencies to act with greater predictability and transparency.

*Arguments for *Kisor v. Wilkie* occurred prior to Paul Hughes and Michael Kimberly joining McDermott.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** Our appellate successes are born of teamwork. When a client hires us, we both fully commit to the cause. All of our work reflects our decade-plus of collaboration.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** There is nothing more satisfying than achieving an outright victory that meets our client's immediate need. Better still, securing a win on appeal often means securing lasting legal change.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Always outwork your opponent. The best appellate lawyers roll up their sleeves to master the details of their cases. Small details can drive the outcome.

Submitted by Paul Hughes and Michael Kimberly, partners at McDermott Will & Emery.

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** Our wins this year showcase our team's breadth and depth of expertise. In one busy six-week stretch, [our] appellate lawyers argued 12 appeals, crisscrossing the country to the Second, Eighth, Ninth, Federal and D.C. Circuits. We won [10] and obtained partial relief in the other two. Of note this year, we scored nine Ninth Circuit wins for multiple clients, including going three-for-three for UPS in appeals about its branded Next Day Air package-delivery services, in two nationwide class actions and a False Claims Act suit.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** Our team wins with strategic thinking, concise writing and powerful oral advocacy. We combine [the

firm's] top-notch appellate specialists with first-rate subject matter specialists. Joe, Brian and I are fostering next-generation appellate superstars.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** I like figuring out why our clients are right and then distilling it into a brief everyone can understand. I then enjoy the challenge at oral argument of concisely putting to rest any doubts the Court may have.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Practice your oral argument in sound bites that can be said different ways and in different orders. The best arguments are conversations, not speeches, so you need to be able to respond to the judges while still making your points.

Submitted by Deanne Maynard, partner at Morrison & Foerster.



Deanne Maynard

MORRISON & FOERSTER

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** In *Jam v. International Finance Corp.*, we persuaded the [U.S. Supreme] Court to overturn decades of D.C. Circuit precedent construing a very important statute: the International Organization Immunities Act. Our victory was truly a team effort. Led by Jeff Fisher, appellate attorneys from three different O'Melveny offices worked together on this complex case. Our team simplified the issues and presented a straightforward path to rule in our client's favor.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** As always: teamwork, creativity and diligence. And making things as simple as possible. We ask ourselves, how we would explain our position to a cousin who asked about it at

Thanksgiving? Then we put that answer in the brief.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Working with the amazing lawyers in our practice, office and firm. O'Melveny has leading practices in so many subject areas, and we get to write briefs and handle appeals in all of them. What a privilege.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Work with lawyers—supervisors, peers and subordinates alike—who challenge you to do your best work. Not because they yell at you, but because what they do and how they do it brings out the best in you too.

Submitted by Jonathan Hacker, chairman, and Jeffrey Fisher, special counsel, for the Supreme Court and appellate practice at O'Melveny & Myers.



Jonathan Hacker



Jeffrey Fisher

O'MELVENY & MYERS



Kelsi Brown Corkran

ORRICK HERRINGTON & SUTCLIFFE

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** For the second time in four years, we resuscitated Oracle's \$8 billion copyright infringement case against Google. Our team, led by Josh Rosenkranz, previously persuaded the Federal Circuit to hold that Oracle's Java software technology is entitled to copyright protection. A jury then agreed with Google's claim that copying the software into its Android operating system constituted fair use. Again, we convinced the Federal Circuit to reverse, this time finding Google infringed Oracle's copyrights as a matter of law. Google now seeks [U.S.] Supreme Court review, but in September the solicitor general sided with us and recommended the petition be denied.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? Our six first-chair partners develop deep relationships that lead to repeat engagements for clients, including Apple, Credit Suisse and Oracle. We also build for the future. In the past year, eight different associates have argued or will argue 10 different appeals.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** I love collaborating with my clients and colleagues to craft a winning case. There's nothing better than when a truly compelling narrative and set of arguments emerge from brainstorming with brilliant, creative people who bring different perspectives to the table.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** The most important factor to professional success and happiness is working with good people.

Submitted by Kelsi Brown Corkran, a partner at Orrick Herrington & Sutcliffe.



Kannon Shanmugam

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** In March, we won a unanimous [U.S.] Supreme Court victory in *Obduskey v. McCarthy & Holthus*, on the question of whether the Fair Debt Collection Practices Act covers entities engaging in nonjudicial foreclosure proceedings. In that case, which I argued before joining Paul Weiss, we persuaded the court that Congress did not intend to reach entities that merely undertake nonjudicial foreclosure in accordance with state law and that do not take other actions to collect on debts. The [Supreme] Court's decision places a substantial and important limit on liability under the FDCPA.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** I joined Paul Weiss in January with the goal of building one of the

country's best Supreme Court appellate litigation practices. We're off to a great start, but we have plenty of work to still do.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** I have always enjoyed the puzzle-solving aspect of appellate matters. Every case is its own puzzle, and our goal is to solve that puzzle for our clients.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** The details matter. When you're the associate on a case, you're responsible for making sure that every last detail in every brief is correct. And even as you become more senior, that remains important.

Submitted by Kannon Shanmugam, the managing partner of the Washington, D.C., office of Paul, Weiss, Rifkind, Wharton & Garrison.

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.**

This was the second time we were before [the U.S. Supreme Court] arguing this case, now *Virginia House of Delegates v. Bethune-Hill* (we had a previous victory in 2017), and the second time SCOTUS ruled in our favor—that the House of Delegates redistricting map included unconstitutional racial gerrymanders in violation of the Fourteenth Amendment. The same team has been working on this matter for more than five years—from brief writing to oral argument preparation. Their commitment and vision throughout the entire process has been steadfast and focused on putting law in place that fully protects minority voters.

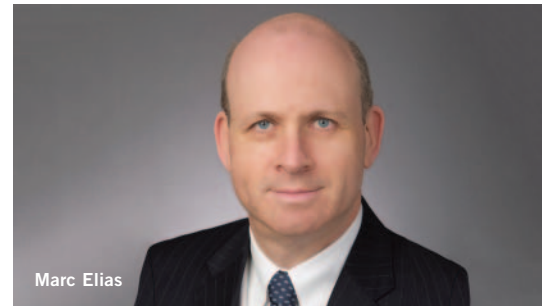
■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** With Eric Miller moving on to

the Ninth Circuit, we took stock of our strengths and weaknesses and focused on collaboration within the firm, development, and opportunities to best deploy our talent.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Good writing is a “flow” experience for me and the best. Working with good junior colleagues is a close second.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Be a conversational, helpful legal writer to your reader—getting to the point, word/phrase choices, road-mapping, formatting, graphics, i.e., the total package. Take care of yourself physically, mentally, spiritually. If you don't know how, find someone who does.

Submitted by Marc Elias, firmwide political law chair, and Eric Wolff, firmwide appellate chair at Perkins Coie.



Marc Elias



Eric Wolff

PERKINS COIE

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.**

In *NextEra v. Elliott Associates*, we successfully defended an order eliminating a \$275 million break-up fee provision the bankruptcy court had approved a year earlier. To overcome NextEra's complaint that the [Supreme] Court rewrote the deal after the fact, we showed how extraordinary the provision was—allowing NextEra to waste estate assets in order to extract the break-up fee. The decision establishes the Third Circuit standard for break-up fees as administrative expenses in bankruptcy. To defeat petitions for rehearing and certiorari, however, we had to rebut arguments that the panel decision would subject all break-up fees in bankruptcy to post hoc revision.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? Close collaboration between appellate litigators and substantive experts gives us the edge. At trial, we have an eye toward appeal; on appeal, we demystify intricacies of bankruptcy, transactions, patents, or health care regulation by working closely with specialists.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** The broad range of cases, from [Racketeer Influenced and Corrupt Organizations Act] class actions to restructurings, and False Claims Act cases to constitutional litigation, makes appellate work incredibly varied and fulfilling.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Two related early lessons rank highest: attention to detail and perseverance.

Submitted by Douglas Hallward-Driemeier, a partner at Ropes & Gray.



Douglas Hallward-Driemeier

ROPES & GRAY

appellate hot list



Peter Keisler

SIDLEY AUSTIN

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** We represented AT&T in the government's appeal of the AT&T/Time Warner merger decision. This was the first time in more than four decades that the government litigated to judgment a case challenging a vertical merger, and it presented many cutting-edge issues. It was extremely helpful that the appellate team had been very involved at trial, was deeply familiar with the facts, the economics, and the law, worked closely with the client, and believed strongly in the case. We were before a very sophisticated court and this background enabled us to successfully convey the overwhelming evidence supporting our position.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** We immerse ourselves in the law,

the record and our client's businesses. We draw on extensive analysis, collaboration and creativity when facing the most complex cases. And we never forget the special persuasiveness of arguments that rely on common sense.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** We bring the same high level of innovation and professionalism to our cases regardless of whether we are representing a multibillion-dollar corporation or an indigent pro bono client.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Be yourself. There are as many different styles of professional advocacy as there are lawyers, and lots of them can be successful. What all the effective ones have in common is authenticity.

Submitted by Peter Keisler, a partner and co-leader of the Supreme Court and appellate practice at Sidley Austin.



Peter Stris

STRIS & MAHER

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** We scored a 9-0 victory before the U.S. Supreme Court in *Fourth Estate Public Benefit Corp. v. Wall-Street.com*. Overcoming strong policy arguments, we persuaded the court to adopt a plain text interpretation of the Copyright Act's "registration" requirement. We credit this achievement to the talent and hard work of our appellate team.

Over the last four U.S. Supreme Court terms, we won five of the nine merits cases we handled. This term, we hope to continue the trend with *Thole v. U.S. Bank*, an [Employee Retirement Income Security Act] standing case in which our petition for certiorari was granted earlier this year.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? We invested in our future. Our junior lawyers hold significant roles on our cases. This year, they crafted strategy, drafted briefs, met with the Office of the Solicitor General, presented federal circuit court arguments and much more.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Collaboration. We love partnering with our clients, other law firm and one another to solve our clients' most significant legal challenges.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** This may seem obvious, but listen to your clients. They often know their case better than anyone and have valuable insights that will help you advance their cause.

Submitted by Peter Stris, managing partner at Stris & Maher.

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** [We] won a string of decisions for several pipeline and industrial clients involved in disputes at the U.S. Court of Appeals for the D.C. Circuit, including a successful challenge to the U.S. Environmental Protection Agency's solid waste recycling rule, defense of two major pipeline projects and defeating an attack on the [FERC]'s pipeline approval process. Maintaining awareness of the facts and variables of these cases and anticipating how the law might change during the appeals process was critical, given the significant number of new projects being proposed at the time that generated similar litigation.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** Crafting the most attractive,

persuasive arguments resulted in a \$60 million 10th Circuit decision for Antero Resources and Texas Supreme Court wins for The Dallas Morning News in a defamation case and Anadarko in a \$100 million Deepwater Horizon dispute.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Collaborating with great lawyers, especially those new to the practice, to produce the best result for our clients.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Keeping an open mind and listening to other points of view. The best lawyers are able to listen to someone else's approach or argument, recognize when it is better than one previously put forward and then adapt to it.

Submitted by Tom Leatherbury, Marie Yeates and Jeremy Marwell, partners at Vinson & Elkins.



Tom Leatherbury



Marie Yeates



Jeremy Marwell

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appellate hot list



Lisa Blatt

WILLIAMS & CONNOLLY

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** Lisa Blatt secured victory for her client in one of the most important federal preemption cases of the past year, *Dolin v. GlaxoSmith-Kline LLC*, where the Seventh Circuit reversed a \$3 million jury verdict in favor of the widow of a Reed Smith partner who killed himself while taking a generic version of GSK's antidepressant Paxil.

In May 2019, the [U.S.] Supreme Court declined to review the decision, and upon remand, Lisa and her team defeated the plaintiff's bid to reopen the judgment based on the Supreme Court's intervening decision in *Merck v. Albrecht*.

*2017-2018 representation occurred prior to Lisa Blatt's return to Williams & Connolly.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST YEAR?** Our women-led appellate practice approaches appellate work just like Williams & Connolly approaches litigation in general: be aggressive and creative, protect and defend your client, and outthink and outwork the other side.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** Winning.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** Don't let other people's perception of you define you. Be fearless. Trust your instincts but recognize and learn from any mistakes along the way.

Submitted by Lisa Blatt, a partner at Williams & Connolly and chair of the firm's Supreme Court and appellate practice.



Danielle Spinelli

WILMER CUTLER PICKERING HALE AND DORR

■ **TELL US ABOUT YOUR TOP U.S. SUPREME COURT OR FEDERAL APPEALS COURT VICTORY OVER THE PAST YEAR AND HOW YOU AND YOUR TEAM ACHIEVED THE WIN.** Among our three [U.S.] Supreme Court victories was *Mission Product Holdings v. Tempnology*, a highly significant Chapter 11 case. *Mission* held that trademark licensors cannot terminate licensees' rights to trademarks by rejecting a license agreement in bankruptcy. The decision resolved a fundamental confusion that has persisted for decades over the meaning of "rejection," a central bankruptcy concept, holding that rejection is the equivalent of a non-bankruptcy breach and cannot eliminate rights that would survive such a breach. Our reading of the Bankruptcy Code prevailed because it was grounded in the text and made sense of the code's overall structure and history.

■ **HOW DID YOUR FIRM APPROACH APPELLATE SUCCESS OVER THE PAST**

YEAR? *Mission* illustrates how we combine our top-notch appellate capabilities with deep substantive knowledge of specific practice areas—bankruptcy and intellectual property, among others—to achieve compelling advocacy on complex and specialized issues before a generalist bench.

■ **WHAT IS THE MOST SATISFYING ELEMENT OF APPELLATE PRACTICE IN YOUR OPINION?** The opportunity to solve clients' most difficult problems while playing a role in advancing the coherence of the law nationwide makes this one of the best jobs there is.

■ **WHAT'S THE MOST VALUABLE LESSON YOU LEARNED AS A YOUNG LAWYER?** There are many: Stretch beyond your comfort zone [and] don't hesitate to take the lead even if the leaders you see don't look like you.

Submitted by Danielle Spinelli, a partner at Wilmer Cutler Pickering Hale and Dorr.



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Dear Readers,

Welcome to the results of our ninth annual LegalTimes readers’ poll, wherein our readers have cast their votes for the best legal vendors in the Washington D.C. market.

Developed to help lawyers identify the finest legal products and service providers, the annual Best Of supplement recognizes the vendors that lawyers and firm administrators turn to first to keep their lives on track, inside and outside of the office. The survey is refined year after year based on response rates to make sure we are only covering the categories you care about.

In the pages that follow, you’ll see the top three ranking companies for each category, as voted on by our readers. We thank everyone that took the time to vote. As always, if you see a category or vendor that we missed, please reach out and let us know.

Again, thanks for sharing your voice and your votes.

Warm Regards,



Richard Caruso
Vice President & General Manager, Legal Media

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CYBER SECURITY PROVIDER FOR DC LAW FIRMS

1. GUIDEPOST SOLUTIONS LLC
2. STROZ FRIEDBERG
3. CONTROL RISKS

DATA RECOVERY SOLUTION PROVIDER

1. DISCOVERREADY
2. CONSILIO
3. HAYSTACKID

END-TO-END EDISCOVERY PROVIDER

1. REVEAL DATA CORPORATION
2. FTI TECHNOLOGY
2. HAYSTACKID
3. THOMSON REUTERS EDISCOVERY POINT

LEGAL HOLD SOLUTION

1. HAYSTACKID
2. FTI TECHNOLOGY
3. EPIQ

TECHNOLOGY ASSISTED REVIEW (TAR) DISCOVERY SOLUTION

1. REVEAL DATA CORPORATION
2. ERNST & YOUNG LLP
3. HAYSTACKID (REVIEWRIGHT)
3. FTI TECHNOLOGY

MANAGED DOCUMENT REVIEW SERVICES

1. HAYSTACKID (REVIEWRIGHT)
2. NIGHTOWL DISCOVERY
3. TRIALWORKS

DATA & TECHNOLOGY MANAGEMENT EDISCOVERY PROVIDER

1. REVEAL DATA CORPORATION
2. HAYSTACKID
3. THOMSON REUTERS
3. FTI TECHNOLOGY

ONLINE REVIEW PLATFORM

1. REVEAL DATA CORPORATION
2. RELATIVITY (KCURA)
3. FTI TECHNOLOGY
3. HAYSTACKID (REVIEWRIGHT)

DOCKETING & CALENDARING SOFTWARE FOR DC LAW FIRMS

1. PROLAW (THOMSON REUTERS ELITE)
2. ABACUSNEXT
3. ELAW

LEGAL PROCESS OUTSOURCING FOR DC LAW FIRMS

1. HURON LEGAL
2. LEXISNEXIS LEGAL PROCESS OUTSOURCING (LEXISNEXIS)
3. EPIQ
3. HAYSTACKID

TIME & BILLING SOFTWARE TO DC LAW FIRMS

1. THOMSON REUTERS ELITE
2. CLIO
3. TABS3 SOFTWARE

IT OUTSOURCING FOR DC LAW FIRMS

1. KENO KOZIE
2. ACCENTURE
3. CONSILIO
3. HILLTOP CONSULTANTS, INC.

TABLES OF AUTHORITY SOFTWARE TO DC LAW FIRMS

1. LEXIS FOR MICROSOFT OFFICE (LEXISNEXIS)
2. DRAFTING ASSISTANT/CITE ADVISOR (THOMSON REUTERS)
3. LEVIT & JAMES' BEST AUTHORITY

DOCUMENT MANAGEMENT SOLUTIONS FOR RETRIEVED RECORDS

1. KIM TINDALL & ASSOCIATES
2. LIGHTHOUSE (FORMERLY DISCOVIA)
3. U.S. LEGAL SUPPORT

LAW FIRM PROPOSAL AUTOMATION & EXPERIENCE MANAGEMENT SOLUTION

1. THOMSON REUTERS ELITE BUSINESS DEVELOPMENT
2. CONTENT PILOT
2. FIRMSEEK
3. SATURNO

COLLABORATION PLATFORM

1. SLACK
1. GOTOMEETING
2. MICROSOFT TEAMS
3. WEBEX

ONLINE LEGAL RESEARCH VENDOR

1. LEXISNEXIS (LEXIS ADVANCE)
2. THOMSON REUTERS WESTLAW/WESTLAW EDGE
3. BLOOMBERG LAW

END-TO-END LITIGATION CONSULTING FIRM

1. TRASK CONSULTING
2. CONSILIO
3. BERKELEY RESEARCH GROUP
3. HAYSTACKID

SOLO PRACTITIONER RESEARCH VENDOR

1. LEXISNEXIS (LEXIS ADVANCE)
2. THOMSON REUTERS WESTLAW/WESTLAW EDGE
2. BLOOMBERG LAW
3. CASETEXT

LITIGATION VALUATION PROVIDER

1. NAVIGANT CONSULTING
2. BAKER TILLY
3. DELOITTE

LEGAL RESEARCH VENDOR (INCLUDING SOFTWARE AS SERVICE, DIGITAL & PRINT PRODUCTS)

1. LEXISNEXIS (LEXIS ADVANCE, LEXIS PRACTICE ADVISOR, PRINT/EBOOK TITLES, ETC.)
2. BLOOMBERG LAW
3. THOMSON REUTERS (WESTLAW, PRACTICAL LAW, WEST PRINT TITLES, ETC.)

LITIGATION DISPUTE ADVISORY SERVICES CONSULTANT

1. ERNST & YOUNG
2. K2 INTELLIGENCE
3. DELOITTE

ONLINE PUBLIC RECORDS RESEARCH PROVIDER

1. BLOOMBERG LAW
2. LEXISNEXIS
3. EQUIFAX

FORENSIC ACCOUNTING PROVIDER

1. GUIDEPOST SOLUTIONS LLC
2. ERNST & YOUNG
3. KPMG LLP



Disruption and Opportunity: Where Will IoT Connect the Commercial Litigation Community to Challenges?

By Teresa Barber, Director of Expert Relations | *Sponsored Content by IMS ExpertServices*

The effects of Industry 4.0 innovations have been felt across sectors, from energy and financial services to healthcare and pharmaceuticals. Consumers and businesses are enjoying new levels of efficiency and real-time precision through artificial intelligence (AI) enabled solutions, connected devices, and the growing prominence of Internet of Things (IoT). Meanwhile, our clients working in commercial litigation at the world's most influential law firms are bracing for a new generation of challenges and questions from the clients and companies they serve.

To help our clients anticipate areas where questions and disputes may be likely, we interviewed industry authorities from our community of experts to gain insights into the trends and issues monitored by experts within the space.

Stu Lipoff anticipates commercial disputes arising out of this swelling appetite for connected devices. "Any misbehaving IoT devices or systems might result in significant financial loss," notes Lipoff, an expert in our network who is a recognized authority in areas including cybersecurity, healthcare, and data privacy.

Given the complexity of these devices and the connected systems that drive them, Lipoff notes that determining the liability among parties may become increasingly complex. As products, services, and systems are developed in line with the IoT vision – ranging from dishwashers and blenders to HVAC and dog tracker tags – products "will have a computer with downloadable firmware and will talk with each other."

Research suggests we will see increasingly vast numbers of internet-connected smart IoT devices per home. Recent data from NPR and Edison Research estimated that there are nearly 120 million smart speakers in U.S. homes, representing year over year growth of 78% from 2018. Leichtman Research found 74% of U.S. households have at least one internet-connected TV device, up from a mere 50% in 2014. Statista projects the Smart Home market will see an annual growth rate of 15.4% to reach a market volume of \$41,756,000 by 2023 to meet demands for connected devices in home entertainment, smart devices, energy management, control and connectivity, comfort and lighting, and security.

This connectivity doesn't just create efficiency and comfort. In one recent scenario, malware had been built "into internet-connected security monitor video cameras," Lipoff notes. "This had the effect of causing thousands of devices in use in people's homes to attack the website of a commercial third party." An excess number of transactions directed through the malware from the people's home security cameras caused the site to crash. Legitimate visits and transactions on the site were thwarted. When the consumers bought and installed their home security cameras, they wouldn't have known that they were enabling a denial of service (DOS) attack on a large company.

In a future with many in home connected devices all talking to each other, Lipoff cautions litigators to prepare for increasingly complex disputes and issues around liability. "Since the ordinary consumer will have no ability to know if these IoT devices have accidental defects or purposeful malware," he notes, "the range of possibilities of what could go wrong is infinite. Some devices might invade your privacy or worse capture bank account passwords and other critical information to facilitate ID theft." While consumers and homeowners may need to stay alert for how malware, design defects, or security holes could lead to hackers disabling alarms and unlocking doors, commercial interests may have substantial risks where connected systems, devices, and services touch proprietary processes and data.

As consumers and businesses become increasingly connected with the rise of IoT, so will the need to help clients navigate complex challenges. IMS ExpertServices is the trusted partner for the world's top litigators, and stands ready to deliver best-in-class experts and consultants who are knowledgeable and experienced in commercial litigation and IoT.

IMS ExpertServices is a consultative expert services provider for the most influential global law firms, dedicated to offering rigorous research, strategic expert alignment, and ongoing services to position clients for success. More information on the firm can be found at www.expertservices.com.

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1. WELLS FARGO
2. CITI PRIVATE BANK
3. PNC

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2. PWC
3. ERNST & YOUNG

BUSINESS BANK

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2. BANK OF AMERICA
3. WELLS FARGO
3. CHASE
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Welcome to The National Law Journal Best of Legal Times 2019 Hall of Fame. All have placed in the top three, three out of the last four years. A few have ranked in the top slot every year since the introduction of Best of. We congratulate them and thank you for your continued support of high-caliber service and expertise.

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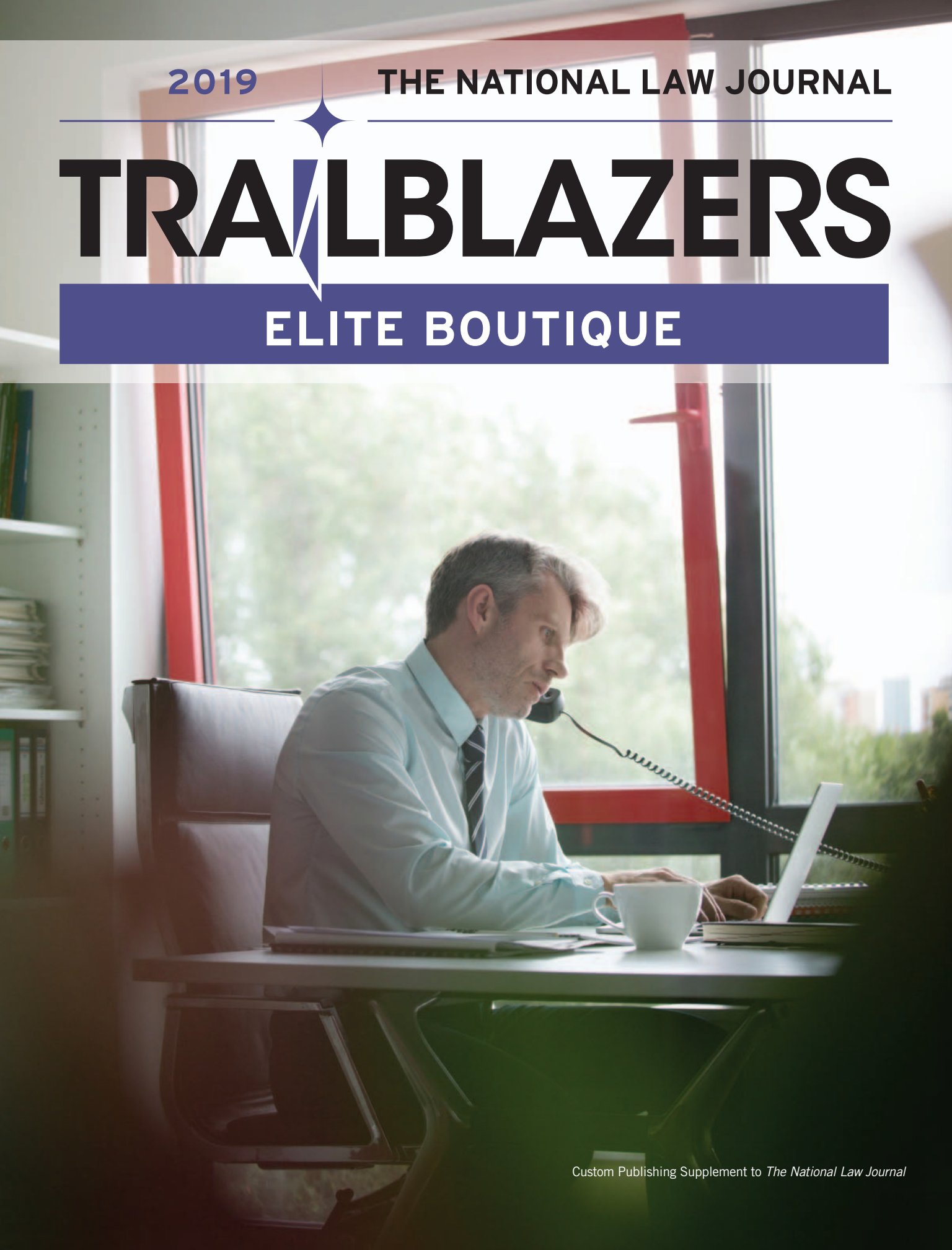
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2019

THE NATIONAL LAW JOURNAL

TRAILBLAZERS

ELITE BOUTIQUE





Dear Readers,

The National Law Journal is recognizing its third list of Elite Boutique Trailblazers as well as our inaugural list of Sports & Entertainment Trailblazers. The Trailblazer series is a special supplement developed by the business arm of *The National Law Journal*. We are proud to spotlight a handful of individuals from each practice area that are truly agents of change.

For our purposes, we defined the boutique firms by their specialization in one area of practice/industry, rather than their size. The next grouping of profiles you'll read is on Sports/Entertainment. The profiles cover everything from counseling A-list celebrities to sports betting legislation. We are pleased with our final list of honorees and are proud to share each of their stories with you.

As with all Trailblazer supplements, the list is never complete. If you have someone you feel is deserving of the title, please reach out and let us know.

Congratulations to this year's honorees!

All the best,

Richard Caruso
Vice President & General Manager, Legal Media

JOSHUA BLOSVEREN

HOGUET NEWMAN REGAL & KENNEY, LLP

PIONEER SPIRIT Joshua Blossveren worked at a larger firm, but "I decided I wanted to continue practicing commercial litigation but thought a boutique would get me more hands-on experience. And that's what I got."

TRAILS BLAZED Blossveren's successful litigations include a 2015 insurance coverage matter over claims of alleged water contamination. "Our client, which manufactured an herbicide, was sued by municipalities and governmental water systems and settled for about \$170 million. We sued the insurance companies claiming that our client may not have done anything wrong, but these older policies were implicated. The insurers argued there was a pollution exclusion, but we convinced the court that under New York law, it didn't meet the definition as a pollutant. We were able to defeat summary judgment filed by 30 of our client's insurance companies and achieved some groundbreaking rulings relating to the application of New York's 'all sums' allocation rule. It was a very good outcome for my client and agricultural companies." He also represented DK Property in another insurance case. "Our clients owned an apartment building, and construction next door caused damage. Along with property damage, we claimed that the insurance company had engaged in a bad-faith claim handling by dragging out the process. The court confirmed for the first time that there is really not a heightened standard for bad faith and that attorneys' fees are among the damages that can be received. It was a precedential case."

FUTURE EXPLORATIONS Cyber liability has been a hot topic. "But that is more bark than bite. We will see more representations and warranties insurance cases, and we are seeing more in large acquisitions. We are not seeing reported cases, because almost always these policies include an arbitration clause. But we are finding more of these policies and cases."



THOMAS E. L. DEWEY, DAVID S. PEGNO, STEPHEN M. KRAMARSKY

DEWEY PEGNO & KRAMARSKY LLP



PIONEER SPIRIT Tom Dewey and Steve Kramarsky were associates at Cravath and Dave Pegno was an associate at Kaye Scholer in 1995 when they worked together on an arbitration in Switzerland. Said Dewey, “We liked working together and decided if we could collaborate on that matter, we could handle anything. In 1998, we decided to strike out together.”

TRAILS BLAZED Pegno said that three years after the firm’s founding, they successfully defended a client in a securities class-action trial in federal court. “That was very rare at the time, and it’s still rare. It moved the firm’s profile forward.” The firm continues to try commercial cases to verdict, as well as pursuing more traditional resolution options. “We are ready, willing and able to try a case, but often a resolution makes more sense,” said Pegno. Kramarsky added the firm focuses on being flexible and efficient. “We offer ‘brains, not bodies.’ We think about things differently, rather than just throwing people at the problem.” Dewey pointed to a case that lasted 15 years. “It went to the New York Court of Appeals twice, and we prevailed multiple times against a party with eight different law firms. Steve’s group has become one of the leading employer-side counsel for Wall Street firms.”

FUTURE EXPLORATIONS Dewey said the firm is at a good place. “We’ve decided to stick to what we know well—commercial litigation and regulatory investigation work.” The firm has a reputation for being prepared to go to trial and take appeals cases, said Kramarsky. “We try to use every tool we have to get good results.” Pegno noted everyone who has become a partner since has been a woman. “We have a superb group, and together we have grown in ways that distinguish ourselves.”

DAVID ELSBERG & JENNIFER SELENDY

SELENDY & GAY PLLC



PIONEER SPIRIT David Elsborg was one of the firm’s five founding partners. “We had conversations about what the best possible law firm would look like. We decided our goal would be around 100 lawyers. At that size, we would all know each other, and we could take on any case of any size.” Jennifer Selendy said the founding attorneys’ experience in very large international firms has influenced the firm’s culture. “Sometimes, trying to be all things to all clients causes bigger firms to impact their legal excellence. We focus on making growth consistent with our values.”

TRAILS BLAZED Elsborg pointed to the firm’s processes and mechanisms. “We are making decisions on criteria and value that are important to us and not for other reasons. Our diversity is a consequence of that.” For example, every applicant to the firm does a case study, which is reviewed blind. “There is no quota or target for diversity, but our partners are 56% women, 23% people of color and 21% LGBTQ. We got there by just focusing on excellence and values.” Selendy said the firm has also reworked operations. “A number of big firms focus on new models, but we’ve focused on professionals in marketing, IT, HR, finance and other areas. We’ve empowered their expertise. We want the whole culture of the office to match the tenor we set for the lawyers.” The firm also has a flat structure for associates and limited hierarchy.

FUTURE EXPLORATIONS Selendy hopes the firm’s approaches will impact the entire profession. Elsborg said there may be more spinoffs from large firms by lawyers looking to take a similar approach. “Clients have already realized the advantages of our firm and other litigation-only firms, rather than those trying to be all things to all people.”

JEFFREY ERDMAN

SCALI RASMUSSEN, PC



PIONEER SPIRIT Jeffrey Erdman's law school mentor worked at a small firm. "I found it very appealing when I was clerking. It was a more family-oriented, personalized environment. After four years, I tried a big firm. Then I ran my own firm for 17 years, which I brought with me to Scali."

TRAILS BLAZED Erdman is a member of the LGBTQ community. "In law school, I was concerned that the legal community would be unwelcoming to people like me, and I felt a kinship to other minorities. When I found my home at the first small firm, I came to realize you can find a place where you can be yourself. I dedicated myself to working within the profession to create a more diverse bar and judiciary, open more minds and educate people." For example, at the judicial level Erdman has served on the Judicial Council on Access and Fairness Advisory Committee. "At the local bar level, such as the L.A. County Bar, I've educated the bar about diversity and promoting the value of diversity in the workplace." He has also worked with the California Bar's Sexual Orientation and Gender Identity Bias Committee. "We've tried to bring people into the legal profession and help those feeling on the fringe know that they could have a successful career in law."

FUTURE EXPLORATIONS Erdman co-chairs the firm's Diversity Initiative. "We are building three primary initiatives: for women, racial and ethnic minorities and LGBTQ people. This includes pro bono work as well as community engagement. The purpose is not only to do good in the community, but to make sure the firm is known as a place that values diversity and puts importance on community service. We expect and hope to make our workplace a more welcoming environment and attract top talent."

LAURA V. FARBER

HAHN & HAHN LLP



PIONEER SPIRIT Laura Farber began her career at a large firm. "It was good training and exposure, but I realized I also wanted to have a family and be involved in my community and the profession in ways that would be challenging to do at a big firm. A mentor from the Women Lawyers Association of Los Angeles introduced me to Hahn & Hahn, which is incredible in the way it works in the community. I love the fact that I'm supported in my outside activities, such as the Tournament of Roses."

TRAILS BLAZED Farber is serving as president for the 2019-2020 Tournament of Roses year and is the first Latina and third female president. "I became involved because of the firm. We have done legal work for them and have been very committed and supported their work. I got involved at a time when folks were criticizing the association for being homogenous and not reflecting our community. It's become more naturally diverse, and I've been a big part of bringing that diversity." The Tournament of Roses is more than just the Rose Bowl parade and college football game. "The president also helps select the bands that get to be in the parade. We've picked a large number of international bands, and a lot of them are from South and Central America. Participating can be very rewarding for them. Spanish is my first language, so I can represent the organization in Spanish and English."

FUTURE EXPLORATIONS Farber has been asked to next serve as chair of the Rose Bowl Management Committee. "I'll be involved more on the football side." She will also continue to be involved in ABA work. "I currently chair the Latin America and Caribbean Initiative Law Council."

ADAM FLEISCHER

BATESCAREY



PIONEER SPIRIT Adam Fleischer represents insurance companies in coverage matters. “Insurers are behind the scenes in figuring out both how to cover social issues-related claims and the constraints of that coverage. Being at a smaller or midsize firm, we are more able to nimbly jump into the novel issues that society puts on the doorstep of insurers.”

TRAILS BLAZED Fleischer cases include NFL and NCAA concussion claims and the Las Vegas Mandalay Bay shooting, among others. “The most trailblazing areas are school molestations, opioid abuse and malicious prosecutions. These are the bubbling social issues insurers are looking at, and our job is to help them not let them bubble over.” His malicious prosecution matters involve representing insurers of municipalities, counties and other entities that have been sued over wrongful convictions. “We help figure out which years of insurance have to pay and how much. We’ve litigated this as an issue of first impression in Nebraska, will soon appear in front of the Illinois Supreme Court and litigated in North Carolina.” The same is true of school molestation. “We’ve been involved in some terrible cases to determine which insurers respond and how. For example, I argued in the Ninth Circuit Court of Appeals to establish which insurance companies should pay how much.”

FUTURE EXPLORATIONS More than ever, insurance coverage is at the crossroads of social harm and the cost of fixing that harm. “We have to figure out a way to work with our insurance clients so they can provide the protection for drug manufacturers or hotels or others in industry to operate but also pay for those social harms when they arrive. And we have to figure out how to balance the causes, so insurers aren’t providing a blank check that leads this type of coverage to be unsustainable.”

JONATHAN GRAY & DAVID F. SCHWARTZ

GRAY SCHWARTZ LLP



PIONEER SPIRIT Jonathan Gray studied avant-garde cinema and rhetoric in college. “Law wasn’t a natural path. But I was interested in the performative part of litigating.” Gray met a prominent entertainment lawyer around the same time he produced his first short film, which premiered at Sundance in 2006. “I was able to combine the two. In 1998 I decided to really dive more into the production world, so I started my own firm and have been practicing in the independent film and TV space ever since.” David Schwartz graduated from law school in 1995 and became involved with representing a singer-songwriter. That eventually led to him becoming a manager/attorney and working as an artist/manager. “I was invited to move to New York and ended up becoming production counsel on a lot of productions and for artists and producers, such as with ‘The Band’s Visit.’”

TRAILS BLAZED Gray and Schwartz recently launched Gray Schwartz, a boutique entertainment law firm concentrating on documentaries, nonfiction/unscripted content and live theater. The firm has also launched an affiliated consulting arm, GS Consulting. Gray said his previous firm, which had grown to 21 attorneys, felt too big. “Trimming down the practice allows us to be more hands-on and work more intimately with the clients.” Schwartz has always worked in a small firm environment. “It provides more flexibility in terms of also being a producer.”

FUTURE EXPLORATIONS Schwartz said adaptations of Broadway musicals back to films are becoming hot right now. “‘La La Land’ was an indicator. For a long time, musical film was out of favor, but it’s roaring back.” Gray’s focus is on the First Amendment. “My practice is shifting toward the documentary and nonfiction space. So my work will be with diverse artists and protecting their voices.”



WAYNE R. GROSS

GREENBERG GROSS LLP



PIONEER SPIRIT Wayne Gross was working for a large law firm in 2011, alongside Alan Greenberg. “We worked on a case that won a \$50 million verdict. The client had offered to do it on contingency, but the big firm passed. Alan and I decided we wanted to be in a position to do litigation for both plaintiffs and companies on both a contingency and hourly basis. We have the best of both worlds.”

TRAILS BLAZED Gross and the firm won two major verdicts in California last year. “One was on the defense side and one was on the plaintiffs’ side. No other firm in California had a top verdict on the defense and plaintiff side in the same year. That trial success has allowed us to bring in cutting-edge cases we couldn’t do at a large law firm.” His victories include a complete defense verdict for the law firm Buchalter in a civil RICO case, which was decided by a jury. He also obtained final approval of a \$17 million settlement on behalf of a class of 32,217 consumers in a nationwide class-action lawsuit against PHH Corp., Realogy Group and other affiliates alleging illegal kickbacks. Gross’ other matters include serving as lead counsel for Tracy Warren. “She is a top female lawyer who has sued a well-known large law firm for gender discrimination and pay inequity. It’s an extremely important issue for the legal community and business community. It’s the kind of groundbreaking case that big law never would have allowed us to do.”

FUTURE EXPLORATIONS There will always be a place for large international law firms to handle major transactional matters. “But I predict that big law will continue to lose top talent, partners and associates, because lawyers want to pursue the cases of their choice.”

BELINDA HANSON

HANSON CRAWFORD CRUM



PIONEER SPIRIT Belinda Hanson started as an employment lawyer at a big firm, then left to practice family law with her father, who was then at a boutique firm. “Then we left to start this firm in January 1997. I’ve had one partner for 20 years, and the other for 15 years.”

TRAILS BLAZED Hanson works with high net worth clients in Silicon Valley who are getting divorces or separations. “We’ve developed a niche and have a team-based practice.” The scale of their cases often encompasses assets of more than \$50 million and sometime up to \$1 billion. “Our cases often involve venture capital, hedge fund and private equity money and complex real estate. Surrounding ourselves with specialists in a small environment impacts the quality of service we can provide. We have four certified family law specialists and four more taking the exam soon. We think that’s the most in the Bay Area.” The firm has several subspecialties. “My partner Joe Crawford is an excellent litigator. We team up, so one can be the litigator and the other can focus on a settlement. That allows us to pursue both tracks at once.”

FUTURE EXPLORATIONS Two years ago, the firm opened a second office in San Francisco. “Our practice reflects the geographic patterns of the Bay Area. We are seeing more wealth move to San Francisco, where it used to be more concentrated in the South Bay. We are also seeing clients wanting direct hands-on service and more work being done in a space-agnostic way, which clients prefer and makes it easier to cover the cases.” Another trend involves an increased interest in mediation. “Historically, I didn’t see super high net worth clients wanting to do mediation. But we are finding more of that now.”

SCOTT HARPER

HARPER BATES & CHAMPION LLP



PIONEER SPIRIT Scott Harper has an engineering background and started with an aviation litigation firm. "I really started in a boutique from Day 1. I was defending aircraft and parts manufacturers. It was great experience, but very limited and concentrated in certain areas. But I enjoyed the scientific piece. It was very interesting to figure out why an aircraft went down, the science behind it and other issues. Then, they invented the internet, and in the late 1990s patents became big. That's what led me to an IP boutique."

TRAILS BLAZED Harper's IP training was similar to his engineering background. "I became very interested in the various types of IP law, such as patents, trademarks and copyrights." Harper has experience in a range of industries, including fiber optics, computer hardware, software and information technology, medical devices, athletic goods, food and beverage product packaging and hydraulic filtration. "I became a utility player IP lawyer. It was cross-functional, and that's what we are doing at the firm. We bring a complete answer to a lot of our clients' IP needs, from procurement through enforcement." For example, Harper and the firm advised an oil field company with buying a portfolio. "Then, we built a licensing piece, and we were in charge of enforcement, as well as going after adversaries in court." He has also designed trademark licensing and IP enforcement strategies to protect clients' publicity and likeness rights.

FUTURE EXPLORATIONS The firm has now been in business almost five years. "We are adding another practice group. This goes back to our goal of developing a cross-functional boutique for the transactional side of IP. Boutique lawyers are often limited to one specialty, but we are trying to break that mold and fill the expanding needs of our clients."

AVI ISRAELI

HOLWELL SHUSTER & GOLDBERG LLP



PIONEER SPIRIT Avi Israeli had always worked at big firms. "Then, at my last firm I was fortunate to work closely with three of HSG's founding partners. I enjoyed the work but always wanted to do something entrepreneurial. When I got the opportunity to continue the exciting legal work I was doing and build a firm at the same time, I jumped. I joined the firm on day two as its fifth lawyer, and in 2014 I became the firm's first elected partner. Now HSG has over 60 lawyers."

TRAILS BLAZED Israeli's matters include representing HSBC and other banks in RMBS litigation. "HSG was an early pioneer in billion-dollar putback cases that stemmed from the collapse of the housing bubble. I helped establish the firm as a leader in this new wave of litigation now resolving the enormous liabilities associated with the housing crisis." More recently, he has been an early adopter in cost of insurance increase litigation. "I represent government-owned investment fund AIMCo and Wells Fargo in multiple cases against life insurers that have improperly raised premiums. We've obtained some important early wins for our clients and are looking forward to establishing more favorable precedent in this area." Israeli also represents a Facebook co-founder in actions over disputes with an investment advisor and its principals arising out of investments in Facebook stock.

FUTURE EXPLORATIONS HSG will continue to grow. "We've laid a solid foundation over the last eight years, and we've focused on shaping and building the firm from the ground up. As I look ahead, I know we'll continue to evolve as a firm. But we intend to make sure the same principles that guided us back when we were five lawyers will still ring true as we expand toward 100 attorneys in the future."

ABRAN KEAN

ERISE IP



PIONEER SPIRIT Abe Kean worked at a big firm in Kansas City for several years after law school. "I did patent prosecution and litigation. Several of us saw an opportunity to serve the marketplace better and do defense work more efficiently. We took the leap and started a boutique firm."

TRAILS BLAZED Kean's practice now encompasses inter partes review. "It's an efficient process that works with our model. We filed the very first one in 2012, and we think they are a useful tool in many patent cases. Other firms are reluctant sometimes because they perceive a risk of estoppel. But we deem it an acceptable risk because the PTAB is smart and we would rather present to this audience." This plays out in several interesting ways. "If you proceed with an IPR to a final conclusion and win, then the patents are found unpatentable. This also shapes the contours of the overall litigation. In several cases we've filed IPRs, and often that will motivate the plaintiff to reconsider the lay of the land. The sides can come together and reach a resolution." The firm also has a unique structure. "We are not fighting for points or shares. We collectively as a partnership try to take a longer-term view. That works in a small business model. Our associates are also not doing busywork—the boutique structure provides better opportunities."

FUTURE EXPLORATIONS Several patent litigation cases have just been filed against foreign parties. "That will impact vicarious liability." Overall, efficiency will always be something that is important to clients. "Some cases will have to go to a jury trial. On average, most companies don't want to pay several million dollars to handle cases that come along. A boutique can help provide that service cost efficiently."

NEIL LIEBERMAN

HOLWELL SHUSTER & GOLDBERG LLP



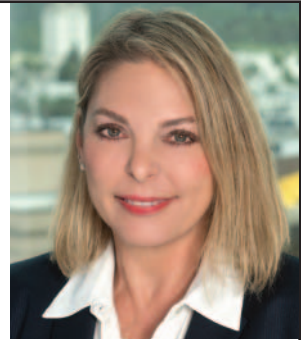
PIONEER SPIRIT Neil Lieberman began his career at Paul Weiss. "I had a very good experience there. But as I started to think longer term about my career, I began to look for different experiences and opportunities. At the time, HSG was about one and a half years old with 12 lawyers; a tight-knit group already executing on a plan to grow. It seemed like a great opportunity that wouldn't be the same if I waited."

TRAILS BLAZED Lieberman's matters include representing Freddie Mac in a dispute over the proceeds of the sale of Stuyvesant Town/Peter Cooper Village. "It sold for about \$5.5 billion in 2015. There was a dispute in how the proceeds should be distributed among the investors. We decided to remove the case to federal court and took the calculated risk to try to overcome some less-than-favorable precedents, and were able to achieve a great precedent as a result. We were creative and not afraid to advocate zealously on behalf of our client." In another matter, Lieberman "quarterbacked" the HSG team that was brought in on the eve of trial to represent trustees such as US Bank, Wilmington Trust, DBMT and TMI to hold Lehman Brothers responsible for mortgage-backed securities losses. "The trial lasted several weeks and resulted in a \$2.4 billion recovery."

FUTURE EXPLORATIONS "We've grown a lot in eight years. There is no huge appetite to become a big firm, but hopefully, we can continue to recruit a diverse and talented team of lawyers. For me as administrative partner, we have choices to make as we manage growth. Sometimes I can look at peer firms. But I always need to think about whether we are doing something in a way that maintains the tight-knit culture that attracted me to the firm in the first place."

NINA MARINO

KAPLAN MARINO



PIONEER SPIRIT Nina Marino comes from a family of lawyers who all had their own firms. “Ever since I passed the bar 30 years ago, it was always my intention to form a practice myself. It’s that entrepreneurial spirit.”

TRAILS BLAZED Marino’s practice includes international extradition cases. “There are very few people in the country that handle these. Our boutique firm lends itself to that kind of niche, because we can be flexible in terms of fees, staffing, structures and what experts and consultants to bring in. If we are fighting to keep the client in the U.S., that flexibility helps us further that objective.” She also works with individuals in other countries facing extradition to the United States. “Our role is to advise the local firm on U.S. laws and interpret them to utilize existing statutory and case law-based systems to the client’s advantage.” She also represents clients in Interpol matters. “Often, our clients didn’t know there was an Interpol notice on them, so we work to correct errors. For example, we are working to remove issues in a case right now in Texas, where the U.S. put a blue notice and a yellow notice on a woman and child.” Marino was also recently retained for the flagship prosecution of a cellphone unlocking case. “The U.S. government is saying that the actions of our client, by unlocking cellphones, caused a loss to cellphone carriers.”

FUTURE EXPLORATIONS There will be more criminal prosecutions on behalf of or against large technology companies. “We will also see an uptick of public corruption prosecutions in the near future. We have a couple going on right now.” Health care fraud cases are also not going away. “They have been steadily rising. When the government is able to close down one aspect, another pops up.”

MARGARET SOHAGI

THE SOHAGI LAW GROUP



PIONEER SPIRIT Margaret Sohagi started her career as a city planner dealing with housing, resourcing and coastal zone issues after college. “It became clear that to understand these issues fully, you had to understand the law. So I went to law school!” Sohagi now represents public agencies. “My clients are elected officials. Agencies have unique laws and constraints and face complex issues. Being in a smaller firm, we can brainstorm as a group. Along with my city planning background, another attorney is an engineer, one is a soil scientist, and one is an air quality expert. Being small also allows me to set up the firm nonhierarchically. It allows more creativity and lets me mentor newer associates and provide them with lots of support.”

TRAILS BLAZED Sohagi’s firm is 100% women owned. “That is groundbreaking. And client-wise, we are working on a lot of cutting-edge issues right now. For example, we are outside counsel for L.A. World Airports (LAX) and have worked on several groundbreaking projects including the modernization of the entire airport. We are also working with cities and municipalities on the cutting edge of climate change issues and how to adapt.” She also advises on the housing crisis in California. “That can conflict with the protection of resources. We help our clients maintain that balance.”

FUTURE EXPLORATIONS There is increased complexity around the environment and land use. “Our federal government and California are not on the same page with respect to environmental protection. Balancing that can be difficult for clients.” Weighing housing and other issues with climate change also brings additional challenges. “It has to be overlaid with what resources are available. I need to ensure that elected officials have the opportunity to reach their goals. All I can do is help navigate these issues.”

DAN TEITELBAUM

BLACKACRE LLP



PIONEER SPIRIT Dan Teitelbaum saw a disconnect between what clients want and what bigger firms provide, “and that’s a fixed pricing model. Legal work is often adversarial between parties, but nothing is more adversarial than a lawyer who bills his client three times what is expected. I wanted to fix this but couldn’t do it in a high-overhead firm. So we went all-in on this fixed-fee model. With low overhead, we can have lower costs and predictable costs every time. It makes for a better relationship and a better career.”

TRAILS BLAZED Teitelbaum and the other attorneys work directly with clients. “There is no receptionist screening calls. Being able to have daily contact, being available and just not being overleveraged give us a leg up. Because we are operating at lower costs, we can spend more of our time on matters and be more responsive.” Teitelbaum’s biggest client is Luzzatto. “They do creative office development, reinventing what office space is. They wanted an attorney looking to reimagine how attorneys work. As a developer, every penny counts. For example, they need to know exactly what they have to pay in terms of closing costs.”

FUTURE EXPLORATIONS In rural and low cost of living areas, firms are adopting fixed-fee models. “I expect it to become the norm in urban areas, too. Today, all a lawyer needs is a laptop and a cellphone. There will be massive reduction in overhead to allow more competitive costs, and fixed fees will become more the norm. Clients cannot indefinitely accept the old way of doing business. We’ve seen incredible momentum with this model. As a millennial, I can tell you that people in my generation are not as driven by financial goals and want more balance.”

JEFFREY S. HORTON THOMAS

AKERMAN LLP



PIONEER SPIRIT Jeffrey Thomas had his own employment defense boutique with around eight lawyers. “We were pulling in unusually significant clients for a firm of that size. So I moved up the food chain. Now, we’re sort of a boutique employment defense practice in an Am Law 100 firm, with five labor and employment partners and four associates in downtown L.A.”

TRAILS BLAZED Thomas’ successes include representing Dollar Tree Stores in a race discrimination case. “The plaintiff sued, although she had signed an arbitration agreement through the web-based onboarding system. We filed a motion to compel. She denied that she electronically signed the agreement. We had a 2.5-day live evidentiary hearing with experts testifying that the system authenticated her signature and that it was a valid way to collect the information. We won the hearing, and the matter was ushered into arbitration and quickly resolved.” He also successfully represented Hugo’s Restaurant Group. “They were sued in Los Angeles County in a punitive class action. We challenged, and plaintiffs’ counsel dropped the class claims and downgraded the matter to a PAGA-only action, which is the Labor Code Private Attorneys General Act. It allows one employee or former employee to sue on behalf of all hourly employees in a certain time period. We settled for a nuisance amount, just on the basis of the plaintiffs’ individual claims.”

FUTURE EXPLORATIONS In California, the future in employment litigation continues to look explosive. “The legislature moves forward with ever-more progressive legislation, and the governor then signs more of that than he vetos.” One example is Assembly Bill 5, which takes effect in January. “It radically expands the scope of people who are considered employees and not independent contractors. That will lead to a whole new rash of wage and hour class actions and PAGA actions.”

2019

THE NATIONAL LAW JOURNAL

TRAILBLAZERS

SPORTS & ENTERTAINMENT



TOM ARA

DLA PIPER



PIONEER SPIRIT Tom Ara started his nonlegal career doing radio. “In the 1990s, I thought I wanted to be in the music business. But things changed, and I felt that being a legal representative for the talent or those producing with the talent would be as fulfilling as being in it myself.”

TRAILS BLAZED Ara’s practice is global and in part focuses on Asia and China. “In the last 15 years, China has gone from almost nonexistent to the second-biggest media market in the world. I’ve been involved since the ground level, both as a lawyer and more recently on the diplomatic side as a trustee of the board of the US-Asia Institute. We engage in a lot of soft diplomacy, taking staff and members of Congress to Asia to strengthen mutual understanding and diplomacy.” Ara also works in eSports. “I represent clients who are launching a variety of businesses in the space. I’m doing creative deals for competitions and life cycles. I’ve been involved in some key deals bringing together Hollywood and Madison Avenue and helping brands access that demographic, which for many has been lost since those people don’t watch TV or even Netflix.”

FUTURE EXPLORATIONS The ground is shifting every day. “How we get content or enjoy entertainment changes rapidly, whether it’s eSports, which is becoming a massive form of entertainment, or new ways of enjoying content. So much will continue to develop, and as a lawyer, you’re always on the edge of your seat. The entertainment business is now international, and anyone who lives in the bubble of their local market will be left behind. I’ve been practicing in the entertainment business for 25 years, and this is the most exciting and uncertain time I’ve seen. But that brings challenges and lots of fun.”

LAUREN BOGLIVI

PROSKAUER ROSE LLP



PIONEER SPIRIT Lauren Boglivi’s work with media and entertainment began with her first transaction for Discovery Communications. “The partner who heads our technology, media and telecommunications practice was able to get Proskauer an initial mandate to do a joint venture for Discovery in 2010. It was a great deal and very interesting. I’ve worked on 10-12 deals for Discovery over the years since then.”

TRAILS BLAZED Boglivi has also represented Empire City Casino. “It was one of only two facilities in the New York City metropolitan area to get video lottery terminals. It had been owned by the Rooney family since the 1970s. These VLTs really did turn things around for the track. We negotiated a deal to sell both the race-track and the casino to MGM. It was the first time a ‘racino’ in the New York City metro area has changed hands. It involved a lot of family negotiations, negotiations with MGM and a cash and stock deal. MGM wanted it because New York State has been giving full casino licenses upstate, and there is a provision in the law that is eventually supposed to allow a downstate casino.” Her ongoing work with Discovery included a \$2 billion rights deal and strategic alliance with the PGA Tour last year to launch a platform to be the home of golf outside the U.S. for the next 12 years.

FUTURE EXPLORATIONS There will still be a great deal of work around what will happen with sports betting. “We represented Stars Group in a transaction with Fox to create FOX Bet. There will be a lot of opportunities and transactions over the next several years to see how the leagues, content providers and technology companies all get together to try to monetize sports betting.”

DAVIDA BROOK

SUSMAN GODFREY LLP



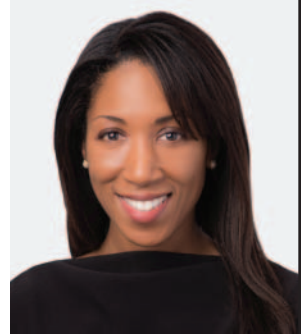
PIONEER SPIRIT Davida Brook is a Los Angeles native. “It’s in my blood. Entertainment law combines interesting factual issues with complicated legal issues. The intersection of those two things attracts me most.”

TRAILS BLAZED Brook’s clients include Melanie Kohler, whom she defended with Roberta Kaplan in a defamation suit brought by Hollywood producer Brett Ratner. Brook helped secure a key victory in that case, convincing the federal court to find that California law should apply to Kohler’s anti-SLAPP motion—even though the lawsuit was pending in Hawaii federal court. She is also part of the team that is representing billionaire hedge fund founder Louis Bacon in a series of disputes involving billionaire fashion tycoon Peter Nygard. “What began as an easement dispute between two neighbors who owned adjoining properties in the Bahamas has evolved into dozens of lawsuits spanning multiple countries. We are currently challenging more than a hundred defamatory statements on YouTube, blog posts and social media. An interesting issue in the case is how to treat republication of defamatory statements—which is a frequent occurrence in the age of the World Wide Web.”

FUTURE EXPLORATIONS Over time, the question will be whether and how courts distinguish the types of statements in new media versus old media. “That will be interesting, and it’s been fascinating to litigate. Part of what I have to do is not just learn the law but also educate myself, the judge and the jury in how the technology in play works, how it should be used and how that impacts the result.”

KANIKA CORLEY

AKERMAN LLP



PIONEER SPIRIT Kanika Corley started litigating media, entertainment and sports matters from an insurance defense perspective about 11 years ago. “But sports is my passion, so I focused my marketing efforts on bringing in sports matters, often involving IP. Once you get in a space, you can work around and network better.”

TRAILS BLAZED Corley has been focusing recently on the endurance sports industry. “I help clients who own those events with transactions, such as buying and selling events and litigating to protect the rights that arise. I hadn’t seen anyone really focus on that space, but I’ve come to realize they have their own way of doing things. That interested me, and I’ve gotten involved in assisting them to come up with standards on placing a value on these events. I have to find a way to negate the speculative valuation and buy and sell based on what companies are actually worth. I’ve done three or four deals over the past year.” She continues to work on sports IP, such as trademark infringement. “I may try to establish whether there is consumer confusion. For example, a professional skateboarder sued my client, a well-known restaurant chain, for trademark infringement for using him in X Games advertising. We had to establish that we didn’t need consent to use his image because you couldn’t see his face. We also had to go through valuation on what it would have likely cost if we went to him in the beginning. I tend to see these types of situations quite frequently.”

FUTURE EXPLORATIONS Sports is ever-changing. “The endurance industry is quite new to me, and now you see developments like eSports and Big3 Basketball. There is potential for a lot of disputes but also a lot of growth.”

CARISSA COZE

JENNER & BLOCK LLP



PIONEER SPIRIT Carissa Coze was doing deals for tech companies and other clients in San Francisco in the early 2000s when, in anticipation of the convergence of media and tech, she was recruited to the L.A. office of a firm that needed transactional lawyers to represent studios and media companies. “Convergence didn’t quite take shape as it had been envisioned,” she says, “but our media clients still were doing some innovative transactions. As the value of live sports content increased, more of my work focused on sports deals.”

TRAILS BLAZED Coze’s deals include FOX Bet, the first-of-its-kind national media and sports wagering partnership in the U.S. “Like many deals we have done, it’s a complex array of media rights, equity and commercial components. But this one had the added complexity of being at the forefront of the legalization of the strategic partnership’s core business—sports betting. There still is a lot of uncertainty as to how various constituencies, including state legislatures, regulators, sports leagues, conferences, the NCAA, advertisers and, importantly, sports fans and the general public, will react to the legalization and expansion of sports betting, especially mobile sports betting.”

FUTURE EXPLORATIONS The sports industry is at an inflection point, as it explores new ways to connect with fans, increase engagement and reach out to multiple demographics. “Live sports remain highly valuable content, but like other entertainment, how it’s distributed and consumed, and by whom, is changing rapidly. What is generally considered a ‘sport’ is also changing—think of eSports. Layered on top of that is the evolution of technology and the impact that things like 5G, enhanced geolocation and AI will have. We should see some interesting experiments in the coming years that should provide sports fans with new ways to watch—and interact with—live sports content.”

DEREK CROWNOVER

LOEB & LOEB LLP



PIONEER SPIRIT Derek Crowover went to law school after his baseball career ended. After graduating, he got a job at a Nashville entertainment firm. “It allowed me to work in sports and music.” Crowover became an MLB agent when he was 27 but didn’t enjoy it. He also began exploring music royalty matters. “I went from the sports guy who did some media to the guy who worked with royalties, income flows and assets to figure out how clients could be more independent. I realized I needed to focus on this 100%.” Eventually, he came to Loeb. “I never saw myself at a big firm. But as some clients exploded, I needed more bandwidth and a platform with New York and L.A. connectivity.”

TRAILS BLAZED Crowover’s clients include the songwriter Craig Wiseman. “He changed my life. He’s had about 35 number-one hits. Then, he decided to open a publishing company that had around 80 number-one songs.” After selling the catalog sales, Wiseman suggested doing their own copyrights. “And we ran some numbers and realized we should absolutely do it.” Crowover continues to work on microfunding albums, including recently representing a client who passed on a major label deal in favor of working with a distributor that would allow for more asset retention. “You have to ask clients what their plan is and how they want to add wealth and value.”

FUTURE EXPLORATIONS Nashville may become the center of the music universe in 10-15 years. “Labels are moving here and private equity firms are buying labels. We are getting clients from New York and L.A. regularly. It’s partially our rates, but there is also a deep copyright knowledge here. If you create assets and monetize them, you need to do it where it’s created.”

MARISSA ROMÁN GRIFFITH

AKIN GUMP STRAUSS HAUER & FELD LLP



PIONEER SPIRIT Marissa Román Griffith has always been fascinated by movies and TV but began as a transactional attorney. “Then I got a call from a headhunter, interviewed for a position as a film finance associate and got the job. I’ve been doing entertainment finance ever since.”

TRAILS BLAZED Griffith has been involved in the field since 1996. “A few times, I’ve worked on a matter, and when someone sent me precedential information, I realized it was my own document.” One transaction she is particularly proud of involved Media Rights Capital. “We began representing them as they were just getting started. But in August 2008, the credit markets started to tighten. We had to move quickly and closed a corporate credit facility in about six weeks, when they can take six months. We got it done and funded one day before Lehman blew up. The company has been very successful, all based on that original deal.” More recently, she has been facilitating sharing of content and growth of companies. “When I started, it was a lot of single-project transactions. It has shifted to larger, more complex transactions. We took those tools and applied them to other spaces like TV, which is probably the frothiest space right now.”

FUTURE EXPLORATIONS The presale market for independent film and TV will continue to shrink. “But I also expect to see a continued expansion of streamers of their own individual productions. There will be more pressure on the box office and more skipping the theater completely. I also expect the trend toward owning IP will continue, as companies continue to invest in and make derivative productions. The problem is that creators need to gear toward what audiences today are demanding, which is fresh and creative stories with diverse characters.”

VIVEK JAYARAM

JAYARAM LAW, INC.



PIONEER SPIRIT Vivek Jayaram has been working in IP since he started practicing 15 years ago. “It naturally involved working with a lot of creatives—visual artists, filmmakers, celebrities and others. Through that, I ended up working with various sports and entertainment clients. And over the last 10 years, I’ve also been advising a lot of tech companies. We’ve seen a real growth in sports tech and media ventures related to sports businesses. So, that confluence brought me where I am.”

TRAILS BLAZED Jayaram’s clients include Daniel Arsham and Snarkitecture, a design collaborative. “I’ve negotiated all kinds of unusual licensing deals for them by applying principles gathered from experience in the art world. We’ve been able to protect and maintain IP ownership. From a legal standpoint, that’s been kind of unique.” Jayaram also teaches IP and entertainment law courses at the University of Miami Law School. “I’m also involved in the Global Entertainment and Sports Law Conference. It includes representatives from every sports league and a bunch of teams. For many years, sports and entertainment were not viewed together. But we’re taking lessons we’ve learned from businesses like Spotify and SoundCloud and applying them to sports leagues.”

FUTURE EXPLORATIONS Increasingly, celebrities are becoming their brands. “If they leverage today’s technology, say through eSports or other endorsements, we will see athletes and entertainers sticking around in the public eye a lot longer.” For example, the two former NFL players recently calling Jayaram about starting a food business would seem out of character. “But their brand allows them to launch a direct-to-consumer product.” In the entertainment industry, the way people are consuming video content is evolving. “Network TV and movie theaters need to figure out a way to reinvent themselves as on-demand content is exploding.”



JEFF IFRAH

FOUNDING MEMBER

IFRAH LAW PLLC

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PIONEER SPIRIT Jeff Ifrah served as a trial lawyer and officer in the U.S. Army Judge Advocate General's Corps, trial counsel to the U.S. Army Communications-Electronics Command at Fort Monmouth and special assistant U.S. attorney in the U.S. attorney's office in New Jersey before going into private practice. "When I first came to Washington, D.C., in 1997, an email went around the firm asking if anyone knew the head of gaming enforcement in New Jersey. It turns out, he was in the army with me and we were prosecutors together." The client was a European sportsbook company. "The client was advertising in New Jersey, and at the time it was unclear what the law was. So I defended that matter pretty quickly. From there, people started referring me other cases involving prosecution of offshore gaming companies."

Ifrah also litigated cases against the federal government and achieved victories in matters involving criminal and civil antitrust laws, securities laws and the Civil False Claims Act for clients in the pharmaceuticals, health care and technology industries. During the late 1990s and 2000s, Ifrah was also defending litigation for sportsbook and casino operators. "They eventually wanted to stop fighting and look into regulation." Ifrah became involved in New Jersey's regulated gambling about seven years ago. "The state first legalized poker, then sports betting. We expected other states to follow, but they didn't. We identified that as a problem. So we formed a trade association, the iDevelopment and Economic Association (iDEA), which is a nonprofit made up of 25 online entertainment companies that seek to grow jobs and expand online interactive gaming in the U.S. through advocacy and education." Ifrah serves as general counsel for iDEA.

TRAILS BLAZED Ifrah's work on behalf of iDEA has included writing an amicus brief for *Murphy v. NCAA*, where the U.S. Supreme Court allowed New Jersey's move to legalize gambling last year. "Once the Supreme Court overturned PASPA, iDEA expanded into sports betting as well. Now, 70 percent of mobile operators active in the U.S. are members of iDEA." Changes in regulation and legislation for gambling will continue to proceed state by state. "That makes it very complicated. Clients come to us to work with legislators and gaming regulators on sensible and reasonable legislation and regulation. In some cases, that may mean we go to court, but obviously clients prefer to work with regulators and not against them."

Since the *Murphy v. NCAA* decision, Ifrah has spoken at 13 national and international conferences and presented webinars on various aspects of U.S. sports betting. He also authored a law review article and national newspaper op-ed on the topic and currently serves on the editorial and advisory board of Online Gambling Lawyer.

Between his roles at the firm and iDEA, he now represents 90 percent of operators, platform providers and digital media providers involved in sports betting, along with a significant portion of digital fantasy sports companies and sports skills games.

FUTURE EXPLORATIONS Sports leagues originally tried to block New Jersey's efforts to legalize gambling. "They were against what they said would hurt the integrity of games. Now leagues want a piece of the pie and this is opening all sorts of new possibilities! We regularly field calls from startups in the space, to established players in Europe, to new suppliers to the industry. One particular sweet spot for us is representing media companies and live streaming companies, both of which are getting in on this new fun and exciting area!"

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JAMES JOHNSTON

DAVIS & GILBERT LLP



PIONEER SPIRIT Jim Johnston studied film at UCLA. “I kicked around in production but realized the creative side wasn’t for me. I still wanted to be involved in the business, so I got my J.D./MBA at UCLA. I interned with entertainment and entertainment finance firms, which allowed me to connect to the career I originally pursued.”

TRAILS BLAZED Johnston moved to New York for his legal career. “That might seem like an odd move, but it gave me an outsider’s view.” He started working extensively with cable TV clients. “I cut my teeth as that industry was really exploding.” He then moved to Davis & Gilbert, which has historically done advertising work, and advised clients such as Gillette, Walmart and Procter & Gamble. “I worked with brands that were investing in new ways. From there, I have been moving on to work with a number of different clients that may not be the historical benchmarks of the industry, but are coming in from a different angle.” Johnston also currently advises the Drone Racing League. “We’re focused on how to build a model on delivering competition in different ways under different models and taking advantage of the technology inherent in the competition itself.” He has also done work for TV manufacturers that have gotten involved with over the top streaming.

FUTURE EXPLORATIONS There will be pressure from both sides as large media companies consolidate to scale while low entry barriers allow for new opportunities for producers. On the sports side, gaming and gambling are entering the sports media ecosystem. “We will see a real acceleration of this trend, and it will change what types of audience engage and what sports are presented and how. We will also see a blurring of the line between live and broadcast events.”

KEVIN KELLEY

HUSCH BLACKWELL LLP



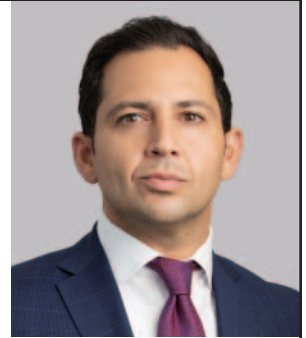
PIONEER SPIRIT Kevin Kelley started practicing in New York in the 1980s. “I loved my firm but not New York. So I looked to move to Denver.” He interviewed with the state’s largest firm, including with Paul Jacobs, who had just been asked by then-Gov. Roy Romer to bring a Major League Baseball team to Colorado. “Paul turned out to be my mentor.” After Jacobs went in-house with the Colorado Rockies, Kelley didn’t do another sports facilities-related deal until 2013. “Paul eventually went to work with the Sacramento Kings. When he fell ill, he asked me to take over. That was my reentry into sports facilities deals.”

TRAILS BLAZED Kelley and his team try to learn from problems with other sports facilities agreements, such as addressing who is responsible for funding capital expense items, repairs and upgrades necessary to stay competitive. “We have focused on making sure those things are covered, so the facility is in a good spot at the end of the operating agreement and the team doesn’t need to demand money to stay in town.” He has represented municipalities in deals with the Kings, Milwaukee Bucks and Milwaukee Brewers’ spring training facilities. “Some of these nonrelocation agreements are some of the best around. We are tying the team and community together.”

FUTURE EXPLORATIONS There will be less public funding for sports facilities. “Cities are under pressure and communities are far less willing to put money into a team that is owned by the wealthy. There will be more private facilities or ones with smaller public contributions.” There will also be more private investment in sports facilities and renovations on campuses at NCAA Division 1 universities. “Colleges have to focus their money on their mission, but they still need facilities for recruiting students to campus.”

ARASH KHALILI

LOEB & LOEB LLP



PIONEER SPIRIT Arash Khalili started in the sports world around 2004. "I was representing athletes with contracts, investments, promotional work, estate planning and other matters. It became apparent that many athletes needed a lot of help protecting their universe. One of my first clients was the football player Tony Gonzalez, and it led from there. I try to be a one-stop-shop professional advisor with everything but regulatory matters and help them leverage their name and likeness past their career. I created the Loeb & Loeb Player Professional Playbook, then team acquisitions. I started to get into eSports a few years ago. It was a natural extension, because we have a deep bench with media, IP, technology, sports and transactions."

TRAILS BLAZED Khalili, who co-chairs the firm's corporate and sports practice, began representing eSports gamers, developers and publishers. His clients include eSports star Richard Tyler Blevins, known as Ninja. "I helped create his brand and pivot to the mainstream." On August 1, Blevins left Twitch for Microsoft's Mixer platform. "It was a cutting-edge, industry innovative transaction. In conjunction, we did deals where he was put on a Red Bull can and closed a transaction with Adidas—a first with an eSports player. It got a lot of press." He also represents eSports investors and ancillary and tertiary businesses such as clothing. "We also represent professional athletes like Reggie Bush in setting up a tech platform and a venue." Khalili is also exploring the monetization and gambling of eSports.

FUTURE EXPLORATIONS The eSports barriers to entry are lower than traditional sports. "I see lots of opportunity for innovation and new technology. With the proliferation of eSports globally, it will become more of a mainstream industry. It will be trending toward what we recognize today as traditional sports."

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including our partners and friends

Derek Crossover
and
Arash Khalili

We salute your extraordinary
professional achievements
and unwavering dedication
to our clients.





JOE LECCESE

PROSKAUER ROSE LLP

PIONEER SPIRIT Proskauer had done NBA work for years, and Joe Leccese was assigned to work on some of those matters. “There wasn’t a thing called sports law, particularly on the transaction side. As the sports business expanded, we gained new clients. Over 25 years, I have been able to do things for leagues, teams, the media and others.”

TRAILS BLAZED Leccese, who now chairs the firm, points to a handful of particularly important matters. “I participated in most of the NBA, NHL and MLS expansions and new facilities and helped those sports increase their reach.” He also advised on the formation of the WNBA and NBA China and the expansion of the NBA to Canada. “Those are fairly significant transactions.” Leccese has also represented the Big East college conference, including during its 2013 realignment. “I worked on the ‘new’ Big East. This helped rebuild the Big East to its former glory. In 75 days, we negotiated releases, secured the name and a TV deal with Fox, reached an agreement to hold the tournament at Madison Square Garden and added three schools. The conference launched to great success. Then a few months ago, we got original member UConn to rejoin.”

FUTURE EXPLORATIONS Leccese sees four fundamental trends. The first includes more globalization and more U.S. consumers following international leagues and vice versa. Second, there will be more women executives in sports, as well as the continued rise of women’s sports. The third involves the convergence of gambling with media broadcasts of sporting events. “It will affect viewership and consumption patterns.” Finally, there will be a bigger investment of capital into sports. “Due to all four, we will see an enormous growth of sports generally and in the complexity of the legal issues we need to deal with.”



KAREN HOFFMAN LENT

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

PIONEER SPIRIT Karen Hoffman Lent began doing antitrust work when she came to Skadden as a first-year associate. “There were two partners here: one did NBA work and the other did NFL work. I was lucky enough to be able to apply the antitrust work I was doing to sports clients.”

TRAILS BLAZED Lent now co-heads the firm’s sports practice and is one of the few female litigators in the space. For example, she advised the NBA when former L.A. Clippers owner Donald Sterling was alleged to have made disparaging remarks about Magic Johnson and was subsequently banned from the league for life. “I was the most senior woman on the case. It was an important engagement for me. It felt like I had a seat at the table in an important matter.” Most recently, she was the most senior woman involved in the NCAA Grant-in-Aid Antitrust Litigation. “The case is a class action filed by Division 1 football and men’s and women’s basketball players claiming NCAA compensation rules were a violation of antitrust laws. At trial in September 2018, the judge found the rules unlawful but didn’t invalidate them completely. The case is currently under appeal in the Ninth Circuit. I played basketball in college, and I realize the value of sports and education. Now, I’m able to be involved in a senior role to help the NCAA maintain the amateur nature of athletics.”

FUTURE EXPLORATIONS More women are getting involved in the male-dominated field. “We are seeing more women taking on in-house leadership roles with sports leagues and teams. They have risen to the point where they can support women doing this type of work. It really starts in-house with the clients, who are comfortable hiring outside counsel that are more like them.”

PAUL LOVING

HOLLAND & KNIGHT LLP



PIONEER SPIRIT Paul Loving was an athlete through college. “I ran track for a national championship team at UCLA.” He attended law school at the University of Oregon, where he met a professor who was the university’s liaison to the Pac 10. “I told him I wanted to be a sports lawyer, and he said to be a good lawyer first.”

TRAILS BLAZED Loving’s clients include Adidas, which recently signed a deal with the eSports gamer Ninja. “We worked on a brand ambassador agreement where we combine Ninja’s gaming expertise and eSports presence with a traditional sporting goods company. We were able to fuse the sports and culture mentality by taking something unique and different and moving beyond conventional approaches. We looked to a new area where there is a focus with kids and created an agreement and relationship that is beneficial for both parties.” Loving also represented Adidas in its deals with Kanye West. “My contribution was to structure a relationship that allowed them to strike up what is by far the most successful product collaboration in the entertainment space ever, the Yeezy by Adidas sneaker. It had phenomenal global success, and I was able to work on an agreement that combined Kanye’s brand with Adidas’ to create unique products and experiences, such as fashion shows in New York.”

FUTURE EXPLORATIONS There will be a continued merging of sports and entertainment. “Going back to the 1990s, I worked on a deal for Nike that had the Brazilian national soccer team playing the Mexican national team in Miami at the Orange Bowl, followed by a Santana concert. That trend is continuing, and more companies that traditionally think of themselves as sports brands or entertainment brands are blurring those lines and really connecting with consumers in a stronger way.”

MATTHEW D. MCGILL

GIBSON, DUNN & CRUTCHER LLP



PIONEER SPIRIT Matt McGill co-led New Jersey’s successful challenge to the federal law that prohibited states from legalizing sports betting. “We were fortunate to be retained by then-Gov. Chris Christie to litigate New Jersey’s efforts and pursued that case for six years before winning in the U.S. Supreme Court. It was a story of determination and perseverance on behalf of our client. That experience gave the team and me a great deal of insight into not only sports betting but the larger betting and gaming industry, that has now spun out into other matters.”

TRAILS BLAZED McGill and his team convinced the Supreme Court to overturn the Professional and Amateur Sports Protection Act of 1992. “After Hurricane Sandy devastated the Atlantic City area, Gov. Christie wanted to revitalize it by making New Jersey a gaming hub on the East Coast. We lost five times in the lower courts but finally convinced the Supreme Court to strike the act down. It was only the third time the Supreme Court has struck down a statute on the grounds of anti-commandeering. Now, of course, sports betting is flourishing in approximately 13 states.” McGill also represented NeoPollard Interactive’s successful challenge to a Department of Justice January 2019 attempt to redefine the scope of the Wire Act to prohibit all forms of betting over interstate wires. “New Hampshire is one of several states that sells lottery tickets over the internet. In June, we won a sweeping victory as the District Court in New Hampshire ruled the Justice Department’s reinterpretation was contrary to the statute and invalidated it. It’s under appeal to the First Circuit right now.”

FUTURE EXPLORATIONS States are eager to legalize internet gambling. “But there will be a number of regulatory challenges, as each state stakes out its own regime.”

DARRELL D. MILLER

FOX ROTHSCHILD LLP



PIONEER SPIRIT Darrell Miller has always been in or around the entertainment world, including as a performer. “At the height of my performing career, I realized I wanted to do more. When the market crashed in 1987 and things were looking a bit gloomy, I went to law school. I figured I could apply law to my creative life. I came west and used my law degree and connections to get into the world of entertainment. Eventually, I started representing artists primarily, as well as production companies.”

TRAILS BLAZED Miller grew up in Ohio and went to school on the East Coast. “L.A. is a difficult town to break into. Thinking differently and embracing change became my mantra. I’ve watched the change in the industry from linear to digital, from three networks and six movie studios to so many different outlets. The groundbreaking opportunities have come from helping clients become ‘multi-hyphenates’—such as an actor becoming a producer-writer-director.” For example, Ludacris has been a client for 16 years. “He started in music, then starred in ‘The Fast and the Furious,’ did headphones in China and hosted ‘Fear Factor.’” Angela Bassett is another client. “She was known for a couple of movies. But over the last 13-14 years, she’s become a big director and is all over magazines and more. That’s what we do.”

FUTURE EXPLORATIONS The entertainment business will continue to see paradigm changes. “Entertainment now has challenges like no other time.” Broadcasting is one example. “Years ago, 100 million people might watch the three networks. Now, the top shows get 14 million viewers. Streaming is disrupting cable and broadcasters. On-demand is the new frontier. Digital will drive ideas and platforms, which will be the future for the next few years.”

CHRISTOPHER M. MORRISON

JONES DAY



PIONEER SPIRIT Chris Morrison grew up in New England. “I’m a lifelong Boston Red Sox fan and have done some work for the team over the years. And last year, I was able to represent the team at trial in a foul ball case, *Taubin v. Boston Red Sox*.”

TRAILS BLAZED Morrison served as lead counsel in the case, where a jury found in favor of the Red Sox. The plaintiff was in a luxury section at Fenway Park in 2014 when she was hit by a foul ball. In 2005, the section had been redesigned, and Taubin claimed that the glass that was removed during the redesign created an unreasonable danger. She sued the Red Sox for \$9.5 million. “Most people believe that there is ‘the baseball rule’ that insulates the club from any liability when a fan is hit by a ball. This plaintiff alleged that her section of the ballpark had been rendered more dangerous when it was redesigned. She claimed something had been affirmatively done to make it more dangerous. So the question was whether it was unreasonably dangerous. We got the jury to consider what the fan experience should be and whether it is reasonable to expect absolute safety. The jury deliberated for about two hours, then came back with a full verdict in favor of the Red Sox that the section was reasonably safe.”

FUTURE EXPLORATIONS Trying the case was stressful. “You have to wonder: How can you lose a foul ball case? Most believe that people can’t sue for that, and this case was important to affirm that. Operators are always concerned with improving the fan experience, and they can now include considering that experience in determining if a section is reasonably safe.”

DAN NASH

AKIN GUMP STRAUSS HAUER & FELD LLP



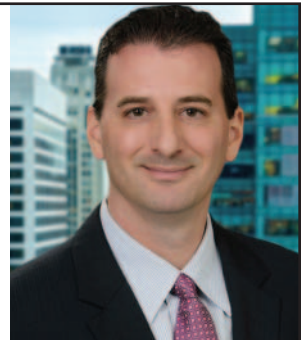
PIONEER SPIRIT Dan Nash became involved in sports law by accident. "As a young associate, I was asked to advise the NFL on some labor issues during the late 1980s when there was a fairly long labor dispute. When that dispute was resolved in 1993, I helped write the new collective bargaining agreement, including a salary cap. That has been the foundation for labor peace ever since. In the course of that, I got to know a lot of lawyers at the league and teams."

TRAILS BLAZED Nash has worked for the NFL and teams on a number of contract disputes regarding players since then, such as when Barry Sanders retired and Ricky Williams left the Dolphins. He has also worked on disciplinary cases such as Terrell Owens'. "Some of that has led to court cases." His high-profile matters have involved Adrian Peterson's suspension. "There was litigation, and we successfully argued that the NFL commissioner did have the authority to suspend him. It was enforced by the Eighth Circuit Court of Appeals." Nash also represented the NFL in the Tom Brady and Ezekiel Elliott disciplinary proceedings. "Those established more precedent that these matters should be arbitrated, not litigated. There is an appeal process in the collective bargaining agreement, and we received favorable decisions in all three cases from circuit courts when the players challenged those decisions in court."

FUTURE EXPLORATIONS Nash expects there to be less litigation due to the precedents he has set. "Several courts of appeals have said that if the players and owners agree on an appeals process, that process has to be respected and you can't get the courts involved." Hopefully, there will also be continued labor peace in the NFL and other leagues. "There is a recognition that work stoppages don't help anybody."

JAMES G. SAMMATARO

PRYOR CASHMAN LLP



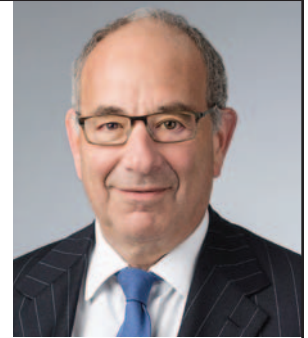
PIONEER SPIRIT James Sammataro went to law school hoping to do sports and entertainment law. "I came out in 1999 and ended up at Cooley. In my 2L year, I was sent to a music law conference. They talked about this new format 'MP3' and how it would change the world." He immediately approached the conference speakers, told them there might be some patent issues involved and invited them to come visit the firm. He also talked to the department chair, and the firm ultimately gave him an origination credit. Sammataro also wrote a book, "Film and Multimedia in the Law." "It was a lot of luck and timing and some foresight."

TRAILS BLAZED Sammataro points to several cases as particularly important. "We tried a case on behalf of Spanish Broadcasting, which owns some TV stations. They got sued for copyright infringement over a film festival-quality movie. The distributor got out of the business, and other side was unreasonable. They hired an expert who said they had been damaged \$8.3 million. We went to a jury determined just to try damages and walked out with a \$0 defense verdict. We've done this a few times since, making the plaintiff prove the damages claim." He also represented the trustee of the Lou Pearlman Estate, who founded the Backstreet Boys and others, over the television show "Making the Band." "We took a \$2 million claim and ended up settling with Viacom for more than \$7.5 million."

FUTURE EXPLORATIONS Sammataro's first entertainment law case involved legal issues for eBay in 1996. "We are constantly looking at cases at the nexus of legal and technology issues. We are usually defending why something does not violate plaintiffs' rights. The future is ever evolving, and the law is never quite settled here."

ROBERT SCHUMER

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP



PIONEER SPIRIT Bob Schumer was an eighth-year associate in 1991 assisting Warner Communications in its merger with Time Inc. “The two partners leading the relationship left, passing the relationship and the lead advisory role on the deal to me. I could hardly think of a more exciting deal to be a part of. That merger kicked off a series of transformational media and entertainment deals for me and the Paul Weiss corporate department, which continues today.”

TRAILS BLAZED Schumer has helped clients with their most important deals, including some of the entertainment industry’s major transactions. “I have been incredibly privileged to be trusted by my clients. Equally meaningful is the impact I have had on Paul Weiss. As longtime head of the corporate department, I have worked hard to build the department from a relatively small part of the firm into a much larger, elite national practice.”

FUTURE EXPLORATIONS Consolidation will continue as generators and distributors of entertainment content join forces to stay competitive. “Typical of this is CBS’s pending merger with Viacom, where I’m advising the special committee of the board of CBS.” The continued disruption in the way content is created, distributed and consumed means that there will probably continue to be more deals by major media companies to secure access to the technology they need to deliver entertainment content to younger consumers where, how and when they want it. “A good example of this is Altice’s recent acquisition of Cheddar, a digital-first video network that streams news and content to college-age and 20-something audiences. I advised Altice on that deal.”

MARC H. SIMON

FOX ROTHSCHILD LLP



PIONEER SPIRIT Marc Simon has an interest in both criminal justice and film and media. “Practicing in criminal justice felt like it would be too narrow in scope. I like to be broad and have a lot of freedom. So I made the documentary ‘After Innocence’ about wrongfully convicted inmates exonerated by DNA evidence. That catapulted me into the middle of the film world, and I started representing other filmmakers.”

TRAILS BLAZED Simon has maintained his passion for criminal and social justice issues. “Whenever I’m exposed to an opportunity around those issues, I grab it.” For example, his clients include Vanessa Potkin and Aida Leisenring, creators and executive producers of ABC’s 2018 unscripted capital murder series “The Last Defense.” “Vanessa is an attorney at the Innocence Project and had been developing this series dealing with people on death row who have been wrongfully convicted. I jumped at the opportunity to bring a spotlight to these issues on the national stage. Now Vanessa’s sister is making a feature documentary dealing with it, and my clients are producing it.” Simon also represents Tani Adewumi, an eight-year-old boy who fled Nigeria to escape Boko Haram and won a state chess championship while living in a shelter, in a book and movie deal.

FUTURE EXPLORATIONS It’s a golden age of streaming and unscripted content, where true crime and social justice stories about the wrongfully convicted are creating water cooler moments. “There was my own documentary and the recent series about the Central Park Five. No one paid attention to the wrongfully convicted after they were exonerated. Now so many are shining a light on these issues, the public is being educated, and celebrities are coming on board. I hope in the future that reform will happen at a faster rate.”

OWEN SLOANE

EISNER, LLP



PIONEER SPIRIT Owen Sloane started as a corporate litigator. “I hated it. So I went to a smaller firm where they let me try different things. I got a call from a guy whose cousin I went to law school with. He was representing Delaney & Bonnie & Friends, and that became my first music deal. I developed a reputation, then did a few a year, then eventually did entertainment full-time.”

TRAILS BLAZED Sloane has overseen several first-of-their-kind developments. “I’ve been a pioneer in the way business is done.” Drafting new language around work for hire provisions in contract assignment language is one example. “I basically said that if something cannot be deemed work for hire (as in foreign countries), then the artist assigns the publisher the rights. Now, that’s part of every standard contract, and I drafted it.” To raise money for one client, he offered sponsors of a documentary some back-end profits. “It gave them a way to get money out of their advertising so it wasn’t just spend.” Sloane also advised Frank Zappa on gaining control over bootleg recordings of his performances. “We made a deal with Rhino Records for a series called ‘Beat the Boots!’” He also represented Matchbox Twenty in allowing concertgoers to buy a copy of the live performance they had just seen through a USB wristband. “It was the first time that was done.”

FUTURE EXPLORATIONS Independents in the music field will have more success, particularly around capturing and promoting the streaming market. “Once you expand the reach of streaming into India, China and other countries, those tiny amounts could mount up much more than they do today. The question is how they get to that point. It’s rare to make a monster streaming hit.”

ADAM J. SULLINS

LATHAM & WATKINS LLP



PIONEER SPIRIT Adam Sullins played soccer though college. “Sports has always been a big part of my life. I knew I ultimately wanted to get into the sports business one way or another.” After five years in private practice, he went in-house at Upper Deck, the trading card company in San Diego. “I was there five years. When my wife graduated from medical school, we wanted to move to L.A. I went back to the firm with a focus on the entertainment, sports and media group, which had been around 100 years. It was mostly entertainment and media, but as sports, media and entertainment have converged, sports have been the natural growth area. I’ve focused on growing that practice.”

TRAILS BLAZED Sullins currently leads the firm’s sports group. “My favorite deal had a large monetary aspect to it, when I represented the March Madness TV deal with CBS and Turner. But in terms of breaking new ground, the best example is my work with Facebook as they have gotten into the sports media distribution space globally. In the last couple years, they have launched Facebook Watch, and we’ve helped them bid against some traditional TV companies and secure live sports and highlights rights around the world in a new medium.”

FUTURE EXPLORATIONS Five years ago, it would have been hard to imagine a Brazilian soccer fan logging on to Facebook to watch a game, instead of watching on TV. “The number of people watching games and tournaments in some sort of digital fashion is growing in huge numbers. We are driving toward a mobile traveler-based mode of consuming sports media.” With fantasy leagues, a second fan base is growing that isn’t tied to teams or cities. “Sports betting may be the next iteration of that.”

PAVAN SURAPANENI

SULLIVAN & CROMWELL LLP



PIONEER SPIRIT Pavan Surapaneni has always been a passionate sports fan. "When I came to Sullivan & Cromwell as a summer associate, I was fortunate enough to work on the Giants-Jets stadium. We only had a few sports clients, and when I came back, I said I loved the work and would like more if it came in. In 10 years, we have grown the practice exponentially. Over that time, we have handled some of the largest M&A transactions in the sports space and expanded the practice past core sports into Major League Soccer and eSports."

TRAILS BLAZED Surapaneni's matters include representing Frank McCourt in selling the L.A. Dodgers in 2014. "It was then the highest value paid for a sports team." He also represented Major League Baseball in transactions with Disney related to MLB's streaming technology business, BAMTech. Recently, Surapaneni represented Joe Tsai in acquiring the Brooklyn Nets and Barclays Center, which set the new valuation record. "Our team has been involved in the most complicated, impactful sports transactions there have been in the last five years."

FUTURE EXPLORATIONS There will be several critical growth areas. "With recent changes in legislation around gambling in the United States, various states and leagues are looking to monetize sports wagering in a responsible fashion." eSports also represents a new and burgeoning product that those in traditional sports may be able to use to reach different audiences. Ancillary real estate development around the sports teams is another growth area. "Owners are getting smarter and more sophisticated in using real estate deals to make teams cash flow positive." Another trend is the continued international expansion of U.S. sports businesses. "Leagues have been successful in hosting games and exploring league expansions to new areas, while finding other ways to grow their fan base globally."

JOSEF VOLMAN

BURNS & LEVINSON LLP



PIONEER SPIRIT Joe Volman started at a firm in New York where the big client was News Corp. "The client developed the glowing puck for TV hockey. Then three employees broke off and started their own company, Sportvision, and I represented them. They invented the '1st and 10' graphics line for televised football, among other sports enhancements, when the sports tech world was just beginning in the early to mid-1990s. I helped them do deals with all the television networks involving sports." Volman moved to Boston in 1999. "I have one client who has bought and sold nine minor league baseball teams, a minor league basketball team and more."

TRAILS BLAZED Volman now divides his practice into two areas, sports tech and sports ownership. "On the sports tech side, Sportvision is really where I broke new ground. Getting broadcasters to agree to put something into their broadcasts that would go out at the last minute to people's homes without their review was interesting." On the sports ownership side, he recently represented the owner of the Modesto Nuts in its sale to the Seattle Mariners. "In the past, major league teams did not take ownership in minor league teams, but recently the regulations have been relaxed. This was one of the first deals of its kind." Volman also helped start Boston VC Sports. "It's all about putting together entrepreneurs and investors for investment and technology for sports."

FUTURE EXPLORATIONS There is a great deal of activity at the sports tier below the major leagues. "In the USL, Major League Soccer's minor league, a lot will happen as the minor league soccer system is built out. There will also be a lot of activity with eSports and other alternative sports where niche viewers are looking to consume sports in a different way."

BART WILLIAMS

PROSKAUER ROSE LLP



PIONEER SPIRIT Bart Williams came to the firm almost four years ago with an eye toward expanding his sports practice. “I thought it played to some of my strengths in some of the substantive areas I’ve worked in before. I did a lot of antitrust cases, and I came to a firm that’s preeminent in that area, even if not for the same clients.”

TRAILS BLAZED Williams’ clients include several college sports conferences. “There are few issues that are hotter than whether collegiate athletes should be paid. There are differing views. The case we did last November in Oakland, *In re: National Collegiate Athletic Association Athletic Grant-in-aid Cap Antitrust Litigation*, is really right at the epicenter of that. The plaintiffs in the case were seeking the elimination of all limits on compensation for student athletes. That would have enormous repercussions for the NCAA and the conferences. Consistent with existing doctrine, the court said that the fact that college sports are amateur increases the demand. People watch college sports in significant part because they are not pros and are associated with particular schools. That was an important finding. The issue is not done. There is still a question on who should be in charge of any limitations. Our clients, the Power 5 conferences, believe it should be the NCAA.”

FUTURE EXPLORATIONS There probably will be further litigation about the contours of legislation and limitations on the use of college athletes’ name, image and likeness. “Another issue that’s coming in pro sports is when teams move. We are involved in the NFL defending claims against the city of Oakland for damages that Oakland says resulted from the Raiders’ move to Las Vegas. Every time there’s a new team in any pro sport or a movement, there’s potential for litigation.”

JORDAN YOSPE

EISNER, LLP



PIONEER SPIRIT Jordan Yospe went to law school and then film school. “I went to a very large law firm, and they didn’t do entertainment law. But I was able to create my own contacts and basically anoint myself an entertainment lawyer.”

TRAILS BLAZED Yospe has approximately 50 nonlawyer credits on movies and TV shows. “Some are as producer, but most are brand integration consultant credits. TV shows used to be funded by studios, not brands. I’m part of a team that created a new revenue stream. Before the mid-2000s with ‘Survivor,’ ‘Apprentice’ and ‘Contender,’ you would do a brand deal and get free stuff. But we got them to pay money to integrate brands into shows. Deals started at tens of thousands of dollars and are now worth millions. As a follow-up, if the brand spends money, they have to ‘activate’ on that spend, meaning promote the production.” Productions are incentivized to feature products. For example, one movie was frequently shooting in hotels, and Yospe’s hotel client offered incentives like free rooms. “The hotel chain’s CMO wanted more. So we came up with a strategy of getting the hotel some footage of the stars talking about how nice the property is.” The hotel showcased the footage on guest room televisions, which also promoted the production. “I help create those opportunities for my clients. Then I work with the producers, directors and talent to create situations they are comfortable with. The key is it should be seamless.”

FUTURE EXPLORATIONS With so much content, producers not only have to create great new options, but they have to market it. “Brands have some cool ways to get to the audience. Helping create that win-win between the brand, the content creator and the distributor so everybody is happy is the future. And you can’t do that with commercials.”

class act

Shutting Down the Bristol-Myers Class Action

BY AMANDA BRONSTAD

IN A CASE OF FIRST IMPRESSION, A federal appeals court appeared unlikely to apply the U.S. Supreme Court's jurisdictional holding in *Bristol-Myers Squibb Co. v. Superior Court of California* to a class action.

In oral arguments on Sept. 30, a panel of the U.S. Court of Appeals for the Seventh Circuit grilled defense attorney Joseph Palmore, who argued to affirm a 2018 decision from an Illinois federal judge striking class allegations in a telemarketing case under *Bristol-Myers*. The case is the second to ask an appeals court to interpret whether the Supreme Court, in limiting personal jurisdiction in a mass tort case against Bristol-Myers, meant also to restrict class actions in the same manner. The U.S. Court of Appeals for the D.C. Circuit heard similar arguments last week.

Numerous times, Seventh Circuit Chief Judge Diane Wood and Judge Amy Barrett, a 2017 appointee of President Donald Trump, remarked that the defendant, IQVIA Holdings Inc., appeared to be overturning more than 50 years of class action precedent.

"I just find it very difficult to believe that the Supreme Court thought in *Bristol-Myers* that it was ushering in this dramatic change to the way everyone has understood class actions to work for more than 50 years," Barrett told Palmore, IQVIA's attorney. Palmore is co-chairman of the appellate and Supreme Court practice group at Morrison & Foerster and managing partner of the firm's Washington, D.C., office.

Palmore did not respond to a request for comment, and plaintiffs attorney Dan Edelman, of Chicago's Edelman Combs Lattuner & Goodwin, did not return a call for comment.



AMY BARRETT

Bristol-Myers held that most of the 600 plaintiffs in a mass action over the blood thinner Plavix had failed to establish specific jurisdiction, because there wasn't enough of a link between their claims and California, where they brought their lawsuit. To go forward, the court held, would violate the defendant's due process rights under the Fourteenth Amendment.

In a footnote to her dissent, U.S. Supreme Court Justice Sonia Sotomayor noted that the majority's opinion failed to address its impact on nationwide class actions. On that question, judges have divided, and no federal appeals court has ruled on the issue.

In the case before the Seventh Circuit, an Illinois doctor sued IQVIA, a health care information company in Pennsylvania, for allegedly sending two unsolicited faxes to his office in violation of the U.S. Telephone Consumer Protection Act.

On Oct. 26, Judge Virginia Kendall, of the U.S. District Court for the Northern District of Illinois, granted IQVIA's motion to strike the national class, whose members had no relationship to Illinois. Both the Washington Legal Foundation and the U.S. Chamber Litigation Center filed amicus briefs supporting IQVIA, and the American Association for Justice supported the plaintiff, Florence Mussat, in an amicus brief. (The lawyer who filed the AAJ's brief, Matthew Wessler of Washington's Gupta Wessler, argued for the plaintiff in the case before the D.C. Circuit last week.)

In oral arguments, the panel several times pointed out that *Bristol-Myers* was not a class action.

Palmore acknowledged that fact, but he argued the same "logic" in *Bristol-Myers* applied in this case: A plaintiff

class act

could not force a defendant into a court without jurisdiction.

“It’s not uncommon for the Supreme Court to issue a decision and the bottom line and reasoning of the decision alerts litigants and lower courts to an issue that hadn’t been litigated before,” he said. “And I think that’s what happened here.”

“I don’t see that at all,” Wood replied. “Your theory, I think, is inconsistent with this whole notion of class actions, and I would think we would be behaving very consistently with Supreme Court jurisdiction to recognize that mass actions, such as Bristol-Meyers faced in California, are simply not the same thing.”

In oral arguments, both Barrett and Wood homed in on the fact that unnamed class members were not named plaintiffs in the case, which Kendall had not yet certified. They also questioned

how IQVIA could apply the jurisdictional concerns of Bristol-Myers, which involved a state court case in California, to a federal case alleging federal claims.

“Has there ever been a case before *Bristol-Myers Squibb* where a nationwide class, where this personal jurisdiction argument was made in a federal question case filed in federal court?” Barrett asked Edelman, the plaintiffs attorney. “It’s just, all of a sudden, *Bristol-Myers Squibb*, and now it’s like, ‘Ah, aha! There’s this personal jurisdiction argument that no one has realized!’”

Edelman replied, “If there is an absolute bar on having a class of multi-state or national scope in a place where defendant is not headquartered or chartered, it’s not there.”

The panel also appeared unlikely to adopt IQVIA’s additional procedural argument that the Seventh Circuit

lacked jurisdiction to hear the appeal because Kendall’s order did not grant or deny class certification, as required under the Federal Rule 23 of Civil Procedure. As part of that argument, Palmore noted plaintiffs still could pursue their case on behalf of a class of Illinois residents.

He also argued that plaintiffs attorneys, as in any national class action, could file their case where the defendant was incorporated or headquartered—in this case, either Delaware or Pennsylvania.

“That would be such an extraordinary limitation on nationwide class actions; it’s hard for me to see that we can derive intent from Congress to do that,” Wood said.

Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. She writes the email dispatch Critical Mass. She is based in Los Angeles.

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justice served

Roberts Would Preside Over Impeachment Trial

BY TONY MAURO

SEVEN YEARS AFTER HE WROTE A BOOK about impeachment, then-U.S. Supreme Court Chief Justice William Rehnquist presided over one: the trial of President Bill Clinton in 1999, which resulted in acquittal. The book, and the experience, made Rehnquist an unparalleled expert on impeachment.

As the U.S. House moves forward with its impeachment inquiry of President Donald Trump, one of Rehnquist's former clerks, now-Chief Justice John Roberts Jr., would be poised to preside over any trial in the U.S. Senate. Of course, only if the process gets to that point.

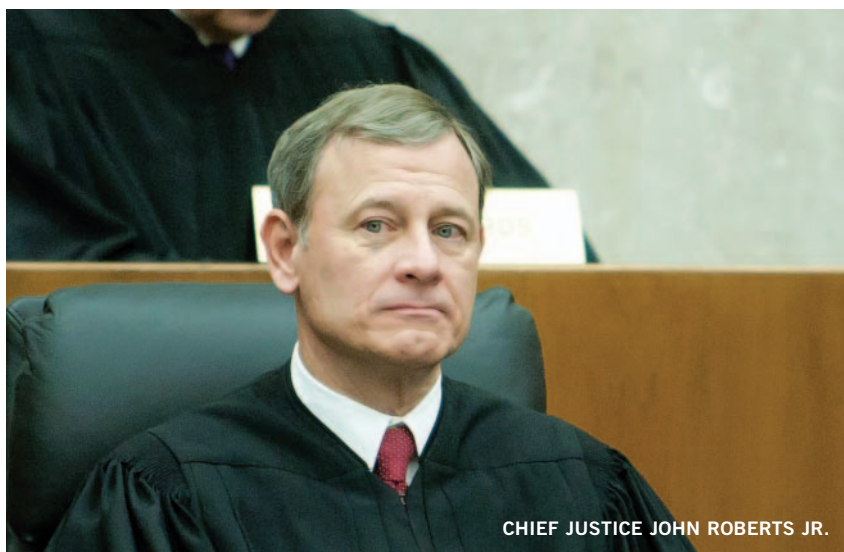
Roberts and Trump have a complicated history laced with rebukes from both sides.

Roberts portrays himself as an institutionalist, protective more of how the court—and the judiciary—is viewed than how he is seen. Last year, Roberts issued a rare rebuke of Trump after one of his criticisms of a court ruling by an “Obama judge.” The chief said: “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”

The chief justice has long painted himself as a nonpartisan leader of the court, eschewing any notion that the justices take sides based on which president appointed them to the high court.

“When you live in a polarized political environment, people tend to see everything in those terms,” Robert said in remarks late September in New York. “That’s not how we at the court function and the results in our cases do not suggest otherwise.”

Trump has called Roberts a “nightmare” for conservatives and an “absolute



CHIEF JUSTICE JOHN ROBERTS JR.

“WHAT WE HAVE IS AN EXTRAORDINARY GROUP OF DEDICATED JUDGES DOING THEIR LEVEL BEST TO DO EQUAL RIGHT TO THOSE APPEARING BEFORE THEM.”—JOHN ROBERTS JR.

disaster,” with criticism tied to the chief justice’s rulings that upheld the signature Obama legislation the Affordable Care Act. Trump has said he would ask the Supreme Court to intervene if the House moved to impeach him. But that’s not how it works—there is no appeal.

Rehnquist’s 1992 book “Grand Inquests” chronicled the impeachment of Supreme Court Justice Samuel Chase in 1805 and President Andrew Johnson in 1868. Both ended in acquittals after failing to garner a two-thirds majority in the Senate as required by the Constitution.

The outcomes, in Rehnquist’s view, established the important principle that impeachment must not be used lightly by Congress as a weapon to punish the other branches for policy differences.

“In retrospect, one cannot imagine anyone better qualified than Chief Justice Rehnquist to preside over the Clinton impeachment trial,” Michael Gerhardt, a professor at University of North Carolina School of Law who’s also written about impeachment, told *The National Law Journal* in a 2017 interview.

Rehnquist, who was an official in the Nixon Justice Department before joining the Supreme Court, was scrupulously nonpartisan and low key in running the Clinton trial. After it was over, Rehnquist borrowed a line from Gilbert and Sullivan in describing his role: “I did nothing in particular, and I did it very well.” In February 1999, Clinton was acquitted in the Senate.

justice served

Rehnquist died in 2005 and his papers reside at the Hoover Institution in California. His impeachment files are closed to the public for the lifetime of other justices who served on the court with him.

Rehnquist's observations about impeachment in the book and other sources resonate in the current debate, Gerhardt said in the 2017 interview. "The lesson to be learned from Rehnquist that can be applied to Trump is to remember impeachment is not supposed to be a partisan tool. It is a last resort to be used for serious abuses of power or breaches of trust."

Some excerpts from Rehnquist's writings on impeachment:

Congressional supremacy: "Had these two trials resulted in conviction rather than acquittal, the nation would have moved closer to a regime of the sort of congressional supremacy that was dreaded by men such as James

Madison, the Father of the Constitution. ... We twice escaped from a precedent that would indeed have given us a Presidency, and a Court, subject to 'tenure during the pleasure of the Senate.'"

Indictable offense: "All members of the Judiciary Committee [investigating Richard Nixon] appear to have rejected the view that a constitutional 'high crime or misdemeanor' must be an indictable offense under the criminal law."

Overreaching and bullying: "One need only note the way in which the framers arranged the test of the United States Constitution to realize that they were concerned about the separation of powers within the new federal government they were creating. ... The framers were particularly concerned about the possibility of overreaching and bullying by the legislative branch—Congress—against the other branches."

Answerable to the country: "The importance of the acquittal [of President Andrew Johnson] can hardly be overstated. With respect to the Chief Executive, it has meant that as to the policies he sought to pursue, he would be answerable only to the country as a whole in the quadrennial Presidential elections, and not to Congress through the process of impeachment."

Obstruction of justice: "The counts relating to the obstruction of justice and to the unlawful use of executive power [by President Nixon] were of the kind that would surely have justified removal from office."

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Certified Fire and Explosive Investigator (CFEI); Certified Fire Investigator Instructor (CFII). Has over 30 years engineering experience including electrical, mechanical, materials, safety, fire protection, and construction. Extensive knowledge of codes and standards. Expertise in forensic investigations of: product defects, fires/explosions, accidents/injuries, building failures, electro/mechanical system failures, and utility company procedures/equipment. He has been retained on numerous large multimillion-dollar property damage cases as well as fatal accidents, fires/explosions and other grave injury matters.

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HANDWRITING & DOCUMENT ANALYSIS - HANDWRITING & DOCUMENT ANALYSIS



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An authority, skilled in handwriting identifications and have completed the following studies in questioned document examinations and psychology:

- * Completed Documentation Examination training from the U.S. Army, MILITARY POLICE OFFICER'S school in Fort Gordon, Georgia.
- * Masters Degree in Psychology, Post-Graduate studies in Behavioral Psychology certified me in 1983 as a MASTER HANDWRITING ANALYST, and in 1987, as a QUESTIONED DOCUMENT EXAMINER.

Expert Witness for Courts, Lawyers and Clients. Just in the last 6 years, I have been approved to testify as an Expert by over 100 Federal and State Courts.

HANDWRITING & DOCUMENT ANALYSIS - HANDWRITING IDENTIFICATION



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Richard T. Picciochi is a retired NYPD Detective and document examiner with over thirty five years of experience in the New York City Police Crime Laboratory and in private practice. Mr. Picciochi has received training in handwriting and document examinations from the NYPD, FBI and US Secret Service and is certified by the American Board of Forensic Document Examiners (ABFDE). He has examined thousands of disputed handwriting and suspect document cases, participated in numerous high profile investigations and testified in trials including the "Zodiac" homicides and the first terrorist attack on the World Trade Center in New York City.

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INSURANCE - INSURANCE INDUSTRY



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Mr. Stegall has over 40 years of insurance industry experience. He is a Chartered Property & Casualty Underwriter, an Associate in Risk Management, an Associate in Reinsurance and a Registered Professional Adjuster. Experience as an underwriter manager, a retail agent, a wholesale broker, a reinsurer, an MGA, a captive manager, and an expert witness. Expertise includes the usual and customary practices and standard of care required in matters of insurance (selling, buying, placing, marketing, underwriting and claims). Past President of the Society of Risk Management Consultants, an Associate Member of the American Bar Association and ARIAS-US.

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Paul F. Amoruso, CPCU, has more than 50 years of experience working or several major insurance carriers as a Senior Vice President of Claims and Operations. As a licensed insurance agent in Massachusetts, Florida, Connecticut, New Jersey and was a licensed public adjuster, he is uniquely qualified to assist either plaintiff or defense attorneys on insurance related issues on local or national concerns. Mr. Amoruso provides expert witness testimony in State or Federal court on all casualty or property claims handling issues related to bad and good faith claims procedures, insurance agency disagreements, insurance policy questions, providing guidance for pre and post litigation management.

MEDICAL & HEALTH - ALCOHOL TOXICOLOGY



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American Scientific Consultants is a full service pharmacology and toxicology consulting practice, providing services related to all aspects of forensic, clinical, environmental, and general toxicology. Working with attorneys, insurance clients, corporations, and law enforcement agencies, American Forensic Toxicology Services provides impartial evaluations involving drug effects, overdose, toxic chemical exposure, medical malpractice associated with drug therapy, poisoning, and the role of drugs, alcohol, or chemical exposure in civil and criminal litigation.

MEDICAL & HEALTH - BEDSORES/PRESSURE ULCERS PREVENTION & CARE

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Dr. Stone's field of practice is Wound Care and Hyperbaric Medicine. He completed a residency in Aerospace Medicine and a fellowship in Hyperbaric Medicine and Wound Care. He is certified in hyperbaric medicine and board certified in Aerospace Medicine. He is a Diplomat and Fellow of the American Academy of Wound Care Management, and a Certified Wound Specialist. He has published articles on many wound issues. Dr. Stone is the Past Medical/Fellowship Director for the Hyperbaric Medicine Unit at the Institute for Exercise and Environmental Medicine at Texas Health Presbyterian Dallas. He has been active in the field since 1985.

MEDICAL & HEALTH - DERMATOLOGY

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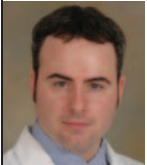
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Dr. Serota is considered a national expert on dermatologic and allergic/asthma topics. He lectures nationally and has published numerous articles in his areas of expertise. He has served as an expert witness on cases ranging from asthma, allergies, occupational issues/exposures as well as skin conditions and skin cancers. He graduated medical school at age 23 and is board certified in dermatology, allergy/asthma/immunology and pediatrics.

Board Certified in Pediatrics, Allergy/Asthma/Immunology and Dermatology; State Licenses: AL, AZ, CA, CO, FL, HI, IA, ID, IL, KS, LA, MD, MI, MO, MS, MT, NE, NH, NY, NV, SD, TN, TX, UT, WA, WI, WV, WY

MEDICAL & HEALTH - BURN SURGERY

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Dr. Steven Sandoval is a surgeon in Stony Brook, New York and is affiliated with Stony Brook University Medical Center, where he specializes in burn, trauma, critical care and General Surgery. He has been practicing for over 11 years after receiving his medical degree from Ross University School of Medicine.

Dr. Sandoval's extensive clinical skills allow him to objectively evaluating victims of burns, Facial Trauma, Critical Care and General Surgery. He Sandoval is available to serve as an expert witness for both plaintiff and defendant in Civil and Criminal cases, as well as provide depositions, medical chart review and independent medical examination.

MEDICAL & HEALTH - DISABILITY EVALUATION

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Dr. Kahn is Board Certified by AAPMR, with > 30 years experience in the evaluation and non-surgical treatment of spinal and neuromusculoskeletal disorders, including EMG/NCS, pain management, botulinum toxin, and MSK ultrasound. He is a Fellow of the North American Spine Society, Active Member of the American Academy of Neuromuscular and Electrodiagnostic Medicine, and the first physician in NYS to be certified by ABIME. Dr. Kahn has performed hundreds of IMEs and file reviews for both plaintiff and defense counsel in multiple states, and has testified as an expert in the state and federal courts in medical malpractice, personal injury, and product liability cases.

MEDICAL & HEALTH - DENTAL IMPLANTS

**Sam R. Morhaim, B.A., D.D.S., C.A.G.S****Sam R. Morhaim, DDS, FICD, PC**

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MEDICAL & HEALTH - EMERGENCY MEDICINE

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MEDICAL & HEALTH - EMERGENCY MEDICINE**Eric Nazziola, MD, MBA, FACEP**
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Emergency physician, board-certified by the American Board of Emergency Medicine since 2002, Fellow of the American College of Emergency Physicians since 2006. Currently practicing emergency medicine with over 18 years of experience in academic and community hospital settings. Emergency department medical director for over 10 years, serving on medical staff quality review committees and performing numerous emergency physician case peer reviews for quality assurance and hospital risk management. Emergency medicine expert witness providing medical expert opinion, written reports, and depositions on behalf of plaintiffs and defendants since 2014.

MEDICAL & HEALTH - MEDICAL CHART REVIEW**Steven D. Kamajian, D.O., C.M.D., F.A.C.O.F.P.**

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Dr. Kamajian has worked a geriatrician, family physician, medical director, and hospice physician in southern California since 1981. He is past Chief of Staff of one of the largest not-for-profit hospitals in Los Angeles County. He is a specialty peer reviewer in geriatrics, long-term care, and family medicine for ACOFPCA's journal. He attends to patients at several local skilled nursing facilities, hospitals, hospices, and assisted living facilities. He is the Medical Director of a nursing home in Glendale, CA. In addition to his Board Certification in Family Medicine, he is a Certified Medical Director (CMD) for nursing homes. He is also the founder and Chief Medical Officer of Westminster Free Clinic; and, founder and former chief medical officer of a community based IPA and hospice.

MEDICAL & HEALTH - GENERAL DENTISTRY**Dr. Lindsey P. Wolfer, D.D.S.**

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Dr. Lindsey P. Wolfer is a general practice dentist who has been providing dental care for 37 years. He provides treatment in most of the various fields of dentistry including: restorative (fillings and cosmetic/whitening), endodontics (root canal), fixed and removable prosthetics (crowns/bridges, dentures, implants), limited oral surgery, children's dentistry, periodontics (soft tissue/gums), advanced laser dentistry. Dr. Wolfer has been involved in expert dental review for dental malpractice cases for the past 25 years. He has provided expert opinion for both plaintiff and defendant to over 15 different law firms and insurance companies. Dr. Wolfer reviews cases, provides expert reports and courtroom testimony.

MEDICAL & HEALTH - NEPHROLOGY**Joshua Schwimmer, MD, FACP, FASN**
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Dr. Schwimmer is a practicing, Columbia-trained, full-time nephrologist and internist based in New York City. He is double board-certified in nephrology and internal medicine. Dr. Schwimmer is on faculty at Lenox Hill Hospital in NYC and is an Assistant Professor of Medicine at the Zucker School of Medicine at Hofstra/Northwell. He is available for expert witness consultations to both defense and plaintiff attorneys. Dr. Schwimmer has provided expert review and testimony in cases involving acute kidney injury and kidney failure, hyperkalemia, rhabdomyolysis, electrolyte disorders, hypertension, end stage renal disease, dialysis, and many other medical conditions.

MEDICAL & HEALTH - GENERAL SURGERY**Louis Flancbaum, MD, FACS, FCCM, FCCP**

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- * Extensive experience in general surgery, bariatric surgery, trauma surgery, abdominal surgery, and critical care
- * Board Certified in General Surgery and Surgical Critical Care
- * Fellow of American College of Surgeons, American College of Critical Care Medicine, and American College of Chest Physicians
- * Member of 25 professional societies
- * Held faculty appointments at UMDNJ-Robert Wood Johnson Medical School, Ohio State University and Columbia University
- * Published 2 books and over 120 peer-reviewed papers and book chapters
- * Available for review and expert testimony in medical malpractice cases, insurance reviews and appeals, and related matters.

MEDICAL & HEALTH - NURSE PRACTITIONER**Diane E. Meehan, PhD, RN, FNP-BC, CLNC**
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A clinically active Board Certified Family Nurse Practitioner, Dr. Meehan's experience includes Assistant Professor of Nursing, Nurse Practitioner and Staff Nursing.

As a Legal Nurse Consultant, Dr. Meehan will review and analyze your cases to assess merit, thereby saving you time and resources. She will prepare in depth literature searches that will provide the foundation in your case development. Dr. Meehan is proficient in summarizing medical records and in preparing reports. She is experienced in cases dealing with Nursing malpractice, pediatrics, adult/geriatric patients. Dr. Meehan also serves as an expert witness in select cases for both the plaintiff and defense.

MEDICAL & HEALTH - PEDIATRIC PSYCHOLOGY

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As a psychologist with specialized training in neuropsychology, I have substantial research and teaching experience in academia, but I devote most of my time to "real-world" clinical work involving mental-health and developmental issues. After post-doctoral work at Yale, Columbia and the NIMH, I directed community clinics and conducted my own private practice. My work as an expert benefits from my experience as an attorney for a decade in major national firms. As a psychologist, I have testified successfully (including surviving a Daubert challenge) in cases involving adults and children. I have a number of publications and specialty certifications.

MEDICAL & HEALTH - PHYSICAL THERAPY

**Dr. Theresa A. Schmidt, DPT, MS, OCS, LMT****Educise PC**

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Dr. Schmidt is an expert orthopedic physical therapist with 30+ years' clinical and academic experience. As Approved Provider of continuing education for NY State Boards of Physical and Massage Therapy and National Certification Board of Therapeutic Massage and Bodywork, she updates clinicians on clinical practice guidelines, procedures, therapy practice standards and competencies.

Board-Certified Specialist: Orthopedic Physical Therapy; Certified Ergonomic Assessment Specialist, Massage therapist; Medical journal author, Presenter for professional associations: Cleveland Clinic, Johns Hopkins, medical centers; Owner: Educise PC, continuing education; Expertise: malpractice, personal injury, orthopedics, ergonomics; Expert Witness: case reviews, examinations, depositions, trials.

MEDICAL & HEALTH - PHARMACOLOGY

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Dr. Bertino has over 30 yrs. experience in Clinical Pharmacology. His expertise includes medication error assessment, drug therapeutics, side effects of drugs, drug and alcohol toxicology, pharmacokinetics and pharmacodynamics and pharmacogenetics. He has experience in the care of adults and children. In addition, he has substantial experience in community, hospital, ambulatory and nursing home settings and therefore, he is able to assess standard of care. He provides objective, fully literature referenced review of criminal and civil cases and guides the client on the strengths and weaknesses of the case. Dr. Bertino provides either plaintiff or defendant support.

MEDICAL & HEALTH - REHABILITATION COUNSELING

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MEDICAL & HEALTH - PHYSICAL REHABILITATION

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Dr. Matthew Shatzer is a Board Certified Physical Medicine and Rehabilitation specialist who is available to do record reviews determining level of disability of an injured individual, assessing standard of care for individuals getting rehabilitation, specifically with diagnoses of spinal cord injury, stroke, spasticity, musculoskeletal injuries, and pressure ulcers. As well, he is available to do Independent Medical Evaluations (IMEs) either at his office in Manhasset, NY or at an attorney's office. Dr. Shatzer has subspecialty training and Board Certification in Spinal Cord Injury Medicine.

MEDICAL & HEALTH - SEX OFFENSES

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I have been practicing clinical social work for the past 29 years. I provide treatment to clientele with a wide range of mental health disorders. I have provided treatment within the context of individual, couple/marital, family, and group therapy; worked specifically with those who have been sexually victimized and those who have perpetrated sexual abuse. I have experience in the area of conducting sex offender risk assessment; safety planning when it concerns sex offenders in the community; and worked closely with the NYS Parole Dept. and area probation department. I have testified and provided reports within family and criminal court proceedings

MEDICAL & HEALTH - SURGICAL CRITICAL CARE



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As a member of an academic/university hospital and ACS Verified Level I trauma surgeon, Dr. Jerry Rubano is an actively practicing general/trauma/acute care surgeon and surgical intensivist. He is board certified in Surgery with an added qualification (dual board certification) in Surgical Critical Care. He serves as the trauma medical director at a local ACS Verified Trauma Center as well. Dr. Rubano's areas of expertise lie in all aspects of general surgery, acute care/emergency surgery, as well as surgical critical care and trauma. Subspecialty areas of interest include advanced modes of mechanical ventilation and resuscitation.

REAL ESTATE - REAL ESTATE APPRAISAL



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MEDICAL & HEALTH - THORACIC SURGERY



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Dr. Craig Nachbauer is certified by the American Board of Thoracic Surgery and has practiced thoracic and vascular surgery since 1991. He is experienced in medical record review, determinations of standard of care, and deposition and testimony in medical malpractice cases.

Dr. Nachbauer received his thoracic surgery residency at the Ohio State University Hospitals. After a fellowship in pediatric cardiothoracic surgery at Emory University, he completed his training as Clinical Associate in Cardiothoracic Surgery at The Cleveland Clinic.

Dr. Nachbauer is the medical director of the University of Vermont Health Network-Champlain Valley Physicians Hospital Wound Center.

REAL ESTATE - REAL ESTATE EXPERT WITNESS TESTIMONY



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Mr. Beal provides expert-witness testimony and litigation support for matters where the value or loss in value of real estate is the measure of damages, or the real estate is a causative or key element in a case. He has consulted and testified in local, state and federal cases, civil and criminal, in all types of matters related to real property. With more than 40 years of experience in multiple phases of the real estate industry his subject matter expertise can be indispensable to successfully litigating complex cases, involving a range of issues relating directly or indirectly to real property.

PSYCHIATRY & PSYCHOLOGY - PSYCHIATRY



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SAFETY & SECURITY - PREMISES LIABILITY



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SAFETY & SECURITY - RESTAURANTS & BAR

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Alan Someck's 37 years experience in the hospitality industry as an owner, operator, consultant and teacher has given him the depth knowledge to provide highly professional and thorough expert witness reports, depositions and testimony. Alan has been an expert witness in a wide variety of hospitality related cases including:

Restaurant Operations | Income and Profit Analysis | Slips and Falls and Customer Safety | Wages and Tip Issues | Food and Alcohol Safety | Harassment and Discrimination | Business Damages and Competitive Analysis

SCHOOL & EDUCATION - SPECIAL EDUCATION

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Since 1973, Dr. Imber has served as a Prof of Sp. Ed. as well as an advocate, consultant, as an independent educational evaluator and as an expert on a national basis for personal injury and other matters. His testimony has been given in federal court, special education due process hearings, superior court for matters of criminal defense, family court.

Imber has testified as an expert on matters concerning custody and parental termination of rights. He serves as an expert on matters of personal injury of children and adults. Imber has been involved in cases of wrongful death and school-based injuries.

SAFETY & SECURITY - SECURITY/PREMISES LIABILITY

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Board certified security professional, 40 years of security expertise in business and industry. Practice services Plaintiff and Defense bars offering expert testimony, litigation support, and consulting in the areas of Premises Liability, Security Adequacy, and Crime Foreseeability Analysis. We conform to industry best practices as well as a professional code of ethical conduct which meets legal and regulatory standards. The opinions we express are based on accepted industry methodology.

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Make That Move: Junior Partner to Rainmaker

BY LILLIAN S. HARDY

From the Editor: You've billed your way up the ladder to make it to the partnership. You've earned the right to be in "the room where it happens," to borrow from Lin-Manuel Miranda's "Hamilton." Now how do you build a top practice? Lillian S. Hardy, practice group head of Hogan Lovells' crisis leadership team, writes on that topic in the fourth column of our National Law Journal series, "On the Rise: Voices from Young Lawyers." The series features columns by our 2019 D.C. Rising Stars and other leading young lawyers on key practice topics. For more insight, read on.



A longtime mentor of mine likens climbing the Big Law career ladder to entering a series of pie-eating contests where the prize is always more pie. I chuckle every time he says it, but I have a different take. To me, the path is a series of milestones achieved differently by each person, each one requiring a new level of focus. All are easier to tackle if you love your job.

After making partner, the new focus must move quickly to growing a sustainable and fulfilling practice. But how on earth is that done? And what are the tools?

I don't have all of the answers, but I'll share some tips based on my journey thus far.

DO IT YOUR WAY.

Being unique is key to survival in a crowded field. As a new partner, I knew I had to create a distinctive plan to make this role work. When it comes to business development, I have learned from the successes and failures of other lawyers. I try to absorb all that I can from watching and listening to others,

including more senior partners that trained me and external mentors. I have learned that no two lawyers are the same and the successful ones make their mark on this profession not just from hard work, but from standing out.

What does this mean for young partners? Work tirelessly to hone your craft, but put your own spin on how you market it. This will deepen your investment in your career and will give you the stamina to engage in the non-billable effort it takes to make it a success.

INVEST IN PEER RELATIONSHIPS.

For me, building a practice is a team sport. I focus on business generation alongside my peers who are other developing partners. And the majority of names on my growing client roster are from my own generation.

It is very tempting to kiss up to more senior lawyers once your associate days are long past you. One thinks that everyone that has client work to offer

graduated from law school long before you. While that may be true today, it won't be true forever. Maintaining relationships with peers in your firm, from college and from law school will prove most important in the long run.

BELIEVE IN YOUR PRACTICE.

I had an "ah-ha" moment when I realized people were truly buying my judgment and not just my execution of tasks. Believing that I have an unusual knack for helping clients take positions when they're under extreme pressure, I set out to build my practice around exactly that.

As head of our firm's crisis management practice, my core offerings are predicated on being calm and confident when things heat up. We are all our most poised when we know our material and can utilize our skill, so that is precisely what we must do. Young partners must have unwavering faith in their practice so that they can credibly sell it to others.

STEPHEN COBURN

ROAD TEST YOUR IDEAS.

My middle school drama teacher always demanded that everyone wore full costumes for dress rehearsals so that we could avoid on-stage faux pas on the big day. Undoubtedly in the rehearsals, there would be issues. Thanks to her, we had a chance to fix them.

The same principle applies for pitch meetings and presentations. I try my best to get in front of my trusted clients for first runs on new projects or business ideas. Let's be honest, flying all over the world to do free CLEs is not as satisfying as booking a seven-figure engagement. But taking those trips gets you ready to deliver when the real opportunity knocks.

SUPPORT YOUR TEAM.

I come from a big, close-knit family, so this one is a no-brainer. Every load is easier to bear with extra hands and brains. When everyone feels supported to play their role and considers the client their own, the team will win more often. That creates a positive impact for clients.

Supporting your team could mean offering a fresh start to the associate that made a mistake in their work for another partner. (I find that folks in that situation may work harder for the partner willing to give them a second shot.) It may mean demanding more from an associate who is not growing from matter to matter. And when associates do a great job—show them off! I often reveal my associates to clients. They are good, and I am proud of them.

When you invest in each person as a professional, they invest in themselves and the team, too. That's when everyone succeeds.

SHARE THE WEALTH.

Resist the temptation to take opportunities that should go to someone else. This can be hard if your personal billings are lower than you'd like when the opportunity comes your way, but it

is always the right call. At our firm, we have practitioners that do nearly everything, and I frequently pass the ball so that the client gets the slam-dunk they deserve. Sharing the wealth allows for relationship building with colleagues across practices and regions. Watching a colleague succeed adds to my sense of pride in our team. It all works out.

FOCUS ON YOUR CLIENT AND THEY'LL FOCUS ON YOU.

Recently, a client called us to ask for advice about assessing an aspect of its internal compliance program. We responded quickly and showed interest in what was meant to be a limited, pro forma analysis. Then suddenly, the client was forced to launch one of the most extensive investigations it has encountered to date.

The lesson here? Being ready for the smaller project made us the client's first call for the big one. Every client should feel like a VIP and that their project is your singular concern. During client-matter intake, you must offer the same level of interest and attention that you would for your most important engagement of the year. It could become just that.

Earning your client's trust is the key to repeat business, which is the keystone to building a successful practice, which we're all working towards. That's the icing on the partner cake (I'm not big on pie).

Lillian S. Hardy is an investigations partner in the Washington, D.C., office of Hogan Lovells and is the practice group head of the crisis leadership team.

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Justice Gorsuch on Being a SCOTUS Clerk

BY RYAN LOVELACE

A SUPREME COURT CLERKSHIP IS A credential that now commands a bonus nearing half a million dollars from the nation's most prestigious law firms. It opens up teaching and research opportunities at leading academic institutions and wins attention from government officials looking to fill vacancies on the federal courts.

It's well known how many doors high court clerkships can open. But what about the closed-door process of selecting them?

Justice Neil Gorsuch is the first Supreme Court justice to preside alongside a justice for whom he clerked, having previously served as a law clerk to now-retired Justice Anthony Kennedy.

In his new book "A Republic, If You Can Keep It," Gorsuch recounts his experiences clerking for Kennedy and Justice Byron White in 1993 and 1994.

When White retired in 1993, President Bill Clinton picked Justice Ruth Bader Ginsburg as his replacement. A quarter-century after his clerkship, Gorsuch wrote in his book, a "surprising number" of the Supreme Court's longtime employees remembered him from his days as a clerk.

"I remember the day my old boss passed along to his new colleague his law clerk manual, just in case she'd find it helpful in setting up her office," Gorsuch wrote. "Shortly after my confirmation, Justice Ginsburg returned that same document to me, along with many helpful updates she had added over the years. That was quite a moment for me."

Whatever lessons that manual held, Gorsuch has already shown that past practice isn't his only guide when it comes to choosing clerks, especially the



JUSTICE NEIL GORSUCH

"NOW THE BEGINNING OF EACH TERM, I TRY TO EXPLAIN THIS TO MY NEW LAW CLERKS. ... I SAY, 'I HAVE JUST TWO RULES AND WE'RE GOING TO GET ALONG FINE.'" —NEIL GORSUCH

practice of almost exclusively favoring a queue of recent graduates from a small circle of elite law schools.

Gorsuch has recently hired three new clerks for the forthcoming terms from the ranks of the professoriate, including Stephen Yelderman, professor at the University of Notre Dame Law School; Mark Storslee, assistant professor at Pennsylvania State University School of Law; and Stephanie Barclay, associate professor at Brigham Young University Reuben Clark Law School.

The diversity of Gorsuch clerks extend to their ethnicity, gender and religion as well.

According to The National Law Journal's research, 85% of all clerks between Chief Justice John Roberts' first term and Gorsuch's first term were white, and twice as many men earned clerkships as women.

Of Gorsuch's first seven clerk hires included in that analysis, two were Asian American men and one clerk was a Hispanic man. One of those law clerks, Jamil Jaffer, is Muslim. A female law clerk, Jane Nitze, was still nursing her newborn baby when she began clerking for Gorsuch at the Supreme Court.

Last year, Gorsuch hired Tobi Young, former general counsel to the

JASON DOY / THE RECORDER

George W. Bush Presidential Center, who may be the first Native American to serve as a clerk for any justice. Young is an Oklahoma-born citizen of the Chickasaw Nation.

Reflecting on the dearth of Native American clerks at the Supreme Court, Gorsuch exclaimed in an interview, “Isn’t that crazy?” He also shared the advice he gives each of his clerks.

“Now the beginning of each term, I try to explain this to my new law clerks,” Gorsuch said. “Some of them like Tobin don’t need it, they’ve heard it too many times already.

“I say, ‘I have just two rules and we’re going to get along fine. Rule No. 1: Please, please don’t make stuff up. And Rule No. 2: When all those people out there in the chattering

“I REMEMBER THE DAY MY OLD BOSS PASSED ALONG TO HIS NEW COLLEAGUE HIS LAW CLERK MANUAL, JUST IN CASE SHE’D FIND IT HELPFUL IN SETTING UP HER OFFICE.” —NEIL GORSUCH

classes beg you to make something up, tell you they’ll spurn you and won’t invite you to their cocktail parties if you don’t make the stuff up that they want made up, refer back to Rule No. 1 please,” he said.

Nitze and David Feder, another of Gorsuch’s former Supreme Court law clerks and a current associate at Jones Day in Los Angeles, co-authored “A Republic, If You Can Keep It” with their former boss.

Feder went on the road with Young on Gorsuch’s whistle-stop book

tour ahead of the Supreme Court’s new term.

In early September, Feder and Young made appearances with Gorsuch as he traveled to the Ronald Reagan Presidential Foundation and Library and the Richard Nixon Presidential Library and Museum.

Ryan Lovelace is based in Washington, D.C., and covers the intersection of law firm business, lobbying and the federal government. Contact him at rlovelace@alm.com. On Twitter: @lovelaceryand

In Memoriam Hon. James Robertson (Ret.) 1938-2019



Hon. James Robertson (Ret.), JAMS neutral and retired U.S. District Court Judge for the District of Columbia, passed away on Saturday, September 7, 2019.

Prior to joining JAMS in 2010 as a mediator and arbitrator, Judge Robertson spent more than 15 years on the federal bench, serving on the Judicial Conference Committee on Information Technology and the Foreign Intelligence Surveillance Court. He was in private practice for 25 years with Wilmer, Cutler & Pickering. Known for his commitment to equality and civil rights, Judge Robertson served as a litigator with the Lawyers’ Committee for Civil Rights Under Law in Mississippi; as its national director in Washington, D.C.; and later as its co-chairman.

Judge Robertson is survived by his wife, three children, six grandchildren and a twin sister. Highly regarded for his progressive thinking, fairness, integrity, courage and compassion for others, he will be missed by all who knew him.

Preserving a Supreme Court Relic

BY RYAN LOVELACE

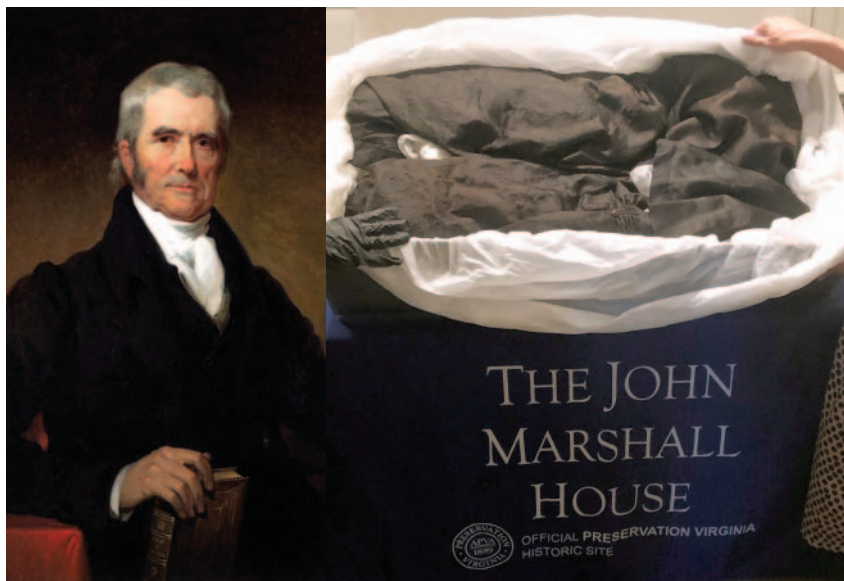
THE JOHN MARSHALL FOUNDATION and Preservation Virginia are partnering to salvage and conserve the only known surviving robe of former U.S. Supreme Court Chief Justice John Marshall.

The two groups kicked off a \$218,000 “Save the Robe” fundraising campaign in September, amid the Sept. 17 Constitution Day festivities. Marshall, who served as the fourth chief justice of the United States, began the habit of wearing a black robe that became the standard for Supreme Court justices, but the garment he first wore in 1801 needs special attention “due to acid hydrolysis from the dye and iron mordant used to achieve its deep shade of black,” according to the campaign organizers.

“I think our goal is to reintroduce John Marshall as a hidden hero of national union and to have his robe as a common artifact, an irreplaceable icon that we need to preserve,” said Kevin Walsh, the John Marshall Foundation’s president, in an interview.

Beyond his sartorial contribution, Walsh pointed to Marshall as a bridge between George Washington and Abraham Lincoln as a unifying force for the country. While Marshall “deliberately put himself in the background,” Walsh said, his most important work came from the bench. Among his many contributions are his authorship of the Supreme Court’s landmark *Marbury v. Madison* opinion outlining the scope of judicial review and holding an act of Congress unconstitutional for the first time.

“People look at the Supreme Court now and they look at politics and judicial nominations and they think it’s



worse than it’s ever been,” said Walsh, who teaches constitutional law at the University of Richmond School of Law. “Well, things were pretty bad in Marshall’s time too, but he held the court together, which I think is hopeful.”

Marshall’s robe is presently stored in a box on the grounds of the John Marshall House operated by Preservation Virginia in Richmond, which Marshall built in 1790 and lived in for 45 years.

Watching Supreme Court Justice Sonia Sotomayor view the robe on a tour of the Marshall House in 2015 was a “turning point” for Walsh’s desire to get involved in the conservation project, he said.

“They brought out the robe for Justice Sotomayor; it’s in a box, and you take the top off and there’s this black robe sitting in white crate paper,” he said. “She regarded it with such reverence bordering on awe, and I thought,

‘Wow, that is so powerful to see a sitting Supreme Court justice make that connection.’”

The Save the Robe campaign formally commenced in Washington, D.C., on Oct. 1, when Hunton Andrews Kurth held a kickoff reception in its Pennsylvania Avenue office to raise funds. Walsh is a former associate at Hunton who said he came up under Hunton special counsel Thomas Slater, immediate past president of the John Marshall Foundation. Walsh noted that Hunton has long been a supporter of the John Marshall Foundation.

The robe will be on display at the John Marshall House if it is successfully conserved.

Ryan Lovelace is based in Washington, D.C., and covers the intersection of law firm business, lobbying and the federal government. Contact him at rlovelace@alm.com.

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Steptoe Adds White-Collar Vet to Roster

BY RYAN LOVELACE

STEPTOE & JOHNSON SAID SEPT. 23 THAT it has added Michael Bromwich, a former prosecutor and senior federal official who represented Justice Brett Kavanaugh’s accuser Christine Blasey Ford before the U.S. Senate last year.

Bromwich is joining as senior counsel in the firm’s white-collar criminal defense practice. He will be based in Washington, D.C., but will also spend time in New York, the firm said.

“Steptoe’s white-collar team has an outstanding national reputation among prosecutors and the defense bar,” Bromwich said in a statement announcing his move. “I’ve known [Steptoe partner] Reid Weingarten for more than 30 years and have been extremely impressed by the top-tier talent he has attracted to the Steptoe white-collar team. I am truly excited about this opportunity to work with him and the group.”

Bromwich left Robbins, Russell, Engler, Orseck, Untereiner & Sauber last year amid his representation of Ford, whose assault accusations against Kavanaugh roiled his nomination to the U.S. Supreme Court. He has since been serving as the managing principal of The Bromwich Group, a consulting company he founded, and he plans to remain in that role, the firm said.

Bromwich also represents former FBI deputy director Andrew McCabe in connection with McCabe’s firing from the agency.

Earlier in his career, Bromwich was an inspector general for the Justice Department under President Bill Clinton and served as an assistant U.S. attorney for the Southern District of New York and an associate counsel in the Office of Independent Counsel for Iran-Contra.



“OVER THE COURSE OF HIS CAREER, MIKE HAS REPEATEDLY BEEN TAPPED FOR COMPLEX AND CHALLENGING ASSIGNMENTS. ... HE HAS DEFTLY HARMONIZED BUSINESS, LEGAL AND POLITICAL CROSS-CURRENTS.” —PHIL WEST

In a more recent stint in public service, President Barack Obama selected him to oversee reform and regulation efforts relating to offshore drilling in the wake of the Deepwater Horizon oil spill. Bromwich was director of the Bureau of Ocean Energy Management, Regulation and Enforcement for the U.S. Department of Interior from 2010 to 2011 and director of the Bureau of Safety and Environmental Enforcement from October 2011 to November 2011.

In a statement, Steptoe chair Phil West called Bromwich the “latest jewel in our crown.”

“Over the course of his career, Mike has repeatedly been tapped for complex

and challenging assignments,” West said in a statement. “Whether in corporate compliance, or representing high-profile individuals in national headline-making matters, he has deftly harmonized business, legal and political cross-currents. His experience will fit in perfectly at Steptoe, and our clients will have another reason to look to us as one of the country’s premiere investigations and defense firms.”

Bromwich was not immediately available to comment.

Ryan Lovelace is based in Washington, D.C., and covers the intersection of law firm business, lobbying and the federal government. Contact him at rlovelace@alm.com.

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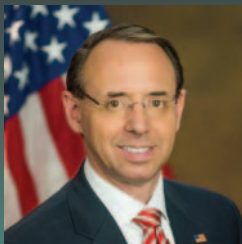
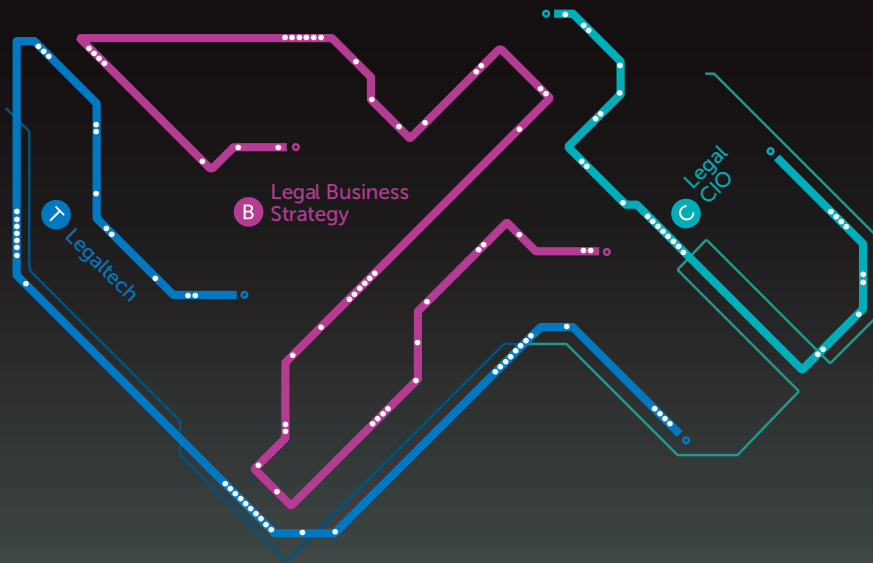
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LATERALS

AKIN GUMP STRAUSS HAUER & FELD (Washington, D.C.): Sam Kamyans joined the firm as an energy tax lawyer. He will be counseling independent power providers and investors on structuring the tax aspects of power projects, including renewable energy deals. Previously, he was a partner in Baker McKenzie's tax group.

SNELL & WILMER (Denver): Andrea Hicks and Daniel Ackerman joined the firm as counsel. Hicks joined the firm's commercial litigation group, while Ackerman joined the firm's intellectual property group. Prior to coming to Snell & Wilmer, Hicks managed a cross-office team of attorneys for Bryan Cave Leighton Paisner, and Ackerman came from Brownstein Hyatt Farber Schreck with extensive intellectual property experience.

MCGUIREWOODS (London): Lee Cullinane and Marc Naidoo joined the firm as partners. Cullinane is leading the firm's Europe, Middle East and Africa finance group. Naidoo's practice is focused on emerging markets, with a particular emphasis on Africa and sustainable finance.

SEYFARTH SHAW (Chicago): Charles Chejfec returns to the firm in its litigation department. Before coming back to

Seyfarth, he worked for the Chicago-based firm Actuate Law, where he was a founding partner. His practice will be focused on representing both government and private insurers victimized by large healthcare fraud schemes.

NEW ARRIVALS

JONES DAY (Dallas): Michaela Crocker joined the firm as of counsel in the firm's business restructuring and reorganization practice. Before arriving at Jones Day, Crocker served as a career law clerk to Chief U.S. Bankruptcy Judge Barbara Houser of the Northern District of Texas. Her previous experience includes assisting in all aspects of hearing and trial preparation, including the preparation of memoranda, attending contested hearings and trials, consulting with the court on outstanding rulings, and drafting opinions, orders and judgments.

ABRAHAM, WATKINS, NICHOLS, SORRELS, AGOSTO & AZIZ (Houston): Jason Muriby joined the firm as a high-stakes business litigator. He returns to Abraham Watkins after working as a briefing attorney for the Supreme Court of Texas and practicing at a large international law firm for six years. His legal practice is focused on a range of personal injury matters, including motor vehicle accidents, wrongful death, medical malpractice, premises liability,

construction litigation, insurance disputes and business litigation.

KILPATRICK TOWNSEND & STOCKTON (San Diego): James Cleary returns to the firm as a partner in the firm's intellectual property group's electronic engineering and software team. Before coming back to Kilpatrick Townsend, Cleary worked for an Am Law 100 firm and served in the U.S. Air Force. His practice will be focused on patent law, including preparation and prosecution of patent applications, rendering of opinions on infringement and validity, licensing, due diligence investigations, and strategic counseling, with an emphasis on electrical, telecommunications, software and mechanical technologies.

HUNTON ANDREWS KURTH (Boston): David McSweeney joined the firm as counsel in its global environmental practice. Previously, McSweeney was in-house counsel for a Fortune 500 midstream energy company in the natural gas and natural gas liquids industry. His practice is focused on environmental and health and safety legal issues associated with permitting, compliance, transactional due diligence, regulatory development, enforcement defense and related litigation.

Victoria Ostrander is the assistant editor for National Law Journal, The American Lawyer and Corporate Counsel at ALM Media.

Why History Supports SCOTUS Term Limits

BY TYLER COOPER

MITCH MCCONNELL BLOCKED MERRICK

Garland, Donald Trump upset Hillary Clinton, and Brett Kavanaugh was confirmed to the U.S. Supreme Court. Now there are more than 20 Democrats running for president, and ideas for reforming the court—specifically by adding justices or reducing their tenure length—have emerged as an increasingly popular topic on the campaign trail.

This is the first time since President Franklin Roosevelt’s 1937 court-packing plan that we’re debating reform, right? Far from it. A closer look at our history shows that plans to modify the court have been a part of our public discourse for centuries.

Limiting terms for Supreme Court justices is one modification currently being discussed. Historically, those opposed to this change have argued that the founders provided life tenure for a reason. This is undoubtedly true.

It’s also true that proposals to end life tenure began with the Founding Fathers themselves. As Thomas Jefferson wrote in an 1820 letter, “To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy.” Two years later he added: “We have erred in this point, by copying England.”

Our third president wasn’t alone in his disapproval. Legislative efforts to limit the tenure of federal judges began almost immediately after the judiciary was organized by Congress in 1789.

According to a widely cited article by Michael J. Mazza, a former federal law clerk and law professor, three more



“THIS IS THE FIRST TIME SINCE PRESIDENT FRANKLIN ROOSEVELT’S 1937 COURT-PACKING PLAN THAT WE’RE DEBATING REFORM, RIGHT? FAR FROM IT. A CLOSER LOOK AT OUR HISTORY SHOWS THAT PLANS TO MODIFY THE [HIGH] COURT HAVE BEEN A PART OF OUR PUBLIC DISCOURSE FOR CENTURIES.”

proposals were introduced in the 1830s, six in the 1860s and 1870s and then more than 20 between 1890 and 1933, when Roosevelt began his first term.

Talk on the trail this year of one plan in particular, court-packing, has naturally led to reconsidering Roosevelt’s effort to add justices. Lost in much of our retelling of Roosevelt’s plan is that it was derived from ideas already percolating in Congress and not something a frustrated president concocted out of whole cloth.

Congressional records and contemporary news articles demonstrate there

was concern in the early 20th century over the power of the judiciary. Three constitutional amendments were introduced in the Senate shortly after Roosevelt announced his statutory plan to add justices. Two were for mandatory retirement (one at 70, the other at 75), and the third limited tenure to nine years. In short order, a series of variations on these amendments were put forward, though they were stymied by lack of support from a White House pushing its own proposal.

In 1954, a conservative Republican senator introduced a plan to end life



JUSTICE BYRON WHITE

tenure through a mandatory retirement age of 75. A resolution on it passed 58-19 in the Senate, winning the votes of then-Sens. John F. Kennedy and Lyndon Johnson.

Ending life tenure at the Supreme Court has even received support among its members. Justice Byron White's service overlapped with the end of Justice William Douglas' tenure—a stint marred by Douglas' increasing infirmities. Weeks before Douglas' 1975 retirement, White wrote, "I am convinced that it would have been better had retirement been required at a specified age by the

"IT WOULD HAVE BEEN WISE FOR THE FOUNDING FATHERS TO HAVE REQUIRED RETIREMENT OF FEDERAL JUDGES AT A SPECIFIED AGE, PERHAPS AT 75." —JUSTICE LEWIS POWELL

Constitution" and that "a constitutional amendment to that effect should be proposed and adopted." Added a 79-year-old Justice Lewis Powell upon his retirement a few years later: "It would have been wise for the Founding Fathers to have required retirement of federal judges at a specified age, perhaps at 75."

In the 1980s and 1990s more than 20 proposals aimed at limiting Supreme Court tenure were introduced in Congress. And though it's now been two decades since a serious congressional effort has been undertaken, much of the 2016 Republican presidential field was firmly on board with ending life tenure at the high court.

There is a reflexive appeal in assuming our institutions are the way they are today because other people, smarter people, people who came before us, banded together and agreed that this is how things should be. It may seem less comforting to consider that some of these institutions' fundamental characteristics—even at the venerable Supreme Court—have come about

in spite of significant and constant opposition.

In a democracy, this opposition is never more than a few flashpoints or a few votes away from a breakthrough. Americans today should look to rectify what Jefferson pointed out almost 200 years ago when he called life-tenured justices "a solecism in a republic, of the first order of absurdity and inconsistency."

A high court comprising men and women who serve for a time and of a time, and not for all time like an English monarch, would be a welcome change to our democracy. Jefferson and many other leaders of nation's past would likely agree. And as they might've said to one another as they discussed founding a new nation, change isn't always a bad thing.

Tyler Cooper is senior researcher at Fix the Court, a nonpartisan organization focused on increasing transparency and accountability at the U.S. Supreme Court. He obtained a J.D. from Boston College, and has worked previously on Capitol Hill and to protect voting rights.

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2019 Statement of Ownership

1. Publication Title: The National Law Journal. 2. Publication No. 2163-8756. Filing Date: October 4, 2019. 3. Frequency: Monthly. No. of Issues Published Annually: 12. 6. Annual Subscription Price: 575.88. Contact Person: Shante Brown Telephone (Include area code) 212-457-7961. 7. Complete address of Known Office of Publication: 150 E. 42nd St., Mezzanine Level, New York, NY 10017. 8. Complete Mailing Address of Headquarters or General Business Office of Publisher: 150 E. 42nd St., Mezzanine Level, New York, NY 10017. 9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor; Publisher: Richard Caruso, 150 E. 42nd St., Mezzanine Level, New York, NY 10017. Editor: Lisa Helem, 150 E. 42nd St., Mezzanine Level, New York, NY 10017. Managing Editor: Mark Bauer, 150 E. 42nd St., Mezzanine Level, New York, NY 10017. 10. ALM Media, LLC, 150 E. 42nd St., Mezzanine Level, New York, NY 10017. 11. 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