

Bar None:
Funding Diversity
Scholarships

by Lynn Bozalis and Kristy Offenburger

How often do you get a chance to laugh until your sides hurt, watch your colleagues on stage, *and* support a great cause — all in one night? You have the opportunity to do exactly that as Bar None hosts its annual musical variety show in June. Having been described as “hilarious, and often irreverent,” this year’s performance should be as comical and entertaining as every other.

For 23 years, Bar None has presented a side-splittingly funny performance at SMU’s Greer Garson Theatre with a cast of actors, writers and directors — all of whom are Dallas-area lawyers, judges and legal professionals. Over the years, the show has raised more than \$1,100,000, and



proceeds benefit the Dallas Bar Foundation’s scholarships for minority students enrolled at SMU Dedman School of Law.

Bar None proceeds are derived from sponsorships, advertising in the show’s program, in-kind donations, ticket purchases, and CD sales. All money raised is donated by the Dallas Bar Foundation to support the Sarah T. Hughes Diversity Scholarship Fund at SMU.

The scholarship program was established in honor of U.S. District Judge Sarah T. Hughes, a former trustee of the Dallas Bar Foundation, who devoted herself to improving the rights of women and minorities for more than half a century.

The Dallas Bar Foundation selects the recipients of the Sarah T. Hughes Diversity Scholarship, which covers the entire cost of tuition and fees for several minority students each year. The scholarship is renewed for the second and third years, provided the student remains in good standing.

Past and recent Sarah T. Hughes scholars have glowing remarks about receiving the scholarships, attending SMU Dedman School of Law, and becoming integrated into the Dallas legal community.

SEE BAR NONE, PAGE 6

Removal of 400+ Children Prompts
Enormous Pro Bono Effort

by Darlene Hutchinson Biehl

Policies from the ABA and State Bar of Texas challenge every lawyer – as a part of their professional responsibility – to provide at least 50 hours of pro bono legal service each year to those who are less fortunate.

For many Dallas lawyers, that recommendation was fulfilled and surpassed in a matter of days, after volunteering their services for the 464 children removed in April from the Yearning For Zion facility in West Texas.

Shortly after the children were removed from their homes in a widely publicized case, **Alicia Hernandez**, the DBA’s director of community service, and **Alma Benavides**, secretary of the DBA Family Law Section, began contacting more than 600 members of the DBA Family Law Section and DBA Juvenile Justice Committee. Subsequently, the e-mail messages ignited like wildfire as lawyers forwarded the calls-to-action to colleagues – in and out of the legal profession. Soon, more than 150 Dallas-area lawyers volunteered



Ken Fuller



Jeff Coen



Aubrey Connatser

their services.

Another 200 to 300 lawyers volunteered from other parts of Texas, as the State Bar’s Family Law Section reached from the Red River to the Gulf Coast. Corporate lawyers and civil attorneys have joined many solo/small firm lawyers in this enormous volunteer effort.

At least six lawyers from Akin Gump Strauss Hauer & Feld LLP have volunteered as ad litem, including **Diane Couchman**, a 17-year lawyer who has been an active pro bono volunteer for

many years.

“After driving to San Angelo, we stayed with a wonderful family who had invited attorneys ad litem to stay in their home,” Ms. Couchman said. “The San Angelo community was wonderful to the volunteer attorneys.” The Akin Gump lawyers went to the coliseum to visit with their clients (who range in age from 2 to 7 years old) and then attended a hearing the following day, before making the long trip

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The DBA’s Community Involvement Committee has recently completed its 17th Habitat for Humanity home, which was dedicated in April in the Cedar Creek Ranch community. DBA President-Elect Christina Melton Crain (far left) presented the keys to Betty Starling and her daughters. The Dallas Bar Association is the longest-running whole-house sponsor for Habitat for Humanity in Dallas. Each spring, the DBA Home Project (chaired this year by Patrick Holmes and Chris Brown) brings together attorneys, judges, legal assistants and court reporters who volunteer their time to provide a home for a specially selected family. The committee also raises the nearly \$60,000 that is needed to complete each home.

The Margin Tax
Impact on Choice
of Entity in Texas

by Matthew S. Beard

With the first reports under the new Texas margin tax due on May 15th of this year, many practitioners are facing new compliance and planning issues with respect to the margin tax. Attorneys should examine closely the impact of the margin tax upon their choice of entity analysis. (Incidentally, the Texas Comptroller of Public Accounts has announced that businesses who are unable to meet the May 15 due date will have an additional 30 days to submit their returns or file an extension without penalty.)

Under the prior Texas franchise tax regime, Texas imposed a franchise tax on corporations and limited liability companies. Partnerships were not subject to tax. Thus, the franchise tax provided clients an incentive to select a partnership form from the Texas entity menu.

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CALENDAR

VISIT WWW.DALLASBAR.ORG FOR UPDATES ON FRIDAY CLINICS AND OTHER CLEs

FRIDAY CLINICS

Friday, June 6 – Belo

Noon

*“Avoiding Stress & Depression: No-Nonsense Nutrition for a Healthy Practice” Darla Seible, Linda Walkowiak and Lacey Ratliff. Co-sponsored by the CLE and Peer Assistance Committees. For more information, contact SEvans@dallasbar.org. (Ethics 1.5)**

Friday, June 13 – North Dallas **

Noon

Topic Not Yet Available. At Two Lincoln Centre, 5420 LBJ Frwy., Suite 240, Dallas, TX 75240. For more information, contact KTarangoli@dallasbar.org.

Friday, June 20 – Belo

Noon

*“IP Litigation,” Robert Earle. (MCLE 1.00)**

MONDAY, JUNE 2			Dan s. Boyd. (MCLE 1.00)*		
Noon	Tax Section		Real Property Law Section		
	<i>“529 Plans and Rough Justice: New Anti-Abuse, Estate, Gift and GST Tax Proposals,” Jim Roberts. (MCLE 1.00)*</i>		<i>“Overview of Commercial Real Estate in Dallas,” Bob Edge. (MCLE 1.00)*</i>		
	Peer Assistance Committee		CLE Committee		
			Dallas Hispanic Bar Association		
			DAYL Ask-a-Lawyer Committee		

TUESDAY, JUNE 3			TUESDAY, JUNE 10		
Noon	Corporate Counsel Section		Noon	Business Litigation Section	
	<i>“Selected Ethics Issues for the Texas Business Lawyer,” Tim Denker and Russ Coleman. (Ethics 1.00)*</i>			<i>“Update on Immigration Law,” Kathleen Walker. (MCLE 1.00)*</i>	
	Tort & Insurance Practice Section		4 p.m.	Senior Lawyers Committee	
	<i>“Defamation Cases,” Dan S. Boyd. (MCLE 1.00)*</i>		6 p.m.	Home Project Committee	
	Morris Harrell Professionalism Committee		WEDNESDAY, JUNE 11		
	Judiciary Committee		11:45 a.m.	<i>“Inspiring Women: Humor & War Stories to Reach the Top of Your Game,” Charla Aldous, Linda Eads, Hon. Deborah Hankinson, Hon. Karen Gren Johnson, Hon. Linda Thomas and Kathleen Wu. Sponsored by the Legal Ethics Committee. (Ethics 1.00)*</i>	
	DAYL Aid to the Homeless				
6 p.m.	DAYL Board of Directors		Noon	Family Law Section	

WEDNESDAY, JUNE 4					
Noon	Employee Benefits/Executive Compensation Section				
	<i>“Abusive Tax Avoidance Transactions,” Stefan Smith. (MCLE 1.00)*</i>				
	Solo & Small Firm Section				
	<i>“Jury Argument,” Dan S. Boyd. (MCLE 1.00)*</i>				
			5:15 p.m.		
THURSDAY, JUNE 5			THURSDAY, JUNE 12		
Noon	Construction Law Section		Noon	Collaborative Law Section	
	<i>“An Expert’s Role in Construction Disputes,” Jerry Mercer. (MCLE 1.00)*</i>			<i>“10 Things I Wish I’d Known About Collaborative Law,” Kevin Fuller. (MCLE 1.00)*</i>	
	Family Law Section Board				
	DAYL Freedom Run Committee				
6 p.m.	DAYL Fair. Learn about DAYL committees, volunteer opportunities — and network. RSVP to cherieh@DAYL.com .				

FRIDAY, JUNE 6					
Noon	Friday Clinic – Belo				
	<i>“Avoiding Stress & Depression: No-Nonsense Nutrition for a Healthy Practice” Darla Seible, Linda Walkowiak and Lacey Ratliff. Co-sponsored by the CLE and Peer Assistance Committees. For more information, contact SEvans@dallasbar.org. (Ethics 1.5)*</i>				
	Pro Bono Summer Clerks Luncheon.				
	Keynote speaker: Jonathan Blum. RSVP to Ethan at minshulle@lanwt.org . (1.00 MCLE, including .5 Ethics).				
MONDAY, JUNE 9			FRIDAY, JUNE 13		
Noon	Alternative Dispute Resolution Section		Noon	Trial Skills Section	
	<i>“Compelling & Resisting Arbitration,”</i>			<i>“Evidence: Common Mistakes From the Judicial Standpoint & Legal Developments You Need to Know,” Hon. Jim Jordan. (MCLE 1.00)*</i>	
				Friday Clinic — North Dallas**	
				<i>Topic Not Yet Available. At Two Lincoln</i>	

Events For Summer Law Clerks

~ At the Belo Mansion ~

• Summer Clerks Pro Bono Luncheon — Friday, June 6 at noon with keynote speaker Jonathan Blum, associate general counsel of the Susan G. Komen Foundation. Learn about the many pro bono opportunities in Dallas, co-sponsored by the DBA Pro Bono Activities Committee and Dallas Volunteer Attorney Program. The regular Belo buffet will be available. RSVP to Minshulle@lanwt.org. (1.0 CLE, including .5 Ethics)

• Minority Clerkship Luncheon — Friday, June 13 at noon with keynote speaker Justice Carolyn Wright, of the Fifth District Court of Appeals. Learn about the broad range of opportunities in Dallas – and why we hope you choose to practice in Dallas. The regular Belo buffet will be available. RSVP to BAvina@dallasbar.org.

• Minority Clerkship Luncheon — Friday, July 11 at noon with keynote speaker Robert Estrada. The regular Belo buffet will be available. RSVP to BAvina@dallasbar.org.

	<i>Centre, 5420 LBJ Frwy., Suite 240, Dallas, TX 75240. For more information, contact KTarangoli@dallasbar.org.</i>
	Minority Clerkship Luncheon. Keynote speaker: Hon. Carolyn Wright. Sponsored by the DBA Minority Participation Committee. RSVP to BAvina@dallasbar.org .
	Criminal Justice Committee
	DAYL Environmental Awareness Committee
3:30 p.m.	High School Mock Trial Case-Writing Committee

MONDAY, JUNE 16	
Noon	Labor & Employment Law Section
	<i>“How to Successfully Navigate Through the Minefield of Non-Compete Agreements and Trade Secret Protection in Today’s Environment,” Mark Temple. (MCLE 1.00)*</i>

TUESDAY, JUNE 17	
8 a.m.	<i>“Securities Customer Arbitrations: A Map of the Road Away From the Court-house,” sponsored by the State Bar of Texas ADR Section and the DBA ADR Section. On-site registration \$150. (MCLE 6.0, including 1.0 Ethics)*</i>
Noon	Franchise & Distribution Law Section
	<i>Topic Not Yet Available.</i>
	International Law Section
	<i>“Global Aspects of Intellectual Property: What Non-IP Attorneys Need to Know,” Bill Naifeh, Purvi Patel and Dawn Perotti. (MCLE 2.00)*</i>
	Community Involvement Committee
	Public Forum Committee
	DAYL Elder Law Committee
	DVAP New Lawyer Luncheon. RSVP to Chris Reed-Brown at reed-brownc@lanwt.org .

WEDNESDAY, JUNE 18	
11:45 a.m.	Sports & Entertainment Law Section Council
Noon	Energy Law Section
	<i>“Lease Termination: Determining the Correct Course of Action,” Peter Vermillion. (MCLE 1.00)*</i>
	Health Law Section
	<i>“Recent Developments in Legal Ethics With Respect to Representing Healthcare Providers,” Randy Johnston. (Ethics 1.00)*</i>
	Library Committee
	Pro Bono Activities Committee
	Municipal Justice Bar Association
	Non-Profit Law Study Group
	Summer Law Intern Program Mentor Orientation
5:15 p.m.	Legal Line

THURSDAY, JUNE 19	
Noon	Appellate Law Section
	<i>“U.S. Supreme Court Update,” Allison Ho. (MCLE 1.00)*</i>
	Minority Participation Committee
	UPL Subcommittee
	Dallas Criminal Defense Lawyers
	Dallas Gay & Lesbian Bar Association
3:30 p.m.	DBA Board of Directors

FRIDAY, JUNE 20	
11 a.m.	Dallas Gay & Lesbian Bar Association
Noon	Friday Clinic – Belo
	<i>“IP Litigation,” Robert Earle. (MCLE 1.00)*</i>

MONDAY, JUNE 23	
Noon	Computer Law Section
	<i>“Beating Back Beauregard: NSPTO Feints With Nuijten, CAFC Jabs with Comiskey, and Software Claims,” Dan Venglarik. (MCLE 1.00)*</i>
	Securities Law Section
	<i>“Recent Insider Trading Developments,” Bill Mateja. (MCLE 1.00)*</i>

Events

DAYL Fair

Thursday, June 5 from 6 to 7:30 p.m. at Belo. This come-and-go event is open to young lawyers and law students. Learn about committees of the Dallas Association of Young Lawyers, including Freedom Run, Midnight Recess and Barristers for Babies. RSVP to Cherie Harris at cherieh@dayl.com.

Practice Tips for the Northern District of Texas

Thursday, June 12 at noon at the Belo. Speakers: Hon. Sidney Fitzwater, Hon. Barbara Houser, Hon. Sam Lindsay, Hon. Jane Boyle, Hon. Jeff Kaplan and Hon. Paul Stickney. Co-sponsored by the Federal Bar Association and the DBA Judiciary Committee.

TUESDAY, JUNE 24	
Noon	Courthouse Committee
	American Immigration Lawyers Association

WEDNESDAY, JUNE 25	
Noon	Sports & Entertainment Law Section
	<i>“Overview of the Grievance Process,” Susan Farris. (Ethics 1.00)*</i>
	Juvenile Justice Committee
	Christian Lawyers Fellowship

THURSDAY, JUNE 26	
Noon	Criminal Law Section
	<i>Topic Not Yet Available.</i>
	Environmental Law Section
	<i>“The State of Climate Change Science,” Prof. Daniel Cohan. (MCLE 1.00)*</i>

FRIDAY, JUNE 27	
11:30 a.m.	J.L. Turner Legal Association
Noon	Intellectual Property Law Section
	<i>“From Law School to Law Office,” Van Lindberg. (MCLE 1.00)*</i>
	Media Relations Committee
3:30 p.m.	High School Mock Trial Case-Writing Committee

MONDAY, JUNE 30	
No DBA meetings scheduled.	

TUESDAY, JULY 1	
Noon	Tort & Insurance Practice Section
	<i>“Marketing the Law Firm,” Larry Upshaw, Holly Mason and Mike Androvett. (Ethics 1.00)*</i>
	Judiciary Committee
	DAYL Aid to the Homeless Committee
6 p.m.	DAYL Board of Directors

WEDNESDAY, JULY 2	
5 p.m.	Bankruptcy & Commercial Law Section
	<i>“Ethics for the Bankruptcy Practitioner Post-Enron,” Nancy Rappaport. (Ethics 1.00)*</i>

THURSDAY, JULY 3	
Noon	Family Law Section Board
	DAYL Freedom Run Committee

FRIDAY, JULY 4	
DBA offices closed for Independence Day.	

Margin Tax Impacts the Choice of Entity in Texas

CONTINUED FROM PAGE 1

By comparison, the new Texas margin tax generally imposes a state level tax on business entities with more than \$300,000 of total revenue per year. Corporations, limited liability companies, business trusts, and most partnerships (generally any entity benefiting from state law liability protection) are expressly treated as a "taxable entity." Thus, the margin tax has diminished (but not eliminated) the general appeal of a partnership form that existed under the franchise tax.

Although the margin tax is generally neutral in its tax treatment of different Texas entities, it provides incentives to use certain types of entities by way of exceptions to the general rule of taxation. For example, a client who believes that the potential expense to his or her business from the margin tax outweighs the risk of personal liability from that business may prefer to form that business as a sole proprietorship or general partnership (whose partners are all natural persons) because sole proprietorships and general partnerships (whose partners are all natural persons and the liability of which is not limited under Texas or other

state statutes) are not considered taxable entities under the margin tax.

The Texas margin tax also provides an incentive to form a business as a limited partnership (rather than a corporation or a limited liability company) if a client anticipates the business will have the requisite amount of "passive" income as defined in the margin tax. Partnerships and certain trusts can qualify as a passive entity. Corporations and limited liability companies cannot qualify.

Qualification for the passive exemption is tested annually and requires that "passive" income be at least equal to 90 percent of the business's total federal gross income. Generally, only dividends, interest, gains from the sale of real property or securities, and royalty, bonus and delay rental income from mineral properties are considered "passive." Importantly, rent from real or personal property is not considered "passive."

Other very limited exceptions to the margin tax exist, but are beyond the scope of this discussion.

Finally, the new Texas margin tax has removed much of the incentive that existed under the franchise tax to structure one business as multiple related entities

due to a new combined group reporting requirement. Under this requirement, entities in an affiliated group (defined as a group of one or more entities in which a controlling interest is owned by common owners or by one or more of the member entities) that are engaged in a unitary business are required to file a single combined report in lieu of individual reports. For this test, a controlling interest is defined for corporations, as more than 50 percent of the total combined voting power of all classes of stock or more than 50 percent of the beneficial ownership interest in the voting stock;

for partnerships, as more than 50 percent of the capital, profits or beneficial interest in the partnership; and for limited liability companies, as more than 50 percent of the total membership interest in the limited liability company or more than 50 percent of the beneficial ownership interest in the membership interest of the limited liability company. **HN**

Matthew S. Beard is an associate of Jackson Walker L.L.P. His practice focuses on taxation with respect to transactions, real estate, estate planning and probate.

Local Attorneys Volunteer As Ad Litem for Children

CONTINUED FROM PAGE 1

back to Dallas.

Jeff Coen, an attorney/mediator who served many years as a family law judge, has already spent hundreds of hours mentoring lawyers who were appointed as ad litem in West Texas; he also frequently answers questions on a list serve created for this unique situation.

"This has been the most unbelievable pro bono effort I have ever encountered," Judge Coen says. "For a large number of volunteers, this is their first [family law ad litem case.] They just dove into the deep end and have really done a fantastic job.... By my estimation, a majority of the attorneys have spent more than 100 hours already."

The Family Code requires that all attorneys ad litem interview their clients (children) before a hearing which is held 14 days after removal. Next, status hearings will be held 60 days after removal, to review the needs of the children and their present placement in foster care.

"This will require another visit to the kids who are [being housed] all over the state, plus coordination with CPS and CASA, as well as traveling to San Angelo for another day," Judge Coen said. All of the lawyers involved are paying their own expenses at this point, he noted.

Aubrey Connatser, a family law attorney with Koons, Fuller, Vanden Eykel & Robertson, P.C. who has already volunteered 80 hours as an ad litem in this matter, has traveled to San Angelo twice and has toured the Yearning For Zion ranch.

"This case is very complex and has many levels," Ms. Connatser said. "These children deserve to have competent representation, and I feel obligated to give back in this way. I cannot imagine turning down the opportunity to help."

Ken Fuller, a partner with Koons, Fuller, Vanden Eykel & Robertson, P.C. who was named Pro Bono Lawyer of the Year by the Dallas Volunteer Attorney Program, refers to the situation as "incomprehensible."

"There is no precedent for this," Mr. Fuller says, who has practiced law 46 years. "As lawyers, we're in tune with the fact that each case should get individual treatment, rather than painting them all with a broad brush. But there's a tug-of-war happening, out of necessity, with the courts and CPS, dealing with these numbers."

A lot of lawyers have "stepped up to the plate," he adds, to represent pro bono clients, and are incurring expenses of their own, "but we wouldn't have it any other way."

The volunteer lawyers will be involved in this pro bono effort for many months to come. Mr. Fuller, who is representing a boy who is nearly 5 years old, said the

six-month pre-trial hearings will be important. "That's where the rubber meets the road, and hard choices have to be made. The clock is ticking" regarding permanent placement of these children.

According to State Bar President Gib Walton, the State Bar has been providing free online training to lawyers who have volunteered to represent children in West Texas.

Additionally, legal aid providers throughout the state will be stretched to the limit as lawyers will be needed to represent the mothers of the children removed from the facility.

"Texas legal aid providers stand ready to help," according to Betty Balli Torres, executive director of the Texas Equal Access to Justice Foundation. "But it will be a tremendous challenge to the already overburdened system.... The mothers deserve the opportunity to tell their side of the story."

The Texas Family Code requires that attorneys be appointed in parental rights termination cases, but because the San Angelo area does not have the resources to appoint such a large number of lawyers, legal aid providers from across the state are expected to step in to assist. The Texas Equal Access to Justice Foundation is making \$100,000 available for administrative costs related to the case, but funds will not be used for attorneys' fees.

"We offer nothing but praise for the private attorneys who have stepped up to represent the children in this case," said **Jesse Gaines**, chief executive officer of Legal Aid of NorthWest Texas, but he also notes that the case has "been extremely taxing on [LANWT] staff and resources."

LANWT will be helping to represent the 140 mothers from the ranch, he adds, and "we're spending a lot of money traveling back and forth. The monetary cost is great and it's money we didn't have in the budget."

"We don't know how long the case will go on. Of course, there are statutory requirements, but we're committed for the long haul," Mr. Gaines added.

Ms. Benavides assisted with the coordination of the many Dallas-area volunteers. "The selflessness of the ... lawyers and the commitment they have made to the children is amazing," she said. "They have given of their good will and their expertise."

"This is truly one of the most remarkable pro bono stories in all of the USA," Judge Coen added. "Most of the attorneys have now spent more time volunteering than some lawyers spend doing pro bono work in a lifetime." **HN**

Darlene Hutchinson Biehl is the communications/media director for the Dallas Bar Association.

"Inspiring Women: Humor & War Stories to Reach the Top of Your Game"

Wednesday, June 11 • 11:45 a.m. to 1 p.m. • Belo Pavilion

PANELISTS INCLUDE:

Charla Aldous, Prof. Linda Eads, Former Supreme Court Justice Deborah Hankinson, Judge Karen Johnson, Chief Justice Linda Thomas & Kathleen Wu.

1.0 CLE Ethics pending. Space is limited. RSVP to Alicia at AHernandez@dallasbar.org.
Sponsored by the DBA's Legal Ethics Committee.

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PRESIDENT'S COLUMN

Chicken Wins! – Or Pride Precedes a Fowl

by Frank E. Stevenson II

Things fall apart; the centre cannot hold....
-W.B. Yeats

Today is my Uncle Frank's 80th birthday. With his multiple Ivy League degrees, it's no surprise he's taught me many things. But he needed help teaching me the most valuable lesson of all. And it came from an unexpected quarter.

At the Fort Worth Fat Stock Show and Rodeo of my youth – nestled in a back corner of an exhibition barn – were once three arcade-type attractions: a rabbit that drove a fire truck, a duck that strummed a guitar, and a tic-tac-toe-playing chicken. I remember the time Uncle Frank dropped two bits in the chicken's booth to silence my childish badgering.

The machine bestowed the first move upon the chicken, which Uncle Frank accepted with cross-phyla magnanimity. The chicken pecked a spot on a touchpad inside its booth and an illuminated "X" appeared on a lighted grid. Uncle Frank casually took his turn. Too casually, as it turned out.

With the chicken's very next move, it was all over. Uncle Frank gave his next two moves all the intense and desperate celebration you'd expect from a man about to lose to an opponent outfitted with a brain the size of a filbert. But his efforts were in vain. And when the chicken pecked in its third "X" in a row, Uncle Frank was left utterly alone with his shame.

But not for long.

All holy hell broke loose. First, the lights inside the booth began to flash. Then came the siren. The booth played a few scratchy bars of something like *Yakety Sax*. And, finally, the large black expanse above the booth – that had seemed just part of the soffit – suddenly illuminated in large red flashing letters: CHICKEN WINS!



I strained to watch my uncle through the growing crowd drawn by the commotion. Chin on his chest, he stood as limp as something boiled from its shell. And the chicken, flush with victory and anticipating an imminent dispensing of food pellets, rocked back and forth on its two legs and squawked and cackled at Uncle Frank through the glass.

Other than in a Turkish prison or Las Vegas, I don't think a man can suffer greater degradation than that: getting trash-talked by a chicken.

In addition to Uncle Frank's 80th birthday, this column corresponds to the midpoint of my year as DBA president. So it seems fitting to provide some sort of "State of the Association" report. And while the news is good – in fact, excellent – there is a cautionary note I'd like to add, courtesy of that tic-tac-toe-playing chicken.

This past spring, the Dallas Bar reached 10,400 members – the most it has ever had in the history of the association. Even more impressive is that our membership has an enormous penetration with the 14,000 lawyers in Dallas – one of the highest concentrations of any voluntary bar nationwide.

Further, our trend lines attest to a vigorous and thriving organization. Over the last 10 years, membership is up 30 percent, indicating that our association provides value. The sum of our committees' budgets has nearly doubled over the last decade, reflecting their expanding activities, additional events and growing memberships.

Finally, the last decade has seen the number of people coming to the Belo balloon from roughly 60,000 a year to more than 220,000, evidencing the inestimable value of the Belo, which was further enhanced by the Pavilion's opening five years ago, blessing us with a facility unmatched by any metro bar anywhere.

One of my predecessors, **Nancy Thomas**, concluded virtually every function her presidential year with "The Dallas Bar

Association is the best bar association in the country." I know she's right, which worries me.

Notwithstanding the scotch ad's breezy assurance to the contrary, the good things in life *don't* stay that way.

Left alone, everything is subject to entropic decay. Yeats intoned that "things fall apart," and Frost admonished that "nothing gold can stay." Because we and our predecessors have taken the DBA to the top of the form, there is a temptation to become relaxed and casual.

Virgil in his *First Georgic* explains perfectly why the DBA would do that at its peril:

*All things by nature are ready to get worse,
Lapse backward, fall away from what they were,
Just as if one who struggles to row his little
Boat upstream against a powerful current
Should but for a moment relax his arms, the current
Would carry him headlong back again downstream.*

There are a million ways to paraphrase Virgil's insight. "Be vigilant." "Remain watchful." "Keep rowing." But I prefer, "Chicken Wins!"

A moment's relaxation out of hubris or uninterest and we are swept by the current away from our goals. A single casual move and "Chicken Wins!" flashes above our heads.

While so much of the news is good, there are challenges on the horizon for our Dallas Bar. While our budget has nearly doubled over the last 10 years, our annual maintenance costs have nearly tripled due to the addition of the Pavilion and the skyrocketing costs of energy and other necessities. And as the Pavilion ages and opulent competing facilities open elsewhere in the CBD, the imperative to maintain its first-class condition becomes increasingly expensive and acute. And that says nothing about maintaining the historic Belo Mansion as it pulls away from its first centennial and heads toward its second.

Some of our challenges are operational. As membership grows, so do wear and tear on our facility. Can we set aside the funds to renovate the Belo on a prudent and predetermined schedule – likely, every five years? Can we build an adequate reserve for unanticipated major repairs and capital events? And as our membership grows, can we continue to meet the day-to-day costs of staff, technology, utilities and such required to maintain our relevance and value?

Some of our challenges are environmental. Will we continue to benefit from successful relationships with capable and committed vendors like Culinaire International and our other partners? As parking in our Arts District neighborhood is wickered up by development, can we ensure our members the access they need?

Other challenges are more institutional. Will our programs remain relevant to young lawyers? As more national firms start or acquire offices here, will they be as committed to the DBA as their predecessors? Can we continue to make progress increasing membership within various underserved segments of the Dallas legal community? Can that be accomplished while maintaining our high levels of participation elsewhere?

The prudent course is to never presume the situation is as secure as it seems. I recently learned that there was, and still is, a cottage industry training chickens all across America to play tic-tac-toe to the humiliation of their evolutionary betters. In retrospect, Uncle Frank never saw what hit him. He was the victim of a vast white-winged conspiracy.

You and I have the privilege of belonging to the finest bar association of its kind anywhere. But *Proverbs* warns that "pride goeth before destruction, and a haughty spirit before a fall." Our association beats against the strong current of challenges we dare not underestimate.

Uncle Frank taught me what can happen if we do otherwise: The chicken wins. **HN**

Build Your Client Base!**The DBA Lawyer Referral Service Panel Is Seeking New Applicants.**

Are you interested in growing your practice? You should consider joining the Lawyer Referral Service Panel. Last year members of the LRS Panel received more than \$1,000,000 in fees from referred cases. Any lawyer in good standing with the State Bar of Texas, who is actively engaged in the full-time private practice of law in the DFW area and who carries at least \$100,000 in professional liability insurance, is eligible to join the LRS Panel. The DBA currently fields more than 2,000 calls each month from residents seeking referrals to qualified lawyers who can handle a wide variety of legal problems. The LRS Panel particularly needs bilingual attorneys and attorneys in suburban offices.

For more information, contact Alicia Hernandez at (214) 220-7499, or visit <http://www.dallasbar.org/members/LRS.asp>

HEADNOTES

Published by:
DALLAS BAR ASSOCIATION

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Phone: (214) 220-7400
Fax: (214) 220-7465
Website: www.dallasbar.org
Established 1873

The DBA's purpose is to serve and support the legal profession in Dallas and to promote good relations among lawyers, the judiciary, and the community.

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Headnotes (ISSN 1057-0144) is published monthly by the Dallas Bar Association, 2101 Ross Ave., Dallas, TX 75201. Non-member subscription rate is \$30 per year. Single copy price is \$2.50, including handling. Periodicals postage paid at Dallas, Texas 75260. **POSTMASTER:** Send address changes to Headnotes, 2101 Ross Ave., Dallas, TX 75201.

STATE BAR PRESIDENT'S UPDATE

by Gib Walton

Thank you for allowing me the great privilege of serving as the 127th president of the State Bar of Texas. It has been a great honor. I look forward to seeing all of you at annual meeting in Houston in June. I appreciate the opportunity to be part of the Dallas Bar *Headnotes* and thank the officers and staff of the Dallas Bar Association for the excellent work that you do and the spirit of cooperation and leadership that is continuously demonstrated by the Dallas legal community. I'd like to update you on a few items of interest.

Access to Justice

Access to justice in Texas continues to be scrutinized under a national microscope. It is standing up well to the test! As has been widely reported, in late March, a complaint came into a child and domestic abuse hotline in San Angelo. After obtaining search and arrest warrants, state officials took 416 children into protective custody from the Yearning for Zion Ranch. More than 350 lawyers volunteered immediately to serve as court-appointed attorneys ad litem representing the children.

The judicial process continues to work and Texas lawyers continue to represent the interests of all parties — many of them on a volunteer basis.

While it would be inappropriate for the State Bar to pre-judge the facts in any lawsuit, it is our responsibility to do whatever we can to ensure access to justice. We recognize that this is an adversarial proceeding, so let me be clear: The State Bar is not taking sides on any legal or factual dispute in this

matter. Our efforts are directed solely toward access to justice issues and trying to make sure that all parties are fairly and adequately represented — so that the rule of law and our justice system can function properly.

This has been an unprecedented team effort by the legal community in Texas. We were fortunate that last year the Texas Supreme Court had the foresight to establish the Permanent Judicial Commission for Children, Youth, and Families. Working with the commission, we were able to mobilize immediately and coordinate their resources to ensure that qualified lawyers were identified, trained and given the information they needed to enable them to volunteer for court appointments.

A fund was established to help offset the out-of-pocket expenses of lawyers appointed to serve as ad litem. Donations can be made through the Texas Access to Justice Foundation or the Texas Bar Foundation at www.texasbar.com.

Report Pro Bono Hours

Voluntary reporting of pro bono hours is now available at www.texasbar.com, and lawyers are encouraged to report their hours. The State Bar of Texas board of directors adopted a pro bono policy, which established an aspirational goal of 50 hours of pro bono legal services to the poor each



Gib Walton

year for each Texas attorney. The policy also establishes an annual reporting system.

An estimated 75 percent of the legal needs of the poor are not being met. The pro bono policy is intended to encourage attorneys to do more to try to close this gap. Simultaneously, the State Bar board continues to take additional actions, such as emphasizing that this is a societal issue that attorneys cannot address alone. The definition of pro bono, examples of qualifying service, and answers to frequently asked questions about the policy are provided in conjunction with the reporting information.

Minorities at the Podium Project

The State Bar Office of Minority Affairs and TexasBarCLE have developed and launched a new program called Minorities at the Podium. MAP's purpose is to: 1) identify ethnically diverse and women attorneys who are qualified and available to write articles for and present topics at the State Bar's continuing legal education courses, 2) assist course directors and course-planning committees in diversifying their faculty; and 3) increase the visibility of attorneys through their participation in the speakers circuit. A brochure about the program has been mailed to minority and women attorneys. For more infor-

mation, contact Caren Blackwell at cblackwell@texasbar.com.

Video Websites and Ad Review

Attorney or law firm videos disseminated on video Web sites such as YouTube, MySpace, and Facebook that solicit legal services are considered advertisements in the public media and are required to be filed with the Advertising Review Committee. The application can be downloaded at the Advertising Review Web site at www.texasbar.com/adreview. The fee is \$75. Failure to file can result in a fine/fee of \$300, and possible disciplinary action. If you have any questions, please contact the Advertising Review Department at 866-566-4616.

Annual Meeting Registration Live

Online registration is open for the 2008 State Bar Annual Meeting, which will take place June 26-27 in Houston. Visit www.texasbar.com/annualmeeting. In addition to some of the greatest programming in recent years, the annual meeting is one of the best CLE bargains in the state. It is an opportunity for lawyers from all practice areas, backgrounds and geographic locations to come together (in person!) to learn from each other, network, attend great events, and be part of the Texas legal community. I hope to see you there! **HN**

Gib Walton is the 2007-08 president of the State Bar of Texas. He can be contacted at gwalton@velaw.com.

DALLAS BAR ASSOCIATION 100 CLUB



100 Club Membership Is Growing!

What is the 100 Club? The 100 Club is an elite group of Dallas law firms, ADR providers, and corporate legal departments with two or more attorneys, in which 100% of their lawyers are members of the Dallas Bar Association. Many firms have hired new lawyers recently who are encouraged to join the DBA and take advantage of our many member benefits. Membership in the 100 Club is renewable by each firm annually. We do not automatically renew a firm's membership. Monthly recognition for 100% support will be given to these firms through August 2008 in HEADNOTES.

Don't see your name on this list? It is not too late to join! In order to renew or become a new member of the 100 Club for 2008, please fax a list of the names of all the attorneys in your Dallas office or corporate legal department to Cathy Maher at 214-220-7465, or e-mail them to cmaher@dallasbar.org. We will then check your list against our membership records.

100 CLUB MEMBERS As of May 7, 2008

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Dallas Bar Association Loses Past President Tim Kelley

Timothy Edward Kelley served as 62nd president of the Dallas Bar Association in 1971. He died recently after a lengthy illness.

Kelley was born in Bay City, Mich., on January 11, 1924. He graduated from Yale School of Law and in 1951 he became associated with Thompson & Knight where he remained for many years. Mr. Kelley served as president of the Junior Bar in 1956 and served on the board of the State Bar of Texas, and the Texas Association of Defense Counsel and Trial Attorneys of America.

As president of the Dallas Bar Association, Mr. Kelley oversaw a membership of 2,200 and a budget of \$91,000. At that time, the association headquarters were located in the Adolphus Hotel and during his year as president a new lease with the hotel was negotiated as the as-



Tim Kelley

sociation continued to seek a permanent home.

He managed more than 20 active committees and oversaw a number of issues and projects, including pro bono activities, incorporation of the Dallas Bar Foundation, and creation of a seat for a Dallas Bar representative on the community board, The Dallas Foundation, which continues today.

Mr. Kelley served as DBA's president during a very significant time in the city's history. In the 1970s, minority families who wanted their children to have equal educational opportunities filed suit against the public school system. In response to unrest in the community, Mr. Kelley issued a statement on behalf of the Dallas legal community assuring the public that the federal judge presiding over the case could not and should not be swayed

by public opinion and that the law would prevail.

"Hysteria or cynicism will not contribute to our stature as a city.... Only sensitive and careful enforcement of the law can assure the best education for all our children and survival of our system of government," Mr. Kelley stated.

Officers of the association during Mr. Kelley's year as president include:

Henry D. Schlinger, Louis J. Weber and T.L. Caudle.

John Estes served as chair of the board, and DBA Past President **Morris Harrell** was president of the State Bar of Texas in 1971.

Mr. Kelley was an active and committed member of the DBA during his entire career and gave much to the organization. He will be truly missed. **HN**

Bar None: Funding Diversity Scholarships

CONTINUED FROM PAGE 1

U.S. Magistrate Judge Irma Ramirez, a 1991 graduate of the Dedman School of Law and a Hughes scholar, noted that her scholarship is "basically the reason I'm here." She also said that the special relationship between SMU and the Dallas Bar Foundation allowed her to begin making connections within the legal community. She fondly remembered being on the SMU campus and meeting **U.S. District Judge Barefoot Sanders** as a 1L at a Sarah T. Hughes Scholarship reception.

Elisabeth Wilson, a first-generation college graduate who earned her law degree from SMU in May 2007, was a recipient of the Sarah T. Hughes Scholarship. She said the overall experience "was amazing. I felt like it wasn't just money to go to school — it was more than that. You got to know people, and you got to know that your presence was appreciated in the

community."

Elisabeth is now clerking for **Hon. Douglas S. Lang**, a justice on the Fifth District Court of Appeals, and next fall she will be clerking for **U.S. District Judge Jane Boyle**. She is also participating in this year's Bar None production.

This year's show, entitled "Sleazy Todd: The Demon Partner of Main Street," runs from Thursday, June 11 to Saturday, June 14 at the Greer Garson Theatre on the SMU campus. Show times are at 7:30 p.m. on Thursday and Friday, and 8 p.m. on Friday and Saturday.

For more information or to purchase tickets, visit www.barnoneshow.com. **HN**

Lynn Bozalis is a lawyer and the director of development for SMU Dedman School of Law, and Kristy Offenburger is assistant communications/marketing director for the law school.

"Global Aspects of Intellectual Property: What Non-IP Attorneys Need to Know"

Tuesday, June 17 ~ Noon ~ The Belo Mansion (2.0 CLE pending)
— Sponsored by the DBA International Law Section —

- Developing an International Patent Strategy (Bill Naifeh)
- Basic Trademarks and the International Trademark Process (Purvi Patel)
- Transactional IP "Gotchas" When Working With Multi-National Parties (Dawn Perotti)

~ DBA's Senior Lawyers Dinner ~



Nearly 200 lawyers, judges and guests attended the annual Senior Lawyers Appreciation Dinner, and enjoyed hearing from keynote speaker Harriet E. Miers. Many of these attorneys played a significant role in the acquisition of the Belo Mansion in the 1970s and laid a solid foundation for the premiere bar association the DBA is today.



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Law Day 2008

**THE RULE OF LAW:
FOUNDATION FOR COMMUNITIES OF OPPORTUNITY AND EQUITY**

The American Bar Association sponsors Law Day each year, and regional bar associations — including the Dallas Bar Association — host various events and programs to commemorate the chosen theme. Law Day educates public school students and citizens about our government and legal system by focusing their attention on important constitutional principles.

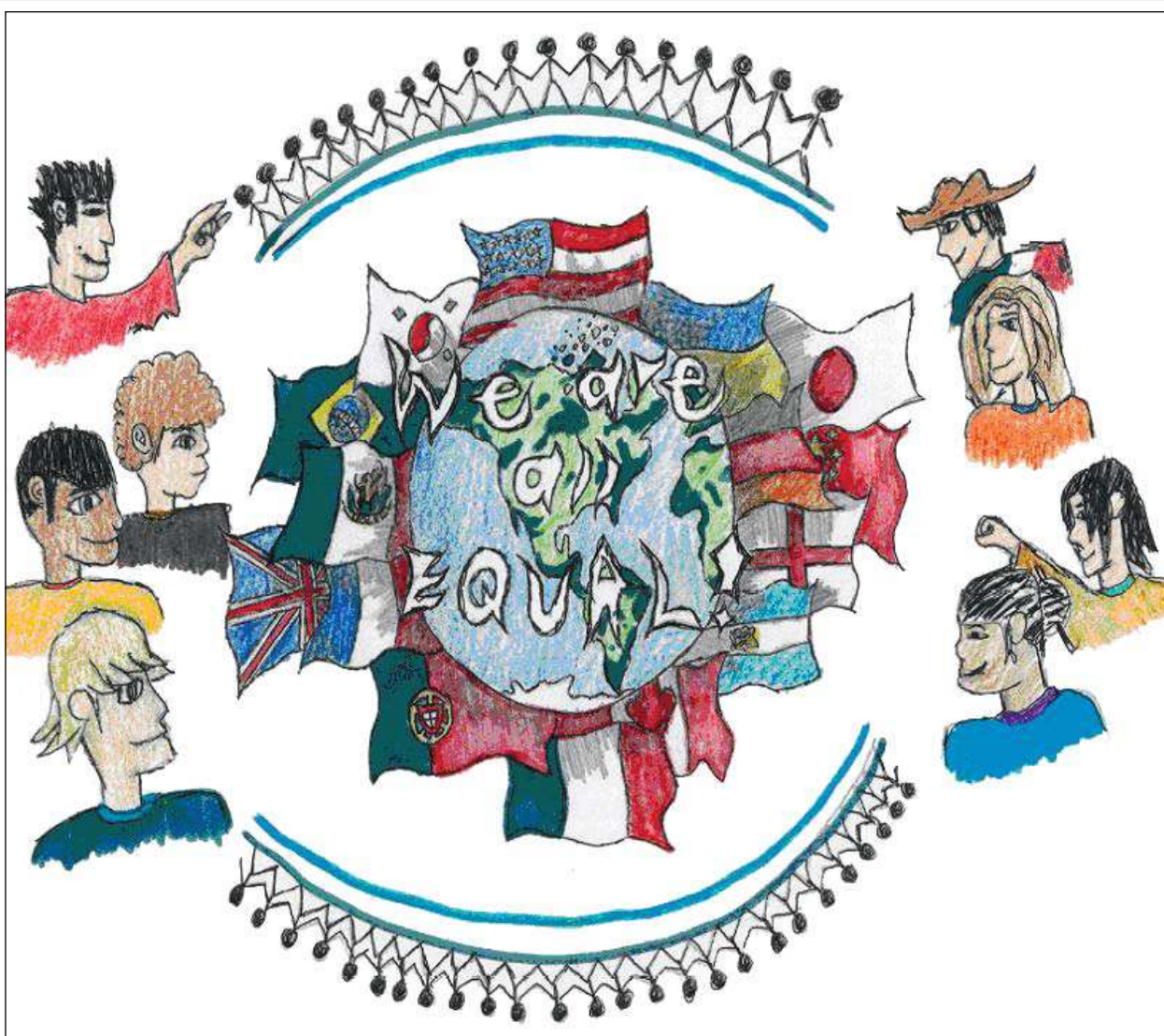
As part of Law Day activities, schoolchildren participate in essay, art and photography competitions. In these categories, students in grades K-12 have the opportunity to create works depicting the Law Day theme.

This year's winners have shared their perspectives on the rule of law with their own insightful expressions. Please take a moment to review excerpts from this year's winning essays and illustrations to view our democracy from a youngster's perspective. Children who won the various contests were honored at the Annual Law Day Luncheon in May at the Belo Mansion.

Additionally, dozens of DBA members became "school teachers" for a day as they met with middle school social studies classes in May to discuss the legal and constitutional issues through the annual DBA Lawyers in the Classroom project. Thousands of students in the Dallas ISD were impacted as these attorneys shared real-life experiences and insights about the American legal system.

DBA Law Day Committee

Teresa Evans, Blaise Gormley and James Holmes
Co-chairs



Luis Rodriguez
First-Place Winner (3rd to 5th Grade)
Vanguard Elementary School

The rule of law is defined as the principle that all members of society are bound by a set of clearly defined and universally accepted laws. No one is above the law and everyone has the same rights. The rule of law may just be the most important principle that the United States holds, for it promotes equity and opportunities for all Americans. That was the principle that our great country was built on.

Imagine the United States not being the mammoth melting pot that it is. There is no diversity in the United States. All is the same. Now, think of the United States and how it's really like. It is so diverse and open to everyone, offering individual rights, opportunities, and the promise of equity. The United States is just a gargantuan melting pot of diversity, rights, opportunities and equity.

The rule of law promotes equity for all Americans. All Americans have the same rights. No person has additional rights or fewer rights than anyone else. Everyone has just consequences for every crime. If two people were to commit the same felony, by the rule of law, they would be given the same chastisement.

Even if the president of the United States were to commit a crime, she or he would be given the same penalty as an average citizen that had committed the same crime. No one holds more power than any other citizen. For example, we, as a nation learned in WWII that greater power given to any one person is very perilous. Hitler took control and in result, millions of innocent people were killed, because he was more powerful, thus the rule of law did not apply. WWII taught us a great lesson, that the rule of law was necessary, that it was

essential to have a democracy in which everything was fair.

The rule of law also promotes opportunities for all Americans. An immigrant is the first thought that comes to mind. Immigrants come to our country for greater opportunities that are not reachable in their own country. The United States welcomes them with open arms, and they too have the same rights as any other citizen. They are able to get jobs, own homes, and live like a citizen. Immigrants are given the opportunity to make a better life for themselves, a life that would have been impossible to live in their home countries.

Citizens have a wide range of opportunities thanks to the rule of law. All is equal; all is fair. Without the rule of law, the United States would not be the economic phenomenon that it is, and it would most definitely not be as great. The rule of law gives Americans chances to make a better life, to be better citizens, and to make a better United States of America.

Evelyn Tavares, 7th grade

First-Place Winner

T.C. Marsh Middle School

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Law Day 2008

THE RULE OF LAW:
FOUNDATION FOR COMMUNITIES OF OPPORTUNITY AND EQUITY

How can the rule of law promote opportunities and equity for all Americans? Well, the rule of law embraces the respect for civil and political rights, which is a good thing for us Americans. It is good to have those things because that may open up opportunities. The rule of law has many opportunities because it's closely related to limited government.

As in American government, everyone must obey the law. The rule of law can promote opportunities and equity because it is what we live by; we live by law. The laws are made to help us have a safe community and a safe life. These laws are made for a specific reason and that is the key to making things in our life easier. The rule of law helps us out in various ways. Those include jobs, and street signs help us in most of our daily lives and they help us from having accidents or getting run over by cars.

The government is fair in what they make the rule of law so that everyone can have the same advantages as anyone else. Equity is one of the most important aspects of the rule of law. You can't just make a law for one person that is personally for them; you have to have it for everyone because we are the people of the United States; not just one person.

The rule of law is made to make the world a better place by all means. The rule of law opens and closes things that are needed for life. It helps the economic development, balancing it so that it has equity and in order for this to happen we have to follow the laws.

In conclusion, without the rule of law, we wouldn't have what we have today, because we live by the rule of law.

Ke'Andrea Wilson, 8th grade
First-Place Winner
W.H. Atwell Middle School



Michael Bardwell
First-Place Winner (K to 2nd Grade)
Hexter Elementary School



Law Day Luncheon At the Belo Mansion

In May, DBA President Frank E. Stevenson (right, in photo to left) presented the first-ever Courageous Advocacy Award to well-known civil rights attorney Morris Dees at the Annual Law Day Luncheon. This award will be presented by the Morris Harrell Professionalism Committee to lawyers who have demonstrated significant courage in pursuing particularly unpopular causes. A few school children from the Dallas ISD were also in attendance at the Law Day Luncheon as their illustrations and essays were celebrated. The students are joined by Blaise Gormley and James Holmes (co-chairs of the DBA Law Day Committee) and Frank Stevenson (left to right, back row).



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FOCUS: CORPORATE COUNSEL

Understanding Your Corporate Client

by Jim E. Bullock

When is settling a case with potential million dollar liability for only a few thousand dollars *not* a good thing? And when is agreeing to indemnify someone against unknown risks a *good* idea?

In the world of corporate practice the seemingly illogical is sometimes logical and the seemingly reasonable can be unreasonable. Nevertheless, the corporate practitioner's job is to understand the client's issues and, sometimes, to explain the client's positions to colleagues.

Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct guides the lawyer part of the way. The lawyer knows that the client is the organization. But, since the organization is a fictional being existing only in law, the attorney-client relationship must be maintained through constituents such as directors, officers and others making decisions on behalf of the organization (see Rule 1.12(a) and Comments 1-2). Except where the lawyer knows that the decision violates the law or the constituent's legal obligation to the organization and "the organization is likely to be substantially injured..." the lawyer must accept the decisions made by the organization's constituents. This is the case even when the decision's "utility or prudence is doubtful," which is a nice way of saying "even when the idea stinks." (Rule 1.12, Comment 6).

To truly understand the corporate client, the lawyer must remember that counsel and the client are, at times, as Winston Churchill once described Americans and Britons, "two peoples separated by a common language." The lawyer and the client may find they use *similar terminology* but with vastly *disparate meanings*.

Even the constituents' objectives – profitability, shareholder return, competitive superiority, positive industry status (i.e., good press), prudent use of funds and employee time and, perhaps, some amount of social consciousness – are concepts.

The lawyer quickly sees how legal tools can enable these principles – limiting contractual liability to avoid drains on profitability by large damages awards, employing strategic intellectual property filings for competitive advantage, and expending effort and cost toward an electronic document retention/discovery program that could save time and expense in the event of future litigation.

To coin a phrase oft used by Dave Ellis of K&L Gates, the lawyer may find the client's interest in principal overrides its interest in principle, or vice-versa. While the lawyer speaks of limiting liability, managing known risk, and avoiding unknown risk, the corporate client speaks of risks as quantifiable and liability in terms of cost, benefit and upside.

For example, to the client being sued, the *benefit* of industry status may outweigh the *cost* of losing the case, so the client opts to take the case to trial and lose rather than have its competitors use the mere rumor of a settlement as a sign of weakness (i.e., the *principle* of good press outweighs the *principal* involved in fighting and losing).

Conversely, the client-defendant may absolutely be in the right but elect to settle the case, simply because the *cost* of winning the case outweighs the *benefit* of winning (i.e., the client's other *principles* – perhaps profitability and prudent use of corporate funds – outweigh the *principal* spent to defend and win).

Here the corporate practitioner uses a valuable skill: translating the legal issues into business issues for the client and translating the client's business issues into legal issues for outside counsel.

The lawyer understands that the "bottom line" can refer to the company's profit margin as well as the end cost of taking or avoiding some action, and is as critical to the client as defending the company against known risks (and often more so than the cost of avoiding theoretical risk).

Counsel even can qualify "risks" in quantitative terms like "non-starter, slam dunk" (meaning there is established precedent on point, so the

client should avoid the risky action), "serious downside" (persuasive authority exists but is not on point, so the client may have a better than average chance of incurring liability and should therefore proceed with great caution), "not highly likely" (eh, it's a risk, but the potential plaintiff would have high and costly hurdles; better than average chance of no trouble), or "merely theoretical" (no cases remotely on point; probably won't happen, but you've been warned). Moreover, the attorney can identify the "upside" in a given situation, meaning that profitability, competitive position, and industry status are improved or preserved by the chosen course of action (notwithstanding the associated costs).

Thus corporate counsel is able to advise the client in quantitative business terms, and then to explain to outside counsel how the decision reached was prudent and reasonable given the information available to the client at the time. The client understands the legal implications of the decision, and outside counsel understand the business justification behind the decision. **HN**

Jim E. Bullock is vice president and general counsel of etalk Corporation in Dallas.



In April, Jeffrey Toobin, a legal analyst for CNN and the author of a recent book about the U.S. Supreme Court, visited the Belo Mansion to speak at a well-attended CLE sponsored by the DBA Business Litigation, Appellate, Trial Skills and Tort & Insurance Practice Sections. Justice Mark Whittington and Joe Cox were among the many attendees who purchased books for Mr. Toobin to sign.

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FOCUS: CORPORATE COUNSEL

Recent SEC Developments & Smaller Reporting Companies

by Norman Miller and James Muchmore

The Securities and Exchange Commission recently amended regulations that will impact significantly a smaller reporting company’s (“SRC”) ability to raise capital. These amended regulations are likely to improve the company’s ability to access capital at a lower cost because of the decreased restrictions on transferability will enable SRCs to register their securities on Form S-3, and will consolidate their disclosure obligations under Regulation S-K.

Rule 144

In November 2007, the SEC adopted amendments to the Rule 144 safe harbor exemption from the registration requirements of the Securities Act for the resale of restricted securities. The amended rules provide a reduced six-month holding period for resales of restricted securities issued by companies that file

periodic reports under the Securities Exchange Act of 1934 (such companies are referred to as “Reporting Issuers”).

Non-Affiliate Sales. Under the revised Rule 144, non-affiliates are permitted to freely resell a Reporting Issuer’s restricted securities after the securities have been held for six months, subject only to the Rule 144(c) requirement that public information has been available regarding the Reporting Issuer for at least 12 months preceding the sale (or for such shorter period that the Reporting Issuer is required to file reports). Non-affiliates are no longer subject to the Rule 144 conditions regarding volume limitations, manner of sale requirements, and Form 144 filing obligations.

Sales by Affiliates. Under the new 144 rules, an affiliate must hold a Reporting Issuer’s security for at least six months before selling, and after this holding period is satisfied, the affiliate can only resell the restricted securities if the Rule 144 conditions regarding vol-

ume limitations, manner of sale requirements, and Form 144 filing obligations are satisfied.

As a result of these shorter holding periods, SRCs may discover that they can access capital more easily and potentially at a lower cost. This is because of the decreased restrictions on transferability, since non-affiliated investors no longer have to hold a Reporting Issuer’s securities for 12 months before selling such securities pursuant to Rule 144. Shorter holding periods may also allow Reporting Issuers to avoid certain types of costly and dilutive financing structures and may reduce their obligation to execute registration rights agreements.

Form S-3 Eligibility

The eligibility requirements of Form S-3 were recently amended to permit smaller reporting companies to conduct primary securities offerings on these forms without regard to the size of their public float. Under the new regulations,

SRCs with less than \$75 million in public float (market value of shares held by non-affiliates) will be permitted to register primary offerings on Form S-3 so long as the following conditions are satisfied.

■ First, an SRC must be eligible to use Form S-3. An SRC is eligible to use Form S-3 if it has a class of securities registered under the Exchange Act, and if the SRC has timely filed its periodic reports for the 12-month period preceding the Form S-3 filing.

■ Second, the SRC must have a class of securities that is registered on a national securities exchange. The Nasdaq Stock Market (and its three affiliated markets (The NASDAQ Global Select Market, The NASDAQ Global Market and the NASDAQ Capital Market) is one of the 10 exchanges that is currently registered as a national securities exchange.

■ Third, the SRC must not sell more than one-third of its public float in primary offerings on Form S-3 for the 12-month period preceding the registration statement.

■ Finally, the SRC must not have been a shell company for at least 12 months before the filing of the registration statement, unless the former shell has a public float of at least \$75 million.

The ‘Smaller Reporting Company’ Designation

In January 2008, the SEC amended the reporting obligations for SRCs under the Securities Act and the Exchange Act. The new rules create a new class of “smaller reporting companies,” and consolidate the disclosure obligations of Regulations S-B and S-K.

Under the new regulations, “small business issuers” will be reclassified as “smaller reporting companies.” This SRC designation will include issuers with less than \$75 million in public float or less than \$50 million in annual revenues in the previous fiscal year. These designations are different from the previous “small business issuer” dual eligibility requirements, which required that issuers have both less than \$25 million in public float and less than \$25 million in annual revenues. Foreign issuers can also qualify as SRCs so long as they file on domestic forms, and they prepare their financial statements in accordance with U.S. GAAP.

In addition, the new rules require SRCs to provide two years of comparative audited balance sheet data in annual financial statements, rather than the one year that was previously required under Regulation S-B.

The SRC regulations also integrate the disclosure obligations of Regulation S-B into Regulation S-K. Under the adopted regulations, 12 SRC non-financial disclosure items were moved into Regulation S-K, without any major substantive changes to the required disclosures. The new regulations also permit SRCs to elect to comply with the scaled financial and non-financial disclosure on an item-by-item or “a la carte” basis. Finally, the new regulations will eliminate the use of the “SB” filing forms over the next 12 months. **HN**

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Norman Miller is a partner in the Dallas office of Patton Boggs, and James Muchmore is an associate in the Denver office of Patton Boggs. They practice in the areas of securities law, corporate governance and mergers and acquisitions.

FOCUS: CORPORATE COUNSEL

E-Discovery: The Basics of Information Technology

by Peter S. Vogel

Information technology is an essential component of every lawyer's practice and every client is dependent upon IT. It should not be a surprise that more than 95 percent of information is electronic. Consequently, nearly every lawsuit today has, and in the future will involve electronically stored information (also referred to as ESI).

This article will describe some basic information about IT so that you will be better equipped to help your clients, particularly in the context of how ESI is used as evidence in litigation.

The IT Language

Just like lawyers have jargon that we all learn in law school and in areas of specialization, IT workers communicate with each other using their own jargon. Being able to use a computer is not enough. Lawyers must have a working knowledge of IT language to address e-discovery issues. Both the Dallas Bar Association and the State Bar of Texas have Computer Technology Sections that can help.

Instead of merely being an IT user, it is incumbent upon all lawyers to take the time to learn more about IT, computers and the Internet. Lawyers need to make it their personal business to learn enough IT jargon to speak intelligently to

IT professionals. It is wise to know the differences between a pop server, Domino server, and Outlook Exchange, or how files can be undeleted.

Special Masters in E-Discovery

Over the past 20 years, I have served as a "special master" about IT and ESI, and my personal experience has been that the lawsuits become less complicated for the parties and the judge. As well, often times the mystery of ESI becomes clearer sooner and cases can be resolved less expensively. So when there are complex e-discovery issues to resolve in litigation, you want to keep costs down, and the judge does not have the IT expertise, you might request a special master who understands the law, evidence and IT. There are a number of excellent lawyers with this experience who can assist most any judge with perplexing ESI issues.

Selecting an E-Discovery Consultant

Since there is no licensing or certification in this area, the selection process for an e-discovery consultant can be confusing and complicated. The consultant you interview today may have been a plumber last month, but if that person can talk the talk and walk the walk, how can you tell

the difference?

Verify the qualifications of an e-discovery consultant by asking for references – as many references as possible. Call and/or visit as many as possible and ask probing questions about the successes (or failures) and as much else as you can learn.

Backup Procedures for Data Files

Lawyers should know the type of data files at issue in litigation that should be kept in litigation hold, and what normal data file backup procedures your client uses. Then clarify for your client's IT professional what is needed to properly protect the data files. Sometimes this is complicated because of the rotation of backup tapes, or some sort of off-site backup procedures. Because each situation is different, as noted above, a working knowledge of IT jargon will help you intelligently ask the right questions to preserve critical ESI.

Backup is very important to IT operations. Eventually every computer system will fail. Accordingly, to protect for the inevitable failure, IT must be able to reconstruct lost data and systems as soon as possible. Even in the wake of the tragedy on September 11, 2001, Wall Street businesses in the World Trade Center were able to recover backup data and systems.

Companies need to place a litigation hold on the correct data and may well have to find and produce that data as part of discovery. This can place a strain on companies, especially where the backup of data is for disaster recovery purposes only, not for litigation hold.

Operating Systems vs. Applications

Operating systems such as Windows XP, Vista, Leopard (Mac), unix, or Linux are a series of computer programs that manage the computer hardware and all other software. Generally, think of the operating system as the nervous system of the computer. Operating systems manage all hardware and software.

Application software, such as Word, Quicken, Internet Explorer, and Adobe readers, are programs written to accomplish a function. To use the application, you must have a compatible operating system so they can synch up and operate together. **HN**

Peter S. Vogel is a past president of the DBA and trial partner at Gardere Wynne Sewell where he is chair of the Electronic Discovery Team and co-chair of the Technology Industry Team; he is founding chair of the Texas Supreme Court's Judicial Committee on Information Technology.

~ Pro Bono Golf Tournament ~



PRO BONO GOLF TOURNAMENT TITLE SPONSOR Payne Mitchell Law Group L.L.P.

In April, more than 100 golfers participated in the 16th Annual Pro Bono Golf Classic at The Golf Club of Dallas to benefit the Dallas Volunteer Attorney Program. With the support of about 30 sponsors, particularly title sponsor Payne Mitchell Law Group L.L.P., approximately \$40,000 was raised to help provide pro bono legal services to low-income residents of Dallas.



IN THE NEWS

ON THE MOVE

Chad Baruch and **Randall Warmbrodt** have joined the newly formed firm of Warmbrodt Baruch Ray in Plano.

Cami Dawson Boyd has joined Friedman & Feiger as a partner.

Charles Cantu has joined Alston & Bird LLP as an associate in the trial and litigation practice.

Lori Carr, Dawn Estes, Jane Taber and **Jessica Thorne** have formed Taber Estes Thorne & Carr PLLC.

Tobey S. Elliott has opened T.S. Elliott Law Office, PLLC, located at 600 S. Denton Tap Rd., Suite 134, Coppell, TX 75019-5441. His practice focuses on federal firearms and explosives license regulation defense, small business needs, real estate leases and transactions, land use law, estate planning, elder law, disability law, and education law.

David C. Gair, Ashley E. Johnston and **Lindsey Jandal Postula** have joined Looper Reed & McGraw, P.C. as associates.

Stephen J. Gilhooly has joined Linage Power as general counsel.

Melinda Wyatt Gilliam has joined Rose•Walker, L.L.P., and **Bryan Rose** has joined the firm's litigation practice.

Curtis Graves and **Richard Hathaway** have joined Sessions Lambert Selwyn, LLP as senior associates.

Alyson Gregory has joined Gregory & Conner in Denton and is practicing family law.

Tanya D. Henderson has joined Greenberg Traurig, LLP as a shareholder in the litigation practice group.

Bruce F. Howell has joined Powell Goldstein LLP as counsel.

Gary Lawson and **Jan Stacey** have joined Strasburger & Price, LLP as senior counsel in the taxes, estate planning and employee benefits practice group, and **Josh Mond** has joined the firm's corporate and securities practice group.

Brigham McCown has joined Hunton & Williams LLP, focusing his practice on regulatory, environmental, legislative and litigation issues affecting oil and natural gas pipelines.

Jeff McPhaul has joined the corporate transactions and securities section at Munck Butrus Carter, P.C., and **Kristina M. Oropeza** has joined the firm as an associate.

Darren P. Nicholson has joined Sayles Werbner, PC.

Craig Onley has joined Dykema's corporate finance practice group.

Steven L. Russell has formed Russell Law Firm, PLLC, located at 5068 W. Plano Parkway, Suite 300, Plano, TX 75093.

Brian P. Shaw has joined Shackleford, Melton & McKinley as an associate, and **Bart Wulff** has joined the firm's litigation section as a partner.

William L. Sladek has joined Condon Thornton Harrell Malik LLP as a partner.

Phillip C. Umphres has joined Burleson, Pate & Gibson as Of Counsel to the firm and will focus on criminal defense.

Wm. Kim Wade and **Suzanne Wade** of The Wade Law Firm, P.C., have relocated their office to Preston Place, 12700 Preston Road, Suite 265, Dallas, TX 75230. **Henry Wade Jr.** has opened a satellite title insurance and law office

at 202 W. Sandy Lake Road, Suite 103, Coppell TX 75019.

Kenn W. Webb has joined Thompson & Knight LLP as partner in its corporate and securities practice group.

KUDOS

Chris Converse, Steve Smith and **Tom Wright** have been promoted to partner at Gardere Wynne Sewell LLP.

John T. "Trey" Cox III has been elevated to name partner at the firm now known as Lynn Tillotson Pinker & Cox LLP.

Sheri D. Crosby, an associate with Wilson Elser Moskowitz Edelman & Dickler LLP, was selected as the Texas Young Lawyers Association's Outstanding Young Lawyer in Texas.

Teresa Clark Evans was named partner with the law firm of McClure Duffee & Eitzen LLP.

T. Ray Guy has been named head of the litigation/regulatory practice for the Dallas office of Weil, Gotshal & Manges LLP.

Rhonda Hunter, past president of the DBA and a family law practitioner, has received the Women of Spirit Award from the American Jewish Congress. The award is presented to Dallas women who have worked on behalf of social justice and human rights for all Americans.

John H. Martin, a partner at Thompson & Knight LLP, has been inducted as a fellow of the International Academy of Trial Lawyers.

FROM THE DAIS

Robert J. Matlock of Woods, May & Matlock, P.C. spoke at the Collaborative Law Spring Conference sponsored by the State Bar of Texas. His presentation was entitled "Ethics Across the Team: Balancing Full Disclosure With Duties to a Client."

Alan E. Sherman recently spoke on "Texas Property, Sales and Margin Taxes" at the Texas Wine and Grape Growers Association Conference in Houston.

News items regarding current members of the Dallas Bar Association are included in Headnotes as space permits. Please send your announcements to Judi Smalling at JSmalling@dallasbar.org.

U.S. Senate Confirms Judge Catharina Haynes and Becky Gregory

Judge Catharina Haynes was confirmed in April to the U.S. Court of Appeals for the Fifth Circuit. She was nominated by President George W. Bush in July 2007.

In 1998, Judge Haynes was elected judge of the 191st District Court in Dallas, and was re-elected in 2002, where she presided over 190 jury trials and approximately 100 bench trials. In 2007, she returned to private practice at Baker Botts, LLP, where she worked in the litigation department.

Judge Haynes graduated second in her class from Emory University School of Law. Previously, she graduated first in her class from the Florida Institute of Technology, earning a B.S. in psychology at age 19.

In 1996 and 2002, Judge Haynes was presented with the DBA's Jo Anna Moreland Outstanding Committee Chair Award. Additionally, she has been active in numerous pro bono efforts over the years, and spearheaded a legal clinic in the Vickery Meadow community through the DBA Pro Bono Activities Committee.

In April, the U.S. Senate also confirmed the nomination of **Rebecca "Becky" Gregory** to serve as U.S. Attorney for the Eastern District of Texas.

Becky Gregory served as first assistant U.S. Attorney for the Eastern District of Texas from 2002-2005, and has worked in the appellate, civil and criminal sections. She was also selected for a special assignment in



Judge Catharina Haynes



Becky Gregory

Washington D.C., where she worked on terrorism investigations.

In 2005, she was appointed to the 283rd Judicial District Court in Dallas, where she presided over felony criminal cases. In 2007, she joined the law firm of Curran, Tomko, and Tarski.

Ms. Gregory graduated from the University of Dallas in 1972 and St. Mary's University Law School in 1978.

The Eastern District of Texas covers a 43-county area and has six fully staffed offices in Beaumont, Plano, Tyler, Sherman, Texarkana and Lufkin.

Also, in April, **James C. Ho** was appointed by Attorney General Greg Abbot as the new Solicitor General of Texas. As the state's chief appellate lawyer, Mr. Ho will oversee both criminal and civil litigation before the state and federal appeals courts and will represent Texas before the U.S. Supreme Court.

Previously, he served as chief counsel to U.S. Sen. John Cornyn from 2003 to 2005, and was a law clerk for U.S. Supreme Court Justice Clarence Thomas.



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- Application has been made to foundations for grants to furnish funds for fees for mediator and counsel where pro se parties lack funds.
- The entity is accepting referrals, including court or institution referrals.

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The DII Asbestos Trust, located near Presbyterian Hospital-Dallas, currently has two openings: **LEGAL/ADMINISTRATIVE ASSISTANT:** Person will be responsible for managing the office and supporting the Executive Director and Director of Operations/Legal with all activities, including the coordination of meetings and travel arrangements. The successful candidate will have a positive, professional demeanor; excellent interpersonal skills; superior organizational and time management skills; and demonstrate excellence in computer applications of various software packages. Position Requirements: Minimum of 5 years experience as legal/administrative assistant; proficient with Microsoft Office Suite (Word, Excel, Power Point, Outlook) and Access; knowledge of legal terminology; excellent verbal and written communication skills; attention to detail; proficient in proofing; deadline-oriented; flexible/adaptable; proficient in research; and ability to work with minimal supervision. **FILE ROOM CLERK:** Person will be responsible for the overall running of the File Room. General activities include maintenance of all files; receiving of inbound and preparation of outbound mailings; maintenance of office equipment including communications with vendors for service work; maintenance and ordering of general office supplies; participation and completion of assigned projects. Position Requirements: Minimum of 3 years experience in general office setting; computer literate and able to use Word and Excel; attention to detail; deadline-oriented; flexible/adaptable; and ability to work independently and

as part of a team. Submit cover letter with resume by e-mail to nfreeman@diiasbestostrust.org or by fax to 214-271-0545.

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North Dallas (Addison) — Sublease space available. Law firm has 8th floor, 15' x 15' three-window office with built-in secretarial station in Class "A" building. Amenities include kitchen; reception area; receptionist; conference rooms; reserved, covered parking; high-speed data lines; copy and fax services; security. 972-364-9700 Roxanne Wilson.

DVAP'S FINEST



JAY DAVID HARTNETT

Jay David Hartnett is an attorney with The Hartnett Law Firm, handling complex estate and trust litigation. As chair of the DBA Probate, Trusts and Estates Section, he has been a strong advocate on behalf of DVAP by encouraging section members to accept DVAP probate and guardianship cases. Jay has handled several DVAP cases and has attended numerous DVAP staffing meetings assisting in the handling and promotion of pro bono cases. With the help of Greg Sampson, Elizabeth Howard and the Probate Section, Jay has also instituted a program where the section donates a portion of the sales of the 2008 Probate Manual to DVAP. Jay is a true believer that "volunteering for DVAP is rewarding and easier than you think!" Thank you, Jay!

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DVAP

Dallas Volunteer Attorney Program

A joint legal aid program of the Dallas Bar Association and Legal Aid of NorthWest Texas (formerly Legal Services of North Texas).

Classified Advertising 2008 Rates & Deadlines

Headnotes is mailed monthly to more than 9,500 attorneys in the Dallas area, and is ideal for announcing available office space, job openings, items for sale, services, etc.

DBA Member Rates: 40 words or less \$80; 41-60 words; \$112; 61-100 words \$140; or \$1.40 per word, for ads over 100 words.

Non-Member Rates: 40 words or less \$128; 41-60 words; \$160; 61-100 words \$190; or \$1.90 per word, for ads over 100 words.

Web Page Rates: Classified ads which run in Headnotes can also be posted on the DBA Web site for an additional fee of \$40 for a 30-day period, or \$60 for non-members. Web-only ads are also available. Ads are posted at www.DallasBar.org/members/classifieds.asp.

Deadlines: Ad text and payments are due on the 10th of the month prior to the issue date. For instance, ads for the July 1, 2008 issue of HEADNOTES are due June 10. Payment must be made at time ad is submitted. Mail items to Judi Smalling c/o Dallas Bar Association, 2101 Ross Ave., Dallas, TX 75201.

For additional information: Request rate card and details from JSmalling@dallasbar.org.

Business of Law

The Creative Lawyer & Authentic Professional Satisfaction

by Mary Louise C. Hopson

In almost 30 years of working with Dallas lawyers, I have seen both happy and unhappy examples. So, when I received a copy of the book *The Creative Lawyer: A Practical Guide to Authentic Professional Satisfaction*, I had to take a look, and was eager to review it for *Headnotes* readers.

What I found was an action-oriented book, one that encourages the reader to dive right into the quest of doing something positive about life and career, and to consider a new perspective on how to manage them. Published recently by the American Bar Association, this succinct soft-cover book provides a framework to help sort through any ambiguous feelings you may have about your life or your practice – a pathway to envision what you want out of your life, including your work, and how to get there.

Career coach Michael Melcher is uniquely qualified to write this book. A graduate of Harvard, Stanford Law, and Stanford Graduate School of Business, Mr. Melcher practiced law at a prominent New York firm for several years. He then served as a foreign service officer and ran an Internet start-up in the Silicon Valley. He presently is a partner at Next Step Partners, a leadership development and executive coaching firm.

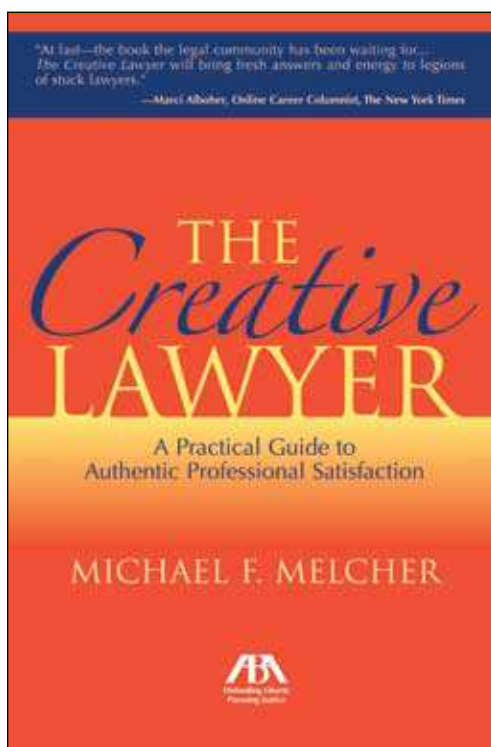
Professional satisfaction "is a question of creating what you want, not just waiting for it to appear," Mr. Melcher says. The creative lawyer "uses his or her own creativity to make a life that works." This creativity can be either in the practice of law or outside of it.

What are the keys to being a creative lawyer? Mr. Melcher suggests the following: Understand your own temperament, interests and values, and assess how they do or don't connect with your work. And create a "plan for integrating who you are with what you do."

The book is helpful for lawyers just beginning practice, as well as for the experienced lawyer who may wish to reassess and renew. A bevy of forms, lists and templates makes it easy to get started.

The author urges the reader to spend 20 minutes a day "on," not "in," his or her career. This time is not for billing client work; instead, the time is spent thinking about your own world and what you want it to be. You might use these dedicated 20 minutes to interview others for ideas, research and learn about a topic, attend a professional development event, do several specific client relations/business development activities (I agree!), clear out a drawer, or read a book about managing your career.

Mr. Melcher's book describes sev-



eral tools, including personality inventories, networking skills, and the concept of mindful communications. Another tool, the "values wheel," tests whether you are living a life that expresses your values; examples may include family connections, financial security and creativity. After listing your values, you assess on a numerical scale the extent to which you are living

each of them, and whether they are fully integrated into your life.

The book poses ideas and asks questions to get you on track. Are you an introvert or an extrovert? (More than half of all lawyers are introverted, compared with 25 percent of the general U.S. population.) How can you build relationships to strengthen your network? What can you do when you're stuck, perhaps because of money issues, and how can you think about money and what role it really plays in your life and how can you move forward despite these strictures?

What are my favorite aspects of this book? For one, I particularly enjoyed the intriguing reading lists, organized by topic at the back of each chapter. They

will encourage you to read more widely, to expand your world past the daily billable quotas and other quotidian chores of life. Another? I found the book's succinct lists, templates and questions useful to get the reader from *thinking* to *doing*. Still another favorite is the collection of real-life stories of people just like all of us who seek – and find – personal and professional fulfillment.

The American Bar Association is a rich resource for lawyers who want to improve their professional and business success, with a wide variety of reasonably priced books for the practitioner. The list price of *The Creative Lawyer* is \$39.95, but is available to DBA members at a 25 percent discount.

Visit www.ababooks.org, enter code PAB7EDBA upon checkout, and the 25 percent discount will be automatically applied to your order. For assistance, call 312-988-6112.

As my daddy has told me for decades, life is a series of choices, and no one ever said it was going to be easy. With this helpful book, you can tap into your own creativity to overcome hurdles and make the best choices – to find your own path to authentic professional satisfaction. **HN**

Mary Louise Hopson, who writes and edits the *Business of Law* column, assists lawyers with their marketing activities. She spent several years as an in-house marketing professional at two law firms, before starting her own consulting practice 15 years ago. She has served on several DBA committees over the past 20 years and is a past co-chair of the Publications Committee.

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