

March/April 2017

Lex | Brevis

WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF LAW



THE
BUSINESS
of
LAWYERING

FROM THE EDITOR'S DESK



AMARA RIDLEY

LEX BREVIS Editor-in-Chief

“Take a method and try it. If it fails, admit it frankly, and try another. But by all means, try something.”

— Ralph Waldo Emerson

The Business of Lawyering

This month we focus on the business of being a lawyer. We spend countless hours in school studying theory, substantive law and procedural law and if we're lucky we get to participate in experiential learning. I'm incredibly grateful that our Law School strongly encourages practical learning through externships, internships, clinical work and immersion in the legal community. I didn't realize how important this was until I started interning two years ago as a 2L. After interning at Gove Law Office it became even clearer how important it is to know how to run a law office. While I value academic learning, no amount of classroom studying can take the place of getting practical experience.

Practicing, from my observation, has as much to do with knowing and interpreting the law as it does with understanding what to do to keep an office running. Informal networking, office management tools, retaining competent staff and knowing how to retain and attract clients are paramount to staying in business. Another thing I learned is just how important it is to ask for help and seek out mentors. Asking for help ensures you do the work adequately and seeking out mentors is beneficial on both ends. Sure, you can do it alone but life is more fulfilling when you work with others.

I hope you enjoy the content this month and use the advice given to better yourself in your career, as I hope to do.

With Warm Regards,

Amara Ridley

Editor-in-Chief

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March/April 2017 Volume 44 Issue 8

- 1** From The Dean's Desk
Thoughts on The Business of Lawyering
- 3** Best Practices
- 6** Power of the Judiciary
*First They Came For The Muslims
and We Said Not Today*
- 11** Faculty Profile
Professor Taylor Flynn
- 14** Faculty Profile
Professor Rene Reich-Graefe
- 20** Business Model
For the Non-Business Lawyer
- 23** Academic Freedom
Freedom of Expression
- 26** Personal Injury
The Need For Personal Injury Attorneys
- 27** Burden of Proof
Sexual Misconduct on College Campuses

31

Spotlight On

**BETTER
TOGETHER**

The Story of a Growing
Local Law Firm

35

**Alumni
Profile**

Attorney

Gregory Bell
Class of 1983

Some thoughts on the

Business

of

LAWYERING



by **Eric Gouvin**

Dean and Professor of Law

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Thirty years ago, when I was a law student, no one in law school ever mentioned any of the things that lawyers in practice spend a great deal of time worrying about – such as getting clients and figuring out how to get paid. When I graduated and started working at the firm, the business end of lawyering suddenly became a big area of focus. I was totally unprepared. So, when Amara asked me to share some thoughts on the “business of lawyering,” I was happy to do so.

My thoughts are this:

Lawyers in private practice are -- to a greater or lesser extent depending on the size of the firm – small business owners and most do not really appreciate what that entails. Law schools have traditionally done a poor job of giving students any insight into the business of lawyering. Indeed, when I first became dean, alumni would routinely tell me “I got a great

legal education, but I had no idea how to practice law when I graduated.” As dean I have been trying to remedy that situation by increasing the number of clinics and externships in order to close the gap between the classroom and the practice, but also by instituting two courses on law office management to expose students to the business end of lawyering. I urge those of you who plan to practice in the private bar to consider taking one or both of those courses.

Practicing law can be a great experience, but you need clients in order to do it. Most law students do not stop to think about how they are going to attract clients. The best way to get clients is by doing a good job for existing clients and having them refer you to new clients. Word of mouth is by far the best form of marketing. But it is rarely enough. In practice, you will need to know something about marketing.

You will need to create a case

for yourself that will convince potential clients to give you money to perform a valuable service for them. This is true whether you are an associate in a big firm, a partner in a small firm, or a solo practitioner. This year at the School of Law Prof. Gale Candaras is offering a course in Public Speaking for Lawyers. I was encouraged to hear that the final project in that class is for the students to prepare and deliver a client marketing presentation. Every lawyer ought to know what they have to offer and be able to clearly communicate that value proposition to potential clients. In my firm we were taught to practice short presentations that could be delivered during the course of one chair lift ride at a ski mountain. You never know where you will find clients.

One thing that is clear, though, is that you need to get yourself out into the community. It is pretty unlikely that potential

clients will be traipsing through your living room while you play video games and watch March Madness. Get out of the house – serve on volunteer boards, take a turn as lawyer-for-the-day in housing court, get appointed to local government committees. People hire lawyers in whom they have confidence – you need to have confidence in yourself to attract potential clients – and you need to find ways to demonstrate your competence to others in non-legal settings. That being said, you do not want every client who walks in the door. It is easier to not take on a problematic client in the first place than it is to extricate yourself from a bad client once the representation has commenced.

How will you know a good client from a problematic client? Experience is the best, and most unforgiving, teacher. It takes judgment to make the call and judgment is something that comes in time after making mistakes. In the meantime, however, it is useful to have an experienced mentor to use as a sounding board. Every good lawyer has a couple of trusted advisors who can be a reality check or source of wisdom when dealing with professional issues. As part of the “business” of lawyering I urge you to become involved in the bar associations in your county, state, and nation. By networking with fellow attorneys you are likely to find that network of mentors who can help you out of a jam. As a bonus, if you make a good impression you may also find yourself receiving referrals from other lawyers when they are conflicted out of a representation or for some other reason do not wish to take on a specific client.

While marketing is a big issue in the business of lawyering, all the other aspects of business come into play, too. Decisions about how to price your services, collect accounts receivable, manage your time, invest in technology, manage risks, and hire personnel all arise in the law practice setting.

I practiced law a long time ago and in a big law firm, so many of these business issues were handled for me by other professionals in the office. If you are not in a big firm, however, you will need to pay attention to all of these things and

more. About five years ago my wife, who is also a lawyer, left a big firm to start her own practice. All of the business issues I listed, and more, were front and center for her. She reached out to the Law Office Management Assistance Program (LOMAP) that is run by the Massachusetts Lawyers Concerned for Lawyers program. They were an incredible resource, and best of all they are free! Actually, your bar dues pay for the services, but you would be well advised to seek out the assistance of LOMAP if you are setting up a firm.

In addition to LOMAP, the various bar associations provide assistance in practice management, offering, for example, CLE programs in how to hang out your own shingle, publications providing tips from practitioners, and – in the ABA – an entire section devoted to the topic complete with its own magazine. Finally, there are on-line communities, such as SoloPracticeUniversty.com that provide useful content on matters relating to law firm management along with a virtual network of fellow attorneys who can help you think things through.

In the end, the law is a profession. We always need to be mindful of that and to uphold that aspect of our work that makes it professional. At the same time, however, the practice of law is a business and you cannot afford to be ignorant of how business principles affect your ability to practice your profession. Finding the right level of comfort between professional and businessperson is a challenge for every lawyer in the private bar, but one that can be overcome. Good luck!

BEST PRACTICES

Advice from the Pros



TALIA GEE, Esq.

SULLIVAN, HAYES & QUINN, LLC

Area of Law: Employment Law

Class of 2010

President-Elect, Board of Trustees of Western New England University School of Law

As far as business advice that I could provide, I would say if you are an associate, realize you have two clients: the partner and the actual client. You will need to service both clients like your livelihood depends on it because, well, it does. To find a niche, look where you find a need but not a lot of people providing the service. If you want to provide a service that many others provide, such as criminal defense, look at how you can attract clients that others may have difficulty attracting. Focus on how you can differentiate yourself from others, whether it be with unique fee structures or practice areas. Think about what you would like your day to look like. That may give you an indication about the area you should practice in. It may also provide you with insight on how to be successful in that area. Also, ask for business advice from non-lawyers. Remember that unless you are practicing ethics or professional liability, you will likely be looking to attract clients who are not lawyers. So think about how other companies have built successful businesses and brands. Try to emulate what you learn with your own unique spin on it.

“Learn where the court house is. Learn who the clerks are. Get to know the clerks, do not be pompous. These are the people who are going to work with you and I mean with you for your entire career.”

—Attorney Michael Borg, '88



MICHAEL BORG, Esq.

SOFFER, RECH & BORG, LLP

Area of Law: Commercial Collection/Litigation

Class of 1988

What is some helpful advice you were given when you started practicing?

When I started practicing law as a solo, PDAs were in their infancy. I thought a cell phone was all that I needed. I viewed

a Blackberry as a toy – a very expensive toy. Then I realized that I missed being referred a couple of closings because I did not get back to my office to review my email in time. At that point I knew that the Blackberry would be more of a tool than a toy. So to answer the question about helpful advice, I think the key is to be reachable at any time, any place. I formed a NYS Corporation while I was outside of "Morocco" at Epcot Center in Florida!! You gotta do what you gotta do...the family understood!

How do you brand yourself as a solo practitioner?

I tried not to "brand myself" as a solo practitioner. I never referred to myself as the Law OFFICE – singular – of Michael A. Borg. I was always The Law OFFICES – plural – of Michael A. Borg. I sought permission and listed colleagues as "of counsel" on my letterhead. They did the same with me. (Note that it is required for professional liability insurance purposes that there be a responsible attorney somehow associated with you, however loosely. This network of "of counsel" attorneys helps tremendously in that regard). I tried to create the illusion of being bigger than I was. I would never turn down a case. If the matter was outside of my personal area of expertise, my response would be someone in my office handles that and I will take care of it. In my experience clients like the fact that you are on your own because they like dealing with the same person. However, they also like the fact that you have others around you in case something unique comes along. It is also helpful when it comes to leasing office space.

What tools do you use for successful law office management?

Back in 1995 when I started, Microsoft Outlook was in its infancy. It might not have even been born yet. I do not recall. I needed a comprehensive, calendaring and contact management software package. I found Amicus Attorney. They are a company owned by Gavel & Gown in Toronto, Canada and they provide a pretty good practice management solution. They are a little pricey, and now that I all of my calendaring and contacts in it, I am kind of married to

it. I can't break away as the data conversion would be too costly and time consuming. Today, I think that the Microsoft Outlook package does everything that Amicus Attorney does, with less of a price tag. There are other practice management software packages out there. Go to a couple of Computer Law Sales shows! QuickBooks was also a great help for accounting and escrow management purposes.

What obstacles did you overcome?

I am still trying to overcome the obstacle of cost. Rent, health insurance, office equipment, phone systems, you name it. I do not think you overcome these obstacles. I think you just have to deal with it. Having similarly situated attorneys on your letterhead and perhaps in your office space may allow you to form a management Corporation. If each of the attorneys on your letterhead or in your office space are "employees" of that corporation may draw a minimum hourly wage for a certain number of hours per week, you may qualify as a "group" for health insurance purchasing purposes. I have done this in the past and it worked.

How did you find your niche in a sea of attorneys?

My first real job out of law school (if you discount the first 6 months of chasing ambulances) was in the field of commercial litigation. I found an area of law that I was good at and exploited it. I developed a good rapport with the various clients at the firm where I was working and when it was time to go out on my own I had the contact information of the various individuals with whom I worked and many came with me when I hung out my shingle. My advice in that regard is to maintain your own contact list so that in the event you elect to bolt from the firm that you are in, or are shown the door by the firm that you are in, you can hit the ground rolling.

One other thing that I think is very important is to find a mentor. Find an older attorney, preferably an alumnus and pick his or her brain. Learn where the court house is. Learn who the clerks are. Get to know the clerks, do not be pompous. These are the people who are going to work with you and I mean with you for your entire career. Become friendly with them. If you see them outside of court buy the first round of drinks. If you have extra tickets to the ballgame, give'em to them. (Many have turned down my NY Jets tickets – yeah, some things you just can't give away, but they all appreciated the offer) You will reap tremendous rewards for such collegiality and generosity.



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Questions? Contact Renee at 413-782-1459 or rrastorfer@law.wne.edu

DATE: Saturday, April 8th, 2017

TIME: 10:00 a.m. - 1:00 p.m.

PLACE: Library Conference Room 330

FIRST, THEY CAME FOR THE MUSLIMS: AND WE SAID “NOT TODAY.”

The Power of the Judiciary (and the People) in the Trump Administration.



by **Chelsea Donaldson**
LEX BREVIS Staff Writer

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This article is, ultimately, about the power of the judiciary within the Trump Administration, with a focus on the recent scuffles in the court system concerning the two Executive Orders colloquially known as the “Muslim Bans.” But I would be remiss to dive immediately into what the judiciary has done to protect our Muslim sisters and brothers without taking a firm stand, as a law student and as a person, with the people who practice this wonderful religion.

President Trump has made no secret of how he feels about the religion of Islam, or those who practice it. A major facet of his campaign was the now-infamous “Muslim ban,” in which he advocated for a complete shutdown on all “Muslim” immigration—including refugees.¹ President Trump has also advocated for the mur-



der of the families of terrorists (which is a war crime)², a “Muslim registry” akin to the National Security Entry-Exit Registration System (“NSEERS”)³, and has made various incendiary remarks about a religion that has roughly one billion followers globally. These are not “alternative facts”—the current President of the United

States spoke these words, and regardless of whether or not the President “changed his mind,” the policies he has currently enacted speak volumes to how he views a fairly sizeable portion of the American population.

The Executive Order blocking the influx of Muslim immigrants (no matter what version the President is mar-

By Lorina Murphy

“No one knew what was going on, much less the attorneys on the ground trying to figure out how our entire immigration system had shifted within the hour.”

keting) is unconstitutional—but that is a law student’s answer to a much larger problem. Too often, I think law students focus on the law without focusing on what the law affects. This article would be pointless without focusing the spotlight on the people who are under attack by this Administration’s attempts to ostracize them from this country: our colleagues, our friends, our wives, our husbands, and our future attorneys.

So, here it is: the disclaimer, in plain and simple terms. Muslims are welcome here. There is no justification for the Executive Orders that warrant the persecution of an entire group of people who rightfully belong in this country. We, as a people, are better than that and we, as law students, must recognize that our sisters and brothers require us to say, loud and clear, that we advocate for them just as we do any other individual who requires assistance. There is nothing more “American” than the diversity that packs our country. We would not be where we are today if our country continued to be run by the elusive-and-exclusive “White Boys’ Club.” We, as people, are better than that.

Now, to the meat of the issue.

What has been happening with the judiciary, lately?

Law students know the power of the judiciary. Our legal career is spent within the halls of the judiciary, arguing cases in front of women and men wearing black robes that have the unique ability to shape the law as the Constitution demands. However, the judiciary (no matter what the level) tends to write in a fashion that doesn’t necessarily allow for the interest of people who haven’t been through law school. Not every justice is a wordsmith akin to Justice Scalia, who causes even the most bored of law students to pay attention to sixty-page opinions on the off-chance that a newly created word (such as “argle-bargle”) appears. Quite a few court opinions and orders are written in “legal-ese” and require a trained eye to pick apart what is important. This leaves an entire group of Americans “turned off” from keeping up-to-date with what the judiciary does on a daily basis.

As a result of the disenchanting nature of our judiciary, I get text messages from friends and family when they see “legal things” in the news, asking a plethora of questions that seem to be common sense to legal folks like us, but not so much to folks in the real world. Normally, I only get these questions when the Supreme Court begins releasing opinions en masse—cases concerning the issues that frequent the front page of the New York Times and the Washington Post. Nobody really cares to talk about scheduling conferences, preliminary injunctions, motions to dismiss, or class action lawsuits unless it’s front page news. That’s for us, the law students, to sipher through when something “important” happens.

“When the dust settled and the first Muslim Ban was blocked, the end result seemed to be this: first, they came for the Muslims—and we said, “Not this time.””

Then, on a late Friday afternoon in January, came the Trump Administration’s Muslim Ban.⁴

All of a sudden, the judiciary was in the news. The words “temporary restraining order” and “preliminary injunction” were front page headlines next to the words “District Court Judge” and “lawful permanent resident.” The CNN News Alert app on my phone was going off every hour, on the hour, with new updates about the ACLU’s attempted temporary restraining order in New York City, IRAP attempting to get refugees out of detention, and lawyers squatting in airports drafting memoranda on the fly utilizing awful airport WiFi pro-bono. No one knew what was going on, much less the attorneys on the ground trying to figure out how our entire immigration system had shifted within the hour. Even the Department of Homeland Security seemed confused as to how the Executive Order happened, or what it entailed.⁵

Meanwhile, as I was watching this madness unfold, I watched attorneys armed with nothing more than a Bluebook and a LexisNexis (or Westlaw, depending on your preference) account move into action and immediately rush to the court system, filing temporary restraining orders (and, eventually, preliminary injunctions) against the Executive Order. Even more

incredibly, I watched non-legal folks share minute-by-minute updates of the ACLU arguing in District Court for a TRO, working to understand what a TRO was, what it entailed, what the ACLU needed to do in order to get one, and texting me updates of the ACLU’s ultimate victory in New York barring the Executive Order from being enforced. Non-legal minds tuned in to the Ninth Circuit’s oral argument debating whether Washington had the standing to file for a nationwide temporary restraining order against the United States of America—after, of course, Googling what the word “standing” meant in the context of a courtroom.

When the dust settled and the first Muslim Ban was blocked, the end result seemed to be this: first, they came for the Muslims—and we said, “Not this time.”

President Trump has made no secret of how he feels about the judiciary. He has made several remarks (via Twitter and other social media networks) that seem to indicate that he has little respect for judges, and little understanding of how our federal judiciary works. On the night of the first Muslim Ban, President Trump tweeted: “Why aren’t the lawyers looking at and using the Federal Court decision in Boston, which is at [sic] conflict with ridiculous lift ban [sic] decision?”⁶ We, as law students, know why—the decision in Boston struck down a TRO that was specific to Logan International Airport, whereas the decision in Washington was a nationwide grant of a motion for a preliminary injunction. The President’s ignorance (and disdain) of the judicial branch became only more apparent as the fight continued, but ultimately, the judiciary (and the attorneys who rushed to said judiciary to file the necessary motions) spoke, loud and clear: this Muslim Ban is not going to happen.

The Trump Administration finally seemed to realize that the judiciary was not going to tolerate a massive shift in the immigration system without a solid argument to best the ACLU, the Center for Constitutional Rights, and other organizations that stepped up to the plate when Muslims were being unlawfully detained en masse in airports. After the Ninth Circuit delivered a blistering blow to the Trump Administration's Muslim Ban by upholding a nationwide preliminary injunction, it was back to the drawing board. Another Executive Order was passed quietly (without cameras or fanfare, with more carefully worded language and with the eyes of lawyers upon it), to take effect March 16, 2017, at 12:01 AM—only to be blocked by the State of Hawaii, before it took effect, by a nationwide TRO. Maryland quickly followed with a TRO of their own.⁷

President Trump, so far, has stayed off Twitter and taken to the press to declare his intent to appeal this second shutdown of his Muslim Ban, but it is unclear how successful he will be at defending it. The second version still poses a disparate impact upon Muslim people and targets six Muslim-majority countries directly within the language. Even more troubling seems to be the Trump Administration's (almost exclusive) reliance on the "plenary power doctrine," which allows the executive branch extensive control over the immigration system under the theory that the nation's sovereign has the right to determine their own borders. This matters, because without any real evidence that the Muslim Ban was enacted with any specific situation in mind, the only "weapon" the Trump Administration has within their armory is the plenary power doctrine, which did not impress the Ninth Circuit. There have been zero fatal terrorist attacks within the United States from any of the countries listed within the ban.⁸ This means, when forging forward with a new ap-

“However, the American people (through the power of the judiciary) have sent a clear message to President Trump about our priorities. Muslims are protected by our Constitution and are welcome within our borders, just like any other individual who has a right to be here.”

peal to this new set of preliminary injunctions, the judiciary is faced with another set of choices: (1) how much power does the executive have over immigration; and (2) does that power supersede the First Amendment's Anti-Establishment Clause, to protect all religions within the United States' borders?

We may not find out these answers for quite some time. We are, after all, at the early stages, and it is unlikely any court will hear the merits of the Muslim ban anytime soon. However, the American people (through the power of the judiciary) have sent a clear message to President Trump about our priorities. Muslims are protected by our Constitution and are welcome within our borders, just like any other individual who has a right to be here. No human being is illegal, and Muslims are deserving of freedom and prosperity just like any other person in the United States. Whether the judges feel as strongly as I do remains to be seen. What is clear is this—the Trump Administration's fight to discriminate against the religion of Islam is not going to be as simple as they thought it was going to be.

REFERENCES

¹While the Trump Administration states the (first) Executive Order blocking immigration from seven Muslim-majority countries, and the (second, rewritten) Executive Order blocking immigration from six Muslim-majority countries is not a per se Muslim ban, the President himself frequently referred to such directives as a Muslim ban throughout the duration of his campaign. The campaign promise (and subsequent press release) is still live on his website (and archived by the author, in case of deletion). See Donald J. Trump's Statement on Preventing Muslim Immigration, (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> [https://perma.cc/HW2A-5G7J].

²Nick Gass, Trump: We Have To Take Out ISIL's Families, Politico (Dec. 2, 2015), <http://www.politico.com/story/2015/12/trump-kill-isil-families-216343>.

³Aaron Blake, Trump Says We've Known His Muslim Ban and Database Plans 'All Along.' But We Still Don't—Not Really, Wash. Post (Dec. 21, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/11/17/the-evolution-of-donald-trump-and-the-muslim-database>.

⁴The "Muslim Ban" has two incarnations. Executive Order 13769, enacted on January 27, 2017, was replaced by Executive Order 13780 on March 16, 2017. Both were blocked by federal courts in multiple jurisdictions, via a temporary restraining order or a preliminary injunction. Richard Gonzales, Joel Rose, and Merrit Kennedy, Trump Travel Ban Blocked Nationwide By Federal Judges In Hawaii, Maryland, NPR, (Mar. 15, 2017), <http://www.npr.org/sections/thetwo-way/2017/03/15/520171478/trump-travel-ban-faces-court-hearings-by-challengers-today>.

⁵Many federal agencies had no idea who the Executive Order initially affected, and some lawful permanent residents (green card holders) were deported in the chaos. See Michael D. Shear and Ron Nixon, How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos, N.Y. Times, (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html>.

⁶@realDonaldTrump, Twitter (Feb. 4, 2017, 6:37 PM), <https://twitter.com/realdonaldtrump/status/828024835670413312>.

⁷Gonzales, supra note 4.

⁸See Christopher Mathias, There Have Been No Fatal Terror Attacks In The U.S. By Immigrants From The 7 Banned Muslim Countries, Huff. Post., (Jan. 28, 2017), http://www.huffingtonpost.com/entry/no-terror-attacks-muslim-ban-7-countries-trump_us_588b5a1fe4b0230ce61b4b93.



By Lorina Murphy

Professor Taylor Flynn



by **Marketia Wright**
 LEX BREVIS Staff Writer
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What’s your favorite thing about the law? Least favorite?

My favorite thing about the law is that citizens can use it to effect social change; my least favorite thing is that because the law is “backwards-looking” (i.e., based on what was done in the past), change can occur at a deadly slow pace, if at all.

Did you always want to go to law school? If not, what made you want to go to law school?

As a kid, I wanted to be a teacher. In college, that morphed into thinking I’d become a French professor. But my heart was always pulled towards issues of social justice, so law school called my name.

What did you enjoy most about law school? Least?

I loved wrestling with the ideas in law school. To be honest, though, I didn’t enjoy law school itself. While law school is always challenging, older style professors routinely ridiculed and humiliated students in front of our classmates on the theory that it prepared us for the court room, which was not conducive to learning.

If you had to do it all again, would you?

Of course!

As a law professor, you are now where your professors used to be. What is one thing that is done in law schools now, that you wish was done when you were in law school?

I wish we had the wealth of experiential opportunities that students have now. We certainly had some of them, but not the same volume. There are far more clinical opportunities, simulations, intern- and extern-ships, etc, which give students a leg up when it comes to practice.

What made you transition from practicing to teaching?

I had always known I wanted to teach, and my favorite part of being at the ACLU was working with the interns, so eventually it made sense to transition to teaching full-time!

What do you like most about teaching? Least?

I love getting to know students well over a period of time and watching them grow and progress. The thing I like least is the thing I’m willing to bet all professors like the least – grading exams.

What was your first legal job?

I interned for the International Commission of Jurists, a human rights organization in Geneva, Switzerland. Pretty great for a first job, huh?!?



Education:
 B.A., Dartmouth College,
 J.D., Columbia Law School,
 J.S.M., Stanford Law School

Courses Taught:
 Civil Procedure, Conflict of Laws, Constitutional Law, Family Law, Jurisprudence

Tell us about your first experience in court or your first big assignment.

I was hired by the ACLU a few years out of law school, primarily to be their LGBT rights lawyer, though I knew I'd be doing other cases as well. For my first case, I represented a criminal defendant who had been questioned in violation of his "Miranda" rights. It was personally challenging, because the client had been convicted for killing another man who had propositioned him. It turned out that not only was my client anti-gay; he was also a white-supremacist. Neither of my client's biases had any bearing on the case, but it brought home to me the commitment required by remaining steadfast to all Constitutional principles.

Do you find yourself critiquing legal shows about their "realness" factor?

Always. You just can't help it.

Tell us something we would never be able to guess about you? What is your guilty pleasure?

Until recently, I owned a horse and a hedgehog.



When you're not helping to shape legal minds of the future, what do you enjoy doing in your spare time?

Hiking, meditating, kayaking (not all at once...).

Tell us about your favorite vacation?

Kauai. Did I mention it was in Kauai!?!?

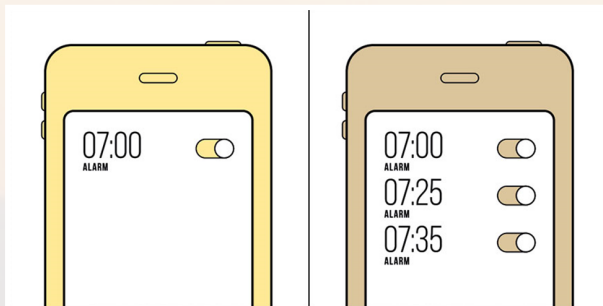
What is something you've always wanted to do, but have yet to do?

Get a pilot's license.

What is one food that you would eat everyday if you could?

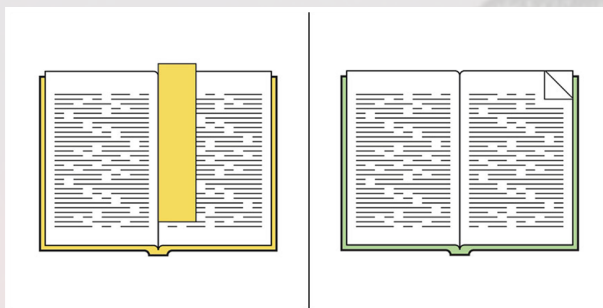
Thai food.

Set one alarm or multiple to wake up on time? If multiple alarms, how many times do you hit the snooze button?



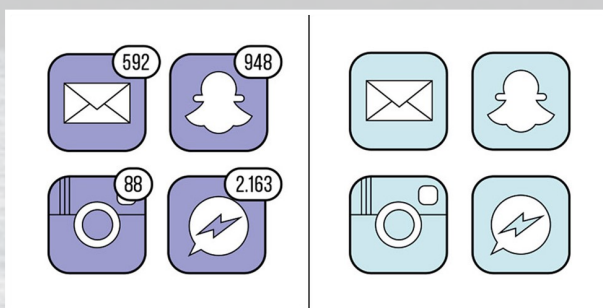
One alarm, hit the snooze twice. On a bad day, 3 times.

When reading do you use a Bookmark or fold the page?



I hate to admit it, but both.

On your phone are there a million notifications or no notifications?



Depends on the app. Mostly a million.

You are on a deserted island, what 3 things do you want with you?

Coffee. Chocolate. LOTS of sunscreen!

SPRING 2017 SERIES

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and the Springfield Public Forum



THE FIRST 100 DAYS

Please join us for a discussion of the critical issues that President Trump's Administration is likely to address in its early days. This program began on January 19 and will continue through the spring. Each session will be led by experts on the issue being addressed. Audience participation is encouraged.

April 6
Trump and Terrorism

April 10
Civil Rights in Education

April 20
LGBTQ Concerns

All events are held in the Blake Law
Center at 12:00 noon.

This series has already covered topics on the Future of Health Care, Litigating the Trump Immigration Order, Environmental Law in the Trump Administration, the Impact on Small Businesses and Entrepreneurs, and Trump and International Organizations.

This series is free and open to the general public.



Produced by the Institute for Legislative and Governmental Affairs
in the School of Law at Western New England University.

Professor Rene Reich-Graefe



by Marketia Wright
LEX BREVIS Staff Writer
Marketia.Wright@wne.edu



Education: LL.M., University of Connecticut School of Law, LL.B. (equivalent), Free University of Berlin School of Law

Courses Taught: Business Organizations, Closely-Held Businesses, Corporate Social Responsibility, International Business Transactions, Sales, UCC Survey, ABA Negotiation Competition, Vis International Commercial Arbitration Moot, International Business Transactions & the Closely-Held Business (online LL.M.), Operation, Management & Control of the Closely-Held Business (online LL.M.)

What's your favorite thing about the law?

Nothing is ever settled or perfect. You can never take the status quo for granted. You can--indeed, are charged to--always question everything and see whether matters--and, if so, which--still make sense to you, notwithstanding the law's (often glaring) imperfections as a minimum-standards system of engineering (and managing dissension in) our communal and social realms.

Least favorite?

Same as before--nothing is ever settled or perfect? No, seriously--because (the rule of) law relies on convention, i.e., a willingness to self-subscribe in our minds, thus, self-proscribe in our behavior certain rules deemed necessary for purposes of engaging with, and accepting, each other, we, as lawyers, are made timid of legal change, timid of exploring creative, better solutions in the course of this massive-scale and constant exercise of legal renewal and social metamorphosis. The mind is always fickle. As a result, and in general terms only, lawyers never experiment enough (and neither does the rest of society because, for one thing, we don't provide them the tools of experimentation and gradual change). Way too often, we still live in the law according to rules that, for purposes of the western world, have been 'perfected' by eighteenth- and nineteenth-century thought and that then have been 'mucked up' ever since until the present. Every 'muck-up' happened because of the lack of temerity to re-think the whole, to entertain something better, and to craft novel solutions accordingly. We need vast amounts of really meaningful (and really effective) social innovation in

order to address the existential challenges created by modernity, and we are so much behind the curve.

Did you always want to go to law school? If not, what made you want to go to law school?

I never planned to go to law school--it just happened to be one of the happiest accidents of my life. Law is an undergraduate program of study in Germany. After high school and, at the time, close to two years of 'civilian service' (i.e., mandatory governmental service for conscientious objectors in lieu of military service), I enrolled at the free university of Berlin in German literature, drama, journalism and information sciences. After a year of undirected studies (I valiantly tried to give my studies direction but received close to none from the programs I was enrolled in--that's, I guess, what a no-tuition educational system gets you), I audited a couple of law school classes, got instantly hooked and never looked back (though, most of my legal studies also remained self-directed given that the free university at the time had over 5,000 law students and that I often sat in classes of more than 500 students).

What did you enjoy most about law school?

I still love the ability you get to think everything through--under your own brain's steam, your own moral compass (because whatever compass would you use and rely on otherwise), your own challenges and shortcomings, your own self-critical eye, your own humility. I often call a legal education the best analytical training money can buy. Of course, there are many orthodoxies and methodologies that, in real life, limit what you can achieve as change for the better in other people's lives (and, talking about humility, we, as lawyers/social engineers, should be very limited in this regard given that others always have to pay for our mistakes)--but, in principle (and as with any other principle, you better use it if you don't want to lose it), you are free to challenge and think through anything and everything--not as a mere intellectual exercise to sharpen your wits, but always as a means to put

your individual (and, ideally, all of our collective) genuine benevolence 'on steroids.'

Least?

Law is powerful knowledge--holistically, it can only be acquired by some, never all. Accordingly, legal knowledge is power, too. Power is only legitimate when employed 'at law.' still, power also always corrupts. In every legal (and legal education) system, there is an inevitable tendency to silence robust independent thought that challenges both orthodoxies and 'the powers that be' (no matter what or who they are) and that rewards the submission to groupthink, the re-manifestation and replication of social hierarchies and classes, and a voluntary 'servitude' to, and defense of, what is ultimately an immoral distribution of both private wealth and public goods.

If you had to do it all again, would you?

Hell yeah--mistakes, warts and all!

As a law professor, you are now where your professors used to be. What is one thing that is done in law schools now, that you wish was done when you were in law school?

Thinking things through and what could be called 'applied thinking' are two separate things. The law in your head and the law lived when people's lives, interests, preferences, etc. are at odds with each other are two very separate things. How terrible an experience it can be to try to be helpful, to bring your genuine benevolence and trained legal mind to the assistance of others and to ultimately fail them--even when you have done 'everything right' within the law. Of course, there will always be plenty of one's own mistakes--great (but painful) experiences by which we perhaps learn the most. But then, we can also benefit so much (and so much more easily) by piggybacking on the experiences of others and by making our own experiences in the application of law in a less charged environment than our own legal practice. So, what we now call

experiential learning as part of a law-school-based legal education was in its absolute infancy (perhaps, even embryonic) at the time of my studies--both in Germany and the United States. I would have loved to participate in a transactional clinic or an alternative dispute resolution simulation course.

What made you transition from practicing to teaching?

Another very, very happy accident--I never planned to use my law degree in order to teach. But, as I regularly explain in more detail in business organizations, people (in particular, lawyers) work too much in this country (there it is again, that lack of experimenting and that single-minded accumulating of income and wealth with no attendant benefits but legions of costs). I loved being in private practice, I loved (and still miss) the transactional work I was doing--forward-looking, dissension-reducing, helping people to put something together, to pool their resources and, ideally, to create a common good--something that I could also recognize as valuable in the larger realm. But not for an average of 80 hours per week! So, I explored a lot of different options that would allow me to stay in this country (given that I then was, and still am, a 'resident alien'). Teaching was one of those options. I did a lot of planning but it also developed for me very quickly and naturally. I was extremely lucky to connect with the good people at the University of Connecticut at a time when they were looking for someone as a temporary teacher that I could be, and then I was even luckier that the good people at Western New England took a chance on me and gave me and my teaching a permanent home.

What do you like most about teaching? Least?

I love everything about teaching--seriously, there are all ups and no downs (as I usually say to Professor Noah, 'I'm a lucky bastard!'). I guess, if there were only one or two types of ups, they might over time become routine, run-of-the-mill, but there is such a diversity of ups (including that the law never stands still) that none of them ever gets old to me. So, I guess, it's the broad diversity of ups that must be what I like most. When I'm a bit sick (but fit and non-contagious enough in

order to teach), teaching a class or two will most often cure me. No kidding! Teaching really makes me a better me.

What was your first legal job?

Do we talk about work that was legal or about work in the legal field? Well, just for the sake of answering completely, I never generated money by illegal means. My first job out of law school was to clerk at the Berlin Court of Appeals as part of the two-year training period that is mandatory in Germany before admission to the bar.

Tell us about your first experience in court or your first big assignment.

I really don't remember--probably because many of the first assignments (for a very long time at the beginning) were smaller matters. Probably, it was to review and summarize the insurance policies of the entire grove crane business which was acquired at the time by a competitor (the transaction had the internal codename 'project hoist'--a fine example of the residual creativity of practicing lawyers).

Do you find yourself critiquing legal shows about their "realness" factor?

I watch almost no TV (too little time), and I find myself ignoring legal shows. Now, if they would produce an extended contract negotiation show for the financing of a wind farm involving the energy-company sponsor, the banking consortium, the equity investors, the manufacturer of the windmills, etc., I would probably watch that. But, please, no commercials.

Tell us something we would never be able to guess about you? What is your guilty pleasure?

According to a colloquial German saying, the sum total of all vices always remains constant. Accordingly, guilt is not an option. As a general statement, I really like things that have been fermented at some point during their value-added process and to perhaps answer the first question, I am much more of a shy and introverted person than people usually assume. I could spend most of my waking hours outdoors,

largely by myself. I know, I know--not an option in my profession. Did i already mention my lack of planning as regards to both law and teaching?? For example, I love very long day hikes, and I love solitary birding.

When you're not helping to shape legal minds of the future, what do you enjoy doing in your spare time?

Traveling with Professor Noah--whether it's just for a day, a week, or an entire month. Also, learning ballroom dancing with Professor Noah. She'll be the first to tell you that I have a tendency to overthink my dancing steps--comes as a complete shocker, no?

Tell us about your favorite vacation?

I love driving and going on road trips. I never make enough time for road trips. After my high-school graduation, two of my best friends and I went on a trip to Austria, Hungary, Yugoslavia (as it then was--today, Croatia and Slovenia), northern Italy and Switzerland. We each had about \$350 in our pockets, what turned out to be a really reliable car, and a tent--and we made it all work for almost four weeks before we ran out of money. Vienna was an early highlight, Budapest, Zagreb and Ljubljana were amazing (and dirt cheap because this was still two years before the iron curtain came down), Venice and Verona still feel dreamlike in my memory (Venice in particular because we explored the city mainly during a long night followed by a very sleep-deprived day given that, at that time into the trip, we could not even afford a hostel), and the weather at Lake Garda, Lake Como and Lake Lugano was so brilliantly sunny, with each scenery set into the midst of these spectacular summer alps, that I am still squinting thinking about it.

What is something you've always wanted to do, but have yet to do it?

Even if I were to live to what is currently the average life expectancy for men (which, of course, I am not counting on--it's always a good thing to acknowledge one's mortality), I have already long

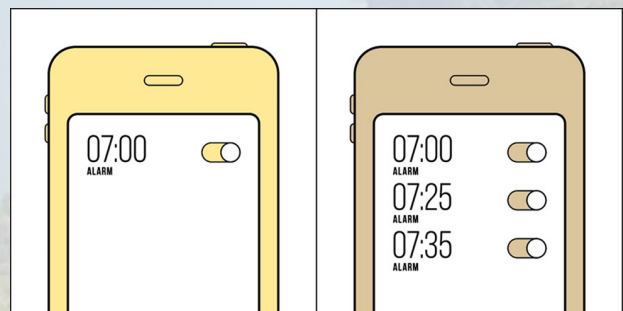
run out of time to do even most of the things that I would love to do. For example, there are so many instruments to learn--the mandolin, the lute, the accordion, the uilleann pipes. So many languages to learn in their native places--Gaelic, Czech, Danish, Norwegian. So much to craft with one's bare hands --pottery, woodwork, screen printing, brewing beer.

What is one food that you would eat everyday if you could?

It's probably obvious now that I like a good amount of variety in my life. In general, whatever food you come up with gets old very quickly when you have it day after day after day. But, there's a solution. I love potatoes--always have and there is an infinite variety of how you can prepare potatoes. I haven't come across a way that potatoes can be prepared that I have not fully and utterly enjoyed. So, potatoes it is and then you wash them down with a good glass of quality beer (of which this country now has the largest variety in the world)--man shall not live by potato alone!

Which type are you?

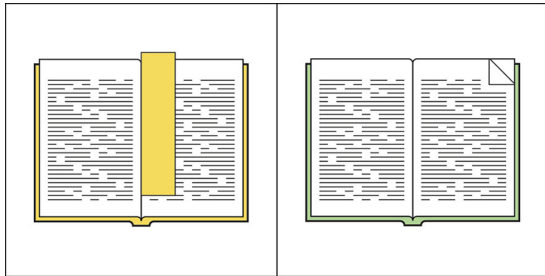
Set one alarm or multiple to wake up on time? If multiple alarms, how many times do you hit the snooze button?



I thoroughly dislike leaving the house in the morning without a decent, time-is-not-an-issue breakfast. If I really have to get up early for something, I set the alarm, roll out of bed when it sounds, grumble and stumble through breakfast, wait for the coffee to kick in, and get going. After that, the rest of the day is usually a complete loss. So, on mornings when i don't have to get up before the crack of dawn, I rather set my alarm (if I have to set one) for only a bit after the crack of dawn--one alarm--hit the snooze button

once or twice, and then leave myself plenty of time, i.e., about an hour minimum, for breakfast--which is what any decent breakfast routine requires in my book.

When reading do you use a Bookmark or fold the page?



Depends on what I am reading and how stubborn I am. I still believe that my memory should work well enough to let me remember the particular page I stopped reading on yesterday. Usually, I try to think about the page number as a section in article 2 of the UCC or in the German penal code; but, alas, this rarely still works at my age. So, given that I usually don't read novels for diversion, read/browse in multiple books, and often don't finish any of them front-to-back, a bookmark is the only option unless I am again stubborn and have my memory fail me (now that I think of it, there may be a correlation between my failing memory and the urge to start reading another book!). I will earmark pages in magazines, catalogs, and any other reading that I won't consider as serious reading; but then I will also earmark things that I want to go back to or follow up on--so, the same item of such reading may end up with many more than just a single earmark--a clear sign that the reading gave me many ideas (most of which, of course, never come to fruition--oh well).

The PILA Auction is Coming Up!

The American Bar Association defines public interest law as work on behalf of individuals or causes that might otherwise lack effective representation within the legal system. This public service practice takes place in various legal services and law reform organizations, as well as government agencies at all levels. The types of public service offices include, but are not limited to: nonprofit and legal services organizations, public defenders, local, state and federal government, courts, labor unions, foundations, private/ public-interest law firms and many more.

The Public Interest Law Association (PILA) is a student-run non-profit organization dedicated to promoting legal work that serves the public and social justice initiatives in the community and elsewhere. Each year, PILA holds an annual auction to help law students who wish to practice in the area of public interest law. The goal of the auction is to raise funds for scholarships that will assist several students participating in summer pro-bono internships. The auction has been successful each year and have afforded students the opportunity to do the work they are passionate about and serve communities in need, while receiving a stipend for their hard work.

On Thursday, April 13th, between 4:00pm-7:00pm, PILA will be holding its Annual Auction in the Law School Commons. The event will begin with a silent auction giving students, faculty, administrators, alumni and all other guests the opportunity to bid on items donated from vendors throughout the Massachusetts and Connecticut area, faculty, and various Bar Prep Courses. Immediately following the silent auction, the live auction will commence, hosted by our very own, Professor Bruce Miller! The event is free and open to the community. Come support your colleagues and the law school community. We hope to see you there!

For more information/ donations, please email Michelle Tsang at pilaatwneu@gmail.com

**Western New
England
University School
of Law**

and

**Public Interest
Law Association**

Presents



2017 PILA AUCTION

What is **PILA**?

PILA is a student-run non-profit organization dedicated to promoting legal work that serves the public, and improves the quality of life for individuals in our community and elsewhere.

APRIL 13, 2017 - Law Common, 4:00-7:00pm

Come support our students and bid on some amazing items that include: deals at area restaurants, getaways, theme baskets, artwork, faculty donated items and much more! Silent and Live auctions are a major source of support for our summer funding goals. Have a beer or glass of wine as you bid for a great cause! Cash bar available. **THE EVENT IS FREE AND OPEN TO THE COMMUNITY.**

Silent Auction from 4:00-5:00pm

Live Auction immediately following and hosted by our beloved and semi-pro auctioneer Professor Bruce Miller!

See Facebook Live coverage of event!

For more information/donations please email Michelle Tsang at: pilaatwneur@gmail.com

The Business of Lawyering For Non-Business Lawyers

by **PROFESSOR ROBERT STATCHEN**

LEX BREVIS Guest Writer

Robert.Statchen@law.wne.edu

Historically, lawyers were notoriously poor at the business of running their own law firms. Fortunately, the economics of operating a law practice enabled lawyers to continue on in this tradition for decades (if not centuries). In the past twenty-five years, the legal market has changed as a result of increased competition and technology. Old-school lawyers lament for the time when they could send large hourly bills to high net-worth clients and expect unquestioned payments to be made forthwith. Conversely, new-school entrepreneurial lawyers now eagerly canvass the transitioning legal market for clients and opportunities previously unavailable to the



small or mid-sized practitioner.

What all lawyers now need to accept is that starting and operating a law firm is analogous to starting any business. This reality does not require that every lawyer (or every entrepreneur) has an MBA. But it does require that every lawyer take a

systematic approach to building an individual, customized and hopefully profitable business model. Three principles can help in this process: 1) learn from experience; 2) make (and update) a business plan; and 3) utilize an effective partnership agreement.

LEARN FROM EXPERIENCE

There are now many resources to assist lawyers in building their law firm on a strong foundation. Several textbooks address law firm management and we are very fortunate at this law school to have Senior Adjunct Faculty Mike Agen teach a course in law firm management. Additionally, one of our alumna, Attorney Anna Levine, is now Executive Director of Lawyers Concerned for Lawyers, Inc. (www.LCLMA.org) in Massachusetts and that organization regularly schedules law firm startup clinics. Furthermore, Massachusetts Continuing Legal Education (mcle.org) has a sixteen-unit Professional Development Plan online program for setting up and managing a law practice. Finally, individual practice areas often have specific advice for establishing a focused area of practice (see for example, the American Academy of Estate Planning Attorneys). Bottomline, there are excellent resources and experts out there to assist in the process.

MAKE A BUSINESS PLAN

Each law firm should individually create (and regularly update) its own business plan. The professional resources referenced above all provide good models, and of course, a quick internet search of “law firm business plan” will result in hundreds of hits. As with any start-up business, the biggest danger in regards to using a pre-packaged business plan is not taking the time to customize it for your specific operations.

A good business plan will clearly identify your potential market, resources needed, and financial projections. An excellent business plan will perform a full SWOT analysis that describes the law firms Strength, Weaknesses, Opportunities and Threats. Starting off with a strong model plan and then spending a significant amount of time tailoring the plan to your individual needs and operations will

provide your law firm with the stability and structure it needs to survive long into the future.

THE PARTNERSHIP AGREEMENT

Any two or more lawyers working together should have a formal, written agreement. As a general partnership, limited liability company, professional corporation or other entity, this agreement can take the form of a partnership agreement, operating agreement or shareholder agreement respectively. Regardless of the form, all such agreements must address numerous issues such as management (is there a “managing partner” and what will those responsibilities entail?), revenue sharing (how are fees collected from clients to pay for overhead as well as individual compensation?), dispute resolution (are there “tiers” of the partnership such that some partners can decide only certain issues?), transition out of the law firm, leaves of absence, and many others. As one can see, these issues are only limited by the foresight of the drafter. Again, there are forms out there (Westlaw/Lexis and others) that provide a good starting point, but it is crucial to spend the time to customize the document for your individual needs. Often, a group of non-business lawyers will find it advantageous to hire a business lawyer to assist in drafting and negotiating such an agreement.

CONCLUSION

There are many exciting new opportunities in the law. Lawyers who embrace these opportunities with a structured approach so they can leverage both technology and business expertise will find great success in their legal careers.



Hampden County Bar Association offer

Colonel Archer B. Battista Veterans Scholarship

The Hampden County Bar Association has recently established the Colonel Archer B. Battista Veterans Scholarship for Veterans entering law school. Applications for the scholarship are now available to any Veteran entering or already attending a law school in New England for the 2017-2018 academic year. The scholarship is based on merit and financial need. Applications are available at the Hampden County Bar Association office, 50 State Street, Room 137, Springfield, MA 01103, by calling 413-732-4660, or by emailing admin@hcbar.org. Please include the applicant's mailing address with any requests. All applications must be completed and filed with the HCBA by **Monday, May 15, 2017**.

Founded in 1864, the Hampden County Bar Association is a non-profit organization representing the interests of lawyers, the justice system, and the public in Hampden County in the Commonwealth of Massachusetts. It provides professional support, education and networking opportunities to its members, and advocacy on behalf of lawyers, the judiciary, and the public.

Contact: Noreen Nardi at 413-732-466 or Noreen@hcbar.org

Colonel Archer B. Battista, USAFR (Ret.) had a deep love and devotion to the men and women who served in our armed forces. After thirty-three years of commissioned service as active duty and as a member of the United States Reserve Air Force, he retired in 2001 as a command pilot in the grade of Colonel. During his military career he participated in over two hundred missions in the Vietnam War, for which he was awarded two Distinguished Flying Crosses and twenty Air Medals, and multiple missions to Saudi Arabia during Operations Desert Shield and Desert Storm.

Upon completion of his active duty service Colonel Battista graduated from Western New England University School of Law. From 1977 until 2013, he practiced law while remaining engaged in his Air Force commitment to flying assignments and middle and senior military management missions. Colonel Battista was dedicated to the organized bar and as a result served as president of the Hampden County Bar Association, a member of its board of directors and an ex officio director.

Colonel Battista was an active part of the team that successfully advocated on behalf of aircrews and maintainers who flew and worked on aircraft used to spread Agent Orange. After years of administrative battles and litigation, the Department of Veterans Affairs conceded the legitimacy of the medical claims of these men and women who were diagnosed with so-called Agent Orange presumptive diseases and opened its system of medical care and other benefits to Air Force Reserve colleagues who were exposed at Westover Air Base and other Air Force Reserve bases.

Remaining true to his commitment to military veterans, after his retirement from the practice of law Colonel Battista was instrumental in establishing a Veterans Treatment Court with jurisdiction over the three counties in Western Massachusetts. This Court addresses the unique situation of military veterans involved in the criminal justice system, offering specialized supervision and care to those who have sacrificed so much for their country and its citizens.

As a result of his advocacy for veterans, in 2015, Colonel Battista received the Adams Pro Bono Publico from the Supreme Judicial Court of Massachusetts.

Through this scholarship Colonel Battista, his family and the Hampden County Bar Association hope to continue Colonel Battista's dedication to help members of the armed services.

The Question of the Necessity of Unabridged Freedom of Expression in the Academic Context



by **CHRIS MUTCHLER**

LEX BREVIS Staff Writer

Christopher.Mutchler@wne.edu

"We are at the very beginning of time for the human race. It is not unreasonable that we grapple with problems. But there are tens of thousands of years in the future. Our responsibility is to do what we can, learn what we can, improve the solutions, and pass them on. It is our responsibility to leave the people of the future a free hand. In the impetuous youth of humanity, we can make grave errors that can stunt our growth for a long time. This we will do if we say we have the answers now, so young and ignorant as we are. If we suppress all discussion, all criticism, proclaiming 'This is the answer, my friends; man is saved!' we will doom humanity for a long time to the chains of authority, confined to the limits of our present imagination. It has been done so many times before."

—Richard Feynman

On the issue of academic freedom of expression, two mutually exclusive points of view tend to predominate among those who have given the matter much thought: (1) those who favor reasonable abridgment, and (2) those opposed to abridgment. Broadly stated, those who favor abridgment assert that speech should be limited to protect members of the student body, and that universities should have the discretion to determine the scope of pertinent limitations. In stark contrast, those opposed to abridgment maintain that no such limits should exist, and that universities should abstain from imposing any limitations on speech whatsoever.

In essence, the argument furthered by those who favor reasonable abridgment is that university policies enacted with the intent of protecting members of certain minority classes from derog-

ative speech help mitigate the effects of socioeconomic disparity that tend to pervade the protected classes. Those opposed to abridgment offer many arguments: that the inconsistent enforcement of relevant policies combined with the often severe consequences for their violation is more harmful than beneficial; that people need to have "thicker skin;" that these policies are in direct conflict with the fundamental right to free expression; that socioeconomic disparity is non-determinative with regards to individual outcome.

Stated broadly, those who support reasonable abridgment believe that certain expressions are harmful to particular groups of people, and that the harm society incurs by foregoing the use of such expressions is inconsequential in comparison to the harm imparted by the use of such expressions. Contrastingly, those opposed to

abridgment believe that while certain expressions may indeed be harmful to particular groups, the mere fact that others may benefit from the relinquishment of certain rights is insufficient to necessitate so-doing.

The fundamental disagreement is whether or not society should adopt a minor limitation on action to further the interests of historically disadvantaged groups. Stripped of context, in isolation, and assuming bipartisan agreement upon the problem as stated, the answer is resoundingly “yes, we should.” Action to the contrary would favor self at the detriment of others – an outcome antithetical to traditional societal values.

The above conclusion relies on at least two important assumptions. First, it presupposes voluntary adoption. If those who refused to adopt the limitation were penalized for their dissent from the majority, precisely the issue sought to be avoided is instead reciprocally created upon the dissenters. Second, it requires that the harm is efficaciously remedied through the limitation. If the harm continues despite the limitation, those negatively impacted by the limitation have suffered arbitrarily. Where either of these conditions is not met, the propriety of the limitations shifts.

It is a basic logical tenet that among competing hypotheses, the one requiring the least number of assumptions should be selected. Whereas the moral validity of reasonable abridgment relies at least on two assumptions, that of complete non-abridgment (i.e., inaction) relies on only one: the non-existence of any single presupposition implicit in justifying reasonable abridgment. If a person disagrees and is criticized, reasonable abridgment fails. If the effect of reasonable abridgment is not precisely as intended, reasonable abridgment fails.

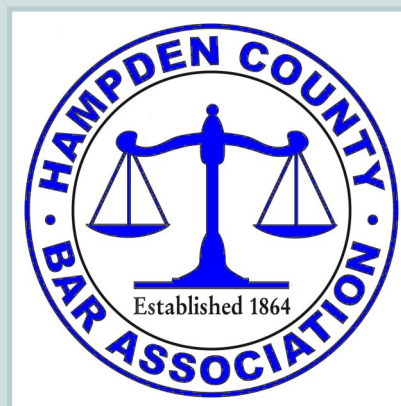
Less than perfect policies necessarily harm some unintended third party. When institutionalized, it is the institution who perpetrates these harms. Where the harm is inflicted in furtherance of a flawed premise, it is inflicted arbitrarily. By involving themselves in uncertain issues pertaining to student expression—barring clairvoyance—universities ultimately ensure their own failure. In the face of uncertainty, abstention from action is often best.

Hampden County Bar Association

John F. Moriarty Scholarship

Applications for the John F. Moriarty Scholarship are now available to any Hampden County resident who has been admitted to or is attending a certified law school for the 2017-2018 academic year. Applicants must have been residents of Hampden County for at least five years. The scholarship is based on merit and financial need. Applications are available at the Hampden County Bar Association office, 50 State Street, Room 137, Springfield, MA 01103, by calling 413-732-4660, or by emailing admin@hcbar.org. Please include the applicant's mailing address with any requests. All applications must be completed and filed with the HCBA by **Friday, May 26, 2017**.

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Citizenship Day Springfield

Monday April 17, 2017

Get help with your citizenship N-400 application!

What to bring to the workshop:

- Green Card
- All Passports
- Social security number
- List of employment for the past 5 years
- List of your addresses for the past 5 years
- \$725.00 money order payable to Department of Homeland Security or proof of receiving means-tested benefits or of low-income

To be eligible you must:

- Be 18 years of age
- Be a legal permanent resident for 5 years or 3 years if married to a U.S. citizen
- Read, write, and speak basic English

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Please call to register by April 10, 2017

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SPONSORS



Why Is There Such A Need For Personal Injury Attorneys?



by **Rabia Hamid**
LEX BREVIS Staff Writer
Rabia.Hamid@wne.edu

Cars are the preferred mode of transportation for the average person living in the United States. Cars are often times the most convenient mode of travel. There are more than 6 million car accidents per year, according to law-core.com. From those accidents, 3 million people get injured, and more than 2 million people end up with a permanent injury.

One-third of all accidental deaths in the U.S. per year involve cars. Every 12 minutes, one person dies because of a car accident, and every 14 seconds, a car accident results in an injured victim.

According to the Legal Finance Journal, personal injury lawsuits are the majority of civil litigation cases in the U.S. Tort claims, also known as personal injury claims, involve either property damage or personal injury damage.

When a person has been in a car accident and he is not at fault, he is entitled to property damage collection. The victim's vehicle may be damaged, or considered a total loss. Payment is sought through the

other driver's insurance, or if the other driver is not insured, then he will have to pay for damages out-of-pocket.

The most common damage one seeks a personal injury lawyer for is collection on personal injury due to the fault of the other driver. If the victim is not at fault, as with property damage, the other driver's liability coverage on his insurance policy must cover the victim's medical expenses. If one lives in a no-fault state, such as Massachusetts, the victim can seek coverage from his personal injury protection (PIP) coverage to get his bills paid without delay of negotiation between companies.

Often times, insurance companies will try to pay the least amount that they need to and require documentation of all medical expenses. Personal injury lawyers aid in decreasing the insurance company's pushback on medical expenses, as well as on the victim's mental anguish and pain and suffering. The more serious the injury, the greater value in hiring a lawyer.

Other common types of personal injury law includes mo-

torcycle accidents, boating accidents, trucking accidents, slip-and-fall accidents, medical and dental malpractice, dog bite cases, product malfunction cases, and work-related accidents. According to the National Center of Health Statistics, over 31 million injuries occur to people throughout the U.S. each year that require medical attention, and 2 million injuries occur to people that requires hospitalization.

The motivating factor for hiring a personal injury lawyer is that he is able to negotiate a victim's damage settlement effectively. A 1999 study conducted by the Insurance Research Council concluded that claimants represented by a lawyer received 3.5 times more settlement money than with those without a lawyer. There is always a statute of limitations on collecting damages on personal and property damage due to an accident. However, if you contact a personal injury lawyer early within the statute of limitations, he will fight to obtain the greatest payout for your medical expenses, as well as for your mental anguish and pain and suffering.

Using a “Double Standard” to Address Sexual Misconduct on College Campuses

by **Arshan Shirani**

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In 2011 the Department of Education, through the Office of Civil Rights¹ (“OCR”), has asked, by way of a “Dear Colleague Letter” (“DCL”) that all colleges and universities that receive federal funding adjudicate allegations of sexual harassment and violence under a preponderance of the evidence standard.² Almost all colleges and universities have complied, some not without a fight.³ This is because the preponderance of the evidence standard is a lower standard than the clear and convincing standard that had been in place at a majority of colleges and universities prior to the DCL. The rationale behind the DCL is that the adjudication of claims under the preponderance of the evidence standard is necessary to obtain “equitable and prompt” justice as required by Title IX, the ultimate goal being to actively reduce the threat of sexual harassment and violence that plagues colleges and universities. Critics argue, however, that this standard does not satisfy the accused’s procedural due process rights under the

Fourteenth Amendment.⁴ This is because the stigmatization of a student’s academic record with the finding of sexual harassment or violence amounts to a deprivation of liberty that requires the clear and convincing standard.

In relevant part, the Fourteenth Amendment provides that no State can deprive a person of “life, liberty, or property without due process of law.”⁵ In general terms, life, liberty, and property interests are all prescribed three different standards of evidence. These standards are “beyond a reasonable doubt,” “clear and convincing,” and “by a preponderance of the evidence.”⁶ The Supreme Court explains that the function of the standard of proof is to “instruct the factfinder concerning the degree of confidence our society thinks he [or she] should have in the correctness of factual conclusions for a particular type of adjudication.”⁷ The standard that is chosen “serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.”⁸

On one hand, there are civil cases that involve disputes of property between private parties.⁹ Because the public interest in civil cases involving property disputes is minimal, the burden of proof allocated in these cases is a “by a preponderance of the evidence.”¹⁰ In cases involving property, the litigants share approximately the same burden.¹¹ On the other hand, in a criminal case, the “beyond a reasonable doubt” standard is used to “exclude as nearly as possible the likelihood of erroneous judgment.”¹² This standard allocates almost the entire risk of error on the prosecution.¹³

In the middle is the intermediate “clear and convincing standard,” usually used in civil cases or adjudications that involve allegations “of fraud or some other quasi-criminal wrongdoing by the defendant.”¹⁴ In these types of proceedings the individual loss “is more substantial than the mere loss of money.”¹⁵ Because of the increased risk of a defendant suffering potentially erroneous reputation damage, courts have increased the bur-

den of proof against a plaintiff.¹⁶ In sum, the standard of proof “reflects the value society places” on life, liberty, and property interests of individuals.¹⁷

The problem, and where the confusion stems from, with lowering the standard to “preponderance of the evidence” in cases alleging sexual harassment or violence as proposed by the OCR is that such allegations implicate both property rights and liberty rights. Acceptance to a public college or university creates an entitlement, which is a property right.¹⁸ As a property right, the preponderance of the evidence is appropriate.

At the same time, in cases involving sexual misconduct, a student also has a constitutionally protected liberty interest in his or her reputation. The Supreme Court has stated that a person’s liberty interest is implicated “[w]here a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him, [due process] is essential.”¹⁹ Subsequent case law requires that the damage done by the government must rise to a level that “make[s] it difficult or impossible for [a person] to escape the stigma of those charges.”²⁰ The court continued by explaining that “[t]he requisite stigma [can be] found in cases [involving] . . . dishonesty, immorality, criminality, racism, or the like.”²¹ Just the allegation of sexual misconduct can have a severe impact on a student’s reputation. Such an allegation invokes not only criminality, but also immorality and in some respects dishonesty. This has never been more true than in the age of the internet where people must live with their mistakes for the rest of their lives. To say the least, the stigma of sexual misconduct on a student’s record may prevent a student from completing his or her education, and deprive a student of potential employment opportunities in the future. Therefore, the deprivation of liberty caused by the stigma of sexual misconduct on a student’s academic record invokes the procedural due process requirement of the use of the “clear and convincing” standard of evidence.

On one hand, the schools have to protect federal

funding and apply the “preponderance of the evidence” standard; on the other, they expose themselves to lawsuits claiming violations of procedural due process. At the same time, there is an urgent need to address sexual harassment and violence on college and university campuses. Studies show that although one in two women between the ages of 18-24 admit to have being assaulted in some form or another, only 6.4% of these assaults are reported annually.²² The preponderance standard of evidence helps to alleviate some of the pressure victims may feel when deciding to report incidents, knowing that if they do come forward there is a good chance they will be vindicated.

One solution to this issue can be for schools to adjudicate using both standards. When the fact-finder’s find that sexual harassment or violence has occurred by a preponderance of the evidence, the fact-finders can prescribe a punishment that affects the student’s property right in his or her education. This would most likely come in a form of a suspension from the institution for a length of time determined by the fact-finder. When the fact-finder’s find that sexual harassment or violence has occurred by clear and convincing evidence, the fact-finder can prescribe a punishment that affects both the student’s property right in his or her education, and liberty interest in reputation. This finding could result in an expulsion or suspension and would be placed on the student’s academic record, subject to automatic appeal. In any event, students would be held accountable on college campuses for impermissible sexual harassment and violence, while also insulating schools from lawsuits claiming violations of procedural due process.

In sum, this solution satisfies the OCR’s requirement that schools adjudicate allegations of sexual harassment and violence under the preponderance standard and helps to further efforts to address sexual misconduct on college campuses. It also protects students’ procedural due process rights under the Fourteenth Amendment, while at the same time protecting colleges and universities from costly litigation by students claiming such violations.

REFERENCES

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²Russlynn Ali, Dear Colleague Letter, U.S. Dep't Ed. 9 (April 4, 2011).

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⁵U.S. Const. amend. XIV, § 1.

⁶*Id.*

⁷*Addington v. Texas*, 441 U.S. 418, 423 (1979) (quoting *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id. at 424.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id. at 424-25.*

¹⁷*Id. at 425* (quoting *Tippett v. Maryland*, 436 F.2d 1153, 1166 (CA4 1971) (Sobeloff, J., concurring in part and dissenting in part), cert. dismissed *sub nom. Murel v. Baltimore*, 407 U.S. 355 (1972) (alteration in original)).

¹⁸See *Goss v. Lopez* 419 U.S. 565 (1975)(the Court

explained that this interest is created by the State and not the Constitution).

¹⁹*Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971).

²⁰*Shands v. City of Kennett*, 993 F.2d 1337, 1347 (8th Cir. 1993).

²¹*Id.* (emphasis added).

²²Protecting Students from Sexual Assault: Sexual Violence on College Campuses, U.S. Dep't of Just. (updated Nov. 1, 2016), <https://www.justice.gov/ovw/protecting-students-sexual-assault>.

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BETTER TOGETHER:

The Story of a Growing Local Law Firm



by **AMARA RIDLEY**
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MICHAEL GOVE, Esq.

GOVE LAW OFFICE

Area of Law: General Practice

Boston College, School of Law 2004

Why did you want to go to law school?

I always thought law would be a good fit for my personality. Back then I wanted to get into politics and thought it would be good.

Why did you change your mind about going into politics?

In 2006 I decided I was less concerned with electoral politics and more interested in supporting specific issues. Some were local. I was heavily involved in the gay marriage debate happening in Massachusetts at the time. A group of us held meetings with state representatives in Holyoke, Springfield and Ludlow. Gale Candaras was the local senator and she actually changed her vote.

Why did you come back to western Massachusetts after law school?

I always knew I would come back. I never wanted to do anything else. I love it here. There is not as much traffic, the size of the area, it is close to colleges—it was a lifestyle decision. I had a lot of friends who stayed in Boston after law school or went to New York or San Francisco and they made a lot of money but they didn't like it.

I was at Housing Court at the time for two years and then had to figure out what I wanted to do.

What did you do next?

I went to work at a law firm called Lyon & Fitzpatrick in Holyoke because they were looking for a business and estate planning attorney. While I was at the Housing Court I took CLEs on things I thought I was interested in. I thought I would enjoy estate planning in part because I am a planner. I would much rather sit across a table figuring out how to solve problems as opposed to butting heads. That [Lyon & Fitzpatrick] was an educational experience. I got to handle mergers and acquisitions, commercial loans, etc. and they did enough areas of law to confirm that I did not like litigation. I spent four years there.

What did you do after those four years?

I left. It was a mutual decision. I moved to Cooley Shrair, a law firm that has been around for over 60 years and did a lot of business law and banking law. I learned a lot more about business work and complex transactions. After three years we parted ways and I opened my own firm.

Why did you decide to open your own firm?

After almost ten years in practice I finally felt like I was comfortable being an attorney and I was finally understanding what it meant to deal with people, handle cases and I liked the idea of being my own boss.

What about during those ten years?

I felt lucky that I had a number of mentors; people who were willing to take time and show me. I feel comfortable now that I know when I need to ask for additional help. The thing about us, attorneys, is that we are not supposed to know everything but we are supposed to know when to ask for help. You have to balance between being “green” and appearing to know things. You have to learn what you can from experiences in front of you, apply

that and constantly going back to supervisors and mentors to make sure you are doing things correctly. It took years before I felt comfortable that I was doing things correctly.

What was it like once you went solo?

It was similar to before except that suddenly I was responsible for everything so I had to be even more careful about understanding what I didn’t know.

What was your first year of being on your own like?

That first year was particularly important because I was the only one—I didn’t have staff. One of the biggest hurdles was keeping myself motivated to build a law firm and get clients. I always had to remind myself to build the business. It was easy to get lost in the work.

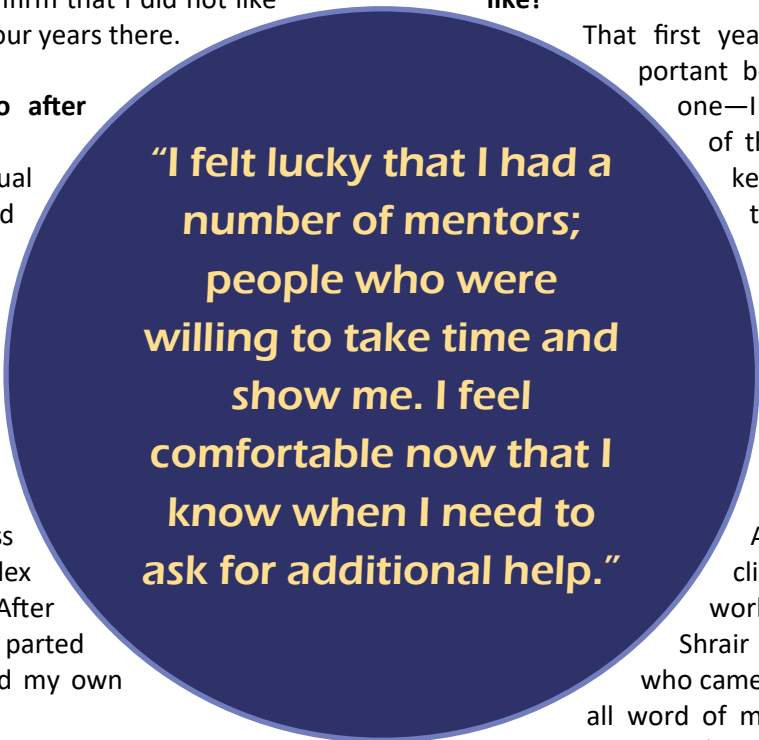
How did you build the business?

A lot of word of mouth, client referrals and networking. When I left Cooley Shrair I had about 40 clients who came with me. It was almost all word of mouth—I did almost no advertising that first year. I just wanted to keep doing the work I was doing and keep enough work so that I could pay my bills. At this point I had been living in Northampton for six years. I was initially working out of my kitchen for the first four months before getting a small office and conference room in January, 2014. It was still the same but my bills became a little larger.

There were times where I had to avoid cases though. Sometimes avoiding clients that are going to be bad for you is just as important as keeping clients that are good for you.

How did you know which ones to avoid?

Intuition. You meet a client, talk to them, get a feel for the case like what the facts are. I never minded cases that were good facts even if it was unlikely I



would get paid for it. But I also avoided a couple of clients that were difficult to communicate with and that was probably just as important as finding the right ones.

What do you mean by “good facts?”

Really, they are situations where people are getting bullied by people who had more money or power. Often landlord tenant situations where a person did not know their rights and were being bullied by a landlord. It is important that those people have someone who can stand up for them even if they cannot afford the help.

How do you balance passion with the need to make money?

It was not explicitly something I thought of then. I had the time. I had plenty of free time. More important were the cases I turned away. Two months in, I turned away a potential client who was ready to pay a \$5,000 retainer but was difficult and combative and would have caused more headaches than what it was worth.

What about after your first year of having your law firm?

At the end of the first year I was thinking about growing. I was approached about taking over this place (the law firm’s Ludlow location). I had known the late Jason Thompson, Esq. since I was young because he was my family’s attorney. [Atty. Thompson was a WNEC Law grad, by the way – people may be interested in that.]

What was that like?

It was really an honor. I admired Atty. Thompson as a person, an attorney and someone in the community so having the opportunity to take over his firm (previously Thompson & Bell, with Attorney Gregory Bell), keep it open and keep the existing staff—it was really an honor. On the other hand, it was a huge challenge. I went from being solo to running an office with two (now four) attorneys, two paralegals, a bookkeeper and two office locations. With all of that it was a lot of management and a lot of changes.

Did it make a difference that you grew up here?

The decision to come back after law school was natural. Taking over the practice in Ludlow was

like coming home. My parents were here and I had a lot of connections to the community. Opening in Ludlow made a lot of sense. My connection to Jason’s family and the town made the transition easier. A lot of his longest clients appreciated the fact that I knew him so well.

Do you find it different practicing in Ludlow versus in Northampton?

Well there is a practical difference as we do more residential real estate in Ludlow so that grew exponentially. Now that we have grown we do more family and probate and litigation—things I was not doing on my own. Now we have grown the whole practice.

How has mentoring changed—or has it?

I still turn to senior more experienced attorneys for assistance with legal issues. Now, I turn to more people in the business world. I am not just an attorney. I now own a business. Now I have to manage a business, keep clients coming in the door etc. and it takes more time than the actual legal work.

Do you act as a mentor?

Not formally, we have law clerks and interns and two new attorneys. Everyone has to learn how to maintain what they are doing but I also try to work with people on having a business.

What kind of changes have you seen in the nearly three years since you started in Ludlow?

We have grown. We added two attorneys and a paralegal. We now handle family law, guardianships, general law, landlord tenant work and would like to think we are more efficient with our clients. We have implemented more computer programming and software which allows us to respond better to client needs.

What is the biggest reward to running a law firm?

For me, it is the ability to make my own decisions and be my own boss. Technically, I have hundreds of bosses in all of our clients but plenty of autonomy and choices.

What is the biggest reward to being an attorney?

I never thought I would do anything else. You get

to represent people and bring justice to the world. I think it is to help people by answering questions and solving problems. That is enjoyable for me.

What surprised you most about practicing?

How important communication is with clients, opposing counsel and people in the office. I was of a generation that used email and text messaging often but sometimes it is much easier to pick up a phone or walk down the hall. Sometimes phone calls are a really important way of communicating.

Where do you see yourself in ten years and in twenty years?

In ten years: Doing what I am doing now but larger. A firm having 10-12 attorneys, still in western Massachusetts but covering more practice areas and clients. I would be managing that while balancing my personal life. That is the reason I came back to western Mass. The idea with the firm is to have people to cover each other. I want this to be a firm and not just me practicing law.

In 20 years: The same thing but semi-retired—still doing law and managing the firm, working with clients and new attorneys.

What changes do you hope to see in the law?

I think it will be a lot easier and more efficient when we can do more transactions electronically. I think it would be nice if we could clean up some of the regulations on residential real estate.

What do you mean?

There are a lot of hoops for lenders and attorneys that could be streamlined better.

What about potential home owners?

I think a lot of those regulations make it harder for potential home owners to know what they are signing. The goals of the last six or seven years are good but the implementation of those goals has been obtuse and counterproductive. The new regulations provide a lot of protections for borrowers but are more complicated and harder to understand.

What has been the impact on real estate?

It has driven a lot of real estate attorneys out of the market.

Why is that?

There are a lot of hoops to jump through. Attorneys who may have been doing it part-time may have seen it was not profitable. Also, lenders are more particular about who they work with and there is more consolidation so the buyer has fewer choices for attorneys.

Does that mean there is a benefit to practicing in multiple areas of law?

Some areas of law do dovetail like business law with real estate and estate planning. The clients are often the same but they are at different places in life. As a firm it is important to have people who can handle most any area of law. If I am talking to a client about tenancy and they have a bankruptcy issue, we have an attorney who can handle that.

What have you learned about dealing with clients?

How important it is for them to have regular communication with their attorney and how far that goes.

Why?

It is important because to us, this is a job. We see the same types of cases on a daily basis. In contrast, each manila folder, to us, is probably the most important thing going on in that person's life. It is important to remember that clients are more than just a number.

What is some of the best advice you were given?

Judge Abrashkin taught me, as an attorney, (and this is even more important for a judge) that the facts of the case and knowing the facts of a case inside and out and knowing them from different perspectives will put you in the best position to represent your client.



Gregory Bell, Esq.
Gove Law Office
Ludlow, MA
Class of 1983

“As you start your practice, make it a priority to get back to your clients quickly.”

What brought you to practicing in Ludlow?

I grew up in Ludlow. In starting a practice, it was natural to go where my network was and in my hometown. The late Jason Thompson was a teacher at Ludlow High School where I went. He was also an attorney. He did my father’s estate and I clerked for him after my 2L year. When I was ready to start practicing he didn’t have enough room in the office where he was to have me there as well but he told me that if he were to change offices he would let me know. This office opened January 4, 1985 and I started working here at the end of January.

He basically said let’s try it out for six months and we worked together in this private practice for over 29 years until he died in April 2014. He was well known in Ludlow and I grew up here so between the two of us there was a tremendous pool of clients that kept the practice going.

What was it like to have clients you know from the community?

One of the more interesting things is that Jason was Town Council in the ‘80s. I would often take his cases and a few times I would have to prosecute classmates of mine in Palmer District Court. They took it better than I did. As far as having people you know as clients, that is great. It is always nice to catch up with classmates (and later their kids) and people you know around town.

Why has real estate law been so prevalent for the firm?

When I came in, it was already established. So when I came in Jason just needed help and I delved into the real estate closings. He did a decent amount of court work so I just did more of the real estate. It naturally became something I did a lot of. You get to know the realtors and the lenders.

Why is it different now?

Today with email you may not get the mortgage papers for the buyer until the morning of the Closing. I've had times when the client was here in the office at 10:00 a.m. drinking coffee because the papers had not arrived. Email allows for mortgage papers to be sent within a minute but the process of the Closing is much more disjointed. Years ago you would get the package (real estate closing materials) and then 12-15 days later you would close. I cannot remember 30 years ago having a lender stop a closing for something such as not verifying employment of one of the borrowers. It never happened 30 years ago and it does happen now. You will get situations where lenders may call now and say they have to close in 48 hours or the loan commitment runs out. That never would have happened 30 years ago.

Why?

I am not sure why it ends up so frantic. It can be very stressful for the clients and the office when so much is last minute.

Was it any different, running a law office 30 years ago?

I don't think the running of it has changed as far as getting staff that is competent, that you trust and like. Today you need to find someone who is tech savvy. It is a skill that attorneys need but it is more crucial for staff. All things being equal, you look for a younger person who knows the technology or if they do not know it then they can pick it up. Your staff really needs to be able to know that technology well to really be competent. You are on the computer all the time. Emails are often taking the place of phone calls. It is the way business is done and you have to be sure that your staff can do it.

Another thing you want to make sure is to treat clients well. If you hurt someone in a small town, that reverberation can go quite far. One thing we try to stress is to not lose your temper with clients. Staff can yell at me and let the frustration out, but I don't want them to do that with clients. You have to treat the clients well.

I don't lose my temper with staff. There are times where I have to correct things but you have to treat them well too. There are stories I've been told about other offices where that doesn't always happen. You have to respect your clients and the staff.

One of the things I regret is a situation when Jason was sick and he was out for a month. One client had a mortgage that was not discharged, and it took a long time for our office to get a discharge. We could have charged an additional \$300- \$400 for our time, as it was not our fault that the mortgage was not discharged. I did not charge the client for securing the discharge. The client came in and they wanted \$100 off the legal fee because it took so long to get done. I didn't take off the \$100 but maybe I should have. We did not do it timely. I do not know how much business I lost because that client never came back with other business. As a practical decision, that was the wrong choice because it was not done timely, even though it was not our fault, I should have taken the \$100 off.

One of the main complaints of clients, and it so often is justified, is that attorneys do not get back to clients in a timely manner. You need to get back to clients as timely as you can. It is something that clients complain about a lot. As you start your practice, make it a priority to get back to your clients quickly.

In any private practice, networking is important. Try to make it enjoyable by doing the things that you already like to do. Join the tennis club, golf league, or whatever, and it does not feel like networking. I have umpired baseball for the last 30 years and I have had business come in by just being out in the community in that way. Networking is important and you should do it. Take what you like to do and it will be another way to bring in clients.

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