TABLE OF CONTENTS

2  From the President: Four Things Learned While Planning the Next Annual Education Conference by Terry Galligan

3  From the Executive Director: Paradigm Shifts Can Feel Like a Zombie Apocalypse by James G. Leipold

5  Timing Is Everything! Tips for Addressing the Provisional Changes to NALP's Timing Guidelines by Marilyn Drees and Mike Gotham

7  What We Learned About Women's Initiatives and Cultural Awareness at the 2014 Diversity & Inclusion Summit by Courtney R. Dredden

9  The OnRamp Fellowship: An Innovative Effort by Four Law Firms to Bring Experienced Women Lawyers Back into the Profession by Caren Ulrich Stacy

12 Key Takeaways from a National Legal Mentoring Conference by Morgan L. Smith

14 NALP Research: New Grads Find More Jobs for Second Year in a Row, But Not Enough More to Offset Larger Class Size by Judith N. Collins

15 Building a Grittier Law Student by Sarah J. Bannister

17 Living Through a Paradigm Shift by William D. Henderson

22 A Survival Guide for the Zombie Job Apocalypse by Vic Massaglia and Pascale Bishop

23 The Social Media Ethics Danger Zone for Law Students, Lawyers, and Their Employers by Christine Ann Guard
I recently participated in the three-day planning meeting for next year’s Annual Education Conference in Chicago. I had not done NALP conference planning before and had not given much consideration to all that goes into it. I wanted to share with you four things I learned in helping to put together what promises to be one of our best conferences ever.

First, I have a renewed appreciation for the depth of talent and dedication possessed by our members. We received 200 proposals for education programs. Nearly all of them were of extremely high quality. A tremendous amount of work had clearly gone into them. Reviewing the proposed speaker bios really brought home to me the deep bench of experts within our membership ranks. It was an incredible challenge to winnow the list down to the 100 or so available time slots.

Second, I discovered just how much work goes into planning the Annual Education Conference. Even before last month’s planning meeting, the Annual Education Conference Planning Committee, under the steady, creative, and experienced guidance of Sonia Menon, Chief Talent Officer at Neal, Gerber, along with the able assistance of Vice-Chairs Megan McGrath (George Washington), Jennifer Cook Johnson (Arnold & Porter), and Eric Stern (Berkeley Law), engaged in extensive outreach among members. Committee members gained a better understanding of what worked — and what didn’t — in prior years and what NALP members would like to hear about next year. Summary feedback reports were prepared and shared among committee members.

Discussions during the planning meeting also included identifying the reasons why members attend the Annual Education Conference, spaces for events, the overall conference schedule, potential plenary topics and speakers, and the need to create some original programming to cover topics members want but which were not addressed by any of the proposals.

They also reviewed the results of the online member survey that was conducted following the Seattle conference, as well as several historical reports about prior conference programs and schedules prepared by the NALP staff. And, of course, the proposals themselves were reviewed by multiple committee members. Each was discussed individually.

The third thing I learned is what a tremendous value the conference attendance fee is considering the cost of making it happen, especially when it takes place in a large city like Chicago. I was shocked to learn how much some things cost. For example, Chris Brown, our Meetings (and Member Services) Director, who has helped successfully (and economically!) plan our conferences for more than a decade, told us that Chicago hotels charge about $130 for each gallon of coffee. A buffet lunch (just the food, not the drinks) for the anticipated 1,000 or so attendees will cost about $74,000. Our anticipated AV costs will be in the six figures. If not for the support and generosity of our vendors and sponsors, the conference attendance fee would be much higher.

Fourth, and finally, the smoothness of the planning process compared to the complexity of the task underscored just how smart, skilled, and experienced NALP’s staff members are. They are all involved in some way, but I wanted to mention in particular...
the relentlessly calm and optimistic Director of Member Professional Development, Mary Beal, Chris Brown, and Jay Richards (Associate Director for Conference Services), who were on-site with the committee during the planning process and guided us every step of the way. The contributions of Executive Director Jim Leipold and Deputy Director Fred Thrasher, each of whom has at least a decade’s worth of NALP conference planning meetings under his belt, were also invaluable.

Chicago is going to be an amazing learning and networking experience in a fun cosmopolitan environment. Thank you to those who responded to the RFP and to the section chairs and vice-chairs who shepherded the proposals. Thank you to all of you who participated in the feedback process or responded to the conference survey. Thank you to our conference planning team members. And, of course, thank you to our dedicated NALP staff.

Stay tuned for future NALP Bulletin articles with information about the themes, speakers, and programs scheduled for next year’s conference.

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**Paradigm Shifts Can Feel Like a Zombie Apocalypse**

This month’s *NALP Bulletin* is as good a snapshot into the industry changes we are all living through as any I have seen. Why is it that increasingly for all NALP members and the institutions they work for it feels as if the rug is being pulled out from under us on a daily basis? Oh, right. Paradigm shifts can feel like a zombie apocalypse.

Vic Massaglia and Pascale Bishop, with tongues firmly inserted into cheeks, provide some simple tips this month for helping job-seeking law students in this tough job market while reminding us at the same time just how scary this job market can feel for recent and about-to-be graduates. Meanwhile Judy Collins, in her research column this month, describes just how much the entry-level legal job market has actually changed in the last 30 years — and while she describes the improved prospects for the Class of 2013, at the same time she documents the very real and likely permanent erosion of entry-level associate positions at the biggest law firms. And then Bill Henderson helps set some of these changes in context by explaining just how it is that change happens in an industry — the inevitability of confusion and denial as the process of change slowly unfolds and innovation is slowly, almost begrudgingly, adopted.

The truth is that we are indeed living through a paradigm shift in the world of legal services delivery and that means the ground beneath our feet is unsettled for all of us. In terms of the Rogers diffusion curve that Henderson describes, the legal industry is likely still in the innovators phase of many of the changes that Susskind predicts will reshape the delivery of legal services in the decades to come. That means that for most of our institutions, the adoption of new ways of doing business is still to come.
I certainly think that is true when it comes to recruiting. Large law firms are still using a model that is almost certainly outdated, and are often frustrated with the results. A small handful of firms have experimented with alternatives but no new, more efficient way of doing business has clearly emerged. Similarly, legal education is undergoing a profound crisis, the immediate effect of which has been plummeting enrollment, and here too, while experimentation is underway at schools throughout North America, no one clear new way forward has emerged.

NALP also faces uncertainty. How can NALP best support its members and continue to provide value to its members as the institutions they work for undergo profound change? Who will be the future members of NALP and how can the association best position itself to meet their needs as they arise? These are some of the questions that we will be trying to answer during the long range strategic planning process that is currently underway.

So is it really a zombie apocalypse? No! Of course not! It just sometimes feels like one, especially in August when in our Alice-in-the-looking-glass world summer is the new fall and the recruiting cycle wraps up well before Labor Day. Our research tells us that the job market is slowly improving for new law graduates, and beginning with the Class of 2014, we should expect to see rising overall employment rates for the next several years. Because of the precipitous drop in law school enrollment, will we actually face a shortage of lawyers in the future? Is it, as some pundits have argued, the best time ever to go to law school? It’s certainly not a bad time to go to law school. Falling application numbers mean candidates are likely competitive at schools they would not have been considered for six years ago, and the way law schools are continuing to dole out merit-based scholarship money, no one should be paying full fare for a legal education. And yes, the jobs picture is likely to continue to improve. But the jobs picture is complex and will continue to evolve. There is not yet a clear pathway for the legal process engineers of the future that Susskind predicts. The new jobs that will emerge to replace the lost associate jobs at Big Law are only just emerging as the innovators continue to try to find new ways to bring efficiency and process engineering to the legal services market.

So it is scary, but there are no zombies running in the streets. More change is coming as the innovators continue to innovate, and early adopters are poised to jump on the next new thing that will emerge from the bubbling cauldron of the marketplace. The rest of us, the early majority and late majority that fill the vast space under the bell curve traced by Rogers, will adopt those changes once it is clear that they provide some market advantage. Technology and the ever-growing demand by clients for lower costs and greater value, greater efficiency and greater predictability, are the levers that will drive this change.

Paradigm shifts are not easy, but Susskind and Henderson are not wrong. The most disruptive part of this cycle of change is still to come. But there is no need to panic. Stick together. Keep your head down but pay attention to what is going on around you. Dare I say keep calm and carry on? And keep your sense of humor. And it’s probably a good idea to make some popcorn. While it’s not actually the night of the living dead, it’s going to be a long night nonetheless.

“Paradigm shifts are not easy, but Susskind and Henderson are not wrong. The most disruptive part of this cycle of change is still to come. But there is no need to panic.”
Timing Is Everything! Tips for Addressing the Provisional Changes to NALP’s Timing Guidelines

by Marilyn Drees and Mike Gotham

Marilyn Drees is Director of the Yale Law School Career Development Office, and Mike Gotham is Director of Recruiting and Retention for Perkins Coie LLP. This article was submitted on behalf of the NALP Ethics & Standards Advisory Group.

The fall recruiting season is upon us again. Amid all the hectic activity, it’s important to keep in mind the latest provisional changes to NALP’s Principles and Standards — more commonly known as NALP’s timing guidelines.

Let’s review three common scenarios and see what would — or would not — change this year:

1. Students who receive an offer from their summer employer, either for permanent employment or to return the following summer.

NEW: Employers should give students until October 1 or 28 days following the date of the offer letter, whichever is later, to accept or decline the offer. (Parts V.B.3 & V.C.3)

UNCHANGED: Students should reaffirm their interest in an offer within 30 days of the date of the offer letter or risk revocation of the offer. Employers who plan to revoke offers if students do not reaffirm their interest should explicitly state in their offer letters their intent to do so and the deadlines for students to reaffirm their interest. (Parts V.B.3 & V.C.3; Interpretation 22)

2. Students who receive an offer for summer or permanent employment from an organization for which they have not previously worked.

UNCHANGED: Employers should give students 28 days following the date of the offer letter or until December 30, whichever is earlier, to accept or decline the offer. (Parts V.B.1 & V.C.1)

UNCHANGED: Employers should give students 28 days following the date of the offer letter or until December 30, whichever is earlier, to accept or decline the offer. (Parts V.B.1 & V.C.1)

NEW: Students should reaffirm their interest in an offer within 14 days of the date of the offer letter or risk revocation of the offer. Employers who plan to revoke offers if students do not reaffirm their interest should explicitly state in their offer letters their intent to do so and the deadlines for students to reaffirm their interest. (Parts V.B.1 & V.C.1; Interpretation 22)

3. Students who receive an offer for summer or permanent employment before their school’s interview program from an organization for which they have not previously worked.

UNCHANGED: Employers should give students 28 days following the first day of their school’s fall interview program to accept or decline the offer. (Interpretation 20)

Experienced career services and recruiting professionals are likely very familiar with the NALP timing guidelines, and these provisional changes may seem like a few simple alterations. It’s important to remember, however, that the timing guidelines are entirely new for law students. Also, during the fall recruiting season students are bombarded with information from many quarters about the process. The following

Continued on page 6
are a few tips for career services and recruiting professionals to help students focus on key information and deadlines.

**Tips for Employers**

1. **Make your offer letter clear and specific.** Specify the response deadline, the manner in which the response is expected (e.g., email, telephone), and the person to whom the response should be given (with all necessary contact information). Provide the same information if you will require students to reaffirm their interest to avoid revocation of their offer.

2. **Stay in touch with your career services colleagues.** The career services staff members at all law schools are doing their best to track student progress in the job search process. If you are having difficulty reaching one of their students, they may be able to offer some insight into the student’s situation and help solicit a response from the student.

3. **Share full information.** Include with your offer letters a NALP “Part V Card” (available from the NALP Bookstore), which includes all of the timing guidelines.

**Tips for Schools**

1. **Alert the 2Ls.** Include an explanation of the reaffirmation provisions in your OCI programs and written materials, with examples of appropriate reaffirmation messages.

2. **Prompt students on schedule management.** Remind students to read offer letters very carefully and to track on their calendars all response deadlines (including any reaffirmation requests).

3. **Alert the 3Ls.** Send a targeted message to third-year students about the October 1 deadline for offers from their summer employers, since they are less likely to be focused on information related to OCI.

The latest provisional changes to the timing guidelines are intended to help employers better manage the yield from their offers during the fall recruiting season. With more certainty earlier in the process, employers may be able to extend more offers and create more opportunities for students. At the same time, the guidelines provide sufficient time for students to explore multiple options and to consider their choices carefully.

The Ethics & Standards Advisory Group is charged with gathering feedback from members on the effectiveness of these provisional changes. We look forward to hearing about your experiences with them later in the fall.

For the full text of the Principles and Standards as well as Interpretations of Part V (the timing guidelines) see www.nalp.org/principles.

Part V Cards can be ordered in bulk quantity from the NALP Bookstore at www.nalp.org/bookstore.
What We Learned About Women’s Initiatives and Cultural Awareness at the 2014 Diversity & Inclusion Summit

by Courtney R. Dredden

Courtney R. Dredden is currently concluding two years of service as the NALP/Street Law Legal Diversity Pipeline Fellow.

In June, nearly 150 legal professionals gathered in Chicago for the annual Diversity & Inclusion Summit sponsored by NALP and ALFDP. The Summit featured numerous networking opportunities, a day’s worth of excellent programs, and (surprisingly) gorgeous temperatures. In addition to general sessions, three different sets of breakout sessions filled the day. This article shares some of the highlights from two of those breakout sessions: one focusing on women’s initiatives and the second focusing on cultural awareness and generational differences.

“Women’s Initiatives 2.0 — Enhancing the Impact of Your Women’s Initiative” was a panel discussion led by Stacey Kielbasa, the Director of Professional Development, Attorney Recruitment and Diversity for Chapman and Cutler LLP. Kielbasa was joined by Lisa Horowtitz, the Founder and Principal Advisor for the Attorney Talent Strategy Group, and Leslie Richards-Yellen, the Chief Diversity and Inclusion Officer and a Partner at Hinshaw & Culbertson LLP. Right off the bat, there was an interesting discussion of how the diversity professional and the leadership of the women’s initiative at a law firm can work together. Specifically, the panelists mentioned four ways that the diversity professional and head of the women’s initiative can work together to:

(1) ensure that there is a clear understanding of both roles and strategize how they can have the maximum amount of impact;
(2) identify areas of common ground;
(3) eliminate silos; and (4) work toward lessening the perception and reality of a zero sum game. Both panelists and attendees emphasized that communication among everyone involved is key to creating clear goals and executing those goals.

Women’s initiative leaders need to have a general understanding of who the talented women are in the firm so those women can be given the extra support that may help keep them from leaving the firm. Having clear communication between
diversity professionals and the leaders of the women’s initiative can help this. The conversation morphed into how it is so important to involve men in the discussion. The fact still remains that men are by and large the leadership at most law firms and that no women’s initiative can succeed without their support. It is a two-way street: men need to realize that as leaders in law firms and as business professionals they should some of the responsibility to help make changes that will increase the success of women at law firms. However, men also need incentives to help make and institute those changes. Alienating men at the firm is not an incentive. Including men in events, offering them a seat at the table, and consulting them about their ideas are all ways that men can be meaningfully included. Richards-Yellen pointed out that if the events and activities that the women’s initiative is doing are truly stellar, everyone will want in. And once they are in and involved, they will feel as if they have “skin in the game” and be more likely to try to ensure the continued success both of the women’s initiative and of women in general at the firm.

Kielbasa pointed out that women’s initiatives need a written strategic plan. When attendees were asked to raise their hands if their firms had a written strategic plan, it was revealed that very few had taken this step yet. Having a written plan helps to legitimize the women’s initiative, provides a written record of what the goals are, and becomes a good way to measure whether those goals are successful. Attendees were encouraged to establish a written strategic plan at their firms. Finally, the session closed by noting the importance of anti-bias training. This was a nice lead-in to the session on cultural awareness.

After lunch, Genhi Givings Bailey, the Director of Diversity and Inclusion at DLA Piper, Koriambanya Carew, the Director of Strategic Diversity Initiatives at Shook, Hardy & Bacon, Renauld G. Clark, a Consultant at The FutureWork Institute, and Tanya M. Odom, the Director of Innovation and Social Media at The FutureWork Institute, led a session entitled “Cultural Awareness and Generation XY and Me!” Attendees discussed the different hallmarks of each generation and the effects those hallmarks can have on the workplace dynamic. For example, while the veteran generation places a strong emphasis on hierarchy and the formal chain of command, generation Xers value work and life balance; millennials believe that work should be fun and that leadership means everyone is involved in making decisions. Those competing values can lead to conflicts and misunderstandings. Law firms should be cognizant of this and work to identify similarities among generations.

When the conversation shifted to discussing how to identify and eliminate bias, Odom shared a fascinating website that is focused on helping millennials identify and remove their implicit bias. The site, LookDifferent.org, encourages young people of the MTV generation (the site is an MTV site) to examine their bias and then consciously work to remove those biases. Diversity professionals should encourage leadership within law firms to have a two-way perspective. This means not just focusing on the fact that millennials may be requesting to work from home more often than baby boomers in the firm, but instead recognizing that millennials thrive when they feel as if they have the freedom to work from an alternative location. This sense of freedom may be important to provide to millennials (within reason) as long as the quality of the work product remains high. This doesn't mean that everyone will be able to work from home, but it does mean recognizing that rather than being lazy millennials may simply have different values. Leadership should also not assume that because someone is of a particular generation they necessarily identify with all of the hallmarks of that generation. This session had built in time for attendees to connect with their table mates, which resulted in a robust discussion of how diversity professionals can handle generational and cultural issues within their law firms.

All told, the Summit offered time for attendees to learn from panelists and each other, and to head back to their law firms or other workplaces with tangible action items.
The legal profession has a leaky pipeline. Plenty of high-performing lawyers enter the profession, but many of them — women in particular — leave within a few years. In most Am Law 200 firms there is a 50/50 gender split at the entry level, but only 16% of the partnership are women. And, as recent NALP statistics illustrate, the partnership numbers are likely to get even more dismal with time — 2013 was the fourth consecutive year that the representation of women in the ranks of U.S. law firm associates declined.

Once women lawyers exit the profession to raise children or for other reasons, it is not easy to re-enter. Since law firms usually hire and advance lawyers based on tenure, it’s difficult for a returning lawyer and her potential employer to know where she fits into the traditional structure upon re-entry.

The OnRamp Fellowship, created in December 2013, aims to address these problems by replenishing the pipeline of mid- to senior-level women lawyers in law firms. As the first “Returnship” ever launched in the legal profession, the Fellowship is a re-entry platform that matches experienced women lawyers returning to the profession with law firms for a one-year, paid position. This unique experiential learning program gives returning women an opportunity to demonstrate their value in the marketplace while also broadening their experience, skills, and legal contacts. In turn, the legal profession and law firms benefit by engaging with a previously untapped pool of high performers and by increasing gender diversity in the profession.

Four innovative and female-friendly law firms — Baker Botts, Cooley, Hogan Lovells, and Sidley Austin — signed on as the OnRamp Fellowship pilot participants. Each of these law firms agreed to hire at least one returning lawyer for a paid position as an OnRamp Fellow.

The OnRamp Fellowship: An Innovative Effort by Four Law Firms to Bring Experienced Women Lawyers Back into the Profession

by Caren Ulrich Stacy

Caren Ulrich Stacy is the founder of the OnRamp Fellowship and the talent R&D company Legal Talent Lab. She can be reached at caren@lawerdevelopment.com.
experienced woman lawyer returning to the profession after an extended hiatus for a year-long training position. The goal is to demonstrate to the marketplace that these women, who are frequently turned away by BigLaw recruiters and law firms because of the extensive gaps in their résumés, can bring incredible value to law firms and their clients.

Challenges in Getting the Fellowship Off the Ground

We faced two major challenges when launching this new initiative. The first challenge was getting large law firms to sign on. Since law firms are often resistant to change and not known as particularly innovative, we anticipated getting many rejections before hearing a single yes. But, to our surprise, we asked four firms and four firms said yes without hesitation. The lack of gender diversity in firms’ senior ranks has been a concern for decades with no feasible solution in sight — until now.

The second challenge was getting the word out to women lawyers who had left the profession and wanted to return. Because these women are often “off the legal grid” and not reading legal trade publications such as Law360 and The American Lawyer, it was incredibly important that news about the Fellowship spread well beyond the legal profession. With an investment of several thousand dollars and more than 500 hours of outreach time — posting on social media and job search sites, sending direct emails to headhunters and career counselors who have access to these women, and connecting with legal and non-legal women’s organizations — the word finally reached interested women lawyers. The Fellowship website received 12,000 hits over the first five months and 170 women lawyers applied for the pilot program.

Differences from Traditional Lateral Hiring and Placement Approaches

To be considered for the Fellowship, applicants are required to complete a rigorous screening process, which includes a personality and skills inventory, a behavioral interview, and a writing assessment developed by Ross Guberman. To further support successful Fellow/law firm matches, the firms participate in an Organizational Cultural Analysis and a Bright Spot Study to better understand the behaviors, attitudes, and skills that lead to lawyer success at their firms.

In addition to the three-hour per candidate screening process — which is unusually rigorous in the law firm world — the Fellows’ training and development is a critical component of this innovative program. More than 35 legal career counselors and training experts, including Tim Leishman, Diane Costigan, Ida Abbott, Brian Johnson, Ellen Ostrow, and David Freeman, agreed to donate their time to assist with the Fellows’ integration and development. Over the course of the year, the Fellows receive training and coaching in negotiations, business development, oral advocacy, social media, project management, time management, and other skills. And to ensure that they also received practice area specific training, PLI and ALI CLE graciously donated unlimited online CLE to the Fellows.

In addition to this external counseling and training, the law firms link each of their Fellows to a Partner Advisor who monitors their workload, performance, and other critical advancement matters.

The Fellowship is only a year, but the hope is that these women will have the updated skills and contacts to leverage the experience into an associate position with their Fellowship firm or another legal organization that values their incredible talents.

Results of the Pilot

In the OnRamp Fellowship’s pilot run, the four law firms hired nine Fellows who will work in six practice areas across six office locations — including Chicago, Houston, Los Angeles, New York, San Francisco, and Washington, DC — over the next year. Although it was anticipated that each firm would hire one Fellow for the inaugural program, most of the firms exceeded this expectation by hiring two or more Fellows. Sidley, for instance, hired four.

The nine Fellows selected for the inaugural program clearly demonstrate the depth and the breadth of this untapped pool of talent. During their hiatuses from practice, which ranged in length from three to 20 years, the Fellows continued to develop their skills while serving in leadership roles in organizations.
such as the Military Spouse JD Network, earning advanced degrees, and holding elected offices.

A second phase of the pilot will be run in Fall 2014 with a select group of firms due to the incredible interest in the initial pilot demonstrated by the following facts:

• There were 12,000 hits to the website in the first five months.

• 170 women lawyers applied for the initial pilot; 83 persevered through the three-hour per person screening process; and nine were selected by the firms as part of the inaugural class.

• 27 additional law firms have inquired about participating in the second pilot.


But to get a true feel for the outcomes of this program, it’s helpful to hear directly from the Fellows themselves. Here are a few highlights:

Dora de la Rosa, a Fellow at Sidley Austin LLP (Los Angeles, California), says: “The OnRamp Fellowship has enabled me to return to the profession and has given me the confidence to take on this new challenge. After a 14-year hiatus, I was unsure about how to return and where I could fit in, especially since the legal workplace has changed so much. Sidley and the Fellowship provided me with an incredible opportunity and I am extremely grateful.”

Dana L. Glenn, a Fellow at Hogan Lovells US LLP (Washington, DC), comments: “When I decided to return to law, I attended networking seminars, and cold-called law school alumni to find possible openings. However, I was only able to secure two interviews and no firm offer over a two-year period because of the gap in my résumé. Given this experience, I was more than thrilled to be able to participate in the OnRamp Program. The program has helped to build my confidence and I am gaining valuable professional experience with a top international law firm.”

Heather Hewitt, a Fellow at Baker Botts L.L.P. (Houston, Texas), states: “The OnRamp Fellowship opened the door to advancement that had been all but bolted shut for women like me who took an extended hiatus from practicing. It provided me with outstanding levels of support and encouragement for what was a previously elusive opportunity to demonstrate my value to the legal community.”

Mary Klumpp, a Fellow at Cooley LLP (Washington, DC), says: “Being married to a senior officer in the U.S. Air Force meant that our family moved across the country seven times in the nine years between 2004 and 2013. Needless to say, I left my practice behind. But by virtue of the incredible opportunity afforded me as an OnRamp Fellow, I am back to work with high hopes for success in my career.”

Lessons Learned and Takeaways Thus Far

As with any new initiative, there are always tweaks that can be made to increase the effectiveness of the program. But the most incredible takeaway — my personal “ah-ha” moment as this concept transformed into a full-fledged initiative — was everyone’s overwhelmingly positive reaction to trying something new that might benefit the profession.

The four law firms and 35+ legal consultants, training experts, career counselors, and CLE providers all agreed to participate in record time. The law firms, due to the amazing leadership of several key partners and recruitment directors, signed on — all within two to three weeks of my pitching the idea — knowing that they would be “piloting” a potentially ground-breaking new path for women lawyers.

Every one of the experts and providers agreed on the spot, saying, “If you can get this off the ground, I’m in.” I was in awe (and so proud) of the genuine support and willingness of these industry experts across the country to donate their time and expertise. They didn’t ask for payment. They didn’t ask for publicity. They just wanted to be a part of something bigger that could positively affect women, law firms, and the profession as a whole.

What a refreshing concept.
Key Takeaways from a National Legal Mentoring Conference

by Morgan L. Smith

Morgan L. Smith is Director, Professional Development, for Dykema Gossett PLLC. This article was submitted on behalf of the NALP Lawyer Professional Development Section.

From May 1-3, 2014, over 100 legal professionals gathered in Columbus, Ohio, for the second National Legal Mentoring Consortium conference. Entitled Mentoring in an Evolving Legal Profession, the event drew attendees from bar associations, supreme court offices and commissions, law schools, and law firms across the United States. Overall, the event covered the mentoring pipeline, how to maximize the benefits mentoring program participants receive, communicating those benefits, and using the benefits to recruit participants for both voluntary and mandatory programs.

The conference began with a conversation with Justices Paul de Muniz of Oregon and Terrence O’Donnell of Ohio moderated by Judge Colleen O’Donnell. Judge O’Donnell is not only Justice O’Donnell’s daughter but also a member of the first class of mentees in the Ohio Mentoring Program. Both justices described how their respective state mentoring programs were developed and the pros and cons of a mandatory or voluntary program.

Sessions extended for a day and a half, and topics included episodic mentoring (great for millennials), incorporating professionalism into a mentoring program, mentoring at later stages of a legal career, and several discussions around innovation. The keynote given by William D. Henderson of Indiana

Continued on page 13
University Maurer School of Law, a law professor and legal commentator well known to the NALP community, was a look ahead to what the legal profession might look like in 2024.

I registered for the conference not sure what I would learn or how relevant and helpful it would be to my law firm. It was a great experience and I left the conference with renewed enthusiasm for mentoring programs and with several new ideas and enhancements to implement at my firm. Other NALP members who attended reported similar experiences.

I asked several of the NALP members who attended to share their key takeaways and heard the following.

- “Mainly [the takeaway] was the idea that mentoring is thriving and with special attention these programs can be of immense benefit,” said Julie Mulhern of Benesch Friedlander.

- “Some may not know much about state/local efforts. By attending you leave knowing more than when you arrived and perhaps even thinking of ways to collaborate,” said Mina Jones Jefferson of the University of Cincinnati College of Law.

For me, the key takeaways were getting to know and learning from colleagues outside of law schools and firms. Many of the approaches and techniques they use to invite participation in their programs could work well in my environment too.

While I arrived at the conference unsure of what to expect, I left looking forward to implementing an episodic mentoring piece into our existing associate programs and to developing a new program for more senior lawyers. I also left hoping I will be able to attend the next National Legal Mentoring Consortium conference.

To learn more about the National Legal Mentoring Consortium see www.legalmentoring.org.
New Grads Find More Jobs for Second Year in a Row, But Not Enough More to Offset the Larger Class Size

by Judith N. Collins

Judith N. Collins is the NALP Director of Research.

The overall employment rate for the Class of 2013 was 84.5% of graduates for whom employment status was known — the lowest rate in 20 years, continuing a decline that started in 2008, albeit a very small decline compared with those from 2008 to 2012. (See the table entitled “Employment Trends — 1985-2013.”)

The employment rate for new law school graduates has fallen 7.4 percentage points since reaching 91.9% in 2007, the highest rate in the past 25 years. Although the employment picture for this class contained some positive markers as graduates found more jobs than the previous class and more of these jobs were full-time and long-term, the graduating class was also larger, more than offsetting the growth in the number of jobs. For more insight into the employment picture for the Class of 2013, see “Employment for the Class of 2013 — Selected Findings” posted at www.nalp.org/classof2013.

Just over 51% of employed graduates obtained a job in private practice, the highest percentage since 2010, but nonetheless below the prevailing levels of 55% to 64% of jobs for the 25 years prior to 2010. As shown in the table entitled “Law Firm Jobs by Firm Size — Classes of 1982-2013,” the distribution of these jobs by firm size has changed over the years. For many years, jobs in firms of 2-10 lawyers outnumbered those in firms of more than 100 lawyers. In 1998, the pattern reversed, and up until the Class of 2010 the number of jobs taken in firms of more than 100 lawyers outnumbered those taken in firms of 2-10 lawyers.

Starting with the Class of 2010 there was a sharp reversal, with jobs in small firms outnumbering those in firms of more than 100 lawyers for the first time since 1997. The difference grew wider with the Class of 2011 but has shrunk in the two most recent years as large firm hiring has rebounded somewhat. It remains the case, however, that the proportion of jobs in either very small or large firms has accounted for at least 70% of law firm jobs since 2000. Finally, the percentage of law firm jobs reported as a solo practice has decreased since 2011. Nonetheless, the rate of solo practice jobs remains relatively high compared to non-recessionary periods such as the late 1980s and the early 2000s. ■
Earlier this year, I listened to a radio segment that got me thinking about the role of grit and resilience in law students’ job search success. The story explored the increasing attention that primary educators are paying to the importance of “grit” to students’ long-term educational, professional, and personal success. Angela Duckworth, a psychology professor at the University of Pennsylvania, coined the term “grit”; she defines it as “perseverance and passion for long-term goals” and has developed scales to assess an individual’s “grittiness.”

Around this same time, a conversation with a student highlighted for me the importance of grit in the job search process, especially for students seeking in-demand public interest positions. This student had applied for a position with a national nonprofit organization. She was one of three finalists (out of over 55 applicants) but did not ultimately get the job. What stood out to me was her response to this disappointing news. She acknowledged her disappointment, but then asked for advice on reaching out to the organization to find out how to build her skills so that her background and qualifications more closely aligned with the organization’s needs. She later secured an internship with a different nonprofit organization working on issues that she was equally passionate about.

After this conversation, I began thinking about how law schools can help students understand the importance of grit to their professional future and improve their grittiness in the face of a challenging legal employment market. Many of us are working with students with little experience in dealing with rejection or academic performance below their expectations. Below are some ideas for how law school career counselors can use insights into grit to help students better prepare to find meaningful internships, externships, and post-graduate employment.

Incorporate a “grit” assessment into the counseling process. Many counselors already use assessments (e.g., Myers-Briggs Type Indicator (MBTI), StrengthsFinders 2.0, and Shultz & Zedeck’s 26 Lawyering Effectiveness Factors) to help students identify strengths, weaknesses, personality traits, areas of interest, and preferred learning and work styles. Incorporating Duckworth’s grit assessment could facilitate a fruitful conversation between counselor and student about strategies for the student to obtain his or her long-term goals. Using some form of grit assessment with students throughout law school can provide helpful feedback to the student as he or she encounters different challenges.

Develop programs to help students build grit in law school and beyond. Law schools can help students change how they view and respond to “failure” through innovative programming. Instead of the traditional panel on finding summer employment, consider a panel featuring students who did not get their ideal summer position but found equally valuable opportunities. When scheduling programs on post-graduate employment, include graduates who ended up in positions that were different from their initial expectations. This can help students recognize that there are multiple paths to success and that persistence is key.

“Using some form of grit assessment with students throughout law school can provide helpful feedback to the student as he or she encounters different challenges.”

Sarah J. Bannister is Associate Director, Alternative and Public Interest Careers, at the University of Oregon School of Law. This article was submitted on behalf of the NALP Public Service Section.
up in their positions through more circuitous routes and ask them to share the ups and downs of their searches. Encourage students to participate in mindfulness based stress reduction (MBSR) programs available through the school or community or bring an MBSR practitioner to the law school for a program. MBSR programs help individuals increase emotional resilience in stress-inducing situations.

**Share your own experiences of personal and professional setbacks with students.** As counselors, we can help our students and graduates start to view failure differently by sharing our own personal experiences. For example, when talking with a student who did not do well in a class, I often tell them about how I bombed a freshman-year calculus final examination. I was mortified, but I took the next semester of calculus with that same professor and worked hard to master that material. Similarly, I share my own experiences of being rejected for jobs that I thought I was qualified for and how I responded to those rejections. The response from students whom I have counseled has been positive.

Maintaining “perseverance and passion for long-term goals” is critical for an individual’s success in law school and as a professional. By beginning an open and frank dialogue with our students about strategies for responding to academic and professional setbacks, we can help them build the skills and confidence to achieve their personal and professional goals.

**ENDNOTES**


Living Through a Paradigm Shift

by William D. Henderson

William D. Henderson is a Professor at Indiana University Maurer School of Law. He is also a principal at Lawyer Metrics, LLC, a research company that focuses on trends and patterns in the legal industry.

The initial two paragraphs of Richard Susskind’s newest book, Tomorrow’s Lawyers, are perhaps the boldest and most confident of any commentator currently writing on the legal industry:

This book is a short introduction to the future for young and aspiring lawyers.

Tomorrow’s legal world, as predicted and described here, bears little resemblance to that of the past. Legal institutions and lawyers are at a crossroads, I claim, and are poised to change more radically over the next two decades than they have over the last two centuries. If you are a young lawyer, this revolution will happen on your watch.

Susskind is a British author, lawyer, and technology expert who was working in the legal industry in the mid-1980s when he completed his PhD at Oxford. His dissertation examined the unexplored terrain between law and computers. For the last 20 years, Susskind has been describing the future to a disbelieving and often dyspeptic audience of lawyers.

Yet, for the most part, Susskind has been right. Until recently, Susskind’s most famous prediction occurred in 1996, when he said that email would someday replace the telephone as the dominant method for lawyers and clients to communicate. At the time, the Internet was largely a novelty that existed inside universities. The leaders of the organized bar were outraged by Susskind’s comments, as they believed that no prudent, ethical lawyers would ever transmit sensitive client information across such an insecure medium. Of course, in the intervening 20 years, email and the smartphone have taken over the lives of even senior partners.

If the legal industry is in the midst of a paradigm shift, surely the stakeholders of NALP — law schools and law firms that hire and train traditionally educated lawyers — would want to understand how and why the industry is changing. This essay is not a substitute for Susskind’s book, which every NALP member should buy and read. (It is a slender 165 pages and highly accessible since it was written for a student audience.)

Instead, in this essay I want to deal head-on with the mystery of why today’s market leaders — both law schools and law firms — might struggle to recognize, understand, and adapt to the changes described by Susskind.

If the Traditional Legal Services Paradigm Is Shifting, What Is Causing the Shift?

The answer to this question is simple: clients. One group of clients — individuals — struggle to pay for a few hours of a lawyer’s time to handle the legal dimensions of many of life’s problems, such as divorce, child custody, estate planning, disability, or consumer bankruptcy. Although some

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Continued on page 18
industrious lawyers are able to serve this clientele through a well-organized, volume practice, there remains a large and underserved market. Another group of clients — large corporations — are awash in a sea of complexity related to globalization, technology, and regulations. These clients need legal solutions to stay in business. But here is the catch: They don’t necessarily have to buy those solutions from traditional large firm lawyers.

Susskind’s core insight is that there are a host of legal problems that can be solved, at least in part, through greater reliance on technology, data, and process. This enables better, faster, and cheaper legal output, which in turn creates opportunities to do good (by lowering costs and improving access to legal solutions) and to do well (because the legal solutions Susskind discusses are highly scalable and can be sold over and over again to a large mass audience).

This combination of doing good and doing well ought to be irresistible to many lawyers. Yet, for a variety of reasons, the changes that Susskind describes are more likely to be greeted with confusion rather than excitement. Here are the top three reasons:

**Education.** The first source of confusion is our educational backgrounds. If we hold a law degree, we have been trained within an artisan tradition. Our concept of legal problem-solving focuses on one-to-one consultative legal services. When things get really complicated, we bring in experienced and highly specialized lawyers, not a computer or a team of information scientists. Nothing in our formal training suggests that our work involves extensive collaborations with other professionals, particularly on a co-equal basis. We lawyers are used to being the smartest people in the room. This perception is deeply engrained in our psyches.

**Experience.** The second source of confusion is our experience. Over the last 30 years, large law firms have grown by over 500% and profits have climbed dramatically. Many large law firm partners continue to make incomes that are on a par with professional athletes. Although entry-level lawyers are having a tough time finding employment as a lawyer, the incomes of large law firm owners remain at historical highs. The latter group will need a lot more evidence to convince them that their model is broken.

**Risk.** There is perennial debate in the nation’s leading business schools on whether it is better to be a “fast follower” rather than a “first mover.” This is because brilliant new ideas are often difficult and costly to implement, so the best strategy is sometimes to sit back and learn from the (expensive) mistakes of our competitors.

Because of our risk-averse nature, lawyers, whether BigLaw or in-house, are probably drawn to the fast-follower approach. Yet, who is there to follow? Back in 2013, Clearspire, one of the standard bearers of the NewLaw movement, garnered lots of legal press when it announced it would be hiring hundreds of lawyers. Only a year later, however, the com-
“Although innovation can bring about significant disruption within an industry, the innovation process itself unfolds in a remarkably predictable way.”

Company closed its doors. This turn of events surely tempers enthusiasm for a new law firm model.

The factors described above reduce the likelihood that lawyers will recognize and embrace change, yet these factors lack the power to stop the change process itself.

The paradigm shift described by Susskind is occurring because of two broader trends: individual and corporate clients increasingly need and want better, faster, and cheaper legal solutions, and the tools and methodologies that can make that happen are becoming cheaper and less complex to implement. As the economist Herbert Stein famously quipped, “What can’t go on forever, won’t.”

Likewise, if legal services can be provisioned better, faster, and more cheaply, a group of clever legal entrepreneurs will eventually make it happen. Money and glory will flow to those who create innovation that the market will accept.

The primary insight that knits together Rogers’ research is that the diffusion of innovation is primarily a social phenomenon rather than a process driven by logic, data, or economic self-interest. According to Rogers, the spreading of all innovations follows a strict bell curve in which only a small minority of people in any community or organization, or companies within an industry, are truly open to new approaches to existing problems. These are the innovators and early adopters. See Figure 1.

How Will the Change Unfold?

Although innovation can bring about significant disruption within an industry, the innovation process itself unfolds in a remarkably predictable way. This observation was established empirically by Everett Rogers, a sociologist who spent his entire academic career studying how innovations spread in a variety of contexts, including manufacturing methods, hi-tech products, mass media, environmental regulation, public health, and the military. Rogers’ research is chronicled in his seminal book, *Diffusions of Innovation*, which was first published in 1963 and then updated several times over the next 40 years as Rogers continued to compile evidence to support this thesis.

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![Figure 1. Rogers Diffusion Curve](image-url)
The innovators are important because they are driven primarily by a love for the creative process. The ideas in their heads appear real to them, so they have tremendous patience for trial and error experimentation. Because the more pragmatic majority often views innovators with suspicion, the innovators depend upon the early adopters to legitimize their ideas to a broader audience. Early adopters tend to be high-status and influential among their peers. Compared to their early and late majority counterparts, they also tend to be younger, more cosmopolitan, more drawn to data and scientific methods, and more willing to take risks in order to secure a competitive advantage.

After the early adopters obtain conspicuous success for a new innovation, the innovation appears less risky. Thus, the diffusion process picks up steam as the early majority copies the methods and know-how of the early adopters. As they obtain a competitive advantage, the late majority quickly follows. Eventually, even the laggards adopt the innovation, albeit their motivation is less about competitive advantage than the desire to avoid the stigma of irrelevance or failure.

The most striking feature of the Rogers’ diffusion model is that rational self-interest plays such a limited role. Indeed, despite the prospect of obtaining a competitive advantage, more than 80% of any market is incapable of adopting an innovation based on abstract theories and data. Before they are willing to supplant their established methods, they will need to directly observe in concrete form the alleged benefits of a proposed innovation. Often this demonstration will occur by observing the success of their direct competitors or peers.

An Example of Diffusion

One of the most vivid examples of Rogers’ diffusion model is the adoption of hybrid seeds among farmers during the first half of the 20th century. The technology behind hybrid seeds was invented in university agronomy departments during the early 1920s. The resulting hybrid seeds produced crops that were more drought resistant, disease resistant, and generally more bountiful than conventional farming methods. Yet, despite these enormous advantages, the diffusion of this relatively simple technology took several decades to take hold.

The initial obstacle to adoption was the communication gap between the farmer and the college-educated agronomists. Only a small handful of relatively sophisticated farmers had the intellect and interest to carefully listen to these outsiders. In turn, these early adopters planted a portion of their acreage with the new seeds. When the resulting corn was better and more bountiful, farms converted their entire acreages to hybrid seeds. The adoption then spread geographically over a period of years as farmers directly observed the superior performance of hybrid seed planted on adjacent land. If it was working for their neighbors, it would likely work for them. Simple imitation was the driving force for change.

Continued on page 21
Figure 2 shows the diffusion of two distinct events: hearing about hybrid seed technology and then, by an average lag of about six years, actually adopting it.

The dynamics in Figure 2 ought to be familiar to anyone who has participated in law firm strategic planning. The first question is typically the same: “What is everyone else doing?” The logic runs, “If they are doing it, maybe we should too.”

A more serious point from Figure 2 is that during this transition period, the Iowa farmers were probably in a state of confusion and turmoil. In particular, by 1931, there had been lots of discussion about the new hybrid seed technology, yet only a tiny proportion of farmers had actually adopted it. With so much talk and so little action, many farmers probably decided to ignore the college-boy agronomists and stick to their established methods. Yet, within a few short years, the benefits to early adopters became too big to ignore. Thereafter, the entire market shifted very rapidly. (Source: Ryan, B., & Gross, N. C., 1943. “The Diffusion of Hybrid Seed Corn in Two Iowa Communities,” Rural Sociology 8:15-24.)

When it comes to many of the innovations predicted by Richard Susskind, is it possible that we are in a similar high-noise environment? Sure, we can listen to abstract discussions of how technology, process, and data can be applied to legal problems. But most legal industry stakeholders—the early majority, the late majority, and the laggards—would prefer to see concrete evidence that these innovations actually work.

During this time of industry tumult, however, it is important to separate out our positions that are based in natural human impulses such as fear and inertia versus positions we shape based on careful research, data, and reason. We are lawyers, after all. We get paid for our brain power and our judgment.
A Survival Guide for the Zombie Job Apocalypse

by Vic Massaglia and Pascale Bishop

The job market has been brutal and may seem to some to be akin to the environment of a zombie apocalypse where the streets are barren, the future is uncertain, and fear is experienced every day. Here are some tips for equipping students not only to survive during the legal employment apocalypse but also to thrive.

Get Organized. In the employment wasteland dead zone where there is little or no movement, it is easy to stay in one place and become apathetic. Help your students create an action-oriented plan that includes self-assessment, market research, strategic networking, and document creation and review, as well as interviewing preparation.

Don’t Be Afraid and Don’t Act Alone. Employers are looking for candidates who appear to be confident, yet searching for work can be a very isolating experience that can affect one’s self-esteem. To combat this, consider that there is strength in numbers. Advise students to create a supportive team composed of people they trust who can help them navigate the job search terrain. Suggest utilizing their career counselors, mentors, faculty members, peers, friends, family, etc., to help them through the barren employment land.

Think Strategically. Most job candidates use only one method to seek employment — responding to ads. According to Quintcareers.com, only 5% to 20% of all available jobs are ever publicly advertised in any medium. Students need to be nimble and vary their job search methods to include approaches like direct employer outreach and targeted networking.

Arm Yourself. Your students will need the right tools; these include resources such as applicable websites (www.nalpdirectory.com, www.psjd.org, etc.), employer-focused résumés and cover letters, and a professional LinkedIn and/or Twitter presence.

Dress Appropriately. You wouldn’t want to be wearing heels when a zombie attacks, and your students shouldn’t be in sweatpants if they see a judge in the school hallway. Make sure your students understand that they are professionals from day one of law school and can expect to see other professionals in their everyday environment. Poor dress, demeanor, and deportment can kill a job search faster than a zombie bite.

Get Up the Staircase, Then Destroy it. No one wants a zombie following behind them. Whether the zombie in this case is a bad grade, a non-offer, a gap in employment, or something else, students should be taught to acknowledge it, own it, and then move on from it. Similarly, application rejections should not be dwelt upon. Just as in the...
zombie apocalypse, new obstacles will always be arising. Dwelling on older ones will only slow students down.

Get Out of the Car, Get onto the Bike. Today's job seekers must plan an alternate route — one that can sometimes move off-road. Talk to your students early about how each job search can involve different access points or circuitous routes so they don't get stuck in a dead-end with a zombie on their tail. Planning alternatives and taking action keeps students from stressing out about the possible failure of their first-choice job application.

Keep Moving, Keep Low, Keep Quiet, Keep Alert! Sometimes students fall into the “no one is going to hire me” slump, just as someone in a zombie apocalypse may lose hope, sit down, and wait to be eaten. It’s our job to keep students moving and looking! Think of creative ways to motivate students — programs on jumpstarting their job search, a “hot jobs” email, or just a mid-semester check-in can push apathetic students back into the search.

No Place Is Safe — Only Safer. Students should seek out groups of like-minded people, whether a student affinity group, a diverse bar association, or an alumni group. These groups provide support, advice, referrals, and networking opportunities. But students should also be cautioned not to get too casual — they are still making an impression!

The Zombie May Be Gone, but the Threat Lives on. The current search may be over but career planning never ends. Keep reaching out to students about their longer term plans and providing networking advice and opportunities. Circumstances change — just look at the zombie job apocalypse of 2008! A true career plan doesn’t end until retirement.

It’s a rare personality that enjoys battling zombies, or engaging in a job search, but with preparation, perseverance, and a positive attitude, the zombie job apocalypse can be survived. And with the right leader (you!), students can learn how to take care of themselves for their whole career.

The Social Media Ethics Danger Zone for Law Students, Lawyers, and Their Employers

by Christine Ann Guard

Christine Ann Guard is Director of Career Services at Mercer University School of Law. This article was submitted on behalf of the NALP Newer Professionals Section.

Law school career services professionals, our law firm counterparts, students, and lawyers must know the rules of the road in the changing digital frontier. Although career services professionals caution students to delete pictures of their unbecoming escapades and lock down their accounts using privacy settings, the damage may already have been done.

Presently, at least one board of bar examiners requests access to social media accounts. Students and graduates need to be cautious about describing their experience in social media profiles. For instance, I recently found a graduate whose LinkedIn profile indicated “attorney awaiting admission” to the state bar association. The graduate had not been admitted in any jurisdiction and was at least dangerously close to a thin ethical line. Students indicating that they have expertise similarly need to be cautious in descriptions because they are not lawyers. Graduates should review their existing profiles because something that was not a problem when they created their profiles might raise ethical issues once they are admitted to practice.

Continued from page 22

Continued on page 24
Use of social media searches in the hiring process may present pitfalls. In “Social Media Strategies in Recruiting, Hiring Pose Legal Risks for Employers” (Human Resources Report, April 7, 2013), Michael Bologna points out that while social media can be used in recruiting and hiring, it may expose an employer to “significant legal risks,” including the disclosure of protected class information. Information of this type should not be utilized by employers in reaching decisions, and this type of research could require employers to acknowledge awareness of a candidate’s protected class if targeted in an intentional discrimination allegation. Employers should have policies regarding use of social media screening in hiring. Notably, twelve states specifically prohibit employers from requesting account passwords, and requesting passwords could violate the Stored Communications Act according to Bologna. Consequently, the article recommends any examination be conducted by the human resources department without involvement from hiring managers or future supervisors and that only publicly available social media information should be screened.

The California Bar Standing Committee of Professional Responsibility and Conduct’s Formal Opinion No. 2012-186 offers guidance, examples of typical attorney use of social media and possible ethical issues, and their analysis of the scenarios. For instance, the California Bar indicates that a status posting such as “Case finally over. Unanimous verdict! Celebrating tonight.” would not violate ethics rules because there is no indication that the attorney is available for employment. However, “Another great victory in court today! My client is delighted. Who wants to be next?” does violate California’s ethic rules because the communication suggests the lawyer is available for employment, contains a client testimonial, and lacks the required express disclaimer.

Other issues arise from confidentiality breaches. In In re Skinner, decided May 19, 2014, the Georgia Supreme Court reprimanded an attorney who admitted posting information on the Internet of a personal and confidential nature about a client. She did so after the client discharged her as counsel and in response to three negative reviews the client posted online. In In re Disciplinary Proceedings Against Peshek, 798 N.W.2d 879 (Wisc. 2011), an attorney was suspended for 60 days in both Wisconsin and Illinois for publishing a blog containing confidential information about her clients that was sufficient to identify them along with derogatory comments about judges.

Students and practitioners should be cautious about the nature of their social media postings. In Florida Bar v. Conway, SC08-326 (Fla. 2008), a lawyer was disciplined for referring to a judge as an “evil unfair witch” and being “seemingly mentally ill,” and for remarking that she was “clearly unfit for her position and knows not what it means to be a neutral arbiter.” The attorney was reprimanded and required to pay $1,250 in costs.

LinkedIn’s Skills section was problematic until recently because it permitted a user’s connections to indicate what skills and

Continued from page 23
“expertise” they believed the user possessed. Many state bars prohibit attorneys from holding themselves out as experts unless they have become board certified or otherwise credentialed. Use of LinkedIn’s Skills section resulted in several ethics advisories, including a warning from the South Carolina Bar in 2013 with instructions for hiding the section. Luckily, LinkedIn recently changed its section labeling to reduce bar association concerns with respect to the expertise label. The section is now titled “Skills and Endorsements,” which appears to be sufficient to satisfy the Florida Bar’s concerns as noted in the April 1, 2014 Florida Bar News.

Participation in other websites may also pose ethical issues. The South Carolina Bar issued Ethics Opinion 12-03 concluding that attorneys could not participate in a website that designated the attorneys answering questions as experts. When publicly posting legal information, such as in a tweet, students and practitioners must be careful not to engage in the unlicensed practice of law. Tweets cross jurisdictions and unlicensed practice can result in disciplinary action and could constitute a criminal offense in some jurisdictions.

The states have mixed opinions as to what connections or “friends” judges may make through social media. While the ABA in Formal Opinion 4462 indicated that a judge may participate in social media, the rules vary by state. To find the relevant opinion for your state, consult the National Center for State Courts website.

Finally, social media sites offer a treasure trove of material for use in litigation. Attorneys must know their state’s rulings about advising clients on preserving and deleting social media activity. Instructing a client to delete social media postings could result in disciplinary action and evidence spoliation accusations. The ABA in Formal Opinion 466 recently concluded that it is permissible for attorneys to review an individual juror’s publicly available social media activity for use during voir dire and to uncover potential misconduct during a trial. However, the ABA warned against following or friending jurors to invade their private postings. The Missouri Supreme Court in Johnson v. McCullough, 306 S.W.3d 551, 559 (Mo. 2010), the Oregon State Bar in Formal Opinion No. 2005-164, and the New York State Bar Association Committee on Professional Ethics in Opinion 843 reached similar conclusions. Universally, ethics rulings find deception and/or misrepresentation may not be used to obtain access to private information, whether researching a juror or gathering evidence in a civil case.

There are many additional resources available online, including:


- Social Media Ethics Guidelines of the Commercial and Federal Litigation Section of the New York State Bar Association (March 18, 2014).

Continued from page 24
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