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By Jeffrey Allen and Ashley Hallene

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Corporate D&O Liability and Sexual Harassment in the Workplace

By Peter J. Biging and Heather M. Zimmer

Following disquieting revelations of alleged high-profile sexual misconduct claims having been quietly disposed of and concealed, a wave of securities fraud and shareholder derivative suits has begun.

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Family Dispute Processes among North American Muslims

By Julie Macfarlane

By working with the Muslim community, dispute resolution professionals can create many opportunities for mutual benefit.
Upcoming...

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November/December
GPSolo Magazine: The
Law and the Internet

By Kathleen Balthrop Havener

Get up to speed on the most important issues involving the Internet and the practice of law. And don’t miss our annual Tech Gift Guide!

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Welcome to the latest installment of our monthly Q&A column, where a panel of experts answers your questions about using technology in your law practice.

This month we answer readers’ questions about whether you really need a VPN when using public WiFi, what to look for in a new laptop, and how to export your entire Notebook in OneNote.

Q: Do I really need a VPN when using public WiFi? By the way, what is a VPN?

A: If you plan to turn WiFi off on all your devices and never use it again, you can get by without a VPN. If you only use WiFi at home, or at work or on your own secure cellular network, you can get by without VPN (but you’d be better off with it). If you ever plan to use a public WiFi network (at the airport, in a hotel, at a coffee shop, in a store or shopping mall, etc.) you need to have a VPN. I use them whenever I use WiFi (even at home) for extra protection. VPN stands for “Virtual Private Network.” Think of it as a tunnel through the public network creating a safe zone for your communications. While it is not particularly difficult to set up your own VPN. The easiest way to get a VPN is to subscribe to one. Several people have written articles talking about VPN services, so you should be able to find one to suit your needs fairly easily with a bit of investigation.

Q: I need to buy a new laptop, what should I be looking for?

A: The first question to ask yourself is: Mac or PC? If you are a Mac person, stick with
Mac, and if you are more comfortable with PCs, stick with them. Next, determine the size of the laptop you wish to purchase. If you plan to keep your laptop mostly in your office but want the flexibility to travel with it occasionally, then you might prefer a larger (15” to 17”) laptop screen. If you want to take it everywhere (more or less), consider something in the 11” to 13” range. Smaller-screened laptops tend to be lighter in weight, but they also tend to support fewer ports (i.e., fewer USB outlets).

You should also consider:

1. Processing power (Core i5 or Core i7)
2. RAM (12 GB to 16 GB)
3. Storage (shoot for a solid-state drive—SSD—rather than a hard drive, and more storage is better)

There are additional factors you can consider that amount to personal preference (aesthetics, build quality, etc.), but these suggestions should get you started.

Q: Can I export my entire Notebook in OneNote?

A: Yes! It is very easy to export your entire Microsoft OneNote Notebook. To start, open the Notebook that you wish to export. Next, go to the “FILE” tab on your top menu bar. Once there, look down the list until you see the option labelled “Export”.

Exporting a Microsoft OneNote Notebook

Choose the format you wish to export the notebook in (OneNote, Word, PDF, XPS, etc.) and voila! You have a replica of your Notebook in that format. This is an easy way to share your notes and work with people you are collaborating with.

What’s YOUR Question?

If you have a technology question, please forward it to Managing Editor Rob Salkin (robert.salkin@americanbar.org) at your earliest convenience. Our response team selects the questions for response and publication. Our regular response team includes Jeffrey Allen, Wells H. Anderson, Jordan L. Couch, Ashley Hallene, Al Harrison, and Patrick Palace. We publish submitted questions anonymously, just in case you do not want someone else to know you asked the question.

Please send in your questions today!
November 20, 2018   GPSOLO PERIODICALS SURVEY

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Lawyers are expected to provide competent representation regardless of their age, type of practice, or years as a lawyer. A fair number of lawyers end up in a solo or small firm at some point in their legal career. This article provides the perspectives of two young lawyers who are building their practice in the modern legal industry.

Meet Shannon T. O’Neill, Esq. Shannon is a licensed attorney in California and a California Notary Public, and she is the owner of Weber & O’Neill, an estate planning and probate law firm located in San Diego, California. She is also a member of the San Diego County Bar Association (SDCBA) and the American Bar Association (ABA).

Meet Tara L. Shaw, Esq. Tara is a licensed attorney in California, Arizona, and New York, and she is the owner of the estate planning and probate law firm Shaw Legal Office in San Diego, California. She is also a California Notary Public. Tara is a member of SDCBA, Probate Attorneys of San Diego, Animal Legal Defense Fund, and the ABA.

Starting a Practice

Hi, Shannon and Tara. How did you decide to start a solo or small practice?

Shannon: I had a great opportunity come to me at the right time. The attorney I
was working for was discussing retirement, and I always wanted to have my own office. I knew that as a new attorney, it would be very risky to go solo with no clients and little experience. I obtained a small business loan and purchased the retiring attorney’s practice.

**Tara:** I’ve always wanted to work for myself and knew I’d like to have my own practice someday. However, I never thought it would be this soon! The poor job market drove me to really focus on putting the pieces together to create a working and viable office of my own.

**What made you decide to practice in your current practice area?**

**S:** When I got a job working with an estate planning and probate attorney, I knew very quickly that this was the career for me. I love the close connection with my clients, and I love getting paid to help people protect their families and assets.

**T:** My first internship was in estate planning, and I really enjoyed the transactional work and office atmosphere that goes along with the job. I enjoy estate planning especially because I know I am helping families complete something on their long-forgotten to-do list.

**Marketing**

**How do you get clients?**

**S:** I advertise in the local Ocean Beach newspaper with an “Ask the Lawyer” article. I’ve found that educating people can be the best way to advertise! I also love speaking at free events like at the local Women’s Club because I can educate people on the benefits of estate planning. I also love donating estate plans to different organizations and local public schools. It’s a good way to get clients in the door because it leads to future referrals.

**T:** I get the majority of my clients through legal insurance plans that are offered by the clients’ employers. These companies offer a great benefit to their employees, and I get to work with a lot of great people, some with very interesting jobs! The rest of my clients are from the Internet or referrals from past clients or my
colleagues.

How do you build your reputation as a young lawyer in your area of expertise?

S: I do my research and know my law. If there is ever something that I don’t know or am unsure of how to handle, I always hop on Continuing Education of the Bar (CEB) and do my research. I also frequently use the SDCBA’s Estate Planning, Trust and Probate Law Listserv to connect with more experienced attorneys to see how they would handle things.

T: I believe online presence is important because I think a lot of prospective clients start with an online search for attorneys in their area. A lot of clients have contacted me based on my positive reviews online.

Finance

What is your billing process for your clients?

S: For my estate planning services, I generally charge a flat fee. I ask for half of the fee up front and the other half when clients return to sign their documents. For more complex or time-consuming matters, I request a retainer and bill the client at my hourly rate. Also, my clients’ funds are kept in a separate attorney trust account and not paid out to my firm until the work has been done.

T: Since my work is transactional and complete when we sign the estate planning documents, I collect payment at our final meeting. If the client has coverage, I bill their insurance at that time. I have an interest on lawyer trust account (IOLTA) account to maintain my clients’ funds.

How do you juggle the overhead costs of running a firm?

S: I don’t pay myself until my bills get paid. It is also important to save money throughout the year to pay for large annual expenses such as malpractice insurance, business liability insurance, bar fees, and legal software. I maintain my own financial and tax records with the help of my amazing bookkeeper who utilizes
QuickBooks Online.

T: I try to keep my overhead costs low. For example, I use QuickBooks to track all my income and expenses, and it even tracks my miles on my phone app, which is great for tax deductions.

Final Thought

Do you have any advice to young lawyers on how to grow a small/solo practice?

S: Delegate! You cannot do everything! I hire competent staff and delegate the work. You have to trust others to help you, and you have to teach your employees the best way to do things rather than just trying to do everything yourself.

T: Be organized! I love to make lists, lots and lots of lists!

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November 20, 2018  PRACTICE MANAGEMENT

Practicing Family Law with Civility: Holiday Co-Parent Civility

By Elise F. Buie

The holiday season is upon us. This time of family and togetherness can be stressful for many families, let alone recently divorced families. Working in a co-parenting relationship can easily double the stress, particularly in the first years of divorce. For many, deviations from and the elimination of shared family practices, and the creation of new traditions, elicits difficult feelings. Mixed emotions of sadness and regret can be overwhelming and compounded by the stress of having to “share” these special moments in the children’s lives. Because the added stress of the holiday season can lead to amplified conflict between co-parents, it is especially important that parents make a concerted effort at civility during this time.

Civility is defined as “a set of attitudes, behaviors, and skills that call upon us to respect others, to remain open-minded, and to engage in honest and constructive discourse” (civilitycenterforlaw.org). In the co-parenting context, choosing to engage in civility is the greatest gift co-parents can give their children.

Co-parents choosing to work together during this time can reduce the stress of special occasions and the holiday season. This makes the decision to practice civility one of the most important decisions this time of year. Why? Because children are more sensitive around the holidays, and the tone of holidays can set the family tone for the following year. Children’s holiday memories last a lifetime. Although no two divorced families are alike, some common civility skills can be applied in any situation to encourage an excellent holiday season for the children and the parents. Keep in mind,
the choice to do what is best for the children (as opposed to what might feel justified to the adults) is the greatest act of civility.

How do co-parents practice civility during the holidays?

Civility: Time Together at the Holidays

Being civil within the context of time is important for co-parents. The holiday season is ripe with family traditions and special events with years of history. Using civility practices to navigate these traditions and events is a great starting point. It may mean spending time together for a tradition or family event as co-parents. Sometimes it means creating new traditions that incorporate a new family dynamic. Co-parents remaining open-minded and respectful when approaching this special time think of their children’s best interests first and foremost. Don’t make college-age children decide who to spend the holiday with; follow the parenting plan that has been in place!

One of the best opportunities to practice civility with a co-parent during the holidays is at shared family events. When co-parents find themselves at family events together, it is an opportunity to guarantee that the children have a strong and united sense of family. Parents will need to set the tone for the children and the extended family. An open and honest discussion ahead of time with the children will help with the children’s expectations and curtail any hopes of reconciliation because you are attending together. Additionally, consider speaking to extended family about the idea of civility and respecting the other parent’s presence at family gatherings. Children thrive when spending time with both parents and extended families, especially during the holidays, so every effort spent working on civility increases the benefits. The family Christmas dinner is not the time to discuss difficult issues—it’s the time to remember that you share a very important role as co-parents—you are the co-leaders of “Team Child.”

If the co-parents decide it is not possible to attend holiday events together, they are encouraged to use civility skills and make a conscious choice to adjust expectations, be flexible, and create a magical holiday season for the children.

Start New Traditions While Maintaining the Cherished Ones, If Possible
Sometimes, the old traditions are just not possible. Co-parents can use civility skills by discussing these issues ahead of the holidays. Make a list of what traditions will not be possible and what events might not work for joint attendance. If necessary, parents can ask the kids what their favorite traditions are while making it clear that some may change. Communicate with the other parent to attempt to keep the children’s most valued traditions. With that in mind, some adjustments might need to happen.

Again, being flexible and open-minded and communicating with each other will help the children feel supported and excited to add new traditions. Maybe celebrate a holiday on a non-traditional day—yay, more parties and more presents! Or if the parents decide that being together is not going to work, each parent can include the children in coming up with new rituals for each home. If starting a new tradition, make sure that your new magical holiday idea does not interfere with something the other parent is establishing.

Focus on Giving: Gift Giving and More

A focus on giving can mean many different things in the context of civility during the holiday season. One important consideration is gift giving. Maybe it means sharing the cost of a large gift that your child needs, such as a computer. Maybe it means taking into consideration the financial situations of both parties when planning gifts for the children. Importantly, however, it means communication regarding the process. Remaining open-minded and flexible in how gifts are given is important. Practicing civility entails encouraging equity between parents and understanding that even gifts to the children require communication and respect.

Another way to practice civility is by encouraging your child to buy a present and/or do something nice for the other parent and former extended family. Depending on the age of the child, help facilitate a kind note or a homemade gift for the other parent or grandparents. Help the children think about the likes and needs of the other parent in order to make a more thoughtful gift. Intentionally supporting the children’s relationship with the other parent allows the children to love the other parent and family freely. Hopefully, this act of civility will inspire the other parent to do the same.

Challenge Yourself to Participate in Acts of Kindness with Your Children
Public shaming and embarrassment imposed on a parent negatively affects children. The holidays are a great time to practice moving through anger and frustration and focus on the well-being of the children. Choose civility. It is good for our health and our children. Challenge yourself to work on steering your attitude and behavior to that of respect and flexibility. Choose to be kind to your co-parent to set an example for your children that you will do what is best for them, not what is best for you.

Being civil takes planning, maturity, and a focus on the best interest of the children. Parents must be willing to put forth effort to make this happen. When co-parents work together to enrich their children’s lives, everyone benefits. The lines of communication must always be open, and parents need to make the other parent feel welcome to share information about the children. What matters is that you find a way to get along. Thinking about civility and using those skills to create a supportive and happy holiday season for the children will only lead to a positive and healthy year ahead.

Remember, you agree on one thing: Team Child! Your actions and attitudes during this holiday season will form your children’s childhood holiday memories. Make the holidays magical—your children will deeply appreciate your efforts.

Next Article > > >
Mindfulness is a multi-faceted practice with many prongs and activities to do as you move toward enlightenment and living in a state where you have substantially less stress and more time to enjoy your life. We have discussed rituals, meditation, spending time each day reading uplifting content, exercising—even if it is just 15 to 20 minutes a day, the benefits will pile up quick—nutrition, and the need to get proper rest. I hear complaints on my many Texas Facebook groups about all kinds of lawyers having problems on all these fronts. I try to stick in my mindfulness information about energy management, but sometimes I feel people would just like to complain, groan, and then go on, work long hours, ignore the family, eat the wrong foods, drink too much, then have horrible sleep, with stress and worry keeping them up all night. I seriously read about these young lawyers venting on Facebook, but no one really seems to want solutions. We do have a profession in crisis.

I want you all, the ones who actually read my short, bimonthly Mindfulness 101 columns, to take this seriously and realize that if you just stick with it a few months, it will change your life for the better in myriad ways—you will have less stress and more time to do the things you need to do. Just a five-to-ten-minute meditation in the morning and a short one before you go to sleep will help you tame that monkey brain, and you will get insights and solutions to problems in
ways you never thought possible. But doing it once or twice and then quitting doesn’t cut it. You know that. Lawyers are smart people. They could take to this much easier than other professions if I just could get their attention long enough and help them not fear the process so much. I’m working on it one bimonthly column at a time.

What I want to discuss this month is a project that would be a great one to begin now and do in December so that you can start the new year with clean and uncluttered energy in your home and your office. I must confess that I have a “black hole” in two places. On is by my bed where I have this little table stuck in the corner—it’s not my nightstand, but it’s next to it. I travel a lot, so I dump all the stuff there that I am not going to take on my trip, or I put all the stuff I got from my trip there. Now it is just a big pile of stuff I don’t want to tackle, and it looks hideous. Energy drain. Then at the office I have a place where I dump all my trip files and all the materials I bring back from trips: speeches, copies of PowerPoints, and sign-up sheets. I just throw that stuff on there, and I never seem to have time to clean it up. I actually did right before my new law clerk, Sarah Lonvick, came on board in September, but now it’s already back in the same shape it was. Both of those “black holes” will be fixed by January 1—hold me accountable!

I want to recommend to you the podcast of a good friend of mine. Her name is Judy Carter, and she is a hilarious, former stand-up comedian who has been on The Oprah Winfrey Show several times. This is a new podcast called The Power of Purpose, where she explores how to create and live a purposeful life. It’s free to subscribe.

I met Judy through the National Speakers Association. I picked her up at the airport and went to dinner with her before the event, and we have been friends ever since. She uses humor in everything she does and is a great coach for how to find your purpose. Judy has several best-selling books published by Simon & Schuster, and her latest is published by St. Martin’s Press and is called the Message of You.

In one of her podcasts she says the same thing I say all the time:

Go into your closet. Your closet will tell you where you are at in life. Closets contain a lot of baggage. A lot of the past. Throw everything away...
that is not you because you cannot add any more to your life until you can get rid of the past. The biggest way you can change your life is to control it by getting rid of what doesn’t fit.

She talks about keeping old clothes. People lament, “I’ll wear that size 6 pants again someday.” I say, “Yeah, by the time you are a six again you will want a new pair of pants.” Judy says, “Nature abhors a vacuum. You can’t bring the new into your life until the past is gone. You will feel more successful and readier to tackle the world if your life is in order.”

I agree. I make up my bed each morning. Nothing is worse than coming home to a messy bed. You want to leave your home with a smile on your face and ready to tackle the tasks ahead. Judy says, “Clean it up and get rid of it and see what happens.” Ashley Hallene, a GPSolo Division Council member and author of several books, said the same thing when she was my law clerk and I had such a hard time getting rid of old things I had carried with me for so long that weren’t even part of what we were doing then. Ashley said, “Just throw it away and see what happens.” She was wise then, and I let her do it. I finally said, “Just don’t even tell me about it.” I didn’t miss a thing. And neither will you.

About this time last year, I started a project at my home due to some Hurricane Harvey damage to my roof and my windows. I needed to paint the whole house. I had been there ten years, and it was time for a change. I loved the old but wanted a clean and minimalist vibe now. Everything came out of the closets so that they could be painted. My closets had gotten so packed I could not even find things, and my drawers were so full. I made the commitment that I was not going to put anything back in the closets or drawers that was not a NOW thing. When I cleaned out my master closet, I didn’t put anything back in until I wore it and it was washed and dried and put in the newly painted master. I gave all those small clothes I got four years ago when I was skinny for a nanosecond away to a girlfriend who is on cloud nine now. When I get back there, and I will soon, I will just get new things. But closets aren’t for storing all the old stuff we don’t even remember we have—they are for storing what we are using NOW. I love having the ability to see the backs of my closets and to have extra space for what’s coming. I love to look at people’s closets in their homes. It shows you a lot about people. And I love to show people my closets. I love that Judy Carter feels the same way. I must have given
Mindfulness 101: Mindfulness and Clutter

away or thrown away at least half of everything that was in there. Tons of shoes and all kinds of things that aren’t serving me now. But there are some women at my housekeeper’s church who have all my stuff, and that makes me very happy.

Cleaning out your house also includes the garage. I did a major purge on the garage, and it feels so good not to have that hanging over me. I drive in to a neat garage and just know the world is right. I even painted it, and it looks so much better.

Think about the clutter around you—all the magazines you will never read, the clothes you won’t ever wear, the appliances you won’t use. Wouldn’t it be better to get rid of it so you can have more energy in your life freed up for what you want to do to live your purpose?

It’s best to have a brutally honest friend to do it with you and keep you on the straight and narrow. When we were cleaning out my kitchen, my niece, Elise, asked me how many martini parties I had since I moved into this house—there were 14 dusty martini glasses in my cabinet. I answered, “None. But give me credit for being hopeful!” I must have envisioned Sex and the City parties or something, but they never happened. Needless to say, all the glasses went bye-bye, and I got rid of 15 boxes from my kitchen. It is so cool to see the backs of my cabinets and only have what I need and use in my pantry.

Karen Kingston is a Feng Shui expert, and she wrote an awesome book called Clear Your Clutter with Feng Shui: Free Yourself from Physical, Mental, Emotional, and Spiritual Clutter Forever (Broadway Books, 1999). Feng Sui is “the art of balancing and harmonizing the flow of natural energies in our surroundings to create beneficial effects in our lives.” Each space in your life carries energy. Old stuff at home or the office is dead energy. Dead energy blocks the power of new energy that you need to operate at optimum levels as a practicing attorney.

Karen encourages us to:

Free yourself from physical, mental, emotional and spiritual clutter forever. . . . Clutter has an energy space, it creates an obstacle to the flow...
of energy and has an unpleasant, sticky, unclean feel to it, as if I am moving my hands through an unseen cobweb. . . . Clutter causes problems in people’s lives. It can cause sickness and confusion. For your life to work well, it is vital to have a good flow of life force energy in your home and workplace. If you don’t, it can make you feel stuck.

I am not talking about the mental illness of hoarding, I am referring to the clutter we all accumulate that can be taken care of pretty easily. I know some men might be groaning right now because they know exactly the things on their honey-do list they need to get done. We spend more time and energy dreading doing it than when we just get it done! But doesn’t it feel good when that list is complete? And there are always handymen who can help if that isn’t your forte. Mine helps me with all this, too.

Unfinished and incomplete commitments do the same thing to us in terms of our energy and making us less productive. Make a list of your incompletes and messes. Is there room in your garage for only one car, even though it is a two-car garage? When was the last time you used that cooler, that AeroBed, and all the stuff you store there?

Do you have an attic? Luckily, mine is too small, and I believe anything stuck in the attic will never be used again. But clean out that attic. You will open yourself up for prosperity quicker next year. And your kids won’t have a holy mess on their hands when you pass, which is another bonus of living lean and mean.

Set up a date and time when you are going to get it all done. It was really a challenge for me when everything was out of my closets and my house was a wreck. The painting job went really slowly, and we had some setbacks and redos, too, but I got rid of so much stuff and it all feels so good. And I haven’t missed a thing. This month we are tackling clutter at the office, getting our closed files scanned in and sent to the shredder. The more you do it, the easier it gets, and you feel the lightness of being, too. Handling your daily workflow is easier because you don’t have piles of things hanging over your head.

Author and motivational speaker Jack Canfield talks about incompletes and messes, and those include people. Saying you’re sorry to someone you know you
hurt is another area to tackle. Getting all your doctor appointments done this month is a good idea. Have we been putting off taking care of ourselves in favor of all those clients who think their needs are more important than our needs? We will better serve them if we do this inventory of our clutter and get rid of it in all areas of our lives. Plus, you will model these good behaviors to your children, and that will give them a sense of peace and security that will enable them to thrive, too.

I recommend we all use this holiday season, while Mercury is in retrograde from November 1 to December 24 when it goes back direct, to avoid starting new projects and other activities, and instead focus on finishing what we have started, and doing some introspection about our goals—what we achieved this year and what we want for next year and our inner work. Completing jobs that have long needed to be done—that gate lock changed, that old desk moved out of the office, that closet cleaned out, and all those nice clothes you can’t wear anymore given to a charity to help people less fortunate. **Christmas time is a great time to do this.** The things you don’t use anymore are things others will be happy to get, and you will be set up for a great new year where new things can come into your life.

Meditation will clear the clutter in your brain

Once you are mindful and you begin to meditate on letting go of clutter in your life and seeing how hanging onto the past is keeping you from your new, prosperous future, you will see how those piles that have stayed there for a long time are blocking the energy in your office—especially things sitting on the floor. You want the floor free of clutter. The law of attraction works better in a clean, uncluttered environment. Then, when January 1 comes and we are in a new year, we can set our goals and have a clean slate on which to do it. Mindfulness works!

Until next time . . . namaste. Please let me know if you have any tips, sources, or experiences with mindfulness you want to share at melanie@bragglawpc.com.

“You should sit in meditation for 20 minutes a day, unless you’re too busy; then you should sit for an hour.”—Zen proverb

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Next Article > > >
Many of you are lawyers; many of you hire lawyers. Lawyers are nice people—stay with me. One thing I love most about lawyers is that they work hard to be good at what they do (it’s not an easy way to make a living). But put them in a suit, hand them a briefcase, and say, “Go represent this guy,” and they change personalities. It’s like somebody performed a lobotomy and out with the frontal lobe went common sense. They start writing stuff like, “The Appellee brazenly claims. . . .” “Incredibly, the Appellee contends. . . .” “It is lame, circular reasoning for the Appellee to argue. . . .” “With amazing chutzpah and inexcusable gall, the Appellee suggests. . . .” Ironically, the lawyer who wrote those sentences was “the nicest litigator I’ve ever had a case against,” according to opposing counsel. “Only when we got in front of the judge or wrote something for the judge to read, did he act like this.” Put them in a suit, hand them a briefcase, and say, “Go represent this guy,” and lawyers. . . .

As I have noted before, underneath the lawyerlike bluff and bluster dwells a pretty nice person, a volunteer, a coach, a good neighbor who gives back to the community, back to the profession. But tell me why anyone not suffering from
temporary insanity would write in a brief:

This is a story of a legal system run amuck, a Kafkaesque demonstration of tyranny given free rein.

What does that have to do with the subject matter of the case: bolts of cloth in a warehouse? And why would any sane person write the following about the owner of that warehouse?

Importer’s conduct in negotiating the ‘purchase’ of these alleged liens was based on the syllogism employed by many Middle Eastern terrorists with a penchant for seizing airliners and their passengers to secure the righting of what they perceive to be wrongs.

The next example has kept me awake at night, trying to picture it. But nothing comes to mind.

The Defendant’s actions can only be described as economic sodomy.

Would anyone smart enough to pass a state bar exam ever write this stuff because they thought it was effective? Of course not. They write it because they are grandstanding for a client, who is paying the bill. Many clients love to see their lawyers use a brief to punch the other guy in the face, the harder the better. But if we determined fees according to results, lawyers would never write this way, because writing this way loses cases.

One of our better-known lawyers, Abraham Lincoln, told a crowd in 1842:

When the conduct of men is designed to be influenced, persuasion, kind, unassuming persuasion, should ever be adopted. It is an old and a true maxim, that a “drop of honey catches more flies than a gallon of gall.”

Remember, this was a guy who was not afraid to stand up for what was right. He just thought it more effective not to scream while he was standing.

Judges warn us frequently, but we can’t seem to help ourselves. The Sixth Circuit Court of Appeals in Ohio recently emphasized:
the near-certainty that overstatement will only push the reader away (especially when, as here, the hyperbole begins on page one of the brief).

Do lawyers somehow forget that their words will be read by judges who are about to decide whether their client will prevail? In an unpublished opinion out of Illinois, the court reminded all lawyers:

Repeated use of exclamation points at the end of sentences is wholly unnecessary . . . More troubling is that plaintiff’s arguments are also riddled with vituperative language leveled against the trial judge, . . . such as that “the court systematically eviscerated plaintiff’s case” or that “the judge created absurdity and injustice.” . . . Plaintiff was similarly highly disrespectful in his briefs to the trial court, as well. Such pre-planned advocacy by an attorney never arouses sympathy for his client.

That is as close as judges will ever come to admitting that such language might sway them from the true path of impartiality. (A little secret: judges are human; they respond viscerally, the same as the rest of us. Don’t ever forget that.) As another court encouraged:

An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Why do lawyers, or anyone—representatives in congress—need to be told this? A final hint from the courts on how to do it right:

Even where the record supports an extreme modifier, the better practice is usually to lay out the facts and let the court reach its own conclusions.

When I was teaching a writing program for the judges of the Ninth Circuit, they told me two sure-fire ways to tell that a lawyer has no case:
she asks for more pages to continue rambling;

he gets shrill, haughty, cute, and feigns disgust.

If you are a lawyer, don’t write this stuff. If you are not a lawyer, don’t write this stuff. If you hire lawyers, don’t let them write it. If you hire lawyers, remember that in court, before a decision-making judge, your lawyer becomes you. You don’t want that judge not to like you because she doesn’t like how your lawyer waxes hyperbolic and disrespectful in a brief. For which you paid money. A lot of money.

And if you really want your lawyers to be effective on your behalf, insist they get WordRake to make their briefs to irascible, overworked judges more clear and concise. WordRake was the first editing software created for the legal profession six years ago. It gives your lawyers an advantage, and they can try it for free for seven days by clicking here.
Your Honor, You Are Stupid, You Suck, and Please Decide for Me
Life moves fast, and it seems like hackers move even faster. Before you roll your eyes at the thought of another cybersecurity article, just wait. This article contains important information, not only on steps you should take, but how hackers are able to get your passwords and sensitive data. We have shared the steps they actually take in the hope that when you see how easy it is, you will take the necessary measures to protect yourself.

**Tip 1: Encrypt your web-based e-mail with Mailvelope** (www.mailvelope.com). You can encrypt every e-mail you send fairly easily, but encryption is especially important if you use that e-mail to communicate sensitive data. Mailvelope is a PGP encryption provider for webmail that works with Gmail, Yahoo, Outlook.com, and more. It is an extension, or “add-on,” to your browser that expands its functionality. It works with Firefox and Chrome web browsers.

**Tip 2: Do the two-step.** No, we are not talking about the Texas two-step, but rather the two-step verification process. If the website or application you are using offers it, then use it. Two-step authentication (sometimes referred to as two-factor authentication) is a security process in which the user provides two different authentication factors. The first is generally your username and password. The second is usually entering a code that is sent to your phone or e-mail when you request access and that must be entered within a certain time frame in order to gain access.
Bonus tip: It often happens that two-step verification will send you a code either via text, e-mail, or by phone call. In our experience, text and phone call have been significantly faster than e-mail and do not run the risk of being caught by a spam filter. Save yourself some time when logging in by choosing to receive your code via text or telephone.

Tip 3: Whenever you are on a shared computer, work in the “private” or “incognito” Internet window. Working in a private browser, or incognito window, allows you to browse the web, and access your accounts, without leaving a trail. It is important to realize that browsing in private mode will not prevent your Internet provider or your work from knowing what websites you are on, so don’t go anywhere inappropriate and expect to be protected. What it does is prevent the browser from recording where you are going, so you won’t find a trail in the “history” folder. Also, the browser will not store your username and password in this mode, so you do not need to remember to clear the history folder when you are finished. This is useful on public computers, if you are checking something in the business center of a hotel and such.

Tip 4. Avoid storing passwords and usernames in your web browser. It can be very tempting to keep your username and password stored in your web browser. Every time you log in, the browser pops up a window asking if you would like it to keep your username and password stored for faster log-in. Sure, you think to yourself. Time is money, and letting my browser fill in my username and password is rather convenient. However, if your computer is ever compromised and accessed remotely over the Internet, an unauthorized user will have immediate and complete access to your online accounts. Sometimes, there are unauthorized users roaming around your office. In this instance storing your passwords can lead to unauthorized access anytime you walk away from your computer. To see how easily hackers can access someone’s password when it is stored in their browser, check out this article from Credera, here.

If you are hesitant to turn off storing passwords because you are worried that you will forget and be unable to access your accounts, you can export all your currently stored passwords to an Excel spreadsheet, enter them into a password-storing app or web service, or keep it in a secure drive, so you only need to remember one password. If you are a Chrome browser user, you can export your username and passwords by going to Settings > Passwords, from here you will click the three stacked dots above your saved passwords list:
Saving passwords in Chrome

Clicking the three dots pulls up a menu option to Export Passwords. For security, your web browser will ask that you enter your computer access password before it will export the data. It will also warn you that anyone who can see the file will have access to your passwords, so make sure you keep the file in a secure location. Enter the passwords into a secure app or database, then destroy the file when you are done.

**Bonus tip:** If you are considering a password manager, check out [Last Pass](https://www.lastpass.com/), [Dashlane](https://www.dashlane.com/), or [SecureSafe](https://www.securesafe.com/). All offer free versions that will store up to a certain number of passwords.

**Tip 5: Trust, but verify.** Hackers have engineered ways to e-mail you compromised files wearing a mask of a name in your contacts list. Attacks like this are commonly referred to as “social engineering.” This works particularly well when the hackers use the name of a firm partner, client, or senior colleague. Usually the e-mail contains a file, with little or no text explaining the nature of it. You may get a short message such as “check this out” or “review please.” Then, when you click the link to download the document, entering a username and password, the hacker has what he or she was after. You have either downloaded malicious software or backdoor access to your system, or they have your commonly used username and password to try and gain access to your accounts.
You can protect yourself by sending a quick e-mail to the sender, confirming he or she has sent you a file to review. It is okay to decline a request in order to keep your data, and your clients’ data, secure. This quick maneuver can save you a lot of headaches.
The Desk Book for Small Business Attorneys Receives a Makeover

By Aastha Madaan

When I first saw the book *Advising the Small Business: Forms and Advice for the Legal Practitioner, Third Edition*, it gave me some law school flashbacks due to its sheer volume—it's more than 750 pages long.

Now, after having had the book for a few months, I can safely say that had I had this book in law school for my classes, life would have been a lot easier!

Author Jean L. Batman’s experience and knowledge truly shine in this helpful desk book, which can best serve as a reference book for business law attorneys. As a bibliophile—for both legal and non-legal books—I have a few criteria by which I judge books, and I’ve presented them for you below, in no particular order, in the hope that they will help you decide whether the book will be beneficial for you.

Content

The content is obviously the reason this book is more than 750 pages long. The information provided will take you straight back to law school, in all the best ways. The information is divided into sections with descriptive titles—more on that below—and is written in easy-to-understand language with very few footers and other references, so you don’t need to flip back and forth. As a busy millennial...
lawyer, I appreciate that the relevant information is provided in bite-sized sections that are easy to read and don’t drag on endlessly. Even mundane concepts such as capitalization are explained in a way that is easy to understand.

The content is in-depth, especially with the forms and letters provided, and it’s made accessible by both the tone and organization of the book.

Organization

In this book, more than others, the organization anchors the content. The book starts in the chronological order by which the attorney-client relationship in a business matter would progress. This can be a huge help to an attorney who is new to this area of law. The letters and forms at the end of each chapter are especially helpful to solo and small firm attorneys who do not have established templates yet. The first chapter, for example, covers conflicts of interests, how to attract clients, and important forms. The second chapter covers the concern for which quite a number of new businesses first seek an attorney: intellectual property. Each section of each chapter is framed as a question. For example, one of the sections in Chapter 5 asks the important question, “Should My Client Get D&O Insurance?” This is one of those questions that a new practitioner without a mentor can’t find an answer to otherwise. And it is easily accessible just by thumbing through the table of contents of the book.

Many of the other chapters are clearly titled and offer just the right amount of information. If an attorney is retained to start a corporation or LLC or is coming in to clean up prior mistakes, the information that she needs to know overlaps heavily, so instead of having separate and confusing chapters, Ms. Batman combined the two and wrote lengthier chapters for “Organizing and Cleaning Up a Corporation,” and the same for other types of entities.

Overall, the organization makes the book accessible in spite of its length. The titles are the cherry on top!

Tone

PowerPoints, MCLE presentation materials, law review articles, podcasts, legal
The Desk Book for Small Business Attorneys Receives a Makeover

magazines, and committee newsletters have now become my most common methods of consuming legal knowledge. Nobody has ever accused legal books of being page turners. This book manages to impart wisdom and how-to’s all while having personality. In the chapter on venture capital, one of the sections is titled “Only C Corps Need Apply.” This is only one of several times that I was reminded that this book was written by a human with a personality, which made it a lot more accessible and easy to read.

Conclusion

The book is a bit lengthy—understandably so—because it provides a wealth of information. Due to the length, it might have been better in loose leaf-form because, as a blend of a reference book, a primer, and a how-to guide, it truly is a desk book that a business law attorney can and should have nearby. The content, organization, and tone were all outstanding, and this has quickly become my personal go-to book for confirming or finding answers when I can’t call a mentor or don’t have time to dive into LexisNexis for research. I highly recommend it for attorneys with less than ten years of practice, or attorneys for whom business law is not their primary area of practice.

Advising the Small Business: Forms and Advice for the Legal Practitioner, Third Edition

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Next Article > > >
The Desk Book for Small Business Attorneys Receives a Makeover
Donald Trump and Stormy Daniels: An Arbitration Case Study

By Brian Farkas

Some law professors have all the fun. Our tumultuous political climate provides endless lecture topics for constitutional law professors. Ditto for those who teach criminal law. And immigration, administrative, and environmental law. Since President Donald Trump took office, these fields have seen an unyielding barrage of policy making, orders, and debates. Whatever one might think of the policies’ merits, students are glued to their seats, hanging on their professors’ every word.

Pity the poor souls who teach arbitration. How dry. How specific. How irrelevant. In the midst of these deeply consequential discussions about liberty and democracy, arbitration faculty have had seemingly little to contribute to public discourse.

That changed in early 2018, when the press reported that Michael Cohen, President Trump’s longtime personal lawyer and lawyer for the Trump Organization, paid $130,000 to Stormy Daniels (a.k.a. Stephanie Clifford) for her silence about her alleged affair with Trump a decade earlier. In exchange for the payment, Daniels signed a non-disclosure agreement containing a sweeping arbitration clause. This
clause mandated absolute confidentiality and said that any disputes would be resolved through private arbitration. Yet Daniels sidestepped the arbitration clause and ignored an order issued by an emergency arbitrator, filing a public lawsuit seeking to invalidate the entire agreement. Suddenly, arbitration came front and center into the political discussion.

Not only does the Daniels case hold students’ attention, but it also illuminates several significant arbitration policy issues.

Brief Factual and Procedural Background

The tale begins in the summer of 2006, when Trump and Daniels allegedly began a year-long intimate relationship.¹ (Trump had married his current wife, Melania, in 2005, and their son, Barron, was born in 2006). Daniels did not discuss the alleged affair for years after it occurred, though sometime in 2011, she disclosed it during an interview with In Touch Weekly. In Touch declined to publish the story after Cohen purportedly threatened the magazine with a defamation lawsuit. Subsequently that same year, Daniels claimed that an ominous man approached her in a Las Vegas parking lot, urging her to maintain her silence about Trump. For five years, she did just that.

Trump announced his presidential candidacy in June 2015 and won the Republican Party nomination in July 2016. In October 2016, the Washington Post published the now-famous Access Hollywood tape in which Trump made various lewd remarks about women. Soon afterwards, several women came forward to tell their stories about Trump. Daniels decided that she, too, wanted to share her experience.

Cohen became aware of Daniels’ intentions to disclose the affair. He quickly approached her to offer a lump-sum payment of $130,000 in exchange for her ongoing silence. Daniels now alleges that the explicit purpose of this arrangement was to ensure that the story did not come to light in the weeks before the 2016 election.

Daniels agreed to Cohen’s terms. The parties memorialized their agreement in a document entitled “Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and NonDisparagement Agreement” dated October 28, 2016 (NDA). A separate “Side Letter Agreement” (Side Letter) gave the confidential names of the parties identified only by initials in the NDA: “DD” was Donald Trump, “PP” was Stephanie Clifford, and “EC” was Essential Consulting, LLC, a limited-liability
company established by Cohen apparently for the sole purpose of making a settlement payment. Both the NDA and the Side Letter were signed by Daniels and her lawyer at the time, and the NDA was signed by Cohen on behalf of EC. Neither document was signed by Trump, although each had a line for a signature by DD.

Section 4 of the NDA mandated absolute confidentiality with respect to various information “pertaining to DD and/or his family” and Section 3.2 mandated that Daniels deliver to Trump copies of any existing confidential information, in any medium, by November 1, 2016. In multiple sections, the NDA mandated that neither the underlying confidential information nor the NDA could be made public.

Section 5.2 of the NDA governed dispute resolution among the parties. The full text of Section 5.2, which is reproduced below, provided that the parties agree to binding confidential arbitration by JAMS, that the parties will split the costs of the arbitration equally, that they will have the right to discovery, that the arbitrator can impose damages, and that the parties understand they are giving up their right to trial and their right to appeal any award. The last part was highlighted in bold type.

In February 2018, claiming to be inspired by the Women’s March and the emergence of the #MeToo movement, Daniels purportedly threatened to breach the NDA and publicize her affair with Trump. In response, on February 22, 2018, Essential Consulting filed an emergency arbitration proceeding in Los Angeles pursuant to Section 5.2 of the NDA seeking a temporary restraining order. An emergency arbitrator was appointed—Hon. Jacqueline A. Connor, a retired California state court judge. On February 27, 2018, Connor issued an order prohibiting Daniels from violating the NDA by, among other things, disclosing any of the confidential information covered by the NDA to the media or through court filings.2

Notwithstanding the arbitrator’s order, Daniels filed a lawsuit in the Superior Court of California, Los Angeles County, on March 6, 2018. Both the NDA and a partially redacted version of the Side Letter were filed as exhibits.

The lawsuit does not seek money damages but rather a declaratory judgment that the NDA is not an enforceable contract.3 Daniels’ argument has two prongs: First, the NDA is not a valid contract because Trump never signed it. Second, even if the NDA were a contract, it should be held unenforceable on public policy grounds.

On March 16, 2018, Essential Consulting’s attorneys quickly filed a Notice of
Removal pursuant to 28 U.S.C. § 1441(b) to move the case to the federal court in the Central District of California. On April 2, 2018, Essential Consulting then filed a motion to compel arbitration pursuant to Section 5.2 of the NDA—in other words, a motion seeking an order requiring Daniels to bring her claims in private arbitration rather than court. Trump joined that motion the same day.

The arbitration agreement and subsequent lawsuit about its enforceability—both still pending before the California federal court—reveal at least four important topics for arbitration advocates and scholars to consider.

Is Arbitration Confidential?

A common subject of confusion is whether arbitration is a confidential proceeding. The short answer is that while arbitration is private, it is not always confidential unless explicitly agreed by the parties.

Arbitration is private in the sense that the case is not filed on a public docket. In arbitration, unlike in state or federal litigation, the public cannot see the names of the parties, the names of the neutral(s), or any filed documents. The date, time, and location of trials are public; not so in arbitration. And while jury verdicts and judicial opinions are public, arbitral awards are private.

If an attorney is concerned about the confidentiality of the proceeding, she should include language in the arbitration clause itself providing that any dispute that may arise shall be entirely confidential, including the existence of that dispute, filings and testimony related to that dispute, and any resulting award. There should be penalties (liquidated damages) built into that agreement, so that neither party is likely to breach.

Indeed, this is precisely what the Daniels NDA does. Section 5.1.2, entitled “Liquidated Damages,” explicitly provides that each breach of the agreement shall result in a payment of $1,000,000 from Daniels to Trump as the “reasonable and fair value to compensate DD [Trump] for any loss or damage resulting from each breach…”

Yet even when there is agreement on confidentiality, a party seeking to escape an arbitration clause can do exactly what Daniels did here—file a complaint in a public court asking the court to void the contract. This is effectively an end run around the
process, because even if the party following the agreement (here, Essential Consulting) opposes the lawsuit, it has already “lost,” as the confidentiality has been violated. Once the contract has been made public, the media has access to it, as we know very well from the extensive reporting on the subject.

The only remedy is to seek massive punitive damages in the arbitration proceeding, assuming Daniels loses the court battle to invalidate the agreement. In her interview with Anderson Cooper on 60 Minutes, Daniels herself acknowledged that she was taking a significant financial risk by filing the lawsuit and appearing on television. (Cooper asked, “For sitting here talking to me today, you could be fined a million dollars. I mean, aren’t you taking a big risk?” She replied, “I am…. [But] it was very important to me to be able to defend myself”).

The distinction between a private process and a confidential one is critical for many parties concerned about the publicity of their dispute. Daniels shows the ways in which one party can subvert the other’s desire for secrecy.

Which Is the Better Venue: State or Federal Court?

As students learn about the statutory framework surrounding arbitration, they often confront a deceptively simple question: What’s the difference between arbitration-related state and federal laws? The long answer involves a complex discussion of federalism and the ability of individual states to establish their own procedural laws. The shorter and more practical observation is that some states show greater skepticism toward arbitration in their statutes and common law.

Arbitration scholars are keenly aware that federal courts—led by the US Supreme Court—will invalidate state laws that run counter to the Federal Arbitration Act (FAA). With its generally liberal laws aimed at protecting consumers and employees from certain types of arbitration agreements, California has been a frequent target for the Supreme Court, which has repeatedly held that the FAA preempts such statutes.

When Daniels filed her lawsuit, she and her lawyer were careful to do so in California state court. Within a week of that filing, Essential Consulting, LLC, transferred venue to the Central District of California federal court in Los Angeles. Why? Obviously, each party thought its chosen forum would be strategically advantageous. Daniels’ attorneys probably anticipated that California’s state courts would be more hostile to the enforcement of the arbitration clause, particularly given the public policy concerns.
After venue was transferred to the federal district court, Essential Consulting’s motion to compel arbitration reveals Cohen’s rationale for preferring federal court: “The strong policy favoring arbitration set forth by Congress in the [FAA] dictates that this motion be granted, and that [Daniels] be compelled to arbitration, as she knowingly and voluntarily agreed to do.”

Litigators regularly consider whether to file arbitration-related motions in state or federal court, taking into account the various procedural and political differences. The Daniels case offers a heightened example of such considerations.

Is This Dispute Arbitrable?

Arbitrability refers to the question of whether arbitrators or courts have the power to rule on the arbitrators’ jurisdiction. When one party does not want to be bound by an arbitration agreement or does not believe that the “agreement” is enforceable, a problem arises: Do the arbitrators decide whether they have jurisdiction, or must a judge rule instead? Arbitrability is a somewhat confusing topic, replete with doctrinal complexities.

The Daniels case makes the topic easy to understand. The NDA containing the arbitration clause was between three parties: Essential Consulting, Daniels, and Trump. Cohen signed the agreement on behalf of Essential Consulting, and Daniels signed it herself. Trump did not sign.

Is it a valid contract? Daniels argues no, because Trump’s acquiescence was material to her agreement. Cohen argues yes, because Daniels accepted the $130,000; under the common law course-of-performance doctrine, the contract should be deemed ratified. Both have legal arguments as to the contract’s validity, but the question is, which tribunal should hear the arguments and decide? The arbitrators or the court?

The federal court will issue a determination on this gateway question as it considers Essential Consulting’s motion to compel.

How Should the #MeToo Movement Impact Arbitration Policy?
The dispute between Stormy Daniels and Donald Trump illuminates another active conversation within arbitration: the intersection of confidential arbitration clauses and the #MeToo movement. Many argue that there should be a public policy exception to the enforcement of confidential arbitration clauses when there are allegations of sexual harassment. Such clauses, these voices contend, are used to silence victims and protect predators.

Others disagree, worrying that such a public policy exception could effectively “undo” arbitration clauses in employment contracts, giving many employees an avenue to escape arbitration whenever it doesn’t suit them, even if they have previously agreed to arbitrate. Some scholars have also cautioned that a confidential arbitration process can be—at least in some cases—preferable for accusers as well as the accused.\(^\text{12}\)

The Daniels case provides a window into this debate. On the one hand, Daniels is a successful producer and savvy businesswoman who voluntarily signed a contract with an arbitration clause. On the other hand, she found herself alone in a hotel room with a wealthy and powerful celebrity, and was allegedly subject to intimidation prior to the execution of the NDA.

For her part, Daniels explicitly rejected any association with the #MeToo movement during her \textit{60 Minutes} interview: “This is not a ‘Me Too,’” she told Anderson Cooper. “I was not a victim. I’ve never said I was a victim. I think trying to use me to further someone else’s agenda does horrible damage to people who are true victims.”

To what extent does Daniels fit into the #MeToo movement, consciously or not? Should the arbitration clause contained in her NDA be voided if she was subjected to physical, emotional, or situational intimidation prior to its execution? Or should she be held to the agreement as a matter of contract law and assessed liquidated damages for her breach of the agreement? These public policy questions extend far beyond Daniels’ particular case; they are relevant for countless employees, particularly women, with such arbitration clauses in their employment agreements.

Concluding Thoughts

The Stormy Daniels case is replete with salacious details and political intrigue. But it also raises familiar and quotidian issues for scholars and practitioners. Confidentiality, federalism, arbitrability, and the #MeToo movement are all at the forefront of arbitration policy debates. So while constitutional law professors may have the most to
say about our current administration, those who study arbitration can now see their work reflected in the headlines, too—for good or for ill.

Notes

1. This article relies on the allegations in Daniels’ complaint, as well as various public reporting. The facts of this dispute were quickly evolving at the time that *Dispute Resolution Magazine* went to press. One of the most significant open factual questions is whether President Trump ever reimbursed Cohen for the $130,000, and if so, whether he knew the reason for the reimbursement or the existence of the unsigned agreements.


6. Trump’s April 2, 2018, Joinder in Essential Consulting’s Motion to Compel Arbitration is available at https://www.politico.com/f/?id=00000162-88dd-d2e5-ade3-c9ffa5cf0002.

7. The factual and procedural background above relates only to the dispute over the enforceability of the arbitration clause pending in California and does not delve into the also-pending criminal case involving Michael Cohen in the US District Court for the Southern District of New York, in which Daniels has sought to intervene.

8. Amy J. Schmitz, *Untangling the Privacy Paradox in Arbitration*, 54 U. Kan. L. Rev. 1211 (2006) (“Arbitration is private but not confidential. This is a paradox to the extent that it is seemingly contradictory, but states a truth. Arbitration is private in that it is a
closed process, but it is not confidential because information revealed during the process may become public").


Reflecting across our more than 20-year collaboration of studying rural health issues, we can’t help but observe that interest in the health and well-being of rural U.S. residents appears to be at an all-time high. It’s not that the problems are new; data on the relatively poorer health of rural people have been available and of concern throughout our careers and in the many decades prior. Still, we understand why much of these data have received limited attention over the years. Studies of rural health escape general attention in much the same way that rural places themselves tend to exist beyond the public view—down dirt roads, amid croplands, in desert borderlands, or under a very big sky.

Yet, over the past year we have found ourselves increasingly called upon to speak to national audiences about rural places and to discuss the role of rural culture in health. Whether driven by rural contributions to the current opioid crisis, new data on the growing gap between rural and urban life expectancy, or even the 2016
elected, we welcome this attention and hope it translates into sustained interest and investment in the health of rural people.

Growing evidence indicates that a significant rural-urban disparity in life expectancy exists in the United States, driven largely by urban longevity gains that have not been shared among those living in rural places. A recent study of the five leading causes of death in the United States (heart disease, cancer, unintentional injury, chronic lower respiratory disease, and stroke) found that the age-adjusted death rate for each was higher among rural residents. Perhaps more disturbingly, the rate of potentially excess deaths in rural communities was also consistently higher. The federal Centers for Disease Control and Prevention consider excess deaths to include those that “might . . . be prevented through improved public health programs that support healthier behaviors and neighborhoods or better access to health care services.”

Part of the challenge for understanding and improving the health of rural populations lies in disentangling the underlying causes of their ill-health and death, which is further complicated by the socioeconomic and geographic heterogeneity of rural places and populations. Exacerbating efforts to tease out these differences, rural health experts have noted increasingly poor access to data on rural health, as financial issues and concerns for privacy have limited the availability of geographic indicators in many federal health surveys. Still, across the country, we have observed that many rural communities actually do embody the small town Rockwellian image that is often equated with life outside the city—places with county fairs, church dinners, strong bonds between neighbors, and children thriving under the collective community eye. However, many others suffer economic and environmental hazards and adverse health outcomes—like infant and maternal mortality—that rival lesser developed nations.

While there is substantial variation across the country, rural residents are more likely on average to live in poverty and to lack formal education; these interrelated social determinants are known contributors to sickness through a complicated pathway of poor health care access, health behaviors, and exposure to toxic levels of stress. In recent years, the rising mortality rate for rural working-class whites has been driven by what some researchers have begun calling “despair deaths.” These deaths represent those from suicide, liver disease, and accidental poisonings.
Health Equity Challenges in Rural America

(including opioid and other drug overdose) and may be associated with economic, mental, and family distress. In 2014, the rate of suicide was 54 percent higher for those living in remote rural counties than for their urban counterparts.

These poorer economic circumstances of many rural populations and places relate to a host of downstream sequelae that have important implications for rural health. For example, while the Flint, Michigan, water crisis has sparked understandable outrage among public health and social justice advocates, rural places face their own challenges with potable drinking water. Runoff from rural industries, including mining and agriculture, has resulted in contaminants leeching into rural public and private water supplies across the country. Many rural households obtain their water from private wells, which may be affected by a range of different contaminants. In 2011, the Environmental Protection Agency reported that more than 2,000 rural communities were in serious violation of the Safe Water Drinking Act and estimates suggest that more 6 million rural residents have some problem with water contamination. On the housing side, a report by the U.S. Census Bureau indicates that rural residents are more likely than urban residents to have problems with the physical integrity of their homes, including serious structural issues like leaking or sagging roofs.

These underlying socioeconomic and environmental conditions are exacerbated by poorer health care access among rural residents and a more anemic rural health services infrastructure. Prior to passage of the Affordable Care Act (ACA), data across nearly four decades demonstrated that rural residents are more likely than urban residents to be uninsured. This has been particularly true in the southern and western Unites States, where as many as 25 percent of those under age 65 lacked health insurance in 2011. Even when rural residents have private health insurance, the coverage tends to be poorer and creates conditions under which rural residents are more likely to face high out-of-pocket costs for care. While the ACA held promise for reducing these disparities in coverage, the Supreme Court decision that made Medicaid expansion optional has resulted in uneven impact across the country. States with substantial rural population have been less likely to expand Medicaid under the ACA so that, overall, rural places have not experienced the same decline in uninsured rates as urban places.

Compounding these financial barriers to care, rural residents face access problems
because many of their communities lack a sufficient number of health care professionals. Compared to large urban counties, remote rural places have less than half the per capita rate of primary care providers; that is, providers who provide day-to-day checkups, screenings, and chronic disease management. Because of the lower availability of health care providers within rural communities, many rural residents must travel great distances to seek health care. Given these travel requirements, reliable transportation is critical for ensuring rural health care access; however, many rural residents (particularly those at lower incomes) face transportation challenges including poor road conditions, unreliable vehicles, or difficulty affording gasoline.

This rural-urban difference in availability of health care professionals is particularly pronounced for specialty care providers. Compared to rural counties, urban counties have nearly nine times the per capita number of specialists. Specialty care providers include mental health professionals, which tend to be severely lacking in rural places. Around 60 percent of rural residents live in a designated mental health professional shortage area, meaning that there are insufficient providers (maybe even zero providers) available to address the mental health needs of that community. More than half of rural counties have no health care professional licensed to provide medication-assisted treatment for opioid dependence.

In addition to a lack of mental health service providers, the emotional well-being of rural populations may be affected by sociocultural barriers to mental health services use. For example, some rural health experts suggest that concerns about privacy in small communities may impede rural residents’ use of services even when they do exist. Also, cultural norms of personal responsibility that may be stronger in rural areas could contribute to concerns of stigma associated with use of mental health care. Yet, the need for mental health services in rural places is clear. As noted previously, the so-called despair deaths that are growing among white rural residents (e.g., liver disease, overdose, and suicide) have an obvious connection to behavioral health concerns, including addiction and depression. Among children, those living in rural areas are more likely to experience Adverse Childhood Experiences (ACEs), including exposure to domestic violence and/or living with a parent who has been incarcerated or who has a behavioral health problem. Without appropriate intervention, including child-focused mental health
services, these children are at greater risk for a lifetime of poorer economic and health consequences that may spill over into the next generation.

The economic trends affecting many rural communities, the more limited participation in the ACA by rural states, and provider shortages are all believed contributors to another rural health crisis: the loss of certain types of hospital services or the complete closure of rural hospitals. In the past 15 years, more than 120 rural hospitals have closed, and the rate of closure has increased in the current decade. Another 9 percent of rural hospitals are at high risk of closure in the near future based on estimates of their financial health. According to researchers at the University of North Carolina who monitor the well-being of rural community hospitals, the people most adversely affected by the closures include impoverished individuals, racial and ethnic minorities, and sick elderly adults who need ongoing care for chronic illness.

In addition to outright closures, some rural hospitals find themselves unable to sustain certain services that are vital to the well-being of rural populations and places. For example, researchers at the University of Minnesota found that 9 percent of rural counties lost their hospital obstetric unit in recent years, leaving more than half of all rural counties without access to inpatient labor and delivery services. Any mother-to-be can relate to the trepidation that surrounds the birth process, even in the best of circumstances. Add to that the need to travel 10s or 100s of miles, in all weather conditions, on roads that are unevenly maintained, and it’s hard to argue that this nation is doing its best for our rural mothers and babies. Certainly, the outcomes for mothers and babies are of concern. In 2015, the rate of remote rural mothers who died from pregnancy or birth-related causes was more than 60 percent higher than that of urban mothers (29 per 100,000 rural live births versus 18 in urban). While we can’t specifically link these maternal deaths to travel distances, it is clear that the last thing rural mothers need is another barrier between them and healthy pregnancies and births.

As noted previously, rural communities are heterogeneous, and studies of rural health may mask important regional and intra-rural differences. Key among these are the consistently poorer conditions and outcomes experienced by racial and ethnic minorities who live in the rural United States. For example, counties with substantial minority populations are more likely to lack access to hospital
obstetrics, and rural black mothers are at particularly high risk for poor birth outcomes. While the death rate has been growing among rural whites, minorities still account for more rural deaths relative to their white, non-Hispanic counterparts; nationally, the relative rate of death for rural whites is about three-fourths that of rural blacks. Because of their concentration in southern states that have not expanded Medicaid, rural minorities—particularly blacks—are less likely to have benefited from health insurance coverage gains under the ACA. Housing and water quality issues in rural minority communities, including those with migrant workers, are less likely to be addressed. Rural communities of color have higher rates of chronic illnesses or debilitating health conditions. American Indians and Alaskan Natives, many of whom live in rural places, experience some of the highest rates of mental and emotional distress of any racial or ethnic group. Yet, rural persons of color tend to have poorer health care access and quality of care when compared to rural whites.

Given the extensive evidence of ruralurban health disparities, it is clear that a social justice agenda focused on health must consider how to improve conditions and outcomes for the nearly 20 percent of the U.S. population who lives in a rural place. To achieve this, policymakers and public and private funding organizations will need to implement an intentional, sustained, and multipronged approach to investing in rural communities. By intentional, we mean strategies that are developed specifically with and for rural communities and not simply the translation of smaller-scale urban strategies to rural places. By sustained, we are expressing our hope that interest in rural places will last beyond the next news, economic, or political cycle.

Because the ill-health of rural people is almost certainly linked (at least in part) to higher rates of poverty, rural economic development will need to be a key component of this effort. This includes targeted strategies to increase rural economic and employment growth. It also includes concurrent investment in rural infrastructure, including housing, water, roads and transit, and broadband internet access. Together, these infrastructure pieces may contribute directly to the health of rural populations by reducing harmful exposures and improving access to information and care. They may also contribute indirectly by improving the overall social determinants of health for rural people.
Investment in the health care infrastructure of rural places is also critical. States with substantial rural populations need to expand access to health insurance, including Medicaid, rather than implement potentially harmful initiatives, such as work requirements. To address provider shortages and facility closures, health care delivery experts must explore and evaluate potential innovations for meeting the health care needs of diverse rural populations. This could include investments in telehealth or other distance options, many of which are beginning to have an evidence base. It should also consider alternative models of health care delivery in rural places that reflect the impracticality of maintaining full-service hospitals in every small community, yet ensure that rural people receive essential services close to home. When rural people need to travel for care, payers and health systems could collaborate to support them and their families through travel and short-stay housing options.

Rural community leaders could also work to engage and train members of their communities to support each other through initiatives like *Mental Health First Aid*, birth doulas, or community health worker programs. These initiatives enable lay professionals from affected communities to obtain skills and knowledge to meet some of the educational and supportive health needs of their families and neighbors. Policymakers, grant makers, and insurance payers can ensure that training for, and delivery of, these supportive services are covered through a variety of funding streams. While not a substitute for medical care, these programs can expand the reach of services to rural populations at risk for poor health outcomes. At the same time, individuals providing these services would gain skills and employment opportunities that support both the health and social well-being of rural places. Finally, these programs build on one of the greatest self-described strengths of rural communities—the sense of social connectedness among members that has evolved from cooperation between families and neighbors, sometimes spanning generations. Rural places and people have strong roots that should be nurtured for optimal results.

### Authors
You’ve Been Served! A Guide for What to Do When the Government Comes Knocking

By Stephanie Yonekura and Michelle Roberts Gonzales

The day starts ordinarily enough. Coffee, email, a quick call, more (oh so much more) email. But then the receptionist calls you (let’s say you are in-house counsel), or the company’s chief executive calls you (let’s say you are outside counsel): “Um, the company just got served with a subpoena, and it’s from the U.S. Attorney’s Office (or the Securities and Exchange Commission).”

You scan the document and learn the government is demanding all kinds of information—internal financial data, communications, materials that you know the C suite would never want turned over to regulators or prosecutors. What do you do now?

Step 1: Preserve Documents and Pick Up the Phone
First, fight the impulse to hide under your desk in the fetal position—or, alternatively, to reflexively object and tell them to pound sand. Regardless of whether the subpoena portends trouble for your client or is just a nuisance, talking down the C-suite and taking reasonable and appropriate steps to address the subpoena are in your client’s best interest. Failure to do so can foreclose what may be your best options to protect the company from a fatal criminal prosecution.

Second, take action immediately to preserve the documents that the government has requested. This does not mean you’re going to blindly turn over everything, but you will not be able to assess the situation without access to the documents. And if you’re careless—or worse—with responsive documents after being served with a subpoena (even if nothing damning is in them), the situation can only get worse. You give the government reason to be suspicious, you annoy the judge who might otherwise be your ally against obtrusive and overly broad demands, and, worst-case scenario, you invite an obstruction of justice charge. (Think Arthur Andersen’s document shredding in the Enron scandal.)

So determine who might have the target documents, whether on paper or in their ever-expanding email folders, and issue a preservation order. Explain to the relevant individuals that they cannot destroy, accidentally or intentionally, documents that have been subpoenaed. Remind them to take care of documents that they might have on personal computers or devices. Put the document preservation order in writing and ask that recipients acknowledge that they understand and will comply with the order. Also, talk to your information technology department and make sure that the usual destruction and deletion policies are suspended for individuals with subpoenaed documents. If you are unsure whether that department is equipped to ensure preservation, consider contracting with a qualified e-discovery vendor. Regardless, make sure that if push comes to shove, the company cannot be accused of failing to comply with a subpoena.

Once you’ve taken steps to preserve the status quo, you can begin to better assess what the government might be after. And you do that by picking up the phone. Call the assistant U.S. attorney (AUSA), introduce yourself, and ask what the investigation is about and how your client fits into the investigation. Is your client a witness, a subject, or a target in the investigation? Although not required to answer your question, more times than not, the AUSA will give you an answer to help
move the matter along.

Determining whether your client is a witness, a subject (someone the government believes was involved in the scheme but is not targeting), or a target can both limit the burden of responding to the subpoena and help inform your internal investigation. If the government’s requests are overly broad, there is likely to be a significant cost associated with gathering the documents. (Even more limited requests can become expensive because of the volume of electronic discovery, but that is why thinking carefully about scope is important.) Particularly if your client is considered a witness, negotiate with the AUSA to limit the scope of the subpoena. Express a willingness to respond, but try to get an agreement on keyword searches for electronically stored information, timing, rolling productions —the types of things that make any document production more manageable. If the government refuses to limit the scope of the subpoena or your investigation reveals other reasons to resist production, go to step 5, below—cooperate or fight.

Regardless, the most important thing you can do at this stage is conduct your search and investigation under privilege and as attorney work product to best protect the company in case litigation from shareholders or investors follows. Make sure that you give any employee you interview an Upjohn warning. For former employees and other witnesses, request that they keep everything that you have asked them and what they have told you confidential. You and any corporate employee who participates in the investigation should keep the information as confidential as possible while still allowing the company to seek legal advice. Interview memoranda and documents memorializing your investigation, even in the preliminary stages, should reflect your thoughts and impressions. Do not merely transcribe what you are told.

You should seek an agreement with the government that the subpoena, the company’s response, and any documents that are produced will remain confidential to the extent possible. If the information relates to a trade secret, you should designate that specific information and request the specific exception from Freedom of Information Act disclosure for trade secret information. At all times, you need to keep in mind the business risk that your client will be punished by the market, investors, or lenders even if it has done nothing wrong.
Witness. If your client is merely a witness, your job is easier, but do not let your guard down. Being a witness today does not preclude being a target tomorrow. Gather the responsive documents. Talk to the relevant individuals after giving them written *Upjohn* warnings with acknowledgements that they understand that you represent the company and that the attorney-client privilege belongs to the company. (The practice of *Upjohn* warnings comes from *Upjohn Co. v. United States*, 449 U.S. 393 (1981)). In a standard warning, the employee is told that the interview or investigation is being conducted under the attorney-client privilege, meaning that the information must be kept confidential. The privilege belongs to the company and the company alone. Finally, the employee is told that the company may choose to waive the privilege and disclose what the employee said to the government or any other third party without seeking permission for disclosure from the employee.

Even if you are certain that your client is only (and will only ever be) a witness, work with the appropriate executives to think through other risks. If your client’s status as a witness becomes public or if the underlying information goes public, are there significant business risks? Are there significant risks to shareholders? Use the time that you have (because you have negotiated for a reasonable, rolling production) to get ahead of those issues.

Subject. This is a bit of a no-man’s-land. Do not get lulled into a false sense of security by the label. You may think you can act like a witness, but you should proceed as if you are a target (see below).

Target. If your client is the target, there are more concerns. The current administration’s approach to business malfeasance may eventually prove different, but federal prosecutors have shown increasing willingness in recent years to turn what might have been a regulatory enforcement action into criminal charges. In just the past several years, several large companies—not just individual bad actors but the companies themselves—have been hit with criminal charges. Following the massive emissions-test-cheating scandal, Volkswagen AG pled guilty to violations of the Clean Air Act and conspiracy to defraud the United States and U.S. customers. Volkswagen paid $2.8 billion in criminal fines in addition to $1.5 billion in civil penalties. Meanwhile, six executives were also indicted. Similarly, Takata Corporation, one of the world’s largest suppliers of automotive safety-
related equipment, pled guilty to one count of wire fraud after allegedly fabricating test data to mask a fatal defect in its airbags. It agreed to pay $1 billion in criminal fines. Three Takata executives were also indicted. And it is not just automobile-related companies that have been hit. In 2016, ConAgra Grocery Products LLC pled guilty to a criminal misdemeanor charge stemming from the shipment of peanut butter contaminated with salmonella. The company was sentenced to pay an $8 million criminal fine and to forfeit an additional $3.2 million in assets.

Step 2: Figure Out Who Needs to Lawyer Up

As the Volkswagen and Takata cases demonstrate, there can be both corporate criminal liability and individual criminal liability in these cases. This can create a substantial conflict that makes common representation impossible, leading to a need for separate counsel for executives or other employees. If your company has a directors and officers liability insurance policy, a claim should be tendered immediately to avoid the risk of inadvertently waiving coverage or creating ethical issues for you as an attorney.

Once separate counsel is retained, a joint defense agreement may make sense to share costs and information. But that is not always true. If you have information or believe that an individual is a true bad actor, who did not act with the company’s best interests in mind, do not—we repeat—do not enter into a joint defense agreement.

Even if you decide initially that separate counsel is not necessary or a joint defense agreement makes sense, you should periodically reassess as new facts are discovered.

Step 3: Conduct an Internal Investigation

Whatever the issue is, you want to figure out what the evidence shows. There is too much risk to the company to bury your head in the sand and wait to see how it plays out. You will want an internal investigation, but you will also want to be able to seek legal advice based on what you find. You should hire outside counsel (or separate outside counsel if you have an ongoing advisement relationship with the company) to conduct the investigation—believe us, this is not just self-serving.
advice. Given the many hats worn by general counsel in today’s business world, courts have sometimes determined that the general counsel was not acting for the purpose of giving legal advice—but for business reasons—in conducting an internal investigation, so the investigation is not privileged and its work product is not protected. Meanwhile, the hiring of outside counsel has been used as a factor in favor of protecting the privilege. The internal investigation team should be made up of outside counsel and in-house counsel, as well as employees necessary to navigate the system and gather information. But all actions will be directed by outside counsel for the purpose of giving legal advice.

The team will then review the documentary evidence (at a minimum, the documents requested by the subpoena) and interview employees (after *Upjohn* warnings). If you determine that you want to memorialize an interview in a memorandum, make sure to include your mental impressions and potential legal analysis to protect the memorandum as attorney work product.

The internal investigation team will take that evidence along with other information they develop and assess the legal ramifications for your client. They’ll offer advice regarding corrective steps, new controls, shareholder disclosures, and whether it makes sense to tell the government some or all of what your investigation uncovered. All of these decisions must be navigated in a way to continue to protect the privilege so that you are not later determined to have inadvertently waived the privilege by providing information to one entity (say, the government), and not another (maybe the plaintiffs in a shareholder lawsuit).

### Step 4: Determine If Your Client Is a Guppy or a Whale

Not all targets are created equal, and it may turn out after careful investigation that your client is a small fish in whatever scheme the government suspects. It might also turn out that you are 100 percent certain that your client did not do anything wrong, despite what the government suspects or what some putative whistleblower alleges. Of course, it is unlikely that you will be able to make that assessment without conversations with the government, which is another reason to pick up the phone in the first place. Express an interest in cooperating if you can get a sufficient understanding of what the government is looking for. If your client is a guppy or a completely innocent actor, you may want to ask the government for the
opportunity to make a proffer in hopes that it ends your client’s need to be involved in the investigation. A proffer agreement will permit your client to give the government information with some assurance that it will not be prosecuted. Note, though, that a proffer agreement is not an immunity agreement. While the proffer statement cannot be used in a case-in-chief, it can usually be used for other purposes like impeachment or to give the government other leads that it may follow up on. So proffer with care.

If your client is a bigger fish and there is a sizable risk of prosecution, you may want to consider seeking cooperation credit. In September 2015, then Deputy Attorney General Sally Q. Yates issued a memorandum with guidelines for cooperation credit in corporate wrongdoing cases. The so-called “Yates memo” lays out specific criteria for cooperation credit, intended to ensure consistency. To qualify for any credit, corporations must provide all relevant facts about individuals responsible for the misconduct. The extent of the credit will depend on such factors as timeliness of cooperation, the proactiveness of the cooperation, and the diligence and thoroughness of the investigation. This is one of the reasons separate counsel and careful Upjohn warnings are important. In the event of serious misconduct, the interests of the company and individual employees are likely to diverge.

This may be true even outside the criminal context. The principles of the Yates memo apply to civil cases also. The memo specifically directs prosecutors to work with the Department of Justice’s civil lawyers when they do not believe there is quite enough evidence for a criminal charge. So, even if you believe your client may avoid criminal liability but faces a substantial risk of civil liability, seeking cooperation credit may be advisable.

The one caveat on all of this is that the current administration has suggested that the Yates memo may be modified and is under review. So before approaching the government seeking any cooperation credit, make sure that you understand the current guidelines. For example, in the realm of the Foreign Corrupt Practices Act (FCPA), the current administration made the FCPA Pilot Program permanent by announcing and issuing its FPCA Corporate Enforcement Policy in November 2017. It sets out a presumption of declination of prosecution for companies that self-disclose and satisfy the cooperation standard. This is a change for the better for companies, and we could spend a whole article on FCPA enforcement, but we need
to move on to the next step of your response to a subpoena.

Step 5: Cooperate or Fight

Suppose it turns out you’re concerned that your client is a whale and has serious potential criminal liability. You will now have to make the decision about whether to cooperate or fight.

If you decide to cooperate, you will have to review the guidance of the Yates memo (see above). The Department of Justice has stated that you do not have to waive the attorney-client privilege to cooperate—but be prepared to provide all relevant facts. In addition, you must be able to demonstrate that you conducted an assessment as to how the violation occurred and that you have taken steps to remediate the problem to make sure that it won’t happen again (fixed the system by adding controls, discharged wrongdoers). You should also make sure that your compliance program is in tip-top shape. To do this, you should review the Department of Justice’s Evaluation of Corporate Compliance Programs and be prepared to answer every question listed with detailed responses supported by documentary evidence. So good luck; you will be praying for a declination with disgorgement—but will accept a deferred prosecution agreement or non-prosecution agreement with or without a monitor—and will be dreading a guilty plea.

Sadly, if you decide to fight, the company will still have to respond to the subpoena and produce many of the records. But you may be able to file a motion to quash the subpoena as overly burdensome or overly broad (or both)—especially if the government refused to discuss limiting the scope of the subpoena in step 1. And you will be able to withhold your investigation materials as privileged.

If there is a civil action and a criminal proceeding, your client, as the target, should resist a motion to stay the civil action even though parallel proceedings can be burdensome. Obviously, you do not want to make it easier for the government to prove up liability with a lower burden of proof in the civil action than in the criminal proceeding. But civil litigation provides the opportunity to engage in discovery, potentially providing an earlier window into the case against your client, rather than waiting for the government to produce discovery on its own timetable.
Special Considerations

For purposes of this article, we have assumed two things: (1) your client is the company, and (2) your client is U.S.-based. But there are some other considerations if those things are not true.

If your client is an individual and is the target, it may be time to consider whether your client should invoke his or her Fifth Amendment right against self-incrimination. Besides the obvious reputation risks that invoking Fifth Amendment rights are likely to bring about, invoking the Fifth Amendment can be used as evidence against your client in a civil case. The kind of limiting instructions that preclude a jury from using a Fifth Amendment plea as evidence of wrongdoing in the criminal context do not apply in the civil context. That is why the government will generally seek to stay a Securities and Exchange Commission lawsuit during the pendency of the criminal case. Whether the end result of the criminal case is a conviction or even just the invocation of the Fifth Amendment, the evidence can be used to win a civil action.

If your client is a company with an international component, there is an entirely different set of considerations. If the investigator is a foreign authority, hire local outside counsel immediately. Many countries, including those in Europe, do not recognize attorney-client privilege for in-house counsel. Moreover, the so-called “legal professional privilege” applies only if the outside lawyer is providing advice in writing and the lawyer is admitted to the bar of a European Union nation. (Your state bar card is no good there!) There are also additional regulatory concerns when it comes to information that implicates privacy rights in Europe, and changes to those regulations became effective in May 2018 with the General Data Protection Regulation.

Bottom Line

Whether your client is a witness, subject, or target—foreign or domestic—it pays to be proactive. Take steps to preserve data. Negotiate with the government regarding the scope of document production and any other information or cooperation it wants you to provide. Do not waste time in launching a privileged internal investigation to ensure you and your client understand the scope and seriousness of
the government’s interest in your client. When the government calls, you don’t have to hide—you have to get to work!
The #MeToo movement has spawned a new era for corporate America with regard to how we look at and what we do in response to allegations of sexual harassment. It has forced corporate America to give serious consideration to the manner in which to consider and manage the risks stemming from sexual harassment by corporate officers and directors.

While complaints of sexual harassment at work are not new, the revelation that the head of a film studio not only was permitted to pursue a decades-long career as a sexual predator but also, in fact, was enabled by corporate leadership to engage in such behavior has been met with a collective sense of horror. The practice of journalistic “catch and kill” to bury claims of sexual misconduct and grossly inappropriate behavior has drawn scrutiny, as well. And the spotlight is shining starkly on the manner in which corporations have placed a premium on “managing” the immediate financial risk presented by the claims and fallout from the allegations, and insulating individuals perceived to be key performers, rather than placing the focus on refusing to tolerate and taking aggressive action toward eradicating such behavior. All of this has
revealed a corrosive culture that society at large now seems unwilling to tolerate.

Previously, ugly allegations might have been addressed quietly, settlement agreements might have been drawn up, and the individuals accused of such conduct might have been permitted to proceed in their leadership positions as if nothing had happened—with the excuse being that the individual’s value to the company justified dealing with the allegations in this manner. However, the discovery of the depth of the ugliness that has been concealed and enabled has had a dynamic impact, the reverberations from which are only just beginning to be felt.

In reaction to the veil being lifted, investors are now suing companies and their boards for the manner in which they have handled allegations of sexual harassment by corporate leadership and for the impact that their conduct may have on the company’s bottom line due to perceptions that it enabled such behavior. This means bringing suit under the antifraud provisions of the Securities Exchange Act of 1934, as well as shareholder derivative suits for breach of fiduciary duties owed to the shareholders by corporate boards of directors when the news of the sexual harassment comes out and the stock price of the company suffers a hit and/or the brand is tarnished.

How do companies and their boards deal with this new paradigm? How do they identify the risks and take the necessary steps to protect against them? This article will provide an overview of the new landscape to be navigated, discuss the issues presented, and offer a road map for how to deal with these issues going forward.

Rise in Sexual Harassment Allegations

For years, companies and their boards were able to quietly settle and then sweep under the rug sexual harassment allegations as there was little financial incentive to address them in a more fulsome manner.\(^1\) Times have changed. While a company’s stock price may not be impacted when allegations of sexual harassment first surface,\(^2\) a company has to consider the possibility that a serious financial risk can occur when a company does not deal with claims promptly, directly, and in a manner that evidences a corporate culture intolerant of such behavior.

An illustrative example can be seen in what happened when model Kate Upton accused the Guess cofounder of sexual harassment: shortly thereafter, the company’s shares dropped nearly 18 percent, shedding roughly $250 million in value.\(^3\) As another example, Twenty-First Century Fox paid out an eight-digit settlement in 2016 for its
mishandling of sexual harassment claims against Roger Ailes and Bill O’Reilly. Still another cautionary tale is told in how the market reacted to the lawsuits against Steve Wynn, Wynn Resorts, and his board of directors concerning Wynn’s alleged decades-long sexual misconduct. In the aftermath of these suits, the stock price of Wynn Resorts dipped nearly 20 percent. And the most telling example is that of the Weinstein Company: an entire brand has been eviscerated by the revelations of Weinstein’s enduring sexual misconduct and the failures of the Weinstein board to take effective measures to put a stop to it.

The Securities Exchange Act of 1934

The Securities Exchange Act of 1934 (Exchange Act) regulates the secondary trading of securities and, under its antifraud provisions, makes it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange to use or employ . . . any manipulative or deceptive device or contrivance [in selling securities].

The purpose of the Act is to create a mandatory disclosure process designed to force companies to make public information that investors would find pertinent in making investment decisions, and to provide a means of punishing individuals and companies that either make false or misleading statements about the company or make use of information not available to the public to enrich themselves at the expense of other investors.

A plaintiff may bring an action against a public company for violations of the antifraud provisions of the Exchange Act via the private right of action authorized pursuant to sections 10(b) and 20(a) of the Exchange Act. The claims brought under the Exchange Act arising from how a corporation has addressed complaints of sexual harassment generally have centered on a company’s duty to disclose and report the claims and risks presented thereby in its public filings made to the Securities and Exchange Commission (SEC), such as the annual 10-K and quarterly 10-Q filings.

Under Rule 10b-5, it is unlawful for a public corporation to make any untrue statements or omissions of a “material fact” that would render any statement made to the SEC “misleading.” Under Item 103 of Regulation S-K of the Securities Act of...
1933, a public corporation also has an affirmative duty to disclose “any material legal proceedings” that are pending against it before a court or agency, as well as “any proceedings known to be contemplated by governmental authorities.” Additionally, under Item 303 of Regulation S-K, a company must disclose any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.

The U.S. Court of Appeals for the Second Circuit has held that a company is required to disclose statements from Item 303 pursuant to section 10(b) filings.

The Fiduciary Duty Owed to Shareholders by Officers and Directors

Every officer and director of a company owes its company and shareholders fiduciary duties of care and loyalty, which, if violated, can subject them to a derivative action. A shareholder who brings a derivative action must either make a demand on the directors to bring a litigation or set forth particularized factual allegations in a complaint that such demand on the board would be futile by raising a reasonable doubt that either (1) the directors are disinterested and independent or (2) the board’s decision was not a valid exercise of business judgment.

In the context of sexual harassment, officers and directors can breach their duties by sexually harassing employees (and, in so doing, intentionally act with a purpose other than that of advancing the best interests of the corporation) or failing to monitor or investigate known sexual harassment claims.

Sexual Harassment and the Risks Presented

The Equal Employment Opportunity Commission defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.” It is defined similarly in many state and city statutes. Sexual harassment does not have to be of a sexual nature for it to be unlawful; sexual harassment also extends to offensive comments about a person’s gender.

Until recently, sexual harassment claims were largely risk specific to the claimant, manageable through employment practices liability insurance (EPLI) coverage, and not
likely to present a potential for risk in the form of securities fraud and/or shareholder derivative litigation. However, there have been a number of claims of recent vintage that should put every corporate leader on notice that these types of claims, and how they are handled, can pose such risks today—and in a very substantial way. These claims have been largely premised on two theories of liability: (1) violations of the Exchange Act and (2) breach of fiduciary duty claims.

#MeToo: Securities Fraud and Shareholder Derivative Suits

The private right of action under section 10(b) can be implicated in the sexual harassment context when a company makes statements to the SEC concerning its board’s integrity; success; or any ongoing investigations, which is the basis for one of the current suits against Steve Wynn, Wynn Resorts, and its various officers. In the class action that was brought in that matter, investors alleged violations of sections 10(b) and 20(a) based on the board’s alleged failure to disclose the CEO’s “pattern of sexual misconduct” in light of the alleged false statements that it previously made to the SEC that any reported violations of the company’s “code of business conduct” would be “taken seriously and promptly investigated.” The plaintiffs alleged that the company was under a duty to disclose the alleged “decades-long pattern of sexual misconduct” by Wynn, which has since been made public, and the ensuing arbitration against the company and its CEO.

Similarly, last year, shareholders sued Signet Jewelers, which sells jewelry through Kay Jewelers and Zales, and its CEO, Mark Light, for violations of the antifraud provisions of sections 10(b) and 20(a) of the Exchange Act. The lawsuit in that case alleged that the company failed to disclose a nearly decade-old arbitration involving claims by approximately 69,000 female employees who had alleged a corporate culture of sexual harassment and discrimination that included a number of executives, including Light. The plaintiffs alleged violations of section 10(b) and Rule 10b-5 as a result of, among other things, the board’s failure to properly disclose the harassment and the board’s misleading statements and omissions “that caused the price of Signet common stock to be artificially inflated during the Class Period.” A month before the plaintiffs filed their complaint, the Washington Post published an article detailing the sexual harassment claims. While Light is not nearly as synonymous with the Signet brand as Harvey Weinstein is with the Weinstein Company or Steve Wynn is with Wynn Resorts, the Signet brand name was damaged by the news of the sexual harassment claims and Light’s alleged participation in activity by “top male
managers,” including dispatch[ing] scouting parties to stores to find female employees they wanted to sleep with, laugh[ing] about women’s bodies in the workplace, and push[ing] female subordinates into sex by pledging better jobs, higher pay or protection from punishment.\textsuperscript{26}

Plaintiffs alleged that these actions caused the company’s stock to fall nearly 13 percent and its common stock price to fall 58 percent from its class period high.\textsuperscript{27}

An example of an application of a derivative action arising from sexual harassment claims can also be found in the suit filed by the shareholders of Wynn Resorts, which alleged that the board and its CEO breached their fiduciary duties by failing to effectively exercise oversight over Wynn Resorts and its CEO by “failing to police, investigate and act . . . to address the known credible allegations of intentional egregious misconduct and violations of law by Steve Wynn involving Wynn Resorts.”\textsuperscript{28} The derivative complaint details the board’s alleged knowledge of decades-long sexual harassment by Wynn (which allegedly included, on numerous occasions, instructing a massage therapist employed at Wynn’s Las Vegas spa to touch his genitals), including the board’s specific knowledge of an alleged rape by Wynn—specifically brought to the board’s attention by Wynn’s ex-wife—that culminated in a $7.5 million settlement paid to the victim.\textsuperscript{29} Wynn resigned as CEO shortly after the \textit{Wall Street Journal} published an article about his alleged rampant sexual misconduct.\textsuperscript{30}

Similarly, in 2016, stockholders of Twenty-First Century Fox alleged that their board of directors failed to properly exercise oversight over Fox’s workplace and thereby permitted a hostile workplace plagued by “rampant sexual harassment and exploitation,” including sexual harassment by Ailes for at least a decade.\textsuperscript{31} With damage claims based on, among other things, the payment of tens of millions of dollars to settle Bill O’Reilly’s alleged sexual harassment, a drop in advertising revenue and ratings, and the “loss of high profile talent,” Fox quickly settled the claims for $90 million.\textsuperscript{32}

\textbf{Obstacles in a derivative action.} While it is fairly straightforward to argue that a director or officer will have breached his/her fiduciary duties to the shareholders by personally engaging in sexual harassment of the company’s employees and/or participating in and fostering a culture of sexual harassment and discrimination, it can
be challenging for a derivative plaintiff to maintain a breach of fiduciary duty claim for a failure to monitor and exercise oversight, which is referred to as a Caremark claim.\textsuperscript{33}

To allege a breach under Caremark, a plaintiff must meet the high burden of showing a “sustained or systemic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system.”\textsuperscript{34} To do this, plaintiffs must show that

(a) the directors utterly failed to implement any reporting or information system or controls; or (b) having implemented such a system or controls, [they] consciously failed to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention.\textsuperscript{35}

Directors may be liable under a Caremark theory where “red flags” are “waived in one’s face or displayed so that they are visible to the careful observer.”\textsuperscript{36} Because sexual harassment often involves surreptitious conduct, this can make a breach of fiduciary duty claim for failure to monitor and exercise oversight challenging. Nonetheless, where evidence of a systemic failure by the board to address a pattern of sexual harassment involving various red flags of misconduct that the board fails to address can be shown, such a claim may have legs.

In the past, plaintiffs were unsuccessful in efforts to pursue shareholder derivative suits arising out of alleged sexual harassment based on a Caremark theory of liability.\textsuperscript{37} As a relatively recent example, shareholders of American Apparel brought suit against the company, several directors, and the CEO in 2010 and then again in 2014, alleging that the board breached its fiduciary duties with regard to the CEO’s sexual harassment.\textsuperscript{38} A California district court dismissed the 2010 complaint, holding that bare allegations of the CEO’s sexual tendencies could not meet the high threshold imposed by Caremark.\textsuperscript{39} As more sexual harassment allegations arose, shareholders of American Apparel brought suit again in 2014.\textsuperscript{40} Yet again, however, the court concluded that plaintiffs had failed to show that the American Apparel board demonstrated a conscious disregard for its responsibilities when it “eventually did investigate, then suspended, and ultimately terminated [the CEO].”\textsuperscript{41}

The changing landscape. This challenging past history notwithstanding, it appears that the tide may be about to turn. Allegations involving a lengthy history of sexual harassment over many years, knowledge by the corporate boards of directors of their
companies of this conduct, and conduct arguably designed as much to conceal and enable the harassing behavior as to provide recompense to the victims and avoid negative publicity could prove to be sufficient to meet this standard.

For instance, in *DiNapoli v. Wynn*, the New York State comptroller’s office and several pension funds filed a derivative suit against Steve Wynn and Wynn Resorts’ board of directors and officers, alleging that the board breached its fiduciary duties based on a decades-long pattern of sexual abuse and harassment by Steve Wynn that remained unchecked, tacitly permitted, and eventually covered up by Defendants, resulting in a breach of their duty of loyalty and other fiduciary duties to stockholders.\(^42\)

The plaintiffs in this case tracked the language of a *Caremark* theory in their amended complaint, filed on March 23, 2018, alleging that the board failed to act “in the face of known and credible allegations.”\(^43\) In addition, the board members intentionally and knowingly breached their fiduciary duties by *failing to implement internal controls that would alert them* to the hostile work environment created by Steve Wynn’s widespread sexual harassment and abuse, which was repeatedly reported to senior Company Officials since at least 2005, and concealed his sexual misconduct from the stockholders by repeatedly misrepresenting the company’s corporate governance framework.\(^44\) Based on these allegations, it appears that the plaintiffs may have enough to meet the *Caremark* standard.\(^45\)

Similarly, in *Asbestos Workers’ Philadelphia Pension Fund v. Hewitt*, a pension fund filed a derivative class action against several directors and officers of Liberty Tax and its CEO, John Hewitt, stemming from Hewitt’s alleged widespread sexual harassment that was claimed to have irreparably damaged the company and caused it to pay out settlements and enter into unfair transactions.\(^46\) In the complaint, plaintiffs allege that Hewitt breached his fiduciary duty by not only engaging in inappropriate sexual activity in the workplace and using company resources for his own “sexual gain” but also, after being fired for such conduct in September 2017,
decision, reestablish himself as the de facto sole power at the Company and make it intolerable for anyone but the most loyal to serve on the Board or in senior management. \(^{47}\)

While the complaint against Liberty Tax did not track the language of a *Caremark* claim or explicitly allege a failure to monitor or oversee claim against the board of directors (most likely because the board fired Hewitt after an independent investigation two months prior), the plaintiffs did allege that several of the Hewitt-loyal individual directors breached their fiduciary duties (1) by rendering the corporate governance of the company “so dysfunctional that independent directors were unable to exercise their own respective fiduciary duties, causing them to resign,” and (2) by terminating the independent director recruitment process. \(^{48}\)

**Recent/Upcoming Legislation**

In reaction to the spate of revelations of sexual harassment by senior corporate officers and directors over many years, a variety of legislation has been proposed or passed with the objective of making it more difficult to conceal such conduct. This has taken place on both the state and federal levels.

For example, on December 22, 2017, Congress passed the Tax Cuts and Jobs Act, which includes an amendment that focuses exclusively on a company’s sexual harassment claims. The amendment, entitled “Payments related to sexual harassment and sexual abuse,” provides thus:

No deduction shall be allowed under this chapter for—

(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or

(2) attorney’s fees related to such a settlement or payment. \(^{49}\)

This amendment theoretically could have far-reaching financial implications for companies going forward because most settlements for sexual harassment claims are accompanied by a nondisclosure agreement.

However, recent state legislation on the use of nondisclosure agreements actually may curb the impact of this amendment on a company. As of April 5, 2018, the New York
legislature passed a bill that prohibits employers from including a nondisclosure agreement in any settlement of a sexual harassment claim unless the complainant is the party to request it. In addition, this legislation will prohibit employers from requiring employees to contractually agree to arbitrate sexual harassment claims. New York Governor Andrew Cuomo signed the legislation into law on April 12, 2018. New Jersey and California also are contemplating similar legislation regarding nondisclosure agreements.

Moreover, California lawmakers have proposed legislation to extend the statute of limitations for employment-related sexual harassment claims under California’s Fair Employment and Housing Act from one year from the date upon which the unlawful practice occurred to three years. Several other states are considering similar legislation to extend the statute of limitations for plaintiffs to file a civil suit or for district attorneys to prosecute related cases, including Massachusetts, Michigan, Missouri, New York, Vermont, Washington, and Wisconsin.

While we have yet to see what financial impact any of this legislation will have on companies, it is sure to put a company more at risk and change the way that it addresses allegations because negotiated resolution of sexual harassment claims will be more and more difficult going forward to keep secret, and the time frame within which such claims can be brought is likely to be broadly expanded.

Managing/Mitigating the Risk

**D&O, EPLI, and related coverage.** Traditionally, companies have sought to manage the risks presented by the potential for sexual harassment by officers and directors principally through the purchase of EPLI and directors and officers (D&O) policies, which include EPL coverage. These policies, however, have limits to their coverage.

As EPLI coverage is intended to cover claims brought by employees, standard EPLI policies may not extend to claims brought by third parties. Most D&O and EPLI policies also exclude coverage for claims of bodily injury, which means that an insurer will not cover claims for any type of touching, rape, assault, or battery. Additionally, both EPLI and D&O policies may have various other exclusions, including an exclusion for criminal acts, fraud, and dishonesty. On the other hand, emotional distress and anguish associated with any bodily injury may be covered under an EPLI policy, and stand-alone policies such as sexual abuse and molestation policies are
available to protect management, employees, and the entity against allegations of abuse, molestation, or mistreatment of a sexual nature. Further, the exclusion for fraud and dishonesty typically requires final adjudication to apply.

It also should be noted that D&O insurance is intended to cover claims for the “wrongful acts” of a company’s directors and officers, but only if the director or officer was acting within the course and scope of his/her employment when committing the act. Accordingly, a gap in coverage may occur if the director or officer committed the wrongful act outside the scope of employment. D&O policies also typically contain an “insured versus insured” exclusion, which may operate to preclude coverage for claims made by an employee deemed an insured person under the policy terms against an executive and/or the company insured under the policy. And while damage to the company’s reputation from the disclosure of either claims of sexual harassment by senior corporate management or a culture that encourages or ignores rampant sexually harassing behavior may pose perhaps the biggest financial risk to the company, D&O policies may not afford coverage for the cost of retaining a public relations firm to respond to the situation.

Another issue to be aware of is that D&O and EPLI policies provide claims-made coverage and thus provide coverage for claims made against a policyholder only during a specified period. Claims-made policies generally require that a policyholder timely report any claim made against it to the insurer, which may be a period of thirty days. Accordingly, gaps in coverage may arise when a company fails to report promptly a sexual harassment claim to an insurer or assumes that a previous or future claim is covered by its policy.

Gaps in coverage can also arise through a prior acts or prior litigation exclusion, which excludes coverage for claims involving facts or occurrences that either were the subject of prior litigation or commenced before the start of coverage. Under this exclusion, an insurer can deny coverage where there are common facts between the prior claim and the current claim. If, for example, a company receives a books and records demand that includes certain allegations of potential wrongdoing, an insurer could potentially deem that demand a prior or pending litigation for purposes of the exclusion.

Moreover, companies should be aware of the aggregate limit of liability and per-claim deductibles in their policies’ terms. Specifically, claims that arise out of the same or related events are treated as a single claim starting from the earliest date that the claim is reported. As such, separate lawsuits, related class action complaints, and suits filed
by multiple plaintiffs may be deemed to create a single claim subject to a single maximum limit of liability and only one claims-made policy. This will have an impact in the sexual harassment context when plaintiffs file various complaints stemming from the same wrongs, the same pattern of sexual harassment, and the same breaches of fiduciary duty—as evidenced by the various suits filed against Wynn and the directors and officers of Wynn Resorts.

Insurers can also refuse coverage when a policyholder previously made misrepresentations on its policy application. For instance, in *Zion Christian Church v. Brotherhood Mutual Insurance Co.*, the U.S. Court of Appeals for the Sixth Circuit found that an insurer could reject coverage where the insured made several misrepresentations on its application by concealing past sexual conduct. Similarly, a federal judge rescinded two D&O policies because the company failed to disclose past sexual harassment claims against its CEO on its policy applications. When filing applications, companies must confirm the accuracy of all statements made in applications or risk a lapse in coverage.

**SEC reporting duties.** As the Weinstein and Wynn cases evidence, an important part of risk management is being conscious of a possible need to report sexual harassment claims on the company’s public filings. It is abundantly clear that such claims can have a material impact on the firm’s business and stock price, so it no longer will be valid to assume that settlements of such claims have fully addressed the pertinent issues.

**Employment policies and sexual harassment claims.** Lastly, there needs to be a renewed focus on monitoring and enforcing the company’s sexual harassment policies. While insurance may cover the financial costs of a suit and any resulting settlement, the revelations emerging as a result of the #MeToo movement should cause boards to be warier of what might be lurking quietly beneath the surface. There is naturally a presumption that the individuals you entrust with the management and operations of your business are going to comport themselves appropriately, but “assuming the best” is not a viable risk-management policy—certainly not in the times that we now live in. Furthermore, it is dangerous to assume that just because the company has written policies in place, employees are fully aware of their rights and feel safe and comfortable reporting sexual harassment.

**Conclusion**
Even in the current climate, it is still unlikely that there will be successful securities fraud actions based on alleged misrepresentations stemming from a corporation’s aspirational statements regarding (1) a refusal as a matter of policy to tolerate harassment or (2) a practice of consistently promoting a culture committed to honest and ethical conduct. But if a complaint sets forth specific allegations of abhorrent ongoing conduct by senior management and/or a widespread toxic culture, there is a much greater likelihood that the complaint will survive a motion to dismiss. Indeed, the most likely basis for a successful securities fraud or shareholder derivative action is allegations of knowledge of ongoing and continuing sexual harassment and other sexual misconduct—which potentially expose the corporation to significant liability and have the capacity to do substantial damage to the corporate brand—coupled with efforts to insulate particular officers and directors from the consequences of such conduct and conceal such conduct via confidential settlements.

While one might think that these types of circumstances are rare, the fact of the matter is that the #MeToo movement has lifted what was previously a very large and protective boulder and, in the process, has given the world a peek at some very ugly things crawling around underneath. As such, it can be reasonably anticipated that claims of this sort are more likely to grow in the short term, particularly in the realm of the shareholder derivative suit against the small to midsize privately held corporation dominated by an individual around whose entrepreneurial aptitude the company has been built.

Corporate awareness of the risk presented by this behavior and the implementation of systemic processes to meet the risk are critical so that the lessons currently being taught by the #MeToo movement quickly become lessons learned. In order to address this developing risk, professors Daniel Hemel and Dorothy Lund offer a useful list of suggestions for boards to consider going forward in an effort to both avoid the risk altogether and attempt to manage it as claims may arise:

- Take stock of their companies’ past responses to sexual harassment claims and, in so doing, identify repeat offenders so that they can be weeded out.\(^6\)

- Review their companies’ procedures for handling complaints, and take steps to ensure that employees are fully aware of and feel comfortable reporting misconduct.\(^6\)

- Ensure that policies providing for “meaningful consequences” for harassers
are in place (including empowering managers to impose sanctions ranging from reprimands to bonus reductions to termination for repeat offenders).67

- When confronted with allegations of sexual harassment by corporate officers or widespread harassment throughout the company, hire outside counsel to conduct a thorough investigation of the claims.68

- Approve the use of corporate funds to pay liability- and litigation-related expenses only in those instances where an internal investigation has been undertaken and it has been concluded that those claims are unfounded.69

- Accept that even in cases where the target of the allegations is a CEO who is associated with the company’s brand, there is misconduct that rises to the level of a fireable offense, and that “[t]he damage to a firm’s value from losing an iconic CEO may be far less than the reputational consequences of a high-profile sexual harassment scandal.”70

- Consider whether statements in their SEC filings might be misleading if sexual misconduct claims emerge.71

Additionally, boards need to consider carefully the insurance coverages in place, what is and is not likely to be covered, and the issues that potentially may arise in regard to insurance claims:

- Analyze the company’s D&O and EPLI policies to make sure that they provide the levels of coverage necessary to meet the risks presented. This includes careful consideration of per-claim deductibles and aggregate limits.

- Take stock of the complaints that have been resolved via settlement and whether the continued employment of particular repeat-offender directors and officers, because of the new dynamic, may present much greater exposure to financial risk than previously anticipated.

- Make sure that knowledge and awareness of claims have been fully vetted at the time of the policy application.

- Consider the purchase of coverage for retention of a public relations firm to handle crisis management.

As Ben Franklin famously stated, “By failing to prepare, you are preparing to fail.” For
Corporate boards, the #MeToo movement is a call to action—and none too soon.

Notes

1. An excellent discussion of some of these cases can be found in Daniel Hemel & Dorothy S. Lund, Sexual Harassment and Corporate Law, Colum. L. Rev. (forthcoming 2018).


7. Recent developments indicate that the trend evidenced by these cases is just getting started and that a number of similar claims will be brought going forward. For example, while this article was originally being readied for print, a federal securities class action complaint, Danker v. Papa John’s International, Inc., was filed in the U.S. District Court for the Southern District of New York. Case No. 1:18-cv-07927 (S.D.N.Y. Aug. 30, 2018). The suit alleges that throughout the class period—alleged to run from February 25, 2014, through July 19, 2018, when an article was published in Forbes magazine entitled “The Inside Story of Papa John’s Toxic Culture” and Papa John’s stock price fell $2.60 per share—defendants (including Papa John’s International, Inc. (Papa John’s) and John H. Schnatter (Schnatter), the company’s
founder) made materially false and misleading statements regarding Papa John’s business, operational, and compliance policies:

Papa John’s executives, including Defendant Schnatter, (i) had engaged in a pattern of sexual harassment and other inappropriate workplace conduct at the Company; (ii) Papa John’s Code of Ethics and Business Conduct was inadequate to prevent the foregoing misconduct; (iii) the foregoing conduct would foreseeably have a negative impact on Papa John’s business and operations, and expose Papa John’s to reputational harm, heightened regulatory scrutiny, and legal liability; and (iv) as a result, Papa John’s public statements were materially false and misleading at all relevant times.

Id. ¶ 4. Asserting claims for violation of sections 10(b) and 20(a) of the Exchange Act, plaintiffs allege that Papa John’s filed 10-Ks each year during the class period that failed to disclose that Schnatter had spied on workers and engaged in sexually inappropriate conduct, which resulted in at least two confidential settlements. Id. ¶ 47. Another recent suit is Luczak v. National Beverage Corp., pending in the U.S. District Court for the Southern District of Florida. (No. 0:18-cv-61631-KMM, 2018 WL 3467900 (S.D. Fla. July 17, 2018)). The suit involves claims brought under the Exchange Act based on violations of sections 10(b) and 20(a) against the company that owns La Croix, National Beverage Corp., and its chief executive officer and executive vice president. The complaint alleges that the defendants failed to disclose that its CEO engaged in a pattern of sexual misconduct between 2014 and 2016 despite stating that it “absolutely prohibited” sexual harassment and actively enforced its anti-harassment policy. See Amended Complaint, Luczak v. National Beverage Corp., No. 0:18-cv-61631-KMM, ¶¶ 69-77 (S.D. Fla. Nov. 2, 2018). The complaint goes on to allege that, in July 2018, the Wall Street Journal reported the CEO’s sexual misconduct in an article detailing that two pilots had previously filed lawsuits alleging that National Beverage’s CEO “engaged in repeated unjustified, unwarranted and uninvited grabbing, rubbing and groping of [plaintiff’s] leg in a sexual manner, reaching up towards [plaintiff’s] sexual organs.” Id. at ¶ 14.

Following the recent allegations of sexual harassment by Les Moonves, detailed in an August 2018 New Yorker article by Ronan Farrow entitled Les Moonves and CBS Face Allegations of Sexual Misconduct, New Yorker, Aug. 8, 2018, a securities class action lawsuit was filed against CBS on August 27, 2018 in U.S. District Court entitled Lantz v. CBS Corporation, Case No. 18-cv-08978. As succinctly described in a law firm
press release regarding the claims, “[t]he complaint alleges that throughout the Class Period [set as November 3, 2017—July 27, 2018], [CBS and certain of its officers and directors] made materially false and misleading statements and/or failed to disclose adverse information regarding CBS’s business and operations. Specifically, the complaint alleges the defendants failed to disclose that CBS’s business operations were facing substantial risk as CBS was being drawn further into conflict with the #MeToo movement as a result of the ongoing media investigations into prior allegations of misconduct by CBS’s CEO, Leslie Mooves, and that having CBS drawn further into conflict with the #MeToo movement subjected it to numerous undisclosed risks, including monetary and reputational risks, particularly because advertising is one of CBS’ largest revenue sources and any harm to its reputation and/or standing in the business community would adversely affect its current business, as well as its future revenues and growth prospects.” See https://www.rgrdlaw.com/cases-cbscorp.html. Additionally, a shareholders derivative suit was filed on August 31, 2018 against Nike’s Board of Directors entitled Stein v. Knight, 18-CV-38553 in the Circuit Court for Oregon following publication of a New York Times article regarding allegations of hostile work environment sexual harassment and gender discrimination at the company. [As pointed out in a recent D&O Diary post, while this case is evidence of the continuing trend of litigation in this area, it should be noted that, unlike the other cases discussed in this article, the allegations in the Nike lawsuit don’t turn on unwanted advances, inappropriate touching, and the use of corporate power to try to extract sexual favors. Additionally, the first named plaintiff is someone who has filed numerous lawsuits, and has, in fact, been referred to in an article in the Oregon Business News about the lawsuit as a “serial litigant.” See https://www.dandodiary.com/2018/10/articles/director-and-officer-liability/nike-board-hit-sexual-misconduct-related-derivative-suit/.] More recently, a class action complaint was brought against the Trustees of Dartmouth College on November 15, 2018 based on alleged failure to act on and ignoring over a period of more than 16 years of “complaints of pervasive sexual harassment and gender discrimination” allegedly perpetrated by certain professors in the Dartmouth Department of Psychology and Brain Scients. See Complaint in Rapuano v. Trustees of Dartmouth College, Case No. 1:18-cv-01070 (D., NH). The lawsuit seeks $70 million in damages.


10. Id. § 229.103.
11. Id. § 229.303.


17. See, e.g., Fair Employment and Housing Act, Cal. Gov’t Code § 12940(C) (West 2018):

For purposes of this subdivision, “harassment” because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

N.Y.S.2d 282, 283, 244 A.D.2d 214, 215 (N.Y. 1st Dep’t 1997):

The State and City Human Rights Laws apply the same Federal standards for determining quid pro quo and hostile environment sexual harassment claims, and differ only in that the City law allows for the recovery of punitive damages.


20. Id. ¶¶ 4–5, 25–27, 45.

21. Id. ¶¶ 4–5, 49–50.


23. Id.

24. Id. ¶ 16.


27. See id.; see also Harwell, supra note25.

29. Id.


34. *In re* Caremark Int’l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996); *see also* *In re* Citigroup Inc. S’holder Derivative Litig., 964 A.2d 106, 123 (Del. Ch. 2009):

   [T]o establish oversight liability a plaintiff must show that the directors knew they were not discharging their fiduciary obligations or that the directors demonstrated a conscious disregard for their responsibilities such as by failing to act in the face of a known duty to act.


5, 2003)).


41. *Id.*


43. *Id.* ¶ 131.

44. *Id.* (emphasis added).

45. For a more in-depth analysis ofthe various claims that a plaintiff may bring against a company and the implications of sexual harassment on corporate law, see the recent and insightful article by Daniel Hemel and Dorothy S. Lund in the *Columbia Law Review*. See supra note 1.


48. *Id.*


Nondisclosure Agreements. Notwithstanding any other law to the contrary, no employer, its officers or employees shall have the authority to include or agree to include in any settlement, agreement or other resolution of any claim, the factual foundation for which involves sexual harassment, any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant’s preference.

(amending general obligations law with new § 5-336).


55. Rebecca Beitsch, #MeToo Movement Has Lawmakers Talking About Consent, Huffington Post (Jan. 24, 2018), www.huffingtonpost.com/entry/metoo-movement-has-lawmakers-talking-about-consent_us_5a6758dfe4b06bd14be5067f.

56. That said, many modern forms have incorporated insuring agreements or optional coverage for discrimination and harassment claims brought by third parties such as customers, clients, and vendors.

58. Some D&O policies offer crisisfund–type coverage; however, whether such coverage may apply in any given situation will depend on the applicable facts and the policy’s wording.


60. See id. §§ 47:13, 74:26.

61. Id.

62. See 126 F. App’x 235 (6th Cir.2005).


64. A useful article summarizing some of the issues to consider with regard to D&O insurance for sexual misconduct can be found at LaCroix, supra note 57.

65. See Hemel & Lund, supra note 1, at 57.

66. Id. at 58.

67. Id.

68. Id. at 59.

69. Id.

70. Id. at 60.

71. Id.

Next Article > > >
Many Muslims in North America continue to use an “Islamic imagination” in approaching life’s transitions. Like those in other cultural communities all around the world, they continue to practise traditional rituals to help members of their community navigate the critical passages of birth, marriage, divorce, and death.

In Canada, where I live, reports of this in the early 2000s caused near-hysteria among some observers, leading to headlines such as “Life under shari’a in Canada?” and “Legal Jihad?” and even “Religious Law Undermines Loyalty to Canada.” This led to the Liberal government in Ontario withdrawing all forms of religious arbitration from the Ontario Arbitration Act. There have been similar instances of public alarm in the United States, prompting an organized movement promoting state referenda on “banning” the use of “shari’a law” in state courts since 2010.
Because much of my work as a researcher, teacher, and practitioner focuses on dispute resolution, I decided to learn how these processes actually worked “on the ground,” to understand the motivations of both the users and the facilitators of processes for marital counseling and divorce, and to chart the wide range of variations in procedure and practice. Put simply, I wanted to get behind the headlines.

From 2005 to 2008, with a grant from the Social Science and Humanities Research Council of Canada, I conducted interviews in the United States and Canada with almost 200 imams, religious scholars, social workers, and divorced men and women from Muslim communities. The result is a picture of private dispute resolution—or “private ordering”—that occurs frequently, informally, with little consistency and wide variations in procedure and practice, and with minimal data collection or formal monitoring either inside or outside Muslim communities. My research data—written up in my 2012 book Islamic Divorce in North America: A Shari’a Path in a Secular Society⁴—reveals a picture of the continuing practice of traditional processes animated by both religion and culture that lie at the heart of notions of Muslim identity and Islamic family values in 21st century North America.

Few of my starting assumptions about this research project proved to be correct. As a non-Muslim, with no starting knowledge of Islamic family law and no previous experience studying religious dispute resolution, I had a lot to learn during my four years of immersion in this project. Let me share some of the most important of these lessons here.

For Marriage and Divorce, a System of “Private Ordering”

By far the most common way in which North American Muslims continue to practise “laws” or rituals are limited to marriage and divorce. I found that this commitment to tradition was present among both religious and secular Muslims and both native-born Americans and immigrants.

Family law is in fact all that is left of original Islamic legal systems in many countries colonized by the United Kingdom, France, and other Western powers that
supplanted the native models of commercial and property law with their own common-law models. Likewise in North America, there is rarely community adjudication on commercial disputes. When we read about shari’a for North American Muslims, what we are really reading about are marriage and divorce processes, and occasionally inheritance principles.

Recourse to processes of Islamic marriage (by contract, or nikkah) and Islamic divorce (release from the vows made in the nikkah contract) is an example of a system of private ordering, running parallel to (but outside of) the formal system of laws and courts. Systems of private ordering are common in every country, community, and organization. They may in fact have as great, or even greater, an impact on the lives of those who choose to use them as the state-sanctioned system, especially if they represent meaningful principles and processes not available in the state system. In common with other systems of private ordering, Islamic divorce depends on the commitment of those who use it—rather than the state—for its authority and legitimacy.

The expression “shari’a courts” is misleading. The dispute processes that were the subject of my research could not be described as formal courts. Moreover, the procedures I collected data on could not be compared to what we know as arbitration. The private ordering system that I uncovered in my fieldwork is largely confined to the work of individual imams, some of whom have limited knowledge of Islamic jurisprudence. Their “permission” for divorce is more closely related to their internal biases and assumptions regarding marriage and especially the role of women than it is to any principles of Islamic family law (which I studied in order to undertake the research).

The process usually involves a meeting with a woman who is seeking permission to divorce, and occasionally a follow-up meeting with both husband and wife. In a few places, the heat that an individual imam might experience from his community if he looks as if he is being “too permissive” about divorce is eased by a panel of two or three local imams who take collective responsibility for decisions. I found no examples of these decisions forming any type of precedent, nor of any calling for and testing of evidence.

The Flaws of Private Ordering
Like any private ordering system, this one is dominated by the most powerful forces within that order and subject to the usual biases of power. For example, only men are presently permitted to be imams (although Muslim women are beginning to mount a strong resistance to this assumption) and therefore approve Islamic divorce; moreover, divorce in Islam is traditionally an asymmetric process, one in which the husband can simply decide he wishes to be divorced, while the wife must ask permission—from her husband, or, in a non-Islamic country, her imam (although I found many imams who refused to approve divorce on this basis and some Islamic legal systems are reforming this rule).  

The personal stories of North American Muslims that I have documented include experiences that are both positive and negative, along with outcomes that are sometimes highly satisfactory to participants—and sometimes less so. These processes, flawed as they might be, have meaning for many North American Muslims that goes well beyond a doctrinal religious belief. Like many private ordering processes, Islamic marriage and divorce are symbols of commitment to a community and a culture as much as to a faith. Like many traditional family processes, they are also something that many Muslims born and raised in North America use mostly to please their parents—just as many of us do at important life events.

Not a Substitute for Legal Divorce

Islamic divorce is not a legal divorce in any part of North America, and all the imams I interviewed know this. Interestingly—and at odds with a widely held public perception—the vast majority of them also had no interest in changing this status quo, seeing the work they did with community members as satisfying their personal conscience rather than requiring recognition in the legal system. Both the imams and the men and women seeking Islamic divorce are clear that this is not a substitute for obtaining a legal divorce in the courts. Islamic divorce is therefore in addition to, and not a replacement for, a legal divorce. Instead it is seen as an important element of ritual and commitment that relates back to the original vows taken in the nikah or marriage contract. In order to break these vows, there must be a sanction that recognizes those vows (also not legally binding) and releases the parties from them.
For the devout, the motivation is to meet one’s religious commitments. One respondent explained that for some Muslims, Islamic divorce allows them to feel that:

“(T)hey closed all the gaps in their faith, they have done everything that they could do, and they have something from an imam or religious scholar that says that they have done everything they could have done and they are free and clear.”

For the secular, the motivation to seek a formal community sanction for their divorce is different, but no less important:

“To retain an Islamic identity, it is often necessary to ... accept the traditions, because of the need to be part of that identity space ... many Muslims reject the religious commitment but retain the cultural commitments.”

I also found that disputes over support, property, and children were settled by the parties in courts of law. Where there was an agreement between the parties, sometimes negotiated with the assistance of the imam, this was submitted as a consent order. More often, however, the imam’s intervention was limited to providing permission (or not).

The relationship between an Islamic divorce and a legal divorce—since all my respondents obtained both—was explained to me as follows:

“The common law allowed me to feel practically and cognitively divorced—the Islamic process allowed me to feel spiritually divorced.”

What Might This Mean for Dispute Resolution Professionals?

Every imam, religious scholar, lawyer, community leader, and social worker I interviewed in the Muslim community believes that divorce is increasing rapidly among North American Muslims. Almost unheard of and certainly unspoken of two generations earlier, divorce is now a relatively common phenomenon that Muslim communities all over North America are confronting. The imams receive
little, if any, training to prepare them for dealing with serious conflicts, especially where there is violence or abuse in the marriage.

Rising levels of divorce are spurring a vigorous debate in the community over how North American Muslims approach marriage, including individual versus family choice of spouse and the continuing practice of matching North American-born Muslims with partners coming from a Muslim country.¹⁵

Dispute resolution professionals, lawyers and mediators alike, have much to gain from informing themselves about continuing recourse to Islamic marriage and divorce processes and considering the role that they might play. Most mediators and lawyers understand the importance of satisfying their clients’ cultural and religious rituals for closure in divorce. By learning more about the basics of Islamic family law—for example, the importance of a wedding promise, or mahr, in establishing ongoing support in the event of divorce—non-Muslims can be much more helpful to Muslim clients for whom this is often a symbol of Islamic identity (and can easily be accommodated within a common-law support model). The negotiation of a marriage contract, which Islamic jurisprudence states clearly can include whatever clauses the couple desire and agree on, offers many opportunities for effective couples counseling and anticipation of a life together.¹⁶

The commitment within Islamic law to resolving marital conflict wherever this is fair and possible—while permitting divorce when a satisfactory resolution is not available—offers a robust framework for mediation. Many imams expressed to me their desire for better training in mediation and conciliation work. The traditional inclusion of a wider group of family members in resolving conflict is another aspect of Islamic dispute resolution that offers challenges but also interesting possibilities for mediators skilled in managing family dynamics.

By working with imams and other leaders within the Muslim community and building relationships with the mosques as well as secular Muslim organizations, dispute resolution professionals can create many opportunities for mutual benefit. These should replace the “fake news” that these customary rituals represent any effort by Islam to challenge and “take over” the American legal system with a fruitful collaboration and enhanced mutual understanding.
Notes

1. Headlines from the Toronto Star, Vancouver Sun, and the Western Standard.

2. Originally the act permitted religious arbitration. See Ontario Arbitration Act (1991) c. 17, s. 32 (1).


6. One exception is the Ismaili community that operates a Conciliation and Arbitration Board in both the United States and Canada. See https://the.ismaili/cab-usa, http://cabcanada.org/.

7. ISLAMIC DIVORCE 40-69.


9. This leads to a well-established practice of “imam shopping.” ISLAMIC DIVORCE at pages 160-161.

10. ISLAMIC DIVORCE 88 155-156.

11. ISLAMIC DIVORCE163-167. For a review, see JOHN L. EPOSITO & NATANA J. DELONG-BAS, WOMEN IN MUSLIM FAMILY LAW 47-126.

12. ISLAMIC DIVORCE 231-232, 244-246.

13. ISLAMIC DIVORCE 185-208.


15. My study found this latter arrangement to be a frequent and significant cause of incompatibility and marital conflict. See ISLAMIC DIVORCE 119-122.


**Next Article > > >**
The upcoming issue of *GPSolo* magazine, focused on “The Law and the Internet,” is one of those that you will want to keep after you’ve read through it the first time. You’ll be tempted, I promise, to set it aside and save it for future reference. Within its pages is a bounty of information to keep you up to date on a number of issues involving the practice of law and our relationship to the Internet. If you do save it, I have no doubt you’ll find yourself turning to it again and again.

In this issue, author Nicole Black reminds us that a majority of states have incorporated into their rules of professional conduct the obligation for lawyers to stay abreast of developing technologies. Ms. Black’s assessment of what’s required of us and how we can maintain our level of facility with the ever-changing technology landscape is a wake-up call to those who aren’t technologically savvy and a bracing reminder to those who are that we owe it to our clients and to ourselves to acquire the necessary competence or be left behind.

Some of the articles will unravel a few mysteries even for Internet and tech veterans among us. Paul Domnick addresses cyber-security, protecting our clients’ data, and what to do if our firms are hit with ransomware attacks. Dustin Sanchez provides a how-to for generating video content to attract clients in need of our services. Josh Burday unravels the mysteries of net neutrality and what its
protection or demise means to us as attorneys. And Jessica T. Ornsby articulates the steps we must take to protect our own and our clients’ privacy in today’s dizzying online landscape.

Brett Burney and Chelsea Lambert visit the world of e-discovery and guide us through the expanding universe of data we are responsible for gathering to keep up with our discovery obligations in a universe where texting has replaced telephoning and lots of clients post the narrative of their daily lives across multiple platforms, as well as how to actually produce it once it’s collected. Examining that situation from the other side, Amy M. Stewart and Raha Assadi have laid out an extraordinary guide to handling the introduction of electronically stored information in court.

Perhaps my favorite of all the extremely practical and enlightening articles in this issue is also the simplest. Noah M. Rich has prepared a truly ingenious and imaginative guide to accomplishing legal research using the Internet without the necessity for spending one thin dime. Who can argue with the value of free legal research for solo and small firm lawyers?

A discussion of the November/December “Law and the Internet” issue of GPSolo would not be complete without a nod to the new ABA Formal Opinion, released just as the upcoming issue was going to press. On October 17, 2018, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 483, “Lawyers’ Obligations after an Electronic Data Breach or Cyberattack,” which imposes a duty on lawyers to notify clients when they or their law firms have experienced a data breach that involves, or has a substantial likelihood of involving, material client information. Under any circumstances, as Opinion 483 makes clear, lawyers simply are not permitted to hide negative information from their clients. Make sure you access the Opinion and make yourself familiar with it:

Finally, this of GPSolo magazine issue will include our much-anticipated, annual Tech Gift Guide, where Jeffrey Allen and Ashley Hallene preview all the best technology gifts to give this holiday season—even if you’re giving them to yourself!

Please enjoy the articles in the issue. And tuck it away—ideally using your digital capabilities—for future reference. I assure you the articles in this issue will prove themselves of practical value to you many times over.

Next Article > > >
November 20, 2018   GPSOLO DIVISION NEWS

Division Announcements

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GPSolo's Brown Bag and Hot Off the Press podcasts are recorded as live teleconference calls and available as podcast recordings for GPSolo members at no additional cost! The Brown Bag Series features presentations on timely legal topics and is recorded on the second Wednesday of every month. The Hot Off the Press
Series features a GPSolo book presented by the author and are recorded the third Wednesday of every other month.

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**Brown Bag Series**

The Business Guide to Law: Creating and Operating a Successful Law Firm
Wednesday, December 12, 2018
12:00 P.M. – 1:00 P.M. Central
Registration is NOT required and the session is free.
Dial-In Number: (877) 732-7160
Conference ID: 1092023

Moderator: Lynn Howell, Programs Board Chair, ABA Solo, Small Firm and General Practice Division

Presenter: Kerry M. Lavelle, Lavelle Law, Schaumburg, Illinois

GPSolo speaks with author Kerry Lavelle regarding his book, *The Business Guide to Law*, which focuses on the business aspect of managing a law office. It answers all those necessary questions (and more) that are important in creating and growing a unique law firm business. You will learn the best way to spend your time to grow your law firm. This podcast is a sneak peak of Kerry’s CLE presentation scheduled at the ABA 2019 Midyear Meeting. Join us in Las Vegas, Nevada, to learn more about growing your firm! Go to [www.ambar.org/midyear](https://www.ambar.org/midyear) for more information about this meeting.

**Hot Off the Press Series**

Lead Like a Rock Star
Wednesday, January 16, 2019
12:00 P.M. – 1:00 P.M. Central

Moderator: Lynn Howell, Programs Board Chair, ABA Solo, Small Firm and General
Practice Division

Presenters: Kristi Staab, Chief Rock Star, Henderson, Nevada, and Melanie Bragg, Bragg Law PC, Houston, Texas, and Chair, ABA Solo, Small Firm and General Practice Division

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2019 ABA Midyear Meeting

January 24 – 26, 2019
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These fantastic programs will be held on Friday, January 25, 2019.

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Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury

9:00 A.M. – 10:00 A.M.
Speaker: Jeffery T. Frederick PH. D.

**Images with Impact: Design and Use of Winning Trial Visuals**
10:15 A.M. – 11:15 A.M.
Speaker: Kerri L. Rutenberg

**Advising the Small Business: Forms and Advice for the Legal Practitioner, Third Edition**
1:45 P.M. – 2:45 P.M.
Speaker: Jean L. Batman

**The Business Guide to Law: Creating and Operating a Successful Law Firm**
3:00 P.M. – 4:00 P.M.
Speaker: Kerry M. Lavelle

**Leveraging the ABA Author Experience Luncheon with Keynote**
**Speaker Kristi Staab**
12:00 P.M. – 1:30 P.M.

Presented with ABA Publishing, this fun and interactive non-CLE program is designed for ABA published and prospective authors who want to distinguish their books through marketing. These resources will make your author career a success. You will learn:

- Guidelines to leverage your author experience to enhance your practice.
- How to effectively promote yourself as an author.
- Marketing services offered by the ABA for its authors.
- Tips to identify other marketing resources to implement

*Luncheon Keynote Speaker: Kristi Staab, MBA, Chief Rock Star, Executive Coach*
Kristi Staab is an international speaker, author, trainer, and consultant who has been coaching and developing individuals, teams, and organizations to excellence.
in the areas of leadership, sales, and success for nearly 25 years—helping them be more, do more, and achieve more.

Keithe E. Nelson Military Memorial Luncheon
12:00 P.M. – 1:30 P.M.

*Keynote Speaker: BG Malinda E. Dunn, USA (Ret.)*
Malinda E. Dunn is the Executive Director of the American Inns of Court Foundation in Alexandria, Virginia. The American Inns of Court inspire the legal community to advance the rule of law by achieving the highest level of professionalism through example, education, and mentoring.

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4:00 P.M. – 5:30 P.M.

*Keynote Speaker: Marianne Williamson*
Marianne Williamson is an internationally acclaimed author and lecturer. For the last 35 years, she has been one of America’s most well-known public voices, having been a popular guest on television programs such as *The Oprah Winfrey Show, Larry King Live, Good Morning America,* and *Real Time with Bill Maher.*

VIP Dinner with Marianne Williamson
Time: 6:30 P.M. – 8:30 P.M.
Location: Old Homestead Steakhouse in Caesars Palace
Cost: $150

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*Presented with ABA Section of Litigation*
May 1 – 4, 2019
Marriott Marquis
New York, New York
November 20, 2018 GPSOLO DIVISION NEWS

CLE

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Upcoming GPSolo CLE

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Webinar
Date: November 28, 2018
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- Screen cases to determine if a consultation with a nursing home abuse lawyer is appropriate
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Webinar
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Learn how to protect corporate data, develop effective incident response plans, and put together the right team to respond to a cyber incident BEFORE you find out about a breach.

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- Develop effective incident response plans
- Make sure you have the right team to respond to a cyber incident

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By Kerry M. Lavelle

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