Is Your Law Practice Welcoming to Transgender Employees and Clients? An Update

By Ari Kristan, Elizabeth Monnin-Browder, and Catherine Reuben

Find out how to make your workplace not only more diverse, but also legally compliant.
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Building a Practice: How I Built My Practice Through Marketing

By Joseph Dang

Helpful advice on every aspect of running your practice, from opening doors through planning for retirement. This month: how marketing can help you develop the practice you want.

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Practicing Family Law with Civility: Pit Bull or Golden Retriever? Be a “Golden” Family Law Attorney

By Elise F. Buie

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In this month’s installment of our technology Q&A column, our panel of experts answers your questions about how to sign a PDF electronically, how to get the most from Office 365, and what you should buy to replace that old, slow desktop computer.

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By Jeffrey Allen and Ashley Hallene

Technological And Practice Advice to help you become more efficient and effective. This month: tips for getting the most out of this videoconferencing tool.

**PRACTICE TECHNOLOGY**

Product Note: Google Wifi Mesh Router

By Nicole Black

**PRACTICE TECHNOLOGY**

Product Note: Olympus DS-9500 Handheld Dictation Machine

By Jeffrey Allen
Eliminate the dead zones in your home or office with this feature-packed, affordable router.

If your practice involves voice dictation, a high-quality recorder like the Olympus DS-9500 is a necessity.

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**Substantive Law**

**IMMIGRATION**

Expectations of an Immigration Hearing: How to Prepare, Part 2

By Julie Houth

The second part of our ongoing series provides perspective from current immigration attorneys regarding the process and expectations of an immigration hearing.

**REAL ESTATE**

The U.S.-Mexico Border Wall: A Unique Project with Unique Real Estate Issues

By Roy R. Brandys, Nicholas P. Laurent, and Blaire A. Knox

The potential construction of a U.S.-Mexico border wall brings with it significant legal issues and unknowns, such as how to appropriately compensate landowners who own property that is affected by the wall.

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**TRIAL PRACTICE**

“I Don’t Recall”: Overcoming a Witness with Selective Memory

Kevin A. Adams

Properly armed, you can overcome a deposition witness’s selective recall and use “I don’t recall” to your client’s advantage.

**REAL ESTATE**

Representing Immigrant Clients in Residential and Commercial Real Estate Closings

By Plinio De Goes Jr.

This article focuses on unique issues that arise in the context of representing immigrant clients in real estate transactions and provides advice on how to best cultivate a successful attorney-client relationship under such circumstances.

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GPSolo eReport is a member benefit of the ABA Solo, Small Firm and General Practice Division. It is a monthly electronic newsletter that includes valuable practice tips, news, technology trends, and feature articles on substantive practice areas.

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Is Your Law Practice Welcoming to Transgender Employees and Clients? An Update

By Ari Kristan, Elizabeth Monnin-Browder, and Catherine Reuben

This article was first published in the March 2013 issue of the GPSolo eReport. It has been updated to reflect best practices in diversity, inclusion, and equity, as well as recent changes in the laws protecting transgender employees. This updated article will be distributed during the breakout session “Transgender Cultural Competencies” at the ABA Section of Litigation’s 2019 Corporate Counsel CLE Seminar, which will take place February 14 to 16, 2019, at the JW Marriott San Antonio Hill Country Resort and Spa in San Antonio, Texas. Click here to learn more and register.

If your new employee or client were a transgender woman, would she feel safe, comfortable, and welcome in your office? Twenty-one states and the District of Columbia have laws that prohibit discrimination on the basis of gender identity and/or expression, and there are similar laws pending in other states. These laws often apply to law practices both in their capacity as employers and as professionals serving members of the public. Further, the Equal Employment Opportunity Commission (EEOC) takes the position that discrimination against transgender persons violates Title VII’s prohibition against gender discrimination. Some state courts have reached the same conclusion with respect to their state’s gender discrimination laws, which often apply to smaller employers not covered by Title VII. In short, the question posed above is not just one of diversity and inclusion—not that they are not worthy goals in and of themselves—but also one of civil rights. Whether or not you are in a state that expressly prohibits discrimination on the basis of gender identity, you need to be aware
of this issue. This article discusses steps you can take now to promote a more welcoming, inclusive, and also legally compliant work environment.

Some Definitions

Although definitions can vary, the term gender identity is generally used to refer to an individual’s internal sense of being male, female, neither, or both. A transgender person is a person whose gender identity is different from the sex assigned to that person at birth. An example of a famous transgender person is Chas Bono (formerly Chastity Bono), son of the popular musical duo Sonny and Cher. Mr. Bono’s assigned sex at birth was female, but he now lives his life as a man; he went through a gender transition, a process by which he went from living and working as one gender to another. Note that laws referenced above additionally protect persons whose gender identity is consistent with their assigned sex at birth, but who do not fit traditional gender roles, stereotypes, or cultural norms. For example, a person may be designated as female at birth and consider herself to be female but not act in a manner that others consider feminine. Gender identity is not the same thing as sexual orientation. Sexual orientation describes the direction of a person’s physical and romantic attractions, such as whether the person is straight, gay, lesbian, bisexual, or queer. Gender identity deals with people’s internal sense of their own gender and how they express that gender through their gender expression.

Discriminatory Conduct by Law Practices

What types of conduct by a law practice could be viewed as discrimination on the basis of gender identity or gender expression? Examples of conduct that could result in a discrimination claim include the following:

- An associate takes a leave of absence to undergo a gender transition from male to female. When she returns from leave, her employer refuses to permit her to use the women’s bathroom.

- A job applicant is rejected solely because the firm learns, when checking his references, that he used to live and work as a woman.

- A prospective client is turned down because the client has masculine features (e.g., facial stubble, Adam’s apple) but is wearing feminine clothing, jewelry, and makeup.
A male secretary is teased and tormented by his colleagues because he has mannerisms that they perceive as effeminate.

An employee is denied a leave of absence to have gender affirming surgery, while other employees are granted leave for other medical procedures.

Avoiding Discrimination Claims

What steps can law practices take to avoid discrimination claims and to create a more comfortable and welcoming environment for transgender employees and clients?

1 **Policies and forms.** Add “gender identity/expression” to the list of protected classes in application forms, recruitment materials, marketing materials, website pages, and policies related to non-discrimination, anti-harassment, and equal employment opportunity. If you use client intake forms, eliminate any questions related to gender (or other protected class status, for that matter).

2 **Access to facilities.** Permit clients, applicants, employees, and visitors to access bathrooms and other gender-segregated facilities based on the individual’s stated gender identity, regardless of what steps they have taken to transition. For example, if an employee identifies as female, she should be permitted to use the women’s bathroom, regardless of whether she has had gender affirmation surgery. If keys to the bathroom are kept with the receptionist or other gatekeeper, make sure that such persons are sensitive to issues of gender identity. If the office has single-occupant bathroom facilities, consider re-labeling them to simply say “Restroom” to permit access by all genders. If other employees or clients express discomfort about sharing a multi-stall bathroom with a transgender person, explain your policy of non-discrimination and offer solutions targeted at the person complaining—as opposed to the transgender person. For example, you could offer those who express discomfort access to a different bathroom, or use an “occupied” sign so that they can wait for the bathroom to be empty if they prefer. What you should not do is make transgender persons use a different bathroom or otherwise single them out. “Separate but equal” is not acceptable for gender identity any more than it is for race.

3 **Pronouns and names.** Use appropriate pronouns and other gendered language
consistent with an employee’s or client’s stated gender identity. For example, if your employee identifies as male, do not refer to the employee as “she” or “her.” Use the name used by an employee (whether or not it is the employee’s legal name) in staff directories, business cards, websites, and other internal and external communications and records. Be similarly respectful of clients. If you are unsure, it is acceptable to ask, provided you do so in a sensitive and open-ended manner. For example, don’t say, “Are you a man or a woman?” Instead, say, “With what gender do you identify?” or “What name and pronoun would you prefer me to use for you?”

4 Training. Training programs and materials related to discrimination, harassment, diversity, supervision, and leadership should address transgender issues and applicable law, even if you do not have (or do not think you have) any transgender employees or clients. The training should include a discussion of the meaning of gender identity, of the law’s prohibition against discrimination or harassment on the basis of gender identity, and of the practice’s expectations regarding lawful and respectful treatment of transgender persons and anyone who does not conform to traditional gender roles or societal gender norms.

5 Confidentiality. Do not “out” your transgender employees or clients. Make sure you have their permission before disclosing to anyone that they are transgender. Be similarly scrupulous about protecting the confidentiality of any medical information they may provide to you to enable you to better accommodate their needs.

6 Gender transition. Work with a transitioning employee to develop an action plan for accommodating and supporting their transition. Be prepared in advance to address such issues as changing the employee’s name and gender in practice records, educating co-workers, and confidentiality. If your practice offers health insurance to its employees, research options to properly cover persons undergoing transition.

7 Remedial action. Respond quickly and decisively to any anti-transgender incidents in your workplace, such as teasing, rude comments (e.g., “you aren’t a real woman”), or refusal to use correct name and/or pronouns. Promote an environment where all persons, including persons who do not confirm to traditional gender norms, are treated with dignity and respect.
8 Hire transgender people. The ABA’s publications are already replete with articles about the business benefits of having a diverse staff. Remember that diversity is not just about race and national origin. Having staff with different backgrounds and perspectives helps you to better serve your clients. It also sends a message to the outside world about your values, company culture, and commitment to equal treatment.

As with any expansion to civil rights laws, there is always a learning curve. Even the most sensitive and forward-thinking of lawyers sometimes struggle with issues involving transgender employees and clients. Here are some places you can turn to for assistance:

- ABA Commission on Sexual Orientation and Gender Identity: [www.americanbar.org/groups/sexual_orientation.html](http://www.americanbar.org/groups/sexual_orientation.html)
- GLBTQ Legal Advocates & Defenders (GLAD): [www.glad.org](http://www.glad.org)
- Transgender Law Center: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)
- Sylvia Rivera Law Project: [www.srlp.org](http://www.srlp.org)

Next Article > > >
When I decided to strike out on my own and start a solo practice, I was faced with a monumental challenge: how to fill the practice up with clients? As solo and small firm practitioners, we face a lot of other questions, but perhaps none are more important than that one.

Without any clients, you won’t be practicing much of anything.

Thankfully, I still had a job when I decided to start my practice. So, I was able to research and learn all the latest (and older) marketing strategies before leaving my job.

The First Step: The Website

When I was first getting started, legal blogging was the BSO (the bright shiny object). That’s all you heard about on legal marketing blogs, at legal conferences, and on solo marketing discussion lists. So, I signed up with a well-known legal blogging service. I started blogging and started to get visitors and clients. The blogging service didn’t advertise this, but they had a large network of sites that all linked together, which served as “link juice”—links are still the best way to get traffic and rankings from Google. This really helped.

But then I decided to change practice areas and focused on personal injury. So, I ended
the service and learned how to develop *WordPress* sites, as web design was a hobby and was so easy with the development of drag-and-drop editors.

Along the way I learned about search engine optimization (SEO) and changed my approach to my website.

**Evergreen vs. Blog Content**

In my opinion, there is content that is evergreen and content that should be in a blog. If your target market is consumers (and not other lawyers), rarely are they going to follow your blog or subscribe to your RSS feed. My target audience is those injured due to the negligence of someone else. I wasn’t expecting personal injury victims to follow blogs. So, think about how your target audience will consume your content.

For each practice area, I set out to write an extensive practice area page. It is basically a FAQ page for each practice area, but I didn’t label it as such. I’m always tinkering and tweaking the content. But the content begins by telling them who I am and what I can do for them. Then I place a “call to action” button to request a free case review.

Below that the FAQ portion begins, and I aim for 1,000 to 2,000 words—a thorough, authoritative guide.

Then for each practice area, I write supporting articles. For example, if the practice area page is “Car Accidents,” then supporting pages could be articles about passengers, common injuries in car accidents, how you prove fault after an accident, etc.

I mentioned earlier that links are the best way to rank in Google. But extensive content is a way to get traffic without links. Potential clients who search for “business lawyer near San Diego” are almost ready to hire, but the competition is harder, so you probably need some links to rank in the bigger cities.

There are also prospective clients who search for, “Do I have to notify California after I issue shares of my small corporation?” If one of your articles has a section that directly addresses this, it’s possible to get traffic without a lot of links. So, I would go to the Avvo website and browse their Q&A section for my practice area and state.

I would look for any questions asked more than once, and then I would answer that question by writing an article or adding a section to an existing page. Also, I would
search Google and find the top-ranking websites, look at their articles, and see if there were any topics I’d like to write about.

At the beginning I would try to write content each night.

Social Media

I started with Twitter but never got into it. The only people I’d connect with would be other lawyers, not my target market. However, Facebook has provided me with a lot of clients.

My strategy with Facebook isn’t a strategy at all, actually. People are on Facebook to be entertained. So, I would write funny posts about my practice area, without any intention to solicit. I started to get referrals from people I never engaged with. Facts tell, stories sell. I wouldn’t even post that often, maybe every few weeks.

But people got the idea I was a personal injury lawyer from my stories, and they started to refer clients. The key is to know your audience and write something very funny—or something that will get them mad.

I’m barely scratching the surface on using social media to grow a practice. There is so much more you can do.

A great resource for that is Mitch Jackson, who is not only a well-regarded personal injury lawyer but is also known for his expansive social media reach. He just released a book, *The Ultimate Guide to Social Media for Business Owners, Professionals and Entrepreneurs*. He has a lot of great content at https://streaming.lawyer.

Advertising

I ran ads in local foreign-language newspapers in my city. They were cheap, and the ROI was significant as I got a lot of good clients from the ads.

I just started to test Facebook ads, and the early results are very promising. For now, cost per signed case seems to be much lower than using Google Ads. Everyone knows personal injury keywords are the most expensive search terms on Google Ads. And you don’t get a return on the ad spend for five months to more than a year.
I tried Avvo ads, but it didn’t work for me. It has worked for other lawyers, and it’s cheap enough to give it a try.

Networking

Let me get this out of the way. I’m not a networker. I know it is very effective, it is the cheapest and fastest way to get cases, and I highly recommend it to those starting out. Personally, I’d rather be at home, tinkering with Facebook ads, than network, so that’s why I don’t do it. I do encounter referral sources naturally, such as chiropractors who work with my patients. So, I have a referral network, I just don’t actively seek it out.

Still, if you’re looking to generate clients quickly, think about your practice area and develop a list of potential networking targets. The most successful lawyers in your practice area are great to network with. They usually have cases they don’t want to take and refer those out. Other professionals who come across your target prospects are also great resources.

If you like to get out and socialize, networking is still a great strategy.

Find What Works Best for You

That is how I grew my practice, and also how I plan to grow the practice further. My website is a living, breathing one, so I’ll continually add content and tweak layouts and images to optimize the conversion rate. I plan on launching Facebook ad campaigns in the immediate future, and eventually Google Ads.

There is no single strategy that works to the exclusion of all others. They all work. They will all continue to work. So, pick what works best for your personality!

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In his book *The Soul of the Law* (Element, 1994), former litigator turned psychotherapist Benjamin Sells discusses “winning.” He writes that a lawyer who attempts to win a case by any means necessary “is mimicking conduct from a time when might literally made right. When the legal profession places winning over altruistic ideals, it is returning to its barbaric roots.”

The return of barbarism in the context of winner-take-all litigation endangers the very ends the legal mind seeks to ensure. If winning supplants idealism, then anarchy, the law’s great enemy, must follow, as all sides do whatever is necessary to win. The argument that the quest for winning is proper so long as it is carried out “within the rules” is simply another way of saying the end is justified by the means.

The Pit Bull Attorney

A pit bull attorney in the field of family law is impulsive, short-sighted, and aggressive. A pit bull attorney often believes the client is paying for aggressive tactics, so these lawyers do not act as “counselors at law.” The pit bull sees no merit nor value in their “counselor at law” role. These lawyers refuse to counsel their clients on the consequences of their actions or whether their desired course of action would harm their family. Sometimes, the pit bull attorney simply has troubling personality traits
often stemming from their own mental health issues and/or issues related to anger or substance abuse. These aggressive attorneys practice incivility in their day-to-day communication; they are rude, demeaning, patronizing, and stir up conflict with their tone and word choice. The pit bull views each interaction as a win or a loss. That win/loss attitude not only hurts the client, but it erodes the entire profession. Sells writes, “Can there be any doubt that such attitudes eat away at the lawyer, eroding the banks of morality?” Winning at all costs creates a breeding ground for post-dissolution revenge and conflict, as well as family-wide, continued psychological harm. This type of winning at all costs, simply put, profoundly harms families.

The Golden Retriever Attorney

A golden retriever attorney in the field of family law is wise, forward-thinking, and measured. A golden retriever’s zone of genius is in that role as “counselor at law.” Golden retrievers mentor and counsel their clients on what is right and fair in certain situations. Golden retrievers understand their client’s heart and goals as well as their opponent’s heart and goals so that they can construct a win-win when negotiating with the other party. Golden retriever attorneys explain the court’s mandate to make decisions in the best interest of the children. A golden retriever explains equity in family law and the court’s view of fairness given the law and the equity of the facts. Golden retriever attorneys educate their client on respectful conflict-resolution techniques and model these techniques in their interaction with other attorneys.

Five Steps to Becoming a Golden Family Law Attorney

Here are five transformative, immediate steps to go from a pit bull family law attorney to a wise Golden Family Law Attorney:

1. **Listen, listen, listen.** Listen more, talk less—we all have heard this advice before. It is worth repeating: listen more, talk less. Stop interrupting clients when they are speaking. Listen for the client’s feelings—feelings drive decisions. Repeat what was heard back to your client. Acknowledge what the client has said. Look for nonverbal cues. These simple steps will provide you endless knowledge in the representation. The main reason to listen more and talk less is so that the client will feel understood and cared about. That feeling alone will diminish the conflict and the negativity.

2. **Educate, educate, educate.** Every consult is a “teachable moment.” As a...
family law attorney, there are so many great resources out there to share with the client on conflict resolution, co-parenting, stepfamilies, etc. When I do consults in my practice, I give everyone *The Co-Parenting Handbook* (Balboa, 2015) by my friend and “co-parenting ninja,” Karen Bonnell. It provides a great starting point for parents to explore what skillful co-parenting can and should look like by providing a common vocabulary and common goals. If I am doing a consult with someone who is already involved in a new relationship, I am now able to share Karen’s newest book, *The Stepfamily Handbook* (CreateSpace, 2018), which will help the client understand the impact of that new relationship on everyone else’s emotions. I also encourage my clients to learn about high-conflict personalities from the works of Bill Eddy (president of the High Conflict Institute) so that they can better understand the possibilities and the pitfalls. Another way we educate clients is by offering “e-mail revisions” to help clients learn to send non-triggering e-mails/texts to their soon-to-be-ex spouse. We teach our clients to avoid some of the pitfalls such as “you always” or “you never” or “as I have said a million times before.” We also teach Bill Eddy’s concept of BIFF (Brief, Informative, Friendly, and Firm) to help clients communicate effectively and respectfully even in a high-conflict relationship.

3. **Encourage counseling for clients.** Counseling is yet another tool in the toolbox of the wise Golden Family Law Attorney. Encouraging clients to work through the understandably tough emotional aspects of divorce in counseling so that they can make sound, logical decisions in the divorce process will help diminish the conflict in the divorce. Divorce counseling will help empower the client to develop a successful and fulfilling life after divorce. Divorce counseling will also help minimize the impact of the divorce on the children. Lastly, divorce counseling will help clients better understand what mistakes they might have made in the relationship so that those same mistakes can be avoided in their next relationship.

4. **Teach constructive communication skills.** The wise Golden Family Law Attorney teaches constructive communication skills and models those skills with all the professionals involved in the case. Bill Eddy has pioneered a new co-parenting class entitled “New Ways for Families,” which strives to teach four important skills: Flexible Thinking, Managed Emotions, Moderate Behaviors, and Checking Yourself. This class is designed to assist both parents
in developing a better co-parenting relationship. Remember, co-parenting is not a competitive sport. These same, important skills are applicable to the professional communication as well. As in all relationships, communication is a key factor. Again, Bill Eddy’s concept of BIFF is invaluable.

**5 Flex the “counselor at law” muscles.** By practicing steps 1 to 4 above, the “counselor at law” muscles will strengthen, thereby empowering clients to reach the highest emotional intelligence possible so that they can gracefully glide through the divorce process, protecting the children and themselves from future conflict. An attorney is in the unique role as legal technician and counselor at law. Too many attorneys focus only on the technician side, forgetting how important emotions and feelings are to decision making, especially when dealing with family law clients. Understanding a client’s feelings and blind spots will revolutionize your practice and your ability to advise the client not from a place of fear and aggression but from a place of measured, forward-thinking wisdom.
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 how to sign a PDF electronically, how to get the most from Office 365, and what you should buy to replace that old, slow desktop computer.

Q: What is the easiest way to apply a scanned signature to a PDF? I would like to place it on a signature line without obscuring the line or the writing beneath. I use Power PDF Advanced 2.0.

A: I'm going to give you my answer in two parts—first I’ll tell you how to apply a scanned signature, and then I’ll tell you how to do something a bit fancier.

To apply a scanned signature, first put your signature down on a white piece of paper and scan it. You now have an image of your signature. The problem (as noted in your question) is that the image has a white background that will cover up signature lines. The good news is that this is easily fixed. Even if you don’t have Photoshop software, there are a number of free programs online that will do the trick. PhotoScissors and Clipping Magic are two that I have used in the past. Once you have a signature image with a clear background, inserting it into a PDF should be easy. If you want to take an extra step to simplify the process, most PDF programs have a “stamp” feature for commonly used markings. You can create a custom stamp of your signature image and save it in your PDF program for easy access on any document.
Q: How can I use Office 365 to be more than just a Word/Outlook subscription?

A: There is an abundance of features to Office 365 that go well beyond Word and Outlook. For starters, the cloud storage and accessibility apply to all applications (Word, Excel, PowerPoint, OneNote, Outlook, Publisher, and Access). The OneNote feature is particularly useful, depending on how you manage your workload. With Office 365 you can set up access to your OneNote workbook anywhere. It also acts as a collaborative tool, allowing you to chat with co-workers from within Microsoft Word. The Office 365 subscription also serves as cloud storage with OneDrive, providing 1 TB of storage or more, depending on your subscription level. There are too many features to highlight on this platform, but for further guidance on how Office 365 can empower your practice, you may want to check out *Microsoft Office 365 for Lawyers, Second Edition* by Ben Schorr, available from ShopABA.org.

Q. My desktop computer is old and slow—what’s a good replacement?

A. You’ve heard the expression, “Good, fast, cheap. Pick two.” Well, that is true for notebook computers, but for desktops it is: “Pick two-and-a-half.”

Now you can buy a powerful, blisteringly fast, almost-cheap mini PC. A big plus from the little box is its blessed silence. You have to put your ear right up to it to hear its only moving part, a lazy fan. These tiny speed-machines are smaller than hardcover books (see the image below). Even if you don’t need to conserve space, you’ll consume less energy and fewer resources.
My mini PC

Why is speed important? For one, press the on button and it’s fired up and ready in 16 seconds. Shutting it down takes four seconds. Use the “hibernate” feature to bring it back up where you left off, your Windows desktop fully cluttered. You’ll tackle busywork in record time.

A tip for chopping 33 percent (or more) off the cost: Buy a bare-bones unit. They come without memory, drive, or software. Order an NVMe M.2 500 GB drive card and a 16 GB RAM card separately. If you can remove four to six small screws, press two cards into two slots, and replace the screws, you too can build your own PC.

Here is an example. I bought an Intel NUC 8 Core i7 for $699. I added a Samsung 970 EVO NVMe M.2 drive for $127.99 and two 16 GB memory cards, but you can buy a single Crucial memory card for $122.99. Use your existing Windows 10 license (not possible if Windows came pre-installed on your old PC).

Total out-of-pocket excluding tax for your speed demon: $949.98. That’s not cheap. It’s not expensive. And it flies!

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!
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TAPAs Power Play Tips for Skype

By Jeffrey Allen and Ashley Hallene

Setting up a Skype videoconference.

Skype, which launched in 2003, was the first mass-market, freely available Internet videoconferencing tool. In 2011 Microsoft purchased Skype and has since been building and adding to its utility. Over the last year, Microsoft has added a variety of new features to Skype that make it a powerful communication tool for solo and small firm lawyers.

Tip 1. You Can Record Important Meetings with Clients and
Colleagues Using Skype Call Recording

In September 2018 Microsoft introduced Skype call recording, a feature that allows you to record your video calls. When you start recording, everyone on the call receives a notification that the call is being recorded. This feature works with voice calling, video calling, and group video calls. During a group video call, Skype will record everyone’s video, as well as screens shared during the call.

You can start call recording at any time during the call, on both the desktop and mobile devices. During a call, on the bottom of the screen, select the “+ More options” button, which pulls up a menu of additional options. Select “Start recording” to begin recording your call.

Tip 2. Use Read Receipts to Know Your Message Was Received

The read receipts feature is currently available in Skype version 8, on Android, Android tablet, iPhone, iPad, and the desktop platforms. The read receipt feature shows you exactly who has read your message in real time; it does this by showing you a miniature version of your contacts’ avatar (the picture or image your contact uses on his or her Skype account) right below the point in the conversation that he or she has read up to. This can be helpful when using group chat to communicate with your team. The feature is employed automatically in instant messages that consist of one-on-one conversations or in group messages with less than 20 participants. Be aware, users can turn this feature off on their end, which means you will not see what they have read.

You can turn off the read receipts feature under Settings > Messaging > then toggle the “Send read receipts” feature off or on.

Tip 3. Feel Secure with End-to-End Encryption for Text and Audio Communications

According to Skype, all Skype-to-Skype voice calls, video calls, file transfers, and instant messages are encrypted. However, keep in mind that if you use Skype to make a voice call to mobile or landline phones, the part of your call that takes place...
over the regular phone network is not going to be encrypted. For instant messaging, Skype uses TLS (transport layer security) to encrypt the messages between the Skype user and the chat service in the cloud. Communications between two Skype clients will be encrypted with 256-bit AES (Advanced Encryption Standard) encryption. AES is the standard used by the U.S. government to protect sensitive information.

Tip 4. Record Video Blogs Easily

In 2018 Microsoft rolled out features in Skype for “Content Creators,” including vloggers (video bloggers) and those who utilize digital broadcasts and live streams. With the Content Creators feature, you can use Skype in lieu of screen recording and capturing software. The feature is designed to work with NewTek NDI–enabled software (such as Wirecast, XSplit, and vMix).

Tip 5. Hold Virtual Meetings with Group Video Calls

You can set up group video calls including up to 25 people so long as they all have Skype accounts. One way of doing this is to hold the “Ctrl” key on your keyboard and select all the contacts you wish to include in the video call. Once everyone you wish to include is selected, right-click one of the contacts and select “Start a video call.”

These tips can take your Skype user experience to the next level. Skype is a great tool for getting to know potential clients, collaborating with colleagues, and holding virtual meetings.

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SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
Product Note: Olympus DS-9500 Handheld Dictation Machine

SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
Product Note: Google Wifi Mesh Router

SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
Ask Techie
Product Note: Google Wifi Mesh Router

By Nicole Black

Reliable WiFi has quickly become something that we all expect and need, whether at work or at home. Sure, it’s a first-world problem, but it’s an important one now that access to the Internet is an integral part of our day-to-day lives.

So, when the router that I’d relied on for many years (the Apple AirPort Express) began to overheat a few months ago, I knew I needed a new, dependable router—and fast. I searched for a similar router from Apple and learned, much to my
consternation, that it had been discontinued years ago. I needed to find a replacement, and I needed to find it right away.

After running a few searches, I discovered the Google Wifi mesh router. It seemed like a good choice, and after a bit of additional research and a few clicks of the mouse, I ordered a set of three. In no time flat, they were on their way to my home.

I’ve used this router system for two months now and wholeheartedly recommend it to anyone seeking an affordable, reliable router for their home or office. One of the best parts about the router is that, because of the mesh network, it has extensive reach. An added bonus: Setup was a breeze.

Setup

The router is controlled via your smartphone, so the first thing you need to do prior to setting it up is download the free Google Wifi app (available in iOS and Android). Next, you plug in your primary WiFi point.

The number of WiFi points that you use is determined by the size of your home or office. For a smaller space (500 to 1,500 square feet), you’ll need one WiFi point. For a medium-sized space (1,500 to 3,000 square feet), you’ll need two. And for a larger space (3,000 to 4,500 square feet), you’ll need three.

The first WiFi point is set up near your modem and a power source. Once you’ve plugged it in and connected it to your modem, you’ll need to follow the prompts on your phone to set it up. Using your phone, you’ll be prompted to scan the QR code of the first WiFi point and then provide additional information to complete the setup. Then you move on to the next WiFi point(s) and set those up in the same way.

Appropriate placement of your WiFi points will be determined by the size of your home and other factors. In my case, I chose to put one on each floor of our house, although the app recommends placement on a single floor for the best coverage. But after researching the issue online, I decided to put mine of separate floors given the footprint of our home.
Once you’ve set up the mesh network, you should have great coverage throughout your home or office. This was definitely the case for me. Prior to setting up the Google Wifi, I often had difficulty accessing WiFi from certain locations in our home, but after setting up Google Wifi, I was able to access the Internet no matter where I was.

Additional Features

But wait, there’s more! Not only does Google Wifi provide reliable, consistent Internet access—it also offers a number of other great features. For starters, you can prioritize a specific device right from your smartphone. This means that for the next hour, that device receives a faster Internet connection than any other device using the network. This is a great feature if you’re working from home and don’t want to compete with the video and audio streaming occurring on other family members’ devices.

Speaking of family members, there are also family controls built right into Google Wifi. These allow you to, among other things: (1) group devices with labels, such as “kids’ phones”; (2) pause WiFi access on demand for any given device or group; (3) schedule Internet timeouts for specific devices or groups; and (4) block chosen devices or groups from accessing millions of adult websites.

Pricing

With all these benefits and features, you might expect a large price tag. The good news is that’s not the case. Google Wifi is surprisingly affordable. The normal price is $129 for a 1-pack or $299 for a 3-pack, but at the time this article was written, they were on sale for $99 for a 1-pack or $249 for a 3-pack. So, if you’re in the market for a new WiFi router, don’t overlook the Google Wifi mesh router—it’s an affordable, feature-packed option that’s worth your consideration.

Authors
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SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
Ask Techie
I have used handheld dictation machines going back to the dark ages. Over that time, I have tried numerous brands, configurations, and features, including full-sized cassettes, mini-cassettes, micro-cassettes, and, in the last several years, digital memory devices. I have tried hard-wired and wireless dictation machines that used a variety of control systems and found them of varying degrees of utility. After going through this experience, I concluded that using anything but a dictating recorder designed specifically for professional use was simply not worth the frustration and lost time, and that the features and convenience of the top-end dictation machines justified their extra cost for anyone doing a serious amount of dictation.
Ultimately, I decided that the two top devices came from Olympus and Philips, and I stopped using other brands. I have used the top-of-the-line Philips or Olympus devices for the last decade or so. During this time, I have regularly upgraded to the top end of one or the other line and, during the process, I have written product reviews of most of them. As the designs of these two brands changed from time to time, I found one or the other a bit more comfortable to hold. The difference, however, has never proven significant. Historically, however, the Olympus has played better with the Mac OS. As I prefer Mac to Windows machines, I have generally preferred the Olympus equipment. I had hoped to make this review a comparison of the newest Olympus top-end device, the **DS-9500**, and the **Philips PSP2000 SpeechAir**; however, I was unable to secure a Philips device in time for this review. Accordingly, I will limit my comments to the evaluation of the Olympus DS-9500. I do want to express my gratitude to the folks at Olympus and one of their dealers, Executive Communication Systems, for making hardware, software, and information available to me for this review.

Maybe because I am old-school and learned to dictate using a machine with a slide switch to control the recording and correction process, I have never found a machine without a slide switch to work well for me. I consider the slide switch one of the features required for a professional dictation machine. To be sure, you can find other machines lacking that switch that their manufacturers might like you to think of as professional dictation equipment; but I recommend you eschew those claims and look to equipment with a slide switch if you plan on doing a lot of dictation. If you just want a recorder to record meetings or lectures and do not plan on using it for serious dictation, you don’t need that slide switch and can buy a machine that does not have one. As a general rule, the slide-switch devices will prove costlier than an equally capable recorder that lacks such a switch.

The DS-9500 is a small package with a lot of power. It comes with a convenient flip-top case that you can drop in a briefcase or clip to the outside of a briefcase or on a belt. It provides substantial protection for the DS-9500 while still leaving the primary controls easily accessible. As the recorder comes with a plastic housing, having and using the case makes good sense, notwithstanding the fact that Olympus designed the case on the device itself to survive a 1.5-meter (4.9-foot) fall. I did not actually test that claim intentionally, but it did get knocked off my desk and fell to the floor without damage. In fairness, it was less than three feet, the device was in the included carrying case, and the floor was carpeted, so it did not really test the 4.9-foot claim; but the device was completely undamaged by the incident.
The recorder charges through a USB cable while in its protective case or through a docking port if you take it out of the case. You can connect it to your computer to upload files through the docking port or using a simple USB cable.

After charging the recorder, setup is very easy. Press the Menu button on the front of the device and then use the directional keys to navigate around the various menu screens and make the appropriate selection. One of the screens you will find in that process allows you to set up a WiFi connection. The DS-9500 is fully WiFi compatible and will let you transfer files via WiFi through e-mail to others so that you no longer need to dock it or connect it by a USB cable (although you still can use those methods if you choose).

The DS-9500 measures 4.75” x 1.96” x 0.73” and weighs in at 4.1 ounces (including the battery). Although it is somewhat larger than earlier models that I have used, it fits nicely in the hand and easily in your pocket. It plays well with Windows 7, 8, and 10 and the Mac OS X (10.10–10.13). The Olympus website does not mention compatibility with Mac OS X version 10.14 (Mojave), but I have 10.14.2 on my computer and it worked fine. Respecting the included software, however, the website does mention that some features may not work. Olympus has apparently not completed work on updating its software for the MAC OS X version 10.14. I did not encounter any problems with the software other than on installation, however. I was able to fix the installation issue by removing a secondary program called “Sonority” from my computer. Don’t worry, you do not need that program, and it will not work with the DS-9500. Restart the computer and the DSS software should work fine. That was my experience.

The recorder will create DSS/DSS Pro/WAV and MP3 files. It draws its power from an included 1350 mAh lithium-ion battery. The DS-9500 comes with 2 GB of built-in memory and will accept SD and SDHC cards with up to 32 GB for additional storage. The recorder lists for $599.99. As the dictation device is high-end and you can find many excellent general-purpose recorders for less, I encourage you to work out a trial and approval period prior to investing to ensure that you are satisfied with it and that you can use it comfortably. If you do not dictate a lot, I consider a top-end dictation device a minor luxury. If you do dictate a lot and do so in various locations, I consider it more of a necessity. Not every vendor carries the device, so, depending on your location, you may want to deal with a provider online. I have worked with several
Of course, the DS-9500 has a slide switch to control recording, and it works like almost every other one I have used: slide up to record, back to the neutral position to stop, down to play back and down further to rewind so that you can playback, re-record, or correct your dictation. You can choose how far back the recorder goes by holding the rewind position for more or less time. The menu controls, settings, new files, etc., can be accessed from buttons that reside on the front panel of the DS-9500 (see image above). They work well and allow ready access to all the controls you need or want. Learning to operate the DS-9500 proved easy and intuitive (it was not that much different from previous Olympus models I have used).

The DS-9500 also plays well with Dragon Naturally Speaking and Dragon for Mac speech recognition/transcription software, as its predecessors have for several years. While the recorder does come with two high-quality, low-noise, omni-directional microphones designed to reduce the effect of ambient noise and triple-layer pop filters to reduce wind noise, if you plan to use the recording with one of the Dragon products, my standard advice remains in play: The quieter the environment in which you record, the fewer the mistakes you get from Dragon. While I cannot state this with certainty, anecdotally I believe that the same is true if you send your files to a human transcriptionist (albeit to a lesser extent). The DS-9500 allows you to use an external microphone; I did not try that feature, so I don’t know whether you can improve the sound attenuation that way.

The microphones come with three settings that let you narrow or broaden the directional pickup to accommodate use for dictation or general recording, such as a conference. Additionally, you have the ability to further “tune” the microphone to deal with the ambient noise by using the microphone “sense” setting. While you would not want to use this feature for dictation, the device does have a voice-activated recording setting that you can use when recording lectures, conferences, or meetings.

Nothing is ever perfect, and I do have one issue with the DS-9500. It has a small speaker, and the volume on playback is quite low by my standards. While I can hear it well enough in a quiet environment, the noisier the environment, the more difficulty I have hearing it clearly. Fortunately for me, the device also has an earphone jack, and I can easily solve the problem with a wired earphone.

All-in-all, I like the DS-9500 a lot and have no problem recommending it to you for successfully.
use in conjunction with a Mac, a Windows machine, a human transcriptionist, or Dragon voice-recognition software.
Immigration laws in the United States have changed many times throughout history. This article is part two of an ongoing series that discusses the process of immigration hearings and how to prepare with perspectives and advice from current immigration attorneys in the field located in various areas of the country. Note that the laws discussed here are applicable at this moment in time and are subject to change in the future.

Background Information of Immigration Court Proceedings

The Executive Office for Immigration Review (EOIR) handles immigration matters and runs the immigration courts. A single immigration judge at that court will hear a single case even if the case extends to different days. There can be more than one immigration judge at each immigration court. Generally, the first hearing takes place a couple months to a year after an individual receives a Notice to Appear (NTA). Note that if the individual is detained by immigration authorities, the case should move much faster and the immigration court should schedule the hearing as soon as possible, which generally is within a few weeks. The NTA indicates the initiation of removal proceedings against an individual. The individual must appear in court on the specified date on the NTA or a future date to be determined by the EOIR. More information about the NTA can be found in part one of this series.

Master Calendar Hearing
A Master Calendar Hearing (MCH) is a brief, preliminary hearing on immigration matters that discusses how the case will proceed. When preparing for an MCH, attorney Daven R. Ghandi of Smotritsky Law Group, PLLC, in New York City, first reviews the NTA with his clients. Ghandi states, “The NTA contains information about the respondent that the government alleges, such as their country of origin, the date and place of entry, and the manner in which they entered the country. Because clients often will not have the NTAs with them, if they have had a previous attorney, I would normally request copies of all documents.” The MCH is usually short and lasts approximately 15 minutes, but the issues reviewed during the MCH are critical to any case. Thus, Ghandi suggests individuals and their attorneys send a request to review the file with the immigration court in advance of the hearing.

There will be several MCHs scheduled at one time. The judge will call each individual by his or her Alien Registration Number (A-number) and name. Note that the judge should be notified if an interpreter is needed; the court should provide one for free. Individuals cannot bring their own interpreters.

During an MCH, the court will not address any legal claims or defenses in the case, and the immigration judge will not make any rulings regarding legal issues at this time. The judge will ask the individual for brief identification information such as an individual’s name, address, native language, and any other languages in which the individual is fluent. If the individual has legal representation, the individual may present his or her attorney at this time to the judge.

Next, the judge will review the charges listed against the individual in the NTA. Attorney Nallely Abad of Velasquez Immigration Law Group in Las Vegas, Nevada, says that it is very important to have reviewed the NTA before the MCH takes place. This is because charges should either be admitted or denied, and incorrect information on the NTA should be brought to the attention of the judge. Individuals or their attorneys will then be able to tell the judge the forms of relief sought, such as withdrawal of removal, cancellation of removal, adjustment of status, or asylum. After the relief sought has been requested, the judge will typically designate the individual’s home country as a country of removal as protocol.

The judge will then set important dates in the case, such as (1) the deadlines for submitting any pertinent applications, amendments, or additional information; (2) the date of another MCH, if necessary; and (3) the date of the Individual Hearing. It is
important that all deadlines set by the judge are met. If additional time is needed, the individual can request an extension of the deadline but will need to explain why additional time is needed. In Abad’s experience, “An immigration judge usually will allow for an attorney to ask for a brief extension of time called ‘attorney preparation time,’ and at the following hearing, you have to have all forms of relief ready to be filed. This is key when you are hired a few days before an MCH.” It is especially important to request another MCH if the individual needs time to find an attorney or if the individual needs to confer with the attorney because the individual just retained legal representation.

Ghandi advises individuals and their lawyers to go early and observe other attorneys. He further states, “Some judges have their own requirements during master hearings such as written pleadings. Speak to the judge’s clerk to see if there are any courtroom procedures the judge prefers. I would also advise newer attorneys to read through the immigration court practice manual.” At the conclusion of the MCH, another notice will be issued specifying the date for the next MCH or for the Individual Hearing.

**Individual (Merits) Hearing in Removal Proceedings**

The Individual Hearing, also known as the Merits Hearing, is where the individual and the government present the full case by testifying in front of the judge with the opportunity to present witnesses. Non-citizens have the opportunity to present arguments before an immigration judge and defend their right to remain in the United States. This includes any forms of relief sought from removal, and the judge will make a final decision on whether the individual can remain in the United States or will be deported back to his or her designated country.

Ghandi says, “To prepare, read through the entire record of proceeding. I like to review the file at least three months before the trial date to make sure all the submissions are accurate. Judges in New York have varying call-up dates for final submissions, ranging from three months to 15 days before the Individual Hearing.” If the individual brought witnesses to testify on his or her behalf, each witness will be brought up one at a time and questioned in the same way the individual was questioned by both his or her attorney and the government attorney. In his experience, Ghandi says witnesses can help because they add to the client’s credibility. Witnesses could be country condition experts, medical professionals, or eyewitnesses. To streamline his preparation, Ghandi prepares his clients and any witnesses by reviewing their affidavits with them and
going through questions.

Unlike the MCH, the Individual Hearing may go on for more than one day because it focuses on a specific individual’s case. After all evidence has been presented, witnesses have testified, and the legal arguments have been made on both sides, the judge will decide whether the individual should be removed from the United States.

Legal Resources and Future Topic for Discussion

Several nonprofits organizations, including Legal Aid Society immigration clinics located across the country, provide pro bono legal services to individuals who may need help with their immigration matters. Some law firms offer payment plans that clients can afford so legal relief and services can still be provided. Abad says that at her firm, “During our consultation, we advise potential clients of any and all types of relief that they are potentially eligible for and then discuss the requirements and realistic time frames.” Abad further states, “Our office charges based on a retainer fee established by the managing attorney, and the retainer is divided up into monthly payments that allow for the client to afford our services and be comfortable with the payment plan.” Lawyers with a specialized practice in immigration can really streamline an individual’s immigration case, so it is always wise to consult an attorney.

The next article in this series will discuss the conclusion of the immigration hearings and the options and remedies available based on the immigration judge’s decision.
The U.S.-Mexico Border Wall: A Unique Project with Unique Real Estate Issues

By Roy R. Brandys, Nicholas P. Laurent, and Blaire A. Knox

Since Donald Trump began his presidential candidacy in 2015, the idea of a border wall between the United States and Mexico has captured the attention, fascination, and frequently the ire of the American public. What many may not realize is that the United States has been erecting fencing and other physical barriers on the border with Mexico since the mid-1990s. See Borders: The Fence, Georgetown Univ., https://apps.cndls.georgetown.edu/projects/borders/exhibits/show/the-fence/overview. Today, more than one-fourth of the border already contains some sort of barrier structure. See Julia Jacobo and Serena Marshall, Nearly 700 Miles of Fencing at the US-Mexico Border Already Exist, ABC News (Jan. 26, 2017), https://abcnews.go.com/US/700-fencing-us-mexico-border%20exist/story?id=45045054.

One issue commonly glossed over in the national conversation is the need to acquire private property for the border wall and the effect of this acquisition and
related infrastructure on the value and utility of the landowner’s remaining land. The Fifth Amendment provides a constitutional mandate requiring the government to pay “just compensation” if private property is taken for public use. U.S. Const. amend. V (“nor shall private property be taken for public use, without just compensation”). But, for a variety of reasons, including the purported justification of national security, the lack of understanding of the physical characteristics of the border between the United States and Mexico, and a dismissive attitude toward border area landowners, this constitutional obligation frequently has been overlooked.

For a more extensive treatment of this topic, including a discussion of the legal procedure accompanying border wall takings and issues affecting compensation, see the authors’ recent article in the Real Property, Trust & Estate Law Journal. Roy R. Brandys, Nicholas P. Laurent, and Blaire A. Knox, United States–Mexico Border Wall: The Past, the Present and What May Come, 53 Real Prop., Tr. & Est. L.J. 131 (2018).

Background on Physical Barriers at the US–Mexico Border


Every year more than 350 million people cross the border, making it one of the most frequently crossed international borders in the world. See generally Annual Border Crossing/Entry Data, Bureau of Transp. Stat., https://www.bts.gov/content/border-crossingentry-data. Approximately $229 billion in goods and merchandise also cross the United States–Mexico border...


Original Border Barriers and the Illegal Immigration Reform and Immigrant Responsibility Act

To curb unauthorized border crossings, in 1990 the federal government erected the first formal physical barrier along the United States–Mexico border through the United States Border Patrol.

[The fence’s purpose was] to deter illegal entries and drug smuggling in [the Border Patrol’s] San Diego sector. The ensuing 14-mile-long San
Diego “primary fence” formed part of the USBP’s “Prevention Through Deterrence” strategy, which called for reducing unauthorized migration by placing agents and resources directly on the border along population centers in order to deter would-be migrants from entering the country.

Chad C. Haddal, Yule Kim, and Michael John Garcia, Cong. Research Serv., RL33659, Border Security: Barriers along the U.S. International Border (2009), https://fas.org/sgp/crs/homesec/RL33659.pdf. Before this time, the only real physical barriers amounted to fencing that was typically put up by private landowners to corral cattle.

In 1994, in an attempt to further stem the flow of illegal goods and persons across the southern border, the Immigration and Naturalization Service (INS) approved a national strategy to prevent illegal entry along the United States’ southern border that would build on the agency’s success in San Diego and El Paso. See U.S. Gen. Accounting Office, GAO/GGD-95-30, Border Control: Revised Strategy Is Showing Some Positive Results 1–2 (1994), https://www.gao.gov/assets/230/220852.pdf. The strategy followed a study prepared by the Office of National Drug Control Policy that recommended “using (1) multiple physical barriers in certain areas to prevent entry and (2) additional highway checkpoints and other measures to prevent drugs and illegal aliens that succeeded in entering the United States from leaving border areas.” Id. at 1.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), a law mandating the construction of border fencing and authorizing an environmental waiver to allow expedited construction. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, 3009-546 (1996). Included in the appropriation bill for fiscal year 1997, the IIRIRA directed the Attorney General to “take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossing in areas of high illegal entry into the United States.” Id. § 102(a). It also provided: “The provisions of the Endangered Species Act of 1973 and the National Environmental Policy Act of 1969 are waived to the extent the Attorney General determines necessary to ensure expeditious construction of the barriers and roads under this section.” Id. § 102(c). At the time
the bill was signed into law, President Bill Clinton indicated his opposition to the waiver provisions, and the INS and Attorney General vowed not to use them. See Statement on Signing the Omnibus Consolidated Appropriations Act, 1997, 32 Weekly Comp. Pres. Doc. 1935, 1935–38 (Sept. 30, 1996); Memorandum from David A. Yentzer, Assistant INS Comm’r (Feb. 24, 1997).

The Secure Fence Act of 2006

Despite the IIRIRA, by 2004, only nine miles of border fencing were complete. See Blas Nunez-Neto and Michael John Garcia, Cong. Research Serv., RS22026, Border Security: The San Diego Fence 1 (2007), https://fas.org/sgp/crs/homesec/RS22026.pdf. In 2005, a plan was proposed in the House of Representatives calling for the construction of a reinforced fence along the entire United States–Mexico border, which would also include a 100-yard border zone on the United States’ side of the border. The progeny of that plan, the Secure Fence Act of 2006 (SFA), was passed by Congress and signed into law by President Bush in October of 2006. See H.R. 6061 (codified as amended at 8 U.S.C. §1103 (2012)). At the time the SFA was signed, President Bush stated, “This bill will help protect the American people. This bill will make our borders more secure. It is an important step toward immigration reform.” Press Release, The White House, Fact Sheet: The Secure Fence Act of 2006 (Oct. 26, 2006), https://tinyurl.com/ycjfa7az.

The SFA authorized the construction of hundreds of miles of additional fencing along the southern border, approved additional vehicle barriers and checkpoints, authorized advanced technology like cameras, satellites, and drones, and doubled funding for border security. See Secure Fence Act of 2006, 120 Stat. 2638. The SFA originally called for at least two layers of reinforced fencing to be built, but this layered approach was abandoned following amendments to the original Act. See H.R. 6061, 109th Cong. § 3 (2d Sess. 2006). Specific to Texas, the SFA called for the building of fencing of 176 miles from Laredo to Brownsville, Texas, 51 miles from Del Rio to Eagle Pass, Texas, and 88 miles from El Paso, Texas, to Columbus, New Mexico. See § 3, 120 Stat. at 2639; see also Al Tompkins, Monday Edition: 700-Mile Fence, Poynter (Oct. 29, 2006), https://tinyurl.com/ycy7o3qh.

By April 2009, the Department of Homeland Security had “erected about 613 miles

The REAL ID Act

The construction of three-layer border fencing near San Diego was delayed by environmental challenges from the California Coastal Commission, whose approval was necessary to obtain Clean Water Act permits for the project. See Kenneth R. Weiss, *State Rejects U.S. Border Barrier Plan*, L.A. Times (Feb. 19, 2004), https://tinyurl.com/yaezwj6o. This spurred Congress to take more aggressive action to implement additional legal waiver provisions, including part of the REAL ID Act, the primary purpose of which was to require uniformity among identification cards (a recommendation from the 9/11 Commission). See REAL ID Act of 2005, Pub. L. No. 109–13, 119 Stat. 231, 302–23 (2005) (codified inter alia at 8 U.S.C. Chapter 12); see id. § 102. The border portion of the REAL ID Act allowed the Secretary of the Department of Homeland Security (DHS) unprecedented power to waive compliance with any federal, state, or local law. See id. Under Section 102 of the REAL ID Act, the DHS Secretary is authorized to waive all legal requirements in order to expedite the construction of border barriers. *See id.* The REAL ID Act also limits judicial review of claims arising from the DHS Secretary’s exercise of the waiver authority, and it allows district courts to consider only those claims alleging a violation of the Constitution. See id.

Following enactment of the REAL ID Act, the Secretary waived legal and environmental requirements to complete construction of the Naco, Arizona, portion of the border fence as part of the SFA. DHS’s waiver of legal and environmental...
requirements, pursuant to the REAL ID Act, allowed the federal government in constructing the border wall to completely avoid compliance with the National Environmental Policy Act of 1969, the Endangered Species Act, the National Historic Preservation Act, the Clean Air Act, the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and other similar federal laws that provide for specific analysis and mitigation of environmental and other negative effects as part of federal projects. See Notice of Determination, 72 Fed. Reg. 60,870, 60,870 (Oct. 26, 2007).


Current Status of the Existing Border Wall

As a result of the legislation discussed above, US Customs and Border Protection has constructed a series of physical barriers separating the United States from Mexico, with most barriers located in more populated areas like San Diego, California, and El Paso and McAllen, Texas. See Dennis Wagner, A 2,000-Mile Journey in the Shadow of the Border Wall, USA Today (Sept. 20, 2007), https://tinyurl.com/y7v7lp4s. There is no single “type” of barrier structure utilized in the existing border wall, which is more accurately described as a series of fences made from “wire mesh, chain link, post and rail, sheet piling, concrete barriers for vehicles and X-shaped steel beams for livestock.” Jacobo & Marshall, supra.

As of 2017, the 2,000-mile border has at least 654 miles of fencing, although only 354 miles is pedestrian fencing, as opposed to vehicle barriers. See Wagner, supra. Much of the existing pedestrian wall in South Texas comprises 12–18 foot steel bollards, anchored in concrete or buried in the ground. See id. The current border
The US–Mexico Border Wall: A Unique Project with Unique Real Estate Issues

Wall is thus more accurately described as a border fence. The fences are typically located some distance from the actual border (the Rio Grande River) and are not contiguous, but stop and start up again. See id. According to the Government Accountability Office, the current border wall cost on average between $4.16 to $6.85 million per mile. See U.S. Gov’t Accountability Office, Southwest Border Security: Additional Actions Needed to Better Assess Fencing’s Contributions to Operations and Provide Guidance for Identifying Capability Gaps 34 Table 4 (2017), https://www.gao.gov/assets/690/682838.pdf; see also Kiah Collier and T. Christian Miller, Border Agency Set to Jumpstart Trump’s Wall in a Texas Wildlife Refuge, ProPublica (July 28, 2017), https://tinyurl.com/y6v8wvon.

To accomplish construction of border barriers on private land, the federal government filed several hundred statutory condemnation suits, mostly in Texas’s Cameron County and Hidalgo County, after the passing of the Secure Fence Act. See John Burnett, Landowners Likely to Bring More Lawsuits as Trump Moves on Border Wall, NPR (Feb. 23, 2017), https://tinyurl.com/ybkuhcdk. Many of those cases have since been resolved, but there are still numerous outstanding cases (around 85 cases, as of 2017). See David Choi and Bryan Logan, One Section of Trump’s US-Mexico Border Wall Could Prompt “Decades of Court Cases” from Private Landowners, Bus. Insider (Sept. 21, 2017), https://tinyurl.com/yc3tv556.

In Hidalgo County, DHS built the border wall where the International Boundary and Water Commission (IBWC) flood levee is located, in cooperation with Hidalgo County and the Hidalgo County Drainage District No. 1. See Letter from Ramon Garcia, Chairman of the Board of Hidalgo Cty. Drainage Dist. No. 1, to Michael McCant, U.S. Rep. for 10th Dist. of Tex. (Feb. 21, 2017). Under this arrangement, the Hidalgo County Drainage District No. 1 provided significant funding for the project, which included flood control improvements, and the federal government contributed funds for construction of the border wall components of the project. See id. Under flood control easements originally granted from private landowners to Hidalgo County and then from Hidalgo County to the United States, the IBWC had authority to build flood control improvements along the levees on the subject property. See Bell v. United States, 123 Fed. Cl. 390, 394 (2015). Nevertheless, the DHS and the county built a border wall and related infrastructure that served purposes other than only flood control. See id. Property owners adjacent to and burdened by the IBWC flood control levees have filed an inverse condemnation...
suit against the federal government, arguing that construction of a national security border wall where authority had only been granted to build a flood control levee exceeds the scope of the easements previously granted and thus constitutes a taking. See id. at 394.

Bad Effects of a Physical Border Barrier

Although a physical border barrier may theoretically halt (or at least slow) illegal border crossings of goods and people, the wall has a much broader effect on property owners near the border and on the environment at large. These practical issues may affect the design and construction of the wall, the daily life and business operations of border residents, and the amount of compensation due for a border wall taking.

Separating Property on the River Side of the Physical Border Barrier

It is commonly presumed that the border wall in Texas is built on the banks of the Rio Grande River, creating a physical barrier to preclude illegal crossings across the Rio Grande River. This common belief is inaccurate; an international treaty between the United States and Mexico prohibits the building of any permanent structures within the floodplain of the Rio Grande River. See Gadsden Purchase Treaty, Mex.-U.S. Dec. 30, 1853, 10 Stat. 1031. Mexican engineers with the IBWC have already expressed concerns that some of the new border wall proposals could create a flood risk and could violate the American-Mexican Boundary Treaty. See John Burnett, *Mexico Worries that a New Border Wall Will Worsen Flooding*, NPR (Apr. 25, 2017), https://tinyurl.com/y8l56b35.

In many instances, the existing border wall is several hundred yards to several miles from the Rio Grande River, which effectively severs large land parcels into two pieces, an orphaned river parcel and a northern parcel. See, e.g., Brendan Mohler, *Fence Dividing U.S./Mexico Border Puts Popular Golf Course Out of Business*, Golf (Dec. 14, 2015), https://tinyurl.com/ha7998v (discussing the severance of a golf course in Brownsville, Texas). In some instances, agricultural fields and even homes can be located on the river side of the border fence. In addition to pedestrian, vehicular, and farm equipment access issues, there are also
safety concerns with living and owning land on the river side of the wall. Where gates are planned and installed, a keypad entry device is located at the entrance. Issues have arisen as to the operational integrity of the gates, potentially stranding landowners on the river side of the wall. Moreover, these gates or openings can become targets for illegal or dangerous activity, creating potential liability or injury to landowners. See generally Wagner, supra. These issues create uncertainty in the minds of willing buyers of the affected property, both as to whether they will make an offer for the affected property and how much of a discount they will seek because of the above issues.

The proposed wall would split wildlife preserves, as discussed further below, and 62 miles of border located in the Tohono O’odham Nation Reservation. See Fernanda Santos, *Border Wall Would Cleave Tribe, and Its Connection to Ancestral Land*, N.Y. Times (Feb. 20, 2017), https://tinyurl.com/y96g4mbn. The tribe controls 2.8 million acres, most located in Southern Arizona but some located in the Mexican state of Sonora, including ancestral land and burial sites. See id. Although the tribe allowed the placement of certain vehicle barriers on their land under the SFA the tribe vehemently opposes Trump’s border wall. See id.

**Environmental Concerns**

The primary objective in building a physical border barrier is to physically prevent the movement of persons and objects over the barrier. This objective has been successful in some respects but has also fragmented the habitat of wildlife and otherwise hindered the free travel of wildlife. See Daniella Silva and Suzanne Gamboa, *Trump’s Border Wall ‘Catastrophic’ for Environment, Endangered Species: Activists*, NBC News (Apr. 22, 2017), https://tinyurl.com/y9slqka9. A continuous border, and potentially solid wall, as Trump proposes, would exacerbate this effect. See id. Scientists and conservationists say that “construction of an impenetrable divider could destroy or damage natural habitats, cut off animal populations who depend on the ability to roam at the border, prevent genetic diversity important to sustaining animal populations, and lead to a loss of natural resources.” Id. Wildlife Biologist Jeff Corwin has explained,

[i]t would be catastrophic for the environment, because for the first time in the geological history of this natural corridor, which affects North to
South America, there would be a barrier like that. . . . What I have come
to believe is that the Trump administration is crafting the perfect
extinction storm.

Id.

A 2011 study authored by researchers from the University of Texas at Austin, Yale
University, and the University of California, San Diego, noted:

Research demonstrates that dispersal barriers need not be entirely
impermeable to have strong effects on populations. Species with poor
dispersal across the border might have reduced gene flow between
populations, which can lead to drift-caused genetic divergence between
populations and rapid loss of genetic diversity in small isolated
populations. Smaller isolated populations may also be subject to an
increased risk of extinction. Populations near species’ range margins are
often of low density and might be similarly vulnerable if isolated by
dispersal barriers. Even slight decreases in dispersal may have large
consequences for species’ populations such as extinction of a low-density
metapopulation.

. . . .

Our species-level analysis cent[e]-red around two related aspects of risk:
(1) loss of population interconnectivity owing to a reduction in dispersal
across the border and (2) reduction in effective population sizes
subsequent to loss of connectivity. . . . At the global scale, we deem two
groups of species as most at risk. First, species already listed as threatened
by the Inter-national Union for the Conservation of Nature (IUCN) or by
both the US and Mexican governments are at risk from a loss of
connectivity (risk G1, Fig.1). Second, species with small geographic
ranges that are bisected into evenly sized populations are at high risk
because this scenario produces the smallest remnant populations and
ranges (risk G2). Species with small ranges are typically at greater risk of
extinction than large-ranged species. At a local scale, we associate risk
with remnant populations that are separated from the rest of the species
Pedestrian barriers might pose a more immediate threat to border conservation than land use change because of the rapid speed with which pedestrian barriers have been constructed (~ 800 km in ~ 2 years; Government Accountability Office, 2009).

Under the REAL ID Act of 2005, the Secretary of the DHS has authority to fence the entire border at any time without the oversight of environmental regulatory law that regulates all other infrastructure projects (USLOC, 2005b). This lack of oversight is detrimental to biodiversity conservation efforts and increases the importance of further research on the impacts of barriers along international borders. The REAL ID Act should be amended to reinstate environmental regulation of border security efforts.


Of particular concern, for the first stage of the new border wall, the Trump administration has targeted a national wildlife preserve in South Texas, likely because it will not require the acquisition of private land. Collier and Miller, supra. The Santa Ana National Wildlife Refuge, located south of McAllen, Texas, is one of the nation’s top bird-watching spots, with more than 400 species of birds. See id. The refuge is also home to two endangered cats, the ocelot and jaguarundi, and one
of the last stands of sabal palm trees in Texas. See id.

Access Issues

To fulfill the objective of precluding persons from easily traversing the border barrier, Department of Homeland Security tactical guidelines mandate that the border wall extend at least 18 feet above the applicable grade on the south side of the wall to minimize any attempts to cross over the border wall structure. See Construction Begins on Wall Prototypes, U.S. Customs & Border Prot. (Sept. 26, 2017), https://tinyurl.com/y8m4ppdq. The real objective may be to preclude unauthorized persons from easily traversing the border wall, but the design of the border wall may prevent or impair those who are authorized to cross it.

Most of the existing border wall structures built following the SFA were constructed along, or on top of, the IBWC flood control levees, which were originally built to protect the lower Rio Grande Valley from flooding. See, e.g., Bell v. United States, 123 Fed. Cl. 390, 394 (2015). In most instances, before the border wall was built, the IBWC levee was a simple earthen berm built to a certain elevation to control floodwaters from the Rio Grande River but built in compliance with the treaty between the United States and Mexico regarding the diversion of floodwaters. See American-Mexican Boundary Treaty, 22 U.S.C. § 277d-34 (2012).

A gravel or caliche dirt road was typically located atop the IBWC levee. Although the road atop the IBWC levee was not technically a public road, landowners typically were allowed to drive on and across it to access their property. Landowners often built earthen ramps or simply drove down the slope of the levee to their property. Appraisers hired by the government as part of many border wall takings have recognized the access situation is rather unusual because the levee roadway is not a public roadway, but the IBWC has historically permitted owners and their tenants to use the roadway to access their properties.

When the border wall was built along or on top of the IBWC levee, the IBWC levee road was removed, and a road was installed along most segments of the border wall. Although it is possible to drive alongside the border wall on these parallel roads, a landowner cannot merely turn off these roads and gain entry into
or exit his property given the physical barrier created by the border wall itself. Instead, a landowner must cross the border wall at one of the designated gaps in the structure, where gates were placed (assuming of course the landowner had authority to open the gate and the gate has not been permanently or temporarily secured by the Border Patrol), or by traveling to the end of the particular border wall segment.

Even if a landowner owned the property to an opening in the border wall or a gate, the landowner often would have to approach the opening or the gate on a ramp parallel to the opening or gate, make a 90-degree turn to pass through the opening or gate itself, then make another 90-degree turn to travel down another ramp parallel to the opening or gate. Navigating these sorts of turns is inconvenient at best but virtually impossible for heavy farm equipment.

Thus, the changed nature of access to property on the river side of the border wall may have a significant effect on the market value of the property adjacent to or burdened by the border wall. Moreover, in some instances landowners have lost all legal access to parcels located on the south side of the border wall, which may preclude the landowner from ever being able to sell the property or obtain a mortgage lien on the property.

Appraisers hired by both the government and landowners on past border wall cases have agreed that access issues do affect the valuation of property affected by the border wall. For example, on at least one occasion, an appraiser for the government has noted that a landowner’s tenant declined to purchase property the landowner was attempting to sell because of access concerns related to the border wall.

Similarly, appraisers hired by landowners in border wall cases have recognized that the creation of the border fence has strained property owners’ rights because strict regulation of the border wall could limit access through the border wall openings to only the landowner, emergency personnel, border patrol, and other government officials. Subsequent limitations on access through the border wall openings could prohibit the landowners from allowing employees, contract workers, vendors, hunters, and guests from accessing property on the other side of the wall.

Safety Concerns Regarding the Physical Border Barrier and Gates
Another important consideration that appraisers hired by both the government and landowners have agreed upon is fear and uncertainty regarding the ability to escape from criminal activity on the south side of the border wall. Although criminal activity obviously has been occurring along the Rio Grande River for many years, and of course is not brought about by construction of the border wall itself, market participants have expressed concerns regarding the limiting effect the border wall may have on those who seek to move safely from the south side of the wall to the north side, when and if encountering criminal activities.

What Might the Future Hold for Trump’s Border Wall?

There is considerable speculation about any expansion of the existing segments of the border wall or the construction of an entirely new border wall. During the 2016 presidential campaign, then-candidate Donald Trump promised to oversee the building of a border wall along the entire 2,000-mile United States–Mexico border. See Phillip Bump, *Donald Trump’s Mexico Border Wall Will Be as High as 55 Feet, According to Donald Trump*, Wash. Post (Feb. 26, 2016), https://tinyurl.com/yah4qsfn. These campaign promises may have been ambitious, but President Trump has made it clear that the border wall, at least in part, is still one of his priority agenda items. As one of his first acts in office, President Trump signed Executive Order 13767, which directs that a wall be built along the United States–Mexico border. See Exec. Order No. 13,767, 82 Fed. Reg. 8,793, 8,793 (Jan. 25, 2017) (stating that the purpose of the order is to direct “executive departments and agencies . . . to deploy all lawful means to secure the [United States’] southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely” and the policy is to “secure the southern border of the United States [of America]”).

It remains to be seen if a border wall stretching along the entirety of the 2,000-mile United States–Mexico border will eventually be funded and constructed, given significant public and congressional outcries. Although a DHS internal report has indicated construction of the border wall would cost $21.6 billion, an MIT study pegs the cost at close to $40 billion. See Julia Edwards Ainsley, *Exclusive—Trump Border ‘Wall’ to Cost $21.6 Billion, Take 3.5 Years to Build: Internal Report*, Reuters (Feb. 9, 2017), https://tinyurl.com/yapm8m4x; Konstantin Kakaes, *Bad

Congress has recently appropriated $1,571,000,000 for several dozen miles of border barriers as part of President Trump’s border wall project. See Consolidated Appropriations Act, H.R. 1625, § 230 at 673 (2018). California has already indicated that it plans to sue the Trump administration over the wall. See Patrick McGreevy and Jazmine Ulloa, *California to Sue Trump Administration Over Plan for U.S.-Mexico Border Wall*, L.A. Times (Sept. 20, 2017), [https://tinyurl.com/yb6brt25](https://tinyurl.com/yb6brt25). Other suits challenging the border wall are likely, particularly if the Trump administration makes use of waiver provisions of environmental protection regulations. Furthermore, the border area potentially includes almost 5,000 parcels of property in the likely path of the border wall. See Choi and Logan, supra. Numerous individual condemnation proceedings will be a prerequisite for construction.

**Conclusion**

The potential construction of a US–Mexico border wall is a highly charged project, fraught with political obstacles and high emotional stakes. The erection of the border wall also brings with it significant legal issues and unknowns, such as how to appropriately compensate landowners who own property that is still undeniably within the United States but which will be located on the south side of the border wall. How the government and the courts will address these political and legal issues remains to be seen, but all parties can agree that the border wall project when funded and authorized will spur substantial, long-lasting litigation.

**Next Article > > >**

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**Authors**
The US–Mexico Border Wall: A Unique Project with Unique Real Estate Issues
“I Don’t Recall”: Overcoming a Witness with Selective Memory

Kevin A. Adams

No one remembers everything. Still, some deposition witnesses, often it seems with the guidance of counsel, appear troubled to recall even the most obvious facts.

“I don’t recall” and “I can’t remember” become the go-to answers to any potentially challenging question. Incredibly, showing the witness emails, contracts, and other exhibits does nothing to refresh the missing recollection. This gamesmanship can frustrate even the most seasoned of trial attorneys.

Don’t fret. Properly armed, you too can help overcome a deposition witness’s selective recall.

Preparation is the key. Come armed with appropriate and strategic initial and follow-up questions. A good question or series of questions will cover the intended topic completely to nail down the answer. Poorly worded questions open the door for the witness to offer different or “refreshed” testimony later.

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If the answer is incomplete or the witness’s response suggests less than full confidence in the answer, follow up. Are there any documents or other items that would help? Is there someone else at the company better positioned to answer? Why else does the witness lack confidence in the answer? Ultimately, the questions should elicit answers that establish that the witness is the right person to respond and is unaware of any materials that would change or refine the answer.

Regardless of your questions, though, the witness answers with no memory. What to do?

**Tactics**

First, try to refresh the forgetful witness’s memory through the use of exhibits and related questions. Later impeachment efforts will be more effective if you can show that, during the deposition, you made every effort to revive the witness’s memory. Confronting the witness using relevant exhibits will help to preclude her from later claiming that those very documents refreshed her failed memory.

If your efforts to refresh the witness’s memory are not fruitful, lock in her answer. Preserve the “I don’t recall” response through a series of follow-up questions designed to neutralize and eliminate the witness, as much as possible, from being a factor at trial or summary judgment. Those questions may include the following: “Why don’t you remember?” “Is there anything that would refresh your memory on this?” “Are there any documents that could help you remember?” “Who might know the answer?” “How would you get the answer to this question?” “Do you have any reason to dispute that [fill in the blank]?”

Those follow-up questions and the responses to them may prompt some further follow-up of their own. For instance, if the witness identifies something that may refresh her recollection, explore what it is and why it was not reviewed before the deposition. If the item was not identified or produced in discovery, but should have been, have the witness explain the omission. If the omission concerns a critical area of the witness’s testimony, perhaps continue the deposition to give you the chance to flush out and investigate the new information before going forward.
Push the forgetful witness until all avenues have been exhausted. Let the witness’s answers confirm that there is nothing left to pursue before moving on. Jar the witness’s memory if you can; always better to hear the answer at deposition than to be blindsided at trial.

Having locked in the witness’s lack of knowledge on a topic, use that admitted ignorance to your client’s benefit. The most obvious opportunities to do so are in connection with a motion for summary judgment and during cross-examination at trial.

On summary judgment, the moving party, of course, bears the initial burden of demonstrating the absence of a genuine issue of fact; then the opposition must show that a genuine issue of material fact does exist. If the opposition’s key witness already has exhibited an utter lack of knowledge on those same facts at deposition, opposing counsel may have a difficult time doing so.

The Sham Affidavit Rule

Still, it is far too common for an attorney to submit a declaration or affidavit from the very same witness endeavoring to create a triable issue of fact on the very same subject that the witness could not recall at deposition. But most courts prohibit that type of conduct through what is commonly referred to as the “sham affidavit rule.”

In federal court, a party cannot create an issue of fact by an affidavit contradicting the party’s prior deposition testimony. In Yeager v. Bowlin, 693 F.3d 1076 (9th Cir. 2012), the Ninth Circuit explained that the sham affidavit rule extends to those instances when a witness testifies at deposition that he cannot recall certain facts and then later recalls those facts in a declaration. Under those circumstances, the witness is still contradicting his prior testimony by changing it from “I don’t recall” to “Now I remember.”

In Yeager, the court found that the plaintiff’s inability to recall facts at deposition amounted to a “total refusal to provide substantive answers,” while his subsequent declaration recalled those same events with “perfect clarity.” Id. at 1080. Both the trial court and the Ninth Circuit found the plaintiff’s explanation for his newfound clarity to be “weak.”
According to the Ninth Circuit, “[t]his sham affidavit rule prevents ‘a party who has been examined at length on deposition’ from ‘rais[ing] an issue of fact simply by submitting an affidavit contradicting his own prior testimony,’ which ‘would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.’” *Id.* In *Yeager*, in light of the plaintiff’s later contrasting declaration testimony, the court struck the plaintiff’s declaration from the record.

Although the sham affidavit rule had a profound effect in *Yeager*, the rule is limited and does not automatically dispose of every case in which a contradictory affidavit is introduced to explain portions of earlier deposition testimony. For the rule to apply, the court must make a factual determination that the contradiction is actually a sham and conclude that the inconsistency is clear and unambiguous. A declaration that “elaborates upon, explains, or clarifies prior testimony” won’t be excluded under the sham affidavit rule. *Id.*

Most state courts apply a sham affidavit rule similar to that described in *Yeager*. For instance, in California the rule is known as the *D’Amico* rule, named for the California Supreme Court decision in *D’Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20–22 (1974). But like federal courts, California courts have shown an unwillingness to exclude declaration testimony when other evidence is presented and credibly explains or contradicts the deponent’s inconsistent statements.

Most crafty or skilled attorneys attempt to skirt the sham affidavit rule by identifying documents that were used to refresh the witness’s memory in preparing the declaration. Try to preempt that. During the deposition, use all of the relevant documents available to you in your efforts to refresh the witness’s memory. Your inability to refresh the witness’s memory using the same exhibits should undermine opposing counsel’s contrary result and may justify the application of the rule.

**Impeaching Inconsistent Testimony**

The witness’s convenient loss of memory at deposition also should be used to impeach the witness’s inconsistent trial testimony. Impeachment through prior inconsistent statements has three basic steps: confirm, credit, confront.
First, get the witness to confirm the inconsistent testimony you seek to impeach. This step places the inconsistent testimony front and center for the trier of fact before drawing the contrast. Questions such as “Today you said that . . .” or “Earlier you testified that . . .” should suffice.

Second, build credibility for the deposition testimony that is about to be introduced. You want the jury to believe that the witness was telling the truth at deposition, and not telling the truth now on direct examination. This step serves two primary goals: It shows that the deposition testimony was reliable and accurate, and it helps to establish a foundation that will allow you to introduce the deposition testimony as extrinsic evidence of the prior inconsistent statement.

To achieve that second step, emphasize at a minimum when and where the deposition was taken, the deposition attendance of the court reporter and counsel for the witness, the witness’s knowledge that the testimony was given under oath subject to penalty for perjury, the fact that the witness had an opportunity to review and confirm the accuracy of the transcript after the deposition, and the fact that the witness either did not make any changes or made some changes but left the rest of the transcript intact.

Third, confront the witness by reading the inconsistent deposition testimony into the record. Before reading from the transcript, ask the court for permission to read the portion of the witness’s deposition testimony containing both the question and the answer. Language such as “Your Honor, I request permission to read page 56, lines 10 to 15, of the witness’s deposition testimony” should elicit court approval for you to read aloud that portion of the transcript into the trial record. After reading the testimony, move on.

In the event you have to call the witness on direct, the procedure for emphasizing the witness’s lack of recall at deposition is a little different. In those situations, try to elicit a response consistent with that of the witness’s deposition testimony. For instance, ask: “You don’t recall any discussions with ABC Corp. before signing the contract, correct?” If the witness responds in the affirmative, stop. If the witness answers with anything less than a complete confirmation, read the witness’s inconsistent deposition testimony—both the question and the answer—out loud in court after obtaining permission from the judge to do so. Same technique, different
circumstance. And as before, include some questions to build credibility for the deposition testimony.

Use the same question to impeach the witness at trial as the question asked at the deposition that elicited the “I cannot recall” response. Any variation, even slight, *may* prompt a different response from the witness and *will* prompt an objection from opposing counsel. The grounds? That the questions are different and therefore do not support proper impeachment.

Knowing how to impeach an adverse witness’s direct testimony by methodically introducing to the jury the witness’s prior lack of knowledge on the same subject can be incredibly effective. Done well, it can even change the outcome of the case.

**Using Motions**

When the witness deliberately fails to recall even the most basic facts, it may be necessary to bring that discovery abuse to the court’s attention immediately. That’s especially true when the witness’s anticipated testimony, if extracted, is needed to advance your client’s position. Under those circumstances, consider filing a motion to compel and accompanying request for monetary sanctions.

If your questions were proper both in form and in substance, if you made a clear effort to refresh the witness’s memory, and if it is evident in the transcript that the witness was intentionally evading the questions, a motion to compel should succeed. That will allow you to resume the deposition later, after the witness and counsel are chastised by the court for giving evasive answers.

Additional relief in the form of monetary sanctions for the cost of having to bring the motion to compel is fairly routine, so long as provided for in the court’s rules. After all, evasive discovery responses such as “I don’t recall” have been described by the courts as “an open invitation to sanctions.” *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 783 (1978); see also *Stein v. Hassen*, 34 Cal. App. 3d 294, 300 n.6 (1973).

Unlike an award of monetary sanctions, evidentiary and terminating sanctions are far more difficult to achieve and typically require a history of discovery abuse by opposing counsel. For instance, under California law, a legal prerequisite for
granting dispositive sanctions is a willful violation of a court order coupled with a history of abuse. Although California law does not require an earlier violation of a discovery order before an evidentiary sanction can issue, the moving party still must show that the offending party has engaged in a pattern of willful discovery abuse that renders evidence unavailable. The evasive responses of a witness at a single deposition would not likely give rise to those heightened sanctions.

Another litigation tool unlikely to deliver the desired result is the motion in limine. In advance of trial, some practitioners use in limine motions to ask the court to preclude a witness from testifying contrary to the witness’s deposition, on the grounds that it would prejudice the moving party because that testimony was not identified during discovery, impermissibly contradicts a party admission, or both.

Although that type of motion may be a useful tool to educate the judge, it is unlikely to be granted. Also, a pretrial report or statement is likely a more appropriate mechanism to highlight for the court those types of anticipated issues for trial.


> It is true that a corporation is “bound” by its Rule 30(b)(6) testimony, in the same sense that any individual deposed under Rule 30(b)(1) would be “bound” by his or her testimony. All this means is that the witness has committed to a position at a particular point in time. It does not mean that the witness has made a judicial admission that formally and finally decides an issue. Deposition testimony is simply evidence, nothing more. Evidence may be explained or contradicted.

The court further explained that any trial testimony offered in contrast to that offered at deposition is subject to impeachment, not a motion in limine. Id. For this reason, a motion in limine is not the most useful tool in preventing a forgetful witness from altering deposition testimony at trial.

No witness can remember every aspect of an event, experience, or business relationship, or all of the details of the related conversations or activities. But the “I
A "I Don’t Recall" response should be accepted only after pressing the witness to remember proves futile. If the witness’s convenient inability to recall is a means to avoid answering critical questions at deposition, it is up to you to neutralize those evasive responses.

So lock in and take advantage of the witness’s “I don’t remember” answers. Well handled, evasive deposition testimony can bolster your client’s position. Next time your deposition questions provoke the response “I don’t recall,” consider it a gift and use it to your client’s advantage.
"I Don’t Recall": Overcoming a Witness with Selective Memory
Representing Immigrant Clients in Residential and Commercial Real Estate Closings

By Plinio De Goes Jr.

Although the Trump administration is calling for more restrictive policies on immigration to the United States, the foreign-born still made up 13.6 percent of the country’s population in 2017. Theresa Cardinal Brown and Jeff Mason, *Immigration Trends and the Immigration Debate*, Bipartisan Policy Center (Aug. 2017), https://bipartisanpolicy.org/wp-content/uploads/2017/08/BPC-Immigration-Trends-and-the-Immigration-Debate.pdf. This sizeable group is not homogeneous. Although some immigrants are highly-educated tech workers with skilled worker visas and are likely to purchase properties in expensive markets, other immigrants labor in service sector jobs for lower wages and may be purchasing real estate in more affordable communities. Id. at 3. This article presents some basic concerns and advocates for an inclusive approach to representing immigrant clients in real estate closings.
Earning Your Client’s Trust

Although immigrants to the United States may come from developed nations, the vast majority of immigrants come from developing countries. Many immigrants from developing countries express greater levels of trust in informal institutions (family, religious, and cultural groups) than formal ones, such as governments, financial institutions, and even the legal profession. In some, but not all, cases, immigrants may approach a lawyer less from the perspective a lawyer might expect (“this attorney represents me and therefore I can trust him/her”) than from a place of suspicion (“this attorney is an institutional player and institutions are untrustworthy, therefore this attorney might be untrustworthy as well”). Simply put, one of the most significant differences between representing native-born and immigrant clients in any matter is that the lawyer must generally earn the trust of the immigrant client.

In the author’s experience, a lawyer can earn the client’s trust by following a three-pronged approach: (1) showing that the lawyer cares from an emotive standpoint by taking time with meetings, projecting warmth, and listening; (2) responding to all communications in a more than timely fashion, which usually means answering emails and phone calls within a period of hours; and (3) projecting confidence to signal that the client is in good hands.

Showing the lawyer cares involves getting to know the client through asking questions about where the client is from in a tactful and respectful manner, the client’s experience with purchasing properties and with lawyers generally, and the client’s opinions and expectations of lawyers. Some good questions to include in a first meeting with the client are:

- Have you worked with a lawyer before? Can you describe that experience?
- In the country of your birth, how do most people view lawyers? Are they considered trustworthy?
- What do you expect from me as your attorney? What is a “good attorney” like?
After establishing a rapport with the client to the extent possible with these icebreakers, the attorney should discuss the transaction, focusing on the financial aspect. Above all else, maybe even more than feeling marginalized in some cases, immigrant clients tend to fear being taken advantage of and can be unusually apprehensive about even straightforward aspects of a real estate transaction, such as escrow. A good approach might include discussing the escrow agent’s obligations with a statement that implies not only that following ethical obligations is very important because it avoids sanctions but also that it helps build business through word-of-mouth (e.g., “[i]t is important to me to meet all of these obligations because I want to avoid any problems professionally, and I want you to let others know they can come to me for good services”).

Lawyers in other countries vary in terms of their education, the prestige associated with the position, and the work they perform. American lawyers receive juris doctor degrees, typically after seven or more years of university work, but lawyers in other countries may practice after receiving a bachelor’s degree. Most states in America have few law schools, but states or provinces in other countries may have several law schools. In Brazil, for example, there are law schools in many small towns, and law degrees are achieved after only four years of study.

Similarly, legal systems can vary vastly among nations. English-speaking nations where many laws are judge-made tend to use a common law system, but nations speaking Latin-based languages often have civil law systems under which laws are codified and precedent has less importance. In these civil law systems, lawyers look up answers in rule books as opposed to reading decisions. Thus, a lawyer might have to explain to a client from a civil law country that an American judge’s decision matters because the client may not understand why such decisions should have any effect on their particular situation.

If possible, and to avoid surprises, all fees should be discussed at the outset. This includes confirming that the client understands how commissions work, explaining tax adjustments, and explaining the legal fee multiple times. A worksheet in both English and the client’s language can come in handy, where the client simply checks off a box indicating the client understands the specific fee item. This might seem like the work of a real estate agent or loan officer, but the buck ultimately stops with the real estate lawyer—if the client refuses to close because he or she
was not made aware of a fee item, the lawyer, not the party to whom the fee is going, will be blamed for it. Poring over a sample closing disclosure (with a message at the top of the first page written in oversized letters in both English and the client’s language indicating that “this is a sample and does not reflect your transaction”) is often a good idea.

A Good Translator Is Invaluable

According to the Modern Language Association in 2010, foreign-language speakers in just the state of Massachusetts spoke a variety of idioms: 35.6 percent spoke Spanish, 14.1 percent spoke Portuguese, 5.27 percent spoke French, 5.27 percent spoke Chinese, 4.22 percent spoke French Creole, 3.42 percent spoke Italian, 2.94 percent spoke Russian, and other foreign-language speakers spoke Vietnamese, Greek, Arabic, Cambodian, Polish and other languages. Modern Language Association, *Most Spoken Languages in Massachusetts in 2010*, MLA Language Map Data Center, [https://apps.mla.org/map_data](https://apps.mla.org/map_data) (last visited Oct. 22, 2018). Nationally, 19.62 percent of the population speak languages other than English. Id.

It is always better to find an attorney who speaks the client’s language. That attorney can personally discuss the transaction in detail in a way that makes the client feel comfortable. Furthermore, in many communities, the lawyer himself becomes a symbol of the success of the community as a unit so that sitting down with such a lawyer becomes a way to affirm the immigrant client’s own identity. A Guatemalan immigrant can view a Hispanic lawyer not only as an attorney but as a community member who has “made it,” a sign that his or her own children can become professionals in the United States. Employers seeking to hire Spanish-speaking attorneys should consult with organizations such as the Hispanic National Bar Association, which maintains a career center. Other language groups maintain similar associations, though usually with significantly fewer members.

In the absence of a lawyer who speaks the client’s language, an administrative professional is the second best option. Many good administrative professionals in Massachusetts speak Brazilian Portuguese, for example, and serve the state’s large Portuguese-speaking population. These professionals often exercise an outsized role in small offices, not only translating and helping with administrative duties but
also helping to forge connections with local ethnic organizations. In Los Angeles, where there is a large Armenian population, similar professionals are available.

The last and least preferable option is using a professional translation service such as Language Line. Although the attorney might be able to make it through a meeting with the client, these services fail to assure the client that someone is concerned for them, has invested in their community, and has worked with people like them before. The client is left with a feeling that getting into contact with the attorney is too much of a hassle, and their concerns can go unaddressed until they snowball into larger problems.

**Document Every Move**

Although every lawyer should guard against conflicts of interest, maintain good records, and insist that clients who make unusual choices sign documents indicating that they have been informed of the possible repercussions, this is especially necessary when attorneys are working with immigrant clients because of the potential for cultural or linguistic misunderstandings. If the client is informed of the possibility of performing a 1031 exchange, for example, but decides not to pursue this option, the client should sign a form (in both English and the client’s native language) indicating that the client understands that he or she has been provided with this option but has decided not to pursue such an exchange.

Emphasizing this documentation is not tantamount to trusting these clients less than most clients. It is a realistic assessment of the possibility that the client may have misunderstood one or more issues as a result of the client’s cultural background, even when an attorney or administrative professional speaks the client’s language and has experience with similar clients. Thus, the attorney should explain the issues carefully and require the client to acknowledge that the attorney has made such an effort.

**Conclusion**

Immigrants purchase homes and start businesses, and they require professionals to represent them in these ventures. Attorneys who would like to represent immigrant clients in real estate transactions should be aware that immigrant clients often first
approach attorneys from a perspective of suspicion. They may require patience and a bit of hand-holding and can at times misunderstand very basic fundamentals of real estate law. Lawyers who are aware of these issues and who dedicate themselves to serving the foreign-born community will find their practices to be rewarding and the clients to be appreciative—essential components of any worthwhile legal endeavor.
The upcoming January/February 2019 issue of GPSolo magazine on “Access to Justice” seeks to raise awareness of a pervasive problem in the United States that for most attorneys is out-of-sight, out-of-mind: Most Americans have trouble accessing, navigating, or defending themselves in our court systems. None of our civil, criminal, or even administrative systems were designed to be “user friendly,” and without being trained in judicial processes, or having access to the funds to hire someone who has, the average citizen has no idea how to navigate our legal system. There are few areas of the law that aren’t suffering an access-to-justice problem, whether it is criminal law (defendants who cannot afford representation or bail), civil litigation (low-income consumers who have been defrauded or are being unlawfully harassed by creditors), family law (couples unable to afford a divorce or pay for an adoption), or trusts and estates (surviving spouses and children who cannot take title to a house or car because they have no clue how to probate an estate).

Access-to-justice issues touch every part of our legal system but in ways that we as practitioners often fail to see. After all, most of our interactions are with individuals who have the means and the know-how to hire us to access the legal system for them. That’s why I believe this issue of GPSolo magazine is a must-read for all subscribers. We don’t just examine the problems of access to justice but offer solutions for how each of us can help improve our legal system for those who need it the most, and ways you just might increase your bottom line in the process.
Three eye-opening articles highlight the crisis facing low-income Americans involved with the courts. In “The Crisis in Federal Criminal Law,” Cynthia Eva Hujar Orr explains how the current structure of federal funding and oversight for indigent representation exacerbates a system that is overstretched, underfunded, and operating at a breaking point. Jeff Yungman’s article “The Criminalization of Poverty” brings us perspective on how 30 years of changes in judicial policies meant to increase funding to local courts has instead turned these courts into modern-day debtors’ prisons. An accompanying sidebar looks at similar mechanisms happening with civil fines. The bright spot, however, is that the pendulum is starting to swing back as more jurisdictions become aware of the negative social cost of these revenue policies.

The bulk of this issue focuses on ways that we as practitioners can help. Michael G. Bergmann and Brent Page explain how important it is for us to participate in pro bono work and funding legal aid organizations. Other articles look at making a difference through offering limited-scope representation, publishing legal information for free online, and utilizing customer-centric legal tech that helps break down barriers while introducing you to new clients. For those of you who aren’t legal service plan providers, I urge you to check out Jean Clauson’s article on “Legal Service Plans Are a Win-Win for Attorneys and America’s Middle Class.” My own experience with clients I have met as a legal plan attorney has convinced me of the true value of these plans to American workers. So many of these clients not only could not have afforded an attorney otherwise but would have suffered greatly without having access to one. And don’t forget to check out Casey Gwinn’s and Gael Strack’s article on legal incubators to see how law schools and young attorneys are helping to close the access-to-justice gap.

I hope you find these articles as enlightening and uplifting as I did. Even more, I hope this issue motivates you to do your part to help make our justice system truly accessible to all who need it.

Next Article > > >

Authors
Read more about access to justice

SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION
In the January/February GPSolo Magazine: Access to Justice

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ABA Career Center

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ABA Presidential Appointments Call for Nominations

We are honored to recommend to ABA President-Elect Judy Perry Martinez extraordinary leaders from within our Division to fulfill her Presidential appointments. We encourage you to seek a Presidential appointment this year; please visit ambar.org/appointments for detailed instructions and the online application, which is available through February 15, 2019.

To facilitate our efforts to support your nomination, please apply first and then provide a digital copy of your nomination data to the Division at gpsolo@americanbar.org no later than February 4, 2019.

Application Advice

When completing the personal statement in the application, please specify your qualifications, commitment to the goals of the committee, and prior experience, as well as ABA or relevant state and local bar association experience. If your statement is cursory or too long, members of the Presidential Appointments Committee will pass over the application. Each member of the Appointments Committee is assigned to review several committees and will be focused on making recommendations as to those committees, so don’t expect that the person responsible for the committees you select will know you. Geography is a factor, so you have a better chance of getting on committees where there is no similar representation. Although some of us may apply for the same positions, do not let that possibility dissuade you from applying; we can sort it out after you submit.
To maximize your potential of receiving the appointment, here are some techniques that seem to work:

1. Electronically nominate yourself for the position.

2. Ask a Section, Division, or other group to electronically nominate you.

3. Contact the person on the Appointments Committee responsible for making recommendations to the president-elect and ask for support.

4. Contact other members of the Appointments Committee that you know and ask for support.

5. Contact the current committee chair for the committee in which you have an interest and introduce yourself and ask for support.

6. Contact the staff of the committee and ask for support.

7. Contact your friends in leadership and ask that they nominate you either electronically or by sending a letter to the president-elect, the committee, or the committee staff.

8. Ask the president-elect to appoint you.

The online nominations application system is integrated with the ABA’s association management system. Therefore, it is critical that your ABA member profile is as complete as possible. Otherwise, the Appointments Committee will not have the necessary information about you for their vetting process.

Additional information can be found in the FAQ and Step-by-Step Guide.

Requests for GPSolo support need to be sent to the Division Office by February 4, 2019.

You must apply to the President’s Office no later than February 15, 2019, to be considered.

GPSolo Nominating Committee Report

The ABA Solo, Small Firm and General Practice Division’s 2018–2019 Nominating
Committee consisted of the following members: Chair, Jennifer A. Rymell, Benes Z. Aldana, Henry Hamilton III, Thomas P. Tully, and Melody Wilkinson. The Committee met in person in Charleston, South Carolina, on October 25 and 26 at the 2018 YLD & GPSolo Fall Conference: Tradition Meets Innovation. The Committee was charged with nominating a candidate for the office of Division Secretary and five candidates to serve as Council Members-at-Large.

Special efforts were taken to ensure each candidate’s interview was conducted in a professional manner, identical in scope and objective. Each applicant was allotted 20 minutes for his or her interview. During the respective interviews, each candidate was afforded an opportunity to share any information the candidate wanted the Nominating Committee members to consider. In addition, Nominating Committee members were given an opportunity to make whatever inquiry they deemed appropriate of the candidates. At the conclusion of the interviews, the Nominating Committee considered all applicants. After extensive deliberations, the Nominating Committee voted on each position and, in accordance with Solo, Small Firm and General Practice Bylaw 7.3.1., has submitted the following slate of nominated candidates for Division Secretary and Division Council Members-at-Large for the Bar Year beginning at the 2019 ABA Annual Meeting in San Francisco, California.

**Division Secretary**

**Scott C. LaBarre.** LaBarre of Denver, Colorado, is a sole practitioner who practices in the areas of employment law, disability rights, and international copyright policy. He received his JD from the University of Minnesota and his BA from St. John’s University in Collegeville, Minnesota. Prior to launching his own firm in July 1998, LaBarre acted as the general counsel of the National Federation of the Blind of Colorado. He served in that capacity for five years. In October 2005 LaBarre was elected as the president of the National Federation of the Blind of Colorado and also serves as chair of the PAC committee that is responsible for the Federation’s largest national fundraiser. Currently, he is president of the National Association of Blind Lawyers and serves as vice chairman of the Board of Directors for the Colorado Center for the Blind. From 1996 to 2002 LaBarre served as president of the National Federation of the Blind of Denver. Due to his outstanding service with the National Federation of the Blind, he has been the recipient of the Dr. Jacob Bolotin Award for work on the Marrakesh Treaty and the Raymond W. McGeorge Award for outstanding service to the blind. Additionally, LaBarre has been very active in national, state, and
local bar associations. He began his involvement with the American Bar Association in the early 1990s, holding several leadership positions in the ABA Young Lawyers Division. He is a member of the American Bar Association Board of Governors, where he serves as Chair of their Member Services Committee. LaBarre has received presidential appointments to several ABA commissions as well, most notably as the chair of the American Bar Association’s Commission on Mental and Physical Disability Law. The Commission is charged with the important work of increasing opportunities for lawyers with disabilities in the profession. His work in the GPSolo Division has included serving two terms on the GPSolo Council, on the Membership Board, and on the Young Lawyers Committee, just to name a few. LaBarre’s state and local involvement included serving as a member of the Colorado Bar Association Board of Governors and treasurer and member of the Executive Council of the Denver Bar Association’s Young Lawyers Division.

**Council Members-at-Large**

**John Austin.** Austin of Raleigh, North Carolina, is a sole practitioner who focuses on commercial litigation, personal injury, labor and employment, and landlord/tenant law. He is a commissioner with the Housing Authority of the County of Wake and has served in that capacity since 2006. Additionally, through his work with the North Carolina State Bar, he serves on the Carolinas Council of Housing, Redevelopment and Code Officials as a code official and the Southeastern Regional Council of the National Association of Housing and Redevelopment. Austin received his BA in English from North Carolina State University and his JD from Campbell University School of Law. He is currently serving an unexpired term as a GPSolo Council Member-at-Large and has used his love for writing to contribute to many legal publications. Austin was the associate editor of the ABA Young Lawyers Division’s *Affiliate* magazine, held an appointed position on the ABA Standing Committee on Publishing Oversight, and is now a member of the GPSolo Division Book Publications Board and the North Carolina Bar Association Newsletter and Publications Committee.

**David H. Lefton.** Lefton of Cincinnati, Ohio, is a partner in the law firm of Barron Peck Bennie & Schlemmer, Co. LPA. Lefton’s main area of concentration is estate planning, trust administration, and probate. He helps individuals of all ages and families achieve their estate-planning goals. Lefton is a leader in the Ohio State Bar Association and the American Bar Association. He has served as the District 1 representative on the Ohio State Bar Council of Delegates and Board of Governors, as well as the section chair of the Solo, Small Firm and General Practice Council for
District 1. With respect to Lefton’s ABA experience, he has received two presidential appointments to the Standing Committee on Group and Prepaid Legal Services and the Standing Committee on Continuing Legal Education. Lefton’s contributions to the GPSolo Division have been extensive, having served as Division Chair in 2016–2017. He has also served as chair of the Division’s Programs and Book Publications Boards. He is the current chair of the Division’s Member Services Board. Lefton’s work has been recognized in the Division with the Chair’s Award in 2007, the Service to Others Award in 2010, and four Star of the Quarter Awards.

Deian McBryde. McBryde of Albuquerque, New Mexico, is a sole practitioner specializing in family law. He received his BA and JD from the University of New Mexico. Prior to going back to school to obtain his law degree, McBryde was an entrepreneur and a professional musician. He was also a non-commissioned officer with the U.S. Air Force (USAF). During his time with the USAF he was honored with the John Levitow Honor Graduate Award for the USAF Non-Commissioned Officers Academy and the USAF Commendation Medal for Meritorious Service. McBryde is active in the New Mexico Bar Association as a member of their Family Law, Solo and Small Firm, and Diversity Committees, as well as the New Mexico Hispanic Bar Association. Due to the nature of his practice, McBryde has focused his ABA involvement with the Family Law Section and the GPSolo Division. He currently serves as a member of the Legal Educators, Family Law, and Technology Committee for those ABA entities.

Joan M. Swartz. Swartz of Maplewood, Missouri, is the owner of a small firm in which she has a general business-related practice. She received her BA in history and political science as well as her JD from St. Louis University. Swartz is a frequent speaker and author on a variety of legal topics, including ethics. She has served as an Assistant Editor for the SOLO newsletter and a member of the Division’s Programs Board. Swartz has also served as a member of the GPSolo Litigation and Business Opportunities and Commercial Law Committees. In addition to her ABA activities, Swartz has been extremely involved with the Bar Association of Metropolitan St. Louis (BAMSL) and the St. Louis Bar Foundation. She has held every officer position, including president, of both those organizations. Currently, she is a member of the BAMSL Board of Governors and serves as that association’s elected representative to the ABA House of Delegates.

Eileen Sullivan. Sullivan of Phoenix, Arizona, is a sole practitioner specializing in
criminal and family law. She obtained her BA from Arizona State University and her JD from the John Marshall School of Law. Sullivan’s involvement in the Division began in 2005 when she was selected as a Diversity Fellow. Since that time she has rarely missed a meeting and has participated as a member of over 15 different GPSolo committees and as a Council Member-at Large. Sullivan was honored in October 2017 with a GPSolo Difference Maker Award: Making a Difference Through Community Service. She received this award due to her service on the Maricopa Health Centers Governing Council, the Child Crisis Arizona Board of Directors External Affairs Committee, the Phoenix Conservatory of Music Board of Directors, and the Children’s Museum of Phoenix. In addition to her vast amount of community service and ABA work, Sullivan is active with the Arizona Women Lawyers Association and the Arizona Asian American Bar Association.

Call for 2019 Solo and Small Firm Awards Nominations

GPSolo is accepting nominations for the 2019 Solo and Small Firm Awards to celebrate the accomplishments and efforts of outstanding solo and small firm (two to nine attorneys) practitioners, as well as bar leaders and bar associations.

Click here for the nomination application or here for frequently asked questions.

- **Solo and Small Firm Lifetime Achievement Award.** Recognizes solo and small firm attorneys who are widely accepted by their peers as having significant lifetime distinction, exceptional achievement, and distinction in an exemplary way. The winners will be viewed by other solo and small firm practitioners as epitomizing the ideals of the legal profession and of solo and small firm practitioners.

- **Solo and Small Firm Project Award.** Rewards bar leaders and associations for their successful implementation of a project or program specifically targeted to solo and small firm lawyers.

- **Solo and Small Firm Trainer Award.** Recognizes attorneys who have made significant contributions to educating lawyers or law students regarding the opportunities and challenges of a solo and small firm practice.

The winners will be honored on Friday, May 3, during the 2019 Litigation & GPSolo CLE Conference at the Marriott Marquis, New York, New York.
We look forward to receiving your nomination!

Nominations are due no later than February 15, 2019.

GPSolo Discounts

**Zeamo**

Zeamo is the simplest way to find and access nearby gyms that meet your workout preferences without a membership or subscription. Simply choose your gym, download a pass, walk in, and work out. With locations across 50 major U.S. cities and international travel destinations, Zeamo makes it easy to exercise wherever you are in the world.

**Solo Practice University®**

Solo Practice University® offers GPSolo members an exclusive discount on tuition when they enroll here. Solo Practice University® is the only online educational and professional networking community designed to help lawyers and law students create and build their solo and small firm practices.

**Kurent**

Kurent is a cloud billing program designed for solo and small firms who typically don’t use and don’t want to pay for elaborate practice management features. Kurent helps attorneys get bills out fast while minimizing A/R. Starting at just $26/user per month, Kurent offers firms free phone and e-mail support, free data migration, and a no-hassle billing system with free updates and automatic backups on Microsoft Azure servers.

**GPSolo Podcasts**

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.
Join us for our upcoming live podcasts or check out our podcast library.

**Brown Bag Series**
Date: Wednesday, February 13, 2019
Time: 12:00 P.M. – 1:00 P.M. Central

**Hot Off the Press Series**
Wednesday, March 20, 2019
12:00 P.M. – 1:00 P.M. Central
Division Meetings

2019 Section of Litigation & Solo, Small Firm and General Practice Division CLE Conference

May 1 – 4, 2019
Marriott Marquis
New York, New York

The Section of Litigation & Solo, Small Firm and General Practice Division Annual CLE Conference is THE premier event for litigators and solo and small firm practitioners. It brings together lawyers and judges from across the United States to share the very latest in trial advocacy, litigation strategy, and case management. Enjoy more than 60 high-quality CLE programs with top speakers, and eight networking events.

Register here. GPSolo members receive a special rate of $399.

Confirm Hotel Reservation


Individuals are responsible for making their own travel accommodations. A block of rooms has been reserved at the discounted rate of $334, plus 14.875% tax for single/double rooms. The deadline for room reservations at the discounted rate is Monday, April 8, 2019. All reservations are subject to availability.

For reservations call 212-398-1900, reference the 2019 Section of Litigation & Solo,
Small Firm and General Practice CLE Conference. Or book online here. Cancellation Policy: Individuals with guaranteed reservations must cancel their reservations 24 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.
Please visit the Events & CLE page on the Division’s website for CLE teleconferences that GPSolo produces and cosponsors.

Upcoming GPSolo CLE

Evaluating Nursing Home Personal Injury Cases for Older Clients

Webinar
Date: February 19, 2019
Time: 2:00 P.M. – 3:30 P.M. Eastern
Credits: 1.50 General CLE Credit Hours

This program will provide attorneys working with elderly and special needs clients with an understanding of these clients' rights in long-term-care facilities. Faculty will teach attorneys how to screen cases to determine if a referral to a nursing home abuse lawyer is appropriate.

As a result of taking this program, you'll be able to:

- Explain the nursing process used upon admission to a nursing home in order to advocate for clients/loved ones in nursing homes and avoid unnecessary injury
- Identify federal and state regulations aimed to protect the elderly living in long-term-care facilities
- Recognize red flags in living and deceased clients that may require legal action
o Screen cases to determine if a consultation with a nursing home abuse lawyer is appropriate

Register Today!

Cybersecurity for Lawyers: How to Anticipate, Investigate, and Litigate a Data Breach

Webinar
Date: February 20, 2019
Time: 1:00 P.M. – 2:30 P.M. Eastern
Credits: 1.50 Ethics/Professionalism CLE Credit Hours

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.

A panel of experienced cyber lawyers will take you through a hypothetical breach, discussing the steps you should take to:

o Protect corporate data prior to learning about a breach

o Develop effective incident response plans

o Make sure you have the right team to respond to a cyber incident

The panel will focus on what to do and not to do when conducting a cyber investigation, including how to make sure certain information is covered by attorney-client privilege, and that the privilege is not inadvertently waived.

Register Today!

The New Compliance Landscape in Latin America, and Its Practical Impact

Webinar
Date: February 21, 2019
Credits: 1.50 General CLE Credit Hours
The members of this panel will bring both compliance and industry experience to bear to discuss the impact of the new laws not only on paper but in practice, including a particular focus on Mexico’s new comprehensive national anti-corruption system (SNA), and also touching on Argentine, Peruvian, and Brazilian developments. They will share specific cases and outline practical advice for investors regarding compliance measures and due diligence.

The last several years have seen a wave of enhanced anti-corruption laws and enforcement efforts across Latin America, including in countries as diverse and dynamic as Mexico, Argentina, Brazil, Colombia, and Peru. With new anti-corruption legal regimes and enforcement offices coming online, and cross-border enforcement cooperation more common than ever, investors in Latin America face a new compliance landscape. How do these regional compliance trends impact global compliance programs organized around U.S., UK, and OECD legal standards? And how will they impact key industries such as energy, infrastructure, real estate, and tourism?

Join our legal experts as they discuss:

- New anti-corruption laws in Latin America
- How those laws interact with existing U.S. and EU enforcement authorities
- The interaction between local laws and U.S. and EU laws to represent clients doing business in Latin America given these new legal requirements

Register Today!

Kiss, Bow, or Shake Hands: Intercultural Communications, Negotiations, Diversity & the Law

Date: February 28, 2019
Time: 1:00 PM – 2:30 PM Eastern
Credits: 1.50 General CLE Credit Hours

If you work in the international arena, have foreign clients, or travel internationally,
this program is a must. You’ll learn to better understand customs, intercultural communication, verbal and nonverbal behaviors, and global negotiating strategies.

You’re on your way to China, Russia, Malaysia, Brazil, India, or just about any exotic locale. Do you kiss, bow, or shake hands? Do you address prospects by their first name, last name, or just their title? Should you expect tough negotiations, or will they never say “no!”? Do they expect a gift, or would it be considered graft?

Every successful lawyer requires the knowledge and complex skills to communicate effectively with fellow citizens from a wide variety of ethnicities and belief systems. Understanding how an individual’s culture can influence a case or negotiation is not only a valuable skill, but also an imperative.

Join this program featuring Terri Morrison, author of the Section of International Law’s book *Kiss, Bow, or Shake Hands: Courtrooms to Corporate Counsels*, and former Section Chairs Marcelo Bombau and Salli Swartz, on international business customs. Learn how to smooth over cultural barriers and form lasting client and professional relationships. The panelists will reflect on a spectrum of inter-cultural communications topics, including negotiating styles, advertising taboos, plagiarism, business protocol, appropriate attire, dining etiquette, entertainment, gestures, and gift-giving around the world.

After taking this course, you’ll be able to:

- Differentiate global negotiating strategies
- Identify and differentiate cultural barriers in international business
- Recognize inter-cultural legal communications
- Analyze verbal and nonverbal behaviors, and identify diverse perceptions to navigate different legal systems

**Special Offer**

ABA TECHSHOW 2019

February 27 – March 2, 2019
Hyatt Regency Chicago
Chicago, Illinois

Bringing Lawyers & Technology Together

ABA TECHSHOW has more than 31 years of experience bringing lawyers and technology together. Legal work today is dependent on technology to manage day-to-day activities, to practice more competently, and to service clients more effectively. ABA TECHSHOW teaches you how technology can work for you. Through the expansive EXPO Hall, CLEs, presentations, and workshops, you will be able to get your questions answered and learn from the top legal professionals and tech innovators, all under one roof. Regardless of your expertise level, there’s something for you at ABA TECHSHOW.

As a member of ABA Solo, Small Firm and General Practice Division, you can register for ABA TECHSHOW 2019 at a special reduced rate. This discount only applies to registrants who qualify for the Standard registration and will save you $150. You can register online and include the unique discount code EP1915 at checkout to receive the discount.

Celebrate more than 31 years of legal technology and innovation. Network with legal technology experts from around the globe. Don’t forget to visit www.techshow.com for current information on ABA TECHSHOW 2019, the best place for bringing lawyers and technology together.
January 22, 2019  GPSOLO DIVISION NEWS

Division Book Releases

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The Commercial Property Insurance Policy Deskbook

The Commercial Property Insurance Policy Deskbook: How to Acquire a Commercial Property Policy and Present and Collect a First-Party Property Insurance Claim

*The Commercial Property Insurance Policy Deskbook* is an indispensable resource on acquiring a commercial property policy and presenting and collecting first-party property insurance claims.

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From the Trenches III, Pretrial Strategies for Success
From the Trenches III: Pretrial Strategies for Success

*From the Trenches III, Pretrial Strategies for Success* provides important insights from experienced trial lawyers from across the country. This valuable resource is a general reference tool with solid insight for both beginning lawyers and seasoned trial veterans.

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The Law and Liability of Small Aircraft

*The Law and Liability of Small Aircraft* contains a compelling representation of judicial decisions—divided between product liability lawsuits and those that deal with the regulatory scheme that oversees aviation—that present the typical dilemmas of the courts in this area of law.
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