

A LOOK AT HOW LAWYERS CAN IMPROVE PUBLIC PERCEPTION OF THE LEGAL PROFESSION

Serve Those Who Serve Their Country

REPRESENT A VETERAN BEFORE THE VA

By Thomas J. Reed and Justin Holbrook



Across America, 1.6 million veterans are returning from the wars in Iraq and Afghanistan. Their long list of injuries include both visible and invisible wounds, such as damaged hearing, lost limbs, mild traumatic brain injury, and Post-traumatic Stress Disorder (PTSD). After separating from the service, such veterans are entitled to receive disability compensation from the U.S. Department of Veterans Affairs (VA).

While many will be compensated, others will be denied benefits, setting off a long and complex chain of appeals within the VA. Fortunately, there are ways in which attorneys can as-

sist these veterans in the lengthy claims process.

The VA is the second largest department in the executive branch. Employing nearly 280,000 people, it administers pension and disability compensation payments to 3.16 million veterans and provides health care to 8 million veterans. Its mission statement is "to care for him who shall have borne the battle, and for his widow, and his orphan." As such, the VA awards monthly compensation payments to veterans and dependents for diseases or injuries incurred or aggravated during military service. To prevail on a claim, a

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Volunteer on Capital Cases

JOIN THE ABA DEATH PENALTY REPRESENTATION PROJECT

By Emily M. Williams

There are 3,300 people on death row in the United States, and 99.5 percent of them are indigent. For too many, without the generosity of pro bono attorneys, they will face death alone.

A confluence of forces works against death row prisoners. First, death row prisoners have no federal constitutional right to counsel in *state* post-conviction proceedings. Second, congressional funding for resource centers that provided direct representation to many death-sentenced prisoners was eliminated in the mid-1990s. Third, the Antiterrorism and Effec-

tive Death Penalty Act of 1996 set a one-year statute of limitations for the filing of federal habeas petitions. Grossly inadequate funding and an absence of meaningful standards for defense counsel means that capital defendants are almost guaranteed to receive ineffective representation at trial.

That is why post-conviction proceedings are so important. They provide an opportunity to correct errors that occurred during capital trials and protect against wrongful convictions. But many of these opportunities will be lost without civil litigators who donate

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Today's Pro Bono Menu Offers More Choices

By Cheryl M. Zalenski

As a young lawyer beginning your legal career, it is important to make time for pro bono participation. Providing pro bono legal services is an integral aspect of the legal profession. Every state and the District of Columbia has a rule or policy encouraging pro bono work by its attorneys. See www.abanet.org/legalservices/probono/stateethicsrules.html. Furthermore, building the time for volunteer work into your practice from the start of your career not

only provides opportunities to gain valuable experience but also establishes pro bono as a vital component of your law practice management strategy.

Pro bono programs first became institutionalized approximately thirty years ago and since have been established in nearly every community. As pro bono programs have developed and become more sophisticated, they have gone from simply referring a case for representation to offering a rich variety of opportunities for volunteer lawyers. While the core of unmet legal needs continues to be family and housing law, pro bono organizations across the country offer opportunities in multiple substantive areas, including veterans law, nonprofit law, consumer law, unemployment law, immigration issues, income tax assistance, and appeals.

By expanding the areas in

which pro bono assistance is utilized, organizations are able to offer a more varied menu of pro bono work, including providing advice, handling transactional matters, representing clients in front of an administrative judge, and trying cases in court. The odds are that you can find an opportunity that fits your comfort level.

As a result of this new focus on providing pro bono lawyers with a large menu of volunteer choices, creative program models have sprung up around the country. Some examples are:

- **Medical-Legal Partnerships (various locations):** Under this model, healthcare providers are trained to screen and triage legal issues that have a detrimental effect on their patients' health and refer patients to volunteer attorneys for assistance. Legal issues may include housing, utilities,

immigration, education, public benefits, and guardianships. For additional information, visit www.medlegalprobono.org.

- **Appellate pro bono projects:** A number of states have launched pro bono projects matching volunteer attorneys with state appellate cases.
- **Chicago Volunteer Legal Services' "Thunderdome:"** New attorneys, deferred associates, and solo practitioners are invited to enroll in this special family law volunteer project. This project provides a substantive background for simple divorce cases, including grounds, child custody, child support, visitation, property and debt distribution and maintenance. Each class of volunteers goes through training together, from initial acceptance of a divorce case to final judgment. Periodic

training provides an opportunity to discuss the next steps in the case flow and network with fellow volunteers.

- **Texas Lawyers for Texas Veterans:** The State Bar of Texas has launched a program to develop and assist pro bono legal clinics throughout the state that provide legal services to military veterans who otherwise cannot afford or do not have access to the services. Legal services organizations and bar associations around the state host the clinics; referrals of cases are also made by both the State Bar of Texas and local providers. More information can be found at www.texasbar.com/AM/Template.cfm?Section=Texas_Lawyers_for_Texas_Veterans#volunteer.
- **The Volunteer Legal Services**

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Typography and the Public Perception of Law

By Matthew Butterick

When I started a website devoted to *typography for lawyers*, I thought it would appeal to a handful of curious characters like myself. But as its popularity grew, I realized that a lot of lawyers wanted to care about typography. They just didn't know where to start.

Typography isn't a substitute for strong, clear writing. But it can make any writing better. Typography matters because it reinforces the meaning of a text and conserves reader attention. While these are important considerations for any document a lawyer creates (is there a situation where you'd want your work ignored?), they're particularly important for documents that the public will read.

Why? Unless you were born with a Bates stamp in your hand, try to remember what life was like before law school. As a member of the public, you were confronted with a stream of documents created by lawyers, such as apartment leases, credit-card agreements, software licenses, product warranties, liability waivers, and insurance contracts.

What do you remember about the typography of these documents? Let me guess—horrible. And what do you remember about the substance of these documents? Let me guess—you didn't really read them.

Somewhere, a lawyer for a credit-card company is dancing a little jig, "Hey, we sent you the agreement, it's not our fault that you didn't read the acre of six-point type that disclosed the 78% interest rate."

But you know what, dancing lawyer? It is your fault—maybe not in terms of legal liability, but you're responsible for the terrible typography. And every time someone has to wade through one of these documents, the public esteem for lawyers drops a little further. That's your fault.

"Butterick, you're overstating the case. Nobody pays that much attention to typography." Lawyers are attuned to many of the nonverbal aspects of their work. Would you meet a prospective client at a Burger King, wear a track suit, and then talk with your mouth full of on-

ion rings? Of course not. As a lawyer, you know that the way you present yourself in person matters.

So how is it any different on the printed page? Good typography makes a document easier to understand and reflects positively on the writer. Here are some typographic tips that are particularly important to keep in mind if you're making a document intended for the public.

1. Typography creates the first impression of the document.



2. Judges and other lawyers are paid to read the documents we create, regardless of how bad they look. Members of the public, however, are not similarly constrained. An ugly document is a deterrent to reading just like onion-ring breath is a deterrent to conversation.

3. Aspire to the standards of professional typography. Contrary to urban legend, there is no "legal typography"; there is only typography. So before you set that residential lease in Arial Extra Bold Condensed font, ask yourself: are any of your favorite books, newspapers, or magazines set in Arial Extra Bold Condensed? I doubt it. Lawyers sometimes behave as if ugly typography magically becomes more tolerable in a legal document. Trust me—it doesn't. And good typography can compensate for the fact that legal documents are often a slog to get through.

4. ENOUGH OF THE ALL-CAPS PARAGRAPHS. EXCESSIVE CAPITALIZATION IS ONE OF THE MOST RELIABLE TYPOGRAPHIC TICS OF LAWYERS WHO CREATE CONSUMER CONTRACTS. ALL-CAPS TEXT DOESN'T ENCOURAGE READERS TO PAY MORE ATTENTION

TO A PARAGRAPH. ON THE CONTRARY, IT CHASES THEM AWAY. STOP IT ALREADY.

5. Enough of the fine print too. Congratulations, fine-print-loving lawyers: it took decades, but you succeeded in making "fine print" an idiom connoting evasion and deception. For all other lawyers: unless those are qualities you strive for, avoid using fine print. Instead, use more paper (or better, fewer words).

"But I'm a new lawyer! Nobody's going to listen to my opinions about typography!" One of the reasons I wrote a book about typography is so lawyers could cite to authority when disputes arose about whether to use bold italic fonts. (Answer: don't.)

But past that, proponents of good typography prevail when they lead by example, not by decree. As a young lawyer, apply the techniques of good typography to your own work where you can. Sooner or later people will ask, "Hey, why do your documents look better?" That's how you win.

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Represent a Veteran

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veteran or dependent must prove (1) the veteran served satisfactorily in the military, (2) service incurrence of a disease or injury, (3) current symptoms, and (4) a medical nexus between current symptoms and the in-service disease or injury.

Although the VA maintains that its compensation system is pro-claimant and non-adversarial, many veterans find the system frustratingly complex. Claims are first adjudicated at one of fifty-eight Regional Offices (RO), a six-month process. If a veteran is dissatisfied, the veteran may appeal to the Board of Veterans Appeal (BVA) and may wait a year for a decision. From the BVA, veterans may appeal to the Court

of Appeals for Veterans Claims (CAVC), another year-long step. Decisions of the CAVC may then be appealed to the U.S. Court of Appeals for the Federal Circuit.

When a veteran files a claim, the RO is required to obtain the veteran's military service and medical records and VA hospital records. The RO then schedules a physical examination for the veteran at the nearest VA hospital to determine whether a nexus between current symptoms and the claimed in-service injury or disease exists. Once completed, the claim is ready for rating.

VA rating specialists assign a degree of disability (0-100%) to the claimed disease or injury. The degree of disability governs the amount of VA compensation due to the veteran. If a veteran disagrees with a rating decision,

the veteran must file a written Notice of Disagreement (NOD) within one year. Failure to file a timely NOD renders the rating decision final. After receiving an NOD, the RO sends the veteran a Statement of the Case (SOC), a chronological record of the steps taken in the adjudication process. To appeal to the BVA, a veteran must file VA Form 9 with the RO within sixty days of the date of the SOC. Again, failure to file on time renders the decision final and non-appealable.

Approximately 35,000 appeals are filed annually with the BVA. The BVA's fifty-eight veterans law judges review each appeal for errors of law or fact. A veteran may elect a personal hearing at the RO or BVA levels or by interactive video from the RO. BVA judges may affirm the

RO, reverse and send the claim back to the RO with instructions to develop the claim further, or, in rare cases, issue an award of service-connected benefits.

Appeals from the BVA to the CAVC must be filed within 120 days of the BVA's decision and must be based on errors of law or clearly erroneous findings of fact. A single judge is assigned to each case, although novel questions of law may be referred to a three-judge panel. Interestingly, more than half of all appeals are filed by individual veterans or dependents without assistance from a lawyer. The CAVC reverses and remands about 50% of all cases, a number indicative of the overwhelming volume of cases handled by the VA and the legitimacy of many claims initially denied.

Given the number of veterans returning from war and the complexity of the VA benefits system, there never has been a greater need for attorneys willing to represent veterans before the VA. These faithful young men and women have given everything in the service of our country. As attorneys, surely we can now give something—our time and expertise—to serve them. To learn more about representing veterans, contact jgholbrook@widener.edu.

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Stop, Look, and Listen REGAIN YOUR FOCUS THROUGH MINDFULNESS

By Scott Rogers

If you've been practicing law for a while or are job searching, you know how easily your mind can dwell in the past and worry about the future. This natural tendency can interfere with your ability to maintain focus, perform at the top of your game, and experience general well-being.

One way of counteracting this tendency that is receiving a lot of press and making its way into law schools, law firms, and the judiciary is "mindfulness." Mindfulness is an area of contemplative and scientific exploration that offers insights and tools to reclaim focus in the midst of challenging situations. It involves paying attention to what is actually taking place in the present moment instead of becoming distracted or trying to avoid—well, reality.

William James, the great psychologist and philosopher, wrote that "the faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgment, character, and will." Mindfulness is a practice of catching the mind as it begins to wander. Agitated feelings like frustration, worry, doubt, and anger are signs of a wandering mind. Being mindful helps reclaim focus and exercises the muscle of attention, which helps us to become more expert at paying attention.

One of the most common and powerful tools in contemplative practices such as mindfulness is bringing awareness to the breath and holding awareness on it. Research suggests that this concentration exercise offers important benefits to cognitive functioning, health, and well-being.

Mindfulness also involves paying attention to what arises within our field of awareness, including thoughts, feelings, and body sensations. When we experience something unpleasant, we may have an impulse to distract ourselves from it. To be mindful means not avoiding, but rather noticing, what arises such that we

experience life more directly and free ourselves to master the next moment. Doing so, we experience the moment as it just "is." This is one of the insights I teach to lawyers and law students in the mindfulness program *Jurisight*, where we split the term "Justice" into "Just Is" and practice the "Just Is" Holmes exercise.

This exercise draws on Justice Holmes' rule for what to do upon approaching railroad tracks: "Stop, Look, and Listen." While it can be helpful to find a comfortable place to sit as you practice the exercise, it is one that can also be practiced in the midst of challenge.

Stop: When you realize that your mind has wandered, pause, close your eyes, and take a few breaths. Bring awareness to your belly, noticing how it rises and falls with each breath.

Look: Turn inward and pay attention to the thoughts arising in your mind and the sensations arising in your body. Notice what *Just Is*.

Listen: As you breathe, expand your awareness outward and listen to sound. Pay attention with ears that are open to the mystery of the sound that *Just Is*—noticing what arises, changes, and passes away.

After a few minutes, open your eyes and return to what you were doing before you become distracted or agitated.

By practicing mindfulness, you will become a more effective attorney able to better cope with stress, listen more deeply to clients, and obtain greater perspective on your work and the challenges presented in daily life.

Scott Rogers is a lecturer in law at the University of Miami School of Law, director of the Institute for Mindfulness Studies, and author of *The Six Minute Solution: A Mindfulness Primer for Lawyers*. He can be reached at scott@imslaw.com. Learn more about mindfulness and the law at <http://themindfullawyer.com>.

"my days are BUSY"



Betty Burnett
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Today's Pro Bono Menu

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Program of the Bar Association of San Francisco Community Organization Representation Project (CORP): Volunteers assist nonprofit community-based organizations in a range of transactional business law matters, including employment, real estate, intellectual

property, taxation, liability and insurance, corporate formation/governance, business contracts, finance, and real estate law. Newer attorneys not supervised by a firm can get involved with CORP through assisting new organizations that are in the process of incorporation and applying for 501(c)(3) tax-exempt status. There are a myriad of pro

bono opportunities out there to fit your interests and schedule. Contact your local legal services or pro bono organization to find out what they offer, or visit www.volunteerforprobono.org to find opportunities.

Cheryl M. Zalenski is the director of the American Bar Association Center for Pro Bono. She can be contacted at zalenskc@americanbar.org.

YLD CALENDAR & CONFERENCES

FEB. 9, 2011	 DIRECT AND CROSS-EXAMINATION IN A FAMILY LAW TRIAL
FEB. 10-12, 2011	ABA YLD EVENTS AT THE 2011 ABA MIDYEAR MEETING ATLANTA, GA
FEB. 15, 2011	ABA YLD 2010-2011 LEADERSHIP APPOINTMENT APPLICATION DEADLINE
FEB. 17, 2011	 STARK LAW BASICS
FEB. 24-25, 2011	GAMING LAW MINEFIELD 2011 LAS VEGAS, NV
FEB. 25-26, 2011	NEW PARTNER AND IN-HOUSE COUNSEL CONFERENCE PHILADELPHIA, PA
MAR. 1, 2011	 MAKING PARTNER: UNDERSTANDING THE PARTNERSHIP AGREEMENT
MAR. 2-4, 2011	WHITE COLLAR CRIME 2011 SAN DIEGO, CA
MAR. 17, 2011	 FUNDAMENTALS OF TAX-EXEMPT HEALTHCARE ORGANIZATIONS
MAR. 31, 2011	ROSNER AND ROSNER YOUNG LAWYERS PROFESSIONALISM AWARD DEADLINE
APR. 5-9, 2011	YOUNG LAWYER TRACK AT THE SECTION OF INTERNATIONAL LAW 2011 SPRING MEETING WASHINGTON, D.C.
APR. 21, 2011	 ANTI-KICKBACK LAW BASICS

Visit www.abanet.org/yld/meetings.html for additional information.

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Volunteer on Capital Cases

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their time, resources, and skills to provide pro bono representation to people on death row.

That is where you come in—you can volunteer to work on a capital case through the ABA Death Penalty Representation Project. The Project recruits, trains, and supports volunteer lawyers to serve as pro bono counsel for death row inmates in post-conviction hearings.

Young attorney Stacie Lieberman, an associate in Crowell & Moring's insurance/reinsurance group, volunteered for the Project along with her firm in 2008. Lieberman first became interested in representing a death row inmate because she felt it was an opportunity to apply the skills she had learned "to help someone who would otherwise not have access to the kind of time and resources" that Crowell was willing to provide.

Lieberman describes her time on the case as "one of the greatest experiences" of her career. "I have met many people that I would not

otherwise meet who have taught me a variety of different things—perseverance, self-respect, optimism in the face of unthinkable circumstances, and simple human kindness," said Lieberman.

While learning these personal lessons from her pro bono work, Lieberman also gained valuable professional experience. For example, she worked closely with senior partners at Crowell during the proceedings. "Taking part in a case like this gives you unparalleled access to partners, especially those you might not otherwise meet," she said. "This also gives you the opportunity to show the partners what you are capable of and that you can handle a serious amount of responsibility."

Lieberman was able to hone her litigation skills during the case by conducting the direct examination of an expert witness at a hearing, "gaining trial and appellate skills, learning how to interact with the press, and becoming more attuned to how to relate to different people." She also valued being able to "experience something different."

Despite all of the valuable personal and professional lessons garnered from volunteering to represent a death row inmate, it is never easy. However, according to Lieberman, "Despite the ups and downs and victories and frustrations that a case like this necessarily dictates, I would not change a thing."

Justin Heather, a new member of the Steering Committee for the Death Penalty Representation Project and a lawyer with the Chicago office of Skadden, Arps, Slate, Meagher & Flom LLP, represents a Mississippi death row inmate referred to the firm by the Project in 2006. In March 2010, Heather and Frances Kao of Skadden Arps and Robert McDuff of Jackson, Mississippi, appeared on behalf of their client at a hearing on his federal habeas petition. Recently, the Chief Judge of the Northern District of Mississippi granted their client habeas relief and vacated his death sentence.

"There is nothing more rewarding in the practice of law than knowing that you played some part in saving another's life,"

Heather explained. "For years our client faced the prospect of a death sentence without the true guiding hand of legal counsel. As a result of the generosity of the firm and the lawyers who agreed to represent our client, he finally received the constitutionally guaranteed legal advice he should have received at trial, and his rights were vindicated."

Former ABA President H. Thomas Wells expressed a similar view when he said, "Nothing in the civil practice of law compares to the gritty reality of death row cases. . . . Representing death row inmates presents a challenging, and highly rewarding, opportunity to help those who need it most."

Since 1998, the Death Penalty Representation Project has worked with many young lawyers like Lieberman and Heather who are eager to play a role in ensuring that all persons facing a sentence of death have dedicated, qualified counsel. The Project is always recruiting volunteer attorneys, either as individuals or as firm teams. Those who cannot take on an entire case can work on amicus



briefs, certiorari petitions, and research projects. No criminal law experience is necessary.

All interested attorneys are encouraged to visit the Project's Web site at www.abanet.org/death-penalty or call (202) 662-1738 to learn more about a prisoner on death row who needs help and how to get involved.

Emily M. Williams is a staff attorney with the ABA Death Penalty Representation Project in Washington, D.C. She can be contacted at williams@staff.abanet.org.

NEXT STEPS

■ "Defending a Life-or-Death Case." (downloadable article from ABA Practice Essentials). PC # 53101003202PDFA10. 2006. Section of Litigation. Visit www.ababooks.org. Keyword search is by article title.