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LEADING LAWYERS  
IN AMERICA

INSIDE

BOIES & OLSON  
TEAM UP

SOUTH AFRICA'S  
JUSTICE DILEMMA

SKADDEN'S  
RISE TO THE TOP





## PAGE 62 ► THE LAWDRAAGON 500

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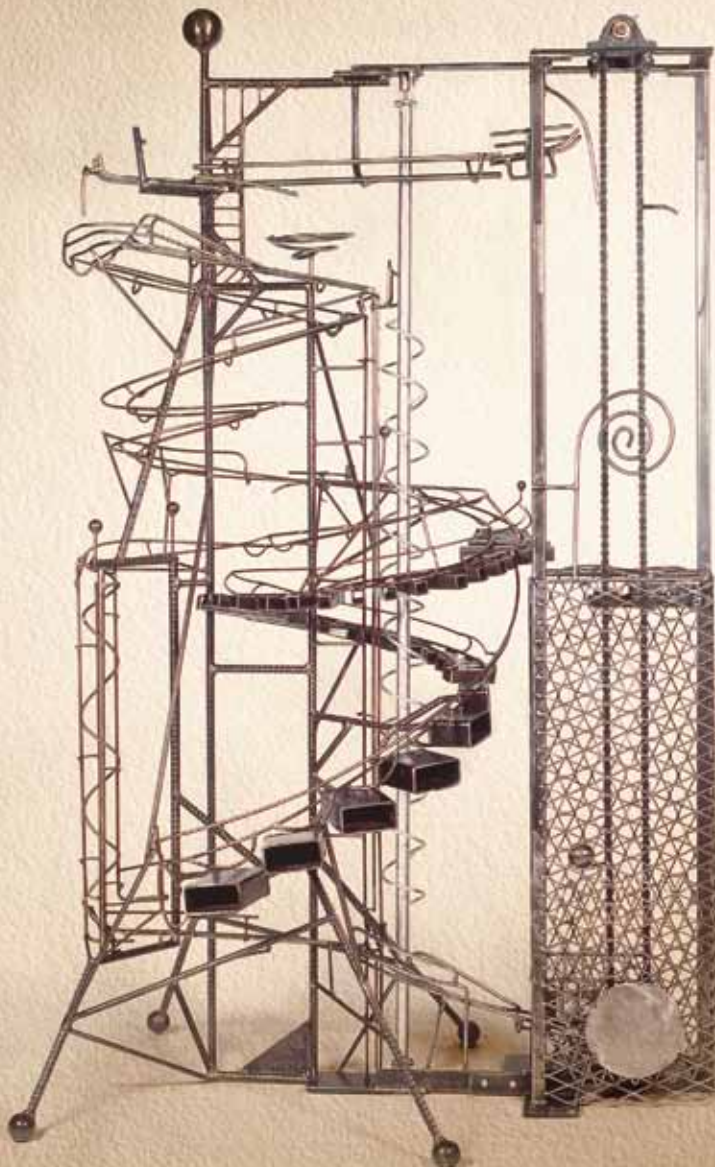
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### The Lawdragon 500

Now five years in, our guide – the most elite in the legal profession – is more impressive than ever. The 2010 Lawdragon 500 features the most interesting and diversely talented lawyers in the world, photographed in stunning portraits and featuring Q&As with:

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The best byproduct of unprecedented competition for the 500 guide is an amazing compilation of attorneys from the "finalists" stage who set the standard for excellence region by region.

BOX FOR COVER SPREAD, From left to right: John Mead, Gloria Santana, David Boies, Ted Olson, Brad Karp, Steven Yerrid, Russ Herman, Richard Marmaro, Anton Valukas, Elizabeth Cabraser, Kenneth Feinberg, Kathleen Sullivan, Harvey Miller, Mike McKool, Shawn Chapman Holley, Tom Demetrio.



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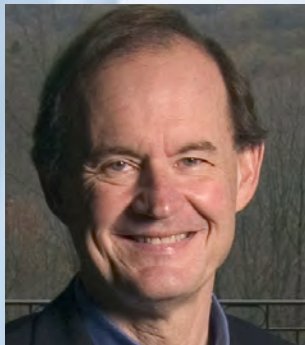
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## A NOTE FROM THE PUBLISHER AND EDITOR



**HIS MAGAZINE IS THE PRODUCT** of a very special journey started just over five years ago by a group of journalists who envisioned a new media company covering the law. To say there have been twists and turns and challenges unforeseen would understate the obvious. But here we are. This is our fifth annual Lawdragon 500 guide. We brought together top talent from throughout the U.S. to provide a startling new look at the nation's leading lawyers. They were photographed in Alabama and New Orleans, Los Angeles and Washington, D.C., Chicago and, of course, New York. The faces of the legal profession presented here are an apt metaphor for the new face of legal media authored by Lawdragon. Also included in our online version of this magazine is the Lawdragon 3000, those lawyers who are the perennial cream of the crop of the legal profession. The online version of the magazine contains links to attorney bios for our clients, who understand the value of their online footprint, which we expand through publishing their profiles and related content.

This year's guide to the legal profession features three other stories of which we are very proud. The first, the "Zen of Skadden," deconstructs one of the world's most successful law firms, and takes a look at the vision of its leader, Eric Friedman.

The second two pieces were motivated by the transition in the legal industry, which presented a good time to reflect on the nature of justice and the power of the law to transform the lives of ordinary citizens. We examine how David Boies and Ted Olson joined forces to defeat California's gay-marriage ban, and how victims of apartheid-era crimes are challenging the South African government's failure to prosecute past crimes. With the 500 guide weighted in recognition for traditional paid work by successful firms, these stories reflect our continuing interest in public-interest law and in expanding Lawdragon's reach across borders and legal themes.

We say this every year, and so far it's been proven true: The next year is shaping up to be an even more exciting time at Lawdragon.com, with a new website on its way and a few new projects we're not yet ready to reveal. But stay tuned. It's been a fun ride so far and we've only just begun.

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Superbly detailed—the car is a 1950 Jaguar XK 120, John May Speciale. Photo by Terry Ng

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*left to right: Karen Barth Menzies, Allan Davis, Kevin Calcagnie, Mark Robinson, Jeoffrey Robinson, Daniel Robinson*



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# *the* **R**omantics

*The California trial to legalize same-sex **marriage** was a **Scopes** trial redux, pitting **science** against **religion**. It also dramatized the defining **civil rights** battle of our time.*

by **Katrina Dewey**

Illustration by Shannon Freshwater

**T**he nation's most famous trial lawyer contemplated his foe, a man who had whipped public opinion into such a state that citizens passed a law requiring others to conduct themselves according to religious belief rather than scientific knowledge.

The threshing machine of a lawyer bore in on the man's beliefs, the depth of his knowledge and comprehension of their foundations. Far from lecterns and populist pulpits, the man was now confined to a witness stand, where his testimony laid bare that his faith in God and the teachings of the Bible were the reason children could not learn evolution.

"You have given considerable study to the Bible, haven't you?"

"Yes, sir, I have tried to," the witness replied.

"Well, we all know you have, we are not going to dispute that at all," said the lawyer. "But you have written and published articles almost weekly, and sometimes have made interpretations of various things?"

The witness was not a stupid man. If he acknowledged that he interpreted some biblical passages, he knew it would be hard to quarrel with an opposing interpretation.

"I would not say interpretations, ... but comments on the lesson."

And so the lawyer turned to the Old Testament. "Do you believe Joshua made the sun stand still?" he asked.

"I believe what the Bible says. I suppose you mean that the earth stood still?" the witness countered.

"I don't know," the lawyer responded. "I am talking about the Bible now."

"I accept the Bible absolutely," the witness said. "I believe it was inspired by the Almighty, and He may have used language that could be understood at that time instead of using language that could not be understood" until you were born.

"If the day was lengthened by stopping either the earth or the sun, it must have been the earth?"

"Well, I should say so," the exasperated witness sighed.

"... Have you ever pondered what would have happened to the earth if it had stood still?"

"No."

"You have not?" the lawyer asked.

"No; the God I believe in could have taken care of that," the witness retorted.

"Don't you know," the lawyer asked, "it would have been converted into a molten mass of matter?"

In 1925, Clarence Darrow defended John Scopes, a school-teacher charged in Dayton, Tenn., with teaching evolution, and thus violating the nation's first law to prohibit children from learning science. The Scopes Monkey trial was a show trial cooked up in Robinson's drugstore by businessmen and civic boosters hoping to strum up business for the local economy. The contest between Darrow and William Jennings Bryan, a failed presidential candidate whose later years were devoted to Florida land development and the spread of religious fundamentalism, became legendary, embossed in our public consciousness through "Inherit the Wind."

Its legend endures not so much because of its cinematic preservation, but because its conflict is that of the American people. Eighty-five years later, we are still torn between faith and knowledge, with many struggling for coexistence. Even today, 40 percent of Americans say they believe humans were created by God in the last 10,000 years. Fortunately, children are now allowed to learn that the earth is roughly 4.5 billion years old and the apes from which we evolved have been upright for around 6 million years.

That's how, on Jan. 25, 2010, I found myself watching as David Boies dismantled a man whose published thesis was in 19th century cabinetry, but whose professed expert field was the family, specifically the need for a father and a mother, as God intended. California voters had enshrined his beliefs into law.

THE CALIFORNIA TRIAL TO LEGALIZE SAME-SEX MARRIAGE, *Perry v. Schwarzenegger*, was, in many ways, *The State of Tennessee v. Scopes* redux. One was a criminal trial and one civil, one rendered a conviction and the other an historic equal rights decision. But each, ultimately, showed the romanticism of the law, and its ability to transcend populist will rooted in moral and religious beliefs. Not incidentally, each involved a law coerced by fundamental religious forces as necessary to protect children but that, as the trial showed, had no basis in fact.

"God's definition of marriage [would] be permanently erased in California" if we lost the battle for Proposition 8, Hak Shing William Tam testified to U.S. District Judge Vaughn Walker, who presided over the *Perry* trial in San Francisco federal court. Tam, one of five original proponents of Prop. 8 and the secretary of a coalition member, 1man1woman.net, was called as a hostile witness by the plaintiffs. He supported Prop. 8 because he feared same-sex marriage would erode traditional Asian family culture, increase child molestation and lead to the legalization of sex with children.

The campaign to pass Prop. 8 was nasty. Fearful of a rising tide of acceptance for gay civil rights in the courts and society, an umbrella group called Protect Marriage crocheted a





**Ted Olson (left) and David Boies talk with their clients, Sandra Stier and Kristin Perry, between court sessions.**

coalition of churches and their offshoots, like the Traditional Family Coalition, Focus on the Family and the California Family Council, to convince California voters that gay marriage would diminish heterosexual marriages, require schools to teach same-sex marriage, and foster pedophilia. One of the most effective strategies of the Protect Marriage campaign was its reliance on support from church pulpits to spread its message. The power of churchgoers in passing Prop. 8 cannot be overstated: 84 percent of those who attended church weekly voted for it; 83 percent of those who never attend church voted against it.

January 21, 2010. David Boies cross-examines Tam.

**Boies:** Okay. And you know that somebody from your organization had typed the words "Homosexuals are 12 times more likely to molest children," and put it on the Internet --

**Tam:** Yes.

**Boies:** -- correct? Now, do you believe that homosexuals are 12 times more likely to molest children? Do you believe that?

**Tam:** Yeah, based on the different literature that I've read.

**Boies:** Oh. And what literature have you read, sir, that says that?

**Tam:** Uhm, I've read what is posted here.

**Boies:** And what is it? Tell me what it is that you read.

**Tam:** I don't remember now.

**Boies:** Who -- who authored it?

**Tam:** Some from, apparently, academic papers.

**Boies:** What academic papers, sir?

**Tam:** I don't remember.

**Boies:** Well, do you remember any of them?

**Tam:** No.

**Boies:** Was it in a -- a journal, or was it in a book that you read?

**Tam:** Some could be news. Some could be from journals.

**Boies:** It could be. I'm not asking you what it could be. You told me you'd read something that said that homosexuals were 12 times more likely to molest children. You told me that, right?

**Tam:** Yes.

**Boies:** Okay. Now, I'm asking you what you read. Was it a book?

**Tam:** I don't remember.

**Boies:** Was it an article?

**Tam:** I don't remember.

**Boies:** Who wrote it?



**Bruce Ivie (left) and David Bowers have attended each court hearing of the six-year legal saga of gay marriage in California.**

**Tam:** I don't know.

GAY RIGHTS IS THE CIVIL RIGHTS BATTLE OF OUR TIME. It has worked its way in, around and through the courts for more than three decades. The lodestar of progress was the decriminalization of consensual sodomy, as *Bowers v. Hardwick* of 1985 yielded to *Lawrence v. Texas* of 2003. Criminalization of sodomy (or deviant sex, as it was called) had laid the foundation for stereotypes that gays and lesbians were criminals. The U.S. Supreme Court upheld that view in *Bowers*, finding a state interest in moral disapprobation of homosexual conduct. Justice John Paul Stevens dissented, writing, that "[I]ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment." He would have equally protected the intimacies of same-sex couples.

Eighteen years later, the Supreme Court agreed with Stevens and overturned *Bowers* in the *Lawrence* case, which again involved state laws forbidding sexual conduct between homosexuals. Justice Anthony Kennedy wrote for the 6-3 court, which extended the liberty protected by the Due Process Clause of the 14th Amendment to intimate consensual sexual conduct between homosexuals. Two interesting opinions accompanied Kennedy's. Justice Sandra Day O'Connor would have struck down the laws as an equal protection violation, while Justice Antonin Scalia criticized the majority for signing on to "the homosexual agenda."

"If moral disapprobation of homosexual conduct is 'no legitimate state interest' for purposes of proscribing that conduct...what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising 'the liberty protected by the Constitution'?" Scalia wrote in dissent, in an opinion joined by Chief Justice Rehnquist. "Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry."

But intimate sexual conduct was only one front of the battle for gay

rights. The workplace, military, domestic relations, AIDS and adoption were all the focus of efforts to expand protections and equal rights beginning in the 1970s. Gay marriage was an issue on the far horizon. A few same-sex couples sought marriage licenses in those early days, but they were routinely denied; pie-in-the-sky lawsuits faced the same fate.

The discussion changed in 1993, when three same-sex couples won an equal rights ruling from the Hawaii Supreme Court, *Baehr v. Lewin*, that a state needed a compelling interest to prohibit same-sex marriage. The *Baehr* case was sent back to trial court to determine whether the state could show a legally valid reason for the prohibition. On Sept. 10, 1996, Judge Kevin S.C. Chang opened the first substantive trial to determine whether same-sex couples were denied equal protection by a prohibition on same-sex marriage. The state defended *Baehr*, claiming five compelling governmental interests in the traditional definition of marriage, including the health and welfare of children, and the need to foster procreation in traditional heterosexual marriages. In December, Chang ruled against the state and enjoined Hawaii from refusing to issue licenses to same-sex couples.

Even as Judge Chang prepared to hear the case, a push-me



pull-you of efforts to turn back same-sex marriage overcame the nation. A congressman from Georgia introduced a measure in May of that year that became known as the Defense of Marriage Act, limiting marriage to one man and one woman. It was legislatively fast-tracked, passing the House in July, the Senate in September, and was signed into law by President Bill Clinton on Sept. 21, 1995. Hawaiians passed Amendment 2, restricting marriage to straight couples, in 1998, effectively ending the *Baehr* litigation. Voters throughout the nation took their turn, with 31 states confining marriage to opposite-sex couples. California voters passed the first of two such prohibitions, Proposition 22, in 2000.

And still, knowledge grinds forward. It may have been inevitable that San Francisco would produce a strikingly handsome and successful young wine merchant who would make his way onto the Board of Supervisors, and then into the mayor's office. Gavin Newsom was sworn in as mayor of San Francisco on Jan. 3, 2004, and wasted no time with an audacious, bold stroke. On Feb. 12, with Valentine's Day looming, he instructed the county clerk to issue marriage licenses to same-sex couples. Newsom's decision electrified gay and lesbian couples, who rushed to San Francisco to take part in the revolution.

The first to receive their marriage license was an 80-year old lesbian couple together more than 50 years; one of them had been fearful that marrying would undermine women's rights. The 79th couple was Bruce Ivie and David Bowers, silver haired after 24 years together. They would become the quiet sentinels of this misunderstood revolution, dutifully attending each court hearing of the six-year saga while enduring a ping-pong marriage, in which they have married, been unmarried, then allowed to wed again, though their same-sex friends cannot.

If you're now thinking "a straight couple would never tolerate that," you may have a point.

BRUCE AND DAVID WERE SITTING IN A DARKENED hallway outside the 17th floor courtroom of San Francisco Federal Judge Vaughn Walker at 6 a.m. on Jan. 11. They could barely sleep the night before, eager for opening statements in *Perry v. Schwarzenegger*. They sat side by side on a wooden bench, under historic photos of old San Francisco as we waited more than three hours for the few seats available for the public in the courtroom. Their quiet dignity was transformative.

I was assigned a seat behind them in court, and listened to the two plaintiffs couples, Kristin Perry and Sandra Stier, and Paul Katami and Jeff Zarrillo, testify about their love for one another and their desire to wed. A marriage cynic, I wondered if this was a case of being careful what you ask for.

Bruce and David held one another tight, barely moving a muscle as Stier, a pretty soccer mom with four children,

testified that the Prop. 8 campaign tried to educate people "that there was a great evil to be feared and that evil must be stopped and that evil is us, I guess." As the no-nonsense Perry talked about her love for Stier, whom she considers the "sparkliest person" she ever met, I was oddly transfixed by Bruce's ears, which have come to be alighted like little butterflies on his head swollen by HIV drugs. And by David's quiet way of reaching over to touch Bruce's knee as the handsome, young Katami talked about the foundation marriage would provide he and Zarrillo to raise a family, since his timeline has always been "marriage first, then family."

Intellectually, I had come to the trial fully supportive of gay marriage as a simple issue of equality and dignity. But, a lifetime of images of happy brides and grooms had left me with stereotypes of what a marriage is and little true understanding of its nature. Sitting with Bruce and David, I learned from a trial presentation notable for its history and power, and most of all for its humanity.

## *The Perry trial was a coming together of long brewing political, societal and legal forces accelerated by the addition of Olson and Boies – who believe in Justice with a capital J and Lawyers with a capital L.*

The 17th floor became our home for most of January 2010. We would arrive by 6 a.m. and often leave at 5 p.m., sometimes not straying to the cafeteria at lunch for fear of losing our place in line. Professional caterers, Bruce and David brought food for us to share.

Through the doors of Courtroom 6, we learned about love and marriage; God and procreation; hatred and discrimination. We learned that most of what we thought we knew about marriage was wrong. We learned, too, that a lot of what we know of love and family is just about right, if not sufficiently inclusive.

LIKE THE 1960S, THIS LEGAL LOVE-IN DIDN'T JUST leap unformed from Lesbos' head. It was a coming together of long-brewing political, societal and legal forces accelerated tremendously by the addition of Olson and Boies, bringing a much broader legitimacy to the view that gay rights are civil rights, and civil rights are not liberal nor conservative. They are American.

Just a month after same-sex marriage began in California in 2004, the California Supreme Court halted it, saying Newsom had overreached. The court invalidated the 4,000 marriages that had been conducted, but invited a challenge to same-sex marriage on equal protection grounds. That decision precipitated four years of litigation, in which the San Francisco city attorney's office and the public interest

community dueling opponents of gay marriage, initially led by the Prop. 22 Legal Defense and Education Fund, the Campaign for California Families and joined by then Attorney General William Lockyer. The litigation culminated in the historic California Supreme Court decision in *In re Marriage Cases* holding Prop. 22 unconstitutional. Chief Justice Ronald George led the court in becoming the first to hold that sexual orientation is a protected class, like race and gender, and to apply strict scrutiny under the Equal Protection Clause of the California Constitution. “Equal respect and dignity” of marriage is a “basic civil right” that cannot be withheld from same-sex couples, he wrote.

Same-sex marriages resumed on June 17, 2008, with more than 18,000 same-sex couples saying “I do.” On Nov. 4, voters said “I don’t,” with 52 percent casting their ballots for Prop. 8, adding a new provision to the California Constitution, that “Only marriage between a man and a woman is valid or recognized in California.”

San Francisco and the public interest community sued again, but after five years of battling on equal protection claims, they switched legal tactics. Instead of continuing a constitutional battle, the ACLU, Lambda Legal, the National Center for Lesbian Rights, GLAD and the San Francisco city attorney’s office challenged Prop. 8 strictly on technical grounds, arguing that Prop. 8 was a procedural revision rather than an amendment, and thus should be voided because it needed the approval of two-thirds of the California legislature.

The case, *Strauss v. Horton*, was heard directly in the California Supreme Court, which rendered its decision on May 26, 2009. With only Justice Carlos Moreno dissenting, the court upheld Prop. 8, finding voters could lawfully take away fundamental rights through the initiative process. “Proposition 8 must be understood as creating a limited exception to the state equal protection clause,” wrote Justice Kathryn Mickle Werdegar for the majority. As a small concession, the court left intact 18,000 same-sex marriages.

While supporters in San Francisco dealt with the shock of again losing the right to gay marriage, a press conference was about to be held in Los Angeles. And it was a game changer.

“Creating a second class of citizens is discrimination, plain and simple.” Ted Olson

“Ted and I, as everybody knows, have been on different sides in court on a couple of issues.” David Boies

The tale of how Olson and Boies came to lead the broadest challenge made on behalf of gay rights is a tale straight from Hollywood. The Polo Lounge, to be precise. There, in the post-mortem days of Prop. 8, a big lawsuit was conceived by three people who knew how to think Big: Hollywood publicist

Chad Griffin and director Rob Reiner and his wife, Michelle. And, like the discovery of Lana Turner at Schwab’s drugstore, a former sister-in-law of Ted Olson stopped by, and *Perry* was born.

It’s hard to say what Protect Marriage supporters thought would happen once Prop. 8 passed. Certainly, they anticipated a legal challenge from the same battle-hardened public interest community that had been waging a glacial, state-by-state ground war inspired by *Lawrence* in hopes of transforming public opinion and ultimately winning the right to same-sex marriage.

They could not have foreseen two lawyers who would enter the battle and transform the legal strategy for gay marriage – elevating it from splinter cause to civil right. David Boies and Ted Olson. The Butch and Sundance of the U.S. legal profession draw headlines as polar opposites after serving as opponents in *Bush v. Gore*, the legendary vote counting battle in which Olson bested Boies before a friendly Supreme Court. But they share a foundation miles deep. Born in Illinois, both spent their formative years in California and reflect the rough-hewn individualism and embrace of unbridled hopes and Golden dreams. Both came of age in the law in the late 1960s, Boies in New York and Olson in Washington, D.C. And both are sufficiently seasoned in the law to be post-ideology: Olson, 70, the conservative is actually more of a libertarian, and Boies, 69, a true liberal, is made of steel.

Mostly, they are Romantics. Not about their opponents, whom they will joyously slay. But, about what it is they do in this system we call Justice. They believe in Justice with a capital J and Lawyers with a capital L, who aim for a higher law than the natural law of our baser selves. They laugh loud, love large, and have marrow in their bones. Each has married and divorced, and come to cherish love, loss, family and life’s whole damn Valentine more fully than their clients are permitted.

Olson’s role in the litigation is one of those star-crossed moments, born in part of the tragic death of his wife on 9/11 in the plane that hit the Pentagon and the springtime that had returned with his new wife, Lady Booth, a former Simpson Thacher tax attorney from Kentucky. That was the Olson who signed on without hesitation to lend his appellate and conservative cred to same-sex marriage. He tapped as his field strategist his Gibson Dunn partner, Ted Bontros, who has overturned more than a billion dollars in damages on appeal for clients including Ford Motor Co. and the Wall Street Journal, and is defending Wal-Mart in the largest employment class action ever. The organizer, Chad Griffin, meanwhile, formed a new public interest group to fund the litigation, the American Foundation for Equal Rights.

In the months leading up to the filing, Olson asked Boies to join the team. David Boies is widely considered the leading trial lawyer in America today, having made his name as a partner at the nation’s quintessential firm, Cravath, Swaine & Moore, before leaving to form Boies, Schiller & Flexner,



the most powerful litigation turbine in America. In addition to adding the nation's most deadly cross-examination expert to the *Perry* team, Boies' presence quieted the concerns of some in the public interest community, who were openly skeptical of an effort headed by Olson, who had defended Ronald Reagan in Iran-Contra and secured the White House for George W. Bush.

The lawyers drafted the *Perry* complaint as a due process and equal protection challenge, telling the story of gays in California, the discrimination and political prickliness they face, and the toll of that discrimination in mental and physical health. It also details the baseless stereotypes and church-based coalition building used by the campaign to pass Prop. 8 and asks the Court to "construe Prop. 8 and enter a declaratory judgment stating that this law and any other California law that bars same-sex marriage violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment...."

One other thing was interesting, as the *Perry* team announced their lawsuit on May 26, 2009, from the stage of the Biltmore Hotel in Los Angeles.

It had actually been filed four days earlier by a Gibson Dunn associate, just four years out of Boalt Hall. Enrique Monagas had very specific instructions: file at the very last moment on the Friday before Memorial Day weekend, and try to be unnoticed.

The timing of the filing was no accident. The *Strauss* decision was expected on May 26, and many suspected the gay-

marriage cause would lose its claim that Prop. 8 had failed because of technical construction.

That was not, at all, the type of claim the *Perry* team had in mind. They would swing for the fence on the biggest equal protection claim yet made on behalf of gays and lesbians, the *Brown v. Board of Education* of gay rights. And from the outset, Olson and Boies were clear they had one goal in mind: A U.S. Supreme Court victory recognizing the right of same-sex couples to wed.

It was hard for Monagas to walk out of the federal courthouse without jumping in the air and levitating once the clerk returned the time stamped (3:25 p.m.) complaint and the designation of the judge who would handle the case.

VRW.

VAUGHN R. WALKER, THE CHIEF JUDGE OF THE SAN Francisco Federal Court, is an elegant, silver-haired Reagan appointee of flinty and witty intelligence. Like Boies and Olson, he was born in Illinois, a small, rural town called Watseka, in the early 1940s. His nomination to the federal bench by Ronald Reagan in 1987 was stalled at the Senate Judiciary Committee, which considered him insensitive to gays because he had represented the U.S. Olympic Committee against the right of the Gay Olympics to use its name. When renominated by George H.W. Bush in 1989, he was unanimously confirmed.

Also, he happens to be gay and from an era when one's sexual

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identity needed to remain private if you were not straight and wanted to make your way to the top of a big corporate law firm (Pillsbury) and the federal bench.

That Walker suffers no fools was never in doubt. Among the most important questions to be answered was who would defend the popular but legally distasteful Proposition 8. The official defendants, including then Gov. Arnold Schwarzenegger and Attorney General Jerry Brown wanted nothing to do with the trial. Brown had repeatedly told courts that he believes same-sex couples are constitutionally entitled to wed. He told Walker the same thing, but took it a significant step beyond, reaching back to the racial discrimination of 1964 to frame the issue of same-sex marriage in historic civil rights terms.

“The United States Constitution is the ‘supreme law of the land.’ ... Taking from same-sex couples the right to civil marriage that they had previously possessed under California’s Constitution cannot be squared with guarantees of the Fourteenth Amendment,” Brown wrote. “Accordingly, the Attorney General answers the Complaint consistent with his duty to uphold the United States Constitution, as Attorney General Thomas C. Lynch did when he argued that Proposition 14, passed by the California voters in 1964, was incompatible with the Federal Constitution.”

Those who missed the early 1960s in California may be unaware of the racial divides already tugging at the diverse populace. The clashes were particularly acute in housing, with entire communities dedicated to keeping out minorities of all hues. When California’s legislature passed a law in 1963 banning discrimination in the sale and lease of real property, voters rebelled and reinstated discrimination through Prop. 14. Brown’s father, then governor, and Attorney General Thomas Lynch, defied the voters, and brought litigation resulting in a ruling striking down housing discrimination, from the California Supreme Court. *Reitman v. Mulkey* held that Prop. 14 was an unconstitutional violation of state equal protection and due process provisions. The U.S. Supreme Court upheld that decision, finding the Fourteenth Amendment trumps discriminatory state law provisions, including those in initiatives. Brown’s father paid a heavy price for his principles, losing his re-election campaign to a young actor who supported those laws, Ronald Reagan.

Because Brown declined to defend Prop. 8, Walker allowed Protect Marriage to intervene. He declined the bid by public interest organizations to participate on the plaintiffs side, allowing only the San Francisco city attorney’s office a seat on their claims of economic harm. Walker sought testimony on a dozen topics – the history of discrimination against gays and lesbians, their political power, the abilities of same-sex couples as parents versus opposite-sex ones – to aid his assessment on the legal standard to apply to the ban on same-sex marriage.

Like Judge Chang in Hawaii 14 years earlier, Walker was seeking the compelling government interest that could justify

denying same-sex couples the right to marriage.

January 11, 2010. Opening Statements.

**TED OLSON:** Thank you, Your Honor. This case is about marriage and equality. Plaintiffs are being denied both the right to marry and the right to equality under the law. The Supreme Court of the United States has repeatedly described the right to marriage as one of the most vital personal rights essential to the orderly pursuit of happiness, a basic civil right, a component of the constitutional rights to liberty, privacy, association, an intimate choice, an expression of emotional support and public commitment, the exercise of spiritual unity, and the fulfillment of one’s self. In short, in the words of the highest court in the land, marriage is the most important relation in life, and of fundamental importance for all individuals.

**JUDGE VAUGHN WALKER:** Now, does the right to marry, as secured by the Constitution, mean the right to have a marriage license issued by the state?

**OLSON:** Well, to the extent that the state asserts the right to regulate marriage, and it utilizes the form of a license to do so, I would think that would follow.

**WALKER:** Why?

Walker defined the trial from the start, breaking down the broad, seemingly lofty notion of marriage into its component parts so he could analyze it as a value and a right and from the perspective of the individual and the state. As Olson warmed to his opening statement, Walker hypothesized whether the state could simply get out of the business of issuing marriage licenses altogether. Olson acknowledged that, yes, it probably could, returning to his theme: the Supreme Court has recognized marriage is central to American life and of benefit to married couples, so denial of that benefit to a class of people, specifically gays and lesbians, is unconstitutional discrimination.

Walker allowed Charles Cooper, the attorney for Protect Marriage, just a smidgen more time before teasing out the parallels of Prop. 8 to anti-miscegenation laws that banned interracial marriage.

**CHARLES COOPER:** Now, against this backdrop the support of Californians, not once in passage of Proposition 8, but twice re-



A black and white portrait of a middle-aged man with glasses, wearing a dark pinstripe suit, white shirt, and patterned tie. He has a serious expression and is looking slightly to the right. The background is a plain, light-colored wall.

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**The Prop. 8 campaigns and court hearings in California drew activists from both sides of the gay-marriage debate.**

cently in the prior passage of Proposition 22, bespeaks not ill-will or animosity toward gays and lesbians, but, rather, a special regard for this venerable institution. Rabbi Michael Lerner, a staunch supporter of same-sex marriage, has said this: "The fact is there are millions of Americans who believe in equal rights for gays and lesbians, but draw the line at marriage."

Countless people can hear themselves described by these words, your Honor. Among those who have drawn that line is President Obama, who said this during his presidential campaign: "I believe that civil unions should include the same legal rights that accompany a marriage license. However, I do not support gay marriage. Marriage has religious and social connotations and I consider marriage to be between a man and a woman." To be sure, your Honor, traditional marriage, as President Obama noted, has ancient and powerful religious connotations,

as Mr. Olson also mentioned. And it is true, that Proposition 8 was actively and vocally supported by many from the faith community, although a substantial number --

**WALKER:** Mr. Olson made the point if the President's parents had been in Virginia at the time of his birth, their marriage would have been unlawful. That indicates that there is quite a change in the understanding of people's entitlement to enter into the institution of marriage. And so his argument here is that we've had a similar evolution or change in the understanding with respect to people of the same sex entering into the marital institution, isn't that correct?

Cooper, of Cooper & Kirk, is a respected member of the D.C. bar, who followed Olson as U.S. Assistant Attorney General for the Office of Legal Counsel under Ronald Reagan. But his mien in defending Prop. 8 seemed to follow the wisdom of Snoopy: When you don't have the facts, argue the law. When you don't have the law, argue the facts. When you have neither, kick the bench.

The trial of *Perry v. Schwarzenegger* was Waterloo for

opponents of same-sex marriage. While the alchemy of a trial is a mystery for the ages, its calculus is rather simple. If the plaintiff presents overwhelming and credible proof, and the defense none, the plaintiffs win. That calculation is multiplied in equal protection cases, which arose following the Civil War as Southern states sought to continue discrimination with local “Black Codes,” erasing the rights extended to racial minorities. If a law discriminates against a group of people, the government must show a rational reason for that discrimination; if a law discriminates a protected class of people, for example minorities or women, the judge will apply strict scrutiny and require the state to show a compelling governmental interest. Most famously, in *Brown v. Board of Education*, the U.S. Supreme Court had found school segregation laws unconstitutional under the Equal Protection Clause, finding that having one set of schools for black children and another for white was “inherently unequal.”

The *Perry* lawyers presented an overwhelming case of the equivalence of opposite-sex and same-sex couples, etched with personal stories of love, commitment and discrimination experienced by the plaintiffs. They framed the case with the harm suffered when same-sex marriage was disallowed, then brought the case home with expert testimony from nine scholars on the history and purpose of marriage; the equivalence of same-sex couples to opposite-sex couples in raising children; and the stereotypes the Prop. 8 religious backers preyed on to win the measure’s passage.

We listened with rapt attention to historian Nancy Cott, a professor of American history at Harvard University, who holds a Ph.D. from Brandeis, and has published eight books, including “Public Vows: A History of Marriage in the United States.”

“Marriage,” she testified, is a “couple’s choice to live with each other, to remain committed to one another and to form a household based on their own feelings about one another, and their agreement to join in an economic partnership and support one another in terms of the material needs of life.” She explained that marriage in the U.S. has always been a secular institution that the government regulates to facilitate stable households. It has also, she noted, changed as an institution along with society as miscegenation laws fell and women gained equal rights.

Stier’s mother enfolded one of her grandsons as Prof. Michael Lamb testified that all evidence shows children raised by gay or lesbian parents are as likely to be well adjusted as those raised by opposite-sex parents. In fact, he noted, the 38,000 California children now being raised in same-sex households are, if anything, likely to have slightly better outcomes than those raised in opposite-sex homes because homosexuals can’t accidentally get pregnant. Lamb, too, was a litany of credentials: a Yale Ph.D., he is head of the Cambridge Department of Social and Developmental Psychology and an expert on the developmental psychology of children, including those raised by gay and lesbian parents. He previously

headed the section on social and emotional development of the National Institute of Child Health and Human Development in Washington, D.C. for 17 years; he has published 500 articles, edited 40 books and reviews 100 articles a year.

And, if the best offense can be a spirited defense, Protect Marriage at least took the field. David Thompson of Cooper & Kirk, for example, was an especially obstinate cross-examiner, asking repeatedly about studies that seemed to show opposite-sex married couples did a better job raising children. We leaned forward in our seats awaiting the obvious flaw in his analysis: the studies compared opposite-sex married couples to single parent households and step families; same-sex couples were not studied.

One of the most revealing parts of the trial was the plaintiff’s portrayal of the inner workings of the Prop. 8 campaign, which repackaged and sold through churches its discriminatory beliefs about homosexuals in a Grimm fairytale of sexual liberation - that gays would adopt or otherwise have children to bring them into their homes and harm them, with marriage somehow the sweets in that tale. But there has never been any evidence homosexuals pose a threat to children, George Chauncey, a professor of history and American studies at Yale, testified. Gary Segura, a political scientist, detailed the effective targeting of Protect Marriage’s vote and fundraising efforts toward churches and religion. Segura is an expert on the political power or powerlessness of minority groups in the U.S. and gays and lesbians in particular, and a professor of political science at Stanford University, where he co-heads the American National Elections Studies Center.

The defense presented only one rationale to prohibit same-sex couples from marrying: procreation. Specifically, the need of society to “channel” the procreative function of men and women into opposite-sex marriage to facilitate stable families. Because gays and lesbians can’t naturally channel, Cooper claimed, they are somehow disqualified from marriage. This despite the fact that courts have recognized the right of the elderly, mentally disabled, sterile and prisoners to wed.

**COOPER:** Your Honor, ... the purpose of the institution of marriage, the central purpose, is to promote procreation and to channel narrowly procreative sexual activity between men and women into stable enduring unions for the purpose -

**WALKER:** Is that the only purpose of marriage?

**COOPER:** Your Honor, it is the central and, we would submit, defining purpose of marriage. It is the -- it is the basis on which and the reason on which marriage as an institution has been universal across societies and cultures throughout history;



two, because it is a pro-child societal institution. The evidence will show --

**WALKER:** Where do the other values associated with marriage come in; companionship, support?

For all the Sturm und Drang about the will of the voters and activist judges, Protect Marriage mustered just two witnesses on Prop. 8's behalf. Cooper shelved four witnesses who claimed they feared for their safety if the trial was broadcast (although Boies' handling of the two who did appear belied the more probable fear of death by cross-examination.)

As I listened to Kenneth Miller and David Blankenhorn, I thought of the four witnesses offered by Scopes' prosecutors in their hour-long presentation: the school superintendent, the man who sold *Hunter's Biology* (the offending text) and two students, who testified they were not harmed by learning evolution.

Miller and Blankenhorn both performed poorly under cross-examination. Take Miller, for example. The Claremont McKenna professor specializes in political power, and testified one morning that gays and lesbians have substantial political power in California. He saw evidence of that in support from entertainment, religious and governmental communities and the defeat of two initiatives: one would have allowed termination of public school teachers for supporting homosexuality and the other would have quarantined those with HIV. I sat with Boies during lunch as he prepared to cross-examine the professor. He ate two pieces of apple pie and a banana, returned to court and destroyed Miller with a cross-examination that illumined the fact Miller had not done most of his own research, and had relied instead on crib notes from defense counsel. The most notable part of the exchange was that for 17 minutes, not a word was spoken. We sat quietly, watching the lauded expert furrow his brow and circle with great intent those items he actually discovered himself, unaware that what we noted most were those he did not.

And then there was Blankenhorn, the last hope of showing a compelling governmental interest. Blankenhorn has a B.A. from Harvard and an M.A. in comparative social history from the University of Warwick (the site of his cabinetmaking piece). Blankenhorn holds well-intentioned beliefs, forged as an inner-city counselor, where the Southerner was introduced to fatherless homes. He made the lay study of family and marriage his life's work, authoring two books, "Fatherless America: Confronting Our Most Urgent Social Problem" and "The Future of Marriage."

Blankenhorn was an evasive witness, repeatedly refusing to answer direct questions from Boies about the basis of his belief that same-sex couples should not be allowed to wed. "I have just read articles and had conversations with people, and tried to be an informed person ... But that is really the extent of it. I haven't developed a methodology or a set of

expert, you know, findings about the topic ...," he testified.

Despite that, he offered as his definition of marriage "a socially-approved sexual relationship between a man and a woman" whose primary purpose is to "regulate filiation." Boies extracted the problem faced by Protect Marriage in building a rational government interest on what is essentially a religious belief when he asked Blankenhorn about his three rules of marriage: the rule of opposites (man/woman); the rule of two; and the rule of sex. Blankenhorn believes, for example, a polygamous man married sequentially to five wives does not violate the rule of two, because each marriage has just two people.

**BOIES:** ... Is it your view that that man who has married one wife, and then another wife, and then another wife, and then another wife, and then another wife, and now has five wives, and they are all his wives at the same time, that that marriage is consistent with your rule of two? And that is a yes or no question.

**BLANKENHORN:** I concur with Bronislaw Malinowski, and others, who say that that is consistent with the two rule of marriage.

**BOIES:** Okay. Now, let me go on to your third essential structure of the institution of marriage. And that is sex.

**BLANKENHORN:** That's a good subject.

**BOIES:** It is. And I don't want to fall into the trap of making sex boring.  
(Laughter)

**BLANKENHORN:** Maybe together we can do that.  
(Laughter)  
No insinuation.

And so it went, until on the 12th day, the defense rested.

IT WAS 5:30 A.M. ON JUNE 16 WHEN I GOT OUT OF A CAB outside the San Francisco federal courthouse. A few news vans were already in place, when I walked to the entrance, eager to see Bruce and David and the others with whom I had watched the trial. There was drama, of course, as we talked our way past security and up to our favorite hallway, where we lined up against the wall just like old times. Today would be different, though, as rallies would be held outside to commemorate closing arguments. The security officer tending the early morning crowd handed out blue tape to the first 12 of us in line, later asking us to write our number; mine was seven.

We were quiet as church mice as Olson and Cooper gave their closing statements, making their final plea for either a

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new era of civil rights, in which equal protection applies to gays and lesbians, or a return to the dictates of the majority on this most personal of issues. And while Cooper predicted a Biblical vision of the end of days should same-sex marriage be allowed, Olson offered a patriotic vision of a better America in which everyone could love equally.

**COOPER:** So the first question, your Honor, that has to be asked is: Why has marriage been so universally defined by virtually all societies at all times in human history as an exclusively opposite-sex institution? It is because marriage serves a societal purpose that is equally ubiquitous. Indeed, a purpose that makes marriage, in the often repeated formulation of the Supreme Court of the United States, fundamental to the very existence and survival of the human race. ... And the historical record leaves no doubt, your Honor, none whatever, that the central purpose of marriage in virtually all societies and at all times has been to channel potentially procreative sexual relationships into enduring stable unions to increase the likelihood that any offspring will be raised by the man and woman who brought them into the world.

**WALKER:** ... Why does the state regulate [marriage]? Why doesn't it leave it entirely up to private contract?

**COOPER:** Your Honor, again, because the marital relationship is fundamental to the existence and survival of the race. Without the marital relationship, your Honor, society would come to an end.

And then there was Ted Olson, who that afternoon unleashed a closing argument for the ages. He deftly combed through the layers of issues any appellate review would entail, and pinned them securely to the broad framework with which he and Boies had started the case those many months ago.

**OLSON:** [Y]ou have to have a reason. And you have to have a reason that's real. Not a post hoc justification. Not speculation. Not built on stereotypes. And not hypothetical. That's what the Supreme Court decisions tell us. We don't have that here. We have a decision that takes -- and there isn't any question -- a group of people who have been victims of discrimination, who are a discrete minority, who have identifiable characteristics, their sexual orientation, and we want to foreclose them from participat-



**Proposition 8 passed in the November 2008 state elections with about 52 percent of the vote.**

ing in the most fundamental relationship in life. Now, rational basis, strict scrutiny, or some kind of intermediate scrutiny tells you those are basic facts. You are discriminating against a group of people. You are causing them harm. You are excluding them from an important part of life. And you have to have a good reason for that.

And I submit, at the end of the day, "I don't know" and "I don't have to put any evidence," with all due respect to Mr. Cooper, does not cut it. It does not cut it when you are taking away the constitutional rights, basic human rights and human decency from a large group of individuals, and you don't know why they are a threat to your definition of a particular institution.

And one more time, Olson returned to the bat he believes will drive them home in the Supreme Court: the 14 Supreme Court decisions recognizing the elemental nature of marriage in human relationships.

You cannot now, in the face of all those decisions by the United States Supreme Court, say to these individuals, "We are

going to take away the constitutional right to liberty, privacy, association, and sexual intimacy that we tell you that you have, and then we will now use that as a basis for not allowing you the freedom to marry."

That is not acceptable. It's not acceptable under our Constitution.

Olson's words rang loud as we filed out of Walker's court for the last time. The air of having experienced history was upon us as Walker took a moment to commend the lawyers on a case well tried. We knew there would be a month or two to wait, as Walker would surely construct his ruling tightly to survive the appellate onslaught almost certain to come.

And on Aug. 12, he made the ruling that seemed a foregone conclusion from the trial we had seen.

"Proposition 8 fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license. Indeed, the evidence shows Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite-sex couples are superior to same-sex couples. Because California has no interest in discriminating against gay men and lesbians, and because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages



on an equal basis, the court concludes that Proposition 8 is unconstitutional.”

Walker’s 138-page decision made clear two things about the trial. First, the *Perry* plaintiffs had put on an unprecedented case of vast intellectual reach that demonstrated conclusively that “moral and religious views form the only basis for a belief that same-sex couples are different from opposite-sex couples.” And second, the defense barely came to the bar with a presentation “dwarfed” by the plaintiffs.

He recognized the tremendous deference due voters, noting they are seldom outweighed by scholars. But, he said, at some juncture, belief must yield to evidence – particularly when the beliefs “enact into law classifications of persons. Conjecture, speculation and fears are not enough. Still less will the moral disapprobation of a group or class of citizens suffice, no matter how large the majority that shares that view.

“The evidence demonstrated beyond serious reckoning that Proposition 8 finds support only in such disapproval. As such, Proposition 8 is beyond the constitutional reach of the voters or their representatives.”

WE DON’T KNOW WHAT THE FUTURE PORTENDS FOR *Perry*. *Perry* itself is currently on the ropes in the 9th Circuit, whose most liberal judge led a panel that deferred to the California Supreme Court the issue of whether Walker should have allowed Protect Marriage to defend Prop. 8. In the last several years, gay marriage has become legal in five states and the District of Columbia; in one of those, Iowa, voters ejected three justices from their highest court for approving same-sex marriage.

Still, whether it takes two years or 20, I believe the case presented by Olson and Boies will result in marriage equality throughout the United States. We are, after all, a country founded on religious tolerance and equality. And when populist forces overwhelm reasoned debate, we have courts and lawyers to right the scales.

William Jennings Bryan died in his sleep five days after his examination by Darrow, which is recounted from Edward J. Larson’s *Summer for the Gods* and the University of Missouri Kansas City’s transcripts of the trial. And while the notion of a fundamentalist leader being cross-examined about his beliefs – where Cain got his wife, or how snakes moved about before God commanded them to crawl on their bellies for eternity – is quaint and amusing, it is also more honest than the case presented by Protect Marriage in San Francisco. The authors of Prop. 8 did not appear in that courtroom and were not willing to be cross-examined on their beliefs, despite the harm those beliefs cause people who want nothing more than to marry the person they love.

Far from its cinematic preservation, the Scopes case itself reached an odd result. Judge John Raulston did not allow the

Scopes defense to present live experts on the issue of creationism versus evolution, permitting only written declarations of theologians, anthropologists and zoologists to be filed with the court. The day after Bryan’s dramatic testimony, given before 3,000 viewers assembled in a park across from the courthouse, the judge expunged it from the record, saying further examination could shed no further light on any issue that could be taken up on appeal. “[T]he issue now is whether or not Mr. Scopes taught that man descended from a lower order of animals,” Raulston said.

Darrow knew his hour was at hand, and asked the judge

*Eighty-five years after the Scopes trial, we are still torn between faith and knowledge, with many struggling for coexistence. The power of churchgoers in passing Prop. 8 cannot be overstated.*

to direct the jury to enter a guilty verdict. “We have no witnesses to offer, no proof to offer on the issues that the court has laid down here,” Darrow said. The jurors returned their verdict in nine minutes, not even taking the time to sit down. One juror, a farmer, noted that the peach crop was about to come in. Following a benediction, the trial was recessed to history, where its retelling became a McCarthy era parable on the threat posed by anti-Communist hysteria to intellectual freedom.

I last saw Olson and Boies in December, at the 9th Circuit argument. It was no small irony to see Boies, whose advocacy for Jamie McCourt in her bitter divorce from Frank had created an extreme counterpoint to the year. Love and marriage, I thought, as Bruce and David and I ascended the gilded elevator to watch two hours of argument. Boies and Olson were brilliant that day, the second leg of a journey they believe will end with a U.S. Supreme Court ruling in which *Perry* will join *Brown* as a seminal equal rights decision.

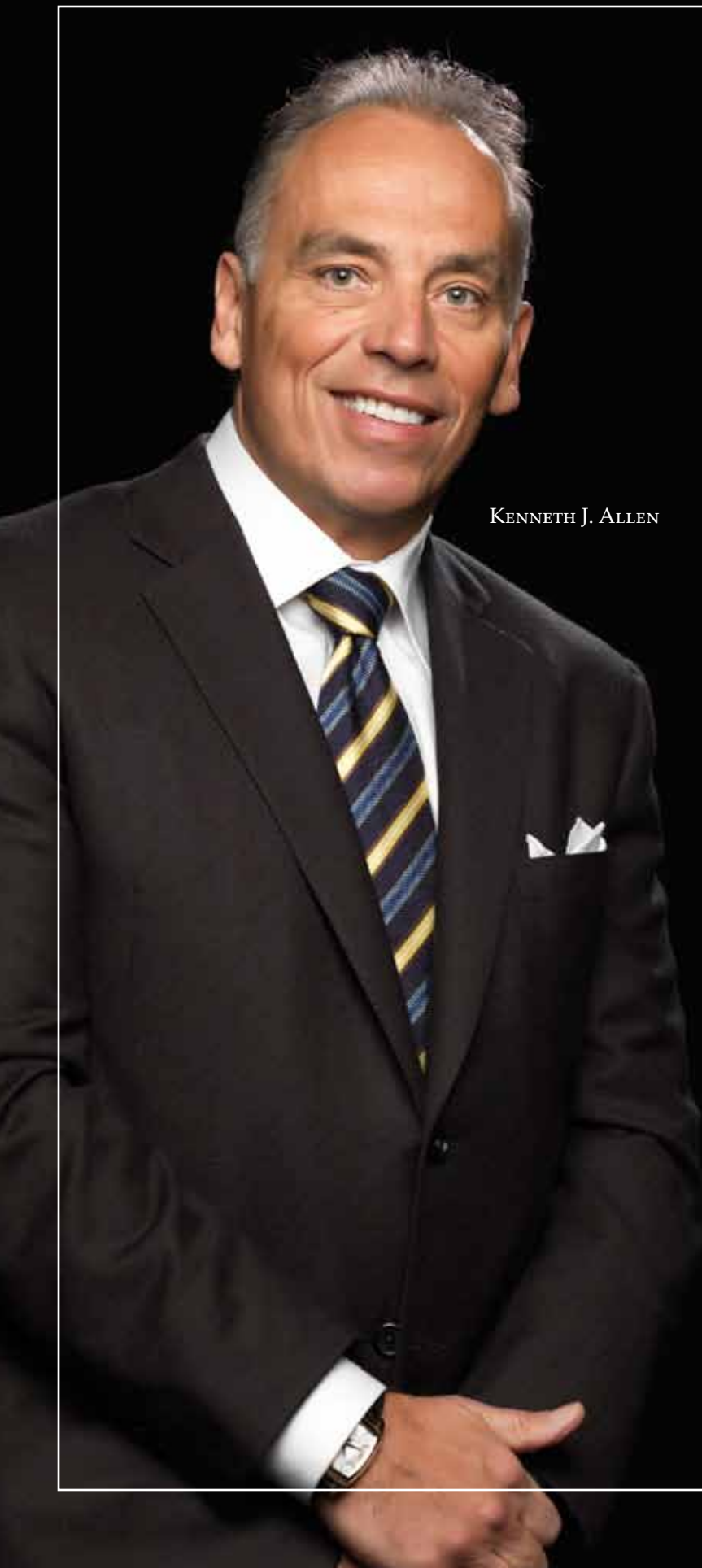
We hugged at the curb, with rainbow flags in the background, and one religious zealot circling the block in a car declaring “God hates gays.”

I don’t think God hates gays. And if that lone driver believes God hates gays because of the Bible, he is missing other passages about us all being God’s children. And that one about faith, hope and love, with love being the greatest.

Love, too, was in the air in San Francisco, with children being born, and children dying; soccer moms doing the laundry, and handsome young men dreaming of the day they, too, can legally have loads of laundry from little children running about on a field playing games together.

The wheel of justice will let us know when they can do that legally, just like other folks.

I do know this. That day will come. ■



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—LAWDRAGON, JANUARY 2008



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# Apartheid's Legal Legacy

South Africa's successful hosting of the World Cup seemed to render apartheid's evils a distant memory.

But for victims of the era's human rights violations, the pain remains fresh – and they still want the government to prosecute the offenders.

BY JOHN RYAN



T

he excitement over the World Cup was hard to miss when traveling around South Africa in late May and early June. Billboards and radio campaigns pumped *Bafana Bafana*, the Zulu term for “the boys,” which was the rallying cry and nickname for the national squad that qualified for the tournament as host team. Outdoor craft markets, street vendors and indoor malls all carried a colorful array of official FIFA and counterfeit soccer gear. Taxi drivers, among the most important resources

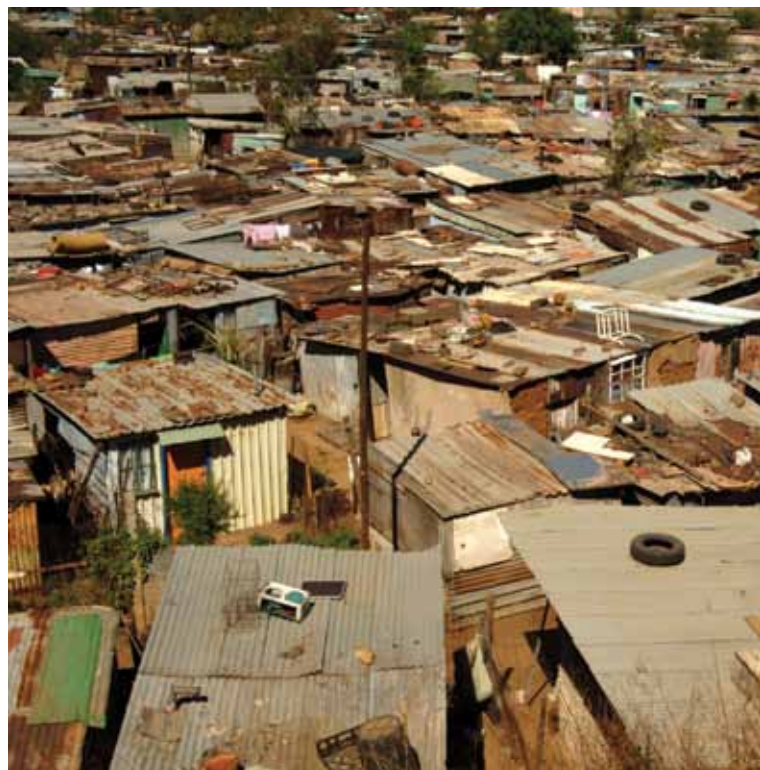
for visitors, were eager for the anticipated business of ticketholders. Taking a more historic view, the South African government touted the Cup – the first-ever hosted in Africa – as a symbol of national pride and proof to the world of the nation’s competence, as well as its successful transition from apartheid.

South Africa is often thought of as a miracle nation for the relative peace and calm it has enjoyed since the first full democratic elections in 1994 brought closure to more than four decades of enforced legal segregation along racial lines. That year, Nelson Mandela and the party of the liberation movement, the African National Congress (ANC), replaced the long-ruling National Party and its leader, F.W. de Klerk, after a protracted period of civil war and political negotiations. The election was followed by the establishment of South Africa’s Truth and Reconciliation Commission, the TRC, which beginning in 1996 held public hearings to document the gross human rights violations of the apartheid era. In one version of this miracle story, the World Cup serves as another symbolic milestone in the successful building of a “Rainbow Nation,” the term of national unity used by TRC chair Archbishop Desmond Tutu and other leaders.

For many victims of apartheid’s crimes, however, this version is just that – a story – and one that does not resolve the era’s complex legal legacy. Many victims and their families are still waiting for the government to prosecute people responsible for the torture, murders, disappearances, detentions, kidnappings and other violence that characterized the apartheid regime’s brutal oppression. And others want justice for the victims of violent acts committed by the liberation movement as it fought to overthrow the apartheid state.

“This dream of the miracle nation is a myth,” Tshepo Madlingozi, an advocate for victims, said in an interview in May. “The victims have not moved on.”

Madlingozi was in his office at the University of Pretoria, a boisterous, sprawling campus where he taught courses in law and human rights while serving as the national advocacy coordinator for the Khulumani Support Group, a membership organization of 58,000 victims of apartheid-era human-rights violations. (He has since relocated to London and now serves



on Khulumani’s board as its advocacy advisor.) At the time, the World Cup was less than two weeks away. Madlingozi described the government’s investment of billions of dollars in preparations as an insult to victims who have not received justice, either in the form of criminal trials or sufficient reparations. He cautioned against describing apartheid crimes as “old.”

“These are continuing violations when people are disappeared and the cases are not resolved,” Madlingozi said.

The TRC, however important to the nation’s transition, was never meant to replace prosecutions. The commission could only grant criminal and civil amnesty to perpetrators who provided a full accounting of their politically motivated crimes. The reality is that most people suspected of committing crimes on behalf of the apartheid regime – including government officials and members of the army, police and security forces, particularly those in senior positions – did not participate in the TRC. When completing its work, the TRC referred 300 cases to South Africa’s National Prosecuting Authority, the NPA, for possible prosecution. But these cases, aside from a few exceptions, have not moved forward since the TRC published its final reports in 2003.

The “why” is rooted in a complex mix of legal, social and political factors. The NPA has intermittently cited the challenges of prosecuting decades-old cases, and some South Africans worry that controversial trials could enflame racial tensions. Nevertheless, at first glance, an outside observer might assume that members of the ANC, which has essentially governed South Africa as a one-party system since 1994,





**The festivities of the 2010 World Cup contrasted with the poverty that remains in South Africa – a legacy of apartheid's brutal oppression.**

would want to prosecute their former oppressors. But the ANC committed its own share of human rights violations through armed campaigns that claimed the lives of innocent civilians. This means that an aggressive prosecution policy for apartheid-era crimes might end up targeting not only former apartheid actors but also high-level members of the ANC. The result is a peculiar dynamic in which former apartheid actors and anti-apartheid forces from the past conflict share an interest in avoiding prosecutions.

Howard Varney, an attorney with the Cape Town office of the International Center for Transitional Justice, which has advocated for prosecutions, said he was hesitant to speculate about the political factors at play. However, he added that “the longer the NPA drags its feet,” the more obvious it becomes that “legal or technical complications” are not the primary reasons for a lackluster prosecution policy.

“There appear to be forces at play that simply don’t want these cases to see the light of day, and the way things are going they won’t see the light of day,” Varney said.

Three interest groups, including Khulumani Support Group, the International Center for Transitional Justice and the Centre for the Study of Violence and Reconciliation, joined with individual victims and their families to sue the NPA over its failure to prosecute apartheid-era crimes. Specifically, the groups challenged the NPA’s proposed policy allowing it to

reach non-prosecution agreements with perpetrators in exchange for information that could bring closure to unresolved crimes – and thus help finish some of what is often referred to as the TRC’s “unfinished business.” Despite a favorable court outcome in 2008, including a ruling that invalidated the proposed policy and held that the NPA had a duty to investigate and prosecute cases when it had sufficient evidence, the ultimate decision to move forward with specific prosecutions remains with the agency – which is why victims’ advocates expect a continuation of the de facto amnesty enjoyed by past human-rights offenders.

Mthunzi Mhaga, a spokesperson for the NPA, provided limited responses to written questions submitted by email, explaining that it is “not the policy of the NPA to comment on ongoing investigations.” Mhaga said only that “cases arising from the conflicts of the past have been referred to the South African Police Force for investigation,” and that the NPA “will decide in respect of each matter whether or not a prosecution should be instituted.”

As time drags on, evidence gets old or disappears and witnesses die, making such cases more difficult – in some situations, impossible – and leaving many victims and their families stuck in apartheid’s tragic past.

“Everyday for the victims, the past is present,” Madlingozi said.

**ON A LIST OF PROBLEMS FACING** South Africa, the controversy over TRC-related prosecutions may not rank very high. Though regarded as its continent’s strongest economic power, South Africa has an unemployment rate of 25

percent, which climbs to 35 percent when including people who have stopped looking for work. The nation's income gap between rich and poor has been among the very highest in the world, and about half of its citizens live below the poverty line. The ANC's economic policies, most notably Black Economic Empowerment, a program aimed at improving the business ownership and employment opportunities for the long-impooverished black majority, are often criticized as having only created relatively small black upper and middle classes without bringing the type of broad socio-economic reforms that most Africans had expected after the transition. (It is nevertheless not uncommon in South Africa to hear whites refer to ANC policies as reverse discrimination that is causing a brain drain of educated whites.)

South Africa suffers not only from an intractable poverty rooted in the apartheid system but also an HIV/AIDS epidemic, with approximately 18 percent of all adults between the ages of 15 and 49 infected, and an HIV prevalence rate even higher among pregnant women. The country has high rates of violent crime and low conviction rates for serious offenses. While it's hard to overstate the importance of apartheid's collapse, the day-to-day lives of many South Africans have not much improved since the transition. In this context, Madlingozi was not alone in his criticism of World Cup preparations: Many community leaders and interest groups wrestling with South Africa's myriad socio-economic problems viewed the construction of new stadiums as offensive and wasteful.

But these conditions might also create a questionable environment for prosecuting apartheid-era crimes that are 20 years or more old. Should the government focus public resources on past crimes when the present has so many pressing concerns? Pursuing justice for victims is an important legal and moral principle, but is doing so practical or constructive in an emerging country?

Jan Wagener, an attorney in Pretoria who has represented apartheid security forces before the TRC and in criminal proceedings, said he was less concerned about the financial

costs of prosecutions than their broader effects on South African society as it attempts to move on from its past.

"We are in a democracy that is very fragile," Wagener said. "We have a peace that is very fragile. Prosecutions will put us right back where we were with racial and political divisions. I don't say forget the past, or forget the plight of victims, but let's close the book on the past regarding prosecutions."

Wagener acknowledged that a non-prosecution policy violates the legal rights of victims. But he said this infringement is the steep and tragic price that must be paid for the sake of the country's future. The only fair and honest way to pursue cases, he said, would be to aggressively pursue all former leaders of the apartheid regime as well as the liberation movement.

"I can tell you our country will not survive that," Wagener said.

Victims' advocates have more confidence in the nation's ability to withstand controversial cases. Madlingozi said it was fair to question whether pursuing prosecutions was a good use of public resources. But he stressed that the importance of doing so goes far beyond abstract legal principles. In addition to violating the rights of victims, a failure to prosecute will "perpetuate

a culture of impunity" that has very practical effects on society, he said. South Africa suffers not only from violent crime but also a political corruption that has not often faced criminal prosecution.

"[An ANC] party member will say, 'Why should they prosecute me for corruption when they didn't prosecute people for something as serious as crimes against humanity during apartheid?'" Madlingozi said. "Then other members of society will say, 'Why should I obey the law when the government can break the law without consequence?'"

South Africa is not alone in such dilemmas. Whether prosecuting past crimes is an essential step in a nation's post-conflict transformation – or a major hindrance to such efforts – is a question that faces most nations hoping to emerge from a difficult period in which rule-of-law principles were abused. It is one of the core debates within the field of transitional justice,



**Tshepo Madlingozi and his organization, Khulumani Support Group, have pushed for new prosecutions of apartheid-era human rights violations.**



which involves the use of justice mechanisms in post-conflict situations to address serious human rights violations from a period of armed conflict or oppression. Most organizations involved in human rights issues, ranging from advocacy groups to the United Nations, typically encourage nations emerging from conflicts to employ transitional-justice mechanisms to account for wrongdoing and foster a rule-of-law culture. (Varney's group, the New York-based International Center for Transitional Justice, or ICTJ, is among the most prominent groups that promote accountability measures around the globe.)

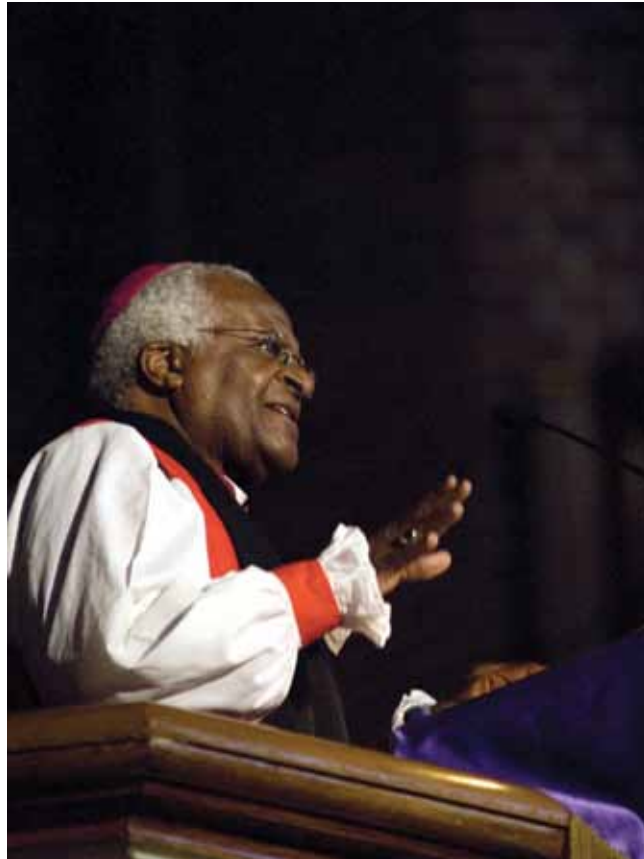
"Justice" in this area of human rights scholarship and advocacy is defined broadly, allowing for a range of mechanisms to be considered: They can include formal prosecutions as well as truth commissions, reparations for victims, programs for purging political parties or officials from governments, the use of traditional reconciliation rituals (most relevant in remote villages less connected to formal court systems) and even the building of museums and memorials. As result, a failure to prosecute wrongdoers is not always equated with a failure to provide or promote justice; some mechanisms may be more appropriate than others depending on a particular nation's history, culture or level of stability.

As is often pointed out in the academic and advocacy literature, prosecutions have not been very common in post-conflict settings since the start of the Cold War. Scholars therefore view the lack of criminal cases in South Africa as less surprising in the broader context of transitional or international justice. Amnesties – and not formal criminal proceedings – have accompanied the end of most modern conflicts, whether they were international or internal in nature. Though the Allied nations established the Nuremberg and Tokyo tribunals to prosecute Axis-power war crimes and aggression after World War II, a prosecutorial approach did not take hold in the decades that followed. The researcher Louise Mallinder, in *Amnesty, Human Rights and Political Transitions*, catalogs 500 amnesties since the end of World War II in various conflicts around the globe. Mallinder's work is one of many to

discuss the tension between the broad use of amnesties and the legal obligations of nations who are party to international treaties relevant to international humanitarian law. The "grave breaches" provision of the Geneva Conventions, which regulate the conduct of combatants during conflicts, requires parties to prosecute or extradite offenders, and the

Convention Against Torture and the Convention Against Genocide impose similar legal responsibilities. The use of amnesties in many post-conflict settings has undoubtedly run afoul of these principles.

But the end of the Cold War and the growth of the global human rights movement have contributed to an increased use of prosecutions to account for gross human rights violations, which has helped shape the analysis of South Africa's handling of crimes from the apartheid era. The United Nations Security Council established the International Criminal Tribunal for Former Yugoslavia (ICTY) in 1993 and the similarly structured ICTR (for Rwanda's genocide) in 1994. The ICTY and ICTR have been followed by a handful of hybrid domestic-international tribunals – set up in places such as Cambodia, Sierra Leone and East Timor – which are based in



**Archbishop Desmond Tutu saw the TRC as a superior vehicle for truth-seeking but also voiced support for prosecutions of non-participants.**

nations affected by conflicts and staffed by a mix of local and international professionals. In addition to these ad hoc tribunals, the international community, through the 1998 Rome Statute treaty, created a permanent International Criminal Court (ICC) that became operational in 2002 and now has a handful of cases and investigations. The result has been an emerging consensus among legal experts that both treaty and customary international law require states to punish a core set of crimes, including war crimes, crimes against humanity and genocide.

South Africa's transition in the mid-1990s took place at the outset of this trend, which has not been without controversy. Stakeholders in ongoing or recently concluded conflicts often contend that criminal cases – whether brought in an international tribunal or domestic court – are backwards-looking, disruptive to fragile political and social relationships and



thus a poor use of valuable resources that could be spent elsewhere. In this sense, skeptics of prosecutions in South Africa have echoed arguments made against the UN's ad hoc tribunals or the ICC's cases in Uganda and Sudan. They question why a pursuit for justice should ever compromise peace or humanitarian efforts. These critics tend to favor justice mechanisms commonly seen as "restorative" – such as truth commissions, reparations and other less punitive measures – over the more retributive trial-justice approach.

## “Forget the foot soldiers. International law is clear. They must go as high as the evidence goes.”

– TSHEPO MADLINGOZI

Of course, unlike many situations that required a UN tribunal or, more recently, ICC involvement, South Africa was (and remains) stable enough to forge and execute its own transitional justice strategy. There is little doubt that many members of the ANC had always hoped for Nuremberg-style prosecutions of the apartheid regime, whenever it was finally toppled. The world had condemned apartheid's systematic use of illegal detentions, torture, murders and other forms of violence as crimes against humanity, and some of the military's operations outside of South Africa likely constituted war crimes.

The regime, however, was not completely overthrown; instead, Mandela and de Klerk negotiated a complex political settlement that incorporated the interests of the ANC and the outgoing National Party. The NP would never agree to a comprehensive prosecutorial dissection of apartheid's evils, and it was clear that the new government would need much of the existing administrative structure to avoid a collapse of services. There was an obvious danger in purging and criminalizing the well-armed police and security forces. The negotiated result was an addendum to the 1993 Interim Constitution that called for an amnesty for political crimes of the apartheid era, which was consistent with indemnity laws that had been passed in the years leading up to the transition. However, the addendum also empowered the forthcoming Parliament to legislatively construct “the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty will be dealt with.”

In 1995, the new ANC-controlled Parliament passed the Promotion of National Unity and Reconciliation Act, which created the TRC in the hopes of establishing “as complete a picture as possible of the nature, causes and extent” of the gross human-rights violations during the apartheid era. The South African process was innovative and, at least initially, highly lauded for incorporating a prosecutorial threat. Most truth commissions that had come before, including high-

profile examples in Latin American countries, had come with either legal or de facto “blanket” amnesties for perpetrators. South Africa, by contrast, established a conditional amnesty that set up a truth-for-amnesty exchange – participants who provided “full disclosure” of politically motivated crimes to the commission could be granted amnesty. Those who did not would risk criminal prosecution.

Nevertheless, many victims were upset that amnesty would be used at all. The political group Azanian People's Organization (AZAPO) and the families of victims, including Steve Biko, an anti-apartheid activist and much-admired founder of the Black Consciousness Movement who was tortured to death in police custody in 1977, filed a lawsuit to invalidate the act's amnesty provision on the basis that it violated their constitutional rights to the courts. The Constitutional Court (South Africa's highest) rejected the case in 1996, but did so with great sympathy to the victims and their claims. In the much-analyzed AZAPO ruling, Justice Mahomed DP portrayed the TRC's limitation on the victims' constitutional rights as necessary for the “historic bridge” needed to complete a difficult transition, and as a tool necessary to uncover the truth that would benefit the greatest number of apartheid-era victims.

**THE TRC MOVED FORWARD IN 1996 AND, AT** least at first, so did some high-level prosecutions of suspects who were already caught up in investigations. An aggressive prosecutor in the Transvaal region, Jan D'Oliveira, headed a large investigation into the notorious Vlakplaas death squad unit. He successfully prosecuted, among others, former squad commander Eugene de Kock, who in 1996 was sentenced to more than 200 years in prison. De Kock later cooperated with prosecutors and implicated colleagues from the security forces. A number of these colleagues later applied for amnesty with TRC, which showed the positive effect that criminal cases could have on the TRC process – especially given that participation from apartheid actors was slow in coming. Under the TRC legislation, any defendant implicated in a criminal or civil case could apply for amnesty before a Sept. 30, 1997, deadline.

The opposite effect, however, followed the failed case against former Defense Minister Magnus Malan, who along with other defense personnel was accused of orchestrating the 1987 massacre of 13 people active in the anti-apartheid group United Democratic Front. In 1996, the judge presiding over the case, Justice JH Hugo, acquitted Malan and the defendants of all charges. Critics blamed the result on a lackluster performance by prosecutors and possible judicial bias. According to a critique of the case co-authored by the ICTJ's Varney in 1997 for the *South African Journal of Criminal Justice*, people in the military – who were watching the trial to see if they should apply to the TRC's amnesty committee – now “had less incentive to do so.”

As it turned out, the TRC hearings would prove to be dramatic and memorable mostly because of the testimony of the victims, not because a great many perpetrators stepped forward to express remorse or provide new information about their crimes. The *Malan* case also raised the question of whether the mostly white prosecutorial and judicial ranks left over from apartheid had much interest in pursuing these cases. Varney, who at the time served on the civilian board overseeing the investigative unit responsible for the case, and his co-author, Jeremy Sarkin, observed that the result “strengthened the opinion of many South Africans that the existing system of criminal justice is deeply flawed because of its heritage as an apartheid institution.”

The TRC presented its first five volumes in 1998 after taking verbal or written testimony from about 22,000 victims and witnesses. The reports cataloged a large number of gross human rights violations, most of which were committed by the apartheid regime. (Many were also committed by the Inkatha Freedom Party, or IFP, a party of Zulu nationalists that worked with the apartheid state to commit violence against the ANC and its allies.) The commission concluded that apartheid was a crime against humanity and that the ANC and the Pan Africanist Congress, or PAC, which had split from the ANC in the late 1950s, were “internationally recognized liberation movements” engaged in a just struggle. The report added, however, that the armed wings of the parties used certain unjust means that constituted gross human rights violations. The final two volumes of the TRC report were eventually published in 2003, after the TRC’s amnesty committee had finished reviewing amnesty applications. In total, the committee granted amnesty to about 15 percent of the roughly 7,100 applicants, most of whom were from anti-apartheid forces.

Though Mandela in 1999 called for prosecutions to take place “within a fixed timeframe” for those who did not seek or were not granted amnesty through the TRC, these prosecutions did not materialize. Ole Bubenzer, the German author of *Post-TRC*

*Prosecutions in South Africa*, provides a detailed account of the administrative changes and delays that characterized the government’s handling of apartheid-era cases after the failure of the *Malan* case. According to his book, the government centralized TRC-related cases within a newly structured NPA unit but refused to support the new unit’s efforts. Bubenzer, who interviewed former and present NPA attorneys, writes: “Whereas the D’Oliveira Unit [which successfully prosecuted de Kock] had been well-staffed and well-equipped, the resources allotted to post-TRC prosecutions after 1998 were absolutely minimal.”

The biggest pending case at the time that eventually reached conclusion targeted Dr. Wouten Basson, who ran the military’s biological and chemical weapons program. He was acquitted in 2002 of many charges, including 229 murders, after a 30-month trial. As with *Malan*, interpretations of the case were divided along racial lines, and the outcome seemed to signify the futility of criminal prosecutions. Archbishop Tutu even commented in his “Chairperson’s Forward” to the final TRC volumes in 2003 that the Basson case showed “how inadequate the criminal justice system can be in exposing the full truth” and “how unsuccessful prosecutions lead to bitterness and frustration within the community.” In his view, the TRC was a superior vehicle for truth-seeking even though “by and large, the white community did not take advantage of the ... process.”

However inconvenient criminal cases might be, opposing them publically would put the ANC in an awkward position. The liberation movement and its supporters around the world had always contended apartheid was a crime against humanity, a conclusion supported by the TRC. In addition, South Africa had in 1996 adopted one of the most progressive and human-rights oriented constitutions in the world, and one that explicitly recognized customary international law. Victims have thus felt well-grounded in contending that international and domestic law required the NPA to prosecute apartheid-era cases. (These positions were eventually



**National hero Nelson Mandela called for prosecutions “within a fixed timeframe” in 1999 after the publication of the initial TRC reports.**

strengthened as a result of the *Basson* case, which the NPA had appealed after losing. In 2005, the Constitutional Court held that apartheid practices constituted both crimes against humanity and war crimes, and that the state was obligated under international law to punish the offenses. Though some charges were reinstated against Basson as result of the appeal, the NPA decided not to retry him, apparently fearing that doing so might constitute double jeopardy.)

In Varney's view, there should have been an "umbilical cord" between truth-seeking and criminal justice, with the prosecutorial threat serving as the "stick" to entice perpetrators into participating with the TRC. Instead, the NPA held off developing a strategy for apartheid cases until the amnesty committee finished its work, which included the referral of 300 cases for possible prosecution.

In April 2003, three weeks after the publication of the final two TRC volumes, Mandela's successor, President Thabo Mbeki, gave a speech to Parliament in which he addressed the tension between amnesties and prosecutions. He said that the government could not design another amnesty process because doing so would suspend the "constitutional rights of those who were at the receiving end of gross human rights violations." He said control of the issue rested with the head of the NPA, who could identify individuals willing to "divulge information" and "enter into arrangements that are standard in the normal execution of justice." Mbeki appeared to be indicating his preference for plea deals, which would result in lenient sentences and fewer trials – and thus create a middle way that recognized the human-rights concerns of victims without heated and lengthy court proceedings.

In 2005, the NPA announced such a policy in the form of amendments to the Criminal Procedure Act. The policy gave suspects a chance to avoid prosecution by providing a written statement that fully disclosed their politically motivated crimes. In addition to weighing the nature of the disclosure before deciding whether to prosecute, the NPA was to consider whether a prosecution "may contribute, facilitate or undermine our national project of nation-building through transformation," and whether it may traumatize "victims and conflicts in areas where reconciliation has taken place." The NPA was required to consult with victims before making its decisions, and these decisions had to be made public. However, unlike the TRC process, the review of evidence was to be done in private, and the NPA was not required to publish the information or testimony given by the offenders.

Victims' groups were outraged and sued the NPA director and several government officials over the policy in 2007 in the case *Nkadimeng and others v. The National Director of Public Prosecutions*. The plaintiffs included Khulumani Sup-

port Group, the International Center for Transitional Justice and the Centre for the Study of Violence and Reconciliation, as well as the widows of the "Craddock Four" (four liberation activists murdered in 1985), and the sister of Nokuthula Aurelia Simelane, who disappeared after an abduction by the state security forces in 1983. The plaintiffs described the new policy as a repeat of the TRC's amnesty process that unfairly extended an "effective indemnity" to those who had refused to participate in the TRC. They alleged that the new policy violated international law and domestic constitutional rights to life, dignity and equal protection under the law.

In response, the NPA contended that there was no extension of indemnity because the victims could still bring private prosecutions, which is allowed under South African law, as well as civil cases against the alleged perpetrators.

**"I don't say forget the past, or forget the plight of the victims, but let's close the book on the past regarding prosecutions."**

– ATTORNEY JAN WAGENER

This was a dubious argument given that victims could not realistically afford the costs to investigate such complicated cases. In his December 2008 ruling, Judge MF Legodi of the South Africa High Court in Pretoria agreed with victims that the new guidelines were "a copy or duplication" of those in the TRC and that the NPA had a duty to investigate and prosecute cases when "there is sufficient evidence." Legodi concluded that the policy was contrary to the NPA's "constitutional obligation to ensure that those who are alleged to have committed offences are prosecuted." He said that the policy was not only unconstitutional but also "a recipe for conflict and absurdity."

The case was a success, but the legal relief was limited to an invalidation of the policy amendments; prosecutorial discretion remained with the agency. The result has been more inaction by the NPA. Since the TRC finished its work in 2003, the NPA has only reached a resolution in a few cases involving apartheid-era political crimes. The one major case that led to a plea deal targeted Adriaan Vlok, a former Minister of Law and Order, and Johan van der Merwe, a former police commander, as well as three lower-level officers involved in the 1989 attempted assassination of Frank Chikane, a UDF member and former head of the South African Council of Churches (they had attempted to kill Chikane by poisoning his underwear). In 2007, Vlok and van der Merwe received 10-year sentences for the assassination attempt, with the remaining defendants receiving five years each. All of the sentences were suspended. Criticism



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came from multiple sides: Those in the pro-prosecution camp felt that the sentences were much too lenient, especially for Vlok, given that he did not provide information to implicate more colleagues or superiors, while Afrikaner groups contended that the failure to bring similarly high-profile cases against ANC leaders was unfair. As with earlier attempts, the *Vlok* case revealed the political challenges of resolving apartheid-era cases in the courts.

Wagener, who defended Vlok and van der Merwe, said he supported the NPA's attempted policy amendments, which would have induced clients such as his to come forward and provide valuable information without fearing prison sentences. (The plea deal for his clients, who were charged and set for trial before pleading guilty, was not reached under the NPA's proposed plan.) Wagner believes that the successful legal challenge by victims' groups will result in less "unfinished business" being solved through the participation of perpetrators.

"I think we missed a very good opportunity," he said.

**REALISTICALLY, THE NPA DOES NOT HAVE THE** resources to prosecute a wide number of apartheid-era cases. The best-case scenario for victims is a smaller number of symbolic prosecutions of crimes that are typical of the worst human rights offenses. While old cases bring evidentiary challenges in any justice system, advocates believe there is sufficient evidence to move forward in several high-profile cases. One is the matter at issue in the *Nkadimeng* suit – the disappearance and torture of Simelane, who is presumed dead – a crime for which the TRC rejected amnesty applications by the white policemen involved. Lawyers have continued to press the NPA to pursue this case. However, Varney said the agency told him that the original investigator's docket has been lost.

Madlingozi believes that excuses over a lack of prosecutorial resources or evidentiary difficulties are "red herrings," and that the issue boils down to politics. He said the ANC is fearful of apartheid-era cases because they have the power to contradict two powerful "meta-narratives." One is the narrative of the "Rainbow Nation" that has miraculously moved on from its turbulent past. The other is the narrative of the liberation movement. If the NPA winds up prosecuting ANC members for their human-rights violations, he said, it could "destroy the myth of the pure liberators." His organization supports "symbolic and meaningful cases that target those with greatest responsibility," regardless of political affiliation – which he said is the approach consistent with South Africa's obligations under international law.

"There can't be scapegoating or the shifting of responsibility," Madlingozi said. "Forget the foot soldiers. International law is clear. They must go as high as the evidence goes."

Not surprisingly, the ANC, which in 1980 declared that it would abide by the Geneva Conventions (a rare move for a non-state entity), has always been sensitive to criticism that

some of its anti-apartheid campaigns violated international law. Though it set the TRC process in motion, the ANC unsuccessfully sued to block the publication of its reports after learning the group would be cited for gross human rights violations, which according to the commission included the killing of suspected dissidents within their ranks, the use of landmines and other terroristic violence that claimed civilian lives. Party members were outraged that they could somehow be placed on the same footing as the apartheid regime. They contended that they had taken steps to minimize civilian deaths and that some ANC supporters had committed violence in acts not planned by party leadership.

Nevertheless, sympathetic observers have suggested that any NPA unit devoted to TRC-related cases should focus most of its efforts on former actors of the apartheid regime – not the ANC – given that the majority of gross violations were committed by the state. In addition, tens of thousands of anti-apartheid activists were already prosecuted and imprisoned (or detained without trial) in South Africa for their activities before the transition. Under this theory, a focus on apartheid government crimes would bring a corrective balance.

Of course, members of the former security forces disagree. In Wagener's view, there are three options: prosecute everyone on both sides, going up the chain of command; prosecute nobody; or prosecute select cases. Unlike Madlingozi, Wagener believes the first approach would tear the country apart. The last option, he said, is unfair because it violates the fundamental concept of equality before the law and is akin to drawing names out of a hat. He concludes that the best course is the second option – prosecute no one – however unfair it may be to the victims.

Even a single case against former apartheid actors is likely to bring retaliation and embarrassment for the ANC. News stories have reported that Wagener's clients among the former security forces have compiled dossiers against senior ANC members, including Mbeki and current President Jacob Zuma, for alleged human rights violations, which they plan to use if the NPA only brings cases against former apartheid actors. The strategy would be to turn over the dossiers to the NPA and then launch a private prosecution if the agency does not file cases.

"I can't speak on behalf of my clients, but I would think they would not sit back and let a totally one-sided process develop," Wagener said. "Common sense tells me that would be a quite normal response."

Given this possibility, it is likely that victims' groups will have a hard time getting the NPA to move forward with any cases. So far, advocates have not threatened their own private prosecutions, which would be expensive. One strategy that has been discussed is attempting to force the NPA's hand on a case-by-case basis. With the amendments already invalidated, the relatives of victims of a specific apartheid-era crime could file a suit against the NPA claiming that sufficient evidence existed for the violation and ask the court to order



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the agency to bring a criminal case. Absent this approach, the *Nkadameng* victory may be largely symbolic.

Victims' advocates have nevertheless succeeded in pursuing additional litigation involving the government's handling of apartheid-era crimes. The same plaintiffs' groups – Khulumani Support Group, the International Center for Transitional Justice and the Centre for the Study of Violence and Reconciliation – along with other members of civil society challenged a pardons process that President Mbeki established in 2007 for individuals who had already been prosecuted and convicted for political crimes related to the apartheid conflict. The new “special dispensation” system covered the apartheid era as well as the first five years of the transition, through May 1999, which witnessed some horrific violent acts, and was open to individuals who did not apply for amnesty with the TRC. A reference group composed of representatives from each political party was established to review pardon applications and make recommendations to the president. Victims' groups sued because the system did not allow for their participation, despite the fact that Mbeki had said that the process would be guided by the principles of the TRC – which itself was based heavily on victim participation. The Constitutional Court ruled unanimously in February of 2010 in favor of the plaintiffs on the grounds that the president must hear from victims before deciding whether a crime was eligible for pardon.

In October, the government released the names of 149 people recommended for pardon, which included Vlok and van der Merwe from the attempted Chikane assassination but otherwise mostly included individuals convicted of offenses after 1994. As 2010 was drawing to a close, the various advocacy groups (together calling themselves the South African Coalition for Transitional Justice) were busy assisting victims and other interested parties in making submissions to the government over the proposed pardons.

**WHATEVER PROSECUTION POLICY THE NPA** adopts, most victims will never get their day in court – there are simply too many of them. This is true in South Africa as in most post-conflict states, which is one reason why human rights advocates and scholars have come to suggest a “package” or multifaceted approach to transitional justice, one that incorporates punitive and restorative mechanisms: Trials can uncover important truths, show a commitment to legal principles and hopefully punish some of the most serious offenders, but truth commissions help establish a more comprehensive account of systemic wrongdoing, and reparations along with broader economic reforms provide a more practical benefit by improving the day-to-day lives of survivors.

How has South Africa fared in these restorative goals? The TRC may very well be the most famous transitional-justice effort in history; it is the subject of many popular accounts as well as an incalculable number of scholarly articles and

books. By and large, the TRC is viewed favorably around the world, but more criticism has emerged about whether it has succeeded in two of its primary goals – promoting reconciliation and producing a satisfying and accurate truth about the apartheid era. These are complicated and emotional topics about which a visitor to South Africa would rightfully feel hesitant to draw conclusions. As Wagener said, the topic is less conducive to a straightforward journalistic interview than to an open-ended conversation over several hours, “preferably with two or three good bottles of wine.”

Nevertheless, it appears as though the TRC may have been more satisfying for people outside South Africa marveling at the “miracle nation” and its resilient citizens' apparent capacity for forgiveness than for the actual victims themselves. Aside from the amnesty provision, which was upsetting at the outset, Madlingozi said many victims felt forced to forgive despite the fact that most perpetrators did not apply for amnesty or express remorse. The lack of participation from offenders also meant that most victims or their relatives did not learn important new details of the crimes. Madlingozi added that the TRC's definition of “victim” was overly technical and legalistic – someone who suffered a gross human rights violation and made a statement about it, which totaled about 20,000 people, a fraction of apartheid's actual victims. These were the only people entitled to reparation payments of 30,000 RAND (worth about \$4,250 in today's currency), which were made in 2004 in addition to smaller interim payments made earlier to those most in need. Khulumani Support Group's membership of victims of gross human rights violations alone exceeds 58,000, and of course the number of South Africans victimized by apartheid's oppression includes many more millions.

Indeed, one of the most common critiques of the TRC is its treatment of the apartheid system as a whole. Under the legislation that created it, the commission was limited to investigating conduct that was illegal under apartheid – gross human rights violations such as murders, disappearances, torture – not the apartheid structure itself, in which segregation, forced land removals, job discrimination and other tools of oppression were legal. The 2008 book *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, draws some negative conclusions about this limitation. The book's editors, Hugo van der Merwe and Audrey Chapman, conclude in the final chapter that the focus on individual crimes led the TRC to focus on the conduct of foot soldiers tasked with carrying out the actual violence rather than senior leaders and planners (few of whom were subpoenaed to appear before the TRC) or the civilian white minority who benefited from apartheid's discrimination. In their view, by focusing on specific acts and perpetrators without going up the chain of command, the TRC failed to achieve “an unequivocal indictment of the apartheid system” as a means of socio-economic oppression. This likely provided a weaker foundation for future efforts to hold senior figures account-



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able and to interpret reparations more broadly as the need to redistribute wealth on a greater scale.

In fairness, the TRC's recommendations on reparations were somewhat broader – more generous payments and community-based programs funded in part by a corporate tax – than what the government chose to implement. Also, the TRC did hold hearings and issue a report, Volume 4, dedicated to the role that key societal institutions played in apartheid, including the business sector. But the sad fact remains that most victims of apartheid continue to struggle in their day-

present government led by Zuma, however, has come out in support of the case. Madlingozi said his organization is motivated less by economic damages than by the principle of holding corporations accountable for supporting apartheid.

It is difficult to assess whether a more satisfying truth commission or reparations policy (or other economic reforms) would have lessened the demand for prosecutions. This is a tricky analysis in South Africa as in any post-conflict setting. Some victims will want criminal accountability regardless of the restorative mechanisms employed; some will refuse to

relive their experiences in court regardless of the alternative truth-seeking mechanisms available. The preference varies not only by nation and community but from person to person. And advocacy groups will continue to debate whether criminal trials threaten reconciliation or whether they are a crucial step to building a stable society based on the rule of law.

But the tension between truth-seeking and criminal accountability is heightened in South Africa because the TRC was structured around the conditional amnesty approach that traded immunity for truth. By law, amnesty could not be granted to those who did not participate. Some critics thus see the government's failure to prosecute non-participants as a serious threat to the legacy of the TRC. This is why supporters of

prosecutions have come to include individuals who believed in the commission's perceived superiority over criminal trials in accounting for the past, including Tutu, who noted in a 2004 interview that the TRC received its praise worldwide "precisely because it avoided a blanket amnesty."

The additional consequences of a non-prosecution policy are hard to predict. Many observers have echoed Madlingozi by suggesting that South Africa's culture of violent crime and political corruption are somehow related to a lack of a criminal accountability for apartheid-era crimes. Madlingozi also put forth a more tragic impact on the psychology of the citizenry: That those who were treated as less than human during apartheid will continue to feel that the state does not value their lives and the lives of their missing or dead family members. And what will later generations of whites conclude about apartheid if there are a dearth of high-profile cases on the books for the system's many crimes against humanity?

"Maybe people will eventually start to think, 'You know, maybe apartheid really wasn't that bad.'" ■



**American attorney Michael Hausfeld is representing apartheid-era victims in New York federal court against corporations that allegedly assisted the apartheid state.**

to-day lives while the beneficiaries of apartheid continue to lead lives of comfort. Madlingozi said these shortcomings are not too surprising given that the entire transitional framework of the mid-1990s, which included the TRC, was a negotiated bargain among political elites who have fared well in the new South Africa.

"The result is that there has been political reconciliation, but no social reconciliation," he said.

For its part, Khulumani Support Group is also seeking some measure of justice outside of South Africa. The group has pushed a lawsuit by victims and their relatives against defendant corporations, including General Motors, Ford, Daimler, IBM and Rheinmetall, in U.S. federal court in New York for allegedly providing the tools and means that allowed the apartheid regime to carry out its many forms of oppression. In that case, *Khulumani v. Barclays National Bank*, which remains pending, Khulumani is represented by Michael Hausfeld, a prominent antitrust and human-rights litigator based in Washington, DC. Mbeki, who instituted the 2004 reparation payments, was very critical of the suit. The



# Coast to Coast to Coast

IN 2008, THE LANIER LAW FIRM maintained offices in New York and Los Angeles in addition to the firm's Houston headquarters. Firm founder Mark Lanier, universally acclaimed for his courtroom track record, was busy working to continue the firm's growth as a national powerhouse.

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# THE ZEN OF SKADDEN

BY KATRINA DEWEY

SKADDEN'S BUSINESS FOCUS ONCE RENDERED IT A CONSUMMATE OUTSIDER. TIMES HAVE CHANGED.

**ERIC FRIEDMAN** wants to talk about the 600 public interest attorneys who got their start as Skadden fellows.

Who can blame him? The Skadden Fellowship Foundation is a singular accomplishment in American law – an audacious, extravagant gift to the profession and poor Appalachians, Mexican-American children in Los Angeles, juveniles in Philadelphia and Iraqi refugees and war veterans across the country.

In its 22nd year, two things stand out about the program, which was started with a \$10 million endowment to commemorate Skadden's 40th anniversary.

One, no other law firm – anywhere, ever – has built a public interest corps on this scale. More than 90 percent of the 620 fellows have remained in public interest after their two-year paid stint at the so-called law firm without walls.

And two, Skadden is the firm that did it.

In its 62 years, Skadden has redefined the modern American law firm. Forged by a cadre of scrappers who were not part of New York's white-shoe elite, Skadden architected many of the hard-hearted deal-making maneuvers that transformed corporate law. Its leaders began to run the firm using strategic business principles when other firms viewed themselves as equal parts civic institution and professional association.

And, in expanding, it made few friends as it hired top lawyers in every market it entered, with no concession to their attendant flotsam.

But a funny thing happened to the legal profession in the past 20 years. American business grew, its legal needs became vastly more complex, and Skadden's singular focus – what's good for its clients is good for Skadden – became a mantra for the age. Call it the Zen of Skadden.

There are seven U.S. firms, give or take, that can

plausibly claim they are the best in the U.S., whether measured by money, power, bodies or exclusivity.

As a whole, however, no law firm has had the impact on the nation's legal landscape as has Skadden over the past two decades.

"We walk through walls for our clients," says Friedman, who became executive partner in 2009, only the third person to hold the post. "That's our way to visually articulate what it's all about. We talk about our firm values as a constant reminder of what we're living up to: performing the highest quality legal work; client service and intensity of effort; teamwork and collegiality; the highest ethical standards; and a commitment to social responsibility and diversity in the law.

"For us, that is what we strive for as lawyers. For me, you've got to live it, and that's what our partners all live up to as well," says Friedman.

Skadden built those walls it now walks through brick by brick, growing to be the world's third-largest firm lawyer by lawyer, partner by partner, client by client. It has assembled a corps of nearly 2,000 of the world's best lawyers, yielding more than \$2.2 billion in annual revenue.

It has redefined what a "national" law firm is by its time-honed method of building out its presence in key legal markets. Rather than enter a city by acquiring a firm or large group, it hires a star or two, blends them with Skadden veterans and gets down to business. As a result, Skadden is unsurpassed on Lawdragon's list of the 500 Leading Lawyers in America each year since it was first published in 2005.

Routinely, the firm places 20-plus lawyers on the guide, selected by their peers and independent editorial assessment of the top lawyers guiding the biggest deals and cases in the nation's most important markets.

"We were never interested in just being present in a practice or market," Friedman explains. "We



**eric friedman**  
SKADDEN (NEW YORK)

wanted to be the best across practices, geographies. That's what sets us apart from our peer firms. We had the confidence."

In the 1970s, the firm began its East Coast expansion, opening in Boston (1973), Washington, D.C. (1975), and Wilmington, DE (1979); the 1980s brought seven more offices, including Los Angeles (1983), Chicago (1984) and its first international staging (Tokyo, then London, Hong Kong and Sydney); the 1990s rounded out its national footprint, with Houston (1993) and Palo Alto (1998), and saw a concentration on global efforts (Paris, Beijing, Frankfurt) that continues today.

And when it's a buyer's market, watch out. Since the recession began, the firm has added two dozen all-stars, including New York's Chief Judge Judith Kaye, Deputy Director of the Securities and Exchange

Commission Brian Breheny, New York Federal Judge Stephen Robinson, Assistant General Counsel to the Commodities Futures Trading Commission Mark Young, Massachusetts Acting U.S. Attorney Michael Loucks, former O'Melveny litigation heavyweight John Beisner and stand-out Silicon Valley trial lawyer Allen Ruby.

A crown jewel of those acquisitions, of course, is Greg Craig, who joined Skadden when he left his post as White House Counsel rather than return to Williams & Connolly, one of the nation's very best law firms by any measure. Craig has earned legal legend status over 38 years as a leader in civil and criminal courtrooms, legislatures, the Oval Office and boardrooms.

He defended the Washington Post in Watergate, John Hinckley after he shot President Reagan, Alexander Solzhenitsyn when he was sued for libel by individuals involved in U.S. publication of *The Gulag Archipelago*, President Bill Clinton in impeachment proceedings, United Nations Secretary General Kofi Annan in the Volcker Commission investigation and the father of Elian Gonzalez in winning custody of his son.

"I was headed straight back to Williams & Connolly, no question," said Craig, who also served Madeleine Albright when she was Secretary of State and was a longtime senior advisor to Senator Ted Kennedy. "The homing radar was beeping and I was going back. This would have been the fourth time I'd left and come back" to Williams & Connolly, the place he learned to practice law.

But his time in the White House had opened the win-

dow to a fresh perspective on the days ahead. So when Joe Flom, David Zornow and Cliff Sloan asked that he hear them out before returning to the nest, he listened.

"I realize that I'm nearer the end of my professional life than the beginning, so I couldn't postpone any longer the idea of setting up a global practice," Craig said. "I realized this was a group of people I'd be happy practicing law with and that the platform is huge."

Craig recently saw Skadden's platform in action when he was hired by Metromedia to win release of two of its employees jailed in the Republic of Georgia. This was a complicated task, as Georgian legal structures are still a work in progress, and the concept of

**"WE WALK THROUGH WALLS FOR OUR CLIENTS. THAT'S OUR WAY TO VISUALLY ARTICULATE WHAT IT'S ALL ABOUT." – Eric Friedman**

bail is unknown.

However, those are small hurdles for Skadden's scale and prowess. Craig was hired at Thanksgiving, contacted the firm's international arbitration specialists in London, got advice from its European human rights experts on entrapment standards in the EU and conducted a credible international arbitration by year's end. On Jan. 4, the employees were released.

"We were able to move more quickly on a number of fronts than you could do anywhere else," says Craig, drawing as well on the firm's office in Russia. "We came close to setting up an office in T'bilisi," he jokes.

Craig's choice mirrors that of Los Angeles' Tom Nolan, who was the top trial attorney at Howrey in 2004, when he was approached by Skadden. Already a monstrous business developer, the Skadden platform has enabled Nolan to expand his portfolio to the size of a small island nation.

"There is no question that my move to Skadden provided me with a much more powerful platform to compete for the biggest cases in the U.S. and internationally," said Nolan, who has won and collected trial judgments in excess of \$1 billion and, on the defense side, beaten back trial claims in excess of \$1 billion.

Shortly after joining Skadden, he became lead trial defense counsel in the WorldCom securities class action and has since represented Merrill Lynch, JP Morgan, Morgan Stanley, KPMG, Rosetta Stone in its trademark battles against Google, Peter Morton of the Las Vegas Hard Rock Hotel and Casino and MGA in the infamous Bratz-Mattel battle.



"But what's just as important is that Skadden allows lawyers to practice law," says Nolan, who is currently embroiled in a class action trial against Wells Fargo in Los Angeles. At prior firms, his roles in firm management siphoned off his focus on what he does best: trial work. At Skadden, although he co-chairs the West Coast litigation department and sits on the firm's compensation committee, those assignments do not distract him from helping clients facing the fights of their lives. "For a trial lawyer, it's a dream come true."

"We have as many stars as any firm, but we're not a star system," says Friedman. "I think our highest-profile partners realize that part of the secret of their success and their ability to accelerate their own career development is to team up with other partners in other practices or geographies to deepen client relationships. It is the way to win."

Or, as securities litigation head Jay Kasner puts it, "what we do for the greater good also ends up benefiting us individually."

Skadden's success is deeply embedded in the burn of deal culture. It's intense, focused, multidisciplinary and fast.

"What you're seeing is the historic core culture which came from the early takeover days. Think about how those worked," explains Tom Kennedy, an M&A partner and the architect of the firm's visionary Global Knowledge Strategy effort.

## IN ITS 62 YEARS, SKADDEN HAS REDEFINED WHAT A "NATIONAL" LAW FIRM IS BY ITS TIME-HONED METHOD OF BUILDING OUT ITS PRESENCE IN KEY LEGAL MARKETS.

"A large group of individuals was assembled quickly and without too much hierarchy or stratification, to work together across multiple disciplines in a concentrated period of time in all kinds of forums in corporate and litigation," he says. "That led to a historic culture where people from different offices, practices and seniority levels really learned to work together in a pretty non-stratified way to share knowledge and experience and really focus on getting the task done."

Skadden's dealmakers have helped define every era of corporate law, representing International Nickel Co. in the watershed successful hostile tender offer for Electric Storage Battery; helping Ronald Perelman prevail in his \$2.7 billion hostile takeover of Revlon; leading the board of RJR Nabisco through

the famous \$25 billion acquisition by KKR; fending off Microsoft in its pursuit of Yahoo!; and, more recently, representing Bear Stearns in its Wall Street crash sale to JP Morgan Chase.

Ken King, who co-heads the firm's global corporate transactional practice from Palo Alto, sees the deal mindset as the firm's core competitive advantage.

"It really is the ability to marshal resources around the world, in 24 offices, 13 different countries, 2,000 attorneys in 42 practices. Doing that seamlessly, in a way that's all focused on the client wherever they may be, to further client needs in a very complex manner, is at the core of what we do best," he says.

"The firm has a great culture of partners helping each other with a sole focus on what's best for the client. It's not about turf, or what's in it for me. It's how we can work together to get the client from A to B."

Skadden was an ideal fit for King, who had worked for a Japanese trading company in Tokyo for four years before going to law school. Following graduation from Boalt Hall in 1987, followed by a clerkship with then-Judge Kenneth Starr, King interviewed with firms in Northern California.

"I met with a number of law firms and oddly they were all very respectful of each other, but critical of Skadden. They viewed Skadden as having really changed the way law was practiced," King recalls. "It had caused law to be practiced in a much more client-centric and professional services-oriented way

and constituted real competition in every market."

At one firm, a partner mentioned with disdain having sent

Skadden a document in the morning, and receiving a marked-up version that afternoon. "Who are these people who would do such a thing?" he asked.

That perceived faux pas sounded like opportunity to King, who joined Skadden, got lots of opportunity early on and has since handled three of the five largest tech deals, including Yahoo! in Microsoft's unsolicited \$45B acquisition bid and Compaq in its \$25B merger with Hewlett-Packard.

The deal culture also spelled opportunity to Jay Kasner when he graduated from Boston University Law School in 1980. The constant deal flow of the 1980s meant substantial work on injunctions and other expedited hearings required to get transactions closed. "We were young lawyers doing things that

# "I REALIZED THIS WAS A GROUP OF PEOPLE I'D BE HAPPY PRACTICING LAW WITH AND THAT THE PLATFORM IS HUGE."

– *former White House Counsel Greg Craig*

oftentimes much more senior lawyers were doing at other firms, taking depositions, arguing in court. At Skadden, it was very much the situation that if you could handle it, you did," Kasner recalls.

That all changed in the late 1980s, with the downfall of Drexel Burnham Lambert and the stock market crash of 1987. The market for hostile deals – and the corporate control contests that came with them – slowed dramatically. "As a department, we realized we could no longer rely solely on transaction-related work to keep us busy," says Kasner, who is currently defending subprime cases for Deloitte & Touche, Bank of America and Merrill Lynch.

The firm had, of course, a huge deal litigation capacity, and had begun to assemble strong practices in mass tort (Sheila Birnbaum), antitrust (the late Frank Rothman); and intellectual property. In the last 20 years, Skadden built a world-class litigation team that mirrors the accomplishments of its dealmakers on behalf of clients including Brocade, Broadcom, Merrill Lynch, Bank of America, Baxter, Putnam, Ernst & Young, Sprint Nextel and Anadarko Petroleum.

"The evolution of our group over the past 20 years has been tremendous. The department took a clear-eyed look at where we were and where we wanted to go, and I think we have gotten there," says Kasner, who won the landmark *Dabit v. Merrill Lynch* in the U.S. Supreme Court, significantly curtailing the ability of plaintiffs to file class action cases in state courts.

Zornow was among the high-profile trial lawyers to join Skadden, after stints in the U.S. Attorney's Office for the Southern District of New York; as an Associate Independent Counsel in the Iran-Contra investigation; and as a prosecutor in the trial of Oliver North. Having tried cases with and against legendary litigators including Rudy Giuliani and John Kecker, he saw a great opportunity to expand upon the "terrific litigation team" at Skadden.

"At Skadden, I am fortunate to have as partners a superb array of trial lawyers who truly are the 'best of the best,'" says Zornow, who is the global head of Skadden's Litigation/Controversy practices. He is

currently defending Dr. Yves Benhamou, a French liver doctor embroiled in the FrontPoint insider trading scandal; Rajiv Goel, the former Intel employee charged in Galleon; Dell Inc. in the SEC investigation; Frederick Schiff, the former CFO of Bristol-Myers Squibb; and Martin Liechti, UBS' former head of wealth management for the Americas.

An avowed Bob Dylan nut, Zornow brings Dylan's philosophy to Skadden's Zen. "He not busy being born is busy dying," he says, of the firm's constant pursuit of improvement. He plays a key role in keeping an eye out for top talent, like Craig and Robinson, who add further dimension to Skadden's deep, deep trial bench.

Nolan experienced the profound difference of Skadden's platform just one week after living through the grueling four-month MGA-Mattel trial. Freedom Communications called and asked if he could parachute into a case that was set for trial in two weeks. A lot was riding on the dispute for the financially strapped newspaper industry, which faced the possibility of higher costs if the trial determined that newspaper carriers were employees rather than independent contractors.

Nolan started calling his partners, asking if the firm should take over at such a late hour. "'No other firm would do this,' one partner said," according to Nolan. "That's because," said another, "no other firm could."

Lawyers from across Skadden assembled on a dime to try the case, which was settled on favorable terms for Freedom.

As one of Skadden's leading M&A partners and co-head of its Private Equity practice, Eileen Nugent regularly draws on Skadden's ability to pull together a corporate team for a deal of any complexity, no matter where it may be. Last year, she helped Endo Pharmaceuticals buy the nation's sixth-largest generic drug maker, Qualitest Pharmaceuticals, for \$1.2 billion, while leading a team that represented Burger King Holdings in 3G Capital Partners' \$3.7 billion buyout of the company.

"As a firm, we have the ability to tap a virtually

unlimited group of talented attorneys with experience in every facet of the deal,” says Nugent, who was a corporate counsel before joining Skadden, and thus innately aware of the value of responsiveness. “Skadden’s deep expertise in dealmaking allows us to help our clients in almost any situation they find themselves. It’s a very important attribute of what we bring to the table.”

Friedman, who was a summer associate in 1988, joined Skadden in 1989 after graduating from the University of Pennsylvania. In the 21 years since, Skadden has “improved and changed in fundamental ways,” he says.

The firm he joined was a 1,000-lawyer firm with a heavy nationwide geographic footprint predominantly focused on corporate transactions and litigation; the one he today leads is a broad, international, interconnected multidisciplinary force of dealmakers and litigators, capital markets, bankruptcy and white-collar experts, and a deep regulated industry and government enforcement bench, with specialists in health-care and Dodd-Frank financial services, energy and international arbitration. Since he’s been executive partner, he has broken down geographic walls, ensuring that all practices are run seamlessly and globally.

## MORE THAN 90 PERCENT OF THE 620 SKADDEN FELLOWS HAVE REMAINED IN PUBLIC INTEREST AFTER THE TWO-YEAR FELLOWSHIP.

“It’s a vastly different firm than the one I joined, that has been able to change and stay ahead of the trends, really to anticipate the trends,” says Friedman.

Another key focus for Friedman is diversity within the firm and the profession. Skadden’s dedication to diversity is longstanding. The firm hired its first woman attorney in 1959, and made the first minority attorney partner in 1979. Its first female partner was tapped in 1981. The firm has been named among the “Best Places to Work for LGBT Equality” for three years running, and has received a perfect score on the Human Rights Campaign Foundation’s Corporate Equality Index. In addition to enhancing the diversity of talent at Skadden, Friedman wants

to build a stronger pathway to the profession for a broader range of people.

To expand the pipeline for minority representation in the legal profession, the firm recently endowed the \$10 million Skadden Honors Program in Legal Studies at the City College of New York, from which founder Joe Flom graduated. Freshmen and sophomore students at CCNY, whose student body is 80 percent from diverse backgrounds, will be able to enroll in pre-honors sequences; juniors and seniors are selected for a two-year scholars program that provides financial support, mentoring, LSAT preparation and a variety of other assistance.

“It’s designed to light the spark and excite their interest in Big Law,” said Friedman, who underscored that participants don’t have to go to law school and they don’t have to come work for Skadden. “Our goal is to lead the way in implementing strategies that benefit the legal community and our society for the long term.”

While firms that practiced as civic institutions first and businesses second have fallen by the wayside, the firm that practiced as a business first has embraced as its companion the value of civic leadership.

Skadden lawyers donated 200,000 hours of pro bono last year (in addition to the Fellowship program), with individual lawyers and the firm earning recognition for their contributions to public interest. The firm recently established the Sheehan Asylum Project at the University of Pennsylvania to help human rights asylum victims navigate the legal system.

“Our core values are not just a motto. We live them every day,” says Friedman.

As Skadden’s leader, Friedman spends much of his time assessing which industries and markets will emerge in need of top legal talent. He knows the resulting fees will fuel one of the world’s most profitable law firms. But, too, they will support a game-changing firm that increasingly defines its success not just by client engagements, but also by the role its attorneys play as leaders in the broader legal profession. The consummate outsiders who turned the legal profession upside down.

“We’re committed to performing our social responsibility at the same standard we practice law,” says Friedman. “Trying to innovate, trying to make a difference.”

Call it the Zen of Skadden. ■



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 again and again. Brad Karp winning everything  
 he touches for Citibank. Tom Girardi nailing  
 Farmers for \$400M. Russ Herman bringing

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**Arthur Abbey** ABBEY SPANIER (NEW YORK) One of the nation's best securities litigators thrives in trial, evidenced by the massive 2010 jury verdict against Vivendi for misleading investors.

**Nancy Abell** PAUL HASTINGS (LOS ANGELES) This defense-side master defeated nationwide employment class actions, won a jury trial she took over shortly before trial and earned a summary judgment in a complex whistleblower case.

**Michael Abourezk** ABOUREZK LAW (RAPID CITY, S.D.) South Dakota's top dog for consumers scored a \$6.2M bad-faith verdict against CUNA Mutual Insurance, one of many multimillion-dollar successes in his career.

**Floyd Abrams** CAHILL (NEW YORK) The First Amendment legend successfully defended corporate free speech in the controversial *Citizens United v. FEC* as amicus curiae and is hoping to protect ratings agency Standard & Poor's from allegations its flawed methodology triggered economic collapse.

**Marc Abrams** WILLKIE FARR (NEW YORK) A go-to lawyer for the biggest bankruptcies and restructurings, Abrams represents 30 creditor clients arising from the Lehman Bros. mess.

**Robert Adams** SHOOK HARDY (KANSAS CITY, MO.) This renowned trial lawyer scored a major defense verdict for pacemaker giants Guidant Corp. and Boston Scientific in a multimillion-dollar jury trial.

**Linda Addison** FULBRIGHT & JAWORSKI (NEW YORK) The remarkable partner-in-charge of Fulbright's New York office is an all-around trial lawyer who excels in intellectual property, class actions, securities and corporate governance.

**Thomas Ajamie** AJAMIE LAW (HOUSTON) Ajamie scored a \$112M verdict for Tyco-subsiary ADT against a group of Mexican and American defendants while continuing to help clients who lost big in the Madoff and Sanford frauds.

**Charla Aldous** ALDOUS LAW FIRM (DALLAS) This litigation machine negotiated several med-mal settlements and scored multimillion-dollar verdicts for minority shareholder oppression (\$7.5M), employment discrimination of a Muslim physician (\$3.6M) and breach of real estate development contract (\$1.6M).

**Frederick Alexander** MORRIS NICHOLS (WILMINGTON) A master of corporate governance and M&As, Alexander represented the transaction committee for IMS Health in its \$5.3B purchase by TPG Capital and CPPIB.

**Mary Alexander** LAW OFFICE OF MARY ALEXANDER (SAN FRANCISCO) Alexander continued her stellar record for plaintiffs by securing a \$45M verdict for a woman paralyzed by a driver who sped through a red light.

**Samuel Alito** U.S. SUPREME COURT (WASHINGTON, DC) Alito has proven a reliable conservative but also one who may be willing to agree with his liberal colleagues on crucial matters, such as interpretations of civil rights laws.



## BRAD KARP

**FEW LAWYERS HAVE** captivated the legal profession as has Brad Karp.

Since becoming chairman of Paul Weiss in 2009, he has elevated the already prestigious firm to one of the hottest in the nation. Its litigators, including Karp, Ted Wells, Dan Kramer and Beth Wilkinson, are on the front line of seemingly ever major litigation matter, anchoring virtually all of Citigroup's challenges since the meltdown. Under Karp, the firm has also gone on the market to hire stars in dealmaking and others who will amplify Paul Weiss in the national market.

**LAWDRAGON:** What are your proudest accomplishments of last year?

**BRAD KARP:** Wearing my firm chair hat, my biggest achievement was helping lead Paul Weiss to the best year in its history - in terms of the extraordinary results we consistently achieved for our clients in these unimaginably challenging times, the exceptional service we provided, our record profitability, our record pro bono commitment, and upgrading our talent in all departments and across all firm offices, all while maintaining a true sense of partnership and collegiality and respecting our core institutional values.

**LD:** Are there any specific cases that most reflect the firm's success?

**KP:** Thank you Ted Wells! I am enormously proud to have quarterbacked our trial victory on behalf of Citigroup in the \$7B Terra Firma/EMI litigation. Many have called this case the most significant trial victory of 2010. And for good reason: It's not every day in this environment that a financial institution tries and wins a multi-billion-dollar jury trial.

And that is the second multi-billion-dollar jury trial victory we've won for Citigroup in the past two years; in late 2008, we won the Parmalat jury trial, defeating a \$30B claim and recovering more than \$400M on Citigroup's counterclaims.) Wins like that are invaluable for our firm's defense of substantial matters. So, unlike virtually every other law firm, when we tell plaintiffs that we're prepared to try a multi-billion-dollar case, we mean it and they know it. The plaintiffs' bar is acutely aware of these trial victories, which pays enormous dividends in settlement negotiations.

**LD:** And what about personally? Didn't your daughter recently enroll in law school?

**BK:** Yes, she did. It was a source of enormous pride to watch Meredith graduate phi beta kappa, summa cum laude from Cornell this past May and be accepted into

Harvard Law School, where she can follow her parents' and my late parents' footsteps in the law.

**LD:** So many legendary lawyers have practiced at Paul Weiss, and I know you've been mentored by many of them. Tell me about Ted Sorensen, who recently passed away. I know he was a role model for you.

**BK:** In a law firm known for its legendary figures, Ted Sorensen stood out. He was, in a literal and a figurative sense, the voice of Paul Weiss. For decades, Ted presided at our Annual Partner Dinners; his lyrical wit and brilliant insights enlivening the introduction of newly elected partners and retiring ones.

During the '70s, '80s and '90s, Ted delivered mesmerizing State of the Firm addresses, in which Ted's combination of doggerel, bad puns and funny insights brought us down to earth as to our past achievements and inspired us all to reach for the stars. Only Ted had the real-world perspective and the magical command of the English language to explain our crazy insular world in terms that balanced wisdom and whimsy.

Ted was a meticulous and breathtakingly smart lawyer, with a unique set of clients. Ted was a giant, but he never took himself too seriously. I learned from Ted every day and I'm smart enough to appreciate that his are impossibly large shoes to fill.

**LD:** For lawyers who would love to have your clientele, what can you share about the secret of your success?

**BK:** I've been enormously fortunate to have had great mentors (especially Simon Rifkind and Arthur Liman) who taught me how to practice law and how to service clients, a law firm that has supported me steadfastly for 25 years, and loyal clients and friends who have given me endless opportunities to help them solve their most vexing problems and have supported me every step of the way.

Beyond being smart, creative, pragmatic and tireless, I believe the key to exceptional client service is to strive to make your client look good at all times, which requires multiple skills. Be available 24/7. Be responsive. Put the client first. Identify problems and risks before they materialize.... Listen to your clients. Understand their businesses, their problems and their needs.... Remember that the goal is to develop a long-term relationship of trust and that, in today's world, clients want the highest possible quality legal service at the lowest possible cost.

**LD:** It seems like you're doing all those things and more. Any final thoughts?

**BK:** To borrow Al Davis' catch phrase, "just win, baby."

**brad karp**

PAUL WEISS (NEW YORK)



**helgi walker**

WILEY REIN (WASHINGTON, DC)





**Greg Allen** BEASLEY ALLEN (MONTGOMERY, ALA.) The veteran star of the plaintiffs' bar settled a truck rollover case and has taken on Sikorsky Aircraft Corp. on behalf of the family of a pilot who died in a helicopter crash.

**Kenneth Allen** KENNETH ALLEN & ASSOCIATES (VALPARAISO, IND.) Allen surprised no one by adding to his list of multimillion-dollar verdicts and settlements, including \$7M for the family of a math teacher killed in a car accident.

**Riley Allen** ALLEN MURPHY (ORLANDO, FLA.) There is simply no stopping this force of nature, one of Florida's best plaintiff-side trial lawyers in the areas of bad faith and brain and other personal injuries.

**Joseph Allerhand** WEIL GOTSHAL (NEW YORK) Allerhand won a high-profile securities case for AIG and advised hedge fund Man Group in a \$1.6B acquisition of GLG Partners, Inc.

**Thomas Allingham** SKADDEN (WILMINGTON) A highly respected litigator known for his courtroom panache, he helped Anheuser Busch negotiate better terms in its \$52B acquisition by InBev and won control of Trans Resources' board of directors for the Trump Group.

**David Anders** WACHTELL LIPTON (NEW YORK) Successfully prosecuting former WorldCom CEO Bernard Ebbers and former Credit Suisse investment banker Frank Quattrone helped Anders become one of the best white-collar defenders.

**Jeffrey Anderson** JEFFREY ANDERSON & ASSOCIATES (ST. PAUL, MINN.) The U.S. Supreme Court gave this tireless advocate for children victimized by sexual abuse the right to proceed to trial in a sex-abuse case against the Vatican.

**Reuben Anderson** PHELPS DUNBAR (JACKSON, MISS.) The former state supreme court justice and one of Mississippi's most admired legal figures continues to draw praise for his work on complex commercial litigation and regulatory matters.

**Bruce Angiolillo** SIMPSON THACHER (NEW YORK) Angiolillo earned dismissals of securities class actions for PXRE Group against Hurricane Katrina-related claims and for Focus Media against claims related to its 2007 financial results.

**Francis Aquila** SULLIVAN & CROMWELL (NEW YORK) Aquila handled InBev's \$52B acquisition of Anheuser-Busch – one of the biggest deals of the downturn – and has since guided British Airways through its merger with Iberia and joint venture with American Airlines.

**Kevin Arquit** SIMPSON THACHER (NEW YORK) The antitrust icon continued his winning ways with defense-side victories for Fidelity National Financial in a federal action and for Equitas in a New York state case.

**Kenneth Bachman** CLEARY GOTTlieb (WASHINGTON, DC) The financial regulation superstar is the counsel of choice for major banks as well as foreign governments such as the Chilean, Kuwaiti and Mexican governments.

# STEVE YERRID

**IT'S NOT SURPRISING** that Tampa-based attorney Steve Yerrid has found himself in the middle of the legal response to the Gulf Coast oil spill. Yerrid has won record-setting verdicts, accumulated a countless number of million-dollar verdicts and settlements and was a vital member of the "Dream Team" that guided the state of Florida to its \$11 billion settlement with the tobacco industry.

For these reasons, Florida Gov. Charlie Crist selected Yerrid as his special counsel to advise the state on all efforts "to secure justice for the people of Florida in relation to the impacts of the Deepwater Horizon oil spill." The oil spill is a personal matter for Yerrid, an avid fisherman who spends as much of his free time as possible on the water.

**LAWDRAGON:** How did you get involved in the oil spill issues for Florida, and what is your role?

**STEVE YERRID:** I think when the governor reaches out to the private sector, it's recognizing that private trial lawyers bring another component not necessarily possessed by the government. We're kind of a different breed of cat. Gov. Crist knows that BP will have the best legal talent money can buy, so what we bring is parity. He asked me if I wanted to help, and of course I said I would help the state of Florida in any way possible.

Since the spill we've been in constant communication and are looking at all of our options. The priority of course is stopping the spill, mitigating the effects and making sure the state of Florida has a voice in any steps taken to make sure this doesn't happen again. This is a generational crisis with catastrophic consequences. We are providing advice on federal, state and environmental levels – on all developments as they occur – coordinating with various officials in the state of Florida. This is truly a team effort.

**LD:** Where does litigation fit into all of this?

**SY:** Any good trial lawyer knows that, while litigation is often the only means of resolving something, it is the last resort. Look at the Exxon Valdez case with 20-years-plus of litigation; that probably doesn't serve anyone's best interest. BP has at least demonstrated a desire to take some steps toward resolution. The posting of the \$20 billion claims fund was the first positive thing they did since the wrongdoing occurred.

**LD:** How do you begin to think about a dollar amount for liability?

**SY:** It's clearly going to be an enormous sum, given

that the damage is enormous. Obviously we do not want to bankrupt or threaten the existence of BP; we want them to make reparations, and of course they are not the only parties we are looking at. The dust hasn't even settled yet. But the important thing is that the \$20 billion fund put up by BP is not capped – that's just a number to demonstrate good faith. This is a multi-billion dollar scenario and a long-term problem that will go into the next governor's term. We are keeping all options open and reserving causes of action.

**LD:** Why did you agree to do this pro bono?

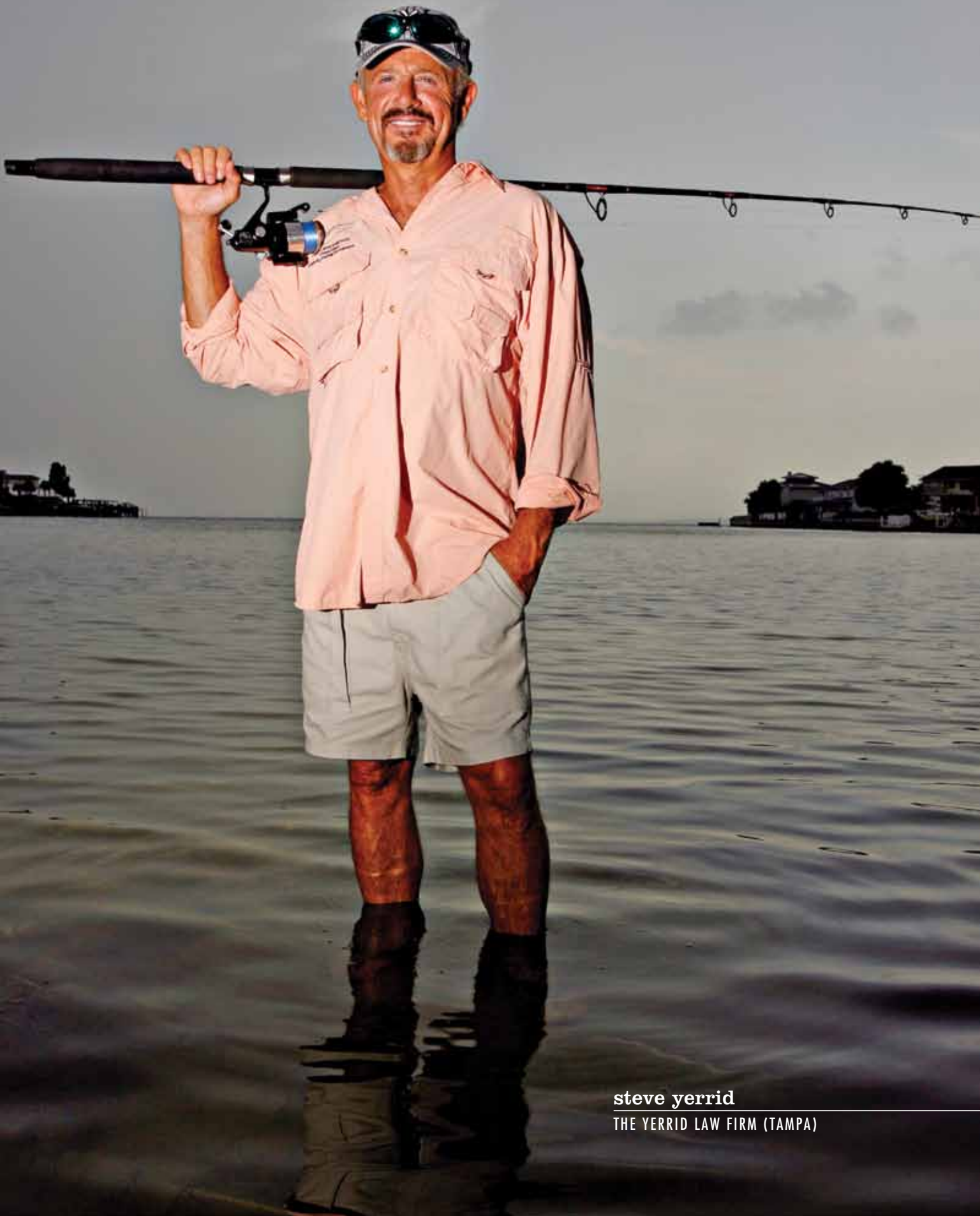
**SY:** I have spent a huge amount of time since the spill on this, a large personal investment in addition to the professional time. It's something that had to be done. There was no hesitation. If I didn't believe that this governor was genuinely interested in protecting all of the people of Florida and willing to take a stand, it may have been more difficult to step forward. But there was no hesitation. I've been very fortunate in my career. It's not just me, I've been assembling the best trial lawyers and maritime lawyers in Florida, which in my opinion means the best in the United States, because I feel we have the best of the best here.

The call of service is something you can either answer or not answer. Much of the time – and there is not always a lot of awareness about this – but much of the time trial lawyers do answer that call and do a lot of good things. When it's something you love – and I love the law and helping Florida – then it's not really work.

**LD:** Your passion for the water must play into this.

**SY:** If there's a good thing to this it's that we're now looking at the whole off-shore deep-water drilling process and the horrible consequences it can have. As a trial lawyer I always say it's a damn shame that people have to get killed at an intersection before we realize that a stop-light should be there. This is a huge human tragedy, with loss of 11 men, the damage to the wildlife, the sea life, the ecological destruction and frankly the anxiety of it all.

Honest to God, this has been horrible for people here. People are frightened for the environment, for the economy, for their way of life. People are married to the sea; it's not just a job. You know my background, as someone who lives on the water it's personally very troubling. It is producing a lot of anxiety, a lot of anger, and a lot of pressure – we have got to make it right, and we can't rely on BP.



**steve yerrid**  
THE YERRID LAW FIRM (TAMPA)



**andrew levander**  
DECHERT (NEW YORK)

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**Marcia Backus** VINSON & ELKINS (HOUSTON) Tops for massive deals in the energy sector, Backus handled Reliance Industries Ltd.'s purchase of a \$1.7B stake in natural-gas properties and joint-venture agreement with Atlas Energy.

**William Baer** ARNOLD & PORTER (WASHINGTON, DC) On any company's short list for the most complex antitrust cases, Baer guided Intel to its settlement with the Federal Trade Commission over the chipmaker's marketing practices.

**C. Mark Baker** FULBRIGHT & JAWORSKI (HOUSTON) This influential oil attorney and international arbitrator has done battle for major oil companies against foreign governments, most recently against Venezuela's Hugo Chavez and Russia's Vladimir Putin on behalf of Nova Scotia Power and Yukos Oil.

**D.J. 'Jan' Baker** LATHAM & WATKINS (NEW YORK) A heavyweight in corporate restructuring, Baker has worked on bankruptcies involving Circle K, HealthSouth Corp., Owens Corning and Spectrum Brands.

**Corinne Ball** JONES DAY (NEW YORK) One of the biggest names in the bankruptcy bar, Ball has represented Fortune 100 companies in some of the most complex and largest Chapter 11 cases in history.

**Thomas Banducci** BANDUCCI WOODARD (BOISE, IDAHO) Banducci helped net an \$800K verdict for Washington sugar beet farmers who were forced out of their cooperative and successfully defended Montana ski resort founder Timothy Blixseth against nearly \$300M in claims during bankruptcy proceedings.

**Jana Barbe** SNR DENTON (CHICAGO) This affordable-housing expert and chair of SNR Denton's real estate group counts among powerhouses clients Bank of America, Allstate Insurance Co., Prudential Insurance and JP Morgan Chase.

**Roy Barnes** BARNES LAW GROUP (MARIETTA, GA.) His failure to retake the governorship in a Republican year will allow this fearless litigator to continue his battle on behalf of Georgians most in need.

**Robert Barnett** WILLIAMS & CONNOLLY (WASHINGTON, DC) Without peer at helping public figures tell their tales, Barnett's recent book deal work includes clients Karl Rove and Sarah Palin.

**Robert Baron** CRAVATH (NEW YORK) After winning dismissal of three class actions against the successor to the Australian Wheat Board arising from its participation in the UN Oil-for-Food Programme, this top litigator helped defeat an unsolicited bid for Casey's General Stores and defended Burlington Northern Santa Fe in conjunction with its acquisition by Berkshire Hathaway.

**Judy Barrasso** BARRASSO USDIN (NEW ORLEANS) One of the state's top commercial litigators prevailed in the 5th Circuit for Liberty Mutual and other defendants against lawsuits filed by medical providers alleging underpayment on workers compensation claims.

**Francis Barron** MORGAN STANLEY (NEW YORK) A top advisor to corporations including Citigroup, UBS, Goldman Sachs, he left his Cravath partnership to become chief legal officer of client Morgan Stanley, for whom he had handled a \$9B investment in Mitsubishi.

**Scott Barshay** CRAVATH (NEW YORK) Cravath's corporate managing partner is flying high with big deals for UAL Corp. (\$4.5B Continental merger); Qualcomm (\$3.1B Atheros Communications acquisition); Special Committee of J.Crew (\$3B TPG Capital and Leonard Green proposed sale); IBM (\$1.7B Netezza acquisition); and a proxy victory for Barnes & Noble against Yucaipa.

**Fred Bartlit Jr.** BARTLIT BECK (DENVER) One of the nation's top trial lawyers, Bartlit was selected as Chief Counsel to the National Commission on the BP Deepwater Horizon Spill and Offshore Drilling.

**George Bason** DAVIS POLK (NEW YORK) The head of Davis Polk's M&A team is a veteran of blockbuster deals, such as his work for Exxon Mobil in its \$41B acquisition of XTO Energy.

**Hilarie Bass** GREENBERG TRAURIG (MIAMI) A go-to litigator for corporations facing complex claims was a natural choice to serve as lead counsel for homebuilders in the massive Chinese drywall multidistrict litigation.

**Paul Basta** KIRKLAND & ELLIS (NEW YORK) Basta belongs to an elite group of bankruptcy and restructuring practitioners who has worked on some of the biggest, most complex bankruptcy cases, including Charter Communications, Inc.

**L. Robert Batterman** PROSKAUER (NEW YORK) Among the nation's best sports lawyers, Batterman represented Major League Soccer in a successful renegotiation of its collective bargaining agreement with the players' union.

**Robert Bauer** WHITE HOUSE COUNSEL (WASHINGTON, DC) Serving as head of Perkins Coie's esteemed political law group prepared Bauer well for the task of managing the Obama administration's litigation and judicial nominations process.

**Samuel Baxter** MCKOOL SMITH (DALLAS) If he's not the Top Dog IP lawyer in the U.S., he's surely among the top two or three after snaring \$139m for Versata Software, whose patents were infringed by SAP, then helping hybrid vehicle maker Paice resolve patent claims against Toyota.

**Jere Beasley** BEASLEY ALLEN (MONTGOMERY, ALA.) This unstoppable force for plaintiffs continues to lead his firm into the biggest and most important actions, including representing victims of the BP oil spill.

**Richard Beattie** SIMPSON THACHER (NEW YORK) Beattie steered his firm through the downturn while representing AIG's outside directors in multibillion-dollar sales of AIG companies to MetLife and Prudential.





dianne elderkin  
AKIN GUMP (PHILADELPHIA)



**roman silberfeld**  
ROBINS KAPLAN (LOS ANGELES)

**David Beck** BECK REDDEN (HOUSTON) The successful defense of Memorial Hermann Healthcare System against antitrust claims worth \$300M is typical of the work of this trial lawyer – one of the best in Texas or anywhere.

**Philip Beck** BARTLIT BECK (CHICAGO) One of the nation's most feared courtroom talents has handled the trial needs for entities as diverse as Bayer, Conoco-Phillips, 3M and Amaranth.

**John Beisner** SKADDEN (WASHINGTON, DC) After negotiating a settlement for Countrywide Financial/Bank of America in the subprime mortgage mess, this monster defense litigator thwarted billions in claims against Merck and Bausch & Lomb, while defending class actions brought against Pfizer and Philip Morris.

**Paul Bekman** SALSURY CLEMENTS (BALTIMORE) The lion of Maryland's trial bar scored a \$4M medical malpractice verdict against two ER doctors – believed to be the largest of its kind in Frederick County.

**James Benedict** MILBANK (NEW YORK) A securities litigator without peer, he defended the largest securities class action ever to go to trial, turning back a \$15B claim of excessive fees against Capital Research in the American Mutual Funds case.

**Robert Bennett** HOGAN LOVELLS (WASHINGTON, DC) Hogan scored big by nabbing Bennett, who remains as trusted as they come for the most sensitive criminal, civil and congressional investigations facing corporations and individuals.

**Max Berger** BERNSTEIN LITOWITZ (NEW YORK) Berger continues to set the standard for plaintiff-side class action securities work through his stewardship of a firm that plays leading roles in the biggest cases, from HealthSouth to Maxim Integrated Products and Toyota.

**Martha Bergmark** MISSISSIPPI CENTER FOR JUSTICE (JACKSON, MISS.) As important as ever with the hardships brought by Katrina and the financial crisis, Bergmark's group played a leading role in securing a \$132M settlement with HUD and the state for still-needed disaster housing.

**Steve Berman** HAGENS BERMAN (SEATTLE) A veteran of some of the biggest cases in history, from tobacco litigation to Exxon Valdez and Enron, Berman is well poised to serve as co-lead counsel in the class action against Toyota over unintended acceleration of their vehicles.

**Donald Bernstein** DAVIS POLK (NEW YORK) A giant in his field, Bernstein has been involved in the restructuring and reorganizations of numerous major companies, including Ford Motor Co., U.S. Industries, LTV Steel, Lomas Financial, Liberte Investors, Allis-Chalmers and Johns-Manville.

**Stephen Best** BROWNSTEIN HYATT (WASHINGTON, DC) This relentless former federal prosecutor and white-collar group co-chair earned a dismissal of securities fraud charges against Lucent's former president and a dismissal of SEC insider-trading charges against Mark Cuban.





**frank aquila**

SULLIVAN & CROMWELL (NEW YORK)

# FRANK AQUILA

**EARLY IN 2010**, Frank Aquila was optimistic about a few important issues in his life. The lifelong New Yorker believed, as he does just about every Spring, that 2010 could be the year that the New York Mets win their first World Series since 1986. He also believed that the struggling economy would pick up and bring an increase in mergers and acquisitions activity, ending the slow dealmaking pace of recent years.

Though the Mets quickly (and perhaps predictably) dipped after a promising start, Aquila remained enthusiastic about the economy and the “cornucopia” of deals he expects to see in the years ahead. Personally, Aquila remained busy during the downturn, representing InBev in its \$52 billion acquisition of Anheuser-Busch in 2008. Other clients have included Amgen, British Airways, Diageo, Medtronic, Collective Brands and EchoStar, among many others.

**LAWDRAGON:** How would you characterize the past few years and the present state of the economy as it relates to deals?

**FRANK AQUILA:** Clearly 2008 and 2009 were pretty slow years for the M&A world. Having said that, there were certainly many interesting deals that went forward despite the downturn in the market. Of course, the one that I am most proud of was InBev’s successful bid for Anheuser-Busch in 2008. There were also many acquisitions that took place specifically because of the liquidity crisis. Bear Stearns being acquired by JP Morgan, Wells Fargo buying Wachovia and most of the other transactions that occurred in the financial services industry took place because of the crisis.

At the same time, there was a sharp decrease during the last two years in transactions by private equity groups. Although private equity activity is well below the levels we saw a few years ago, we are beginning to see the private equity guys finding ways to get back into the game. The most important recent development was the return of strategic buyers in the second half of [2009]. Today companies have significantly more cash than they did two or three years ago....

**LD:** What types of deals are we going to see?

**FA:** A cornucopia! We are going to continue to see stock deals, stock and cash deals and all-cash deals. Dealmakers are being creative in terms of deal structures and how they finance transactions. We will see deals in a wide range of industries, and geographies, for that matter. In addition to the continuation of con-

solidation in the financial sector, we will likely see consolidation in the energy and basic materials sector, as well as in consumer products, tech and media. We may not see deals in every sector, but we will see companies across a range of sectors doing deals in 2010 and 2011. We will see a significant amount of cross-border transactions as well.

In the last 10 years “cross-border M&A” has largely meant U.S. companies buying European companies, or European companies buying U.S. companies. But what will be more interesting and more challenging in the years ahead will be cross-border activity from Latin America to North America, Latin America to Africa, India to Africa, the Middle East to Asia, and so on. We are likely to see activity where acquirers, huge companies from Asia or Latin America some of whom you may have never heard of before, are buying U.S. and European household names. This sort of global dealmaking is what cross-border M&A will look like in the years ahead.

**LD:** What are some of the challenges of handling cross-border deals?

**FA:** You have to be part lawyer, part orchestra conductor and part traffic cop to pull off everything at the same time. You have to work closely with the litigators in preparation for litigation and the regulatory lawyers to be sure that all of the regulatory issues are being handled. You need to fully understand all of the legal issues that could arise in multiple jurisdictions. You have to do this while remaining focused on the big picture, what the client wants and what their objectives are. You always have to understand their constraints and limitations. Clients rightfully expect more than just technical support; you have to provide the best possible strategic and tactical advice while taking into account all of the practical and legal factors.

**LD:** Who was an early mentor for you?

**FA:** One of the earliest transactions I worked on was in late 1983, after being at S&C for just a few months. Our client, Lincoln First National Bank was being acquired by Chase Manhattan Bank. I had an opportunity to work directly with Rodgin Cohen, to see the master in action if you will. It had a profound impact on me and really made me want to become a deal lawyer. Rodge is one of the greatest people to work with when you’re young and starting out. Actually, Rodge is one of the best people to work with at any stage of your career. It was a great experience.

**Mike Bidart** SHERNOFF BIDART (CLAREMONT, CALIF.) A man of historical importance, Bidart remains one of the very best attorneys a policyholder can hire to take on HMOs and insurers for bad-faith claims.

**Martin Bienenstock** DEWEY & LEBOEUF (NEW YORK) Bienenstock remains the counsel of choice for major companies seeking help with complex restructurings, reorganizations and risk assessment strategies.

**Sheila Birnbaum** SKADDEN (NEW YORK) When one of America's premier corporations is under fire, it's a fair wager that Birnbaum will get the call given her track record defending State Farm, Amgen, BP and Pfizer; she also mediated claims of 92 families who lost loved ones in the World Trade Center attack on 9/11.

**Donald Bivens** SNELL & WILMER (PHOENIX) One of Arizona's most accomplished trial lawyers continued his stewardship of the state's Democratic Party while securing a defense verdict against a \$50M claim for his accounting-firm client.

**Roy Black** BLACK SREBNICK (MIAMI) A longtime standout in high-profile criminal cases (as well as the occasional civil dispute), Black successfully defended Indy 500 winner Helio Castroneves against tax charges in a six-week trial.

**F. Paul Bland** PUBLIC JUSTICE (WASHINGTON, DC) This skillful advocate and coordinator works tirelessly on behalf of wronged employees as well as consumers caught up in everything from bad payday loans to HMO double-billing.

**Dennis Block** CADWALADER (NEW YORK) M&A mainstays don't get much bigger than Block, who guided Pfizer's \$68B acquisition of Wyeth.

**Jerry Bloom** WINSTON & STRAWN (LOS ANGELES) Widely known for his involvement in the restructuring of California's energy market, Bloom is the counsel of choice for the state's investor-owned utilities.

**Jack Blumenfeld** MORRIS NICHOLS (WILMINGTON) Another stellar turn for this IP litigation leader, who earned victories for clients such as Agilent Technologies, Edwards Lifesciences and Sanofi-Aventis.

**Steven Bochner** WILSON SONSINI (PALO ALTO, CALIF.) Every boardroom in Silicon Valley knows his name and now he's CEO of the most influential firm in the high-tech world.

**Paula Boggs** STARBUCKS (SEATTLE) Widely respected for her management of the coffee giant's legal issues and commitment to public service, Boggs earned a place on President Obama's Council for Community Solutions.

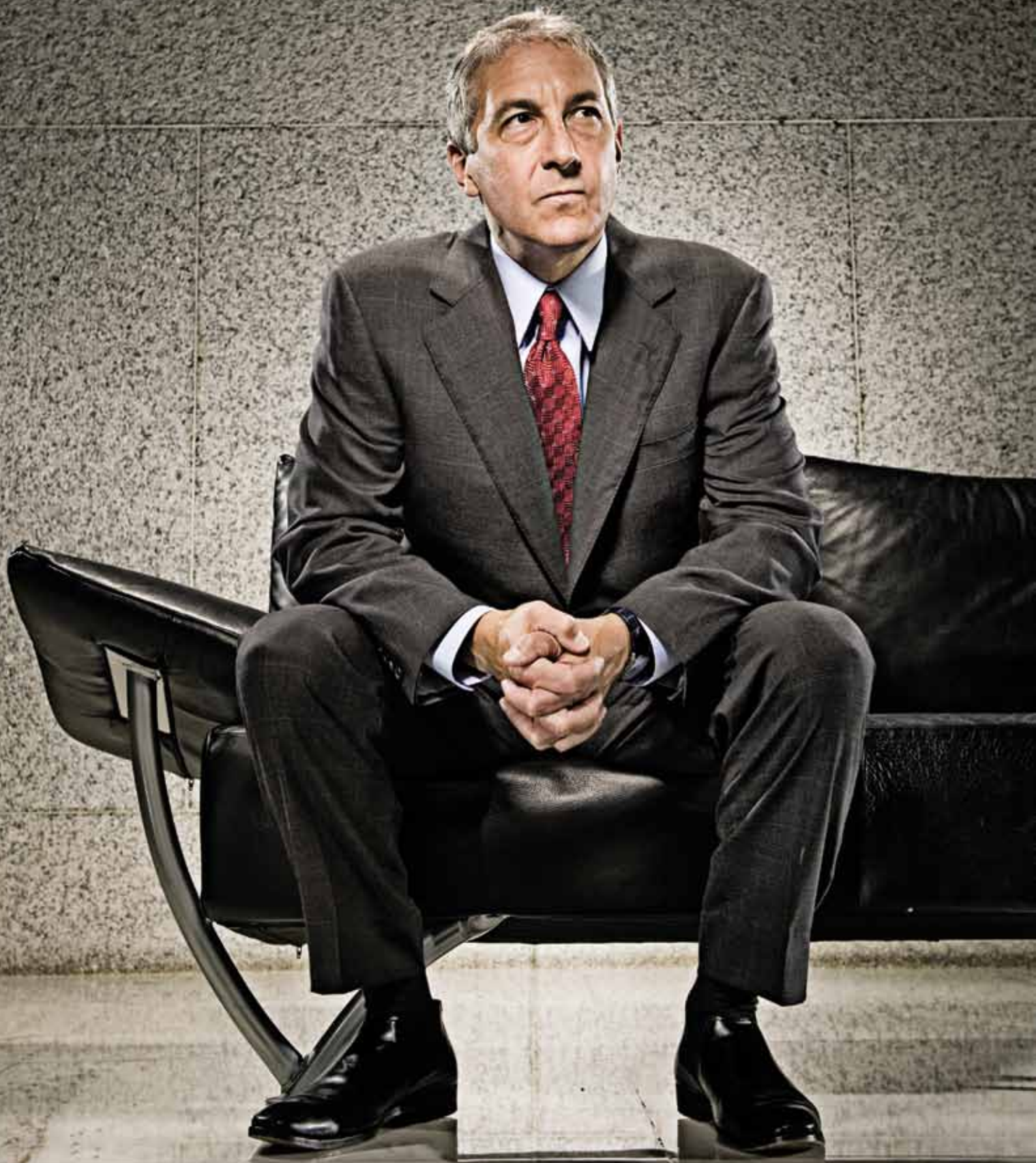
**David Boies** BOIES SCHILLER (ARMONK, N.Y.) The best trial lawyer in America became a hero for dismantling Prop. 8, while winning billions for Starr International against AIG and fighting for Madoff investors and others duped by financial fraud.





**linda addison**  
FULBRIGHT & JAWORSKI (NEW YORK)

paul singerman  
BERGER SINGERMAN (MIAMI)





**Michael Boone** HAYNES & BOONE (DALLAS) For decades Boone has been one of the Lonestar State's most renowned and sought-after attorneys for complex M&As and other corporate work.

**Andre Bouchard** BOUCHARD MARGULES (WILMINGTON) The managing partner of the outstanding Delaware-based corporate litigation boutique is as skillful an advocate as they come in the Court of Chancery.

**Ray Boucher** KIESEL BOUCHER (BEVERLY HILLS) This hero of the priest abuse litigation never backs down, whether taking on the Catholic Church, Corporate America or international child abuse.

**John Bouma** SNELL & WILMER (PHOENIX) The state of Arizona chose wisely in hiring Bouma to defend the constitutionality of the controversial SB1070 illegal-immigration law against several legal challenges.

**Theodore Boutrous** GIBSON DUNN (LOS ANGELES) One of the best media and appellate attorneys in the nation, Boutrous plays a key role in the firm's pro bono effort to overturn California's Prop. 8 ban on gay marriage.

**David Bradford** JENNER & BLOCK (CHICAGO) Jenner's litigation co-chair has won more than his fair share of complex cases, including a \$101M federal court verdict for healthcare REIT Ventas against HCP Inc.

**David Braff** SULLIVAN & CROMWELL (NEW YORK) Equally adept at complex civil cases as well as regulatory and criminal investigations, Braff presides over Sullivan & Cromwell's outstanding litigation department.

**John Branca** ZIFFREN BRITTENHAM (LOS ANGELES) A rock star in entertainment law business, Branca's name carries the same caché as some of his super-star clients.

**Frank Branson** LAW OFFICE OF FRANK BRANSON (DALLAS) The state's most respected and powerful force for injured plaintiffs earned a substantial settlement for two Dallas Cowboys employees hurt in the collapse of the team's practice facility.

**Bruce Braun** WINSTON & STRAWN (CHICAGO) A rising star in the commercial and white-collar crime litigation practice, Braun has already represented the likes of Microsoft, Ernst & Young, Grant Thornton and McDonald's.

**Greg Breedlove** CUNNINGHAM BOUNDS (MOBILE, ALA.) This mainstay of the Alabama legal scene has scored multimillion-dollar verdicts and settlements across the areas of product liability, medical negligence, personal injury and bad faith, among others.

**Stephen Breyer** U.S. SUPREME COURT (WASHINGTON, DC) Breyer again displayed his reason and intellect as a jurist and also by distilling his 16 years on the court in the well-received book, *Making our Democracy Work: A Judge's View*.



**Brad Brian** MUNGER TOLLES (LOS ANGELES) Still the attorney that powerful corporations and individuals turn to when facing complex litigation needs, whether of the white-collar criminal or civil variety.

**Bruce Broillet** GREENE BROILLET (SANTA MONICA, CALIF.) It doesn't matter if you're a poor victim of a defective product or a business embroiled in a complex dispute, Broillet can take – and win – your case to the tune of millions.

**Brian Brooks** O'MELVENY (WASHINGTON, DC) Among the very best for financial services litigation, O'Melveny's DC office head has been kept busy defending major subprime mortgage lenders in criminal probes and civil cases.

**Joseph Brown** CUNNINGHAM BOUNDS (MOBILE, ALA.) This longtime veteran of complex cases is a big reason why Cunningham Bounds is one of the South's top trial firms for plaintiffs in need of powerful and sage counsel.

**Michael Brown** REED SMITH (LOS ANGELES) A dominant force in Reed Smith's stellar product liability practice group, Brown boasts an exceptional record in life sciences and in coordinating MDL defense strategies.

**Susan Brune** BRUNE & RICHARD (NEW YORK) Brune, a former federal prosecutor, successfully defended a Bear Stearns hedge fund manager at trial and is just as good at killing a case before charges are brought.

**Susanna Buergel** PAUL WEISS (NEW YORK) She won dismissal of claims against Ericsson and Citigroup, including a lawsuit in Del. Chancery Court claiming Citigroup's board breached its fiduciary duty by allowing the company to invest in the subprime market, the first case examining D&O liability for subprime deals.

**Donald Bussard** RICHARDS LAYTON (WILMINGTON) Bussard handled the Delaware corporate work for Marvel in its acquisition by Disney, Live Nation in its merger with Ticketmaster and DirecTV in its deal with Liberty Media.

**John Butler** SKADDEN (CHICAGO) Butler is a turnaround titan, as evidenced by his work on the restructuring of the Delphi auto supply chain, a key to the Chrysler and GM restructurings, as well as on behalf of Sprint-Nextel.

**Bradley Butwin** O'MELVENY (NEW YORK) The chair of O'Melveny's powerhouse litigation practice has his hands full in turbulent times representing financial institutions in securities class actions, subprime cases and Madoff-related claims.

**Elizabeth Cabraser** LIEFF CABRASER (SAN FRANCISCO) Cabraser is co-lead counsel suing Yamaha for rollover accidents involving the Rhino ATV and is part of the team going after BP and other defendants for damages related to the oil spill.

**Paul Cappuccio** TIME WARNER (NEW YORK) The top dog at the world's largest media conglomerate has been a key member of the team divesting AOL, expanding internationally and transforming the giant into a digital rights empire.



**kannon shanmugam**

WILLIAMS & CONNOLLY (WASHINGTON, DC)

**ariana tadler**  
MILBERG LLP (NEW YORK)

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# ARIANA TADLER

**ARIANA TADLER WAS** clearly on to something as a 13-year-old, when she decided she wanted to be a lawyer. The Milberg LLP partner is one of the nation's most talented plaintiff-side securities litigators. Among her successful cases, Tadler has served as plaintiffs' liaison counsel in the massive Initial Public Offering (IPO) Securities Litigation, which resulted in a \$586 million settlement last year. She also is one of the foremost experts on electronic discovery matters.

**LAWDRAGON:** How did you know you wanted to be a lawyer so early in life?

**ARIANA TADLER:** I had the opportunity at a very young age to travel to Haiti and was extremely touched by what I saw there. That definitive experience precipitated my interest in helping people who didn't have the resources to help or protect themselves. Working for consumers and investors who have suffered a financial loss or wrong has been very appealing to me. Doing what I can to rectify some of the inequities in the lives of individuals or groups of people is gratifying, particularly in very large complex cases.

I also enjoy cases that are not just about the recovery of monies lost but that also play a role in changing practices that companies engage in that are unfair to consumers and investors.

**LD:** What was some of your early work at Milberg that helped established your reputation?

**AT:** I joined Milberg in 1997 as an associate and quickly had the opportunity to work on complex cases. In fairly short order, I gained experience by litigating cases in the Eastern District of Virginia, which is known as the "Rocket Docket." For example, Microstrategy, which was a very fast-paced, challenging case, afforded me the experience of honing my legal and case-management skills. That case ended in the summer of 2000 with a successful resolution. Then, in 2001, our firm became involved in the IPO securities litigation matter. The firm certainly anticipated it to be a large litigation, but I don't think anybody in our industry anticipated just how big it would be.

The firm was looking for people to work on the IPO litigation. I thought long and hard about it and eventually volunteered, thinking, "I know I can do this." A critical prerequisite for this case was that it required somebody who could micromanage teams of people with lots of moving parts. Those requirements come naturally to me. (I was the goalie for a New York State champion lacrosse team, so I am very accustomed to

managing a field. That experience continues to serve me well today.) The case has been ongoing for nearly ten years – with a \$586 million settlement now pending appeal.

The IPO litigation opened up a new array of opportunities and exposure for me. Then, in 2004, I was asked to serve on Milberg's Management Committee, which was a tremendous honor at that stage of my career. In 2008, I was elected to serve as one of the five partners on the firm's Executive Committee.

**LD:** How did you develop an interest in e-discovery?

**AT:** I had an opportunity early on with some of my cases to develop a greater specialization in e-discovery. With the IPO case, which involves 55 investment banks, much of the discovery was electronically-based. I, along with a select team, had to come up with fairly unique tools and approaches for managing the discovery. That led me to establish a personal interest in the area and to become involved in a variety of entities. I serve on the Advisory Board of Georgetown University Law Center's Advanced e-Discovery Institute. I also joined The Sedona Conference in 2003 and am now Co-Chair of the Working Group on Electronic Document Retention and Production. I have also had the opportunity to educate members of the judiciary.

In addition to becoming more involved in public speaking and writing, I worked with the firm to develop two particular areas that work together hand-in-hand. First, the firm has established a Litigation Technology Support Department, which is distinct from our IT Department and focuses on the management of electronic data in litigation. In addition, we have established an e-Discovery Task Force comprised of lawyers, paralegals and Litigation Technology Specialists. Under my supervision, this Task Force serves as a resource to each litigation team at the firm, providing hands-on assistance and guidance as to how best to tackle and manage the issues associated with discovery today.

With this team, we also are equipped to serve in a specialized discovery counsel capacity – for example, we are currently Special Discovery Counsel in a civil RICO case pending in the Eastern District of New York on behalf of various departments within the Republic of Colombia, against several major liquor companies for, among other things, the illegal distribution of liquor in Colombia and elsewhere, as well as money laundering.

ralph cook  
HARE WYNN (BIRMINGHAM)



**Bill Carmody** SUSMAN GODFREY (NEW YORK) Carmody makes it work for financial funds and shareholders facing peril from the market meltdown; he's especially adept at last-minute trial finesse, as evidenced by Dan Loeb and Third Point's decision to count on Carmody in the high-profile Fairfax case.

**George Carpinello** BOIES SCHILLER (ALBANY, N.Y.) This litigation standout gave hope to victims of table saw accidents, Harrah's Casino when faced with a \$1.8B trial court default, the N.Y. Yankees, and the photographer of the iconic Obama photograph.

**James Carroll** SKADDEN (BOSTON) This Boston big shot is equally adept at defending national insurers, mutual funds facing market-timing claims, investment advisors connected to Bernard Madoff and high-tech firms in whistleblower and derivative claims.

**Michael Carroll** DAVIS POLK (NEW YORK) A seasoned securities litigator, Carroll has successfully represented corporate giants such as Aetna, Comcast and Oracle in major cases.

**Douglas Cawley** MCKOOL SMITH (DALLAS) He slammed back to back victories against Microsoft for infringing patents held by i4i (\$290m) and VirnetX (\$105m) after an earlier settlement with the company over video game controller technology that infringed on the patent of client Anascope.

**Thomas Cerabino** WILLKIE FARR (NEW YORK) This M&A master has a bevy of billion-dollar deals to his name, including Farmers Group in its \$1.9B bid for AIG's Personal Auto Group and Electronic Data Systems in its \$14B acquisition by HP.

**Neel Chatterjee** ORRICK (MENLO PARK, CALIF.) One of the Silicon Valley's most sought after IP litigators is now the lawyer of choice for Facebook.

**Howard Chatzinoff** WEIL GOTSHAL (NEW YORK) Represented NBC and GE in the \$37.5B joint venture with Comcast, one of the largest media deals in recent years.

**Erwin Chemerinsky** UNIVERSITY OF CALIFORNIA AT IRVINE LAW SCHOOL (IRVINE, CALIF.) The insights of everybody's favorite law professor will only grow more timely with the renewed national debate on the Constitution's meaning and the threat of budget cuts to public higher education.

**Michael Chopiga** SIMPSON THACHER (NEW YORK) A master of complex securities cases, Chopiga scored victories for underwriters facing class-action claims in separate litigations involving Fannie Mae and Freddie Mac.

**Evan Chesler** CRAVATH (NEW YORK) He's famous as a trial lawyer, winning summary judgment for Morgan Stanley against Discover (with a judgment exceeding \$800M) and securing major patent infringement rulings for Sanofi-Aventis, Bristol-Myers Squibb and Novartis, while earning acclaim for his leadership of the nation's quintessential law firm.



**Morgan Chu** IRELL (LOS ANGELES) The tireless IP litigator helped net a defense verdict for Novellus Systems over Linear Technology while pursuing scientific outfit Max Planck Society's claims related to RNAi technology against the Whitehead Institute and UMass.

**Richard Cieri** KIRKLAND & ELLIS (NEW YORK) This giant of the bankruptcy bar has led some of the most complex restructuring and turnaround deals to date.

**Michael Ciresi** ROBINS KAPLAN (MINNEAPOLIS) One of the country's most versatile trial lawyers, Ciresi has scored major victories in the areas of product liability, intellectual property, business and commercial litigation.

**Richard Clary** CRAVATH (NEW YORK) Clary's winning ways helped Credit Suisse beat back billions of dollars in claims from purchasers who bought its stock on the Swiss exchange, using one of the first applications of *Morrison v. National Australian Bank*, and obtained the dismissal of claims against the outside directors of Citigroup in subprime-related litigation.

**Jay Clayton** SULLIVAN & CROMWELL (NEW YORK) One of Sullivan's ever-busy M&A standouts, Clayton represented Ares Management and Teachers' Private Capital (owners of Serta) in the \$760M acquisition of rival Simmons Bedding.

**Richard Climan** DEWEY & LEOEUF (EAST PALO ALTO, CALIF.) Climan's name is synonymous with big-ticket M&A deals in the tech sector; his recent high-profile exploits include helping Gilead Sciences acquire CV Therapeutics and advising Dell in its acquisition of Compellent Technologies.

**Ty Cobb** HOGAN LOVELLS (WASHINGTON, DC) A longtime SEC compliance and white-collar crime standout, Cobb represented AIG during congressional hearings into the financial crisis.

**Eleni Coffinas** SULLIVAN PAPAIN (NEW YORK) With a track record of many multimillion-dollar payouts for injured clients, Coffinas is one of the most respected and feared of all medical malpractice litigators.

**Charles Cogut** SIMPSON THACHER (NEW YORK) Cogut followed up his work for Wyeth in the Pfizer merger by representing the special committee of independent directors of Hearst-Argyle Television in response to the Hearst Corp.'s acquisition proposal and the City of New York in establishing a trust for Governor's Island.

**H. Rodgin Cohen** SULLIVAN & CROMWELL (NEW YORK) There is little that needs to be said of Wall Street's savior, who had his hand in nearly every bailout, merger and acquisition of the crisis and its aftermath.

**Mary Cohen** PHILLIPS & COHEN (WASHINGTON, DC) Well known for eye-raising (even record-setting) qui tam settlements, Cohen netted \$302M from Quest Diagnostics in a whistleblower case over the company's blood test kits.

**robert barnett**

**WILLIAMS & CONNOLLY (WASHINGTON, DC)**



**kenneth feinberg**

FEINBERG ROZEN (WASHINGTON, DC)





**Thomas Cole** SIDLEY (CHICAGO) This transactional specialist continues to negotiate billion-dollar M&As while guiding his respected firm into a new era.

**J. Peter Coll** ORRICK (NEW YORK) The senior member of Orrick's litigation department has taken on the most complex cases for Fortune 500 companies such as American Cyanamid Co., Dow Chemical Co. and American Home Products Corp., among many others.

**Mark Collins** RICHARDS LAYTON (WILMINGTON) Collins chairs one of the most admired and busy bankruptcy practices in the nation with clients such as Washington Mutual, Linens 'N Things and Tropicana.

**Dean Colson** COLSON HICKS (CORAL GABLES, FLA.) The redoubtable star of the Florida bar has earned countless successes (and recompense) for personal injury victims as well as for clients in commercial cases.

**James Comey** BRIDGEWATER ASSOCIATES (WESTPORT, CT.) The Ray Dalio-founded hedge fund did well to acquire this highly respected former Bush-era Justice Department official and, more recently, Lockheed general counsel.

**Roxanne Conlin** ROXANNE B. CONLIN & ASSOCIATES (DES MOINES, IOWA) A loss to Sen. Charles Grassley in Iowa's U.S. Senate race doesn't undermine the popularity of Conlin, whose successful suit against Microsoft is sending millions of dollars to Iowa schools.

**Richard Cordray** OHIO ATTORNEY GENERAL (COLUMBUS, OHIO) Before losing his re-election bid, Cordray made Wall Street pay by recovering billions of dollars from institutions caught up in the crisis.

**Robert Cote** MCKOOL SMITH (NEW YORK) He puts his electrical engineering background to use for clients including Optical Recording Corp., Applera, Wi-Lan and two Italian auto makers suing GM and others for violating trade secrets involving hybrid cars.

**Cameron Cowan** ORRICK (WASHINGTON, DC) One of Orrick's most talented attorneys in the financial markets arena represents public agencies and financial institutions in complex transactions and also has taken on a leadership role in the firm's Social Sector Finance practice.

**Gregory Craig** SKADDEN (WASHINGTON, DC) Craig shocked the legal establishment by joining Skadden over returning to Williams & Connolly after serving as White House Counsel, where he helped select Supreme Court Justice Sonia Sotomayor and parse through Guantanamo abuses.

**John Cruden** U.S. DEPARTMENT OF JUSTICE (WASHINGTON, DC) Cruden's department obtained \$1.79B, one of the largest environmental bankruptcy settlements in history, from mining giant Asarco to fund environmental cleanup efforts at more than 80 sites in 19 states.



**jeffrey lamken**

MOLOLAMKEN (WASHINGTON, DC)

## JEFF LAMKEN

**TO SAY JEFF LAMKEN** has had an eventful year would be a gross understatement. A year ago, the veteran appellate litigator left his post as head of Baker Botts' Supreme Court and Appellate Practice in Washington, D.C., to start a boutique firm with fellow big-firm defector Steven Molo, a prominent white-collar trial and appellate lawyer and partner at Shearman & Sterling in New York.

During his first year as a small-firm attorney at MoloLamken, he briefed and argued three high-profile cases before the Supreme Court—including defending the creation and constitutionality of the Public Company Accounting Oversight Board under the Sarbanes-Oxley Act.

**LAWDRAGON:** It's a year now since you left big-firm practice and started your own boutique. How has it been and what were the biggest adjustments for you?

**JEFF LAMKEN:** It has been phenomenal. When you leave a well-managed firm with a huge infrastructure, you learn to appreciate that. But at the same time the advantage of being able to manage your own firm and creating an infrastructure that you think works best for you and for your client and doing things your way is pretty exciting.

**LD:** Any surprises?

**JL:** I kind of feel that after years of being in a very well-managed firm, I've been trained well to deal with any surprises that come my way, so there hasn't been that many surprises. Except, one time, when I found myself lying on my back trying to fix the office Xerox machine, I sure was surprised. But hopefully there won't be any more of those.

**LD:** What's the most exciting part of your job?

**JL:** To handle any Supreme Court case is an extraordinarily high mark of every lawyer's legal career, and to be able to do that for a living is just a fabulous thing. Every case is unique, and you just have fabulous clients who are extremely knowledgeable about their cases. They help you learn and develop your own knowledge and expertise in each legal issue before you. I also deal with a lot of different counsels and phenomenal lawyers writing amici who have been around the block and are experts in their fields. It's just the pinnacle of law practice.

**LD:** How did you end up in appellate advocacy?

**JL:** It is an example of the invisible hand at work. I didn't decide to do appellate work, but I came out of law school and went to clerk for Justice Sandra Day

O'Connor and just fell in love with that practice. I went back to private practice and then ended up in the attorney general's office where I got a chance to argue a lot of cases before the court. So it's something I just ended up practicing and loving enormously.

**LD:** Has anything changed in the practice since you started doing it?

**JL:** It is one of the more stable areas of practice. Trial lawyers would tell you how there have been dramatic changes in technology in the courtroom, electronic filing and e-discovery, but for the appellate world, except for page limits and word limits, the emphasis on the values of clean expression of writing and persuasiveness is still the same.

We haven't gone into huge technological changes, and I'm more surprised by the consistency than any changes that have occurred. I expect in the future we'll have e-briefs, as a new generation of judges and clerks become more oriented with the Internet and other new media. It would be really interesting to see whether or not video testimony would be embedded in briefs. I think it is just a matter of time before the appellate briefs move away from words to images of witnesses embedded in briefs. My guess is that it will be 10 years or more before we see that.

**LD:** How would you describe the upcoming Supreme Court docket?

**JL:** It seems to be the ever-shrinking docket. It appears that a smaller and smaller number of cases each year are being taken. When I was a clerk, it was around 120 to 125 a year, and now it's down to about 70 cases a year. Whether that's good or bad, I don't know.

On the one hand, as a Supreme Court advocate you sort of think, "Shouldn't they be they taking more cases? Shouldn't they be correcting more circuit conflicts to get uniformity?" On the other hand, this is a court where what they say is the law of the land and very often there's only one court that can consider constitutional decisions made by Congress, so maybe they'll just pick constitutional cases and that's it. Perhaps given the smaller docket they can just focus on those issues.

You want them to address the inefficiencies of the lower courts because people should not get a different brand of justice in California than you get in New York, for example. But maybe it's better for us to sit back and let the lower courts hash it out for a while longer so we get a better perspective or viewpoint. The docket is smaller; whether it's better or not, it's really hard to tell.



**Robert Cunningham** CUNNINGHAM BOUNDS (MOBILE, ALA.) No stranger to billion-dollar cases, Cunningham is helping to lead the charge against BP in the oil spill litigation.

**Andrew Cuomo** NEW YORK ATTORNEY GENERAL (NEW YORK) Cuomo earned the top spot in New York state politics thanks in large part to his aggressive but reasonable prosecutorial approach to government and corporate corruption.

**Richard Dannay** COWAN LIEBOWITZ (NEW YORK) This New York veteran remains among the most skillful litigators and sharpest legal minds in the areas of publishing and copyright law.

**Frank Darras** DARRASLAW (ONTARIO, CALIF.) No lawyer in America works harder or with greater success to help policyholders both rich and poor get what they deserve from bad-faith insurers.

**Mark Davis** DAVIS LEVIN (HONOLULU) Hawaii's most accomplished trial lawyer secured an \$11M settlement for a Navy family whose daughter suffered brain damage during delivery at the Tripler Army Medical Center.

**Steven Davis** DEWEY & LEBOEUF (NEW YORK) Davis is considered a trailblazer in law firm management, steadily steering his newly merged 1100-lawyer firm out of the worst economic recession and also earning high marks for law firm diversity and community service.

**Cari Dawson** ALSTON & BIRD (ATLANTA) A force that plaintiffs's lawyers will have to reckon with for many years to come, Dawson defends complex class actions across multiple industries and jurisdictions, including as lead counsel for Toyota.

**David Dean** SULLIVAN PAPAIN (NEW YORK) This exceptional advocate has literally done it all in a career spanning roles as lead trial counsel for 2M Vietnam Vets in the Agent Orange cases to lead counsel against the Port Authority for failing to prevent the 1993 World Trade Center bombing.

**Morris Dees** SOUTHERN POVERTY LAW CENTER (MONTGOMERY, ALA.) He helped secure a settlement for the widow of an elderly man shot dead by a police officer in Louisiana – one of the SPLC's many litigation victories in the areas of civil liberties, children's rights, racial discrimination and immigrant rights.

**Edward DeFranco** QUINN EMANUEL (NEW YORK) His successful trial defense of patent infringement claims against RealNetworks exemplifies his dangerous combination of legal skills and technical expertise.

**Mike Delikat** ORRICK (NEW YORK) The chair of Orrick's employment practice, Delikat has handled high-level matters for such major companies as Alliance Bernstein, Facebook, PG&E and JP Morgan Chase.



arthur abbey  
ABBAY SPANIER (NEW YORK)

**adam emmerich**  
WACHTELL LIPTON (NEW YORK)





**Teresa Demchak** GOLDSTEIN DEMCHAK (OAKLAND, CALIF.) Demchak is a passionate litigator on behalf of victims of racial- and gender-based employment discrimination but is equally adept at securing pre-litigation settlements for companies willing to change their behavior.

**Thomas Demetrio** CORBOY & DEMETRIO (CHICAGO) He's a master of the bench and bar, having achieved more than \$1B in settlements for his clients and more than \$130M in jury verdicts; in the last year alone, he's won \$75M for the Hancock Building scaffolding collapse; \$16M for a severely injured roofer and \$2M for a toddler killed at a day care center.

**Robert Denham** MUNGER TOLLES (LOS ANGELES) Warren Buffet's right-hand counsel repped Berkshire Hathaway in its \$44B acquisition of Burlington Northern and its \$515M buyout of Capmark Financial Group's North American servicing and mortgage banking business.

**Otway Denny** FULBRIGHT & JAWORSKI (HOUSTON) Boasting a tremendous defense-side track record for power plant and refinery explosions, Denny was tapped by BP to defend a whistleblower suit against its Atlantis platform.

**Kelly Dermody** LIEFF CABRASER (SAN FRANCISCO) Dermody always scores big, whether for Mexicans who were deprived of their savings accounts after working in the U.S. during WWII labor shortages, or Wal-Mart employees deprived of meal and rest breaks.

**Gandolfo DiBlasi** SULLIVAN & CROMWELL (NEW YORK) This stalwart defense-side securities litigator will be kept busy in the wake of the subprime mess, defending Goldman Sachs, its officers and directors against shareholder claims.

**Joseph Dilg** VINSON & ELKINS (HOUSTON) A widely respected corporate and energy attorney, Dilg is also the steward of a top-flight firm that has come through the downturn with flying colors.

**Marshall Doke** GARDERE (DALLAS) Boasting an unrivaled tandem of trial skills and government contracts mastery, Doke also lends his hand to Congress with testimony on oversight and reform matters.

**Christopher Dolan** DOLAN LAW FIRM (SAN FRANCISCO) This bold advocate's representation of a transgendered golfer pushed the LPGA to abandon its "female at birth" requirement and allow her to play.

**Dennis Dunne** MILBANK (NEW YORK) A true standout in his field, Dunne helped companies such as Greystone Financial, Virgin America and Fortress Homes out of bankruptcy.

**Karen Dyer** BOIES SCHILLER (ORLANDO, FLA.) This star litigator is representing Colombian victims of terrorists, whose efforts were allegedly funded in part by Chiquita Brands after her successful turn on the team that won \$4.3B for Starr International against AIG.

**Douglas Eakeley** LOWENSTEIN SANDLER (ROSELAND, N.J.) KPMG tapped Eakeley to handle an appeal of a \$30M jury verdict, as did Johnson & Johnson's special committee for an investigation into a range of claims made by shareholders.

**Scott Edelman** MILBANK (NEW YORK) This talented former federal prosecutor is one of the anchors of Milbank's venerable litigation team focusing on high-profile securities and corporate governance matters.

**Jay Eisenhofer** GRANT & EISENHOFER (WILMINGTON) Eisenhofer's prowess in the securities arena only grows more important in the wake of the financial crisis; he filed suit against Goldman Sachs over its insensitive \$22B bonus plan.

**Mitchell Eitel** SULLIVAN & CROMWELL (NEW YORK) Among the busiest M&A lawyers in the financial world thanks to clients such as Barclays, Citigroup, JP Morgan Chase, U.S. Bancorp, Wachovia and many more.

**Dianne Elderkin** AKIN GUMP (PHILADELPHIA) Elderkin earned a record-setting \$1.67B verdict for Centocor Ortho Biotech and NYU in a patent-infringement action against Abbott Laboratories over arthritis drug Humira.

**Adam Emmerich** WACHTELL LIPTON (NEW YORK) Emmerich's name is connected to some of the biggest deals in the corporate world – he is representing Wyeth's board in the nearly \$70B purchase by Pfizer – and he is playing a key role in the rebuilding of the World Trade Center site as counsel to WTC leaseholders.

**Alan Epstein** SPECTOR GADON (PHILADELPHIA) The attorney of choice for high-profile individuals caught up in employment disputes also successfully defended the City of Philadelphia against two discrimination suits.

**Steven Epstein** EPSTEIN BECKER (WASHINGTON, DC) Widely regarded as a pioneer in his field, Epstein leads the nation's strongest practice devoted to representing healthcare organizations and providers.

**Leslie Gordon Fagen** PAUL WEISS (NEW YORK) This longstanding leader of the Paul Weiss litigation corps can do it all, from commercial and IP litigation to financial fraud, most recently for AC Nielsen, JP Morgan and Kohlberg Capital.

**Eldon Fallon** U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA (NEW ORLEANS) A master of handling multidistrict litigations and other complex cases, Fallon has presided over bellweather cases in the massive MDL against manufacturers of Chinese drywall.

**Kenneth Feinberg** FEINBERG ROZEN (WASHINGTON, DC) From the 9/11 claims process to the fund for the BP oil spill, Feinberg – in equal parts sensitive, shrewd and smart enough to wear a thick skin – is the unquestioned leader in his field.

**Boris Feldman** WILSON SONSINI (PALO ALTO, CALIF.) Feldman has set the gold standard in securities defense litigation representing some of the elite names in the high-tech world, including Pixar and Salesforce.com.



ty cobb  
HOGAN LOVELLS (WASHINGTON, DC)





**mike mckool**  
MCKOOL SMITH (DALLAS)

# MIKE McKOOL

**A LITTLE OVER A** decade ago, Mike McKool and the Dallas-based firm he founded, McKool Smith, made a calculated bet in starting a patent litigation practice. At the time, the firm didn't have any patent lawyers among its ranks and had merely been assisting intellectual property boutique attorneys in litigating cases.

But under McKool's leadership, the firm aggressively recruited patent lawyers to create a powerful patent litigation practice. McKool Smith boasts some of the largest patent verdicts in recent years, including two nine-figure verdicts against Microsoft Corp., the first for \$200 million and the second for \$106 million..

Now, McKool sees a new opportunity in financial litigation with the banking industry in his cross-hairs. He is personally overseeing the growth of the firm's New York office, which has rapidly grown in the last two and a half years.

**LAWDRAGON:** Your firm recently made an aggressive push in New York City. Tell us why and what you hope to accomplish.

**MIKE MCKOOL:** The robustness of the legal market in New York City is leagues ahead of anywhere else in the country, particularly in financial litigation. We started two and a half years ago with one lawyer and we now have 28 in New York, and we could very easily double within the next year. Our name is known, people know who we are, and there's a segment in the market, particularly those who have cases against financial institutions, that find our firm very attractive.

We've hired superb New York lawyers and staff from such firms as Davis Polk, Quinn Emanuel, Weil Gotshal and Simpson Thacher. The recession has produced opportunities for us, particularly in financial litigation. We've melded our financial litigation practice with our bankruptcy practice, which was added about a year ago.

**LD:** Tell me a little bit about the financial litigation practice.

**MM:** This is litigation generally stemming from failed business deals, and a lot of times there is some kind of lending involved. Recently, we've been hired by Freddie Mac in connection with a bankruptcy. It's a very, very significant matter for us, and we're protecting the interests of Freddie Mac. Our practice is generally opposed to financial institutions. We have lawyers who have many, many years of experience doing that kind of work. For example, there's Jack Cooney, who

was at Davis Polk for almost 35 years. Jack is very well known in financial services and white collar cases. He understands the business, and lawyers know who he is. Jack has two cases involving the Madoff situation. We represent a feeder fund that invested its clients' money with Madoff.

**LD:** Your firm has been hailed as a great model and proponent of contingency-fee work because of your success in picking real winners. Is there a secret to that?

**MM:** Yes, there is – it is the willingness to spend resources at the front end in deciding what case you should take. We end up agreeing to take less than 10 or 20 percent of the cases we are offered. We have a reputation now for being successful so we see lots and lots of those cases. I get two or three calls a week from inventors and technology companies. Our firm spends easily \$100,000 to \$200,000 per case on ones that pass the first hurdle. We spend sometimes \$200,000 before we say no, but that's money well spent because you can spend \$10 million to \$20 million very easily only to find out that you've got a problem. And you still can spend that much money because there is no way you can know all the possibilities. You have to spend a million dollars or more to do that kind of analysis. We have a rigorous system in place to determine which cases would be appropriate for us to undertake.

**LD:** What advice would you give a young lawyer about to embark on a career as a trial lawyer?

**MM:** To try cases or put yourself in a position to try cases and be able to get up in front of a courtroom. The problem with practicing law at the highest level is there's not much opportunity for young lawyers to do significant courtroom work, and clients are not expecting a second-year lawyer to represent them in court. One way lawyers could do it is to work for the U.S. attorney's office and get some courtroom experience. At our firm we make it a standard to allow our young lawyers to have some role in the courtroom in virtually every case. In the VirnetX case, where we got a \$106 million jury verdict against Microsoft this year, there were four lawyers that participated in front of the jury, and three of them were associates. We have to be careful where we put them, but we know that judges and juries like young lawyers. We insist that they work hard and prepare to offset their inexperience. But we give them appropriate tasks and get them in the courtroom.

A portrait of Bruce Rogow, a middle-aged man with a receding hairline and a grey beard. He is wearing a dark blue suit jacket, a white dress shirt, and a blue and gold patterned bow tie. He has his arms crossed and is looking slightly to his left. The background is dark and textured, possibly wood paneling. The lighting is dramatic, coming from the side, highlighting his face and suit.

**bruce rogow**  
ALTERS LAW FIRM (MIAMI)



**Matt Feldman** WILLKIE FARR (NEW YORK) A restructuring superstar, Feldman was tapped by the Obama administration to help in developing an overall strategy to restructure and recapitalize General Motors and Chrysler.

**Edwin Feo** USRG RENEWABLE FINANCE (LOS ANGELES) The nation's top talent at closing renewable-energy deals has closed the book on his storied Milbank career to become managing director of private equity firm USRG Renewable Finance.

**Ralph Ferrara** DEWEY & LEOEUF (WASHINGTON, DC) A star of the securities bar, Ferrara continues to shine for clients such as Royal Dutch/Shell and Zurich Financial Services.

**Louis Fishman** FISHMAN HAYGOOD (NEW ORLEANS) An economic slowdown can't stop the likes of Fishman, without question one of the very best corporate transactional attorneys in the South.

**James Fitzgerald** THE FITZGERALD LAW FIRM (CHEYENNE, WYO.) Wyoming's leading trial lawyer has a near monopoly in the state for multimillion-dollar verdicts and settlements for injured plaintiffs and their families.

**Michael Fitzgerald** MILBANK (NEW YORK) The head of Milbank's outstanding Latin American practice represented Grupo México S.A.B. de C.V. and its subsidiary American Mining Corp. in financing the massive reorganization of its American copper unit.

**Patrick Fitzgerald** U.S. ATTORNEY'S OFFICE, NORTHERN DISTRICT OF ILLINOIS (CHICAGO) Never one to shy away from the toughest cases, Fitzgerald hopes to restore his unblemished record of putting away corrupt officials by retrying former Illinois Gov. Rod Blagojevich on corruption charges.

**Keith Flaum** DEWEY & LEOEUF (EAST PALO ALTO, CALIF.) A dealmaker extraordinaire, Flaum helped clients like eBay, Applied Materials, Merz Pharma and Zynga ink billions in deals in a down economy.

**Donald Flexner** BOIES SCHILLER (NEW YORK) This antitrust ace helped American Express obtain its \$2.2B settlement from Visa, Delta merge with Northwest Airlines and is now representing DuPont in its claims that Monsanto monopolized the market for genetically modified soybeans and corn.

**Jodi Flowers** MOTLEY RICE (MOUNT PLEASANT, S.C.) Fearless in pursuing claims for victims of terrorism and human-rights abuses, Flowers also has taken the cause of individuals and businesses damaged by the BP oil spill.

**Laura Foggan** WILEY REIN (WASHINGTON, DC) A mainstay for insurers in complex coverage disputes, Foggan also excels in emerging areas such as Section 111 Medicare reporting, tainted drywall, global warming and nanotechnology.

**Katherine Forrest** U.S. DEPARTMENT OF JUSTICE (NEW YORK) The standout digital rights litigator for Time Warner helped win antitrust clearance for United to merge with Continental before leaving Cravath to become deputy attorney general in the antitrust division, overseeing civil and criminal matters.

**Carol Forte** BLUME GOLDFADEN (CHATHAM, N.J.) Forte netted a \$725K settlement for a newborn's death from an untreated heart defect and a \$750K verdict for a nerve injury after a biceps-tendon surgery.

**Russell Frackman** MITCHELL SILBERBERG (LOS ANGELES) Not one to rest on his historical laurels in the file-sharing (Napster) and early DMCA cases, Frackman remains one of the most in-demand litigators for copyright disputes related to movies, music, websites and video games.

**Bart Friedman** CAHILL GORDON (NEW YORK) Friedman represented Freddie Mac's independent board of directors during the crisis and worked on Lorillard Tobacco's \$1B public note offering.

**Joseph Frumkin** SULLIVAN & CROMWELL (NEW YORK) The perennial corporate star represented German-based E.ON in the \$7.6B sale of its U.S. power and gas business to Pennsylvania power provider PPL.

**Agnieszka Fryszman** COHEN MILSTEIN (WASHINGTON, DC) A powerful force in the human rights arena, Fryszman reps detainees at Guantanamo Bay and Colombia banana workers suing Chiquita for allegedly supporting terrorist groups.

**Kenneth Gallo** PAUL WEISS (WASHINGTON, DC) A standout antitrust and intellectual property litigator, he helped win dismissal of two Auction Rate Securities claims against Citigroup, and continues to defend MasterCard, AIG, BASF and Genentech in their weightiest matters.

**Sergio Galvis** SULLIVAN & CROMWELL (NEW YORK) This international star defied the sour economy by securing a \$1.05B loan for Antofagasta's financing of the Minera Esperanza copper project, and he represented the Royal Bank of Scotland in the acquisition of its Colombian banking operations by Canada's Scotiabank.

**James Garner** SHER GARNER (NEW ORLEANS) He's leading the charge for New Orleans fisherman unable to earn a living after BP's oil spill, while continuing to pursue \$1.5B in coverage for Hurricane Katrina and Rita claims on behalf of New Orleans' leading institutions, from Xavier University to Children's Hospital.

**Steven Gartner** WILLKIE FARR (NEW YORK) The king of private equity deals, Gartner advised longtime client Warburg Pincus in its \$5.1B acquisition of Neiman Marcus Group.

**Mark Gately** HOGAN & HARTSON (BALTIMORE) Highly sought after for all manner of complex cases, Gately represented Black & Decker in litigation over its merger with Stanley Works and earned a highly favorable resolution without any pre-settlement discovery.



**john mead**

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SULLIVAN & CROMWELL (NEW YORK)





**erwin chemerinsky**

UNIVERSITY OF CALIFORNIA, IRVINE, SCHOOL OF LAW

**Paul Geller** ROBBINS GELLER (BOCA RATON, FLA.) The esteemed firm's Florida anchor is prolific at protecting shareholders from corporate misconduct and has even won kudos for protecting a woman from a pit-bull attack.

**Ronald George** CALIFORNIA SUPREME COURT (SAN FRANCISCO) This California legal icon wrapped up an impressive 14-year stint as chief justice that included a vast array of historical decisions and structural changes to the state court system.

**Michael Gerrard** COLUMBIA LAW SCHOOL (NEW YORK) One of the nations' leading environmental lawyers is making a difference as a professor and director of Columbia's Center for Climate Change Law while remaining special counsel to Arnold & Porter.

**Robin Gibbs** GIBBS & BRUNS (HOUSTON) Gibbs continues to fuel one of the best litigation boutiques in the country, netting a \$1.7B settlement for Huntsman Corp. against Credit Suisse and Deutsche Bank and a \$23M trial verdict for Zachry Construction against the Port of Houston Authority.

**Ruth Ginsburg** U.S. SUPREME COURT (WASHINGTON, DC) Ginsburg nobly maintained her position as one of the court's unwavering and highly respected liberal voices despite undergoing surgery for pancreatic cancer.

**Tom Girardi** GIRARDI & KEESE (LOS ANGELES) Billions and billions served. That's what Girardi brings home for clients each year, most recently against Farmers Group and Zurich Insurance, which agreed to pay \$455M to settle claims they overcharged 13M policyholders. Next up, Erin Brockovich II, in which he is pursuing Shell and Dole Food for a polluted Carson neighborhood.

**Robert Giuffra** SULLIVAN & CROMWELL (NEW YORK) Busy on defense side work for institutions caught up in the subprime crisis, this fearless litigator also is representing major U.S. and foreign banks pursuing claims against bond insurer MBIA and the New York State Insurance Department.

**Patricia Glaser** GLASER WEIL (LOS ANGELES) The tough-as-nails litigator successfully represented Morgan Creek Productions against interference claims by Amaru Entertainment and won dismissal of a lawsuit against Frank Gehry.

**H. Lee Godfrey** SUSMAN GODFREY (HOUSTON) This legendary lawyer and powerbroker is a key pillar of the high-powered Susman firm, most recently representing Lyondell as it works to exit bankruptcy following its \$12.7B acquisition by Basell.

**David Goldschmidt** SKADDEN (NEW YORK) A high-powered and multifaceted dealmaker, Goldschmidt pulled off the largest ever mortgage REIT initial public offering, \$932m for Starwood, while representing a who's who of financial institutions raising billions of dollars in offerings.



**michael gerrard**

COLUMBIA UNIVERSITY SCHOOL OF LAW (NEW YORK)



# MICHAEL GERRARD

**MICHAEL GERRARD WAS** a star environmental lawyer at Arnold & Porter and head of its New York office before departing the partnership at the end of 2008 for Columbia Law School, where he is the Andrew Sabin Professor of Professional Practice. (He remains senior counsel to his former firm.)

Gerrard made the move to found and direct the law school's Center for Climate Change Law. Perhaps not surprisingly, given the timeliness of climate issues, Gerrard says there has been a positive response to the center and his classes. In addition to training students in the field, the center has helpful databases that track developments in climate change laws and regulations.

**Lawdragon:** Why did you make the move to leave private practice at this stage in your career?

**Michael Gerrard:** I had been practicing for thirty years and things were going very well – I had a thriving practice and was partner in charge of my firm's 110-year-old New York office. However, I had also always enjoyed writing (I have written or edited seven books) and teaching (I had been an adjunct professor for years). In the last several years I had devoted much attention to climate change and came to believe it was a massive problem.

The opportunity unexpectedly arose to become a law professor, start up a Center for Climate Change Law, and devote most of my time to this important issue. By then our kids were out of college, our house was almost paid for, and my wife and I decided we could probably manage this move. So I gulped hard – very hard – and took the plunge.

**LD:** What has been the most difficult part of the transition so far?

**MG:** I have a full teaching load, with courses on environmental law, climate change law, and energy law. It is astonishingly time-consuming to teach a course for the first time. (You didn't ask, but the easiest part of the transition so far is not having to fill out a time sheet every day.)

**LD:** What has been the response so far to the Center for Climate Change Law in terms of interest level of the student population and other departments of Columbia that have an interest in climate change?

**MG:** The result has been enormously positive. When I initially said I wanted to teach a course on climate change law, the registrar's office assigned me a classroom with 20 seats; I said I might need something larger. They gave me a 60-seat classroom, and I had 60

students (of whom 45 were in the law school and 15 in other graduate departments in the university). My seminar on energy law had 18 slots; 130 students tried to sign up. I have a lot of law student and undergraduate volunteers working for me. I also have a joint appointment to the faculty of Columbia's Earth Institute, which allows me to spend a good deal of time with the scientists, economists and others on the university faculty.

**LD:** I'm sure our readers will be interested in learning more about the center's databases, given the patchwork of climate-change related litigation and regulatory activity around the world. What was the motivation for doing this?

**MG:** I started up the U.S. climate litigation database while at Arnold & Porter, and it has proven to be very popular; it is the most-downloaded page on the firm's web site (<http://www.climatecasechart.com>). Lawyers all around the world tell me they use it, and many law school classes are told to monitor it.

After coming to Columbia, I realized that there was a real thirst for organized, constantly updated, on-line information, so I started up databases to track U.S. legislative activity, U.S. regulatory activity, and non-U.S. climate litigation. We have also posted a database on legal literature on climate change and one on securities disclosure and greenhouse gases, and several other databases are now in the works. One of the purposes of the center is to help lawyers in the private, governmental, non-profit and academic sectors understand and access legal information in the climate change area, and these databases help serve that purpose.

**LD:** Can you tell our readers how you developed an interest in environmental matters?

**MG:** I grew up in Charleston, West Virginia, a town dominated by the chemical industry. Our house was on the banks of the Kanawha River, which in the 1960s was an industrial sewer. The air and water pollution in Charleston got me interested in environmental issues. I was in college (at Columbia) during the first Earth Day in 1970, further adding to my interest. After graduation I worked for an environmental organization in New York City for two years and observed that much of the most effective work in the area was being done by lawyers, so I decided to go to law school with the objective of being an environmental lawyer. I entered NYU Law School in 1975 and never changed course.



**donald wolfe**  
POTTER ANDERSON (WILMINGTON, DEL.)

**Barry Goldstein** GOLDSTEIN DEMCHAK (OAKLAND, CALIF.) This former NAACP lawyer and leading expert on employment discrimination has litigated cases that have produced hundreds of millions of dollars in verdicts and settlements.

**Marcia Goldstein** WEIL GOTSHAL (NEW YORK) The renowned star of the bankruptcy bar led a team of lawyers in the restructurings of General Growth Properties, Inc. (\$27B of debt) and Extended Stay Hotels (\$7.5B of debt).

**Sandra Goldstein** CRAVATH (NEW YORK) The head of Cravath's illustrious litigation department continued her winning ways by prevailing for Barnes & Noble in a landmark poison pill trial in Delaware Chancery Court, fending off Ron Burkle and his Yucaipa companies, and achieving dismissal of a shareholder derivative action against Novartis.

**Tom Goldstein** GOLDSTEIN HOWE (WASHINGTON, DC) The influential blogger (Scotusblog.com) is also one of the busiest appellate advocates with a half-dozen cases pending before the Supreme Court in the coming year.

**Arturo Gonzalez** MORRISON & FOERSTER (SAN FRANCISCO) Gonzalez won an \$11M trade-secrets verdict for Technology Integrated Group and won an appellate victory in another trade-secrets case for Cypress Semiconductor.

**Jamie Gorelick** WILMERHALE (WASHINGTON, DC) One of the most influential voices on Capitol Hill, Gorelick is advising BP on its oil-spill lobbying effort.

**J. Warren Gorrell** HOGAN LOVELLS (WASHINGTON, DC) Gorrell retained his reputation as an exceptional corporate attorney while putting together a 40-office merger with Lovells and becoming co-CEO.

**David Grais** GRAIS & ELLSWORTH (NEW YORK) Launching his own firm worked out well for Grais, who is in the eye of the storm suing financial institutions over mortgage-backed securities for clients such as The Charles Schwab Corp.

**Stuart Grant** GRANT & EISENHOFER (WILMINGTON) A lawyer of historical importance for his shareholder-side victories in corporate governance, Grant has achieved settlements in the billions of dollars.

**Nicholas Gravante** BOIES SCHILLER (NEW YORK) Known as a masterful white-collar defender and trial lawyer, he has been the counsel of choice for Calvin Klein, the Andy Warhol Foundation, Maurice Greenberg, and even members of Joe Biden's family.

**Gordon Greenberg** MCDERMOTT WILL (LOS ANGELES) Among the most effective white-collar specialists in criminal or civil matters, Greenberg achieved total victory for Broadcom co-founder Henry T. Samueli when the feds decided to drop their appeal of the failed prosecution.



**Mark Greene** CRAVATH (NEW YORK) This hot dealmaker scored again for Unilever, which he has helped transform in a series of deals, including its recent \$3.7B acquisition of Albert-Culver and its TRESemme, VO5 and St. Ives brands and advised Mylan in its \$550M acquisition of Bioniche Pharma.

**Alan Greer** RICHMAN GREER (MIAMI) One of Miami's most accomplished litigators successfully defended a law firm banking partner against misconduct charges before an administrative law judge and served as a defense lawyer on five separate multi-district litigation class actions in Florida.

**Marshall Grossman** BINGHAM MCCUTCHEN (SANTA MONICA, CALIF.) This much admired veteran litigator is always in the thick of it, whether representing ESPN anchor Erin Andrews or the Los Angeles Dodgers leading up to the McCourts' divorce battle.

**Stuart Grossman** GROSSMAN ROTH (CORAL GABLES, FLA.) Within weeks of the accident, the ever-amazing Grossman obtained a confidential settlement for the family of a 13-year-old girl seriously injured after falling from a Wisconsin amusement park ride.

**Theodore Grossman** JONES DAY (CLEVELAND) The not-so-secret weapon of corporate America's litigation arsenal, Grossman has represented clients such as Bayer, FirstMerit, R.J. Reynolds, Wendy's/Arbys, and Zimmer in high-stakes cases.

**Nina Gussack** PEPPER HAMILTON (PHILADELPHIA) The chair of Pepper Hamilton's health effects practice and its executive committee scored big at the 2nd Circuit, which affirmed eight lower court rulings dismissing claims against Eli Lilly over its Zyprexa medication.

**Jay Gutierrez** MORGAN LEWIS (WASHINGTON, DC) Among the world's foremost energy attorneys, Gutierrez has guided his firm to a leadership position in the U.S. nuclear regulatory market and will play a vital role in the worldwide development of nuclear power programs.

**Randall Guynn** DAVIS POLK (NEW YORK) As head of Davis Polk's financial institutions group, Guynn has advised major banks on all regulatory issues, including Federal Reserve Bank of New York in the U.S. Treasury's \$250 billion bank capital purchase program.

**John Halvey** NYSE (NEW YORK) A nimble mind in corporate technology transactions, Halvey sits in the center of the universe as the manager of all legal matters facing the world's leading exchange group.

**Jeffrey Hammes** KIRKLAND & ELLIS (CHICAGO) A top M&A lawyer and chairman of his firm's Executive Committee, Hammes led the firm's expansion into Asia with the opening of the Hong Kong office in 2006 and the Shanghai office in 2010.

**elizabeth cabraser**

LIEFF CABRASER (SAN FRANCISCO)

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**simon lorne**

MILLENNIUM PARTNERS (NEW YORK)



**Deborah Hankinson** HANKINSON LEVINGER (DALLAS) Her experience as a Justice on the Supreme Court of Texas helps make her one of the best and most sought-after appellate lawyers the state has to offer.

**Keith Harper** KILPATRICK TOWNSEND (WASHINGTON, DC) The leader in his practice area, Harper secured a \$3.4B settlement for a class of 500,000 Native Americans in the landmark suit over mismanagement of Indian trust assets.

**Michael Hausfeld** HAUSFELD (WASHINGTON, DC) Hausfeld secured multimillion-dollar settlements in the air-cargo cartel and egg price-fixing cases while also leading the cause for Apartheid-era victims suing corporations that aided the regime.

**David Heiman** JONES DAY (CLEVELAND) The founding member of Jones Day's stellar bankruptcy team leads the way on some of the most complex matters around, including Lehman Bros. and Chrysler in its sale to Fiat-led 'New Chrysler'.

**Kris Heinzelman** CRAVATH (NEW YORK) This illustrious dealmaker specializes in big deals for Credit Suisse, Goldman Sachs and JPMorgan, but sweetened his resume with his representation of Kraft in the acquisition financing of its \$19.7B hostile takeover of Cadbury, creating the world's largest confectioner.

**Edward Herlihy** WACHTELL LIPTON (NEW YORK) A marquee name in financial services, Herlihy was part of the legal team advising the U.S. Treasury Department on the takeover of mortgage finance giants Fannie Mae and Freddie Mac.

**Russ Herman** HERMAN HERMAN (NEW ORLEANS) The Bard of the Bayou brought the BP litigation home, landing co-lead counsel status for his firm with a 'To be or not to be' presentation in Idaho, not to mention prior monster wins in Vioxx and the Chinese drywall litigation.

**William Hinman** SIMPSON THACHER (PALO ALTO, CALIF.) Among many deals, Hinman represented underwriters in the Avago Technologies IPO and follow-on offering, and the initial purchasers of Oracle's \$3.25B notes offering.

**Eric Holder** U.S. DEPARTMENT OF JUSTICE (WASHINGTON, DC) Tensions over terrorist trials and the failed Ted Stevens case only proved that Obama chose the right man – thick-skinned but also reasonable and clear-headed when it comes to the toughest choices.

**Shawn Holley** KINSELLA WEITZMAN (LOS ANGELES) Holley is the top choice for celebrity clients like Lindsay Lohan and Reggie Bush – she can handle the courtroom pressure but is even better at resolving tricky messes outside the public eye.

**Marshall Huebner** DAVIS POLK (NEW YORK) Considered one of the best minds of the bankruptcy bar, Huebner helped the Federal Reserve Bank of New York and the United States Department of Treasury craft a complex exit plan with respect to their \$150 billion in multiple financings and 79.9 percent stake in AIG.



tom demetrio  
CORBOY & DEMETRIO (CHICAGO)

# TOM DEMETRIO

**THOMAS A. DEMETRIO HAS** built his career trusting juries, and so far they have yet to fail him. In his 37 years of litigating serious personal injury cases and wrongful death cases in the area of transportation and aviation, the Chicago lawyer has won more than \$130 million in jury verdicts and an estimated \$1 billion in settlements for his clients. He recently won a \$29.6-million verdict for an individual injured in a mass transit crash after turning down a \$16-million settlement offer.

As past president of the Chicago Bar Association and Illinois Trial Lawyers Association, Demetrio is one of the most recognized and respected lawyers in the area. He is active in numerous charitable endeavors and has also done extensive teaching, lecturing and writing in the field of trial techniques and civil litigation.

**LAWDRAGON:** Can you talk about your most recent success in court?

**THOMAS DEMETRIO:** Last year, I tried a case that was fascinating to me even as somebody who has been doing it for a while. The occurrence dealt with Chicago's Metra Train system. A train was traveling 70 miles an hour in a 10-mile an hour zone, and it came off the tracks, killing two people and injuring a third. We represented the estates of the two victims who died and the third person that was injured. The two death cases settled at the start of trial and the injury case proceeded. The defendant was insured by AIG, which offered my client \$16 million – a rather significant amount. I did two mock juries, and both of them were consistently saying the value of the case was \$30 million. So I rejected the offer.

What shocked me in opening statements was that the defense lawyer told the jury that he was of the opinion the value of the case was \$16 million. I almost fell off my chair because he was setting a basement rather than a ceiling. The way he looked at it, he was going to shock the jury by asking them why these three lawyers are even making them sit through a two-week trial when the defendant already offered the plaintiff a substantial amount. The case proceeded and the verdict was \$29.6 million. I don't know of any case where anybody in Illinois ever turned down \$16 million and took a chance at trial.

**LD:** How did you end up in this area of law?

**TD:** I clerked for Judge James Geroulis during law school. He was among the most active trial judges in

Cook County, and I got a taste of what trial work was all about in his courtroom. I immediately thought it was something I'd like to do because I like interacting with people. When my clerkship was over he told me to come see him when I'm ready to go to work. Then I took the bar in Illinois and also Florida. I didn't want to ever study again, so I took the Florida bar because I figured if I would ever move it would probably be to Florida. So I went to see Judge Geroulis after I passed the bar. At the time there was a trial going on, and a witness on the stand was being cross-examined by Philip Corboy. Judge Geroulis shouted out from the bench and introduced me to Corboy saying: "There's this young man I was talking about." Corboy asked me if I wanted a job. I said "yes." I started work that same day.

**LD:** What is the most important lesson a trial lawyer must learn in order to be successful?

**TD:** Thorough, exhaustive preparation. You should know everything your opponent is going to do and whom they are going to do it with. You should know what evidence should never see the light of day. You should basically know everything so when you are selecting a jury or, I should say, deselecting a jury, you know who to pick. You can only do that if you know every aspect of the case. Second most important thing is maintaining your credibility with the jury and the judge. If you have your credibility intact at the end of the trial, then you've done your job.

**LD:** Tell us a little bit more about your fund-raising effort in Haiti.

**TD:** A priest in Minnesota who was trying to raise funds for several orphanages contacted us. I was impressed by the project and the fact that 100 percent of every dollar would go toward the project unlike other larger entities that were raising money at the time, so we donated \$100,000 for the effort. In the Chicago area, we are pretty well-known for helping various professional and charitable associations.

When I was president of the bar association, I started a program called Lend a Hand in 1993. We started out with 500 lawyers who worked on a pro bono basis as mentors and tutors for inner-city kids. This year, we gave away close to \$2 million through the bar association to various mentoring organizations throughout the city to help provide kids alternatives to gang life and foster the importance of higher education. This is a natural thing for us because we are in the "people service" business.



**James Hurst** WINSTON & STRAWN (CHICAGO) Hurst, a talented and versatile trial lawyer, has successfully represented major clients in a wide array of commercial cases, including patent, antitrust, class action and employment cases.

**William Isaacson** BOIES SCHILLER (WASHINGTON, DC) This intellectually savvy international arbitrator and litigator is representing bondholders against Washington Mutual and student athletes against the NCAA after scoring a \$33M settlement in a claim of DNA amplification.

**Jesse Jenner** ROPES & GRAY (NEW YORK) This IP star represented Motorola in its settlement and licensing agreement with RIM over patent claims and helped RouteOne win its bet-the-company patent dispute with DealerTrack.

**Peter John** WILLIAMS MONTGOMERY (CHICAGO) One of Chicago's most highly regarded trial lawyers successfully defended regular client Siemens Westinghouse against a construction claim made by Athens Generating Corp. in an arbitration proceeding that dragged out over 3½ years.

**Christy Jones** BUTLER SNOW (JACKSON, MISS.) The master of complex product liability cases scored a defense verdict for Merck in New York federal court after just 25 minutes of deliberations.

**Michael Jones** KIRKLAND & ELLIS (WASHINGTON, DC) One of the country's top litigators, Jones has represented such corporate powers as Abbott Laboratories, Chevron, BP America Inc., Conoco Phillips and General Motors.

**Gregory Joseph** GREGORY P. JOSEPH LAW OFFICES (NEW YORK) The president of the American College of Trial Lawyers has earned his stripes as one of the nation's best litigators and authoritative authors on subjects such as visual evidence, sanctions and civil RICO.

**Elena Kagan** U.S. SUPREME COURT (WASHINGTON, DC) The confirmation process was a breeze for the well-liked Kagan, who Obama hopes can use her legal savvy and consensus-building skills to forge more progressive majorities.

**MaryEllen Kanoff** LATHAM & WATKINS (LOS ANGELES) This M&A and finance star has handled deals for the likes of United Online, Jefferies & Co., Foster Poultry Farms, Nestlé and New Regency Pictures.

**Harvey Kaplan** SHOOK HARDY (KANSAS CITY, MO.) The accolades keep coming for Kaplan, who remains the nation's top defense-side choice for bet-the-company litigation related to pharmaceuticals and medical devices.

**Stephen Karotkin** WEIL GOTSHAL (NEW YORK) A turnaround standout, Karotkin is credited with bringing GM, the second-largest automotive manufacturer in the world with \$91 billion in assets, out of bankruptcy in just 40 days.



**russ herman**  
HERMAN HERMAN (NEW ORLEANS)



**ronald schutz**

ROBINS KAPLAN (MINNEAPOLIS)



**Brad Karp** PAUL WEISS (NEW YORK) He's the prince of the Citi, handling virtually all of the bank's major matters, winning a defense verdict in the multibillion-dollar Terra Firma trial, counseling Citi's CEO in testimony before the Financial Crisis Inquiry Commission (and moonlighting there, as well, for JPMorgan), representing a who's who of blue-chip clients, all while leading this hot, hot firm.

**Jay Kasner** SKADDEN (NEW YORK) The indefatigable Kasner is in extraordinarily high demand, defending financial institutions such as Bank of America/Merrill Lynch, CIBC and the underwriters of Citibank, Barclays and Deutsche Bank securities and corporations such as Anadarko, Burger King and Sprint Nextel in the highest-profile subprime, securities class action and takeover cases du jour.

**Marc Kasowitz** KASOWITZ BENSON (NEW YORK) Kasowitz represented a Norwegian securities firm in its suit against Citigroup and defended MBIA against claims filed by JP Morgan Chase, UBS and other large banks.

**Neal Katyal** U.S. SOLICITOR GENERAL (WASHINGTON, DC) With nary a pause, this uncommonly talented advocate took over the SG's office after his boss left for the Supreme Court.

**David Katz** WACHTELL LIPTON (NEW YORK) A prolific legal scholar and an accomplished practitioner, Katz recently combined theory and practice helping client Nova Chemicals Corp. in its \$2.3B sale to Abu Dhabi's International Petroleum Investment Co.

**John Keker** KEKER & VAN NEST (SAN FRANCISCO) Keker's trial work earned former KB Home chief Bruce Karatz an acquittal on most charges related to stock-option backdating, leading to a sentence of just eight months home confinement.

**Michael Kelly** KIRTLAND & PACKARD (EL SEGUNDO, CALIF.) Kelly strikes fear in the heart of Corporate America, whether AT&T Wireless, Toyota or Limco-Piedmont, after winning more than \$130M in the past five years.

**William Kelly** DAVIS POLK (MENLO PARK, CALIF.) A veritable technology industry insider, Kelly has been involved in some of the biggest M&A transactions in Silicon Valley and advises a number of tech companies and their boards in takeover defense and other sensitive matters.

**David Kendall** WILLIAMS & CONNOLLY (WASHINGTON, DC) This litigation stalwart has represented an eclectic group of clients that include The Washington Post, The Baltimore Orioles, the Clintons and Bechtel Infrastructure.

**Anthony Kennedy** U.S. SUPREME COURT (WASHINGTON, DC) With the court's divisions, Kennedy remains uniquely positioned to swing the nation one way or the other – health care may hinge on his commerce clause interpretations.

**Jeffrey Kessler** DEWEY & LEBOEUF (NEW YORK) Always busy on high-profile matters, Kessler represents the NFL's and NBA's players associations in collective-bargaining proceedings as both hope to avoid lockouts and the Lower Manhattan Development Corp. in litigation over the World Trade Center site.

**Robert Khuzami** SEC (WASHINGTON, DC) A talented former federal prosecutor, Khuzami is proving formidable as the SEC's enforcement director with cases against the likes of Goldman Sachs with fraud related to subprime mortgages.

**Paul Kiesel** KIESEL BOUCHER (BEVERLY HILLS) Kiesel fought for victims of the metrolink crash, secured settlements for screenwriters and actors against the WGA and SAG over foreign levies; and is pursuing a wrongful death suit for a 15-year old who died at a rave at the LA Coliseum.

**B. Robbins Kiessling** CRAVATH (NEW YORK) Kiessling's a finance guru of the highest order, helping banks and other financial institutions with their most complicated leveraged deals, including Cincinnati Bell's \$970M bank financing for its \$525M acquisition of CyrusOne, while also helping lenders in financing for sports franchises, including an \$959M credit facility by JP Morgan for the NBA teams.

**Kenton King** SKADDEN (PALO ALTO, CALIF.) King continued his regal dealmaking ways, crafting Yahoo's 10-year search and advertising partnership with Microsoft, Visa's \$2B purchase of CyberSource, and Union Square Advisors in Vista Equity Partners' acquisition of SumTotal Systems, as well as Trident Microsystems' acquisition of NXP.

**Richard Klapper** SULLIVAN & CROMWELL (NEW YORK) Goldman Sachs made the right move by tapping this diversely talented litigator to defend against fraud charges brought by the SEC.

**Jeffrey Klein** WEIL GOTSHAL (NEW YORK) The esteemed head of Weil's Employment Litigation practice group recently defeated class certification in a high-profile employment discrimination suit for client Merrill Lynch.

**Thomas Kline** KLINE & SPECTER (PHILADELPHIA) Kline earned a \$10.5M settlement and a measure of justice for the family of a troubled Philadelphia teen strangled to death in a Tennessee treatment center.

**Lou Kling** SKADDEN (NEW YORK) Kling's a dealmaking dynamo, as seen in his work for pharmacy benefits manager Express Scripts in its \$4.7B acquisition of WellPoint's NextRx subsidiaries, his representation of The Lawrence Group in its \$1.2B bid for United States Sugar and News Corp. in its bid for the portion of BSKyB it does not yet control.

**Harold Koh** U.S. STATE DEPARTMENT (WASHINGTON, DC) The former Yale Law School dean has made a smooth transition to the State Department, giving counsel on such controversial issues as the WikiLeaks and the legality of targeted killing by aerial drones.

**jamie gorelick**  
WILMERHALE (WASHINGTON, DC)

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shawn chapman holley  
KINSELLA WEITZMAN (LOS ANGELES)

# SHAWN CHAPMAN HOLLEY

## OUT OF ALL THE LAWYERS

on the Lawdragon 500, Shawn Chapman Holley may be the one most often called by celebrities embroiled in sensitive legal situations.

In recent years, Holley represented Lindsay Lohan in relation to her DUI offense and prevented Mike Tyson from being prosecuted after an airport altercation with a photographer. Other celebrity clients have included Reggie Bush, Paris Hilton, the Kardashian sisters, Michael Jackson, Tupac Shakur and Axl Rose.

The partner at Santa Monica's Kinsella Weitzman Iser Kump & Aldisert got her start at the public defender's office of Los Angeles County, then later joined the Law Offices of Johnnie L. Cochran, Jr. – where she helped defend O.J. Simpson. Holley's appearance on numerous TV shows over the years has added to her prominence on a national scale.

**LAWDRAGON:** Can you describe when you knew you wanted to be a lawyer, and what your motivation was?

**SHAWN CHAPMAN HOLLEY:** My mother was a legal secretary when I was growing up and whenever I would visit her office or whenever we would go to her work functions there would, naturally, be loads of lawyers. And they were nice and smart and seemed happy, so I thought I'd give it a shot. I was too risk-averse to pursue my true dream of being a famous Hollywood actress, so I thought "trial lawyer" would be the next best thing. But it was when I started in the Public Defender's Office (first, as a law student doing a summer clerkship) that I knew I had chosen the right profession. And since then, I have never second-guessed my decision. It is amazing to be able to help people at one of the most difficult times in their lives.

**LD:** What stands out from your time as a public defender?

**SCH:** The first two years at the PD's Office were magical. Honestly, I would have done the job for free – that's how rewarding it was. As an extremely young (and new) lawyer, you are able to make an immediate difference in someone's life. Your ability to make a persuasive argument which gets someone's charges dismissed or gets them out of custody on their own recognition so that they can keep their job or get home to their family is a powerful tonic. Doing those sorts of things on a daily basis with a group of energetic, like-minded young public defenders is a wonderful and

exciting experience.

**LD:** How did you come to join Mr. Cochran's practice? Is there something about the practice of law or life lessons that you learned from him?

**SCH:** I was working as a public defender in downtown L.A. and I was embroiled in a lengthy hearing. Mr. Cochran was in the courtroom and he watched me in action. Right after the hearing, he invited me to come to his office for an interview. At the time, Mr. Cochran's law firm handled only civil rights and personal injury litigation – no criminal law. But when he offered me the job, I had to say "yes." And I'm so happy that I did. Mr. Cochran became my true mentor in the law and he was like a father to me. He taught me that you can be nice and pleasant and funny and charming to everyone in the courtroom (your adversary, a witness who is opposing you, the judge) and still be an effective advocate and exceedingly successful lawyer.

**LD:** What are some of the challenges of representing celebrity clients like Lindsay Lohan, when news outlets like TMZ disseminate information about the cases so quickly?

**SCH:** When effectively representing celebrity clients, your responsibilities are twofold: you must successfully handle the court case and you must also successfully protect the client's image and reputation. To the extent that you are focused on the latter, the former is necessarily impacted – but almost necessarily in a good way.

**LD:** Do you ever get tired of dealing with the media?

**SCH:** If I had my way, I would never talk to the media. The media scare me. But sometimes it is in the client's best interest to talk to the media and those are the occasions when I do. I never talk "off the cuff," so I don't generally run the risk of saying the wrong thing.

**LD:** Aside from your work for celebrities, what's a case that our readers may not know about that holds special significance for you?

**SCH:** The highlight of my legal career so far has been being a part of the Geronimo Pratt defense team. Geronimo Pratt was a decorated Vietnam vet and Black Panther leader who was convicted of a murder he didn't commit and sentenced to life in prison. I was part of the team of lawyers which helped free him and helped get his conviction overturned after he had served 27 years in prison.

**anton valukas**

JENNER & BLOCK (CHICAGO)





**John Kozyak** KOZYAK TROPIN (MIAMI) The sunshine state's bankruptcy titan represented hotel developer Charles Bray through Bray & Gillespie's bankruptcy, helping Bray keep much of his assets and wrap up his relationship with his partner.

**Daniel Kramer** PAUL WEISS (NEW YORK) This quiet giant won dismissal of billions of dollars of claims last year for AIG, Yorkville Advisors, Citigroup and Swiss Re after persevering in securing a favorable settlement for Bank of America with the SEC before a quite unfavorable judge.

**James Kreindler** KREINDLER & KREINDLER (NEW YORK) A leading advocate in aviation and terrorist litigation is representing victims of the 2008 Mumbai terror attacks in claims against Pakistan's intelligence agency and militants.

**Ronald Krist** THE KRIST LAW FIRM (HOUSTON) One of the best trial attorneys anywhere for injured plaintiffs and also across almost any area of law.

**Harvey Kurzweil** DEWEY & LEOEUF (NEW YORK) An all-around litigation superstar, Kurzweil has represented major clients such as The Travelers, Tesoro Petroleum, MedImmune and The Mony Group.

**Walter Lack** ENGSTROM LIPSCOMB (LOS ANGELES) Lack is lacking nothing in the extraordinary lawyer category, most recently ringing up a \$455M settlement on behalf of policyholders of the Farmers, Fire and Truck Insurance Exchanges who were charged billions in management fees, allowing Farmer's to boast profits exceeding 44 percent.

**William Lafferty** MORRIS NICHOLS (WILMINGTON) One of Delaware's very best is knee-deep in litigation arising out of M&As for clients 3Com (being acquired by HP), Berkshire Hathaway (purchasing Burlington Northern) and Wind River (acquired by Intel).

**Stephen Lamb** PAUL WEISS (WILMINGTON) The highly regarded former Delaware Vice Chancellor, who authored hundreds of key corporate law decisions, was in high demand last year by clients including Talbots, Russell Hobbs, Genco Distribution System and Deluxe Entertainment.

**Jeffrey Lamken** MOLOLAMKEN (WASHINGTON, DC) He's as hot as they get in the Supreme Court bar, with only one private lawyer having more arguments than him last term. And did we mention he won all three cases?

**Carolyn Lamm** WHITE & CASE (WASHINGTON, DC) Lamm has served the profession nobly as president of the ABA and continued her skillful handling of complex international disputes, scoring arbitration victories for the Government of Philippines in disputes related to an air terminal.

**Steven Lane** HERMAN HERMAN (NEW ORLEANS) As legal counsel to the New Orleans City Council, this coveted counselor is guiding legal strategy to recover billions in damages against BP for the Deepwater Horizon oil spill.

**W. Mark Lanier** LANIER LAW FIRM (HOUSTON) Lanier expanded the reach of his excellent litigation boutique while guiding its litigation against Toyota and BP in the year's biggest cases.

**Steve Larson** GIRARDI & KEESE (LOS ANGELES) As one of the nation's youngest federal jurists, this esteemed counselor presided over the Barbie/Bratz case before joining the powerhouse plaintiffs firm where he serves as a top partner.

**Mark Leddy** CLEARY GOTTlieb (WASHINGTON, DC) A former senior lawyer in the Justice Department's antitrust division, Leddy is highly sought after for complex antitrust matters on both sides of the Atlantic.

**William Lee** WILMERHALE (BOSTON) This unparalleled IP litigation talent won three decisions at the Federal Circuit and a month-long jury trial for Pfizer over its patent for the blockbuster drug Protonix.

**Kenneth Lefkowitz** HUGHES HUBBARD (NEW YORK) This masterly M&A closer represented the government of Jamaica in its sale of Air Jamaica routes to Caribbean Airlines and Fortune Tobacco Corp. in its joint venture with Philip Morris' Philippines subsidiary.

**Andrew Levander** DECHERT (NEW YORK) An obvious choice for those caught up in the financial crisis, Levander was tapped to represent former Merrill Lynch CEO John Thain and the outside directors of Lehman Bros.

**Fredric Levin** LEVIN PAPANTONIO (PENSACOLA, FLA.) With more than two dozen verdicts in excess of \$1M and many more settlements, Levin earned his induction into the American Trial Lawyer Hall of Fame.

**Richard Levin** CRAVATH (NEW YORK) Levin's a bankruptcy virtuoso, counseling a who's who of financially troubled entities, including the Independent Directors of GM in its Ch. 11, New York City Off-Track Betting in its Ch. 9 municipal bankruptcy, and Harrisburg, Penn., on a pro bono basis as it assesses whether to file municipal bankruptcy.

**Victor Lewkow** CLEARY GOTTlieb (NEW YORK) Lewkow helped BHP Billiton in connection with its \$40B all-cash offer to acquire Potash Corp. of Saskatchewan and Prudential plc in its proposal to acquire AIG's Asia Pacific subsidiary for \$35.5M.

**Martin Lipton** WACHTELL LIPTON (NEW YORK) The giant continued his legendary ways advising Novartis in its \$28B takeover of Alcon and the \$11.3B acquisition of Smith International Inc. by rival Schlumberger Limited.

**David Lira** GIRARDI & KEESE (LOS ANGELES) Consumers, from those exposed to toxic torts or defrauded by insurers, know to call Lira, who most recently earned a recall of defective beds distributed by Costco, which killed a 22-month old San Diego boy, for whose parents he won a substantial settlement.



**bill carmody**  
SUSMAN GODFREY (NEW YORK)



daniel winslow  
PROSKAUER (BOSTON)



**Edward Little** HUGHES HUBBARD (NEW YORK) A trusted counsel for the most sensitive criminal and civil matters, Little helped Bear Stearns hedge fund manager Ralph Cioffi win acquittal for lying to investors at the start of the financial meltdown.

**Judith Livingston** KRAMER DILLOF (NEW YORK) This legal legend is one of the most sought-after and effective plaintiff-side trial lawyers focusing on medical malpractice and personal injury cases, particularly for birth injuries.

**Gary Long** SHOOK HARDY (KANSAS CITY, MO.) A product liability and class action whiz, Long has successfully represented tobacco, alcoholic beverage, pharmaceutical and firearms companies in a variety of complex cases.

**Simon Lorne** MILLENNIUM PARTNERS (NEW YORK) The hedge fund is lucky to have this leading regulatory mind and former SEC general counsel as chief legal officer in an era of increased transparency and changing regulatory environment.

**Martin Lueck** ROBINS KAPLAN (MINNEAPOLIS) Lueck has vanquished his share of corporate giants, including Microsoft Corp. in the celebrated \$520.6M patent infringement victory for clients Eolas Corp. and the University of California.

**Michael Lynn** LYNN TILLOTSON (DALLAS) A \$12.5M verdict for Orix Capital in one of the first commercial internet defamation cases adds to the hundreds of millions of dollars Lynn has earned for aggrieved plaintiffs.

**Colleen Mahoney** SKADDEN (WASHINGTON, DC) So high profile is this securities enforcement doyenne's clientele that if we wrote their names, we'd have to kill you. However, we can whisper she advised the H-P board of directors as independent counsel in the Mark Hurd imbroglio, and that she brokered a \$185M settlement for client Daimler, concluding a five-year Foreign Corrupt Practices investigation.

**Maureen Mahoney** LATHAM & WATKINS (WASHINGTON, DC) The founder of Latham & Watkin's Supreme Court practice remains one of the most talented appellate litigators in the nation.

**Thomas Malcolm** JONES DAY (IRVINE, CALIF.) From Expedia to the Orange County Transportation Authority, the renowned trial lawyer continues to score big for clients in high-stakes litigation.

**William Maledon** OSBORN MALEDON (PHOENIX) Arizona's go-to commercial litigator was tapped for major cases by the likes of W.L. Gore, Honeywell International, AstraZeneca Pharmaceutical, and many others.

**Thomas Malone** MALONE LAW OFFICE (ATLANTA) This icon of the trial bar scored a nearly \$50M verdict for a pre-med student who suffered a traumatic brain injury during an accident on a California highway.

**Floyd Mandell** KATTEN (CHICAGO) Companies across all industries have trusted their most vital IP litigation and counseling needs to Mandell, whose name stands out even in the cream of the crop of his field.

**gary naftalis**  
KRAMER LEVIN (NEW YORK)





# GARY NAFTALIS

**GARY NAFTALIS** has a long list of victories suggesting he is one of the toughest and most effective white-collar litigators of the past quarter century. He boasts a particularly impressive track record of convincing prosecutors and regulators not to bring charges against clients caught up in complex investigations. He was able to convince then-U.S. Attorney Rudy Giuliani not to bring criminal charges against the Kidder Peabody firm during the massive insider trading scandal of the late 1980s. More recently, in 2004, he convinced the SEC not to bring charges against former Global Crossing Chairman Gary Winnick.

He won dismissal of the New York Attorney General's case against former New York Stock Exchange Compensation Committee Chairman Kenneth Langone over the compensation approved for NYSE Chairman Richard Grasso. He also convinced the Manhattan District Attorney not to bring criminal charges against the City of New York over the deadly fire at the Deutsche Bank building, even though lapsed building inspections contributed to the tragedy. Among his famous trial victories, Naftalis successfully defended Disney CEO Michael Eisner in a 2005 Delaware bench trial against claims related to the termination of Michael Ovitz.

**LAWDRAGON:** Contractors were charged in the Deutsche Bank fire case. How were you able to prevent the City of New York from being charged?

**GARY NAFTALIS:** That's part of what I can't talk about. But in these kinds of cases generally, when you're representing an individual or a corporation who is under investigation, what you want to do is convince the prosecutor or the regulator that criminal charges should not be brought, either based on the facts, the law, or the equities based on possible collateral consequences. In Kidder Peabody, for example, we were able to convince the U.S. Attorney – who at the time was Rudy Giuliani – not to prosecute, and it saved the firm. In the financial services industry, an indictment can be a death warrant. It's really a life or death issue for your client.

**LD:** What else goes into convincing a government entity not to bring charges in a case?

**GN:** Credibility is the key to being a lawyer, as it is to a large number of other professions. If you make representations that turn out not to be accurate, or if you take positions that are over the top or not supported by the facts, you will not get a good reception. You

can't invent things. But when you're talking to a prosecutor or regulator who exercises discretion whether or not to bring a case, if you credibly explain why they might lose for the following reasons or why if they bring a case it will cause damage to innocent people, they're going to take you seriously.

With the government, if you're dealing with a line lawyer, such as an assistant U.S. attorney or a staff lawyer at the SEC, you can properly ask to take an appeal if the line lawyer wants to prosecute. My own practice is that I only take an appeal up to the U.S. Attorney in a very small number of cases. It's not every case that you have as good a position. I don't take an appeal just for the sake of taking an appeal, that doesn't do your clients any good. In the Kidder Peabody case, we were able to make a presentation and convince Rudy Giuliani to change his mind and overrule his staff, who wanted to prosecute.

**LD:** Do you have a favorite part of doing trials?

**GN:** I'm sort of like a kid in a candy store – I like it all. But I really like giving opening statements. I've always thought that lawyers don't pay as much attention to openings; everybody gets excited about summations, when you really get to argue to the jury. But opening statements set the stage for the whole trial. That's your first chance to talk to the jurors and establish a relationship with them, both on the part of yourself and your client. You get to give them a framework, a review of what the evidence will be from your point of view. That's a real opportunity for you as a lawyer to connect with the jury and have them understand how the evidence actually helps your client.

**LD:** What advice do you give young lawyers when it comes to trials?

**GN:** Everybody gets influenced by watching lawyer TV shows or movies. People seem to think that you have to act in a certain way. But to be effective in court, you have to be yourself. If you're someone who is dramatic, then you'll be dramatic; if you're low key, then you should be low key. You can be as effective in front of a jury by lowering your voice as you can by raising your voice.

Doing things in your own style is part of being credible. When you're dealing with a jury or judge, you have to persuade them that what you're saying is the truth and can be relied upon. And so how do you do that? The jury doesn't know who the heck you are. You have to be sure not to cut corners or make representations that are not accurate.



**morgan chu**

IRELL & MANELLA (LOS ANGELES)

**Neal Manne** SUSMAN GODFREY (HOUSTON) Yet another of Susman's standout litigation corps, Manne is noted as well for his political savoir faire and pro bono contributions, including advocacy to punish a Texas criminal court judge who closed her court, allowing the execution of death row inmate Michael Richard with no hope for appeal.

**Gregory Markel** CADWALADER (NEW YORK) Cadwalader's litigation head defended Pfizer in class actions related to its purchase of Wyeth and kept many coals in the fire defending the likes of Wells Fargo Bank, Deutsche Bank Securities and Bank of America.

**Richard Marmaro** SKADDEN (LOS ANGELES) This masterful white-collar defender threw the prosecution of stock-option backdating into question with his remarkable defense of Broadcom CFO William Ruehle, leading to complete vindication of not just Marmaro's client, but also of Broadcom and its founders.

**John Martin** THOMPSON & KNIGHT (DALLAS) Martin continued to fly high with a no-negligence verdict for American Airlines and American Eagle Airlines and an appeals court ruling for George W. Bush in a dispute involving the Presidential Library at SMU.

**William Martin** HOWREY (WASHINGTON, DC) This uniquely talented defense lawyer deserves some credit for football star Michael Vick's turnaround and is defending a Maryland county official against federal corruption charges.

**Randy Mastro** GIBSON DUNN (NEW YORK) The co-head of Gibson's stellar litigation practice is defending Chevron against the world-famous suit brought by Ecuadoreans allegedly made sick by oil contamination.

**Nina Matis** ISTAR FINANCIAL (NEW YORK) One of the nation's best real estate attorneys left her Katten partnership to guide iStar's many investment and transactional matters in the commercial real estate market.

**Brian McCarthy** SKADDEN (LOS ANGELES) The facile and highly-sought-after McCarthy represented Advanced Medical Optics – the leading manufacturer of LASIK surgical devices – in its \$2.8B sale to Abbott Laboratories, while handling financings for Quiksilver and Westwood One.

**Mike McCurley** MCCURLEY ORSINGER (DALLAS) McCurley is always on the shortest of lists for the most high-profile and contentious divorces but is equally skilled at resolving family disputes out of the public eye.

**Harold McElhinny** MORRISON & FOERSTER (SAN FRANCISCO) This firm MP won a \$40M trade-secrets verdict for Hansen Medical Systems and settled Pioneer's patent-infringement case against Samsung after earlier winning a \$50M jury verdict for Pioneer.



**Martha McGarry** SKADDEN (NEW YORK) Her masterful dealmaking skills were integral to the restructuring of leading financial company CIT Group, for which she orchestrated the largest prepackaged bankruptcy solicitation ever, with \$71B in assets and \$64.9B in debt. She also advised the Coca-Cola Co. in numerous transactions and helped AmEx buy Revolution Money for \$300M.

**Patrick McGroder** GALLAGHER & KENNEDY (PHOENIX) His continuing passion and effective results for injured plaintiffs has earned the unanimous respect of peers and a place in Maricopa County Bar Association's Hall of Fame.

**Mike McKool** MCKOOL SMITH (DALLAS) The masterful McKool is on top, with a firm that leads the pack for big-stakes IP litigation – winning four of the largest verdicts nationwide the past two years, against such titans as Microsoft, Apple and SAP – while expanding its geographic and practice reach.

**William McLucas** WILMERHALE (WASHINGTON, DC) The most sought after corporate boardroom adviser, McLucas advised General Electric Co. in a seven-year SEC investigation.

**Barry McNeil** HAYNES & BOONE (DALLAS) This former Justice Department lawyer is tops in Texas for defending large companies and individuals in complex criminal and civil cases.

**John Mead** SULLIVAN & CROMWELL (NEW YORK) The legendary consigliere represented the board of directors of CIT Group during the company's restructuring, helped to coordinate longtime client Goldman Sachs' defenses against a range of civil claims and government investigations, and counseled Cablevision on its spin-off of Madison Square Garden.

**Thomas Melsheimer** FISH & RICHARDSON (DALLAS) This go-to litigator's \$178M plaintiff verdict in *IRCC v. NL Industries* is yet another success in a career filled with victories in challenging cases of all stripes.

**Mark Mendelsohn** PAUL WEISS (WASHINGTON, DC) The architect of the modern-day Foreign Corrupt Practices Act regime made a monster name for himself as a federal prosecutor, with 80 individual prosecutions and 50 corporate prosecutions, yielding \$1.5B in criminal penalties, before joining Paul Weiss last year.

**Mark Menting** SULLIVAN & CROMWELL (NEW YORK) Never a slow moment for this dealmaker, who represented the Bank of Ireland in the 3.5B Euro investment by the Irish government and Allied Capital's board in the \$900M acquisition by Ares Capital.

**Ronald Mercaldo** MERCALDO LAW FIRM (TUCSON) Tucson's top trial lawyer scored a massive verdict over the death of a 14-year-old boy – \$40M split between the drunk driver, the bar that served her and the City of Tucson for negligence related to the road of the accident.



john quinn  
QUINN EMANUEL (LOS ANGELES)



**richard climan**

DEWEY & LEBOEUF (EAST PALO ALTO)



**Michael Meyer** DLA (LOS ANGELES) Meyer runs what may be the best real estate leasing practice in the world and mediates disputes involving the fair-market rental rate concept he developed.

**Lee Meyerson** SIMPSON THACHER (NEW YORK) People's United Financial tapped Meyerson for its \$738M acquisition of Financial Federal Corp., while Scotiabank called on him for its \$5.6B purchase of the banking operations of R-G Premier Bank of Puerto Rico.

**Jane Michaels** HOLLAND & HART (DENVER) One of Colorado's top trial attorneys, Michaels scored one of Colorado's largest verdicts with a \$14.3M victory for client National Oilwell Varco in its patent case against Pason Systems.

**Harvey Miller** WEIL GOTSHAL (NEW YORK) Miller took center stage with the Lehman collapse, to which he continues to devote significant time and expertise, and he acts as senior consultant for other high-profile bankruptcies such as AIG and General Growth Properties.

**James Fox Miller** BOIES SCHILLER (HOLLYWOOD, FLA.) This legendary family lawyer handles only the biggest and messiest divorces – so it's no surprise he has a leading role representing Jamie McCourt in her battle with Frank over the Dodgers.

**Ted Mirvis** WACHTELL LIPTON (NEW YORK) Corporate America's antidote to poison pills, Mirvis remains the undisputed expert in high-stakes corporate litigation.

**Richard Mithoff** MITHOFF LAW FIRM (HOUSTON) A veteran of the Big Tobacco, BP Texas City explosion and Enron litigation, Mithoff is one the most powerful forces for plaintiffs in all of Texas.

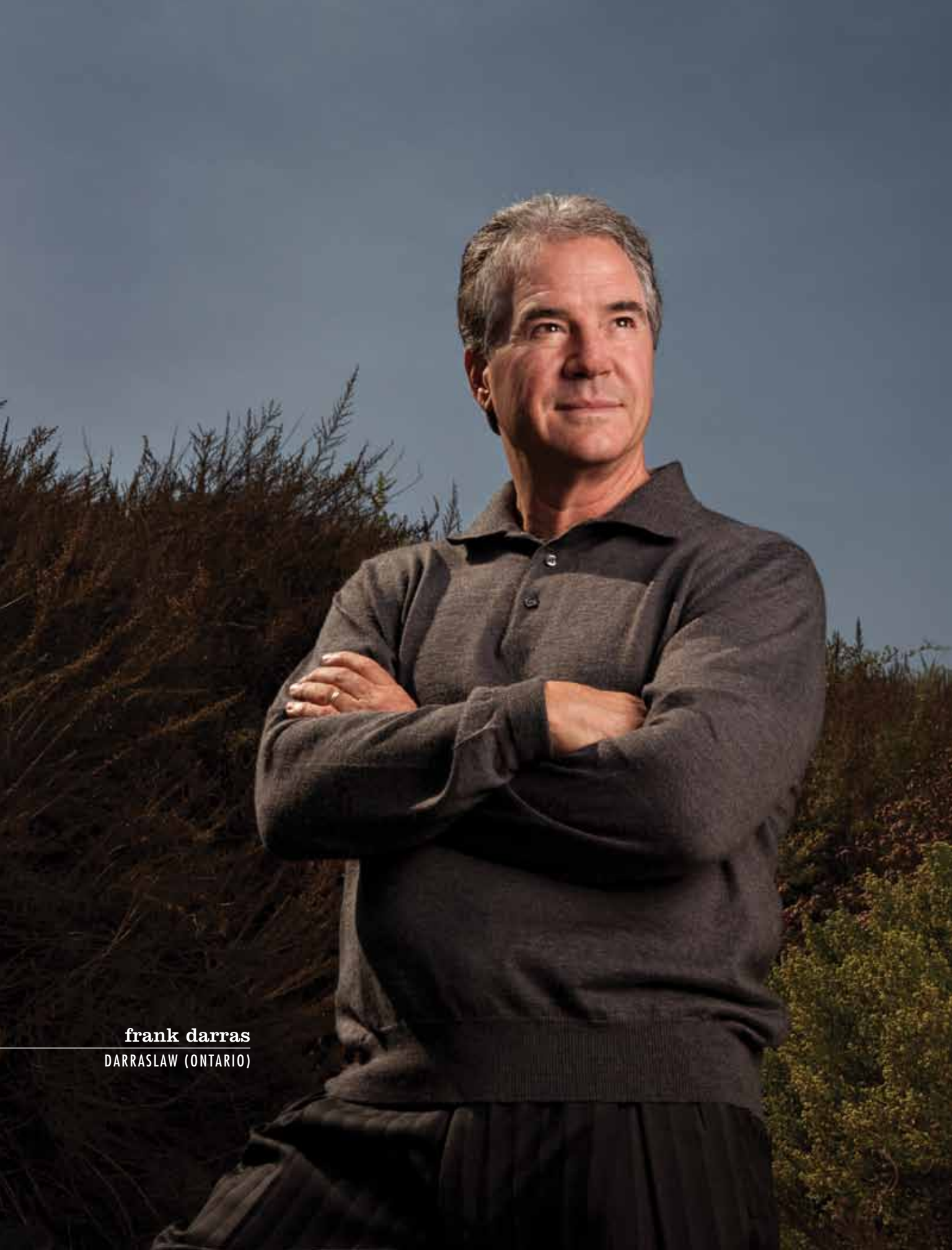
**Steven Molo** MOLOLAMKEN (NEW YORK) This standard bearer for big-time lawyers striking out on their own is taking on DOJ in the Auction Rate Securities scandal and Kaye Scholer in a major malpractice action for Celanese.

**Robert Mongeluzzi** SALTZ MONGELUZZI (PHILADELPHIA) He netted a \$36M settlement for a class of tenants left homeless by an apartment fire and has won \$1M or more in damages in 60 separate construction-site accident cases.

**C. Barry Montgomery** WILLIAMS MONTGOMERY (CHICAGO) The Chicago area's top high-stakes litigator for complex commercial cases has unparalleled experience with in excess of 150 trials under his belt.

**Thomas Moore** KRAMER DILLOF (NEW YORK) This magnificent advocate for victims is tops in N.Y., scoring a \$40M verdict for a construction worker injured by a truck.

**Carlos Moreno** CALIFORNIA SUPREME COURT (SAN FRANCISCO) That he did the right thing on gay marriage despite the fact he was under consideration for the U.S. Supreme Court says all you need to know about this longtime leader of the California judiciary, who recently announced he would return to the private side.



**frank darras**  
DARRASLAW (ONTARIO)

# FRANK DARRAS

**IF YOU ARE SICK**, badly injured, or know someone who is or might become sick or disabled, you need to know Frank Darras. Darras has established a reputation over the past 20 years as the nation's top attorney for those facing disability or long-term care issues. He is a tireless and fearless advocate willing to take on the insurance industry for any claim. In 24 years, Darras has recovered nearly \$500M for policyholders wrongfully denied coverage. Formerly of Shernoff, Bidart & Darras, he recently started his own firm, DarrasLaw, whose mission is to help everyone get the disability and other insurance benefits they paid for and deserve.

**LAWDRAGON:** Why start your own firm at this point?

**FRANK DARRAS:** I founded DarrasLaw to broaden my reach, to get my name out to the four corners of America and everybody in the middle so policyholders would know my name means real protection when it comes to fighting big insurance. It was difficult to get in early enough to fix problems that became fatal mistakes made by claimants and unfamiliar counsel to the practice area. All across the country, I found it hard to fix a cake that was already baked. With DarrasLaw I want policyholders to come to me first and avoid those fatal mistakes.

**LD:** What are some of the obstacles policyholders face in getting their claims covered? And how is your new firm responding to those needs?

**FD:** For the sick, disadvantaged and disabled, it's hard to take on a billion-dollar insurance company when carriers know sick people don't fight hard and some won't last long. Insurers regularly make courts hard to find and too expensive to get into.

So I said, let's do as much as we can for free. And when we can't do more, let's find another way to help – with free policy analysis, free claims help, free insurance problem assistance without sticking a retainer in front of their faces or charging sky-high hourly rates. It's my way of giving back so people know there are some lawyers in America who are doing it differently.

If I can help 1,000 people a month, bulletproof their claim forms, help them understand what their carrier is required to do and what their legal rights are, people can do a better job of empowering themselves. Clients often come back to me and ask, "Frank, what can we do for you?" I say two things. "One, say a prayer for me and the people I'm lucky to work with, and two, tell a friend."

**LD:** How do you provide services to injured people around the nation?

**FD:** I have an 18-hour shop that starts at 6 am to cover the East Coast. People start at noon to cover the Midwest, then people start at 3 pm and work until midnight to cover the West Coast and Hawaii. We provide coverage from 6 am to midnight with live, compassionate, empathetic intake staff who want to give these folks help and the emotional penicillin to not give up. We want people to send us information so we can provide free help, and in the event the carrier still does the wrong thing, we want to partner together to ensure they get the coverage they deserve.

**LD:** Does the large volume of cases you see provide you a greater ability to impact insurers who abuse their policyholders?

**FD:** Absolutely. I see things in real time. If I see 2,500 to 3,000 cases a month, I see right away what a carrier is doing. I know when they're doing something institutionally wrong. I know when they're using an institutional claim tactic.

I know most lawyers won't see that volume of cases in ten years. I know the pattern and practice of the insurers, so I can step in early to correct and avert. The good carriers know that sometimes even a good company can go bad and need a correction. Sometimes it's just one bad apple that has started a practice and the higher-ups aren't aware of it. But \$10 here and \$10 there times a million policyholders, pretty soon starts to add up. I have the ability to impact a carrier's legal budget if they're not doing the right thing.

**LD:** How did you get started as a disability insurance lawyer?

**FD:** When I graduated from law school, one of the first things I did was buy life and disability insurance. For me as a lawyer, I thought "this is simple, it's just a contract." But as I tried to wade through it, it was like reading Greek. I realized that if it was that hard for me as a lawyer, how was the layperson going to be able to sit down and understand a full-of-holes insurance policy that wouldn't save you on a sunny day, let alone serve as a life preserver.

**LD:** How has the economy affected your clients?

**FD:** My practice is a barometer of the national economy. In years past, even in tough times, people would come to me with six months worth of savings. They hadn't yet received the foreclosure notice. They had family and friends who could take them in. When the economy collapsed last year, there was no more room. The credit cards were gone. The house had been foreclosed on and friends and relatives were in worse or equal shape.



**James Morphy** SULLIVAN & CROMWELL (NEW YORK) The consummate M&A attorney, BP hired Morphy for the sale of \$7B worth of assets to Apache Corp.

**Mark Morton** POTTER ANDERSON (WILMINGTON) The state's top M&A specialist was retained by CKE Restaurants' board in the company's \$1B acquisition by an Apollo Global Management affiliate.

**Edward Moss** SHOOK HARDY (MIAMI) One of the bedrocks of Shook Hardy's amazing product-liability roster, Moss has defended the likes of Texaco, Boeing, DuPont, Brown & Williamson and Westinghouse Corp., to name just a few.

**Ronald Motley** MOTLEY RICE (MOUNT PLEASANT, S.C.) No one is surprised that Motley is representing victims of the BP oil spill given his work on history's biggest cases: tobacco, asbestos and accountability for terrorist acts.

**Elizabeth Mulvey** CROWE & MULVEY (BOSTON) This talented trial and appellate lawyer has racked up many of New England's biggest personal injury verdicts while helping to forge important case law.

**Francis Patrick Murphy** CORBOY & DEMETRIO (CHICAGO) This brilliant trial lawyer has more than 50 \$1M verdicts and settlements to his name, including \$16.6M for the victims of a collapsed porch in Lincoln Park.

**John Murphy** CLEARY GOTTlieb (WASHINGTON, DC) One of the world's best banking lawyers regularly represents the largest financial institutions, including Bank of America and Capital One.

**Sean Murphy** MILBANK (NEW YORK) One of the reasons why his firm's securities litigation team is in such high demand, Murphy is a veteran of Milbank victories for Legg Mason Inc. and Capital Research and Management Co.

**Scott Musoff** SKADDEN (NEW YORK) The financial conflagration, especially alleged selective disclosures of subprime exposure, is providing a great platform for the highly respected Musoff to display his considerable prowess, representing Societe Generale, CIBC, Fortis and Bank of America/Merrill Lynch in claims against MBIA's "good bank/bad bank" restructuring plan.

**Kenneth Nachbar** MORRIS NICHOLS (WILMINGTON) He successfully represented board of director defendants in *Yucaipa v. Riggio*, in which the Chancery Court upheld the use of a poison pill to stop a takeover of Barnes & Noble.

**Gary Naftalis** KRAMER LEVIN (NEW YORK) Individuals and companies facing high-level investigations know to turn to Naftalis, who is great at trial but also among the very best at killing a case before it starts.

**Daniel Neff** WACHTELL LIPTON (NEW YORK) The M&A powerhouse remained busy in the down economy advising clients on some of the biggest and most complicated transactions of the year, including Airgas in the \$6B hostile takeover bid by Air Products.

ed moss

SHOOK HARDY (MIAMI)





carolyn lamm

WHITE & CASE (WASHINGTON, DC)



**Sharon Nelles** SULLIVAN & CROMWELL (NEW YORK) An integral member of S&C's stellar litigation department, Nelles has handled complex cases for giants such as JPMorgan Chase, Goldman Sachs, Diaego, Moody's and Microsoft.

**Steven Newborn** WEIL GOTSHAL (WASHINGTON, DC) Steve Newborn continues to be the antitrust lawyer wizard that corporate America goes to for its make or break mergers – his latest includes ExxonMobil's \$41 billion acquisition of XTO as well as numerous deals for J&J, Walgreens and Staples among others.

**Blair Nicholas** BERNSTEIN LITOWITZ (SAN DIEGO) With massive recoveries in direct actions against Marsh & McLennan and Qwest and in class actions against Maxim Integrated Products and International Rectifier, Nicholas is hard to beat.

**Thomas Nolan** SKADDEN (LOS ANGELES) He has proven once again he's the cream of the crop, recently representing clients Peter Morton, whose interest in The Hard Rock Hotel & Casino he protected in a divorce dispute, and MGA in the "doll-war" litigation, in which the 9th Circuit reversal of the lower court's injunctions and rulings validated the case trial theme he presented during a 2008 trial.

**Harold Novikoff** WACHTELL LIPTON (NEW YORK) Wachtell's restructuring chair took on JPMorgan's cause in the Lehman Bros. bankruptcy and SIPA cases and settled favorably on the \$29B in claims his client had filed against the failed firm.

**Eileen Nugent** SKADDEN (NEW YORK) Clients including Avaya, American Standard and Lazard Freres rely on the savvy negotiating skills of Skadden's N.Y. managing partner, who most recently advised Burger King in its \$4B deal with 3G Capital and Endo Pharmaceuticals in its \$1.2B acquisition of Qualitest Pharmaceuticals.

**Robert O'Brien** ARENT FOX (LOS ANGELES) A go-to litigator for all manner of complex cases, O'Brien continued his work for the State Department's Afghanistan justice-reform efforts while serving as discovery master for the contentious *Mattel v. MGA Entertainment* litigation.

**Brian O'Neill** FAEGRE & BENSON (MINNEAPOLIS) The veteran of the Exxon Valdez case can tackle the most complex cases for both plaintiffs and defendants across environmental, intellectual property, securities, products liability, general commercial, civil rights and other areas of law.

**Terry O'Reilly** O'REILLY & COLLINS (SAN MATEO, CALIF.) Though best known for his success in air disaster cases, O'Reilly has also secured multi-million dollar (often eight figures) verdicts and settlements in a diverse range of personal injury and wrongful death scenarios.

**William Ohlemeyer** BOIES SCHILLER (NEW YORK) This remarkable tactician showed his mettle in-house at Altria, shaping the defense of mass tobacco litigation, and now defends Pfizer – for which he won a dismissal after opening statements – against claims its Neurontin drug causes suicide.

**Ronald Olson** MUNGER TOLLES (LOS ANGELES) The sage and much-admired litigator represented Berkshire Hathaway subsidiary General Reinsurance in the federal criminal probe of its transactions with AIG.

**Ted Olson** GIBSON DUNN (WASHINGTON, DC) The coolest conservative around showed the breadth of his brilliance with his unlikely victory in *Citizens United v. FEC*, extending corporate political speech, while quarterbacking the case for gay marriage in *Perry v. Schwarzenegger*.

**Jerold Oshinsky** JENNER & BLOCK (LOS ANGELES) Jenner scored big by landing the undisputed leader of insurance-coverage litigation who continues to handle the most novel and complex cases in the field.

**Barry Ostrager** SIMPSON THACHER (NEW YORK) Ostrager won dismissal of civil claims against former Washington Mutual officers and a habeas ruling that vacated a murder conviction for the firm's pro bono client.

**Wayne Outten** OUTTEN & GOLDEN (NEW YORK) The leader of the best individual-side employment practice in the nation helped former AIG executives under attack over bonuses while leading a firm making new law in credit rating discrimination.

**Brian Panish** PANISH SHEA (LOS ANGELES) Panish scored a multimillion dollar settlement for the family of a Learjet plane crash victim and is handling the suit Michael Jackson's mother is pursuing against his concert promoters.

**Mike Papantonio** LEVIN PAPANTONIO (PENSACOLA, FLA.) This outspoken critic of corporate abuse of power is pursuing justice for oil spill victims against BP and Halliburton.

**James Patton** YOUNG CONAWAY (WILMINGTON) A nationally recognized bankruptcy and restructuring lawyer, Patton has handled significant bankruptcy cases around the country including Alterra Healthcare, American Home Mortgage Holdings and the Catholic Diocese of Wilmington.

**Gerard Pecht** FULBRIGHT & JAWORSKI (HOUSTON) Companies, corporate officers and boards all turn to this diversely talented litigator for their most complex cases, enforcement actions and internal investigations.

**W. Ray Persons** KING & SPALDING (ATLANTA) Persons scored a defense verdict in D.C. Superior Court for a Kuwait-based investment bank that faced \$100M-plus in claims for alleged fraud and breach of fiduciary duty.

**Kathleen Peterson** ROBINS KAPLAN (MINNEAPOLIS) Among the nation's most prominent personal injury and med-mal attorneys, Peterson has obtained some of the state's largest verdicts and settlements in the field.

**Steven Pfeiffer** FULBRIGHT & JAWORSKI (WASHINGTON, DC) The chair of Fulbright's executive committee is also one of the nation's leading international lawyers when it comes to advising U.S. companies on overseas transactions.



**keith harper**

KILPATRICK TOWNSEND (WASHINGTON, DC)





**michael young**  
WILLKIE FARR (NEW YORK)

# MICHAEL YOUNG

**MICHAEL R. YOUNG** has spent his entire career at New York's Willkie Farr & Gallagher, where he represents individuals, companies, investment banks and accounting firms in litigation, investigations and regulatory proceedings related to financial reporting. He also handles securities class actions, and serves as co-chair of Willkie Farr's litigation department and its securities litigation and enforcement practice group.

During our reporting for the 2010 Lawdragon 500, Young's name was the most frequently mentioned as a practice leader focused on accounting irregularities. Young has authored two seminal books in the field – The Financial Reporting Handbook and Accounting Irregularities and Financial Fraud – and he has assisted in the development of standards and legislation related to financial reporting.

**LAWDRAGON:** How would you describe your practice?

**MICHAEL YOUNG:** My area is financial reporting, and by that I mean the ways in which companies report their performance. If, for example, a board of directors is suspicious of financial fraud they may bring me in to investigate, or I may help audit committees in putting in place things to help prevent financial fraud. I defend public companies, accounting firms and investment banks where fraudulent financial reporting has been alleged. I also represent individuals who are mixed up in allegations of improper financial reporting.

**LD:** What has your practice been focusing on recently?

**MY:** Ironically, current events are sort of dragging me into several new directions. One direction is the accounting at the core of the subprime crisis – fair value accounting – which has led to numerous allegations of impropriety. Another area coming out of the subprime crisis is the burgeoning topic of risk management. Just as accounting fraud was the topic of the last decade, it looks like risk management may be the topic of the coming decade. Some people are of the view that risk management should be the responsibility of audit committees, so I'm getting dragged into this area along with them.

The problem with risk management right now is that everyone is wondering about the best approach. To everyone's credit, we have just been through a horrific financial crisis, and so we should be wondering about the best practices. The problem is that the best practices have yet to be written. Almost everything is up for grabs, including the risks that boards should be trying to focus on, who should manage those risks and who within the board structure

should oversee the entire process.

**LD:** What approach should boards take to risk management?

**MY:** The best approach to board-level oversight of risk will depend on a company's particular needs, its culture and history. That having been said, we can see a couple of trends. One trend is in the direction of a special risk management committee of the board. I don't mean to suggest that such a view is by any means unanimous; at some companies, the costs will outweigh the benefits.

On the other hand, in the absence of a risk management committee, an audit committee may have to pick up responsibility, and many audit committee members are not happy about that. But there is no one-size-fits-all approach; it will be different based on the company.

**LD:** What are some of the challenges of practicing in this field?

**MY:** One of the main difficulties is that expectations placed upon boards of directors and board committees can change so quickly. That is, for example, exactly what we saw about 10 years ago with Enron and Worldcom. One day we woke up and suddenly there was Sarbanes-Oxley, which largely federalized the law of financial reporting and corporate governance. Today we're seeing dramatically increased expectations in the area of risk management. It is a real challenge to upgrade corporate governance mechanisms when things can change so suddenly.

**LD:** What do like about practicing in this area of law?

**MY:** One of the most intellectually intriguing things about accounting problems is that they often have very little to do with accounting. Rather, they can be a consequence of business pressures and the impact of business pressures on the psychology of human organizations. One course I did not take in college was psychology, and I know now that was a big mistake.

**LD:** What are some of the psychological insights you've picked up over the years?

**MY:** One of the interesting things about accounting problems in general, and financial fraud in particular, is that these problems tend to develop in the same ways over and over again, regardless of the business or the industry or the individuals involved. Fraudulent behavior rarely starts with dishonesty. Instead, financial misreporting tends to start with pressure for performance that creates an almost irresistible temptation by honest individuals to rationalize to the point where they find themselves doing dishonest things. That is the pattern I have seen over and over again for 30 years.

**richard wiley**

WILEY REIN (WASHINGTON, DC)





**Carter Phillips** SIDLEY (WASHINGTON, DC) One of the most consistent appellate stars successfully battled the FCC for client Fox, winning a 2nd Circuit decision that struck down the FCC's indecency policy.

**John Phillips** PHILLIPS & COHEN (WASHINGTON, DC) The dean of qui tam practices guided his firm to a record-setting year in 2009 with more than \$1B in recoveries to government agencies.

**Stacy Phillips** PHILLIPS LERNER (LOS ANGELES) Los Angeles' top divorce attorney is the first call for celebrities, politicians and corporate leaders when their personal lives fall apart, most recently helping Daphna Ziman in her divorce from real estate mogul Dick Ziman.

**Roberta Pichini** FELDMAN SHEPHERD (PHILADELPHIA) With a long list of multi-million-dollar verdicts and settlements to her name, Pichini will forge new ground as the first woman president of the International Academy of Trial Lawyers.

**Aaron Podhurst** PODHURST ORSECK (MIAMI) One of Miami's legends for his litigation skills and community service, Podhurst helped net a \$2M settlement for a local university student hit by a street sweeper.

**Richard Posner** 7TH U.S. CIRCUIT COURT OF APPEALS (CHICAGO) The prolific scholar added to his collection of legal tomes with two critically acclaimed books, A Failure of Capitalism: The Crisis of '08 and the Descent into Depression and The Crisis of Capitalist Democracy.

**Joseph Power** POWER ROGERS & SMITH (CHICAGO) His \$16M settlement in a wrongful-death trucking case typifies a career filled with eight- and nine-figure payouts for clients.

**Matthew Powers** WEIL GOTSHAL (REDWOOD SHORES, CALIF.) The IP litigation heavyweight continues to bring courtroom firepower for clients such as Merck & Co.

**James Pratt III** HARE WYNN (BIRMINGHAM, ALA.) Pratt scored a \$19M verdict against Ford Motor Co. in federal court for a young man who became a tetraplegic after he was ejected from his vehicle during an accident.

**Giovanni Prezioso** CLEARY GOTTlieb (WASHINGTON, DC) One of the most influential lawyers in the area of corporate governance, Prezioso coordinated the implementation of the enforcement and regulatory provisions of the Sarbanes-Oxley Act during his tenure as the SEC's general counsel.

**Steven Quattlebaum** QUATTLEBAUM GROOMS (LITTLE ROCK, ARK.) This courtroom master counts among his many trial victories a defense verdict for Tyson Foods against claims that the use of additives in chicken feed led to leukemia.

**James Quinn** WEIL GOTSHAL (NEW YORK) Consummate trial lawyer Quinn continued his winning ways by scoring a defense victory for United Health Group in a major False Claims Act case.

**John Quinn** QUINN EMANUEL (LOS ANGELES) The leader of the most aggressive litigation boutique has scored billions for plaintiffs and saved billions for defendants in high-stakes business cases.

**Gordon Rather** WRIGHT LINDSEY (LITTLE ROCK, ARK.) Arkansas' top trial lawyer, Rather is the top pick for clients Blue Cross, Entergy Arkansas, Baptist Health, Lion Oil and the Chubb Group of Insurance Companies.

**Harry Reasoner** VINSON & ELKINS (HOUSTON) More than four decades into his amazing career, Reasoner remains in high demand for high-stakes cases at trial and on appeal.

**Daniel Reidy** JONES DAY (CHICAGO) The versatile veteran litigator has represented companies such as Abbott, Potash Corp., Midwest Generation and numerous corporate executives in a variety of cases, including antitrust, accounting probes and other white-collar matters.

**Alison Ressler** SULLIVAN & CROMWELL (LOS ANGELES) This nimble dealmaker guided Barclays through the \$13.5B sale of Barclay Global Investors to BlackRock Inc. and represented Colony Capital in the \$1B acquisition of First Republic Bank.

**R. Bruce Rich** WEIL GOTSHAL (NEW YORK) Rich got client eBay off the hook in its longtime trademark dispute with Tiffany & Co. by obtaining a landmark ruling vindicating the online giant's business model.

**Barry Richard** GREENBERG TRAURIG (TALLAHASSEE, FLA.) A major star for defending billion-dollar suits, Richard was retained by Cameron International to fight off claims related to the BP oil spill.

**Darren Robbins** ROBBINS GELLER (SAN DIEGO) With a string of settlements exceeding \$100M already to his name, Robbins is sure to be one of the most dominant forces in securities litigation for many years to come.

**John Roberts** U.S. SUPREME COURT (WASHINGTON, DC) The Chief Justice has succeeded in making the court his own, putting a decidedly pro-business and conservative stamp on the institution that is likely to remain for many years.

**Mark Robinson** ROBINSON CALCAGNIE (NEWPORT BEACH, CALIF.) His legendary preparation has this powerful consumer advocate in the driver's seat for billions in claims against Toyota for unintended acceleration of its vehicles, following massive victories against GM, Ford, Nissan and Hyundai.

**Larry Rogers** POWER ROGERS & SMITH (CHICAGO) It's hard to keep track of the eight-figure verdicts and settlements Rogers has earned for plaintiffs in medical malpractice, personal injury, motor vehicle and premises liability cases.



sri srinivasan

O'MELVENY & MYERS (WASHINGTON, DC)





**mark lanier**  
THE LANIER LAW FIRM (HOUSTON)

**Bruce Rogow** ALTERS BOLDT (MIAMI) Legendary in Florida for his litigation track record, which includes 11 U.S. Supreme Court cases and a diverse mix of clients including Richard Scrushy, Morgan Stanley, Donald Trump, F. Lee Bailey and the Seminole Tribe of Florida.

**Martin Rose** ROSE WALKER (DALLAS) He helped score a \$7.3M judgment for video game developer MumboJumbo against rival PopCap, and \$10.8M for a fired doctor in a defamation and breach of contract case.

**Philip Rosen** WEIL GOTSHAL (NEW YORK) Among the very best dealmakers in the real estate arena, Rosen guided Trump Entertainment Resorts, General Growth Properties and Extended Stay America through their massive restructurings.

**Richard Ross** SNR DENTON (PHOENIX) Ross leads one of the nation's best practices focusing on hotel and leisure developments and was crucial during the downturn advising distressed businesses.

**Neal Roth** GROSSMAN ROTH (Coral Gables, Fla.) Roth and his fellow name partner remain the most potent and highly respected one-two punch for Florida's biggest medical malpractice and personal injury cases.

**Paul Rowe** WACHTELL LIPTON (NEW YORK) Rowe remains one of the very top litigators of choice for major companies negotiating contentious deals.

**Michael Rubin** ALTSHULER BERZON (SAN FRANCISCO) Another stellar year for Rubin, who secured a \$78.5M False Claims Act settlement with the University of Phoenix, won the largest settlement ever under the living wage ordinance for 500 Southern California factory workers and succeeded in overturning the conviction and death sentence of a California death row inmate.

**Peter Rubin** BERNSTEIN SHUR (PORTLAND, MAINE) A major defender against asbestos-related claims, Rubin has earned his reputation as Maine's mass tort master.

**Michael Rudell** FRANKLIN WEINRIB (NEW YORK) Journalists, producers, authors, artists and companies both large and small trust Rudell, among the most respected lawyers in the media and entertainment industries.

**Philip Ruegger** SIMPSON THACHER (NEW YORK) This trusted corporate adviser is a veteran of many complex deals, including client Federal Reserve Bank of New York's \$30B financing agreement related to JPMorgan's acquisition of Bear Stearns.

**Patrick Ryan** RYAN WHALEY (OKLAHOMA CITY) The hard-charging former prosecutor is universally regarded as one of the state's very top litigators for complex civil or criminal matters.

**Faiza Saeed** CRAVATH (NEW YORK) Spanning financial institutions, pharmaceuticals, media and entertainment, Saeed's in the running for most diverse dealmaker, advising Terra Industries in its defense against an initial hostile bid from CF Industries, a subsequent \$4.6B proposed sale to Yara International and a final \$5.2B topping bid by CF, while helping the Schulz family and Iconix Brand buy back the beloved 'Peanuts'.

**russell frackman**  
MITCHELL SILBERBERG (LOS ANGELES)





# RUSS FRACKMAN

## WHEN THE NATIONAL

Law Journal

released an editorial feature called The Decade's Most Influential Lawyers earlier this year, it came as no surprise that Russell Frackman was among the three IP lawyers chosen for the distinguished list. The Mitchell Silberberg & Knupp partner may be best known for A&M Records v. Napster (and later Metro-Goldwyn-Mayer Studios, et al. v. Grokster), in which he successfully argued for clients in the recording and entertainment industry that peer-to-peer file sharing sites should be held liable for copyright infringement.

But the landmark Napster case is just one of many highly influential copyright and trademark cases handled by Frackman over his 40 years in practice. And for Frackman, who also made our 2010 Lawdragon 500 guide, the fight goes on as the online distribution of content creates endless opportunities for copyright infringement.

**LAWDRAGON:** How would you describe your practice these days?

**RUSSELL FRACKMAN:** I am still doing work on online infringement, mostly in the recording business, just like I've been doing since Napster, with much of it now involving user generated content (UGC) sites. But a lot of the issues remain the same or are very similar. It's just a continuing battle, I suppose, that goes back to the beginning of my practice 40 years ago when we were dealing with pirated 8-track tapes that people sold out of the backs of their cars.

I think what's happening now with the Internet is sort of symptomatic of what I've seen throughout my career – that technology moves so much more quickly than the law can keep up. Right now we are dealing with technology that has the greatest opportunity to be used for good as well as for infringing activities, and copyright law just hasn't kept pace. UGC and peer-to-peer sites were not in existence when the Digital Millennium Copyright Act (DMCA) was passed.

**LD:** What are the issues we are seeing now in disputes between content owners and distributors?

**RF:** What we've seen in recent cases – and I have one or two cases pending that deal with these issues – is that courts are grappling with how to apply the DMCA and in what ways the protections of the law apply to these new technologies. Those issues are winding their way through the courts and have not yet been decided by courts of appeals. That's going to be a major battle-

ground over the next several years.

Things are a lot different than when I litigated Napster, both in terms of what the technology can do and what can be done to prevent infringement. As we well know, the capability to spread material, both good and bad, is infinitely larger now than with any technology that has ever existed.

**LD:** What do you see as the legacy of Napster?

**RF:** To put it in perspective, piracy in one way, shape or form has always existed. I suspect that soon after the printing press developed, people were using it to print books without consent of the owners. And soon after Edison invented the phonograph, people were making pirated or counterfeit copies of music. Looking at Napster, I think that – whatever level of piracy is going on now – things would have been many magnitudes worse if we had lost or not litigated the case. It would have been a de facto license for Internet service providers to use copyrighted materials in many different ways without prospective liability.

**LD:** It seems many people of a younger generation believe that it's their right to have free access to copyrighted materials they can find online. Is this a losing battle?

**RF:** I'm not sure I agree 100 percent with the premise. The evidence is anecdotal. One of the clear legacies of Napster was that it was widely publicized and made clear to almost anybody engaging in that kind of conduct that it was copyright infringement. One could have argued that before Napster it was uncertain. I think after and in cases that followed it was difficult if not impossible for someone to say, "I didn't know that it was copyright infringement." Will some people continue to do it? Absolutely, and they do. But I think a good number of people choose to comply with the law, whether they would be caught or not caught doing it.

I suppose it's the same reason that people in L.A. don't jaywalk or cross against the light even when there is no policeman present. I think the vast majority of people want to act in a way that is legally and morally correct.

And now there is one significant business difference that followed the days of Napster, and that is the ability at a fairly small price to legitimately download music or stream music over the Internet. Given the popularity of these services, I think a significant number of people are making the decision not to infringe.

**Kelli Sager** DAVIS WRIGHT (LOS ANGELES) No one knows media rights like Sager, whose portfolio ranges from digital music to print publishing to film distribution for clients including A&E, CBS, Electronic Arts and Universal Pictures.

**Mark Samuels** O'MELVENY (LOS ANGELES) This master of complex IP cases handled Advanced Micro Devices' worldwide antitrust battle with Intel that resulted in a landmark \$1.25B settlement that included a cross-license agreement and a pledge by Intel to remedy AMD's complaints.

**Richard Sandler** DAVIS POLK (NEW YORK) Sandler represented Verisk Analytics in connection with its \$2.1B initial public offering.

**Gloria Santana** MCDONALD'S (OAK BROOK, ILL.) A past recipient of the American Corporate Counsel Association's Excellence in Corporate Practice award, Santana continues to set the gold standard for excellent stewardship of company legal matters and commitment to community service.

**John Savarese** WACHTELL LIPTON (NEW YORK) Savarese excelled as lead counsel for UBS AG in the historic tax probe involving Swiss accounts, securing a deferred prosecution agreement with the DOJ, a consent decree with the SEC and a settlement with the IRS.

**Richard Sayles** SAYLES WEBBNER (DALLAS) His trial skills were evidenced by a record-setting \$1.67B verdict for a Johnson & Johnson unit in its patent dispute with Abbott Laboratories.

**Antonin Scalia** U.S. SUPREME COURT (WASHINGTON, DC) Whether he's scolding lawmakers to use their powers or authoring opinions to limit foreign class actions, Scalia is a conservative force to be reckoned with off and on the bench.

**Jonathan Schiller** BOIES SCHILLER (NEW YORK) This superstar litigator is trial counsel for Barclays in an \$11B dispute with the Lehman estate, defeated a \$225B lawsuit for the Bank of New York against the Russian government and is defending Goldman Sachs against billions of dollars in claims related to the derivatives market.

**Allison Schneirov** SKADDEN (NEW YORK) After her staggering work representing Blackstone and others in the \$17.6B acquisition of Freescale, Schneirov helped Freescale through a \$5.8B exchange offer and represented Foundation Coal Holdings in a \$2B merger with Alpha Natural Resources.

**Paul Schnell** SKADDEN (NEW YORK) After leading Anheuser-Busch through its \$52B acquisition by InBev, the energetic Schnell turned his sites to South America, handling billions in Brazilian deals and financings, most recently Apax Partners' \$1B purchase of Tivit.

**Amy Schulman** PFIZER (NEW YORK) Schulman guided Pfizer through its \$68B purchase of Wyeth and is helping to transform the way large corporations engage with their outside counsel.

**jonathan schiller**  
BOIES SCHILLER (NEW YORK)

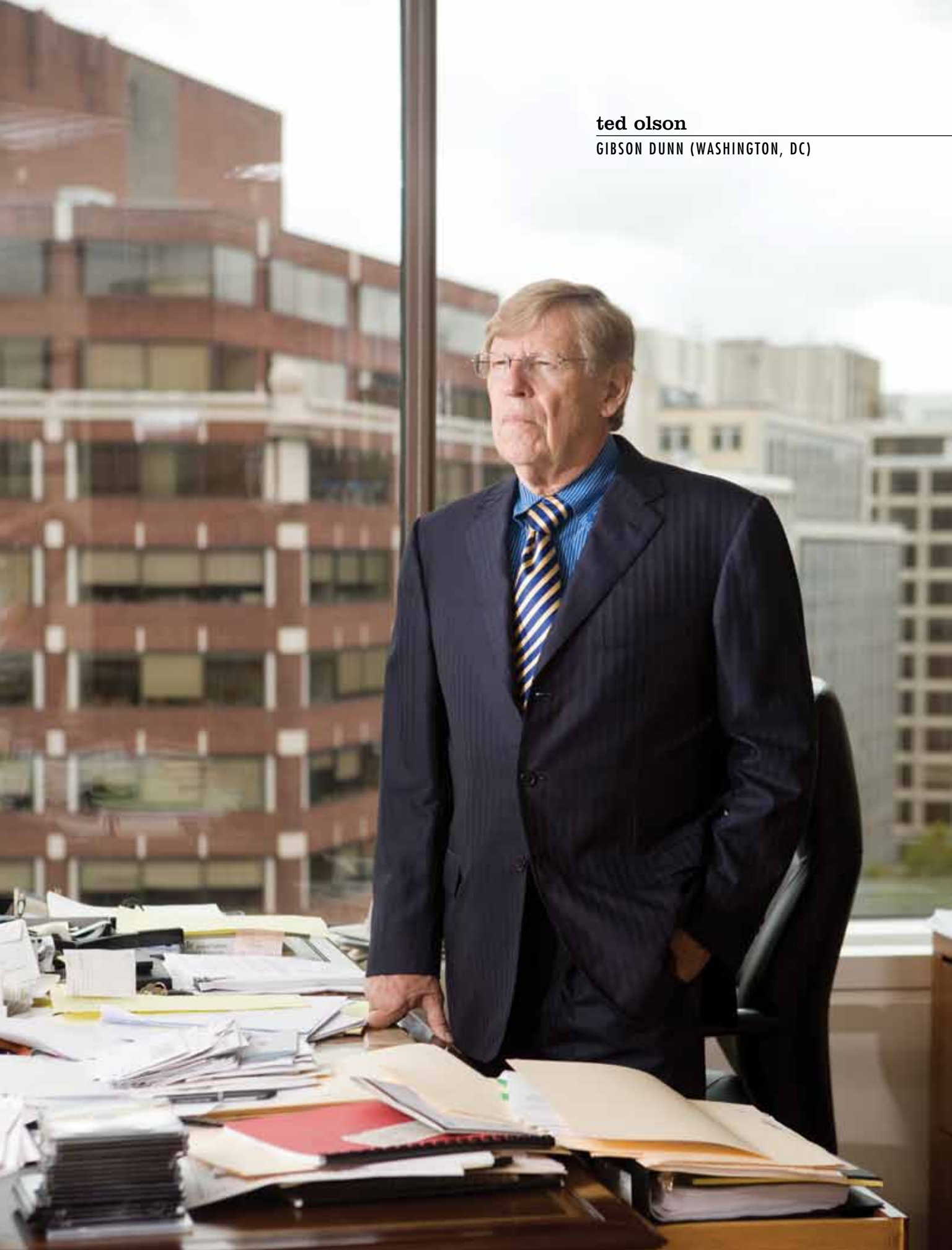




**ted olson**

GIBSON DUNN (WASHINGTON, DC)

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**Robert Schumer** PAUL WEISS (NEW YORK) He kept the big deals flowing, helping Universal American sell a portion of its Medicare business to CVS for \$1.25B and Lightstone Group sell its Prime Outlets Acquisition Co. for \$2.3B to the Simon Property Group.

**Ronald Schutz** ROBINS KAPLAN (MINNEAPOLIS) This seasoned IP litigator has won multimillion-dollar patent infringement verdicts for the likes of Fonar Corp., Grantley Patent Holdings Inc. and St. Clair Intellectual Property Consultants.

**Victor Schwartz** SHOOK HARDY (WASHINGTON, DC) The general counsel to the American Tort Reform Association remains one of the leading minds and strongest advocates on the most vital civil justice matters.

**Christian Searcy** SEARCY DENNEY (WEST PALM BEACH, FLA.) He takes on the toughest wrongful death cases and wins big, such as the \$33M verdict – upheld on appeal – against Walgreens for an incorrectly filled prescription.

**Lawrence Secrest** WILEY REIN (WASHINGTON, DC) This former FCC deputy general counsel is the ultimate insider in the media regulation arena.

**Christopher Seeger** SEEGER WEISS (NEW YORK) He's the heavyweight champion for plaintiffs suing pharmaceutical companies, winning \$25M for Accutane damage and suing Johnson & Johnson for faulty Depuy hip replacements, following his leadership of the Chinese drywall litigation.

**Brad Seligman** THE IMPACT FUND (BERKELEY, CALIF.) The ultimate advocate for the little guy (and gal), Seligman continues his fight against the glass-ceiling as the Wal-mart class action reaches the Supreme Court.

**Joseph Sellers** COHEN MILSTEIN (WASHINGTON, DC) As effective as any plaintiff-side employment litigator, he represented Native American farmers and ranchers in their historic \$760M settlement with the USDA over alleged discrimination in the farm loan program.

**R. Michael Senkowski** WILEY REIN (WASHINGTON, DC) The top dog of the nation's premier telecom practice remains as sought after as ever for complicated FCC issues.

**Kannon Shanmugam** WILLIAMS & CONNOLLY (WASHINGTON, DC) A rising star of the Supreme Court and appellate bar, Shanmugam has argued 10 cases before the high court in the last six years and was the first lateral partner hire at Williams & Connolly in 22 years.

**David Shapiro** BOIES SCHILLER (OAKLAND, CALIF.) When Copper River tangled with Overstock.com and American Express faced claims from its cardmembers, this longtime leading prosecutor was there to save the day.

**Gerald Shargel** LAW OFFICES OF GERALD SHARGEL (NEW YORK) One of the most visible and talented New York criminal defense attorneys, he guided David Letterman blackmailer Joe Halderman through his plea deal.

**Joseph Shenker** SULLIVAN & CROMWELL (NEW YORK) He's breaking ground on legendary status after feats including youngest partner (at 29); innovative deal-maker for clients like the Pritzkers, Goldman Sachs, and the Mara and Tisch families in developing the Jets' and Giants' Meadowlands Stadium; and now chairman of one of the world's best law firms.

**Leopold Sher** SHER GARNER (NEW ORLEANS) One of New Orleans' leading lights for business and real estate matters, Sher has helped companies work through difficult economic times, as well as calamities.

**Roman Silberfeld** ROBINS KAPLAN (LOS ANGELES) One of the nation's best trial lawyers once again proved his mettle in court winning a \$270M verdict — plus \$50 million in prejudgment interest — for British production company Celador against the Walt Disney Co.

**Gerald Silk** BERNSTEIN LITOWITZ (NEW YORK) This star of the securities bar is representing investor victims of shady transactions involving mortgage-backed securities and collateralized debt obligations, taking on all the major banks.

**Joe Sims** JONES DAY (WASHINGTON, DC) The icon of the antitrust world won a major Supreme Court decision for client American Needle Inc. against the NFL that reversed the 7th Circuit's holding that the NFL was exempt from attack under antitrust laws.

**Gary Singer** O'MELVENY (NEWPORT BEACH, CALIF.) The chair of O'Melveny's transactions team, he guided Freeman Spogli & Co. and Smile Brands Group through the \$600M sale of Smile Brands to New York buyout firm Welsh Carson.

**Stuart Singer** BOIES SCHILLER (FT. LAUDERDALE, FLA.) When not representing 500,000 Amway distributors in their successful claim that the company's arbitration agreement is unlawful or defending Fresh Del Monte against claims it monopolized the pineapple business, this dynamo is co-leading the claims against the Madoff feeder funds.

**Paul Singerman** BERGER SINGERMAN (MIAMI) Florida's leading bankruptcy lawyer is representing the trustee of the Rothstein Rosenfeldt law firm in attempts to recoup money from Scott Rothstein's billion-dollar Ponzi scheme.

**Daniel Slifkin** CRAVATH (NEW YORK) He's Mr. Fix-It for a host of top corporations, including Vivendi in its four-month-long "f-cubed" securities fraud jury trial; Morgan Stanley (obtaining a judgment topping \$800M against Discover), priceline.com, Lucent and Alcoa.



**richard beattie**

SIMPSON THACHER (NEW YORK)

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james benedict  
MILBANK (NEW YORK)

**Bradford Smith** MICROSOFT (REDMOND, WASH.) Microsoft's unparalleled intellectual property portfolio is well maintained due to the negotiations, agreements and legal actions across the world managed by Smith, who also runs a tight ship in corporate governance matters.

**Bradley Smith** DAVIS POLK (NEW YORK) This corporate giant specializes in massive deals, such as the \$41.1B Merck and Schering-Plough merger, for which he represented JP Morgan.

**Paul Smith** JENNER & BLOCK (WASHINGTON, DC) One of the nation's best appellate litigators led a Jenner team that helped defeat the Defense of Marriage Act in Massachusetts federal court – and was well-deserved in winning the ABA's Thurgood Marshall Award for a career of dedication to civil rights.

**Larry Sonsini** WILSON SONSINI (PALO ALTO, CALIF.) There is no rest for Silicon Valley's most sought-after corporate lawyer as one of his biggest clients, Google, spent a record \$1.6B acquiring 22 companies in 2010.

**John Soroko** DUANE MORRIS (PHILADELPHIA) Soroko chairs Duane Morris and guides its growing international reach while helping to anchor the firm's stellar litigation group and its strength in securities matters.

**Sonia Sotomayor** U.S. SUPREME COURT (WASHINGTON, DC) Sotomayor held her own in her first year on the high court, penning her first major opinion in a dissent in the *Berghuis v. Thompkins* case dealing with limiting Miranda rights.

**Robert Spatt** SIMPSON THACHER (NEW YORK) Always boasting a full deal plate regardless of the economic swing, Spatt repped Facet Biotech in its sale to Abbot Laboratories and Tommy Hilfiger in the acquisition by Phillips-Van Heusen.

**Shanin Specter** KLINE & SPECTER (PHILADELPHIA) The unstoppable Specter negotiated a \$12M settlement with the Philadelphia Housing Authority for a child injured by mold exposure in public-subsidized housing.

**Gerry Spence** SPENCE LAW OFFICE (JACKSON, WYO.) The legendary leader of Wyoming's best practice lent his talents to the family of an unarmed man shot to death by police in Oregon, earning a million-dollar settlement.

**Broadus Spivey** SPIVEY & GRIGG (AUSTIN, TEXAS) The accomplished veteran of the plaintiffs' bar can do it all, from products liability, personal injury and wrongful death cases to legal malpractice and business disputes.

**James Sprayregen** KIRKLAND & ELLIS (CHICAGO) The cream of the crop of the bankruptcy bar continues to work on some of the most complex cases around, including representing General Growth Properties in the first major restructuring of commercial mortgage-backed securities in history.



**Sri Srinivasan** O'MELVENY (WASHINGTON, DC) He is one of the nation's best appellate litigators with 17 U.S. Supreme Court arguments under his belt, including *Skilling v. U.S.*, in which the court held that prosecutors were too expansive in using the "honest services" statute.

**Eugene Stearns** STEARNS WEAVER (MIAMI) An accomplished litigator in a diverse range of big-ticket cases – plaintiff or defense – Stearns guided Swiss bank UBS in its settlement with the U.S. government over tax charges..

**Myron Steele** DELAWARE SUPREME COURT (DOVER, DEL.) A remarkable jurist who brings dignity and decisiveness to his role guiding the nation's most important court for corporate law.

**John Paul Stevens** U.S. SUPREME COURT (WASHINGTON, DC) The nation will miss the reasonable, outspoken liberal voice of Stevens, who capped his fascinating 34-year tenure by authoring a 90-page dissenting opinion on the use of corporate contributions for political campaigns.

**Bryan Stevenson** EQUAL JUSTICE INITIATIVE OF ALABAMA (MONTGOMERY, ALA.) The leading advocate against the death penalty and racial disparities in the justice system obtained a landmark Supreme Court ruling against sentences of life imprisonment without parole for juveniles.

**Larry Stewart** STEWART TILGHMAN (MIAMI) Stewart continued his crusading ways for individuals and consumers and also led a complete re-write of the state civil instructions that were adopted by the Florida Supreme Court.

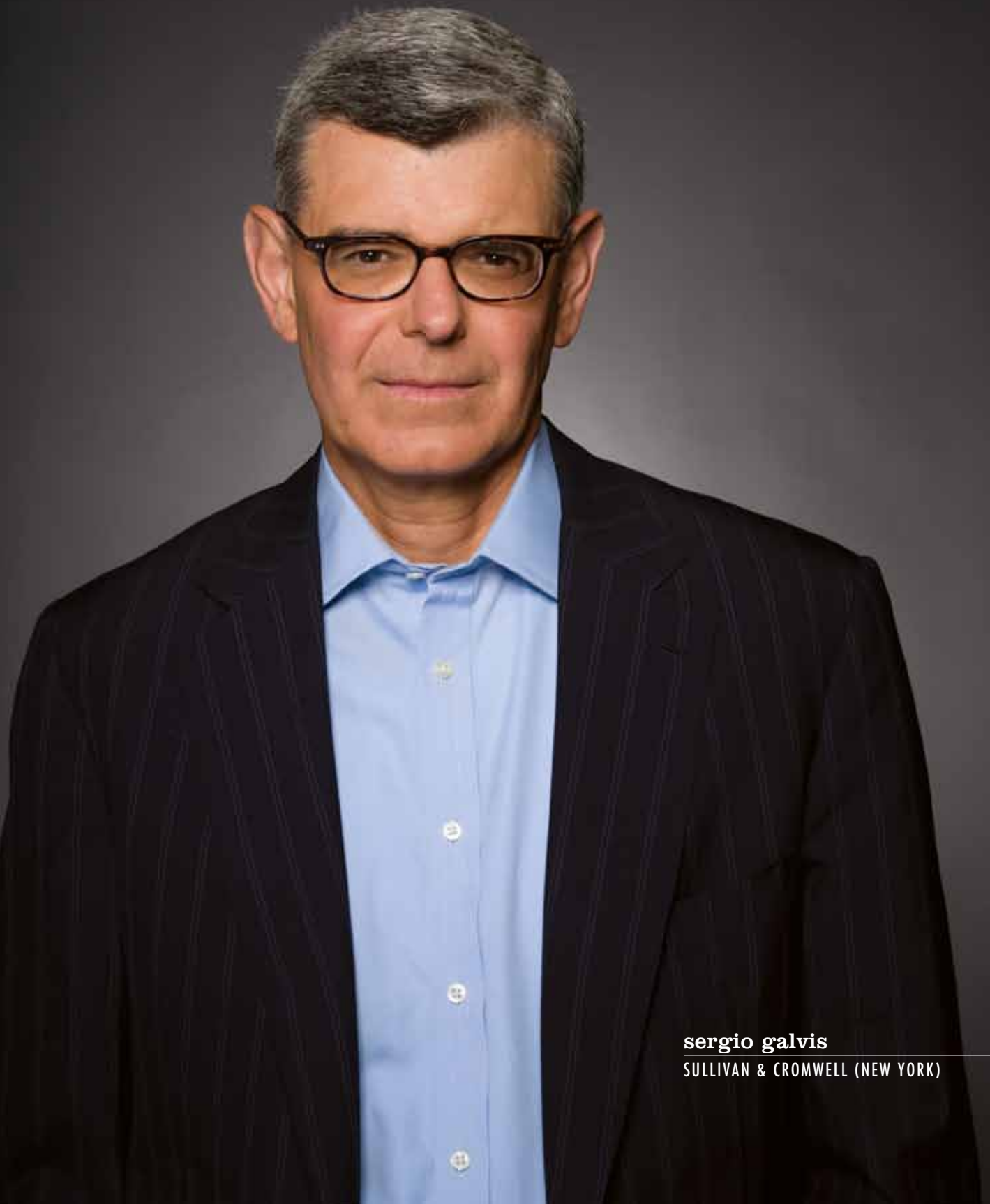
**Adam Streisand** LOEB & LOEB (LOS ANGELES) The master of trust and estate litigation for celebrities and regular folks alike, Streisand is representing Katherine Jackson in matters relating to Michael Jackson's estate.

**Leo Strine** DELAWARE CHANCERY COURT (WILMINGTON) No one's smarter or savvier than the nation's top corporate jurist, who last year oversaw corporate contests between Barnes & Noble and Ron Burkle; J. Crew and TPG/Leonard Green; and Dollar Thrifty and Hertz.

**Brendan Sullivan** WILLIAMS & CONNOLLY (WASHINGTON, DC) Sullivan continues to be the lawyer of choice for C-level executives caught in high-profile cases such as former Countrywide CEO Angelo Mozilo.

**Diane Sullivan** DECHERT (LAWRENCEVILLE, N.J.) One of the nation's best trial lawyers won a defense verdict for AstraZeneca in the first case to go to trial over the company's Seroquel drug, a mass tort involving more than 20,000 claims.

**Kathleen Sullivan** QUINN EMANUEL (NEW YORK) Oracle, AIG, Pfizer, Motorola, Siebel Systems and Samsung have all relied on this amazing trial and appellate lawyer, as did Gov. David Patterson in getting the New York Court of Appeals to uphold his right to appoint a lieutenant governor.



**sergio galvis**

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SULLIVAN & CROMWELL (NEW YORK)

**richard marmaro**  
SKADDEN (LOS ANGELES)





**Steve Susman** SUSMAN GODFREY (HOUSTON) This legal legend continues to anchor the biggest wins, including \$178M for minority shareholders of NL Industries, while battling on behalf of Frank McCourt's ownership of the L.A. Dodgers and forging cleaner air for Texans through a deal with TXU.

**Ariana Tadler** MILBERG (NEW YORK) Tadler helped secure a \$585M settlement in the IPO litigation and \$165M from Schering Plough while continuing her leadership on e-discovery matters.

**John Tarantino** ADLER POLLOCK (PROVIDENCE, R.I.) Rhode Island's do-it-all litigator convinced the state Supreme Court that former Senate President William Irons was immune from ethics charges and that PI attorney James Sokolove's practice could operate in the state.

**G. Irvin Terrell** BAKER BOTTS (HOUSTON) Terrell likes to play in the billions, scoring a \$6B-plus verdict for copper miner ASARCO against Americas Mining for breach of fiduciary duty and fraudulent transfer.

**Clarence Thomas** U.S. SUPREME COURT (WASHINGTON, DC) Known as the quiet justice, Thomas is the court's conservative voice who reveals his sharp legal mind in bits and pieces.

**Daniel Thomasch** ORRICK (NEW YORK) This veteran is the lawyer of choice for biotech, big pharma and medical device companies when it comes to the most important product liability and IP cases.

**James Thompson** HARE WYNN (BIRMINGHAM, ALA.) Thompson is one of the most well-regarded advocates in the South, as seen by his position as president-elect of the Alabama bar and work guiding a condominium developer to a \$37M settlement with BP to help complete the project after complications brought by the oil spill.

**David Tulchin** SULLIVAN & CROMWELL (NEW YORK) Tulchin won dismissal for longtime client Microsoft against claims brought by Novell, successfully wrapping up a decade's worth of stellar antitrust work for the software giant.

**Jonathan Turley** GEORGE WASHINGTON LAW SCHOOL (WASHINGTON, DC) TV hosts and academic experts all rely on the insights provided by the articulate and reasonable Turley, who also defends individuals caught up in terrorist and national security criminal cases.

**Daniel Tyukody** ORRICK (LOS ANGELES) Tyukody has quietly become the defense lawyer of choice for individuals and companies embroiled in complex securities class actions and SEC proceedings.

**A. William Urquhart** QUINN EMANUEL (LOS ANGELES) Whether defending companies against billions of dollars in damages or scoring nine-figure verdicts and settlements for plaintiffs, Urquhart has been one of the best business litigators for decades and helped take Quinn's boutique to the next level.

**Anton Valukas** JENNER & BLOCK (CHICAGO) The renowned white-collar litigator is undoubtedly one of the attorneys of the year for his work as court-appointed examiner in the Lehman Bros. bankruptcy.

**Robert Van Nest** KEKER & VAN NEST (SAN FRANCISCO) Corporate giants like Google and Intel turn to Van Nest, who can prosecute or defend claims across all areas of intellectual property and business disputes.

**Chilton Varner** KING & SPALDING (ATLANTA) Varner continued her masterful work for GlaxoSmithKline in the Paxil litigation, obtaining defendant-friendly trial results and defeating class certifications for certain allegations in the MDL.

**Fred von Lohmann** GOOGLE (SAN FRANCISCO) “FvL” fought the good fight for innovation and the free flow of information at the Electronic Frontier Foundation – often against great odds – before putting his digital copyright expertise to use for the search giant.

**Cynthia Vreeland** WILMERHALE (BOSTON) A versatile IP litigator, Vreeland has represented companies across many industries, from semiconductor chip manufacturers to pharmaceuticals and computer software.

**Peter Wald** LATHAM & WATKINS (SAN FRANCISCO) Wald earned summary judgments in separate securities class actions against Omnicom and Oracle, and now represents Ernst & Young in In re Lehman Brothers and Deloitte & Touche in In re Washington Mutual.

**Helgi Walker** WILEY REIN (WASHINGTON, DC) Tops in communications law, Walker successfully appealed the FCC’s first “net neutrality” decision for client Comcast after the agency sanctioned the company for denying bandwidth to users.

**John Walker** GOOGLE (MOUNTAIN VIEW, CALIF.) Walker always draws high marks for managing an astounding array of legal issues as Google continues to expand and win important victories, such as YouTube’s defeat of Viacom’s billion-dollar copyright lawsuit.

**Paul Walker** SIDLEY (LOS ANGELES) At the top of the real estate practice for many years, Walker only became more essential in the crisis with his deep experience for property workouts, restructurings and bankruptcies.

**Vaughn Walker** U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO) One of the year’s standout jurists for his calm and effective stewardship of the controversial Prop. 8 trial and his brave and reasoned ruling against the gay-marriage ban.

**James Wallace** WILEY REIN (WASHINGTON, DC) An IP litigation heavyweight who once had BlackBerry under a threat of an injunction, Wallace has taken on Cross Atlantic Capital Partners’ patent case against Facebook.

**Leigh Walton** BASS BERRY (NASHVILLE) The co-chair of the nation’s strongest healthcare law group will remain the expert counsel of choice for major industry transactions in the era of reform.



floyd abrams

CAHILL GORDON (NEW YORK)





**harvey miller**  
WEIL GOTSHAL (NEW YORK)

**Elizabeth Warren** HARVARD LAW SCHOOL (CAMBRIDGE, MASS.) Harvard's shining star and outspoken advocate for consumers was tapped by President Obama to set up a U.S. consumer financial-protection bureau in the wake of the crisis.

**Dorothy Watson** NOVARTIS (CAMBRIDGE, MASS.) Watson uses her deep experience at Novartis to guide the pharmaceutical giant through a vast array of legal issues, from IP concerns to environmental matters to lawsuits for product liability and employment discrimination.

**Seth Waxman** WILMERHALE (WASHINGTON, DC) WilmerHale's appellate chair remains the litigator to call for any complicated appeal regardless of industry, issue or circumstance.

**Dan Webb** WINSTON & STRAWN (CHICAGO) A superstar trial lawyer who has handled more than his fair share of high-profile cases, Webb continues to deliver for clients such as Ernst & Young, Health South Corp., and Cisco Systems.

**Perry Weitz** WEITZ & LUXENBERG (NEW YORK) A veteran of asbestos litigation, Weitz is also pursuing claims for people seeking compensation from BP over the oil spill.

**Edward Welch** SKADDEN (WILMINGTON) One of the go-to corporate litigators when M&A battles land in Delaware court, Welch fended off challenges to the \$18B merger of Activision and Vivendi Games and \$13B acquisition of Lyondell by Basell, as well as claims that the New York Mercantile Exchange breached its fiduciary duties in its \$10B combination with the Chicago Mercantile Exchange.

**W. Scott Welch** BAKER DONELSON (JACKSON, MISS.) With 46 years of practice and more than 125 reported decisions in Mississippi appellate and federal courts under his belt, you can't find a more experienced defender of corporate interests.

**Theodore Wells** PAUL WEISS (NEW YORK) Winning a defense verdict for Citigroup against an \$8.3B claim it duped Terra Firma into overpaying for EMI; securing a \$150M settlement for Bank of America with the SEC; and defeating human rights claims for ExxonMobil's business activities in Indonesia bolstered Wells' reputation as one of the top trial lawyers in America.

**Mark Werbner** SAYLES WEBNER (DALLAS) This do-it-all veteran of 150-plus trials for both plaintiffs and defendants scored a \$3.7M patent-infringement verdict for Commil USA against Cisco Systems.

**John White** CRAVATH (NEW YORK) White's contributions to corporate governance as director of the SEC's division of corporate finance are legendary, as are his engagements counseling Citi in its \$25B exchange agreement with the U.S. government, assisting UAL Corp. in its \$4.5B merger with Continental, advising Bank of America on critical disclosure matters and guiding Huron Consulting through its recent restatement.

**Mary Jo White** DEBEVOISE (NEW YORK) White, highly sought after for killing cases before charges are brought, repped former Bank of America CEO Ken Lewis against separate suits by the SEC and New York AG Cuomo.

**Richard Wiley** WILEY REIN (WASHINGTON, DC) Wiley's name is as big as the clients he represents in the telecommunication field, including Verizon and AT&T.

**Beth Wilkinson** PAUL WEISS (WASHINGTON, DC) This superstar went three for three last year as lead counsel defending Pfizer's Wyeth unit in claims its Prempro drug causes breast cancer, following stints as general counsel for Fannie Mae and a prosecutor of the Oklahoma City bombers.

**Ann Claire Williams** 7TH U.S. CIRCUIT COURT OF APPEALS (CHICAGO) The only non-Ivy League-schooled jurist on Obama's Supreme Court short list also won the ABA's Margaret Brent Women Lawyers of Achievement Award for her outstanding contribution in advancing women and minorities issues.

**Gregory Williams** RICHARDS LAYTON (WILMINGTON) Williams helped defend directors of Citigroup against claims related to the bank's subprime exposure and has recently handled the Delaware litigation needs for Dell, Disney, Staples, Nvidia, Office Depot and PNC bank.

**Barton Winokur** DECHERT (PHILADELPHIA) The outgoing firmwide chair who took a \$1M pay cut during the downturn continued to earn praise for balancing his roles as Dechert's longtime strategic leader and one of the foundations of its corporate and M&A practice.

**Daniel Winslow** PROSKAUER (BOSTON) A respected former state judge, Winslow served as legal counsel for U.S. Sen. Scott Brown's campaign and developed a "litigation prenup" agreement designed to control litigation costs.

**Michael Wiseman** SULLIVAN & CROMWELL (NEW YORK) Always game for the biggest and trickiest banking deals and regulatory matters, Wiseman manages what is likely the most powerful financial institutions practice in the world.

**Phillip Wittmann** STONE PIGMAN (NEW ORLEANS) This corporate defender represented Merck & Co. in the multidistrict litigation over Vioxx claims and has taken the same role in the MDL over Chinese drywall products.

**Barry Wolf** WEIL GOTSHAL (NEW YORK) This private equity/fund formation star helped create and lead Weil's immensely successful private equity practice group and now guides the entire firm as executive partner.

**Donald Wolfe** POTTER ANDERSON (WILMINGTON) Intel turned to Wolfe for help with its multibillion-dollar purchase of McAfee, as did Airgas as it sought to fight back a hostile bid by Air Products and Chemical.

**Marc Wolinsky** WACHTELL LIPTON (NEW YORK) One of Wachtell's steely litigators, Wolinsky prevailed in compelling Dow Chemical to complete its acquisition of Rohm & Haas.

**Nicole Wong** GOOGLE (MOUNTAIN VIEW, CALIF.) The highly respected Wong is helping forge new legal ground for all of us as Google's deputy general counsel handling matters related to censorship, monitoring and user privacy.



jere beasley  
BEASLEY ALLEN (MONTGOMERY, ALA.)





A portrait of an elderly man with white hair, wearing a tan fringed jacket over a dark turtleneck. He is seated in a room with wooden bookshelves filled with books. The lighting is warm and dramatic, highlighting the textures of his clothing and the wood of the shelves. His hands are resting on his lap, and he has a serious expression.

gerry spence

SPENCE LAW OFFICE (JACKSON, WYO.)

**Diane Wood** 7TH U.S. CIRCUIT COURT OF APPEALS (CHICAGO) Obama's choice of Sonia Sotomayor was great news for the 7th Circuit, which gets to keep this formidable intellectual counterweight to the circuit's conservative stalwarts.

**James Woolery** JP MORGAN CHASE (NEW YORK) Before his recent move to co-head JP Morgan's M&A team, the dazzling Cravath dealmaker won a proxy contest victory for Air Products in its \$7B offer to acquire Airgas; advised the Special Committee of J.Crew in its \$3B proposed sale to TPG and Leonard Green, and Affiliated Computer Services in its \$8.4B sale to Xerox.

**Robert Wyman** LATHAM & WATKINS (LOS ANGELES) One of the most accomplished litigators in climate-change and environmental matters, Wyman is the lawyer of choice for industry clients and governments wrestling with the complex morass of federal and state regulations.

**C. Steven Yerrid** THE YERRID LAW FIRM (TAMPA) Gov. Charlie Crist surprised no one by hiring this legendary trial lawyer as his special counsel to represent Florida in all legal matters arising from the BP oil spill.

**Michael Young** WILLKIE FARR (NEW YORK) A leading authority on financial reporting rules and risk assessment, Young is also a courtroom superstar representing clients such as AIG in various litigation matters.

**Stephen Zack** BOIES SCHILLER (MIAMI) When not suing Chiquita for helping fund terrorism against Colombians, this top litigator became the first Hispanic president of the American Bar Association, setting an agenda of access to justice and increased diversity.

**Herbert Zarov** MAYER BROWN (CHICAGO) Zarov continued to coordinate the defense of national asbestos litigation while defending against massive product-defect claims in Alabama and a class action over alleged water contamination in Madison County, Ill.

**Kenneth Ziffren** ZIFFREN BRITTENHAM (LOS ANGELES) One of the most influential lawyers in Hollywood, Ziffren continues to negotiate major deals for the nation's top recording, movie and television artists, producers and executives.

**David Zornow** SKADDEN (NEW YORK) The brilliant Zornow has proven himself one of the very best white-collar defense lawyers for individuals and corporations, having recently represented Rajiv Goel of Intel Capital, who was embroiled in the Galleon insider trading case, and Frederick Schiff, former CFO of Bristol-Myers Squibb, for whom Zornow brokered a deferred prosecution agreement.

**Gerson Zweifach** WILLIAMS & CONNOLLY (WASHINGTON, DC) This diversely talented litigator successfully defended DLA Piper against claims by retired Coudert Brothers partners and won two dismissals of off-label marketing claims against Genentech.



THE **LAWDRAGON** 3000

# BOLD

THE UNPRECEDENTED PARTICIPATION IN THE SELECTION PROCESS FOR THE 2010 GUIDE GAVE US THE STRONGEST AND MOST GEOGRAPHICALLY DIVERSE LAWDRAGON 3000 (ALSO KNOWN AS THE “FINALISTS”) IN LAWDRAGON’S FIVE-YEAR HISTORY. INCLUDED ARE Q&As WITH SEVERAL OF THE AMAZINGLY TALENTED 3000 MEMBERS, AS WELL AS LINKS TO ATTORNEY PROFILES FOR THOSE WHO HAVE ENHANCED THEIR LAWDRAGON LISTINGS ONLINE.

# MOVES

## ALABAMA

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 WILLIAM BAXLEY BAXLEY DILLARD {Birmingham}  
 CHARLES DAUPHIN BAXLEY DILLARD {Birmingham}  
 JOEL DILLARD BAXLEY DILLARD {Birmingham}  
 GREG ALLEN BEASLEY ALLEN {Montgomery}  
 JERE BEASLEY BEASLEY ALLEN {Montgomery}  
 ANDY BIRCHFIELD BEASLEY ALLEN {Montgomery}  
 THOMAS METHVIN BEASLEY ALLEN {Montgomery}  
 BEAU GRENIER BRADLEY ARANT {Birmingham}  
 GAIL MILLS BURR & FORMAN {Birmingham}  
 JACK STEPHENSON BURR & FORMAN {Birmingham}  
 GEORGE TAYLOR BURR & FORMAN {Birmingham}  
 WILLIAM LEE THUSTON BURR & FORMAN {Birmingham}  
 CLARENCE SMALL CRISTIAN & SMALL {Birmingham}  
 GREG BREEDLOVE CUNNINGHAM BOUNDS {Mobile}  
 JOSEPH BROWN CUNNINGHAM BOUNDS {Mobile}  
 JOHN CROWDER CUNNINGHAM BOUNDS {Mobile}  
 ROBERT CUNNINGHAM CUNNINGHAM BOUNDS {Mobile}  
 BRYAN STEVENSON  
 EQUAL JUSTICE INITIATIVE OF ALABAMA {Montgomery}  
 D. LEON ASHFORD HARE WYNN {Birmingham}  
 RALPH COOK HARE WYNN {Birmingham}  
 JOHN HALEY HARE WYNN {Birmingham}  
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 RICHARD COHEN SOUTHERN POVERTY LAW CENTER {Montgomery}  
 MORRIS DEES SOUTHERN POVERTY LAW CENTER {Montgomery}  
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## ALASKA

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 DAVID OESTING DAVIS WRIGHT {Anchorage}  
 JEFFREY FELDMAN FELDMAN ORLANSKY {Anchorage}  
 SUSAN ORLANSKY FELDMAN ORLANSKY {Anchorage}  
 JENNIFER COUGHLIN K&L GATES {Anchorage}  
 DOUGLAS SERDAHELY PATTON BOGGS {Anchorage}  
 THOMAS DANIEL PERKINS COIE {Anchorage}  
 LLOYD BENTON MILLER SONOSKY CHAMBERS {Anchorage}  
 JOSEPH PERKINS STOEL RIVES {Anchorage}

## ARIZONA

SHAWN AIKEN AIKEN SCHENK {Phoenix}

**LAWYERS CAN GO THEIR** whole careers without handling a case of first impression or a dispute with tremendous implications for their practice area. For Michael Elkin, who heads Winston & Strawn's New York office, litigating such matters is a regular feature of his legal practice, which operates at the forefront of where the law meets the online distribution of content.

Elkin successfully defended video-sharing website Veoh Networks against copyright infringement claims by UMG Recordings. A federal judge ruled that Veoh's services were protected by the safe harbor provisions of the Digital Millennium Copyright Act because the company took down infringing material when notified by UMG. A federal judge in New York made a similar ruling for YouTube against claims brought by Viacom (Elkin did not work on that case).



**LAWDRAGON:** What do you think is the significance of these decisions favoring online service providers?

**MICHAEL ELKIN:** I don't think we would see the proliferation of new media companies that are now so woven into our corporate institutional framework but for the protections afforded under the DMCA. By holding websites liable for acts of their parties, it would stifle innovation and have the opposite effect of what Congress intended when it passed the DMCA. Clearly, there is going to be tension between content owners and technology companies, but I think if many content owners have their way it will roll back many years of advancement, and it would create a treacherous path for any new investor in this field to embark upon.  
**LD:** How did you get into this area of law?

**ME:** For many years I represented content owners – record labels, publishers, performers, motion picture studios, and I still do on some matters. But I noticed an opportunity with the advent of the Internet, that there would be technology companies without entrenched counsel on entertainment and copyright cases. I really thought it would be useful for technology companies to have an insider's view

of what content companies were thinking, for example in the recording industry. I thought I could add a certain value to understanding what was in the heads of content owners, what they're concerned about.

I've argued key issues in a number of cases where I think our being on the other side provided greater clarity and assisted in testing outer limits of these positions.

**LD:** What are some of the challenges of handling these types of cases?

**ME:** I think, number one, clients want predictability and are generally clamoring for lawyers to give a sense of how things are likely to turn out. Litigation is itself fairly unpredictable and when you graft onto that the challenges created by litigating in uncharted territory of the Internet, it sort of exacerbates the tension that exists. Number two, there is considerable acrimony between the content side and the technology side, with one side blaming the other for holding onto an antiquated business model and the other side claiming that companies are engaging in mass piracy. The opposing sides have fairly extreme views, and trying to harness those views to bring about a resolution short of all out war is a significant challenge.

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 DARYL WILLIAMS BAIRD WILLIAMS {Phoenix}  
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 LUCAS NARDUCCI BRYAN CAVE {Phoenix}  
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R. HEWITT PATE CHEVRON CORP. {San Ramon}	FRED VON LOHMANN ELECTRONIC FRONTIER FOUNDATION {San Francisco}	BERTRAM FIELDS GREENBERG GLUSKER {Los Angeles}
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PAMELA DUFFY COBLENTZ PATCH {San Francisco}	JERRY RAMSEY ENGSTROM LIPSCOMB {Los Angeles}	BRUCE BROILLET GREENE BROILLET {Santa Monica}
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STEPHEN NEAL COOLEY GODWARD {Palo Alto}	TED ULLYOT FACEBOOK {Palo Alto}	MARK QUIGLEY GREENE BROILLET {Santa Monica}
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**MARK SCARSI WAS INTERESTED** in a legal career back in high school. Like many successful patent lawyers, however, he ended up taking a detour that paid dividends for his legal practice down the road. Scarsi received his B.S. and M.S. in computer science at Syracuse and spent a decade working as a software engineer on U.S. Navy defense projects. He started his legal career after getting his law degree from Georgetown in 1996. Scarsi left O'Melveny & Myers in 2007 to lead the West Coast IP practice for Milbank, Tweed, Hadley & McCloy.

**LAWDRAGON:** Can you describe your background a bit and your work as a software engineer? What exactly did you design for the Navy?

**MARK SCARSI:** I worked for a decade as a software engineer on defense projects for the United States Navy. The projects that I worked on were geared towards assimilating various sonar data to better define torpedoes or other enemy contacts in the water. I worked on similar systems for submarines as well. The experience was a very rewarding and enriching one from a technical standpoint because there was a lot of engineering and software programming involved. It was also very beneficial to see how large software systems are developed in practice. It gives you a better appreciation for the kinds of documents that are generated, what software code actually looks like, and what you can find in the code.

Those are all skill sets that I've been able to apply to the legal cases I handle – I'm perfectly comfortable sitting down with a pile of code to see what I can find, as opposed to solely relying on experts. Some of the most fun I've had as a trial lawyer has been in situations where I've been able to confront a software engineer with examples of his code that contra-

dict statements that he's making on the record.

**LD:** What made you want to go to law school?

**MS:** As a high school student, one of my career ambitions was to go into the law, but I got out of high school in 1983 and at that time, technology was really taking hold and it seemed like it would be important to understand how technology and computer software work. I saw technology and computing as a huge part of where the economy was going. So, instead of going the traditional pre-law route, I got a bachelor's degree in computer science. Enjoying the complexity of the field, I went on to get a master's degree in computer science as well. During that time, I was working as an engineer.

When I was done with the master's degree, it seemed to be a good natural breaking point so I thought that it was time to return to my original ambition of going to law school. I thought law school was going to be a very foreign experience, but I found that an engineering background, with the focus on logical thinking, seemed to translate very well into legal reasoning and writing. I found that my engineering background prepared me very well for succeeding in law school.

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### EUNICE TREVOR, A PARTNER

at Philadelphia's Saltz Mongeluzzi Barrett & Bendesky, began using mini-documentaries as a litigation tool about 20 years ago. She soon discovered how effective the films were at convincing mediators, judges and opposing counsel that her clients deserved a favorable settlement. The method was so persuasive, in fact, that she now produces the films full time for her firm's catastrophic injury cases.



**LAWDRAGON:** Why did you start doing these videos?

**EUNICE TREVOR:** I was frustrated that some of the decision makers on a case would not get the chance to actually see my client, a dynamic expert or impartial witness until the time of trial. The documentary is sent before the mediation to all potential decision makers – both present at the mediation or at a remote location, giving the decision makers the opportunity to preview the case.

**LD:** Why do you feel this contributes to the process of an early settlement? Presumably, opposing counsel will already know most of what's in the videos.

**ET:** Reading a physiatrist's report that explains the impact of a brachial plexus injury is much less compelling than watching our client struggle to put on a t-shirt for almost two minutes.

During the process of creating the videos, I spend a substantial amount of time with the plaintiffs and very often discover witnesses whom the defendant has not deposed. These witnesses, such as a pastor describing the loss of our plaintiff to the church community, or a lay witness describing the impact of a brain injury, in their own words, are very powerful.

Reading a defendant's admission is much less persuasive than watch-

ing the defendant at his videotaped deposition squirm, wince and struggle to answer a question which only required a simple yes or no.

**LD:** What type of balance are you striving for in terms of legal content versus emotional content?

**ET:** I try to create a dynamic where the liability and damages are intertwined.

I think it is important to convince the defense that we have a very good chance of proving liability before we present the damages or emotional impact of the case. Therefore, it is a delicate balance of attempting to have the viewer feel vulnerable – with the defendants' admissions and plaintiff's expert testimony presented before they preview very powerful and emotional testimony about the plaintiff's injuries.

**LD:** Have you seen more plaintiffs' lawyers using this video strategy over time?

**ET:** Yes. When I first started creating these documentaries, I knew of only one other firm in the country that did something similar. Now, I am asked frequently about the process and know of other firms creating video presentations, in some form, for select cases.

Recently, a local law school asked for copies of the documentaries to show in one of their classes on settlement.

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**VINCENT MCKNIGHT HEADED** a powerhouse Qui Tam practice at Washington, D.C.'s Ashcraft & Gerel, a plaintiffs firm, before setting out on his own with fellow partner Altomease Kennedy to establish McKnight & Kennedy, which is based in Silver Spring, Md. The firm takes on individuals and companies who defraud the government by violating the False Claims Act (FCA).

**LAWDRAGON:** How did you develop an interest and expertise in whistleblower cases?

**VINCE MCKNIGHT:** Throughout my career, I have represented clients in various employment related cases from employment discrimination to wrongful discharge claims. One day Edward Totten called me because he claimed to have been discharged as a result of his whistle-blowing activities at Amtrak. I recognized this as a potential fraud case, and it became quite a famous case in the Qui Tam world. We argued the matter in the D.C. Circuit twice. While I lost the case in court, the recent amendments to the FCA specifically rejected the Totten rationale adopted by the court in a decision that was authored by then Judge John Roberts.

**LD:** What are the responsibilities of whistleblowers once they and you decide to go forward with a case?

**VM:** Whistleblowers play an integral role in the presentation and development of the case. They are usually experts in the area. Their inside information is critical. It is stressful as sometimes they are still employed in the field or with the employer charged with fraud. Most whistleblowers come into this with their eyes wide open, recognizing the risks at least on an intellectual

level. They are sometimes surprised by the emotional toil that this takes on them. Counseling and support are part of my job.

**LD:** What are the risks? Do whistleblower clients of yours often lose their jobs or go through some type of emotional trauma as a result of stepping forward?

**VM:** Imagine being a whistleblower, exposing your company (including old friends and colleagues) to substantial fines for wrongdoing. But, on a daily basis, the whistleblower must proceed as if nothing special is going on. It's tough. Compare it to being an undercover agent or police officer, except whistleblowers generally have not received any special training for their assignment.

**LD:** Once the government becomes interested in the case and possibly sees some evidence of criminal activity, what is the type of communication and working relationship between you and the government lawyers?

**VM:** I have the utmost respect for the men and women working in the government on the fraud beat, as I call it. I speak to them almost every day. I think that I have been fortunate, and have forged strong working relationships with them. They know that I want to catch the bad guy, and I am willing to work.

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 BEN RUBINOWITZ GAIR GAIR {New York}  
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 JONATHAN DICKEY GIBSON DUNN {New York}  
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 JOSH KREVITT GIBSON DUNN {New York}  
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**A VETERAN OF THE STAND-UP** comedy circuits, Los Angeles attorney Lew Feldman can rattle off an impressive string of jokes not suitable for publication in Lawdragon. But he is best known for his serious work as the head of Goodwin Procter's public/private development practice and as one of the nation's most prominent dealmakers within the real estate arena, putting together blockbuster deals like the massive L.A. Live complex in downtown Los Angeles.



**LAWDRAGON:** Tell us about your comedy work: When did you start, what clubs did you perform in and when did you leave it behind?  
**LEW FELDMAN:** My father, Ken, was a funny guy. He knew every joke – I mean every joke. Starting at about 11, I tried to find jokes that he didn't know. We had a comedic "stump the band" thing going. I'd hear something I thought was funny and bring it to him. I was rarely able to present a set up that he didn't know or a punch line he couldn't fill in. I had a lot of practice, and we laughed a lot. My mother has a terrific sense of humor, too....

In the 80's, a new generation of comedians were like rock stars: Robin Williams, Steve Martin, Billy Crystal, Eddie Murphy and Whoopie Goldberg were just a few of the big names. Comedy clubs like Caroline's, and Comic Strip Live opened, and concerts filled venues like the Met.

After practicing law for a few years, I indulged the bug by studying comedy with Richard Pryor's former wife, Shelly Bonus, at UCLA and hitting a few open mike nights at local comedy clubs. My most auspicious performance came at the now-defunct L.A. comedy club, Igby's. I pretty much stopped doing comedy when my boys were born

in 1998. But now I reserve my best jokes for captive audiences in our board room and at seminars and events.

**LD:** Has your comedy background contributed to your legal career, such as being able to handle pressure?

**LF:** In my view, a sense of humor is a critical aspect of good communication and great relationships. I try to lighten a moment or break tension in a negotiation, but always with consideration for my audience and a good sense of when humor isn't appropriate. I'd like to think my clients and colleagues appreciate my funny bone. I'd like to think that – but who the hell knows?

**LD:** How did your practice change as a result of the economic crisis?

**LF:** Throughout my career, I have strived to live in the real world and adapt to the reality of the present moment. My job is to provide my clients with innovative legal counsel that puts capital to use and transformative projects in the ground. In light of the current reality, my practice emphasis has shifted to a few key trend areas: distressed real estate, alternative energy and sustainable development, transit-oriented development, educational financing, and, of course, economic development.



**LANCE HARKE, THE NAME PARTNER** of Miami litigation boutique Harke & Clasby, has earned hundreds of millions of dollars for consumers since starting his own firm in 1998. He specializes in complex, multi-state litigation and has handled cases involving deceptive drug marketing, products liability, personal-data privacy, deceptive pricing and antitrust claims, among many other issues. Harke also is lucky enough to practice with his wife, Alison Harke, who is an associate at the firm

**LAWDRAGON:** Have you always focused on plaintiffs' and consumer cases?

**LANCE HARKE:** For the first ten years of my practice I was a Big Firm litigator for Steel Hector & Davis, where I handled a variety of large commercial cases. When I formed my own firm in 1998 we had the opportunity to get involved in some consumer cases on the plaintiff side, and over the years have taken more and more of those cases. My firm still handles a significant number of traditional business disputes.

**LD:** What made you want to get into consumer-side law?

**LH:** Over the last eight years we have seen more and more examples of corporate misconduct, with consumers often the ones left holding the bag. It's been very rewarding to see your work result in a tangible benefit to real people. That's a satisfying feeling.

**LD:** Can you describe how you came to practice law with your wife? Do you find yourself talking a lot about work at home?

**LH:** My wife and I met in law school and afterwards she went to work for some very good plaintiffs' class action lawyers who helped train her and hone her skills from that perspective. When her younger sister and I left Steel Hector and

formed our own firm it seemed like a natural fit to ask her to join us. We are all very close and share the same perspective on most things, so it's been easy. And yes, we do wind up talking about our cases at home, when we're not watching "Mad Men."

**LD:** Is there a case that stands out as particularly meaningful for you?

**LH:** In the matter of *Francis v. Sero*no Laboratories, I had the privilege of representing a class of HIV/AIDS patients who were the victims of a deceptive and illegal marketing, sales and promotional scheme regarding the AIDS wasting prescription drug Serostim. The drug was marketed as a drug which would combat the significant and rapid weight loss associated with the AIDS disease. Patients were given a "test" to diagnose them with AIDS wasting and then prescribed the drug at exorbitant prices, sometimes as much as \$30,000 per treatment course for the uninsured. We alleged that the defendant-created "test" improperly diagnosed all patients with AIDS wasting regardless if they actually had it. This increased the defendants' sales dramatically. We further alleged that the drug was ineffective at combating AIDS wasting. We were able to obtain \$24 million to compensate for the losses associated with the sale of this drug.

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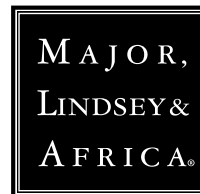
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The Law Offices of Frank L. Branson congratulates Mr. Branson for his repeat selection as one of the Lawdragon 500 Leading Lawyers in America. Also in 2010, Mr. Branson was honored as the Dallas Bar Association's Trial Lawyer of the Year and again named to the list of *Texas Super Lawyers'* Top 10 Lawyers in Texas. For the 25th consecutive year, he earned selection to *The Best Lawyers in America*, while his firm was named among the state's elite in the inaugural "Best Law Firms" list compiled by *U.S. News & World Report* and *The Best Lawyers in America*.

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A professional portrait of Frank L. Branson, a middle-aged man with a full grey beard and mustache. He is wearing a dark navy blue pinstripe suit jacket over a white dress shirt and a yellow patterned tie. He is standing in a room with dark wood paneling. To his right, a framed painting is visible on the wall. The lighting is soft, highlighting his features. The text "Frank L. Branson" is overlaid on the left side of the image.

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