perspectives

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Message From the Chair

by Joey Bowers

Dear Younger Lawyer Division Members:

The first half of the YLD year has been off to a fast and fun start. It was great to see many of you at the FBA's Rising Professionals Symposium in Las Vegas in February. If you weren't able to attend this exciting event, you can get a sense of what you missed in two of the articles in this newsletter, as well as by checking out some of the highlights on our Twitter (https://twitter.com/federalbarYLD) or Facebook (http://www.facebook.com/FederalBarAssociationYLD/) pages.

I also want to congratulate the University of Oklahoma for winning the FBA's Thurgood Marshall Memorial Moot Court Competition in March. This year's Competition featured a number of talented teams from across the country, and you can find a complete list of winners and participants on our website at: http://www.fedbar.org/Divisions/Younger%20Lawyers%20Division/Moot-Court-Competition/2019-Moot-Court.aspx. If you see your law school's team listed, be sure to reach out to them to congratulate them on their hard work and success. More importantly, if your law school is not listed, be sure to encourage your school to send a team to next year's Competition, which will be celebrating its 25th anniversary.

In the coming months, we will host a Supreme Court Swearing-in Ceremony in Washington, DC, in May, and our

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Smart Contracts are Smarter Than you Think...?

by Ronika J. Carter Esq.

What does it mean to be smart? What is a contract? How are the principles of contracting applied in our everyday lives? The answers to these questions are not be as simple as one may presume…

From Bitcoins and blockchains, to augmented reality and 3D printing, technology is constantly evolving and challenging our preconceived notions about how things should be done. Consequently, it comes as no surprise that legal concepts and their applications are no exception to this rule. Granted, the basic principles of contracting remain the constant, but our understanding of what those principles are and how we can or should apply them, is amorphous, in a sense.

When you consider all of the potential implications, and possible applications, it becomes easy to see how the concept of smart contracts could be discussed at length for days at a time, but without covering all of the available material. The goal of this article is simple: to provide an introduction to smart contracts, that will hopefully, foster a journey of self-study and exploration.

What Are Smart Contracts?

The term "smart contract" is a bit of a misnomer, because smart contracts, in the purest sense, are not necessarily legal contracts; they are computer code. The concept of smart contracts was developed by computer scientist and cryptographer Nick Szabo in the mid 90s, and he describes them as follows:

*"a **computerized transaction protocol** that executes the terms of a contract. The general objectives are to satisfy common contractual conditions."*

-Nick Szabo, 1994

In simplest form, smart contracts are self-executing, autonomous agreements, which means that computer code is used to both automate the terms of the agreement, and to enforce those terms. When trying to deepen your understanding of this concept, it helps to visualize a smart contract in action, and the best way to do so – in my opinion – is to visualize a vending machine.

Smart contracts are often analogized to vending machines because with a vending machine, if you insert the currency, then the product is automatically dispensed, and that is how smart contracts work, as well. The terms of the agreement are translated into computer code, and once the preconditions are met, the code executes itself. This process is akin to the "if-then" statements we learned in grade school logic; if certain performance metrics are achieved, then, the funds will be released.

What Differentiates Smart Contracts from Traditional Contracts?

To phrase it bluntly: smart contracts are not necessarily smarter than traditional contracts; they are simply more efficient, especially when they are implemented on a blockchain. Unlike traditional contracts, smart contracts are authenticated, monitored, and enforced without the help of any third-party intermediaries, which in turn, significantly reduces transaction costs, and this is held to be one of the primary benefits of smart contracts. When implemented on a blockchain, some of the other benefits of smart contracts include transparency and an immutable record.

As you may know, the blockchain can be described as a ledger of transactions that have occurred within a particular network. Once a transaction has been verified, a block is created memorializing that transaction, and that block is added onto the end of the chain. Each new block, references each preceding block in the chain, thus creating a record of all of the transactions within that network. Blockchains are often described as being immutable, because of the process by which a change in the blockchain would have to occur, if such a chain could occur.

Because blockchains are decentralized, i.e., every member of the network has an identical copy of the ledger of transactions, all members of the network would have to approve changes to the chain, and the chances of such an occurrence happening are slim to none, hence the sense of immutability.

Let's Get Practical: Are Smart Contracts Useful in Everyday Transactions?

Although learning about smart contracts and blockchain technology can be useful for educational purposes, the knowledge is quite practical as well, and it can be applied in everyday business transactions. In fact, you've probably encountered real-world uses of smart contracts on several occasions. The following examples demonstrate some of the ways in which companies are utilizing smart contracts, today.

We've all been there: waiting near the gate for your flight's boarding call, only to hear an announcement requesting volunteers to move to a later scheduled flight … and, after no one volunteers, your name is called. Or worse: racing through the airport, only to learn that your flight has been delayed, and consequently, you will miss your connecting flight(s). It's frustrating and upsetting. What happens next, though, helps to lessen the blow, because the airline then offers you

some compensation for your trouble. Is it enough? Never. But does it help? Absolutely. Because occurrences like these are fairly common, it comes as no surprise that airlines are thinking of ways to streamline the issuance of compensation for delays and cancellations, and to make the process easier for all parties involved. It also comes as no surprise to learn that French Airline AXA has begun to use smart contracts for this purpose. Through the use of a smart contract accessed through a mobile app, customers can select a compensation option, and the funds are automatically released to their payment of choice.

Purchasing real estate through smart contracts on blockchains is no longer the subject of brainstorming exercises and academic discussions; it's a reality, and it has been for quite some time. Propy is a real estate listing and transaction platform that uses smart contracts and blockchain technology to democratize the process of selling and purchasing real estate. The use of smart contracts and blockchain technology not only increases efficiency in these transactions, but also promotes trust and fair dealing, by requiring transparency and thus, (essentially) precluding fraud.

Are Smart Contracts Legally Enforceable?

We know that smart contracts are not necessarily legal contracts, but they can be if they contain all of the components needed for a legal contract. Think back to your 1L contracts class, and apply those same principles; if the necessary components present, a legal contract is formed, however, practitioners have questioned the enforceability of smart contracts because of the use of electronic signatures and records in their formation.

Thankfully, both the Electronic Signatures in Global and National Commerce Act ("ESIGN"), and the Uniform Electronic Transactions Act ("UETA") provide sufficient framework through which smart contracts can be executed and legally enforced, because they work together to legally recognize and validate electronic signatures, and records.

Under the ESIGN, electronic records and signatures for transactions in or affecting interstate or foreign commerce, are validated. UETA prevents records or signatures from being denied legal effect or enforceability solely because they are in electronic form. Along the same vein, UETA prevents contracts be being denied legal effect or enforceability solely because electronic records were used in their formation, so we currently have the legal framework in place, to promote the development, and eventual widespread use of smart contracts in our everyday lives.

Once you've taken the time to study the concept and parse through the parlance, smart contracts are not that complex after all. In fact, they are actually quite simple. The intrigue of smart contracts lies in the efficiencies we achieve, and the applications we have yet to imagine. They may not be smarter than you thought, but if you're seeking innovative ways to execute and enforce traditional agreements, the solution is just a smart code away.

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Endnotes:

[1]Olga V. Mack, *Smart Contracts: The Shared Ledger That's Set in Stone*, accdocket.com, https://www.accdocket.com/articles/smart-contracts-the-shared-ledger-set-in-stone.cfm (last visited February 27, 2019).

[2]Reggie O'Shields, *Smart Contracts: Legal Agreements for the Blockchain*, 12 N.C. Banking Inst, 177, 179 (2017).

[3]Because smart contracts are computer code, they can be implemented on traditional databases, as well as blockchains. For practical purposes, however, blockchains are most often the medium of choice for smart contracts, because blockchains provide transparency, efficiency, and an immutable record, and these characteristics are not readily available through traditional databases.

[4]Julia Maga, *Immutability in Doubt,* cointelegraph.com, https://cointelegraph.com/news/immutability-in-doubt-do-we-need-to-protect-blockchain-data (last visited February 27, 2019).

[5]*AXA Goes Blockchain With Fizzy,* AXA, https://group.axa.com/en/newsroom/news/axa-goes-blockchain-with-fizzy (Last visited March 20, 2019).

[6]https://propy.com/.

[7]*"Smart Contracts" Legal Primer; Why Smart Contracts are Valid Under Existing Law and Do Not Require Additional Authorization to Be Enforceable*, Chamber of Digital Commerce, https://digitalchamber.org/wp-content/uploads/2018/02/Smart-Contracts-Legal-Primer-02.01.2018.pdf (last visited February 27, 2019); *see also* Cohn, West, and Parker, *Smart After All: Blockchain, Smart Contract, Parametric Insurance and Smart Energy Grids*, 1 Geo. L. Tech. Rev. 273, 288 (2017).

Getting to the Courtroom as a Complex Litigation Associate

by Dominic LoVerde

For the past two decades, judges, trial lawyers, and federal practitioners have bemoaned the continuing decline in civil trials.[1] This article addresses the resulting challenges newer attorneys face in seeking quality courtroom experience and exposure. Courtroom opportunities are even more challenging and less frequent for those practicing at large firms or in complex litigation. This decline raises a practical concern: the infrequency of litigators going to trial creates a skills gap, and that gap will only become more difficult to bridge in the coming decades as trials continue to decline.

If you're a litigation associate at a large firm or organization, you are acutely aware that complex litigation often does not expose associates to the courtroom. Instead, young associates are tasked with document review, research, and writing – all necessary tasks. But how can the hopeful trial attorney assigned these tasks enhance and potentially expedite the process of becoming a qualified and effective advocate? This article explores methods and practices you can use to strengthen your trial skills and expedite your path into the courtroom.

Communicate & Seek Out Trial Attorney-Mentors:

During the colonial period, an apprenticeship or clerkship was essential to be admitted to the bar. Those seeking mentors and legal experience found an established lawyer, paid a fee, and then received practical experience at that lawyer's direction.[2] The current legal profession lacks this emphasis on mentoring. For associates seeking trial work and courtroom opportunities, seek out trial attorneys with experience in your field. Many law firms have a robust number of former prosecutors and trial lawyers with significant experience who are well equipped to mentor newer associates. Those trial lawyers can help you develop your trial skills by getting you into the courtroom, working with you on public speaking, and identifying other opportunities to hone your advocacy skills.

Be direct, forthcoming, and persistent in voicing your desire to get into the courtroom and those opportunities will occur.

Take Ownership in Assignments:

While you may not be staffed on a matter that is close to trial, nearly every office assignment presents the potential opportunity to expedite your courtroom path. Litigation tasks are all conducted with the end goal in mind—trial or judgment. Each step and task brings the team closer to that end. If you are tasked with reviewing documents, review them with an eye toward how each document may or may not be helpful, not just whether it is relevant, responsive, or privileged. Does this document prove an element of your claims? Does it support an affirmative defense? Will it muddle the plaintiff's theory? Will it provide or refute the necessary factual issues for supporting or opposing summary judgment? Are there evidentiary hurdles that might prevent your best documents from being excluded? Thinking about these issues is taxing but necessary, and having your thumb on the pulse of these critical issues makes you an integral part of the team.

If you are reviewing documents for deposition preparation, do so with an eye towards understanding how that deposition fits into your overall theory. Rather than simply funneling documents for the partner or senior associate's review, categorize those documents by separating them into issues, put them in chronological order, or even prepare a deposition outline. That way, when the partner receives your work product, they feel comfortable that you turned over every stone, understand the issues, and know the deponent and case. Also, if the partner does not offer the opportunity to attend the deposition, ask! A closed mouth doesn't get fed, and the partners you work for aren't waking up every morning thinking, "what can I do for that associate?" Be a vocal advocate for your own development. That partner may eventually feel confident in your skills and work product that she will give you the reins to conduct the next deposition.

Also, many assignments offer opportunities to gain public speaking and presentation experience. With various research or writing assignments, you can take ownership over the project and use it as an opportunity to discuss the topic orally with the partner you work with. In addition to providing a research memo, present the legal issue to the partner and communicate the issues. Most senior attorneys will appreciate that you did not just drop a stack of papers on their desk, and will openly give you an audience even just for a few minutes. Every public speech is an opportunity to hone your speaking and presentation skills.

While each of these tasks may seem minor, they give the senior attorney confidence in your abilities. These little steps ultimately bring you closer to the

courtroom, because if you know the case better than other attorneys in your office, your mentor will need you in the courtroom when trial comes.

Assistance from the Bench:

The federal bench is uniquely aware of the lack of civil trials and lack of courtroom opportunities for newer attorneys. Some federal judges have even adopted standing orders and local rules encouraging newer associates to argue at various court hearings and appear in court.

Judge William Alsup in the United States District Court for the Northern District of California has a standing order for civil jury trials, which states that "[t]he Court strongly encourages lead counsel to permit young lawyers to examine witnesses at trial and to have an important role. It is the way one generation will teach the next to try cases and to maintain our district's reputation for excellence in trial practice."[3]

Judge F. Dennis Saylor of the United States District Court for the District of Massachusetts recognized that "Courtroom opportunities for relatively inexperienced attorneys, particularly those who practice at larger firms, have declined precipitously across the nation in recent years." He adopted a standing order to counter that trend, "strongly encourag[ing] the participation of relatively inexperienced attorneys in all court proceedings." His standing order has lock-step specific methods for enabling newer associates the opportunity to argue motions at various hearings.[4]

Seventh Circuit Judge Amy St. Eve (previously with the United States District Court for the Northern District of Illinois) had a similar standing order for younger attorneys regarding oral argument. Judge St. Eve recognized the lack of opportunity for newer attorneys to appear and argue in court, and stated that "[a]lthough oral argument is not necessary for the Court to rule on the majority of motions filed before it, the Court will consider scheduling oral argument if a party requests it and commits to entrust the argument to an attorney who has been out of law school for fewer than six years."[5]

These examples reflect only a small handful of judges who have taken these affirmative steps, as many more judges and district courts have adopted local rules with similar positions.[6] Take a couple minutes to research and recognize the judge overseeing your case and the jurisdiction you're practicing to determine whether this outlet is available. You may find yourself before a judge who encourages your participation and will give you an audience and opportunity to argue in the courtroom.

Pro Bono Work:

Not only do we have an obligation to give back to our communities through pro bono, but this work has another major upside. It provides the ability to take ownership over a case and gain confidence in courtroom appearances. In contrast to the behind the scenes legal work most newer associates have, pro bono cases enable attorneys to handle big-picture legal issues like developing legal strategy, interacting with clients and managing their expectations, and being the sole attorney representing that client before a judge or jury.

Identify pro bono organizations in your area through bar associations, non-profits, legal clinics, and the courts.[7] A wide variety of pro bono programs are available in which you can get stand-up courtroom experience. For example, many FBA chapters partner with legal clinics and non-profits, offering significant pro bono opportunities that can be crafted to your skillset or interest.[8] To name a few examples: the Western District of Washington FBA Chapter offers its Federal Civil Rights Clinic and also its Pro Bono Panel to represent indigent and pro se litigants in federal court, a great "way for practitioners to interact with and learn from other lawyers in the Western District, and to make a positive contribution to our legal community and the administration of justice."[9] The Northern District of Illinois' Settlement Assistance Program appoints an attorney to represent a pro se litigant solely for settlement purposes. The appointed attorney will help the pro se litigant prepare for his settlement conference, and then have the opportunity to serve as lead settlement counsel during the conference. The appointment expires after the settlement conference is completed, regardless of whether or not the case is resolved. This program provides an excellent opportunity for newer attorneys to gain quality courtroom experience without the committing to litigating an entire matter from inception to judgment.

Explore Self-Learning Opportunities:

Every successful and experienced trial attorney is devoted to continuously learning. Litigators pursuing a similar path should do the same, and commit to learning new skills, tasks, and tips from

other trial lawyers. Pursue CLEs covering trial and evidentiary issues, attend a trial conference through the FBA, the National Institute for Trial Advocacy, or your State's bar association, or join a trial lawyer association and network and meet with other trial attorneys. Trial lawyer groups frequently hold seminars and workshops for trial attorneys to harness their skills and learn from their peers. In Illinois, there are several trial organizations other than the Federal Bar Association—the Illinois Trial Lawyers Association, Association of Defense Trial Attorneys, and others that provide committees, workshops, and opportunities with a sharp focus on trial work. And you'll also have the opportunity to develop relationships with other trial attorneys who are generally happy to share tricks of the trade, advice, and mentorship.

Observation is a powerful tool, and observing trials and experienced trial attorneys in your free time is a valuable source for learning. If you practice in a high volume jurisdiction, chances are a jury or bench trial is happening at the courthouse every day. Do not forget that the courtroom is a public forum, so treat it as such and make a point to observe others.

Finally, there are plenty of books containing trial transcripts with openings, closings, tips for public speaking, and court documents covering trial attorneys. Biographies on trial lawyers provide insight into the work of courtroom advocates and Lexis Nexis's Law360 offers profiles on trial attorneys at large and small firms alike, covering their major cases and tips for the profession. These stories offer brief glimpses into effective habits of trial attorneys, and you might find some helpful points you could adopt as your own.

Conclusion:

These recommendations provide just a few ways to expedite and enhance the young litigator's path to the courtroom. Ultimately, it is up to the newer attorney to take ownership of her experience and pursue opportunities that fit her career. So take the reins, and be your best advocate. Newer attorneys must respond to the decline in civil trials to overcome the existing advocacy skill gap. This will expand the availability of qualified trial lawyers, and in turn enhance justice overall.

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He previously served as a judicial law clerk to the Honorable Samuel Der Yeghiayan in the U.S. District Court for the Northern District of Illinois.

Endnotes:

[1]https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/judicature/judicature100-1_hornby.pdf

[2]https://hosted.law.wisc.edu/wordpress/wilj/files/2012/02/katcher.pdf; see also MARIAN C. MCKENNA, TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL 6 (1986) (recognizing the apprenticeship system originated and became firmly established in New England).

[3]*See Judge Alsup's* "Standing Order on Jury Trials" (https://cand.uscourts.gov/filelibrary/192/jurytrials1.pdf)

[4]*See Judge Saylor's* "STANDING ORDER RE: COURT-ROOM OPPORTUNITIES FOR RELATIVELY INEXPERIENCED ATTORNEYS" (http://www.mad.uscourts.gov/boston/pdf/saylor/StandingOrderReCourtroomOppor_Bostonupdate.pdf).

[5]*See Judge Amy St. Eve's* Standing Order on Oral Argument (https://www.ilnd.uscourts.gov/judge-info.aspx?2qetMz8rZTQ=) (last accessed January 31, 2019).

[6]Visit Next Generation Lawyers, an organization providing a great resource and compendium of federal judge and district court standing orders encouraging young attorneys in the courtroom. (https://nextgenlawyers.com/).

[7]*See, e.g.,* https://www.probono.net/oppsguide/.

[8]*See Middle District of Florida FBA Chapter Offering Pro Bono Opportunities* https://www.probono.net/oppsguide/organization.289940-Middle_District_Federal_Bar_Association; see Orange County FBA Chapter Offering the 9th Circuit Pro Bono Program https://fbaoc.clubexpress.com/content.aspx?page_id=22&club_id=986138&module_id=16466.

[9]https://fba-wdwash.org/service-opportunities/.

Managing International Trademark Portfolios

by James M. Theo

Managing international trademark portfolios in the age of globalization can be a fickle endeavor. Ecommerce has blown the top off traditional thinking as it relates not only to advising your clients on what and where to file, but also how to strategically maintain those filings in the face of an increasingly crowded and adversarial global marketplace. When a brand attempts to gain a foothold with an emerging clientele, fortune tends to favor the strategically bold. For this reason, companies often try to establish their intellectual property rights in countries where actual use or implementation may not be in the cards for years. In the case of trademarks, the benefits are obvious: if/when a product is launched, a service begins, or a brand is introduced, a strong and enforceable portfolio is waiting to greet and protect it. However, in some jurisdictions around the world, such a strategy leaves open the possibility of an attack on these rights, most commonly in the form of a non-use cancellation action. Thus, when considering a trademark filing strategy for international clients, it is important to contemplate a workable scheme to protect the filings from eventual vulnerability.

Imagine your client is a high-end fashion house based in New York hoping to crack into growing markets in East Asia. As part of that push, you seek protection for their trade name in China in association with the core goods and services they provide, eventually securing trademark registrations. Your client is thrilled to have carved out freedom to operate in burgeoning fashion destinations such as Shanghai and Beijing, and set into motion a plan to launch. After three and a half years of planning and investment, on the cusp of their official launch, you receive notice that the trademark registrations have been challenged by another applicant for non-use, and will be cancelled unless you are able to show actual use of the marks within the last three years. Your client, of course, has not begun to utilize the mark, and is devastated to learn their rights have been usurped, and they are no longer free to introduce their brand.

So what happened? Simple, the registrations reached the date on which they became vulnerable to such a challenge, and having not taken action to reinforce your client's rights, another party was able to challenge, cancel, and potentially obtain rights in, your client's trademarks.

Had there been use of the trademark in association with the goods/services for which it is registered, vulnerability to cancellation would not be a concern. But what if there is only partial use? What if there is no use at all? Assuming the trademark owner maintains an interest in protecting the assets, there are helpful considerations for formulating a vulnerability strategy:

- First, know your client's portfolio in a given country. This will likely require a regular review of the portfolio to determine what is in use; what remains of high interest and importance; and, most importantly, which filings are technically vulnerable to cancellation.
- Second, maintain a working knowledge of what constitutes satisfactory use to effectively "cure" vulnerability or to rebut a challenge based on non-use. Whether this means keeping in close contact with peer counsel abroad or diligently studying local laws, it is imperative to know what constitutes use in a given country, as these requirements vary.
- Third, consider the objectives of your client. How important is a jurisdiction and its consumers to your client? How important is a given suite of marks to your client's international business strategy? Are there limitations on the resources your client is willing to commit, or a level of risk your client is willing to accept?
- Finally, be aware of the options for overcoming vulnerability in ways that will maximize the trademark protection for your clients.

Knowing your client's portfolio, as well as its related business strategy abroad, seems like a no-brainer. However, it requires a proactive attitude of communication and understanding. After all, a client's most common complaint of their representation is lack of open dialogue. Ask questions to try and understand their thinking: What countries take priority? Which marks are most important to their business? Which core goods or services do they hope to protect? Where are they currently using the mark? Where do they plan to use it? Once you know these details, come up with a strategy or a timeline to regularly review the portfolio to identify those registrations that may be vulnerable. It's important to keep in mind this varies from country to country. A three-year-old registration in Argentina is perfectly safe, while a sister registration filed at the same time in China or Canada is open to attack by any interested third party. Know your client. Know your jurisdiction.

Now that you've identified what may merit protection and what is technically vulnerable to cancellation, you must understand what constitutes satisfactory "use" to effectively "cure" vulnerability or to rebut a challenge based on non-use. Again, this is a jurisdictionally-specific question that requires

the lawyer to be diligent in keeping up with country-specific norms. Consider again the hypothetical fashion house client. In order to crack into developing marketplaces, they filed broadly in international trademark Class 25 for a variety of clothing and accessories, but begin using the mark only in association with dresses. Among the targeted countries are Chile and China. In Chile, there is no "use" requirement whatsoever; i.e. an attack on the ground of non-use is not available to third parties. Your client can rest assured its current limited use (or no use at all) does not leave the filing vulnerable to a non-use cancellation. However, the same cannot be said for China, where partial cancellation is allowed. If a third party was to attempt to cancel the registration, and evidence of the client's sole use in association with dresses was presented, the remainder of the broad Class 25 filing could be cancelled. Knowing how liberal or strict use requirements are in a given country will not only inform your vulnerability strategy, but should also be a consideration when developing the initial filing strategy. A little foresight is likely to lead to a more cost-effective trademark protection strategy.

Of course all of this sounds good in theory, but at the end of the day, you serve your client, its wishes, and its wallet. That's why it's also important to take a step back and consider the practical. Knowing what you know about your client and the applicable countries' law, is it even worth attempting to cure vulnerability? As with anything, calculated risk can be your friend. Ask trusted local counsel to offer their opinion on how likely a challenge based on non- will be successful. Why expend resources to shield against an eventuality that in practice does not exist? If you report to a client there is extremely low-risk of a third-party challenge, chances are the related cost of fortification will seem an unnecessary gouge. The same holds true for jurisdictions and marks that are of lesser importance. Harkening back to the theme to "know your client," if a given country is not an integral part of its business model, or a given set of trademarks is being deemphasized, a lawyer shouldn't expect the client to agree to expend a lot of resources to defend the registration. If you can make the case for accepting certain risks, your clients will thank you for it. It's often better to be seen as practical than to be seen as overzealous.

Taking into account the above considerations, you should now have a working idea of "what/where." That is, considering cost, strategy, and legal particulars, you are ready to submit to your client a group of filings ripe for fortification. To fortify a given portfolio is to overcome vulnerability. In most instances this means refiling, thus starting the vulnerability clock over in a given country. In many situations, refiling to overcome vulnerability will come at time when the client's goods and services of interest have evolved. Therefore, refiling will provide an opportunity to have the goods and services in the filing more accurately reflect the current interests of the client. Where there is no use, it often makes sense to file broadly for the core goods/services of interest to your client that reflects their current business goals, but at the very least covers those goods/services that are not currently being used. Even if your client decides to take on the risk of vulnerability, it is important to reinforce that this does not mean you are failing to renew a registration or actively allowing it to lapse. It just means accepting the risk of a potential (often times unlikely) third-party challenge.

Your international clients, at a certain point, want business in new and enticing marketplaces. This often requires aggressive and forward-thinking measures, such as establishing intellectual property rights before beginning business in earnest. The benefits of such a strategy are obvious, but so are the risks. Our job as corporate attorneys is to mitigate this risk as much as possible, while integrating ourselves into the goals and mindset of our clients. In the case of trademark portfolio management, an increasingly important facet of this job is recognizing the need to protect vulnerable assets so they retain robust and powerful protection for our clients' businesses when they finally come ashore. Creating a strategy to protect vulnerable filings around the world by considering local law, legal reality, and client temperament can help businesses claim and maintain a foothold in an increasingly frenzied international market.

James Theo is an intellectual property associate at Dinsmore & Shohl LLP in Chicago. He assists in managing international trademark portfolios from clearance and registration through opposition and enforcement. This includes handling trademark prosecution and patent management for a multinational retailer concerning their dealings around the world, specifically Asia, Australia, Europe, South America and Canada

My Experience at the 2019 Rising Professionals Symposium

by Giselle Gutierrez

In 2018, I had the privilege of attending the Federal Bar Association's inaugural Rising Professionals Symposium. It was an incredible weekend where I learned practical skills and more about many substantive areas of law, all while making incredible connections with other young professionals. When the FBA announced it was hosting the Second Annual Symposium, I knew I could not miss out.

A gathering at the 2019 Rising Professionals Symposium

The Second Annual Rising Professionals Symposium surpassed all of my expectations. The content was engaging and masterfully delivered. The FBA and the presenters did a phenomenal job providing career-focused and relevant training for all attendees. For example, Evan Gibbs gave great advice on how to build critical relationships with current and potential clients through seminars and speeches. Speeches and educational trainings are tools I frequently use in my labor and employment practice to build and maintain client relationships, and his presentation gave great tidbits on how I can better capitalize on those tools.

The FBA also provided excellent presentations on substantive areas of law. Some of these presentations were perfectly tailored to my practice area, such as Dustin Massie's training and research in "Medical Cannabis in the Workplace: What Protections Do Employees Have?" And the other presentations were so interesting to learn about, such as Andrew Rossow's "The Dark Side of Social Media" presentation on issues surrounding cyber bullying.

Besides the practical and substantive benefits, what I treasured the most were the relationships I had the opportunity to make and those I was able to build upon with the other veterans at the Symposium. I had the opportunity to network with professionals from around the country, in professional and casual settings at seminars, brunches, and after-hours receptions.

I cannot wait to see what the Third Annual Rising Professionals Symposium has in store!

Giselle Gutierrez practices in the Labor & Employment and Litigation Departments at Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. in Miami. Her labor and employment experience includes representing clients before administrative agencies and federal and state courts in cases involving employment discrimination, retaliation, unpaid wages, defamation and claims under the FMLA, ADA, ADEA, Title VII, and more. Earlier in her career, she clerked for The Honorable Paul C. Huck, United States District Judge for the Southern District of Florida.

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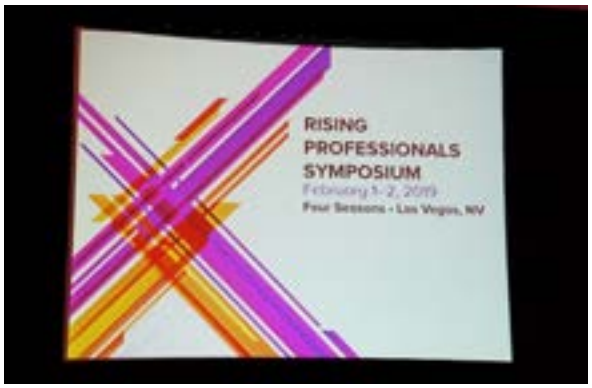
Summer Law Clerk Program will kickoff in June. We are always looking to find ways to make the YLD more enriching for our members, so if you have any ideas or are looking to get more involved, including getting one of your articles published in our next newsletter, please let us know.

Lastly, I want to thank the Chair of our Publications Committee, Erin McAdams, for her dedication and commitment to publishing this newsletter. From recruiting authors and editing articles, to formatting the newsletter, she has done it all, and it has turned out wonderfully. I hope you enjoy the newsletter as much as I did, and I look forward to seeing many of you at one of our upcoming events.

My Experience at the 2019 Rising Professionals Symposium

by Ashley Ramm

Starting on February 1, 2019, the Young Lawyers Division hosted its second annual Rising Professionals Symposium in Las Vegas, Nevada. The Symposium was well-balanced with practical CLE sessions, exciting keynote speakers, and an abundance of networking opportunities. This was my second time attending the conference, and I was once again impressed by the diversity of relevant topics that were addressed.



The conference began with a kick boxing inspired workout lead by the Federal Bar Association's Executive Director, Stacy King. The workout was followed by a breakfast that allowed attendees and presenters to meet and get to know each other. The first segment of the conference, "Practice Prowess," started with a presentation by Marisa Darden, an Assistant United States Attorney from the U.S. Attorney's Office for the Northern District of Ohio. Marisa presented on voir dire, "The Dying Art Form of Jury Selection," providing a unique perspective as a young attorney who spent an impressive amount of time in the courtroom. Next, Kristine Schanbacher, Managing Associate at Dentons US LLP in Chicago, addressed the topic of writing a compelling brief in a novel area of law. Kristine walked through a step-by-step process that can be applied for any novel or undeveloped area of the law. Rounding out the first block of morning CLEs was a session about taking control of depositions when opposing counsel has more experience, presented by Dallas attorney Ben Barnes, Senior Associate at Lynn Pinker Cox Hurst. Ben gave practical advice on preparing and conducting depositions, along with how to gain the respect of opposing counsel. These sessions provided practical know-how that is extremely useful for new attorneys and law students interested in litigation.

In the second segment of the conference, "Practice Makes Perfect," Evan Gibbs, an attorney at Troutman Sanders LLP in Atlanta, addressed how taking advantage of speaking opportunities helps generate business. Evan gave great advice on how to make presentations engaging, the number of interactions to expect after a presentation, and explained how to build relationships effectively after making those initial connections. Following Evan was a presentation on medical marijuana in the workplace by Dustin Massie, Minneapolis labor and employment attorney at Baillon Thome Jozwiak & Wanta LLP. Dustin explained the complications that arise because medical marijuana is simultaneously legal (in some states) while illegal (federally). He also touched on how courts are currently addressing the issue.

Before breaking for lunch, Jennifer Lohse, Vice President and General Counsel of the Hazelden Betty Ford Foundation, and Thomas Ting, General Counsel of Starkey, participated in a panel discussion on in-house counsel roles and responsibilities. Both speakers discussed the benefits of being in-house, how they got to their current positions, and what they look for when choosing outside counsel. Jennifer and Thomas emphasized the importance of outside counsel providing high quality, concise, and to the point work product, along with developing a personal connection with in-house counsel, to secure and continue securing work. Additionally, they noted how taking the time to really understand the company's business is a great way to distinguish yourself from other outside counsel. Jennifer and Thomas emphasized that they don't hire law firms—they hire attorneys—so personal connections are key.

The afternoon session kicked off with discussions about hot topics "In Your Newsfeed." First, Ronika Carter, President and CEO of Resolute Management and Consulting, discussed the concept of smart contracts. Ronika detailed the implications that these contracts can have, such as removing middlemen and even replacing the work attorneys do. Kate Baxter-Kauf, Associate Attorney at Lockridge Grindal Nauen P.L.L.P., followed with a presentation on the timely topic of data breach litigation. Kate dove into Article III standing requirements and discussed how current cases involving retailer, medical, and technology companies are being decided. Andrew Rossow, cyberspace and internet attorney at Rossow Law, LLC, then discussed the emerging legal field of cyberbullying. Andrew explained how states are slowly, but surely, revising existing laws and creating

new ones to address cyberbullying, a space that federal law has yet to touch.

Next, in a "Good to Know" session, Christian Grostic, an attorney with the Federal Public Defender's Office for the Northern District of Ohio, used the television series Law & Order to explain criminal justice concepts. Christian educated the audience, mostly civil attorneys, on how to advise civil clients on common criminal issues they might face. Sybil Dunlop, a partner at Greene Espel PLLP in Minneapolis, then presented on how implicit bias impacts the legal profession. In an uplifting manner, Sybil discussed ways that attorneys can help correct the lack of diversity in our profession, including using tools to understand and help address our own implicit biases. Finally, Debashish Bakshi, an associate at Robbins Geller Rudman & Dowd LLP in San Diego, discussed using phone logs as a discovery tool in civil litigation. Debashish emphasized the multitude of ways phone logs can be utilized, including to reveal relationships between individuals.

The last speaker on the first day, prior to the happy hour reception, was C.J. Vranca, Senior Vice President of Legal & Business Affairs at Funny or Die. After watching a hilarious composite of popular Funny or Die content, C.J. opened up about how she landed her dream job and the unusual legal issues that make up her workdays. She discussed what makes Funny or Die unique in the industry, challenges the company faces, and how her legal office plays a role in overcoming those challenges.

The final speakers of the Symposium, Allison Leotta and Joel Oster, kicked off the second and final day. Allison Leotta, a critically-acclaimed author and former federal prosecutor, spoke about some of the most fascinating cases she worked on as a prosecutor, along with her drastic career change. Allison divulged the steps she followed, and recommends others follow, to lead a successful career, including starting small, pushing through despair, and taking care of yourself—a topic that was prominent throughout the conference. Last, but not least, Joel Oster, President and General Counsel of Comedian of Law LLC, provided a hilarious lecture on legal ethics. Joel used real, newsworthy examples and audience participation to highlight the Model Rules of Professional Conduct and consequences that can stem from breaking them.

Overall, the Symposium provided real-life, practical skills that that are beneficial and useful for new attorneys. Learning from professionals who are currently practicing and able to provide personal illustrations gave context to their advice. The Symposium provided ample opportunities, in addition to the scheduled breaks, to network and build relationships, which is what makes the Symposium so unique. And best of all, the majority of materials are created and presented by young lawyers, which not only makes the information applicable to law students and new attorneys, but also provides a great example of the types of speaking opportunities that young attorneys can obtain. I look forward to attending the Rising Professionals Symposium in the years to come!

Ashley Ramm is a third year law student at the University of Cincinnati College of law, where she serves as the school's FBA Chapter President and Law Review Executive Editor. In addition to law school, Ashley clerks for GE Additive and will start her career at Frost Brown Todd LLC in Cincinnati as a Litigation Associate.

perspectives

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