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**THE FELLOWS CLE RESEARCH SEMINAR:
"WHAT DEFINES COMPETENCE?
A DEBATE ON THE FUTURE(S) OF LAWYERING"**

The Fellows CLE Research Seminar: What Defines Competence?

A Debate on the Future(s) of Law yering

The forces of globalization and technological change and their impact on the legal profession were the focus of the ABF Fellows Research Seminar, held on February 12, 2011, in Atlanta, Georgia, during the American Bar Association Midyear Meeting.

The session was moderated by Richard Pena, Founder and CEO, Law Office of Richard Pena, and immediate past President of the American Bar Foundation. Speakers Frederic S. Ury, founding member, Ury & Moskow LLC, William D. Henderson, Professor and Director of the Center on the

Global Legal Profession, Indiana University Maurer School of Law, Carole Silver, Professor, Indiana University Maurer School of Law and Affiliated Scholar, American Bar Foundation, and Robert L. Nelson, Director and MacCrate Research Chair in the Legal Profession, American Bar Foundation, shared their perspectives on

how globalization and technology are rapidly changing the practice of law, with immense consequences for both practitioners and legal educators.

Richard Pena began the session by remarking that the legal profession is undergoing a “tremendous paradigm shift.” A “tidal wave has hit the legal profession and the legal

profession is going through incredible upheaval,” Pena commented. “If we are to be successful as we go forward in the future, we must defeat the fear of change,” Pena said. “We must change, and there is no turning back. You cannot be nostalgic about how you used to practice law. It’s not going to work in the future. Our challenge as a profession is ...to move ...in a different direction and to shape our own future, and we can do that. In part that is a reason for this seminar.” The panelists will be “talking about where lawyering is heading and what will be required of lawyers in the future if we’re to be successful,” Pena concluded.

THE FUTURE OF THE LEGAL PROFESSION: ADDED VALUE, TRANSPARENCY, DEMOGRAPHIC CHANGE

The first panelist, Frederic Ury, spoke on the effects of computer technology on the legal profession. Not surprisingly, the Internet is a major force driving changes in the

practice of law, Ury noted. “Easy access to legal answers on the Internet will change how people use attor-

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neys,” Ury predicted; the “search” function can become the key to “access to justice for all.” Websites such as LegalZoom.com and search engines such as Google Scholar have brought legal research within easy reach of the client. At the same time, artificial intelligence is being developed to the point where it can be added to basic

“search” functions easily accessible to consumers, to arrive at answers to complex legal questions.

Because of this development, lawyers have “lost the monopoly” on legal research, Ury commented. In the future, lawyers will survive by “adding value” in the form of expertise and counsel, to the research clients have already done about their legal problems. This model of practice will require lawyers to develop a better, more in-depth understanding of their clients’ businesses, and to partner with them in more of an “ongoing consultation” regarding clients’ strategies to develop and grow their businesses, Ury emphasized.

Technology has also enabled general counsel to bid out their largest legal work to firms via the Internet, Ury noted. Counsel use websites to solicit bids from attorneys, but these attorneys, in turn, must prove their readiness to utilize technology in their practice. To qualify for inclusion on the eLawForum website, for example, a firm must demonstrate that they offer electronic case management and



Richard Pena

The founder and CEO of the Law Offices of Richard Pena whose principal office is in Austin, Texas. He is the immediate past President of the American Bar Foundation, and a past Chair of the Fellows of the American Bar Foundation. He served on the ABA Board of Governors from 2007 to 2010. He is a past President of the State Bar of Texas and the Travis County Bar Association as well as past Chair of the Texas Bar Foundation. He has served as State Delegate to the ABA and is currently serving on both the Nominating Committee and the Presidential Appointments Committee. Richard is the 2010 recipient of the Difference Makers Award, presented by the ABA’s General Practice, Solo and Small Firm Division.

time management. In addition, they must offer safe portals, which allow the client to look at documents online and to follow along closely as legal work is undertaken on their behalf, greatly increasing the transparency of the work of the law firm.

For better or worse, the Internet has also enabled “rating” services, where the public can rate attorneys and judges, Ury commented. Sites such as RobingRoom.com, which allows users to rate federal judges, are here to stay. Though the assessments on such sites can be uninformed and patently unfair, the legal profession must acknowledge their existence, and find ways to deal with their effects, Ury said.

Finally, Ury spoke about technology in relation to the changing demographics of the American legal profession. In certain regions of the country such as New England, the profession is aging rapidly, Ury noted. Connecticut and Vermont, for example, count more eighty-year old attorneys than attorneys in their twenties. In the south and southwest,

following general populations trends, the age range is reversed, with more younger than older attorneys. Ury wondered aloud if emerging technol-

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ogy could be used in older northern states to fill the gaps created by an aging, diminishing lawyer population.

THE NEW TALENT MODEL

William Henderson of Indiana University Law School followed with

“The New Talent Model,” a presentation on the interrelated problem of how law firms develop talent and how law schools prepare students for their careers. Henderson argued that firms should move away from the traditional human capital model that favored high achievers (in terms of grades) from elite law schools. While firms assume that new lawyers from such schools produce a competitive advantage, this thinking is not rooted in empirical evidence, Henderson stated.

The legal profession experienced great growth throughout most of the twentieth century, thanks to increasing economies of scale in American corporations, a growth that increased the demand for legal services, and masked the limitations of the traditional human capital model, Henderson explained. Demand for legal services is starting to diminish, Henderson argued, and in the future firms will have to compete much harder for legal work. They will need to find economical ways of identifying and cultivating young lawyers



Frederic S. Ury

A founding partner of the law firm of Ury & Moskow, LLC in Fairfield, Connecticut. A small boutique trial firm, Ury & Moskow handles civil and criminal cases throughout the state. Mr. Ury is a past President of the Connecticut Bar Association (CBA) and current President-Elect of the National Conference of Bar Presidents. He is a former Chairman of the CBA's Litigation Section and is presently serving as a member of that section's Executive Board. He was elected to the Board of Directors of the Connecticut Bar Foundation in 2007. Mr. Ury was a member of the ABA's House of Delegates from 2004 to 2009, and more recently was appointed to the ABA Commission on Ethics 20/20. He is a frequent lecturer to various bar associations and lawyer groups around the country on the Future of the Legal Profession and has lectured about civil procedure to Connecticut attorneys for over 13 years.

who will add the most value to their firms, Henderson predicted.

Henderson began by explaining that the “old” model of talent or competence, the one still relied upon by most large firms, was based on a sound business rationale when it was developed about one hundred years ago. Firms hired graduates of elite law schools then, because those schools required students to have an undergraduate education, which provided a broad foundation in history, politics, literature and economics from which to draw analogies when counseling clients. Also, the elite law schools, in contrast to other venues for legal education, required faculty to be scholars, who “wrote the restatements of law, the uniform laws that connected the economies of the several states,” Henderson noted.

Firms particularly favored those graduates of elite schools who had the highest grades. Only relatively wealthy people could afford to attend these schools and, especially before the introduction of the LSAT, grades were a way of differentiat-

ing “the smart upper class people from the dumb upper class people,” Henderson said. The third and final element of the “old” talent model

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was training. Firms experienced rapid growth throughout most of the twentieth century, so much so that they needed to “create a better lawyer

faster” through in-house training of new associates. “Law schools never created sophisticated business lawyers,” Henderson noted. “Sophisticated business lawyers have created other sophisticated business lawyers once they saw the incentive problem of how to split profits...but the purpose of the training was to create a better lawyer faster. Why? Because the clients needed more lawyers,” Henderson stated.

In the late twentieth century, however, the demand for young graduates of elite law schools began to outstrip the supply. Large law firms so valued these graduates that starting salaries offered them spiked ever higher, so that by 2007 23% of entry level lawyers started with a salary between \$145,000 and \$160,000. Three unfortunate consequences stem from this trend, Henderson noted. First, elite law schools were not motivated to innovate and develop new models of lawyer education because their students (assuming they earned good grades) were guaranteed high paying jobs the



William D. Henderson

A Professor at the Indiana University Maurer School of Law, where he teaches courses related to business law and the economics and structure of the legal profession. He serves as Director of the Center on the Global Legal Profession at Indiana University; Director of the Law Firms Working Group, a joint initiative of the Indiana Law and the American Bar Foundation; and as a research associate for the Law School Survey of Student Engagement. Professor Henderson recently developed *The Legal Profession*, a 4-credit 1L course that explores traditional legal ethics and professionalism through the lens of specific practice settings. The course innovations include a rigorous competency model, team-based projects, peer feedback, and various assessment tools to help students identify and develop several non-analytical competencies critical for success as a lawyer.

day they were admitted to law school. At the same time, since the status quo seemed to work so well, the legal community demanded little accountability for what schools taught during the three years of law school. Law professors have great incentives to carry out high level scholarship, since they are rewarded for publications, but they are rewarded little for investing in educating the next generation of lawyers, Henderson argued. Second, the high cost of legal education pushed many graduates into high paying careers at large law firms, though those graduates may have had little genuine interest in or passion for business law. Thus, an “adverse selection” problem was created, Henderson stated, where potential “public interest lawyers and business owners are...not following their passion because they’ve got a lot of debt to pay off.” Finally, because of their high starting salaries, “young lawyers become too expensive to train,” Henderson pointed out. At a salary of \$140,000 to \$160,000 a year, with the addition of overhead, “why would a client want to have

somebody like that working on their matter when the partner can solve it much faster?” Henderson queried.

Henderson then discussed his ideas for a “new talent model” that

“Law schools need to better prepare students to “turn that corner from academic, to practical, to applied, to leadership.”

will identify lawyers best suited to work in today’s legal market. He identified three main components of the new talent model: passionate practitioners, a sound and relevant competency model, and robust and effective training and feedback. In

order to delineate the details of the new talent model, the profession needs to develop a more data-driven basis for understanding how lawyers add value to clients and to firms, Henderson argued. Further, it needs to implement strategies for lawyer education, training and development that capitalize on these findings.

Henderson is working with several law firms to identify the qualities they most value in mid-career lawyers, and is analyzing those qualities in relation to traits those lawyers had when they were first hired as entry-level associates. This research may someday help firms identify with confidence those graduates who will add the most value to the firm. While results are still preliminary, Henderson has found that the most valuable general traits are integrity, initiative, and responsiveness. At a more fine-grained level, he has found that both high performing associates and—to a greater extent—partners, spike on initiative, oral communication, confidence, analytical thinking, and the ability to continue to learn. Only



Carole Silver

A Professor of Law at Indiana University Maurer School of Law and Director of the Law School Survey of Student Engagement, which has gathered information from nearly 150,000 law students about the quality of their experiences in law school. Her research analyzes legal education and globalization, including the role of United States legal education in the careers of international lawyers; the global strategies of large law firms; and the relationship among globalization of legal services, regulation, legal education and law firm structure. In addition to teaching in traditional U.S. law school programs, she also has taught in Korea in an executive LLM program. Professor Silver is a member of the Commission on Ethics 20/20 of the ABA and is an advisor to the ABA Task Force on International Trade in Legal Services and to the Committee on International Issues of the ABA Section of Legal Education and Admissions to the Bar.

partners, however, excel greatly at business awareness, decision-making, innovation, problem solving, and customer focus. It is these qualities that distinguish a client oriented, business-savvy lawyer from one who is only academically brilliant, and Henderson argued that law schools need to better prepare students to “turn that corner from academic, to practical, to applied, to leadership.”

EDUCATING LAWYERS FOR THE GLOBAL ECONOMY: THE VALUE OF RELATIONSHIPS

Henderson’s colleague at Indiana University, Carole Silver, spoke next about globalization’s influence on the work of lawyers and on what students must learn in law school. According to Silver, one important task law schools must take on is preparing students to work in a world which increasingly requires interaction with attorneys and clients from other countries and cultures. Thus, law schools would be well advised to help students learn to develop and maintain effective work-

ing relationships with a broad range of people of varying backgrounds. Lawyers who are adept at developing relationships both within and outside of the firm add another kind of value

“Grades are of enormous importance to law students, but “their grades are not contingent upon working well with others.”

to the firm of the sort that Frederick Ury discussed in the first presentation, Silver noted.

How well are law schools helping students develop relationship-building skills? According to Silver,

tools like the Law School Survey of Student Engagement (LSSSE) can help schools assess the success or failure of their efforts in this area. Silver explained that LSSSE is a subscription-based web survey that is administered to all JD students at participating schools. Since LSSSE began in 2004, 164 law schools in the US and Canada have participated. The survey provides a unique data set to assess “what law students feel they are learning about developing relationships, among other things” Silver noted.

The survey poses a broad array of questions to students such as “How do you spend your time? How many hours a week do you read in preparation for class? Do you work with other students in class? Outside of class? Do you participate in law review or moot court? Have you participated in a clinic or externship program? Are you involved in pro bono work? Have you discussed ideas from readings and classes with faculty members outside of class, or worked with faculty on research or other activities?”



Robert L. Nelson

The Director of the American Bar Foundation, the MacCrate Research Chair in the Legal Profession at the ABF, and Professor of Sociology and Law at Northwestern University. He is a leading scholar in the fields of the legal profession and discrimination law. He has authored or edited 7 books and numerous articles, including *Legalizing Gender Inequality*, co-authored with William Bridges, which won the prize for best book in sociology in 2001; *Urban Lawyers: The New Social Structure of the Bar*, co-authored with John Heinz, Edward Laumann, and Rebecca Sandefur (2005), and *Global Perspectives on the Rule of Law*, co-edited with James Heckman and Lee Cabatingan (2009).

How satisfied are you with your relationships with other students and administrators?” Silver noted.

In her presentation Silver focused on two questions that indicate collaborative learning experiences: how often have you worked this year with other students on projects during class, and how often have you worked this year with classmates outside of class to prepare class assignments? (possible responses were: never, sometimes, often, very often). In 2010 students from 77 law schools responded to the survey, and “over 80% of all students who responded in 2010 said that they only sometimes or never worked with classmates on a project during class. About two-thirds said they sometimes or never work with classmates outside of class to prepare for class assignments,” Silver reported. Students were also asked “about whether they talk with other classmates about their assignments or talk with their family, friends, anyone about their assignments,” Silver noted. Two thirds of respondents reported that they did have such conversations. Two thirds of students also responded that they “had serious conversations with students who are very different from them in terms of race or ethnicity, in terms of religion, in terms of political views, values...” which is an important experience for helping students learn to work with individuals with varying backgrounds later in their professional careers.

However, in one crucial area law students rarely work with others during law school. Grades are of enormous importance to law students, Silver noted, as their future employment hinges on their earning top grades in law school. But “their grades are not contingent upon working well with others.” Rather, as has been

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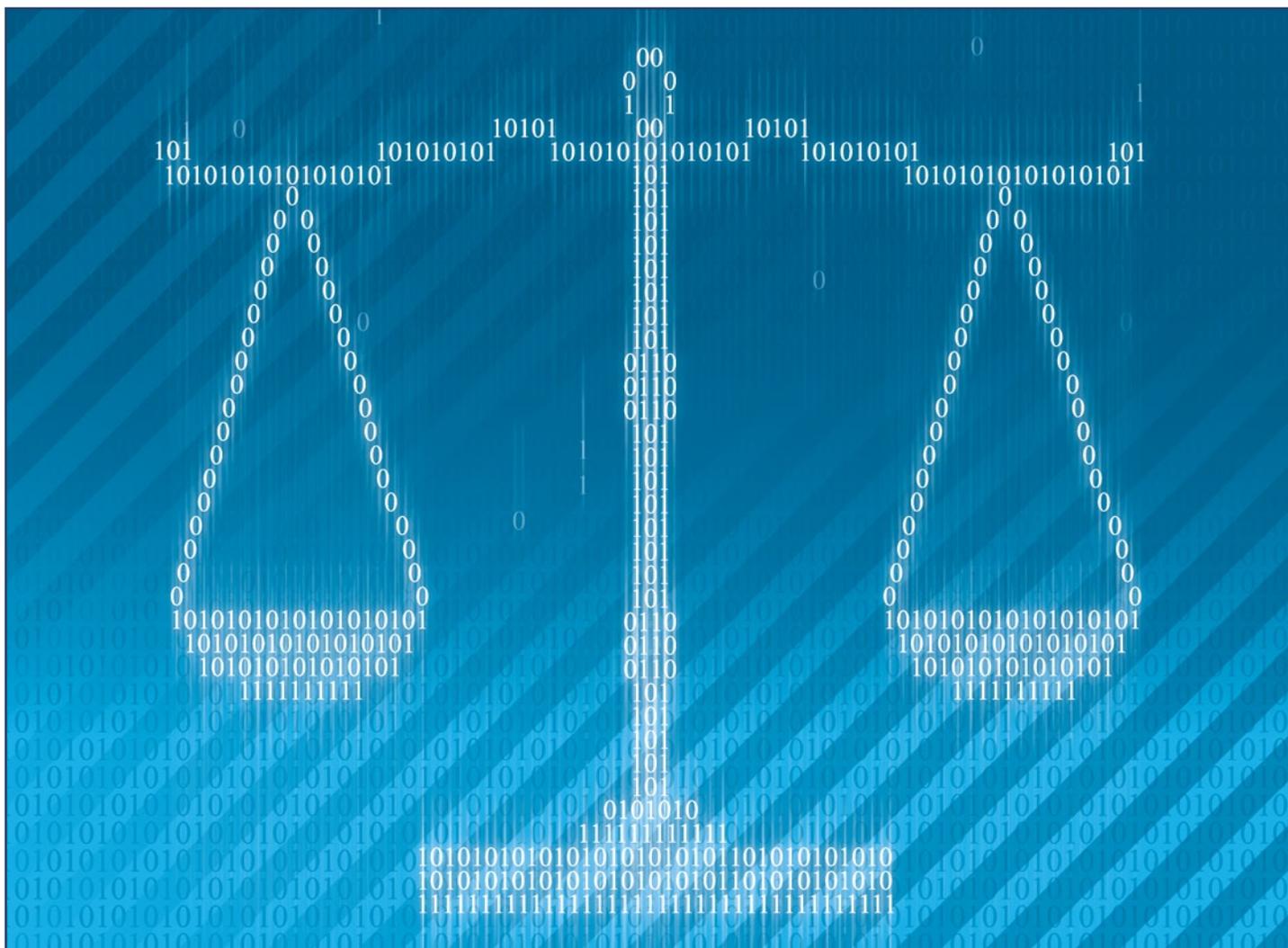
the case traditionally in law school, law students are graded on the basis of their individual performance on exams and class participation.

Indiana University Maurer Law School is beginning to experiment with alternative grading methods that reward teamwork, Silver reported. In a 1L legal professions course that she is teaching for the first time, a significant portion of a student’s grade is based on how well they can negoti-

ate relationships with other students while working together to solve legal problems. This course is too new to yield conclusions about the grading method, but at Indiana faculty are “trying to push [change] ourselves, and we seem to be getting good results,” Silver stated. Given the changes to the legal profession brought about by globalization and technology, Silver urged law schools to “think about how to use the resources they have now to try and affect what really matters to students, to influence them to work through difficulties in working relationships, establish valued working relationships that are effective, and work together and value their work as a team.” Young lawyers who are skilled at building relationships and working in teams will add value to firms in the global era, Silver concluded.

AFTER THE JD: GRADUATES’ REPORTS ON THE VALUE OF LAW SCHOOL

ABF Director Robert Nelson concluded the program with a presentation based on findings from the After the JD project (AJD), a multi-year study that is tracking the careers of a nationally representative sample of lawyers who passed the bar in 2000. The presentation focused on how the respondents valued their law school experience three years and seven years into their careers. This part of the



study also broke the law school experience answers down to see whether they varied by law school type and law practice setting.

The survey asked the question: “*How helpful are the following elements of your law school years in your current work assignment?*” The most highly ranked elements tended to be practical: summer employment, employment during school, and clinical courses, Nelson reported. The next

most valued item was training in legal writing. Legal writing also held up as the element with the least “erosion” in value between AJD 1 (the survey conducted three years out of law school) and AJD 2 (the survey conducted seven years out of law school). After training in legal writing, respondents again valued the practical experience offered by internships and externships during the academic year. Further down in value were specific

courses and course concentrations or specializations. Bringing up the rear in terms of value was the first year curriculum. Respondents also reported legal ethics courses as being only of modest value three years out of school and of even less value seven years out.

Nelson also reported on survey respondents’ answers to more general questions about the value of legal education. Subjects were asked

whether they considered law school a good investment; seven years out (AJD 2) almost 75% said they would go to law school again, and 86% reported that they thought getting a law degree was a good investment. However, when asked how well law school prepared respondents for law practice, only half said it was helpful when they were interviewed seven years after passing the bar. Specifi-

regardless of law school type or practice setting there was near unanimity on the value of legal employment both during the summers and during the school year, and consistency across law school types and practice settings on how well law schools prepare people for their careers. Clinical courses and course concentrations or specializations were much more highly valued by those who engaged

regardless of law school type or practice setting, graduates wish they had received more business and technology training in law school.

Finally, Nelson reported that most AJD respondents saw law school as a good investment. This finding was strongest among those working in firms of over 250 lawyers, where 94% of respondents thought law school was a good investment. How-

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cally, in both AJD 1 and AJD 2, most respondents thought that law school was too theoretical. Respondents were roughly evenly split on whether or not they thought the third year of law school was superfluous. But they were unanimous in saying that law school failed to provide them with good technology skills.

When considering respondents' answers in relation to law school type and practice setting, Nelson and colleagues found that these elements mattered with some questions and not with others. Nelson reported that

in solo law practice, Nelson noted. Clinical courses and course concentrations were less highly valued by those who attended the top ten law schools (these are also the graduates least likely to work as solo practitioners). Internships and externships were very highly valued by those who worked for the government or in public service, and valued least by those working in large law firms. Courses in legal ethics were seen as most helpful by solo practitioners and least helpful by those working for the biggest firms. Nelson noted that,

ever, none of the categories of respondents fell below 80% who thought law school a good investment. Thus, Nelson concluded, on the one hand, law school may not be preparing students particularly well in the areas of technology, business, and ethics. On the other hand, most graduates feel that the education they received was worth the investment.

PARTING THOUGHTS

Richard Pena wrapped up the seminar by asking each panelist to

share advice or parting thoughts concerning the future of law practice. In response, William Henderson recommended that all lawyers read Richard Susskind's *The End of Lawyers? Rethinking the Nature of Legal Services* (2008), a book that predicted the commoditization of legal services and the disruptive effects of technology, concrete examples of which were discussed by the seminar panelists. Yet, in spite of these transformative developments, Henderson said, most lawyers today are still conducting legal practice like "plasterers, artisan plasterers, in a world that has just discovered sheetrock."

Robert Nelson commented that the reconfiguration of the legal services market is profound and has profound implications for the profession. On the other hand, he was confident that many lawyers will "do what smart entrepreneurial lawyers have been doing for years and adapt...whether that means continuing to practice law or developing skill sets that are more flexible..." "I think it's an incredibly exciting time," said Frederic Ury. He noted that while we are in the middle of the transition, as when one is in the middle of a storm, it is hard to see exactly where we're going. "But I also truly believe that we lawyers are a smart group," Ury concluded, "we are an innovative group, and we're going to get through this on the other side but we're going to look different."

In the same vein, Carole Silver

When asked how well law school prepared respondents for law practice, only half said it was helpful when they were interviewed seven years after passing the bar.

commented that this is a time of "real opportunity." In particular, Silver expressed the hope that the current upheavals would inject more flexibility into the structure of legal practice, presenting an opportunity for "pursuing work that you love and can really embrace but in the midst of a life that is balanced, both over time and at a particular time." For Silver, law is about "intellectual curiosity, and challenge" on the one hand, "and about people and communication" on the other. "And when you marry the two it can be so much fun...[and] my hope is that there will be more opportunities to do that," Silver concluded. 

Correction: The article "Uncertain Justice: Litigating Claims of Employment Discrimination in the Contemporary U.S." in Vol. 19, no. 2 (2008) of *Researching Law* incorrectly attributed a quote on page 10, top of column 2 to Judge Bernice Donald. The statement concerning a "vastly different" view of what evidence supports summary judgment was actually made by the Hon. Miriam Shearing. *Researching Law* regrets the error.

IF YOU ARE INTERESTED IN SUPPORTING RESEARCH ON THE FUTURE(S) OF LAWYERING OR OTHER IMPORTANT ABF INITIATIVES, PLEASE CONTACT LUCINDA UNDERWOOD AT 312.988.6573

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