IN THIS ISSUE

Curricular Objectives and the Public Schools: Current Events and the Teaching about Religion, p.2

Ethics Corner - Managers as Caretakers: Rule 5.1, p.11

Recent Powers and Duties Decisions, p.13

U.S. Supreme Court Brief Writing Style Guide: Part 3, p.21

Beau Biden Fellowship and State Resources to Protect our Most Vulnerable, our Children, p.26

Advancing Leadership Development in the Offices of Attorneys General, p.30

Land Banks: A Viable Solution for Revitalizing Abandoned, Derelict Properties, p.38

Developing Domestic Violence Shelters in Rwanda, p.44

About the Authors, p.46
Curricular Objectives and the Public Schools: Current Events and the Teaching about Religion

KEVIN C. MCDOWELL, DEPUTY ATTORNEY GENERAL, INDIANA ATTORNEY GENERAL’S OFFICE

Even though publicly-funded education is “not among the rights afforded explicit protection under our Federal Constitution” nor is there “any basis for saying it is implicitly so protected,” education is perhaps the most important function of state and local governments. Public schools and the intrinsic role they play in advancing the interests of a state are also susceptible to competing, sometimes conflicting, forces and there are few issues that divide Americans more than religion. Evolution, the Pledge of Allegiance, Halloween, mascots, Bible clubs, the use of school facilities, the determination of curriculum, transportation, taxes, posting of the Ten Commandments, graduation exercises, Internet connections, distribution of religious materials, the posting or publishing of religious-oriented student works, the performance of religiously-themed works, immunizations, and similar issues have spawned their own legal histories.

Cataclysmic events often create rippling effects that course through state legislatures. Following World War I, some legislatures saw the root cause of the “War to End All Wars” stemming from factionalism on the European Continent, exacerbated by cultural, religious, and linguistic differences. One state determined that the best way “to promote civic development” was to “inhibit[] training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals[.]” Foreign influences were inimical to achieving this end, the legislature believed, noting that “the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.” The state passed a law that forbade the teaching of any subject in any language other than English. No modern foreign languages could be taught to any student until that student had completed the eighth grade. In Meyer v. Nebraska, Meyer was convicted of teaching German to a 10-year-old student in a parochial school. The U.S. Supreme Court noted succinctly that “a desirable end cannot be promoted by prohibited means.”

The Supreme Court did not disagree that the state may establish schools, require instruction to be in the English language, compel students to attend, and “prescribe a curriculum for institutions which it supports.” While the legislative desire “to foster a homogenous people with American ideals... is easy to appreciate,” especially given the “[u]nfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries,” there was no present emergency that would justify the state’s action and the “consequent infringement of rights long freely enjoyed.”

The Court further commented:

Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the [Fourteenth] Amendment.

The Court, thus, concluded that the statute as applied was arbitrary and not reasonably related to any end within the state’s competency.
But it isn’t just the legislatures that react to cataclysmic events, sometimes in unfortunate ways; public school constituents may also do so. Legislators affect statewide curriculum; parents attempt to affect local implementation. Under Meyer-Pierce principles, a parent has the right to determine how the parent’s child will be raised, and one of these choices would include where the child would be educated (such as in a public school, a private school, a parochial school).

The parent’s right, however, does not encompass “a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children.”

As a practical matter, public schools could not accommodate every parent’s disagreement with or demand for specific curricular content. One court noted the difficulty schools would face.

The number of potential lawsuits that could arise from the highly varied educational curricula throughout the nation might well be unlimited and unpredictable. Many school districts would undoubtedly prefer to “steer far” from any controversial book and instead substitute “safe” ones in order to reduce the possibility of civil liability and the expensive and time-consuming burdens of a lawsuit—even one having but a slight chance of success. In short, permitting lawsuits against school districts on the basis of the content of literary works to proceed past the complaint stage could have a significant chilling effect on a school district’s willingness to assign books with themes, characters, snippets of dialogue, or words that might offend the sensibilities of any number of persons or groups.

If a school attempted to accommodate one parent, it might offend another, resulting in additional legal action. “It would clearly not be in the best interests of our public education system and its students to have such competing lawsuits become a part of our legal landscape.”

Religion and Current Events

Although there is some misunderstanding or misconception about what the Supreme Court has determined regarding the teaching of religion in the public schools, the Court has never supported an outright ban. In School District of Abington Township
The Court noted that “it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization.”

In a decision the year before, Justice Hugo L. Black observed in Engel v. Vitale: “The history of man is inseparable from the history of religion.”

But this was before the cataclysmic events of Sept. 11, 2001, and the subsequent hostilities that continue to this day.

It should not be a surprise that world history curricula will contain references to Islam, especially when discussing countries where Islam is the primary religion. It would likewise not be surprising to discuss the changing political and religious landscape as the Roman Empire declined and Christianity grew or to study the influences of Buddhism on China, Hinduism on India, and so on.

The events of 9/11 and thereafter, however, have resulted not in attempts by legislatures to restrict such references but by parents who object to their children being exposed to such discussions of religion—and of this particular religion.

A current dispute wending its way through the federal district court is Melissa Wood, et al. v. Board of Education of Charles County, et al. The parents of a high school girl sued the school district and certain of its personnel, asserting a host of violations, including violations of the Establishment Clause and the Free Speech Clause of the First Amendment. This dispute began when the student was in an 11th grade World History class. Because there has yet to be a trial (the Sept. 30, 2016, decision denied the parents’ request for injunctive relief and granted in part the school district’s motion to dismiss), a full factual account has not been determined. It does appear that part of the student’s homework assignment dealt with “certain faith statements fundamental to the Islamic belief system,” an assignment with which the student’s parents took great exception. A subsequent telephone conversation between the father and school personnel resulted in a “no trespass” order being issued, which prevented him from attending events on campus. The parents alleged the World History course spent very little time discussing Christianity, the Bible, or other non-Islamic religious texts but provided considerable information and emphasis on Islamic matters. The parents and the student asserted this amounted to implementation of religious instruction that endorses Islam over Christianity.

The district court, in denying the request for injunctive relief, noted the student had graduated; thus, the need for injunctive relief is moot. However, the claim for monetary damages remains. The student’s free-speech claim also survived the school’s motion to dismiss. The complaint alleged the course required her to make a profession of faith. Under Barnette, the Supreme Court established a First Amendment right not to be compelled to speak. However, this does not support the retaliation claim based on the student’s failure to turn in her homework assignments.

Even assuming that the law is “clearly established” regarding compelled speech under Barnette, the law is certainly not clearly established regarding whether students may “conscientiously object” by refusing to turn in homework assignments, and whether giving a student a lower grade, the customary punishment for missed assignments, could be considered “retaliation.”

School personnel were entitled to qualified immunity on this claim, but not on the father’s separate claim that the “No Trespass” order violated the First Amendment. This issue will be tried. The plaintiffs’ due process, Title VI, and Title IX claims were also dismissed.

There have been some other disputes around the country as well. The current political climate has not been helpful in this regard.

In December 2015, the Augusta County School Board in Verona, Va., found itself immersed in a dispute that began with an assignment in its high school World Geography class. The assignment required students to attempt to copy the Islamic statement of faith as written in Arabic. This was part of a unit on the Middle East. The assignment was designed “to give the students an idea of the artistic complexity of the calligraphy.” The statement was not translated for the students, nor were the students required to attempt to translate it. Students were introduced to the religions and written languages of regions as they studied various areas. This exposed them to various faith traditions, including Christianity, Buddhism, Judaism, Hinduism, and Islam. The students would also engage in similar activities when they studied China and its unique written language. This somehow became distorted, especially through some media outlets, resulting in a
significant brouhaha. The school attempted to address concerns in a factual manner through three successive public statements (December 15, 17, and 18), but the more the school attempted to explain the exercise, the worse the situation became. Threats became so severe, especially from outside persons and groups, that local law enforcement began to monitor the communications. The school eventually had to close on Friday, Dec. 18, 2015, and cancel all extracurricular activities through the weekend out of concern for the safety of students and school personnel.

The school district also announced that it would continue to expose students to world religions without promoting any particular faith tradition, as it had done in the past, but it would use a non-religious text in the future to demonstrate the artistic complexity of Arabic calligraphy.

**A Middle-School Dispute**

The two matters above either have not been fully resolved or did not involve any legal action. The following is the only case to date involving a public school and its curricular choices that have run the legal gamut.

In *Eklund, et al. v. Byron Union School District, et al.*, the plaintiffs challenged the middle school curriculum that involved the use of a role-playing game to teach seventh grade students about Islam. The plaintiffs claimed the school’s methods violated the Establishment Clause of the First Amendment.

The California State Board of Education requires seventh grade world history classes to include a unit on Islamic history, culture, and religion. There is an approved textbook—*Across the Centuries*—which the school district employs, but the teachers are encouraged to use other instructional methods they believe will enhance their students’ understanding of the unit.

Some teachers used an interactive module called “Islam: A Simulation of Islamic History and Culture,” which employs a variety of role-playing activities to engage students in situations approximating the Five Pillars of Islam, the elements of faith in the Muslim religion.

Students were encouraged, but not required, to choose a Muslim name to facilitate the role-playing. For the first two Pillars of Islam, the teacher read Muslim prayers and portions of the Qur’an aloud in class. Student groups recited a line from a Muslim prayer, such as “In the name of God, Most Gracious, Most Merciful” as they left class. Students also made group posters. Some banners had quotations from the Qur’an, both in Arabic and English, although this was not required.

For the third and fourth Pillars, students were encouraged to give up things for a day, such as watching television or eating candy, to demonstrate the fasting associated with *Ramadan*. Students were also encouraged to perform volunteer community service, mostly around the school, as a means of demonstrating the charity aspect of *Zakaat*. In all, these four activities took about a week in the eight-week unit.

For the fifth Pillar—*Hajj*, the pilgrimage to Mecca—the teacher had the students participate in a board game called “Race to Makkah.” Students used their knowledge of Islam to advance on the board, with the goal of the game to reach “Mecca.” Cards were used that expressed certain elements of the Muslim faith, with three categories to choose from.
(“trivia,” “truth,” or “fact”). The teacher indicated the statements were expressions of what Muslims believed and were not actual historical fact. The teacher also permitted students to dress in Arabic garb for class presentations.

As a part of the final, the teacher required the students to write an essay critiquing elements of Islamic culture, albeit with the following caveat: “BE CAREFUL HERE—if you do not have something positive to say, don't say anything!!” The final followed the events of Sept. 11, 2001, and the teacher was concerned the students might “express racist remarks” rather than attend to the objectives of the unit on Islam.

Other world history units also used role-playing. Some units also addressed religious themes, such as the rise of Christianity after the fall of the Roman Empire and the role of Buddhism in Chinese culture.

Although the plaintiffs’ son had participated in the Islam module when he was in seventh grade, his sister was allowed to “opt out” of the unit when the parents requested this. The plaintiffs’ daughter was provided an alternate assignment (the French Revolution) while the rest of the class participated in the Islam unit.

The school moved for summary judgment. The federal district court judge noted that the Supreme Court has fashioned three separate but interrelated tests for analyzing Establishment Clause disputes: the Lemon test, the Lynch endorsement test, and the Lee “coercion” test.

The plaintiffs argued the role-playing games constituted the practice of Islam, and the school district’s use of the Islam simulation module constituted an impermissible endorsement of the Islamic faith.

Under the Lee or “Coercion Test,” the Establishment Clause is violated where a school coerces students into participating in religious activities. “Coercion” can include “subtle and indirect pressure,” such as social pressure from peers to conform to school-set norms, even if students are otherwise free to opt-out of the unit. The school district argued that, as a threshold matter, the Establishment Clause could not be violated because the role-playing activities at issue were not “religious” activities.

The court found that an objective review of the circumstances led to the conclusion the students at the middle school “[c]annot be considered to have performed any actual religious activities in their seventh grade world history class.” The students did not perform the actual Five Pillars of Faith. They did not proclaim faith in one God or belief in Muhammad as His prophet, did not pray five times a day, did not fast for a month, did not make charitable donations, and did not travel to Mecca. “Instead, the students participated in activities which, while analogous to those pillars of faith, were not actually the Islamic religious rites . . . . Role-playing activities which are not in actuality the practice of a religion do not violate the Establishment Clause.” The court also noted that there was no evidence introduced that the students performed the classroom activities with any religious intent and that the subjective lack of devotional intent is a further demonstration that there was no “religious activity” under a Lee analysis.

The plaintiffs argued that, should the court find the role-playing activities did not constitute a “religious activity,” the module nonetheless had the effect of advancing or endorsing the Islamic religion, failing both the Lemon and the Lynch tests.

The court agreed that the Islam module would be unconstitutional under both Lemon and Lynch should the role-playing activities have the primary effect of either endorsing a religion or disapproving of any religion.

Under an objective review of the situation at hand, the students would not reasonably have understood the module to have endorsed Islam over other religions merely because of the role-playing activities at issue. As a matter of law, “a practice’s mere consistency with or coincidental resemblance to a religious practice does not have the primary effect of endorsing religion.” Brown v. Woodland Joint Unified School District, 27 F.3d 1373, 1381 (9th Cir. 1994) (role-playing witchcraft rituals not an endorsement of Wiccan religion). Thus, the mere fact that the Islam role-playing module involved approximations
of Islamic religious acts is not sufficient to create an endorsement of the Islamic faith.37

According to the court, a reasonable student would not have believed the activities constituted an endorsement of religion. Students at the middle school participate in a number of role-playing activities for purely educational reasons and were exposed to a number of different religions. “Given these facts, an objective review of the activities in question does not result in a finding of an endorsement of Islam.”38 In addition, the use of the Islam module was motivated by a purely secular purpose: to instruct the students in world history regarding the history, culture, and religion of Islam. “[E]ven quasi-religious role-playing is permissible if it does not objectively endorse one religion over another.”39

The judge was likewise not swayed by the plaintiffs’ claim the banners violated the Establishment Clause, drawing an analogy to the display of the Ten Commandments. The court added that the display of the banners was not for the primary purpose of endorsing a religion, as the display of the Ten Commandments was in Stone v. Graham.40 The court was also not persuaded by the plaintiffs’ objections to the “Race to Makkah” trivia game and its cards that quizzed students on information they had learned during the Islam module. Given the context in which the cards were used, an objective observer could not conclude the cards endorsed Islam. In addition, the teacher’s cautionary note prior to the final examination could not reasonably be construed as endorsement of Islam. The school district was granted summary judgment.

The Ninth Circuit summarily affirmed the decision and the Supreme Court denied a writ of certiorari.41

A Post-Secondary Dispute

Eklund involved middle school students where the Lee “coercion test” would be applicable. This test has not been applied in a post-secondary context, but that does not mean the study of Islam does not have its constitutional challenges.

In Yacovelli, et al. v. Moeser, et al.,42 the University of North Carolina at Chapel Hill (UNC) instituted as a part of its freshman orientation program the study of a book about the Qur’an. The goals of the orientation program are, in part, to stimulate discussion and critical thinking around a current topic, along with the typical goals to introduce students to academic life at UNC, provide a common experience for incoming students, and enhance a sense of community among students, faculty, and staff. For the 2002 orientation, UNC selected portions of Michael Sells’ Approaching the Qur’an: The Early Revelations, “stating that a book exploring Islam was highly relevant in light of the terrorist attacks of September 11, 2001.”43 In the portions of the book assigned to be read, the author attempts “to clarify the cultural and historical matrix in which the Qur’an came to exist, the central themes and qualities of hymnic Suras, and the manner in which the Qur’an is experienced and taken to heart within Islamic societies.”44

Initially, UNC required all incoming freshmen to read the book and write a paper in response to the book, guided by a series of questions previously prepared. Later, UNC indicated that students with religious objections did not have to read the book and, instead, could write a paper addressing why they chose not to read the book. The papers were collected but not graded.

Plaintiffs challenged the orientation program, arguing it violated the Free Exercise Clause of the First Amendment by assigning a book with a positive portrayal of both Muhammad and Islam and by forcing students to read and discuss the book.45 The plaintiffs also asserted that UNC’s forcing students to write about and share their personal religious beliefs subjected them to harassment and ridicule.46

The district court observed that “the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.”47 Government—including UNC—may not “compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.”48 However, where the challenged government action is “a neutral, generally applicable law, the government need not establish a compelling governmental interest even though the action may have the incidental effect of burdening one’s religious beliefs.”49

The court held that the plaintiffs did not allege sufficient facts to state a claim for violation of the Free Exercise Clause. The court had previously found the assigned book was not religious reading but part of an
academic exercise. Notwithstanding, UNC allowed any who objected to reading the book to “opt out” of the reading assignment. The only factual allegations remaining involved whether the requirement that students who “opted out” write about why they chose not to read the book and attend a two-hour discussion group led by a facilitator interfered with such students’ exercise of their religious beliefs.

The UNC orientation program did not compel the affirmation of any particular religious belief, did not lend its power to a particular side in a controversy over religious beliefs, did not impose special disabilities on the basis of religious views or religious status, or did not punish the expression of any particular religious doctrines. Therefore, the court also denied that claim, stating:

UNC, instead of endorsing a particular religious viewpoint, merely undertook to engage students in a scholarly debate about a religious topic. The discussion groups that followed the reading assignment were likewise intended to encourage scholarly debate about the Islamic religion. Students were free to share their opinions on the topic whether their opinions be positive, negative or neutral.

The court pointed out that students were not punished for their expressions on the basis of religious belief or doctrine and, in fact, those who objected on religious grounds were given an optional reading task. The writing task allowed students to explain their reasons for objecting to the book and could express their religious views as well as their views on the Qur’an and the Islamic religion. No particular group was penalized. All freshmen students were required to attend a group discussion on topics relating to the Islamic religion and traditions, where they were encouraged to contribute to an academic discussion on a controversial topic. Part of the purpose of this program was to introduce students to the type of higher-level thinking that is required in a university setting. Students who were not members of the Islamic faith, probably the great majority of students, were neither asked nor forced to give up their own beliefs or to compromise their own beliefs in order to discuss the patterns, language, history, and cultural significance of the Qur’an. The court concluded that no one’s religious beliefs were burdened by this academic exercise and granted UNC’s Motion to Dismiss.
“Amen” To That

Cataclysmic events spawn emotional responses, which can lead to unfortunate legislative actions from the federal to the state to the local governmental levels. The attorneys general are the attorneys for their respective states, which often task them with defending legislation; however, they are also the chief legal counselors for their states. Attorneys general need to be able to withstand the furors of the day and dispassionately advise their clients when proposed legislation or other actions are unconstitutional, even as applied to the currently disfavored class. Justice James C. McReynolds’ caution in 1923 is just as applicable today (and maybe even more so): “[A] desirable end cannot be promoted by prohibited means.”

Endnotes
4 Id.
5 Id.
6 Id. at 402.
7 Id.
8 Id. at 403.
9 Id. at 400. See also Pierce v. Society of Sisters, 268 U.S. 510 (1925) where the Court found unconstitutional a state law that would have required all students to attend public schools. The statute “interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” Id. at 534-35.
Also see West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), striking down a State Board of Education resolution that would require all students to participate in the recitation of the Pledge of Allegiance under penalty for insubordination (with resulting expulsions from school coupled with penalties assessed the parents for failure to ensure their children attended school). The resolution would not allow for those who would choose not to participate in the flag ritual, even where such objection was based on sincerely held religious beliefs. The context is World War II and a widespread belief that patriotism requires unity in the face of America’s enemies. Credence had been accorded such a position by the unfortunate decision by the Supreme Court three years earlier in Minersville School District v. Gobitis, 310 U.S. 586 (1940), a decision that resulted in considerable misery for those who objected on religious grounds to saluting a flag or participating in such rituals. Barnette reversed this decision. As the Supreme Court noted: “Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.” 319 U.S. at 641. (As an aside, it was learned only recently that the family name is actually spelled “Barnett.”)

10 262 U.S. 390, 400.
11 The Meyer-Pierce principle is more generally expressed as a substantive due process right of parents “to make decisions concerning the care, custody, and control of their children.” Troxel v. Granville, 530 U.S. 57, 66 (2000) (plurality opinion).
12 Brown v. Hot, Sexy & Safer Products, Inc., 68 F.3d 525, 533 (1st Cir. 1995). See also Fields v. Palmdale School District, 427 F.3d 1197, 1206 (9th Cir. 2005) (parents do not have “a right to compel public schools to follow their own idiosyncratic views as to what information the schools may dispense”); Blau v. Fort Thomas Public School District, 401 F.3d 381, 395-96 (6th Cir. 2005) (“While parents may have a fundamental right to decide whether to send their children to a public school, they do not have a fundamental right generally to direct how a public school teaches their child”) (emphasis original); Parker v. Hurley, 514 F.3d 87, 106 (1st Cir. 2008), cert. den., 555 U.S. 815 (2008) (“Public schools are not obliged to shield individual students from ideas which potentially are religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas, or even participate in discussions about them”); and Curtis v. School Committee of Falmouth, 652 N.E.2d 580, 586 (Mass. 1995), cert. den., 516 U.S. 1067 (1996) (“Although the program may offend the religious sensibilities of the plaintiffs, mere exposure at public schools to offensive programs does not amount to a violation of free exercise. Parents have no right to tailor public school programs to meet their religious or moral preferences.”). As the Fields court stated, “[T]he Meyer-Pierce right does not extend beyond the threshold of the school door.” 427 F.3d at 1207.
13 Monteiro v. The Tempe Union High School District, 158 F.3d 1022, 1030 (9th Cir. 1998).
14 Id. at 1030-31.
18 Id., Memorandum Opinion (filed Sept. 9, 2016), slip op. at 18.
19  Id. at 19.


21  Id. at 1-4. The Five Pillars of Islam are Shahada (profession of faith in God); Salaat (prayer five times a day); Ramadan (ritual fasting from dawn to dusk during the month of Ramadan); Zakaat (charity); and Hajj (pilgrimage to Mecca).

22  Id. at 6-7.

23  Id. at 7-8. During the time of the events at issue, the tragic events of Sept. 11, 2001, occurred. The class spent a week discussing the attacks in the context of world history. Id. at 5.

24  Id. at 8-9.

25  Id. at 10.

26  Id. at 10-12.

27  Id. at 12-13.


29  Id. at 19.

30  Id. at 21.

31  Id., citing Lee, supra note 28, 505 U.S. at 592-94.

32  Id.

33  Id. at 22.

34  Id. at 24.

35  Id. at 24-25.

36  Id. at 27.

37  Id. at 29.

38  Id. at 29-30.

39  Id. at 31.


41  See supra note 20.

42  324 F.Supp.2d 760 (M.D. N.C. 2004).

43  Id. at 761.

44  Id. at 762. “Suras” are described as “hymnic chapters.” The “rhythmic patterns of the Arabic language” are “central to the Qur’an.” Id. n.3, 4.

45  The plaintiffs had earlier sought a preliminary injunction to prevent the orientation program, but the district court and the U.S. Court of Appeals for the Fourth Circuit denied the injunctive relief.

46  Id. at 762-63.


48  Id., quoting Employment Division, Id.

49  Id.


51  324 F.Supp.2d 760, 763.

52  Id. at 764.

53  Id.

54  Meyer, 262 U.S. at 401.
In November 2016, the U.S. surgeon general issued a report titled “Alcohol, Drugs, and Health.” The first paragraph of the Executive Summary states:

In 2015, over 27 million people in the United States reported current use of illicit drugs or misuse of prescription drugs, and over 66 million people (nearly a quarter of the adult and adolescent population) reported binge drinking in the past month. Alcohol and drug misuse and related disorders are major public health challenges that are taking an enormous toll on individuals, families, and society. It is estimated that the yearly economic impact of substance misuse is $249 billion for alcohol misuse and $193 billion for illicit drug use.

Early last year, a study conducted by the American Bar Association (ABA) and the Hazelden Betty Ford Foundation was published in the Journal of Addiction Medicine. The study concluded that attorneys “experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations.” In fact, as high as one in three practicing lawyers are problem drinkers. The study also found that 28 percent of the 12,825 attorneys studied suffered depression and 19 percent show symptoms of anxiety. The Hazelden study noted that being in the early stages of one’s legal career is strongly correlated with a high risk of developing an alcohol use disorder.

Regarding drug use other than alcohol, 10.2 percent reported using marijuana (compared to 7.5 percent of the general population). According to the National Institute on Drug Abuse, several studies have linked marijuana use to increase risk for disorders such as depression, anxiety, and substance use disorders. Users of marijuana often experience impaired short-term memory, impaired judgment and attention, and anxiety during use. One commentator stated that some studies suggest that attorneys abuse cocaine at twice the rate of non-lawyers.

Another issue our profession is facing is that there are more Americans, including lawyers, working over the age of 65. For instance, there has been a 110 percent increase in Americans working over the age of 75. The increase in the age of practicing attorneys reflects this trend. In 1980, the median age of lawyers was 39; today, the median age is 49. Although many of these older lawyers are extremely valuable members of their profession with their experience and expertise, there is an undeniable connection between aging and cognitive decline. Recognizing this concern, in 2014, the ABA hosted a conference on “Cognitive Decline: Assessing and Assuring Professional Competence in Lawyer Clients and Partners.”

Couple these issues with the Centers for Disease Control and Prevention statistic that lawyers rank fourth in suicides, behind dentists, physicians, and pharmacists, compared to suicides in other professions and we are confronted with the fact that our profession is struggling with substance abuse and mental health issues in a much higher proportion than the general population.

But what do these lamentable statistics regarding substance abuse and the concerns about aging lawyers with possible cognitive issues have to do with the topic of ethics? An ABA survey of malpractice cases from California and New York determined that 50 to 70 percent involved an alcohol-impaired attorney. Rule 5.1 and 5.3 of the ABA Model Rules of Professional Conduct require lawyers who have managerial responsibility to make reasonable efforts to ensure that the lawyers they supervise conduct themselves ethically. In 2003, the ABA issued Formal Op. 03-429 that stated affirmatively that “if a lawyer’s mental impairment is known to partners in a law firm or a lawyer having direct supervisory authority over the impaired lawyer, steps must be taken that are designed to give reasonable assurance that such impairment will not result in breaches of the Model Rules.” State bars...
have been slow to address the issue. Kansas issued Legal Ethics Opinion (LEO) No. 14-01 in 2014, which indicated that referring an impaired attorney to a Lawyer Assistance Program would satisfy the professional obligation so long as no ethical lapses have occurred. North Carolina issued an extensive response to queries regarding an impaired attorney and the overlap with Rule 8.3 also suggests making a confidential report to the Lawyer Assistance Program. However, if there has been an ethical breach by the impaired attorney, there also must be a report to the state bar appropriate disciplinary authorities.

Virginia recently issued draft LEO 1886, Duty of Partners and Supervisory Lawyers in a Law Firm When a Lawyer in the Firm Suffers from Significant Impairment. In discussing the scope of the issue, the LEO points out that the substantial increase in aging lawyers presents challenges to state bars. The Florida Bar has realized that dealing with an aging attorney who is showing difficulty is much more complicated than dealing with an attorney with a substance abuse issue. Its Committee on Professionalism is suggesting that offices work out plans that would allow a lawyer to continue work, providing expertise and experience, perhaps with reduction or elimination of particular duties and with assistance from associates. The Florida Lawyers Assistance Program worked with the Ohio State University Medical Center to place an on-line self-administered gerocognitive exam (SAGE) that attorneys can take.

What does this mean for supervisors in an Attorney General’s Office? In order to comply with the ethical requirements, offices should have enforceable policies in effect that would require that an impaired lawyer seek appropriate counseling and assistance in order to maintain employment and find ways to assist when there is evidence of cognitive impairment. Under Rule 5.1, supervisors cannot turn a blind eye to evidence that an attorney may be impaired through substance abuse or a mental health issue. It is important to remember that a lawyer with an impairment will seldom seek assistance for himself. No matter how uncomfortable it might be to confront a staff member with this issue, managers and supervisors not only have the ethical obligation to do so, but they also have a human obligation to be concerned about a colleague’s well-being and assist him or her to obtain the services needed and/or adjust work demands to ensure ethical performances.

Endnotes

1 Available at https://addiction.surgeongeneral.gov/key-findings

2 Patrick Krill et al., The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION & MENTAL HEALTH. 46, 52 (2016), http://journals.haw.com/journaladdictionmedicine/Pulltext/2016/02000/The Prevalence of Substance Use and Other Mental Health

3 Florida estimates that roughly 15 percent of Florida Bar members will develop a problem with alcohol or drugs at some time during their careers, translating to almost 10,000 lawyers at risk. Richard B. Marx, “Impaired Attorneys and the Disciplinary System” Florida Lawyers Assistance, http://fla-lap.org/literature/1299-bar-journal/impaired-attorneys-and-the-disciplinary-system/


5 Nora Volkow, id.

6 David Escamilla, A Devastating Disease Rampant Among Attorneys, 43 THE PROSECUTOR (July-Aug. 2013). The author does not provide a citation for this statistic.


10 G. Andrew H. Benjamin et al., Comprehensive Attorney Assistance Programs: Justification and Model, 16 L. AND PSYCHOLOGY REV. 118 (1992), cited by Rick B. Allan, Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?, 31 CREIGHTON L. REV. 266 (YEAR?).

11 Available at http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/03_429.authcheckdam.pdf


13 Available at https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2013-formal-ethics-opinion-8/?opinionSearchTerm=mental%20impairment

14 LEO 1886 (draft) (July 21, 2016), http://www.vsb.org/docs/draft-1886-072116.pdf

15 In Virginia, over 11 percent of practicing attorneys are over 65. Id.

The Kentucky Supreme Court issued an important decision on the common law powers of the attorney general, upholding the attorney general's standing to challenge actions by the executive branch.

The Kentucky governor ordered a budget reduction for the executive branch, which included the state's public universities. The attorney general filed a declaratory judgment action against the governor, the state budget director, and the state treasurer, alleging that the governor had no authority to reduce the amount of money made available to a state university under a legislative appropriation. The governor argued that the attorney general did not have standing to bring the suit and that his own actions were legal. The lower court held that the attorney general had standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.

The court cited an earlier decision, Commonwealth ex rel. Conway v. Thompson, which held “the Attorney General of the Commonwealth of Kentucky has standing to seek injunctive relief on behalf of the citizens of the Commonwealth” because “the Attorney General ha[d] a sufficient personal right in these types of cases by virtue of the office and the duties commensurate with that high office.” The court analyzed the question of whether the attorney general's standing to challenge the governor's actions, but held that the actions were within the governor's power; the attorney general appealed to the Kentucky Supreme Court.
other agencies or actors: “The ongoing functions of such entities and the costs of such litigation, in money and political good will, could make a legal challenge prohibitive despite whatever disagreement they may have with a Governor’s or legislature’s action. Because the Attorney General is the chief law officer of the Commonwealth, he is uniquely suited to challenge the legality and constitutionality of an executive or legislative action as a check on an allegedly unauthorized exercise of power.” In conclusion, the court held, “the Attorney General, as chief law officer of Kentucky, has broad authority to sue for declaratory and injunctive relief against state actors, including the Governor, whose actions the Attorney General believes lack legal authority or are unconstitutional.”


**Parens Patriae Authority**

The Ninth Circuit recently addressed the question of the *parens patriae* standing of state attorneys general in a case brought by six states to block enforcement of certain California laws. After California voters adopted an initiative that enacted new standards for housing egg-laying hens, the California legislature enacted a statute saying that all eggs sold in California must comply with the standards adopted in the initiative. The initiative, law, and associated regulations (egg laws) were to go into effect on Jan. 1, 2015. In early 2014, six states filed a complaint asking the court to declare the egg laws invalid because they violated the Commerce Clause or were preempted by federal statute. The state of California filed a motion to dismiss, which was granted by the trial court on the grounds that the plaintiff states lacked standing as *parens patriae*. The plaintiff states appealed.

In addition to the three factors required for Article III standing (actual injury, traceable to the challenged action, that is redressable), *parens patriae* cases also require that 1) the state articulate an interest apart from the interests of particular private parties and 2) the state express a “quasi-sovereign” interest. The Ninth Circuit held that the plaintiff states did not meet the first part of the test.

Listing a number of claims, the Ninth Circuit panel stated, “The complaint contains no specific allegations about the statewide magnitude of these difficulties or the extent to which they affect more than just an ‘identifiable group of individual’ egg farmers.” The court found that complete relief from the claimed injuries would be available to the egg farmers in the plaintiff states through a complaint they filed themselves. The court also found that the potential
damage to the egg farmers was speculative, since the suit was filed before the egg laws went into effect. In addition, it is "substantially more difficult for a plaintiff to establish standing when the plaintiff is not himself the object of the government action or inaction he challenges." In this case, “the alleged price effects for consumers are remote, speculative, and contingent upon the decisions of many independent actors in the causal chain in response to California laws that have no direct effect on either price or supply.”

Finally, the Ninth Circuit noted that the California egg laws do not discriminate among eggs based on the state of origin, but rather require that all eggs be from hens housed in a way that complies with California law. Nor did the plaintiff states allege “trade barriers erected against their broader economies.” The court affirmed the district court’s judgment and remanded the case with instructions that it be dismissed without prejudice. Missouri ex rel. Koster v. Harris, No. 14-17111 (9th Cir. Nov. 17, 2016).

Privilege under State FOIA: Communications among AG Offices

An exemption from state Freedom of Information Act (FOIA) laws for privileged communications applies to discussions among attorneys general offices about potential amicus briefs, according to the New Hampshire Supreme Court. New Hampshire Right-to-Life made three requests under New Hampshire’s Right to Know law for documents and materials related to Planned Parenthood of Northern New England. The state provided some documents but declined to produce others, arguing that they contained information exempt from disclosure under the law. The plaintiffs filed a complaint for injunctive relief and the state provided the withheld documents to the trial court for in camera review. After the court generally upheld the state’s decision as to production of documents, the plaintiffs appealed, and specifically requested certain documents, including “e-mail communications between [the AG office] and such offices in other states.”

Noting that the Right to Know law should be broadly construed to “effectuate its purpose to ensure the greatest possible public access to the actions . . . of public bodies,” the court stated that the exemptions to the law would be interpreted restrictively. The law identifies as exempt from disclosure “confidential, commercial, or financial information.” The plaintiffs argued that this provision did not cover the attorney general’s claims of attorney work product. The court determined that federal law should be applied to determine whether the documents at issue were subject to the work product privilege because the documents sought were produced in connection with federal litigation challenging the state’s “buffer zone” law. The court held that, under FOIA precedents, the test for disclosure “is whether the documents would be routinely or normally disclosed upon a showing of relevance.” The New Hampshire Supreme Court adopted this reasoning in the context of the state’s Right to Know law.

The plaintiff sought e-mail messages exchanged between the New Hampshire Attorney General’s Office and offices of attorneys general in other states in connection with McCullen v. Coakley. These communications included draft amicus briefs and discuss the process by which the New Hampshire Attorney General’s Office decided whether to join or file amicus briefs in that case. The trial court upheld the state’s position that these documents were privileged attorney-client or work-product communications. The state Supreme Court agreed, stating, “Because these e-mail messages contain the ‘mental impressions, conclusions, opinions or legal theories of an attorney,’ [citations omitted] in connection with the McCullen litigation, we hold that they constitute opinion work product, and were properly withheld from disclosure under the Right-to-Know Law.”

Turning to the question of whether the privilege was waived because New Hampshire did not join the amicus brief, the court quoted from a previous case: “The prevailing rule is that, because ‘work product protection is provided against adversaries, only disclosing material in a way inconsistent with keeping it from an adversary waives work product protection.’” The court concluded: “Based upon the record before us, we cannot say that the exchange of e-mail messages between the AG and such offices in other states was inconsistent with keeping those messages, and the documents they referenced, from the plaintiffs in the buffer zone litigation.” New Hampshire Right to Life v. Director, New Hampshire Charitable Trusts Unit, 2016 N.H. LEXIS 55 (N.H. June 2, 2016)
Georgia: AG’s Authority to Appoint Substitute Prosecutor

The Georgia court of appeals upheld the attorney general's authority to appoint a substitute prosecutor without review by the trial court. A defendant in a DUI case had a relationship with an employee in the solicitor general's office in Cobb County. (The county solicitor general is the local prosecutor). The solicitor general recused himself from the case and notified the attorney general, pursuant to statute. The attorney general then appointed the solicitor general from a neighboring county to act as the prosecutor in this case. The defendant moved to vacate the recusal, arguing that the prosecutor had recused himself without a hearing or the consent of the defendant. The trial court granted the motion. The state appealed.

The state argued that the defendant does not have standing to object to the recusal of a prosecutor under Georgia law. The relevant statute provides that the attorney general shall be notified of the disqualification of a solicitor general's office “from interest or relationship” and the attorney general shall appoint a solicitor general pro tempore for the purposes of that case. The decision as to recusal is the responsibility of the individual attorney. Opposing counsel may raise the question if the prosecutor does not recuse him/herself. However, under Georgia law, “a defendant does not have a substantive right to have his case tried by a specific prosecutor.” The court held that the trial court's order should be reversed because the defendant does not have a right to challenge the solicitor general's voluntary recusal.

The court also addressed the state's argument that the trial court lacked legal authority to vacate the attorney general's appointment of a solicitor general pro tempore after the voluntary recusal. After a comprehensive revision of the statutes on the solicitor general's office, the attorney general is “the only person then authorized to appoint a substitute prosecuting attorney pro tempore. . . . [T]he trial court no longer enjoys the same authority it once did in disqualifying and appointing substitute prosecuting attorneys.” Although the statute still provides that trial courts have the inherent authority to disqualify an attorney, they must specify the legal basis of such an order, which is then subject to appellate review. There is no similar language with respect to the appointment of a substitute solicitor general by the attorney general. The court thus reversed the trial court's order. State v. Mantooth, 2016 Ga. App. LEXIS 396 (Ga. App. 3d Div. July 1, 2016)

Louisiana: AG’s Ability to Bring Suit in Name of State

In Louisiana, an appellate court held that state law authorized the attorney general to sue on behalf of the state itself, rather than on behalf of one of its agencies. The Louisiana Attorney General's Office sued a number of pharmaceutical companies, asserting claims under the Louisiana Unfair Trade Practice ACT (LUTPA) and the Louisiana Medical Assistance Programs Integrity Law (MAPIL), as well as claims for fraud, negligent misrepresentation, and unjust enrichment. The plaintiffs alleged that the attorney general had brought the claims in the name of the state, rather than the agency, in order to avoid statute of limitations issues. The district court dismissed the state's case, holding that the state Department of Health was the real party in interest, rather than the state. The attorney general appealed.

The court of appeals noted that, under Louisiana law, the state cannot bring a cause of action that is the property of one of its political subdivisions which has the right to sue and be sued. The Department of Health does have the right to sue and be sued. The court therefore reviewed the LUTPA and MAPIL, and found that the legislature had expressly given the attorney general the right to bring claims under both statutes. However, the court of appeals did not find that the attorney general could bring claims outside of these two statutes. The court therefore upheld the dismissal of the attorney general's tort-based claims. State of Louisiana v. Abbott Laboratories, 2016 La. App. LEXIS 1938 (La. Ct. App. 1st Cir. Oct. 21, 2016)

Maryland: Duty to Defend State Statutes

The responsibilities of the Maryland attorney general in defending state statutes were described by a Maryland appellate court in a recent decision. Maryland law permits the use of “ground leases” through which people do not own land, but, instead, rent it for renewable terms of 99 years. If the lessee of the land does not pay the appropriate taxes or ground rent, the owner has the ability to enter the
property and eject the lessee. In that event, the lessee then loses all equity in the property. After a series of newspaper articles about eviction of lessee tenants and their subsequent loss of all equity in property where the missed payments were far less than the value of their homes, the Maryland general assembly enacted two statutes. One required recording of all leases in a central registry, on pain of loss of a lessor’s interest in a ground lease, and the other established a lien and foreclosure system, similar to typical mortgage foreclosures. Several property owners sued, claiming the legislation was an unconstitutional regulatory and physical taking without just compensation. After nine years of litigation, the plaintiffs prevailed in the state’s highest court, although no damages were awarded. Their attorneys sought fees, and the district court awarded $5 million. The state appealed.

The Maryland Court of Special Appeals held that the fee award was improper, finding that fees were not authorized under 42 U.S.C. § 1988, the common fund doctrine or Maryland condemnation statutes and procedures. The court then turned to whether the state had maintained or defended this proceeding in bad faith or without substantial justification, which would allow the court to award fees under Maryland Rule 1-341(a). The court of appeals first pointed out that there was substantial justification for the state’s position, since the district court itself had denied cross motions for summary judgement, and had stated that the case presented genuine and novel questions of law. Turning to the question of bad faith by the state, the court stated that the General Assembly’s enactments are presumed constitutional and that a statute has “just as much right to an advocate of its validity” as a criminal defendant has to an advocate of his defense. The court specifically held, however, consistent with past Maryland decisions, that “[t]his is not to say that the Attorney General must defend a law that is undeniably unconstitutional.” That was not the case here, where the district court declined to grant the motion to dismiss, where the decision invalidating the statue was accompanied by two dissents from the opinion, and where the state accepted the decision once it was final. The court also held,

[T]he [district] court seemed to object that the State attempted to remove the case to federal court (on account of the numerous federal claims in the complaint) and to have it transferred to Baltimore City (where the majority of ground rents are located). Suffice it to say that it was no more of an exercise in bad faith for
[E]stablish the attorney-client relationship between the Attorney General and state agencies and offices, providing, in relevant part, that the Attorney General “shall . . . [p]rosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state . . . .

Because the plaintiff was neither a client of OVS nor of the attorney general, the court affirmed the lower court’s denial of the motion to compel. *Waldman v. State of New York*, 2016 N.Y. App. Div. LEXIS 4629 (June 16, 2016).

**New York: Who is Client of the AG?**

The attorney-client privilege for communications between the attorney general and a state agency was clarified in a recent New York case. Plaintiff Waldman and another person, Ludwig, were robbed at gunpoint by Rodriguez who was convicted of the crime and sentenced. Rodriguez later received a settlement from New York City in connection with a claim of excessive force. The Office of Victim Services (OVS) notified the plaintiff of the settlement. Plaintiff Waldman and Ludwig notified OVS that they intended to pursue distribution of the settlement to themselves, as victims of the crime. OVS, represented by the attorney general, sought an injunction to prevent dissipation of the funds, and the injunction was entered. Ludwig then obtained a judgment against Rodriguez in an amount that exceeded the settlement. She presented the judgment to OVS, which successfully moved to lift the injunction, and Ludwig was paid. Waldman did not obtain judgment until after the funds were distributed to Ludwig and, when he learned that the funds were gone, he filed suit against OVS, claiming that it violated the law by failing to preserve the assets, since it had notice that he intended to file suit against Rodriguez.

In the course of the litigation, Waldman sent interrogatories to OVS, seeking information about communications between OVS and the attorney general in connection with the injunction and the payment to Ludwig. OVS refused to answer, citing attorney-client privilege. Plaintiff Waldman moved to compel, arguing that the attorney general also represented him. The lower court denied the motion, finding that plaintiff was not the client of OVS or the attorney general. The appellate court affirmed.

The court held that Waldman was not in an attorney/client relationship with OVS or the attorney general. OVS assists crime victims, but, by statute, cannot substitute itself for a crime victim and begin an action against a convicted person. Plaintiff Waldman had his own counsel when he pursued Rodriguez’s assets. The court stated that New York statutes:  

**New York: AG’s Authority under Martin Act**

In the latest in a series of decisions on the New York attorney general’s authority and the availability of remedies under the state’s Martin Act, New York’s highest court held that the attorney general may obtain permanent injunctive relief and that disgorgement is an available remedy. The Martin Act is the New York securities fraud statute, and it gives the attorney general broad powers to fight financial fraud. In a long-running case against American International Group, Inc. (AIG) and several of its officers, the New York court of Appeals held that the attorney general could obtain permanent injunctive relief, barring the defendants for life from participating in the securities industry and serving as an officer or director of a public company. The defendants argued that the attorney general must show irreparable harm in order to obtain the permanent injunction. Noting that the injunction sought is “one authorized by remedial legislation, brought by the Attorney General on behalf of the People of the State and for the purposes of preventing fraud and defeating exploitation” the court held that “the standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief” (internal quotes omitted). The court also held that disgorgement is an available remedy in Martin Act cases. The court cited the Martin Act’s clause allowing courts to “grant such other and further relief as may be proper” and stated that disgorgement “merely requires the return of wrongfully obtained profits [and] does not result in any actual economic penalty.” The court dismissed
without discussing defendants’ arguments that disgorgement is barred under the Supremacy Clause. Defendants appealed to the U.S. Supreme Court on the grounds that federal securities law barred the case, but the Court denied cert. The parties then reached a settlement under which the defendants admitted their involvement in the sham transactions at issue, and agreed to disgorge $9.9 million in bonuses they had received from AIG. People of the State of New York by Schneiderman v. Greenberg, 27 N.Y.3d 490 (N.Y. Ct. App. 2016).

Texas: Eligibility for Office of Attorney General

In an unusual case challenging the qualifications of the attorney general, a Texas appellate court held that the attorney general is not part of the judicial branch of state government. A Green Party candidate for Texas attorney general challenged the results of the 2014 attorney general election on the grounds that all of the other candidates, who were licensed attorneys, were members of the judiciary and their election would violate the separation of powers clause of the state Constitution.

Appellant Osborne argued that Attorney General Paxton, the successful candidate, and the other candidates for the position of attorney general, were ineligible because they are attorneys licensed by the State Bar of Texas and therefore “defacto members of the judiciary.” According to the plaintiff, the Texas Constitution bars a member of the judicial branch from exercising any power of one of the other branches of government and, since the Texas attorney general is an executive officer of the state, the attorney candidates were ineligible. The trial court dismissed the case on summary judgment and the plaintiff appealed.

The court first outlined the definition of “judicial power” in Texas, describing it as power “to hear facts, to decide issues of fact made by pleadings, to decide questions of law involved, to render and enter judgment on facts in accordance with law as determined by the court, and to execute judgment or sentence.” This power is vested in the courts by the Texas constitution. Attorneys are “officers of the court” and must be licensed by the State Bar, but they “do not hear facts, determine issues of fact or law, render judgment or execute judgments.” Prior Texas case law held that district attorneys are not part of the judiciary, so attorneys in general are not part of the judiciary just because they are licensed by the State Bar.

Because restrictions on the right to hold public office are strictly construed against ineligibility, the court concluded that “attorneys do not become members of the judicial department . . . when they obtain a license from the State Bar.” Osborne v. Paxton, 2016 Tex. App. LEXIS 6062 (Tex. Ct. App. 3d Dist., June 9, 2016).

Washington: Statute of Limitations Not Applicable to AG’s Suit under CPA

The Washington Attorney General’s Office achieved a recent victory in one part of its antitrust case against a number of foreign electronics manufacturers when the Washington Supreme Court held that the state had not consented to a statute of limitations that would bar the suit. The attorney general filed suit in May 2012 against the electronics manufacturers, alleging a price-fixing conspiracy occurring between March 1995 and November 2007 involving cathode ray tubes (CRTs). The state sought damages, restitution civil penalties, and injunctive relief on behalf of the state and of its citizens. The defendants moved to dismiss the case on the grounds that the claims were time barred by the state's Consumer Protection Act (CPA), which had a four-year statute of limitations. The trial court denied the motion, and the defendants appealed. The Washington court of appeals held that the CPA's statute of limitations did not apply to actions for injunctive relief and restitution brought by the attorney general because the statute expressly applies only to actions for damages. The court of appeals also held that, because the case was “brought for the benefit of the state,” it was exempt from any general statute of limitations. The defendants appealed.

The state Supreme Court first discussed the state's CPA, which authorizes enforcement by the attorney general under section 19.86.080. Subsection 080 authorizes the attorney general to bring an action for injunctive relief in the name of the state or as parens patriae for state citizens. Section 19-86.090 allows private injunctive and damages suits. It also authorizes the state to sue for actual damages. The CPA's statute of limitations bars “claims for damages under RCW 19.86.090” if not filed within four years. The Supreme Court addressed only the state's claims under subsection 080 and specifically did not discuss the applicability of the statute of limitations to any claims brought by the state under section 090.
The court first noted that the limitations section of the CPA does not, by its terms, apply to section 080 claims and that the legislature had amended section 080 and the statute of limitations provision several times and had never sought to include claims under section 080. The defendants argued that, because the statute directs courts to “be guided by . . . decisions of the federal courts” interpreting federal antitrust statutes, the four-year statute of limitations that applies to attorney general actions under the Clayton Act should apply to this action. The court held that the Clayton Act was not similar enough to section 080 to warrant following it in this case.

As a second ground for allowing the attorney general’s suit to proceed, the state Supreme Court invoked the common law doctrine of *nullum tempus*, which has been codified in Washington law. The statute provides, “there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state.” The court noted that it has allowed the statute of limitations to run in actions where the state “is not asserting any public right or protecting any public interest” and the defendants argue that this case is such a case because it is simply enforcing a private or individual right since the state seeks monetary restitution for consumers. The court disagreed. The CPA’s purpose is to “protect the public and foster fair and honest competition.” Citing prior decisions, the court held, “Just like administering workers’ compensation and regulating insurance, safeguarding the public by prohibiting business practices that undermine fair and honest competition is well within the State’s police power.” The court held that, when the attorney general enforces antitrust laws under section 080, he or she acts in the name of or for the benefit of the state, and the action is exempt from the statute of limitations. *State of Washington v. LG Electronics, Inc. No. 91263-7 (Wash., July 14, 2016).*

**Endnotes**

1. 300 S.W.3d 152 (Ky. 2009).
2. *Id.* at 173.
3. 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014)
DAN SCHWEITZER, DIRECTOR
AND CHIEF COUNSEL, NAAG CENTER FOR SUPREME COURT ADVOCACY

In previous NAGTRI Journal editions, I discussed general issues concerning Supreme Court style and what the prefatory parts of the brief should look like. In this issue, which concludes my series on U.S. Supreme Court brief writing style, I will discuss the heart of the brief — the Introduction, the Statement of the Case, and the Argument. I will also spend a few moments on the Conclusion and Appendices.

**Topic 1: Introduction**

Many briefs filed in the Court, at both the cert-stage and merits-stage, begin with an introduction. Although the U.S. Solicitor General’s Office does not use them, most of the leading Supreme Court practitioners do. The typical approach is to have a formal section, called ‘Introduction, that appears before the prefatory sections.1 Another common approach is to open the Statement of the Case with a few paragraphs that serve as a de facto introduction.2

A caution: Many briefs have an Introduction, a Summary of Argument, and an opening to the Argument that serves as another overview of the party’s position. The challenge is ensuring that these sections don’t get redundant. Toward that end, avoid having the Introduction read like a Summary of Argument, walking through the various arguments the brief will make, one at a time, in order. An effective Introduction is more thematic than that, presenting the big-picture sense of why your position is correct. (I recently heard a leading advocate refer to the Introduction as “an essay.”)

**Topic 2: Statement of the Case**

Because this is a style guide, not a manual on how to write effective appellate briefs, my focus will be on how this section should look — not on the various techniques for making the Statement as effective as possible. Still, many of my style pointers help accomplish the core goal of the Statement, which is to set out the relevant facts and procedural history (and, in some cases, statutory background) in an accurate, non-argumentative way that nonetheless subtly shows why your legal position is correct.

**Title**

Most practitioners call this section the “Statement of the Case.” The U.S. Solicitor General calls it “Statement.” Either title is fine. The key is that, in contrast to many lower courts (especially state courts), this section encompasses both the background facts and procedure.

**Structure**

- Most Statements have at least two subsections, one providing the factual background, one providing the procedural background. For example, in a case about excessive-force claims brought by pretrial detainees (Kingsley v. Hendrickson, 576 U.S. ___ (2015)), petitioner’s Statement was simply:

  **STATEMENT OF THE CASE**
  
  A. Factual Background
  B. Proceedings Below

- Another technique is to have the Statement’s headings tell a bit of a story. In a case about the meaning of the Prison Litigation Reform Act’s three-strikes provision (Coleman v. Tollefson, 575 U.S. ___ (2015)), Michigan’s Statement looked like this:

  **STATEMENT OF THE CASE**
  
  A. The history of in forma pauperis status
  B. Coleman incurs three dismissals
  C. Coleman brings four more actions after his third action was dismissed but while it is pending on appeal
  D. The district-court decisions
  E. The Sixth Circuit’s decision
When the principal issue in a case is the meaning of a specific statute, Statements usually include a subsection that discusses the statute’s background and lays out its core provisions. For example, in Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. ___ (2016), a case involving how the False Claims Act interacts with Medicaid requirements, the Statement’s subsections were:

A. Background And Purpose Of The FCA
B. MassHealth’s Provider Regulations For Mental Health Centers
C. Factual Background
D. Proceedings Below

A simple case’s Statement may not need any subsections. Even in those cases, however, the Statement should separate the discussion of the facts from the discussion of the district court decision from the discussion of the appellate court decision. Supreme Court briefs typically accomplish that by placing a number at the start of the first paragraph of each new component of the Statement. Thus, for example, the first paragraph describing the facts opens with the number 1; the first paragraph describing the district court decision opens with the number 2; and the first paragraph describing the court of appeals decision opens with the number 3.

Lawyers who don’t practice before the U.S. Supreme Court often find that practice an odd one. Trust me: The Justices are used to that style and like it. The U.S. Solicitor General’s Office, which is the gold standard of U.S. Supreme Court practice, uses that style in every one of its briefs. Indeed, that office — and other leading practitioners — insert numbers before some paragraphs throughout their briefs, not just in the Statement.

Note that I say “some paragraphs.” The Statement should not look like a Complaint, with each and every paragraph numbered. Only those paragraphs that transition to a new topic should begin with a number.

**Other Style Pointers**

- When setting out the facts, include supporting citations. (A citation does not have to appear after every sentence describing facts; but, at the least, every paragraph in the factual background section should have a citation.) Sometimes, those citations can be to a lower court’s opinion in the case. Those are the easiest — just cite the appropriate page in the cert petition appendix. And if it’s a merits brief, cite to the Joint Appendix (e.g., JA 211) where possible.

When no lower court opinion supports a factual assertion, a cert-stage brief must cite something in the lower court record. Try to make such citations as short and simple as possible. For example, cite to the court of appeals’ record (abbreviated as “R. __”) or joint appendix (“CA JA”). Cites to a trial transcript can be “Tr. ___”; and so on. Your goal is to make the brief easy on the reader’s eyes, not weighed down with long descriptions of lower court documents.

- As a general rule, the story of the case — the facts and then the case’s trip through the courts — should be told in chronological order. Most importantly, that means it is the very rare case where you will want to summarize the facts by walking through the testimony of specific witnesses.

- A prior issue in this series noted that Supreme Court briefs should limit the number and length of block quotes. Statements of the Case present special risks on that score. I have seen many Statements that set out the facts by inserting a multi-page block quote of a lower court’s description of the facts. Please, please, please don’t do that. Occasional quoted language is fine; long block quotes of that sort are not.

- The “story” the Statement tells culminates with the decision by the federal court of appeals or state appellate court. Your Statement should therefore end with a summary of that court’s reasoning (and a summary of the dissent, if any). Different cases warrant summaries of different lengths. I have seen effective two-paragraph summaries and effective four-page summaries. But it is almost never a good idea simply to say, “the [State] Supreme Court affirmed,” and then leave it to the Argument (or Reasons) section to lay out that court’s reasoning.

**Topic 3: The Argument**

A. Cert Petitions

I have already published a guide on cert petitions and briefs in opposition — Preparing Cert Petitions and Oppositions (NAGTRI 2008) — which I do not wish to duplicate here. My present focus is on style, not broader strategic and tactical issues such
as what arguments are most likely to convince the Court to grant certiorari and how to raise “vehicle” problems with the other side’s petition. Here are a few suggestions that fall into the “style” camp.

- The argument section of a cert petition is called the “Reasons for Granting the Writ” or the “Reasons for Granting the Petition.” Because the Court is deciding whether or not to grant the petition, the latter title is technically correct. But the former title is commonly used as well. As far as I can tell, the Court is fine with either.
- The Reasons section usually has subsections that address the different grounds for granting certiorari, such as:

   **Reasons for Granting the Petition**
   I. State Supreme Courts are divided on the question presented
   II. The case presents an issue of national importance
   III. The [State] Supreme Court’s decision is incorrect

What you don’t want to do, but I’ve seen done on occasion, is insert the heading “Argument” between Reasons for Granting the Petition and § I; or insert a long heading between them that tries to summarize the entire case, e.g.:

   **Reasons for Granting the Petition**
   The Court should grant certiorari to address whether the Fourth Amendment is violated when a police officer searches digital information on a cell phone incident to arrest because the lower courts are deeply divided on the issue, the issue arises frequently and is critical to law enforcement, and the court of appeals decided it incorrectly

   I. State Supreme Courts are divided on the question presented
   II. The case presents an issue of national importance
   III. The [State] Supreme Court’s decision is incorrect

And it is rarely a good idea to have one long heading of the sort set out just above in place of the more precise subsections.

**B. Merits Briefs**

There isn't much to add to at this point. Most of the “General Rule[s]” and “U.S. Supreme Court-Specific Styles” discussed in [Part 2 of this series](#) apply to the Argument section of a merits brief. And various other suggestions, such as my prior discussion of

---

**Training Calendar**

A wide variety of courses are available for professional development and management leadership to NAAG membership. Details, including registration, for all courses may be found at [www.naag.org/nagtri/nagtri-courses.php](http://www.naag.org/nagtri/nagtri-courses.php)

**National Courses**

- Trial Advocacy - Boise, Idaho
  March 13-17, 2017

  March 14-16, 2017

- Veterans Issues - Orlando, Fla.
  March 30-31, 2017

- Legal Writing - Savannah, Ga.
  April 4-6, 2017

- Negotiation Skills - Kansas City, Mo.
  April 11-12, 2017

- E-Discovery Negotiations - Washington, D.C.
  April 25-26, 2017

**Mobile Courses**

- Deposition Skills for OAG-IA
  Feb. 16-17, 2017

- Management for OAG-NY
  Feb. 16-17, 2017

- Opioid Abuse Consumer Protection and Enforcement Training for OAG-FL
  Feb. 16-17, 2017

- Management for OAG-IL
  Feb. 22-23, 2017

- Representation of State Agencies: Intermediate Level for OAG-CT
  Feb. 22, 2017

- Management for OAG-CT
  March 7-8, 2017

- E-Discovery for OAG-RI
  March 8, 2017
In the end, the federal government's tax power argument suffers from the very same failing as every other constitutional argument that it advances in defense of the ACA. Congress may not "break down all constitutional limitation [on its] powers ... and completely wipe out the sovereignty of the states" by invoking its tax power to enforce commands that it lacks the authority to impose. Bailey, 259 U.S. at 38. The federal government implicitly recognizes as much when it acknowledges that the Court would have to read the individual mandate out of section 5000A to uphold the statute under the tax power. Govt.'s Br. 60-62. That the federal government's tax power argument would require this Court to effectively ignore what Congress itself described as an "essential" piece of the Act, ACA § 1501(a)(2)(I), is reason enough to reject it. The statute the federal government defends under the tax power is not the statute that Congress enacted. In that statute, the penalty provision is merely the tail and the mandate is the proverbial dog, not vice-versa. And that statute imposes a command that is unprecedented and invokes a power that is both unbounded and not included among the limited and enumerated powers granted to Congress. It is therefore unconstitutional, no matter what power the federal government purports to invoke.

In the end, the federal government's tax power argument suffers from the very same failing as every other constitutional argument that it advances in defense of the ACA. Congress may not "break down all constitutional limitation [on its] powers ... and completely wipe out the sovereignty of the states" by invoking its tax power to enforce commands that it lacks the authority to impose. Bailey, 259 U.S. at 38. The federal government implicitly recognizes as much when it acknowledges that the Court would have to read the individual mandate out of section 5000A to uphold the statute under the tax power. Govt.'s Br. 60-62. That the federal government's tax power argument would require this Court to effectively ignore what Congress itself described as an "essential" piece of the Act, ACA § 1501(a)(2)(I), is reason enough to reject it. The statute the federal government defends under the tax power is not the statute that Congress enacted. In that statute, the penalty provision is merely the tail and the mandate is the proverbial dog, not vice-versa. And that statute imposes a command that is unprecedented and invokes a power that is both unbounded and not included among the limited and enumerated powers granted to Congress. It is therefore unconstitutional, no matter what power the federal government purports to invoke.
**Topic 5: Appendices**

**A. Cert Petitions**

Supreme Court Rule 14.1(i) lists what materials must be included in the appendix to a cert petition and in what order. Most notably, the petition appendix (colloquially known as the “Pet. App.”) should include the lower court opinions and the relevant statutory provisions, if the latter do not appear in the Constitutional and Statutory Provisions Involved section. A few additional thoughts on the Pet. App.:

- Most petitions do not include *any* of the lower court record. Petitions are supposed to present clean legal issues already addressed by the lower courts. They therefore should not need to rely heavily on additional record materials. Indeed, the Supreme Court does not usually even obtain the record until *after* it grants certiorari. (Only a few times each Term does the Court ask the lower court to send over the record while the Court is still assessing whether to grant certiorari.)

- In some cases, however, a particular part of the record is critical — either to the merits (e.g., the transcript of the interrogation at which the defendant’s Miranda rights were allegedly violated) or to establishing jurisdiction (e.g., to show that the federal issue was raised below). You should include that part of the record in the Pet. App. when that’s the case.

- For roughly the same reasons — to help show that the lower court was correct on the merits or that the federal issue was *not* raised below — a brief in opposition may wish to provide critical portions of the record in its own appendix. This should be done sparingly; but it can be very helpful in a small percentage of cases.

- Sometimes, the lower court decision for which review is sought is very short and lacks analysis because it relied almost entirely on a prior decision in which that court addressed the legal issue at length. You will usually want to include that prior decision in the Pet. App. when that’s the case.

**B. Merits Briefs**

Once you’re at the merits stage, the role of an appendix attached to your brief changes. The separate Joint Appendix should contain any pleadings and other record material the Court needs to assess the case. And the lower court opinions already appear in the cert petition appendix and do not need to be reprinted anywhere else. So is there any need for an appendix to a merits brief?

The answer is yes. Although the relevant statutes and regulations should already appear in the cert petition or its appendix, it is common to include them again in an appendix to the Brief for Petitioner [or Respondent]. The goal is to make things as easy as possible for a Justice (or clerk) reading your brief. In a statutory construction case, the reader will often want to study different provisions as she moves through the brief. You make it easier for her by including the relevant provisions in an appendix. Merits briefs from the U.S. Solicitor General’s Office almost always include such an appendix.

You may also want to include in a merits-brief appendix record material that is critical to the case. If, for example, the question presented asks whether particular jury instructions were constitutional or consistent with a federal statute, you may wish to include the jury instructions in an appendix to your opening merits brief. Again, that serves your core goal — making it easier for the Justices to read your brief and understand your argument. Other cases may warrant including portions of the trial transcript, the lab report of a DNA technician, and so on.

That said, don’t overdo it. Not every case calls for a merits-brief appendix. (Fourth Amendment cases typically do not.) And when you provide one, include only the most important materials.

With the entire brief, including appendices, covered, this style guide will now conclude. As always, if you have any questions about Supreme Court practice — style or otherwise — please never hesitate to contact me.

**Endnotes**


4. The guide is available on NAGTRI’s web site.

5. As my guide explains, a cert petition should begin by describing the conflict among the state high courts and/or federal courts of appeals. With a few exceptions (such as AEDPA cases where the state is seeking a summary reversal), any argument that the lower court erred should be saved for the final section of the petition.
For more than 15 years, I have had the pleasure of working as a prosecutor for the Rhode Island Attorney General’s Office. During that time, I have prosecuted many different crimes and have worked with many different populations. One of the most rewarding and challenging parts of my career began in 2011 when Rhode Island Attorney General Peter Kilmartin appointed me chief of the newly-formed Child Abuse Unit (CAU). The CAU is comprised of talented prosecutors, victim advocates, and support staff working together to help children and their families seek justice for abuses perpetrated upon them. This fall, I had the honor of being selected as the first Beau Biden Foundation fellow working from the National Association of Attorneys General (NAAG) office in Washington, D.C. The Foundation’s mission, in honor of the life of former Delaware Attorney General Joseph R. “Beau” Biden, III, seeks to continue his life’s work: ensuring that all children are free from the threat of abuse. Education, advocacy, and leadership development are the pillars on which this foundation was established.

This fellowship gave me the opportunity to take a step back from prosecuting these extremely difficult cases, work on child protection issues in Washington, D.C., and see things from a very different perspective. I was able to observe what is being done on a local and national level to prevent these crimes from happening or, at the very least, educate children, their families, and those who work with children about child abuse prevention. To that end, the training of prosecutors, law enforcement, educators, physicians, clinicians, advocates, and others is essential to a proactive approach to these complex issues. Additionally, enacting effective state and federal legislation can help ensure children’s rights are protected and ensure those who commit these terrible crimes are held accountable.

Over the course of several weeks, I met and spoke with many different professionals from various organizations who have dedicated their time, many their careers, to protecting children around the country and the world. These organizations include but were not limited to: NAAG, the National Center for Missing & Exploited Children (NCMEC); Darkness to Light’s Stewards of Children; Safe Shores; Shared Hope International; American Academy of Pediatrics (AAP); Association of Prosecuting Attorneys (APA); The Children’s National Medical Center; the National Center for Prosecution of Child Abuse at NDAA; Bikers Against Child Abuse (BACA); Stop Child Abuse Now (SCAN); District of Columbia Metropolitan Police Dept.; the U.S. Department of Justice (USDOJ); National Organization for Victim Assistance (NOVA); U.S. Attorney’s Office (DC); and Office of Attorney General (DC). From this unique perspective, I gained an even greater appreciation for the work we do while acknowledging the immense undertaking that protecting children and preventing child abuse and exploitation is.

During my fellowship, I was invited to Alexandria, Va., to train at NCMEC headquarters. During this training process, I met with their different teams and saw how all of these diverse and unique programs play an integral role in finding and protecting children.1

As enumerated in 42 U.S.C § 5773(b), NCMEC receives federal funding to help perform 22 specific functions pertaining to missing and exploited children.2 Some of these functions include: maintaining and operating a national resource center and information clearinghouse for missing and exploited children; operating a 24-hour hotline for reports of missing children and updates on ongoing cases; providing technical assistance and training to families, victims, law enforcement agencies, and the public on issues related to missing and exploited children; operating a CyberTipline; and coordinating with families and child welfare and law enforcement agencies.
agencies in reporting children missing from the foster care system. Its technology and outreach programs are vast and easily accessible.

NCMEC operates two essential programs in furtherance of its mission to help find missing children, reduce child sexual exploitation, and prevent future victimization. NCMEC’s CyberTipline is the central mechanism for the public and Electronic Service Providers (ESPs) to report apparent child sexual exploitation. Federal law requires that ESPs report to NCMEC apparent child pornography discovered on their systems. As of December 2016, the CyberTipline has received over 16 million reports, with over 8.2 million reports for just 2016 alone. NCMEC also works to help address the unique and challenging issues raised by children missing from care. The Preventing Sex Trafficking and Strengthening Families Act recently passed by Congress required that, by 2016, social workers must report any child missing from the state foster care system to police and to NCMEC. This legislation acknowledges the harsh reality that, as of 2015, one in five of those endangered runaways reported to NCMEC were likely victims of sex trafficking. In fact, 74 percent of those missing children reported to NCMEC who were likely to be victims of sex trafficking, had been in the care of Child Protective Services. Since it is inevitable that, over time, there will be changes in these state agencies, NCMEC has developed a case management system which serves as a national clearinghouse to maintain continuity which provides easy access to support for all of these agencies. This continuity allows law enforcement and those whose job it is to protect children to identify children that may be at risk and more quickly assess their needs. Although NCMEC has been utilized by families, victims, international, federal, state, and local law enforcement agencies and the public, others have yet to take advantage of this national clearinghouse and its no-cost national training and resources aimed to help recover missing children and reduce child sexual exploitation.

National training is also provided by NAAG through its National Attorneys General Training and Research Institute (NAGTRI). NAAG recognizes that attorneys general around the country may have different powers and duties but all have unique leadership roles in their respective states that extend far beyond their offices to local district attorneys and local county prosecutors. To this end, NAGTRI is working to expand its training to meet the jurisdictional needs of attorneys general as well as their needs as national and international law enforcement leaders. This will enable NAGTRI to reach a wider audience on a myriad of issues and training topics including child abuse, exploitation, and trafficking. These trainings will enable more effective prosecution across the country as well as internationally.

The issue of sex trafficking was on Attorney General Biden’s radar throughout his eight-year tenure. Nothing was more important to Beau Biden than protecting those whose voices were marginalized, those who had lost their power or never had any power at all. “Human trafficking takes place in the shadows, but the devastating effects on victims, families and communities are plain,” said Biden. “Because these crimes occur without regard to local, state and even national boundaries, it is essential that we stand together across those borders to fight trafficking and help victims heal.” Crossing those borders to first recognize and, ultimately, combat sex trafficking begins with training all of those individuals who work with children.

While in Virginia, I also took the opportunity to visit with the Association of Prosecuting Attorneys (APA). Their Child Abuse Prosecution Project, a Victims of Crime Act-funded project through the Office of Juvenile Justice and Delinquency Prevention was started approximately two years ago and also offers free training and technical assistance to child abuse prosecutors and their multidisciplinary teams. Their access to educational webinars and referrals to medical experts in the field of child abuse/neglect and legal research is another valuable resource.

There are many state and local agencies helping in the fight against child abuse and working towards prevention. I attended an informational open house at Safe Shores, the District of Columbia Children’s Advocacy Center (CACs), where victims of suspected
child abuse can be interviewed by trained forensic interviewers.\textsuperscript{10} As with all CACs around the country Safe Shores utilizes a multidisciplinary team (MDT) approach towards child abuse/prevention. This approach minimizes the number of interviews a child victim must give to different agencies, decreasing the trauma to the child. The MDT meetings at the Children’s National Medical Center allow for different disciplines/agencies to meet and discuss neglect and physical and sexual abuse cases. This team approach provides a more effective way to help keep children safe, identify their needs, and ultimately help to prosecute those who abuse/exploit children. As part of their educational outreach, Safe Shores offers trainings for those who work with children including the Darkness to Light's Stewards of Children\textsuperscript{*}.\textsuperscript{11} This evidence-informed prevention program increases knowledge, improves attitudes, and changes child protective behaviors while utilizing a conversational real world approach.\textsuperscript{12}

Another organization helping child victims of abuse that I had the pleasure of meeting was Bikers Against Child Abuse (BACA), the Northern Virginia Chapter.\textsuperscript{13} BACA is an international organization that supports children and their families once criminal charges have been filed and the case is proceeding through the court system. It was founded by John Paul “Chief” Lilly who is a licensed clinical social worker, play therapist/supervisor, and a part-time faculty member at Brigham Young University. BACA’s members are men and women bikers whose goal is to empower children to not feel afraid in the world they live and to lend support while working in conjunction with local and state officials. After extensive background checks and training, two BACA members are assigned as the child’s primary contact. Some of the services they provide may include: visiting the child at school; accompanying the child to court/parole hearings; transportation to and from therapy sessions; and maintaining a therapy fund for those in need of assistance. As of the writing of this article, the Rhode Island BACA Chapter is now fully accredited and is working with local officials and agencies in assisting children and their families.

I met with a representative of Stop Child Abuse Now (SCAN) of Northern Virginia who was also trained as a Stewards of Children\textsuperscript{*} facilitator. This non-profit agency was just one example of how these different organizations can come together for education and the prevention of child abuse. SCAN’s “Safe Babies” initiative was of particular interest. Prosecuting abusive head trauma (AHT) cases, this initiative provides educational tools for new parents on a multitude of issues. Because of the more often than not tragic results of AHT, helping caregivers and their families through early intervention education cannot be under estimated.

While at NAAG, I also conducted research in legislative trends in child protection in all 50 states and territories. The mandatory reporting laws vary from state to state and are often amended. Generally, individuals designated as mandatory reporters have frequent contact with children. Individuals typically enumerated are: all school personnel, social workers, all health care providers, clinicians, law enforcement officers, and medical examiners. Enumerated lists can often miss individuals who may have knowledge of suspected abuse or neglect of child. A review of the mandatory reporting laws recently updated in 2016 and provided by the National District Attorneys Association indicates that 16 states have amended their laws eliminating these enumerated lists and/or generally designate “any person” having reason to believe a child is being abused or neglected “shall” report suspected abuse or neglect.\textsuperscript{14} The timing (immediately or within 48 hours), the method (oral or written) and where to report (police department or department of social services) also varies widely from state to state. Moreover, the penalties for failing to comply with these mandates range anywhere from a fine to a misdemeanor criminal offense. Requiring mandated reporting for anyone who has knowledge of abuse or neglect of a child will help to quickly protect children and remove any threats to their safety. Broad mandatory reporting laws provide greater protection for children.

State civil statutes of limitations for victims of childhood sexual abuse is also an area of concern in protecting children. There is a national trend to extend the civil statute of limitations for the filing of claims for these victims. More and more states are eliminating the civil statute of limitations for first degree sexual assaults against children or extending the terms of years in which these victims may file a civil action against their abusers.\textsuperscript{15} According to the Crimes Against Children Research Center and my professional observation, many victims wait to disclose their abuse and, sadly, some never disclose. These delayed disclosures and an inability to connect how these criminal acts may have affected their lives leave many without recourse. State legislators who regularly introduce these bills recognize what national research has shown time and time again, that those victims of childhood abuse experience long-term emotional and psychological effects.\textsuperscript{16} Research in
this area has found that this type of toxic stress has long-term and serious consequences for millions of people. According to the Centers for Disease Control and Prevention and the foundational research referred to as the Adverse Childhood Experiences (ACE) study, there is a strong relationship between the exposure to abuse/household dysfunction during childhood and multiple risk factors for several of the leading causes of death in adults. Disease conditions including heart disease, cancer, chronic lung disease, skeletal fractures, and liver disease all suggest that the impact of adverse childhood experiences on adult health is strong and cumulative.

Recognizing these devastating effects of childhood abuse, the 2015 Status Report on State and Federal Legislative Efforts to Prevent Child Abuse found that many states mandate school districts to provide awareness and prevention training on child sexual abuse within their public school systems. Erin’s Law and Jenna’s Law require that public schools teach children about sexual abuse identification and prevention, with age appropriate materials, and require adults be trained in child sexual abuse. These laws help children, teachers, counselors, and parents to prevent, recognize, and identify child sexual abuse early. Also acknowledging that more than 87 million children are involved in school activities provided by child/youth serving organizations staffed by adults each year and 35 million participate in youth sports programs, some states require that coaches and volunteers participate in these educational programs. Some state statutes also require a task force be established to determine the curriculum and implementation. The development and implementation of these educational mandates appears to vary widely. NCMEC’s website provides many educational resources including videos and other interactive materials that can be accessed by educators, parents, teens, and children at any time and at no cost. I had the pleasure of speaking with both Jenna Quinn and Erin Merryn during my fellowship discussing the many resources and educational tools available to implement these respective laws. I look forward to helping these courageous and inspirational women in the future to ensure that once state legislation is passed it is also effectively implemented.

My fellowship with the Beau Biden Foundation was an eye-opening experience. I was able to learn of the many varied resources that are available to all of us who work in the field of child abuse prevention and education. Although every state has its own structure, needs, and concerns, learning where those resources exist and possibly combining them, is a great starting point. Some state’s needs are universal, some are unique, and many must be tailored. I am grateful for this opportunity and look forward to seeing what we can accomplish together working towards the same goal—the goal that Beau Biden had—ensuring all children are free from the threat of abuse.

Endnotes
1 These different areas include the Call Center, Missing Children Division, Case Analysis Division, Exploited Children Division, Family Advocacy Division, Training and Outreach Division, Office of Legal Counsel, and Communication and Public Relations.
2 A complete list of NCMEC’s operational functions may be obtained at http://www.missingkids.org/programs.
3 See 18 U.S.C. § 2258A - Reporting requirements of electronic communication service providers and remote computing service providers.
5 These are the most recent statistics provided by NCMEC.
6 Alaska, Delaware, and Rhode Island along with American Samoa, Guam, Northern Mariana, and the U.S. Virgin Islands all have original jurisdiction to prosecute all criminal cases. Other states may have concurrent, appellate, or extremely limited criminal jurisdiction.
7 NAGTRI has developed human trafficking training for state prosecutors and recently provided training for the Virginia Attorney General’s Office and the Kentucky Attorney General’s Office.

Patricia Dailey Lewis, Beau Biden Foundation Executive Director, left, Former Vice President Joe Biden, center, and Shannon Signore, right.
I often ask supervisors in government law offices to describe managerial challenges they have faced or observed in their offices. They tell me about struggling to:

- Supervise friends, former bosses, and co-workers who competed for the promotion
- Improve performance and conduct
- Motivate staff and address low morale, especially during times of transition
- Ask others to take on more work with fewer resources
- Resolve conflict and interact with diverse personalities
- Re-engage senior, experienced employees
- Build coalitions among management team members and different divisions
- Hire and develop new employees while retaining experienced high performers
- Adapt to changes in senior leadership, new or realigned managers, and different priorities
- Hold everyone accountable for contributing quality work and give feedback

These challenges reflect a common theme: Influencing others to do what you need them to do because they want to do it. In other words, exercising leadership, which is the inherent accountability of all managers. Managers are charged with: deciding what needs to be accomplished (goal setting, work planning); developing staff to get the work done today and tomorrow (selecting, developing, and
This approach is particularly important in government law offices where demands are frequently driven by unpredictable and uncontrollable external events. Everyone in the organization needs to be able to communicate effectively, manage conflict, influence the behavior of others, and regulate emotions. The point is to consciously develop and rely on leaders as they emerge within the office.

**Management Behavior That Contributes to Building a Culture of Leadership**

- Bring up leadership topics at meetings and talk about what it means to take on a leadership role
- Take advantage of management/leadership training opportunities
- Create opportunities for those who attend training to apply and share what they learned
- Ask for input and acknowledge staff contributions
- Look to different team members to take on diverse responsibilities and leadership functions
- Expect others to step up and be relied upon to assume a leadership role

**Foster Employee Engagement**

Engagement can be defined as the point where individual and organizational needs align. It has also been described as an employee's connection and commitment to the organization. Sadly, engagement among workers in the United States is reportedly at 30 percent, which means that seven out of every 10 workers are checked out. Disengagement is linked directly to low performance, high turnover, and decreased productivity.

Most offices appreciate the importance of an engaged workforce and, from time to time, senior leadership initiates attempts to introduce quick fixes when they sense work is being impacted by low morale. Some sponsor events intended to serve as teambuilding or morale boosters. Others offer environmental rewards such as dress down days or special day celebrations. These efforts may improve short-term employee satisfaction, but they lack a sustained effect on motivation or performance, in part because motivation is not a cognitive issue alone. It involves emotions and relationships. Managers rarely have success in getting employees excited about their work by appealing to reason or offering short-term incentives. Employee level of engagement is connected to how the employees feel about the work they are asked to do, and how they feel about themselves while performing the work.
Factors that contribute to engagement from the employee’s perspective include: strong relationships with co-workers and immediate supervisors; opportunities to use one’s skills and abilities and to perform meaningful work that is valued and contributes to the mission; and ongoing communication between employees and senior leadership. On the other hand, employees demonstrate apathy, disinterest, negativity, higher absenteeism, and frequent complaints when they feel and believe that they are overextended because of increased work and reduced resources; their work is unappreciated and their contribution undervalued; managers overtly or indirectly dismiss their input; expectations are unclear and they are blamed when goals are not met; managers display favoritism, impose unequal standards, and foster competition rather than cooperation among team members; and management withholds information or provides it to some and not others, which signals distrust.

Against this backdrop, what can be done to more effectively engage employees? We begin by asking the timeless question: What drives human behavior? The 20th century model was based on two drives, pleasure or pain, which translated in the workplace to rewarding desirable behavior and sanctioning the undesirable. This “carrot/stick” approach worked for routine, unchallenging, and highly-controlled tasks where processes were straightforward, without the need for creative thinking or innovation. As a result, rewards provided motivation without harmful side effects. As work became more complex, challenging, and technologically provocative, the reward theory resulted in short-term thinking, more unethical behavior, lower performance, and diminished creativity.

Before long, the negative side effects of extrinsic motivation far outweighed the benefits, and the paradigm shifted. It became clear that employees were more engaged when given responsibility and authority that required judgment. They also responded positively when given challenging work, social support, and feedback that resulted in growth and improvement.

By the mid to late 20th century, it became clear to social scientists that there was a third powerful drive, the joy of doing the task itself. Further research validated that employee engagement increases when management provides work opportunities that focus on an individual’s need to self-direct (autonomy), to learn and develop new skills and abilities (mastery), and to connect the work with making a difference (purpose). Employees who take ownership of their work and feel what they are doing matters are far more likely than others to feel engaged on the job.

As a practical matter, the self-determination approach focuses on results-based work, not a time clock, which allows employees flexibility; the work that needs to be done, rather than “how” to perform the assigned task, which permits the employees the discretion to determine how they will accomplish the goal without technical supervision (micromanagement) or mandated procedures; and employee participation in identifying desired areas of work or projects in addition to routinely assigned work, as well as employee involvement in assembling their own work groups and teams.

Creating an environment of self-management also triggers employee engagement, particularly in government law offices where there is a heightened need for adaptability. Senior leadership often struggles with finding the right balance between adhering to well-established procedures to ensure operational steadiness and providing flexibility to respond to current trends. Self-management can bridge the gap. The idea of self-management is not new. Self-managed teams took popular form in the 1970s and 1980s, becoming the framework for task forces in the 1990s. The model is characterized by employee involvement in assembling team members, monitoring individual and group performance, and modifying how work is performed to meet changing conditions. The current trend has expanded to self-managed organizations, where employees have authority to set goals, exercise discretion over the use of resources to meet those goals, maintain access to information related to the work, and share accountability for results.
Recently published findings from a decade of neuro-scientific research support the conclusion that high trust in an organization significantly impacts employee engagement and, therefore, overall work performance in a meaningful way, over time. After scientific studies confirmed that the brain chemical oxytocin in animals was shown to signal safe approach, scientists explored the theory in humans. Carefully controlled trust experiments involved scientists monitoring levels of oxytocin in participants as they chose an amount of money to send to strangers electronically, knowing the money would increase over time, and that the recipients might or might not share the proceeds with the sender. The researchers found that participants who produced more oxytocin sent more money and the amount of oxytocin produced predicted how trustworthy the participants would likely be. High amounts of oxytocin appeared to reduce the fear of trusting a stranger. Years of continued scientific experiments revealed information about trust variations among individuals and situations. Research continued outside the laboratory, where scientists measured oxytocin as it related to employee productivity and innovation. These outcomes combined with the results of a survey used in thousands of organizations ultimately led to guidance for managers connecting behaviors for building trust with employee engagement and resulting higher performance.13

Management Behavior That Fosters Employee Engagement

- Hire candidates with the right skills for the position so they can succeed in accomplishing the work. Invest in developing the skills set of existing employees to bring them to the next level where they can take on different or more complex work.
- Know your people to learn what matters to them and to understand what engages them. Treat everyone fairly but not the same. Avoid giving the same opportunities or challenges to everyone.14 For example, one person might not need structure because she provides it for herself, whereas another looks to you to provide it.
- Rather than focusing on why employees are not engaged, observe your most engaged employees to figure out what works and replicate that model.
- Distribute challenging work that is viewed as worthwhile.
- Encourage people to share positive experiences, exchange ideas, and disseminate best practices, which supports peer collaboration and counters individual complacency or negativity.
- Give people something to work toward that matters by identifying a purpose that is more important than the individual benefit. For example, for an employee nearing retirement it may be leaving a legacy or for a contrarian it may be proving critics wrong.
- Provide direction and information frequently about senior leadership's vision, strategies, and initiatives. At every meeting and in every communication, address the work being done and talk about its impact on the mission. Expressions of openness and frequent communication reduce uncertainty while also increasing credibility and trust. To the contrary, guarded sharing of information or perceived secretiveness causes stress and undermines trust. Daily communication with direct reports improves engagement.
- Reward first line managers for inspiring their employees. Engagement is linked to a managerial leader’s ability to inspire others much more than it is related to the manager's skill or effectiveness in assigning and managing tasks.
- Expect employees to take initiative in identifying desired areas of work in addition to routine assignments. This practice focuses on an individual's need to self-direct how they can best contribute. When employees are asked and trusted to tell managers the work that interests them the most, or where they believe their strengths lie, the employee becomes a partner in designing the work plan and becomes more invested in successfully meeting performance outcomes.
- Display vulnerability by seeking counsel, asking for help, and relying on team members and subordinates. It builds credibility, increases trust, and furthers leadership development. When seeking input, invite both reinforcing and challenging views.
- Model integrity in day-to-day behaviors, with no “say-do” gap.
- Acknowledge and use the experience and institutional knowledge of senior employees by consulting with them and relying on them to take the lead in meeting established goals.
- Team seasoned and novice employees because it helps both perform better.
- Give employees (especially high performers) the opportunity to exercise discretion in how they complete assigned work. This behavior
signals that management trusts and relies upon them to figure out how to get the work done. The value of giving a high performing employee an opportunity to self-direct cannot be overemphasized. Framing assignments from the viewpoint of what the high performer can learn will also make a difference. Autonomy bolsters innovation and cooperation among diverse people when they can offer different methods to accomplish the task. This is a powerful tool when supervising younger employees because they are less bound by organizational mantras such as: “This is how we usually do it, or that won't work here.”

• Share continuous feedback (especially with high performers) to ensure employees feel their work and effort is appreciated. Likewise, provide constructive criticism when accurate and necessary because it shows an interest in the employee’s growth.

• Dispel average thinking and set the bar high by giving challenging, stressful, and achievable tasks to teams, which intensifies the members’ focus and fortifies social bonds that enhances their ability to work together and trust one another to get the job done.

• Encourage peer recognition of employees immediately after meeting a goal in a tangible and unexpected way. This practice celebrates success, inspires striving for excellence, and supports group gain through the efforts of individuals which strengthens trust.

• Support strong social relationships at work, which are directly aligned with high work performance. Those who connect with others earn the trust of their peers and become more productive individually and collectively. Work-related social activities (even if forced at the start) can facilitate people building connections.

**Embrace Change**

A third suggestion for advancing leadership development in your office is to embrace change. The culture of the government law office is characterized by change. Transition in senior leadership is institutionalized. People routinely deal with personnel changes (new hires and realigned managers), different operational processes and systems, new technologies, and the redistribution of limited resources resulting from changes in the nature and scope of the work. The future direction of the office may be unclear. Accepting a different vision can be both cognitively and emotionally difficult. Critical factors affecting acceptance include whether the people value what is being described as important and whether they can see a benefit to them, their work, and the mission.

It is important to remember that change, even when welcomed, is stressful because it always involves moving away from the familiar. People experience anxiety, with feelings of loss, fear, or uncertainty about what is to come. Responding to change frequently triggers strong emotions, rigidity, and resistance which can be demonstrated by silence, hostility, malevolent obedience, or confusion. Managers have an especially challenging role in leading themselves and others through a constantly changing landscape. How managers react and interact with subordinates during this time can significantly impact levels of trust and credibility, potentially harming work performance, as well as relationships. Likewise, managers can act to build trust and effect a smooth, positive transition to the new environment.

**Managerial Behavior That Embraces Change**

• Reframe how change is approached. Identify how the change may have a positive impact on the office systems, operations, workload, and employees and can result in opportunities for growth.

• Approach leading change as a process by taking the following steps:
  • Explain the reason for the change, creating a sense of urgency
  • Describe what success looks like, especially if successful elsewhere
  • Mobilize support; anticipate potential resisters, how they will act, the impact of their behavior, and how to overcome their resistance
  • Celebrate success along the way
  • Monitor progress, acknowledge missteps and adjust as necessary

Be mindful of potential obstacles to change efforts and contemplate ways to overcome them:

• Inadequate leadership, where the direction, strategies, or roles are unclear.

• Boss barriers exist when someone in the management chain has not committed to the change and suggests overtly or subtly that it is foolish, unnecessary, or doomed to fail. This can be a silent killer because employees are apprehensive to disagree openly with management. It can, however, present an opportunity to “lead up” by focusing on the benefits of the change.
• System barriers are associated with established rules, procedures, bureaucracies, or existing culture that contravene proposed changes. It is helpful to identify people in the office with change experience and who know how to work around system barriers.

• Mind barriers internalize a deep feeling that change is impossible. It becomes a mental block and disempowers action. An equally powerful force is the power of creative people to help others see possibilities becoming reality. Tell positive change stories, rather than conversations that retell failures. The “I survived, so you can too” approach is also useful.

• Information barriers can freeze movement because information is a source of power and lack of information disempowers. Providing accurate, necessary feedback that informs helps people make decisions. Share as much information as you can; be honest; do not avoid reality. Remember: Bad news does not get better with age.

Demonstrate resilience, which is the physical, cognitive, emotional, and psychological capacity to adapt to disruption and bounce back from adversity. Behaviors that build resilience include:

• Offering and accepting help; relying on strong relationships and support systems

• Engaging in physical activity; showing a healthy sense of humor

• Accepting the reality of the situation and looking for constructive ways to deal with it

• Committing to find something interesting and worthwhile in the work you are doing

• Avoid looking at the worst-case scenario or catastrophizing

• Over communicate. Conduct all hands meetings, explain the vision, plans, strategies, rationale behind decisions that impact staff, and give progress updates along the way. Acknowledge that change is difficult.

The Experience of One Attorney General’s Office in Advancing Leadership Development

The Tennessee Attorney General’s Office (the Office) took advantage of resources provided by NAAG to strengthen its office management structure, processes, and environment. By utilizing the results of a NAAG management review as an opportunity for growth along with subsequent management training and a facilitated strategic planning workshop provided through the NAGTRI Center for Leadership Development, the office reorganized its management structure, integrated personnel into new roles, and introduced revised systems, all of which exemplify building a leadership culture, fostering engagement, and embracing change.

At the attorney general’s request, NAAG conducted an office management review. Taking the information and suggestions provided, the Office created mid-level manager positions (senior deputies), and existing divisions, supervised by deputies, were grouped into sections. Each section was to be led by a newly-appointed senior deputy. Several deputies were promoted to the new positions, which left vacancies at the deputy level. The management restructure also envisioned that the senior deputies would form a management team and promote a cohesive, integrated culture among all divisions and sections. The Office embraced this structural and cultural change. Managers identified critical points to implement the reorganization: Fill vacant management positions by hiring or promoting competent candidates and integrating them into the office; clarify managerial roles, functions, expectations, responsibilities, and levels of authority; draft position descriptions and work plans; institutionalize lines of communication; assess the environment and address process failures to introduce more efficient systems.

The Office experienced related transitions over the past two years. The long-serving chief deputy retired and a new chief deputy from outside the office was appointed; offices moved; and new telephone and case management systems were introduced, along with revised performance evaluations.

The management restructure significantly impacted roles and accountabilities, relationships, communications, work flow processes, and norms of behavior in the office. For example, the relationship between the deputies and front office changed. Division deputies no longer directly reported to the chief deputy. Having different reporting lines impacts the culture of the office.

Senior deputies participated in a NAGTRI facilitated workshop to draft a strategic plan that would effectuate the structural, personnel, and cultural changes and realize the vision of a cohesive, effective and engaged office. They are working to define managerial roles and functions, organize work flow processes, introduce new systems, ensure an engaging environment, prepare for succession planning, and integrate mid-level managers into the Office culture. Continuing these efforts will serve to advance leadership development in the Office.
Endnotes


2 Noel Tichy, Succession: Mastering the Make or Break Process of Leadership Transition (2014).


7 Peter Daly, Cate Reavis, & Michael Watkins, The First 90 Days in Government: Critical Success Strategies for New Public Managers at All Levels (2009).

8 Stewart Liff, Managing Government Employees (2007).


Resource for AG Offices

The NAGTRI Center for Leadership Development is committed to supporting the managerial work of the attorney general community.

Learning and development opportunities are designed for participants to acquire the knowledge, skills, and behaviors needed to serve as effective managerial leaders. The Center’s holistic approach provides a curriculum of core competencies and focused practice skills along with customized programs to meet specific office needs. Training and facilitation resources are also available to assist offices in implementing recommendations from NAAG management reviews.

Staff members from the Hawaii Attorney General’s Office participated in a NAGTRI Trial Advocacy training in Honolulu in February 2017.
Announcing a New NAGTRI Research Tool

PAGE: Promoting Attorneys General Expertise

The National Attorneys General Training and Research Institute (NAGTRI) is excited to announce the launch of its newest educational and legal resource PAGE: Promoting Attorneys General Expertise. PAGE is a “Wikipedia”-inspired, user-editable webpage that will allow attorneys general offices (AGOs) to exchange information on a variety of legal topics ranging from antitrust to veterans affairs. PAGE will serve the AG community by sharing information such as research articles, expert witness information, statutory compilations, legislation, and more. This information will help to expand communication and cooperation among AGOs and assist each in carrying out its duties. To this end, PAGE will be a closed system, accessible only to and populated only by AGO staff and National Association of Attorneys General (NAAG) and NAGTRI staff.

PAGE will be launched with instructional materials at the NAAG Winter Meeting, Feb. 27-March 1. PAGE will continue to evolve and grow only with the support and efforts from all members of the AG community. Any suggestions for content or questions should be directed to NAGTRI Program Counsel Joanne Thomka at jthomka@naag.org. NAGTRI, a NAAG branch, looks forward to continuing to serve the AG community with PAGE.
Vacant, abandoned, and tax-delinquent properties are often grouped together as “problem properties” because they destabilize neighborhoods, create fire and safety hazards, drive down property values, and drain local tax dollars. The U.S. Fire Administration reports that, from 2010 to 2012, an estimated 25,000 vacant residential building fires were reported annually in the U.S. These fires result in an estimated 60 deaths, 225 injuries, and $777 million in property loss each year. Abandoned properties also are known to attract crime. A study done in Pittsburgh showed that the rate of violent crime within 250 feet of a recently vacated property is 19 percent higher than the rate in the area between 250 and 353 feet from the property; furthermore, the longer the property has been vacant, the greater the effect it has on crime rates. A report done in Austin found that 34 percent of vacant properties studied were used for illegal activities; this number increased to 83 percent if the properties were unsecured. Not only do these crimes pose a public safety concern, but they also drain police department resources and cost taxpayer dollars.

Blighted properties also cost local municipalities the resources needed to clean and maintain the properties in an effort to fulfill their duty to protect the public health, safety, and welfare of its community. For example, a study in Philadelphia calculated that the city spends more than $20 million annually to maintain some 40,000 vacant properties, which cost a conservatively estimated $5 million per year in lost tax revenue to the city and school district. Chicago officials estimated that, in 2010, they spent an estimated $875,000 to board up or secure 627 properties, and officials in Detroit estimated costs of $1.4 million to do the same for 6,000 properties over a period of nearly a year and a half. Additionally, abandoned and vacant properties drive down the surrounding property values, which results in lowering the property taxes that most municipalities rely on as a primary source of revenue. According to Emory University Professor Frank Alexander’s research, “failure of cities to collect even 2 to 4 percent of property taxes because of delinquencies and abandonment translates into $3 billion to $6 billion in lost revenues to local governments and school districts annually.”

Land banks were created to address the many problems municipalities incur due to these abandoned properties. Land banks are typically created by local ordinances, pursuant to state enabling legislation, and operate, not as financial institutions, but, instead, as governmental entities or non-profit organizations. Land banks are better equipped to undertake this task than other public or nonprofit entity because they are often given special powers to do so. According to the Center for Community Progress, “When thoughtfully executed, land banking can resolve some of the toughest barriers to returning land to productive use, helping to unlock the value of problem properties and converting them into assets for community revitalization.”

Special Powers and Legal Authority of Land Banks

To make land banks an efficient and effective system to eliminate blight, they are granted special powers and legal authority pursuant to state-enabling statutes. These statutes allow “land banks to streamline blight removal and create a nimble, accountable, and community-driven approach to returning problem properties to productive use.” Although the statutes differ widely from state to state, some of the more recent examples of comprehensive land bank legislation have granted the following powers:

- Obtain property at low or no cost through the tax foreclosure process
- Hold land tax-free
- Clear title and/or extinguish back taxes
• Lease properties for temporary uses
• Negotiate sales based not only on the highest bid but also on the outcome that most closely aligns with community needs, such as workforce housing, a grocery store, or expanded recreational space.  

Some have expressed concern that land banks have an unfair advantage in competing with private markets. In reality, however, land banks were created as a response to a large number of blighted properties that the private market has rejected. The private market is uninterested in these properties for a number of reasons: clouded title, back taxes, and/or high cost of repairs. A land bank, therefore, is one solution for municipalities to deal with these discarded properties and convert them into community assets.

**Structure and Operations**

There are around 120 land banks and land banking programs across the United States. They are quite diverse in their structures and operations, varying greatly in terms of the size of cities, locations, and economic conditions in which they operate, the size of their inventories, their staff capacity, their legal authorities, and their goals and programs. However, Payton Heins, associate director of Michigan Initiatives at the Center for Community Progress, and Tarik Abdelazim, associate director of National Technical Assistance for Community Progress, both noted authorities on blighted properties and the land bank process, have determined a list of certain best practices successful land banks and land bank ordinances tend to share:

- **Links to the tax collection and foreclosure process.** Frequently there is a strong link between tax delinquency and abandoned properties. Creating a strategic link between tax foreclosure process and land banks is important because auctions rarely lead to a positive outcome with problem properties. Land banks are a tool that can be used to acquire and convert tax-foreclosed properties to productive use.

- **Scaled operations in response to local land use goals.** Land banks need to be designed in a way that coincides with local land use goals and community needs. No matter the size of the land bank, it should operate based on a strong understanding of community priorities and goals, and guided by neighborhood, local, and regional revitalization plans.

- **Policy-driven, transparent, and publicly accountable transactions.** Land banks must build and maintain trust with the public through complete transparency in the establishment of priorities, policies, and procedures that govern all actions. These ground rules and policies must be established prior to any transactions and regularly revisited with public input. Creating websites that offer members of the public full access to accurate, up-to-date information pertaining to all land bank operations, programs, policies, and activities, including sales listings and past transactions, is an important part of the transparency process.

- **Engagement with community stakeholders.** Engaged community members are not only most directly affected by a land bank's work, but they also best understand the community's history and goals. Successful land banks have found creative and consistent ways to inform, engage, and empower these active residents to help prioritize land bank interventions and develop long-term solutions.

- **Coordination with other local or regional tools and community programs.** A land bank should be used as a tool to support locally-developed land use goals, and not a goal in and of itself. Successful land banks facilitate and work within diverse collaborations across the public, private, and nonprofit sectors that share similar economic and community development goals.

Though a land bank is not a cure-all, in the right environment and with the right structure, a land bank can be a key tool for turning blighted property into productive property.

**Funding Sources**

Land banks incur significant costs converting problem properties into productive properties. Therefore, it is critical that land banks have consistent, hopefully dedicated, funding sources. Land banks can be funded through many different sources, including revenue from the sale of properties, foundation grants, general fund appropriations from local and county governments, and federal and state grants.

Land banks in Michigan and Ohio have received a significant portion of their funding from the federal Hardest Hit Funds, while land banks in New York and Illinois are greatly supported by the National Mortgage Settlement Funds. Some states have enacted special legislation that creates financing mechanisms for land banks. In Michigan and New
In Michigan, Attorney General Bill Schuette entered into the settlement with mortgage servicers following the mortgage foreclosure crisis. Michigan state law allocated $25 million of the settlement to create a Blight Elimination Program that demolished abandoned properties, promoted public safety, stabilized property values, and enhanced economic development opportunities. Ten million dollars went to the City of Detroit to eliminate blight near select schools; removing dangerous structures provided a safer route to and from school for children, and overall neighborhood stabilization.

The Michigan Land Bank (MLB) has seen successes in removing blight throughout the state. As of Aug. 15, 2014, the MLB completed a total of 768 demolitions. One important tool that the MLB has is its ability to initiate Expedited Quiet Title and Foreclosure Actions to address title issues that are often associated with tax reverted property and the tax foreclosure process. Clearing liens or clouds in a property's title is important in making the property marketable. The MLB has initiated litigation to clear title to a number of properties under the Neighborhood Stabilization Program through the appointment of special assistant attorneys general. This has encouraged economic development projects throughout Michigan.

In New York, Attorney General Eric T. Schneiderman began granting millions of dollars to New York land banks through the Land Banks Community Revitalization Initiative (CRI) – a grant program administered by his office that distributes portions of the funds New York received in a settlement with banks involved in the mortgage crisis.
2013, more than $30 million has been invested in New York land banks through the CRI. AG Schneiderman also worked with the state legislature to increase the number of land banks permitted in New York from 10 to 20. Since 2013, New York land banks have reclaimed at least 1995 properties from abandonment, returned over 700 properties to the market and back into productive use, and have demolished (or are in the process of demolishing) over 400 unstable structures.

As a result of these efforts, New York has seen many successful outcomes. In Rochester, the land bank is currently working on renovating 70 formerly blighted properties to create homeownership options for low- and moderate-income residents. The City of Schenectady was able to convert vacant and blighted properties into Tribute Park—a large park in an area in great need of greenspace. The land bank in Suffolk County has been able to take over the liens on abandoned and environmentally—contaminated factory buildings and sell these liens to responsible investors who will hold clear title and will remediate the contamination and rehabilitate the properties. Not only does this result in fixing up the property and turning the property back into a tax-paying property, but it also helps create jobs and improve quality of life of community members. These are only a few examples of the successes of New York land banks and the attorney general’s CRI.

Ohio

In 2012, Ohio Attorney General Mike DeWine launched the “Ohio Attorney General’s Moving Ohio Forward Program” in an effort to repair and rebuild communities following the mortgage foreclosure crisis. This program was initiated following a settlement with mortgage lenders and earmarked $75 million of that settlement to go towards demolition efforts in Ohio. The program resulted in the demolition of more than 14,600 blighted housing units.

Land banks from all over Ohio benefitted and were able to partner with Habitat for Humanity, NeighborWorks, and other organizations to tear down blighted structures and rebuild on the property and turn it back into tax-collected and productive use. Land banks also were able to turn some property into green space and side lots, which has resulted in beneficial community uses such as playgrounds, community gardens, and expanded parking. Also, Ohio officials began to notice that neighboring property owners began to take better care of their property once the blighted property was restored.

The Ohio program resulted in improved neighborhoods with fewer public hazards and increased property values. One of the more beneficial results was a drop in criminal activity, as many of the abandoned properties were being used for illegal drug activity and manufacturing. It also helped foster local partnerships and bring community members together.
**Conclusion**

Land banks are a useful tool that can help states combat blight and turn “unproductive” property back into tax-earning property or into a beneficial use for the community. Improving blighted property has benefits that extend far beyond simply cleaning up an eyesore, such as decreased crime rates and increased property value of neighboring lots. Attorneys general, in conjunction with land banks, can play an important role in ensuring that neighborhoods are revitalized, communities are made safe, and abandoned properties are cared for once again.

**Endnotes**

1 Frank S. Alexander, Ctr. for Cmty. Progress, Land Banks and Land Banking 15 (2d ed. 2015).


3 Id.

4 Lin Cui & Randall Walsh, Foreclosure, Vacancy and Crime, 87 J. URB. ECON. 72 (2015). The effect of time of vacancy on crime appears to level off at around 18 months. Id.

5 Funders’ Network for Smart Growth and Livable Communities, Vacant Properties and Smart Growth: Creating Opportunity from Abandonment, 1 Livable Communities @ Work, no. 4, Sept. 2004, at 5.


7 U.S. Gov’t Accountability Office, GAO-12-34, Vacant Properties: Growing Number Increases Communities’ Costs and Challenges 37 (2011).


9 Funders’ Network for Smart Growth and Livable Communities, supra note 5, at 6.

10 Dan Kildee & Amy Hovey, What Is a Land Bank?, NSP Land Banking 101: What Is a Land Bank? (Sept. 2010), available at https://www.hudexchange.info/resources/documents/LandBankingBasics.pdf; Frequently Asked Questions on Land Banking, CENTER FOR COMMUNITY PROGRESS (Dec. 16, 2016, 12:47 PM), http://www.communityprogress.net/land-bank-faq-pages-449.php. Land banking programs can also be developed within existing entities, such as redevelopment authorities, housing departments, or planning departments. Id.

11 Id.

12 Frequently Asked Questions on Land Banking, supra note 10.

13 Id.

14 Payton Heins & Tarik Abdelazim, Ctr. for Cmty. Progress, Take It to the Bank: How Land Banks Are Strengthening America’s Neighborhoods 11 (2014).

15 Frequently Asked Questions on Land Banking, supra note 10.

16 “It is important to note that a land bank is not a “silver bullet” for communities struggling with blight. Though land banks are uniquely designed to help reduce problem properties, the policies, priorities, and activities of a land bank must complement other community strategies and activities, such as strategic code enforcement, smart planning and community development, and effective tax collection and enforcement.” Id.

17 Heins & Abdelazim, supra note 14, at 11.

18 Frequently Asked Questions on Land Banking, supra note 10.

19 Heins & Abdelazim, supra note 14, at 11.

20 Id.

21 Id.

22 Id. at 11-13.

23 Frequently Asked Questions on Land Banking, supra note 10.

24 Id.

25 Id.

26 Id.

27 Id.

28 Alexander, supra note 1, at 58.

29 Id. at 60-61.


31 Id.


34 Id.
35 Id.


37 Id.

38 Id.

39 Id. at 17.

40 Id.

41 Id.

42 Thomas P. DiNapoli, Office of the N.Y. State Comptroller, Land Banks Enter the Fight Against Blight 7 (2016).


44 Id. at 1.

45 Id. at 4.

46 Id. at 11.

47 Id. at 12.

48 Id. at 14.

49 Id.

50 Id. at 11-21.


52 Id. at 1.

53 Id. at 6.

54 Id. at 11-12.

55 Id. at 13-14, 21.

56 Id. at 13.

57 Id. at 7.

58 Id. at 8.

59 Id. at 15-16.
Editor’s Note:
As part of NAAG’s continuing and evolving partnership with the U.S. State Department’s Bureau of International Narcotics and Law Enforcement, two members from the Massachusetts Attorney General’s Office participated in a unique opportunity conducting training for a group of government and non-government officials in Rwanda on the operation of domestic violence shelters. In September 2016, Kim West, the Massachusetts Attorney General’s Office criminal bureau chief, and Stephanie Haven, a paralegal in the office’s Human Trafficking Division, worked jointly to train the small group as it contemplated how best to create and implement a domestic violence shelter operation guide. During this short-term deployment, Stephanie and Kim were able to witness first-hand the changed conditions in Rwanda following the 1994 genocide, which often serves as an international model on transitioning, governing, and reconciliation efforts following a conflict period. Kim and Stephanie worked directly with the Rwandan Ministry of General and Family Promotion and its partners to offer support and provide guidance on how domestic violence shelters tend to operate in the United States. Such information helped Rwandan officials with their goal to assess and identify next steps in executing their plans to get a designated domestic violence shelter fully operational. Stephanie authored this report on their experience in Rwanda, discussing both their professional roles as well as a memorable visit to one of Rwanda’s national parks.

Rwanda has received little attention from the West since the country’s 1994 genocide. Yet, under the leadership of Rwandan President Paul Kagame, the small, landlocked African nation has reinvented itself, and the president has worked to unite its people through their shared nationality rather than dividing them by ethnicities. In some ways, the country has even begun to serve as a model for creating policy that promotes gender equality. For instance, compared to the all-male Parliament before the conflict, more than half of the representatives are now women. Furthermore, with the creation of the Ministry of Gender and Family Promotion (MIGEPROF), President Kagame has recognized the need to dedicate government resources to issues lingering from a longstanding patriarchal society.

The U.S. State Department works with and provides resources to MIGEPROF on a number of these matters, including the creation of a short-term shelter for domestic violence victims. NAAG was asked by the State Department to assist with organizing a training for Rwandan government officials and non-governmental organization workers to learn how domestic violence shelters operate in the United States. NAAG reached out to the Massachusetts Attorney General’s Office, at which time Kim West, the criminal bureau chief, was identified to serve as a facilitator of this training given her extensive experience prosecuting domestic violence abusers when she was a local prosecutor. Although our office does not directly handle domestic violence cases, issues of gender-based violence, including sex trafficking, are embedded in many of the cases that Kim oversees. We prepared to share information about our system in a way that would help—but not dictate—how MIGEPROF could build and operate its own shelter.

The MIGEPROF officials had a very clear goal with this training: create a shelter operation guide that MIGEPROF could present to high-level Rwandan government officials for review. With this objective in mind, we split the training between our presentations and all-group workshops, which could then use the issues we had covered to assist in the writing of the guide. In an effort to bridge some language barriers and power through a few technological glitches, we distributed thumb drives with our presentation materials to each member of the audience. Though we had planned a week-long training, we condensed the material to three days upon request. Each of the 15 men and women attending the training had full-time jobs to combat gender-based violence -- and had worked in their offices early in the morning before the training started and, again, in the late afternoon after it finished. The audience’s efforts demonstrate their
commitment to establishing a program and guide that met the needs of MIGEPROF.

Throughout the training we discussed how our admittedly Western-shaped ideas could be modified—or scrapped altogether—to fit the culture and values embedded in Rwanda. For instance, there was some pushback in how we tended to refer to domestic violence victims as women. While we agreed that most victims are women, the MIGEPROF plan is to house all victims, including both men and women, in the same facility, which is not something shelters in the U.S. tend to do. Additionally, those in the training did not want the address of the shelter to be confidential, as is common with shelter locations in the U.S. Part of the outreach efforts for the current emergency domestic violence center in Kigali have included radio and billboard announcements about what the facility offers and where it is located. This initiative is something MIGEPROF wants to continue for the short-term shelter. Moreover, even though the United Nations recommends an organization independent of the government operate domestic violence shelters, MIGEPROF, a department of the government, will run the facility.

These culturally-specific conversations were vital to the creation of a guiding document that, we hope, will help MIGEPROF actualize the short-term shelter. Although we only worked with these dedicated individuals for a few days, we exchanged email addresses and ensured them that we would continue to support their mission from afar. While we were not able to see much of the country outside the training space and our hotel, we had arrived a day early to trek through Volcanoes National Park and see the famous mountain gorillas. In addition to the invaluable cultural and informational exchange that occurred during the training, we feel fortunate to have had an unforgettable experience with Rwanda’s wildlife.

To AG Office Staff: A Call for Articles

If you are a staff member working in an attorney general’s office and want to write an article for the quarterly NAGTRI Journal, please contact Judy McKee, NAGTRI deputy director, jmckee@naag.org.
About the Authors

Nikki Calvano has been a NAGTRI consultant since 2014. She has been a practicing attorney and training professional for over 25 years. Prior to retiring from the U.S. Department of Justice, Nikki was an assistant director in the Office of Legal Education, where she founded and led the Justice Leadership Institute (JLI); supervised the civil attorney training team in designing courses and provided legal/advocacy skills instruction; started the Medicaid Integrity Institute which trains state Medicaid staff; and served as chief of the National Bankruptcy Training Institute at the National Advocacy Center. Nikki holds a Juris Doctor, a Master of Science degree in Strategic Leadership, and a Bachelor of Science degree in Social Science Education.

Stephanie Haven is the paralegal for the Human Trafficking Division in the Massachusetts Attorney General’s Office. In this multidisciplinary role, Ms. Haven works with government agencies and non-profit organizations to help develop human trafficking prosecutions, investigations, and policy. Before joining the Attorney General’s Office, Ms. Haven reported on issues including gender-based violence for McClatchy Newspapers, USA Today, and CBS News. Ms. Haven is a graduate of Tufts University, where she studied sociology.

Kevin C. McDowell is a deputy attorney general in the Advisory Section of the Indiana Attorney General’s Office. He served previously as general counsel for the Indiana Department of Education. He has BS and MS degrees from Butler University and his JD from the Indiana University School of Law—Indianapolis. He is a military veteran, having served in the U.S. Army. He teaches School Law for Principals at the University of Indianapolis as well as Law and Ethics in the university’s MBA in Educational Leadership Program.

Judy McKee is NAGTRI deputy director, a position she assumed when NAGTRI was formed in 2008. In that capacity, she oversees the more than 100 training programs a year that NAGTRI conducts, both in the continental United States and overseas. She supervises the other NAGTRI counsel, assisting in the planning and designing of new programs. She also serves as an instructor at numerous NAGTRI trainings. Judy received her JD degree, magna cum laude, from Washburn University in Topeka, Kan., a master’s degree in English from Brown University, Providence, R.I., and a BA degree in English from Dickinson College in Carlisle, Pa.

Emily Myers is NAAG antitrust and powers and duties chief counsel as well as NAGTRI program counsel. She has been with NAAG since 1993. She is the editor of NAAG’s third edition book, “State Attorneys General Powers and Responsibilities” and the author of chapters on state antitrust enforcement in American Bar Association and state bar publications. As antitrust counsel, Emily assists states in their multistate activities and maintains the NAAG Multistate Litigation Database, a comprehensive database of state antitrust cases since 1990.

Kari Reed was a NAGTRI visiting legal fellow in fall 2016 and is now a law clerk for Clayton County Superior Court in Georgia. She graduated from the University of Florida with a BA in anthropology and a BA in political science. She then went on to receive her JD from Emory University in Atlanta, participating in Emory’s Turner Environmental Law Clinic.

Dan Schweitzer is director and chief counsel for the NAAG Center for Supreme Court Advocacy and has worked at NAAG for 20 years. The Center staff conducts moot courts for state attorneys who argue in the Court, edits 45-50 state briefs each Term, facilitates communication among the states on amicus briefs, and holds annual training programs.

Shannon Signore was the fall 2016 Beau Biden Foundation fellow working on child protection issues. During this time, she was based in the Washington, D.C., office of the National Association of Attorneys General. As special assistant attorney general in the Rhode Island Attorney General’s Office, she has served as a prosecutor in its criminal division since 2002. In 2011, after serving seven years in the Office’s Domestic Violence and Sexual Assault Unit, Signore was named chief of the newly-created Child Abuse Unit. The Unit prosecutes all cases involving child physical and sexual abuse as well as child murder. Prior to joining the Office of Attorney General, Signore served as a judicial law clerk in the Rhode Island Supreme and Superior Courts. She earned her BS and JD degrees from Roger Williams University in Bristol, R.I.