



## Executive Editor's Report

By John G. Kelly, B.Com., DPIR, F.CIS, L.L.B, M.S.Sc., M.A. (Jud. Admin)

### About John Kelly

John G. Kelly is a Toronto law professor and professional services strategist to consultants and vendors in the corporate legal department and law firm communities on the development of value-added client-centered legal services in the new professional services paradigm. He has developed billings management models that utilize the Uniform Task Based Management System (UTBMS) as a platform for project management applications, metrics measurement and performance management through Balanced Scorecarding. John is the author of the *The Legal E-Business Guide*, published by The Association of Legal Administrators (ALA).

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I attended the 2010 *Council of Litigation Management (CLM)*. Not surprisingly, alternative/flat fees were a topic brought up in more than one session and were the subject of a number of discussions at the various watering holes. Alternative/flat fees come up in every downturn in the economy. They sound and even look good in the short-term but once the economy rebounds, top law firms and their best attorneys rebel, and everything returns to normal. The *Big Ideas* article in this issue of LMR is a must read for every litigation manager tempted to resort to alternative/flat fees as the mechanism to contain their legal spend. Lean thinking, and learning to work cost effectively is the key to containing budgets while ensuring that you continue to get best practices services from your outside law firms. The *Performance Management* article is a different twist. Nancy Fraser contributed an article to an issue of the LMR last year and became intrigued with one of the *Must Read* book reviews. I'll let you read first hand how that read resulted in a shift in the performance of her business.

Enjoy the read.

John



# Big Ideas

By John G. Kelly

## Lean Thinking Insurance Litigation Management

Insurance litigation managers are being enticed by the notion that there is a correlation between the number of outside counsel assigned to work on a case and the end cost to the client. The fewer the number, the lower the end cost to the client. The concept is known as '*lean thinking*.' The simplistic logic behind it is that one timekeeper costs less than two timekeepers. If that one timekeeper is a senior litigator with a minimum five years of experience, then even though their billable hour rate is significantly higher than two junior associate's, the client will benefit overall by being billed by one rather than two timekeepers. An inevitable extension of this is that insurance litigation managers insist on cases being assigned to senior associates and partners. Often lost in this logic is that partners and senior associates started as junior associates. Lean thinking can dry up the pool of senior litigators by not providing juniors with the necessary hands-on casework experience to grow into the seasoned, senior-status level.

Lean thinking is a big idea. It can be a cost-effective insurance litigation management tool. But it needs to be understood and applied strategically, not as a quick fix.

Lean thinking is a concept popularized in the 1990's by management guru James Womack ([www.lean.org](http://www.lean.org)) to provide manufacturing companies with a methodology for combating bloated overstaffing on production lines and within middle management ranks. It does work and has evolved into the Lean Enterprise Institute with a comprehensive professional education program. Lean thinking adheres to a five-step thought process:

1. Specify value from the standpoint of the end customer by product family.
2. Identify all the steps in the value stream for each product family, eliminating whenever possible those steps that do not create value.
3. Make the value-creating steps occur in tight sequence so the product will flow smoothly toward the customer.
4. As flow is introduced, let customers pull value from the next upstream activity.
5. As value is specified, value streams are identified, wasted steps are removed, and flow and pull are introduced, begin the process again and continue it until a state of perfection is reached in which perfect value is created with no waste.

Insurance litigation managers can and should adapt the five-step thought process as follows:

1. Determine what the value proposition is. This doesn't mean fixing on the potential

cost of the case at hand. In lean thinking strategy it means that, in this instance, the insurance litigation manager determines why they've retained this particular law firm. If it is for short-term service, then by all means it may be appropriate to specify that the work be done by a single senior litigator. On the other hand, if the reason the case is being referred to the firm is to augment and implement a long-term relationship, then the value proposition is more complex.

The insurance litigation managers should be looking to utilize case assignments to facilitate professional development. The insurers want to make certain that there is a professional development pipeline in place that will ensure a constant stream of competent litigators familiar with the way it wants to be serviced. This requires that junior associates be introduced to case files at the appropriate level of their competency and that the work they do be monitored and mentored with the file being transferred to a more seasoned senior attorney at the appropriate time.

The e-bill management system is the technology management tool to support this step. It can create a coded catalogue of attorneys that allows the insurance litigation manager to monitor assignments and the level of timekeeper assigned to them.

2. Insurance litigation managers already have the capability to identify all steps in the value stream by breaking them down into phases and tasks using the UTBMS Litigation Code Set.
3. A dashboard program mounted in the e-bill management system can provide the litigation manager with overviews and updates on the most appropriate sequencing of tasks and activities and facilitate on line monitoring. Relationship management between the litigation manager and attorney responsible for case management is the key to assigning the most appropriate time-keeper to cost-effective sequencing.

4. Pulling value from upstream activities is management jargon for pro-active case management. The insurance litigation manager and managing attorney will have prepared a budget that is being monitored on a dashboard with performance analyzed through e-bill review. The litigation is ideally positioned to see what is and isn't going according to plan to initiate corrective action.

5. For insurance litigation managers familiar with balanced score-carding, this fifth step sounds eerily familiar. And so it should. What you are doing is completing the loop and embedding efficiencies into the system. This is strategic "*lean thinking*."

There are some important lessons to be learned from this brief explanation of "lean thinking:"

- First and foremost is that lean thinking isn't synonymous with a dictate that only senior

litigators be assigned cases. Lean thinking is a management strategy that must be applied strategically to insurance litigation management to be effective.

- Lean thinking requires sophisticated technology support to be effective. For insurance litigation managers, this means access to a latest generation e-billings system that can support a comprehensive bill review management program.
- Relationship management is core to a successful initiative. Lean thinking provides insurance litigation managers with an opportunity to maximize the value from their e-billings system platform. The combination of e-billings technology and lean thinking can be the ideal foundation for cost effective litigation management. ■



# Process Improvement

By Nancy Fraser, RN, CEO Med Legal Consulting Source



Nancy Fraser

## Pathway to Process Improvement

*Nancy E. Fraser, RN, is CEO of Med Legal Consulting Service, which she founded in 2000 to provide customized medical record review services to corporations, attorneys for plaintiff and defense counsel, and insurance companies.*

*Nancy received her bachelor's degree in nursing from the University of Wisconsin-Madison and holds a certificate from the University of Southern California in Healthcare Management Development.*

A year ago when I was developing a new strategic growth plan for my company, I discovered a book that would have a profound influence on my thinking, my staff and our medical records review business.

It all began with a book review that caught my eye while reading the **June 2009 issue of The Litigation Management Report**, which was devoted to changes in the legal services market. I had contributed an article, "Leveraging the Defense Dollar in Medical Malpractice Cases" that was a

case study of developments in my area of expertise: customized reviews of medical records by nurse consultants. Many firms are adding an outside medical record expert to their case management teams.

This "unbundling" of documentation is one of many innovations in legal services, according to the book, **Unbound: How Entrepreneurship Is Dramatically Transforming Legal Services Today** by David Galbenski with David Barringer. I've been on this unbundling path since 2000 when I founded **Med Legal**, so this book resonated with me in a very special way.

There are times when you read books that just open up your life. For me, this was one of those books. It spoke to me on a number of levels at a time when I was formulating a strategic growth plan. A decade into building a successful new legal service category, I knew I was on the right track, and on the cutting edge.

**Unbound** spotlights the trends I have seen reshaping the tradition-bound legal industry, and includes interviews with 19 corporate legal counsel and partners in law firms. Like other service professions, the legal trade is facing globalization, which presents both opportunities and competitive pressures. A new generation of lawyers, especially women, are changing work practices, priorities and procedures. There is a commoditization of some services as consumers go the do-it-yourself route. And information technology is having an impact on everything from billing to the democratization of legal information.

Anyone who reads **Unbound** will better understand all the challenges law firms, corporate counsel and insurance companies face as they navigate this shifting paradigm. And based on my own observations since the economic meltdown and in the current financial climate, they are searching for ways to reduce costs and increase efficiencies in managing litigation

Armed with this broad context and framework, I have been able to better serve and communicate with our clients. **Med Legal** is a young and unique company with only a few competitors nationally. Our method of doing business with clients is to intimately understand their challenges and how our services could add value and provide solutions. We help clients do their jobs better while saving time and money.

Clients look to me give them information on what's going on in the industry because I'm talking to all the players. We work on both sides of the bar so I'm talking to plaintiff and defense attorneys, insurance companies and corporations. Our clients want to know what we're seeing out there and how has this economy impacted clients. That has allowed me to share information about our industry. **Unbound** is another resource I'm sharing with them.

My message to clients and potential clients is that it makes business sense to consider alternatives to the status quo. Medical records, for example, contain some of the most important case-forming data of any resource. With expert

analysis, medical record reviews can account for massive savings of time and money while adding precious strategic value.

Legal nurse consultants have the experience and expertise to assess the value of medical data. They can be a crucial link between legal and medical elements of a case. Lawyers are trained to litigate, not to interpret medical data so why waste a lawyer's time doing a nurse's job?

This is especially true on the defense side as companies move away from billable hours to alternative fee arrangements with their counsels. If their clients directly contract and pay for medical record reviews with a third party, lawyers end up with expert medical data without having to spend their time and dollars doing the reports or outsourcing to more expensive alternatives. Most important, both clients and attorneys will have better tools to do their respective jobs.

People tend to undervalue the role that medical record reviews play in the foundation of a liability case. Consider that 70% of all evidence in medical malpractice cases is in the medical records. Consequently, there is an interest and move to take the unbundling route for medical reports.

Entrepreneurs like me like to think about new possibilities and come up with innovations. Reading **Unbound** helped to put me in touch with other entrepreneurs.

First I connected with fellow entrepreneur and author David Galbenski, who has built a legal staffing and consulting company. We had a series of calls and conversations and David has become a friend, resource and a mentor.

He, in turn, connected me with the Entrepreneur Organizations or EO, a global network of entrepreneurs. Members are young, and have at least \$1 million in revenue. I joined the L.A. Chapter and it has been an extraordinary experience.

Being an entrepreneur can be sort of lonely. I've got this vision. I know where I'm taking this company. I know what's possible. I know the opportunity we have but it can be difficult because as a CEO and an entrepreneur I need to be on top of a number of areas, from finance to being the visionary to creating corporate culture while overseeing and making sure operations are inline in tandem with business development.

With EO I'm able to network and build relationships with like-minded people who are in the same place as I am in building a business. It provides so much support, comfort and a knowledge base. There are wonderful educational opportunities and seminars with entrepreneurs, including some who have built billion dollar businesses. Every month I meet with the same group of 12. We share advice, ideas and experiences. It's like having a board of directors who are actively doing what you are doing or have just accomplished what you are trying to accomplish.



**Unbound** has changed my world. One thing led to another and it all has helped me formulate a strategic plan that is catapulting my business. I've had all my staff read the book. I did a session at a staff meeting about the book and everything in it so that we're all coming from the same place. It's become a foundation for my company and me.

I look back and think about the book review in **Litigation Management Report** that has brought me to this moment. It's like serendipity in the extreme, where so many things have come together.

**Editor's Note:** If you would like to obtain a copy of the book review referred to in this article please e-mail me at [johnkelly@rogers.com](mailto:johnkelly@rogers.com) ■

# Performance Management

By Matt Wapnick, Account Executive/Court Liaison, CourtCall, LLC.



Matt Wapnick

## Using Telephonic Court Appearances to Reduce the Cost of Litigation Management

Each day throughout the United States, thousands of lawyers travel to State, Bankruptcy and Federal District Courts to make brief appearances that do not require their physical presence in the Courtroom. There are countless case management, status and trial setting conferences, show cause hearings and motions that easily fall into this category. The travel costs associated with such appearances are staggering, whether the lawyer is across the street or only a few miles from the courthouse. Even thirty minutes of lawyer travel time that can be avoided equates to substantial savings for cost conscious clients, such as insurance companies and their litigation management divisions. By several estimates, \$300.00 or more is saved each time an attorney skips a trip to Court.

Appearing in Court telephonically is not a new a new concept and has been performed on some

level for many years. Only within the last ten to fifteen years, however, have organized methods for conducting these telephonic appearances been widely implemented to make the process uniform and the quality of the calls sufficiently consistent so as to permit Judges to conduct their business without disruption. This process has been greatly aided by the creation of public-private partnerships that call for “turn-key” systems to be installed and operated by private enterprise. These systems are developed to ensure ease of use for the Court, making the transition to frequent telephonic appearances as seamless as possible. Everything is paid for and completely installed by private entities, thus allowing cash-strapped Courts to utilize state-of-the-art equipment and proven scheduling methods at no cost. Upon installation of the dedicated phone line and full duplex speakerphone system, the Court can immediately begin hearing matters telephonically. In a classic “win-win-win” scenario, lawyers save time and personal wear and tear, clients save substantial fees for unnecessary travel time and the Courts help reduce the overall cost of litigation.

Changing the practice of law and the culture of lawyers and judges is not easy, but telephonic court appearances have changed both for the better. Some insurers have already made the direct connection between telephonic appearances and reduced litigation costs, having gone so far as to send out ad hoc memos to attorneys mentioning the availability of such

services. For a widespread change in practice to take hold, however, it is imperative that all insurers and litigation management groups recognize the major cost and time saving benefits of a telephonic court appearance. The necessary steps must be taken to inform attorneys that they can and should appear in Court telephonically. Insurers should invite providers to speak at in-house and industry conferences to help inform attorneys. Insurance providers may even consider revising their litigation management guidelines to require attorneys to make use of telephonic court appearances for appropriate matters. Given the ability to directly quantify savings, it is imperative that insurers take full advantage of the opportunities that telephonic court appearances present by insisting that their attorneys appear telephonically, whenever appropriate.

## Key Benefits of Utilizing a Telephonic Court Appearance Program

*Each Telephonic Court Appearance Directly Contributes to the Reduction of Litigation Costs*

A trip to and from Court can consume several hours of valuable attorney time. Insurance companies are, in turn, billed an hourly rate for the “windshield time.” A telephonic appearance generates one easily identifiable charge (combined with the “in court” wait that cannot be avoided), as opposed to various charges attributed to hours billed on wasted travel.

### *Telephonic Court Appearances Provide Immediate Savings with Each and Every Usage*

Unlike other litigation management initiatives that can be time consuming to implement and difficult to quantify, there is a clear cut cost savings benefit each and every time attorneys choose to appear over the phone in lieu of an in-person appearance.

### *Increased Productivity*

Lawyers are constantly faced with more work than there are hours in the day. Eliminating unnecessary trips to court affords attorneys much needed time to effectively and efficiently manage ever-growing caseloads, which ultimately benefits the insurer and the insured.

### *Ease of Documentation and Billing*

Paying a one-time, flat fee per appearance allows for streamlined documentation and easy client billing.

### *No Worry of Missed Court Appearances*

Attorneys are no longer exposed to potential missed appearances due to unforeseen weather or travel issues arising from traffic or busy airports.

### *Advantageous for the Attorney-Carrier Relationship*

With increasing frequency, attorneys recognize that it is in their competitive and personal best interest to be the messenger raising the use of telephonic court appearances to the carriers with which they

conduct business. An attorney who operates with the carrier's interests in mind may actually generate more business. Many carriers are constantly looking to manage costs and, as a result, tend to gravitate toward the most efficient, cost-conscious firms.

### *Removing the Burden from Busy Court Staff to Allow for Wider Adoption by Judges*

Telephonic appearances should be scheduled in conformity with a judge's existing calendar through private enterprise. Appropriate interviewing of the Judge and courtroom staff at the front end allows for a properly established and administered program – one that is completely tailored to the needs of each judge. The court does not maintain scheduling and administrative duties, but the judge always remains in control of his or her courtroom. The telephonic appearance becomes the norm – not a disruption and court staff may focus their efforts on duties other than acting as a telephone operator.

### *Telephonic Court Appearances Provide a Green Solution*

With every eliminated trip to court, an unnecessary car trip is avoided, thus preventing the release of harmful CO2 into the Earth's atmosphere.

A telephonic court appearance does not require the use of new technology. Nevertheless, there are several keys to establishing an effective telephonic court appearance program that distinguishes

the service from what would otherwise be a conference call with the court. CourtCall, one of the recognized leaders in the industry, was developed around the following key factors and serves as a simple and voluntary way for lawyers to make routine appearances over the phone without disrupting the business of the Court.

### *Install and Utilize Appropriate Technology*

Using the wrong speakerphone technology usually results in "voice clipping" which is a major irritant to a judge. Successful programs include the use of full duplex speakerphone equipment strategically placed in the courtroom and/or chambers and electronically amplified audio conferencing with the port capacity to permit multiple callers and multiple cases simultaneously.

### *Each judge Should Determine the Types of Proceedings for which Telephonic Appearance will be Permitted*

Each Judge must maintain full authority over which proceedings can be heard telephonically. A properly administered program can be tailored to the needs of each judge, through interviews conducted at the onset of the program.

### *Telephonic Appearances Should be Made a Part of Each Judge's Regular Calendar*

The program must be voluntary and allow attorneys full discretion as to when to use

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# Law Firm Profile

By: Monica Davies, Partner, Leonard, Street and Deinard



Monica Davies

## Profile of Firm:

Leonard, Street and Deinard is among Minnesota's largest law firms, with offices in Minneapolis, Mankato and St. Cloud, and in Washington, D.C. Since 1922, they have helped individuals, start-up businesses and Fortune 500 companies achieve their objectives through astute legal advice complemented by good common sense.

## Monica Davies' Bio:

Monica Davies focuses her practice on the representation of insurers and other financial services institutions in class action and complex business litigation. She has litigated in at least 25 states and has defended insurers in class actions filed in 8 states. Her peers have also repeatedly recognized Monica as a rising star, as noted in Minnesota Law & Politics magazine.

*Monica, your firm is quite proud of its record in supporting diversity. You're a successful female shareholder in a prominent firm. Describe how the firm's diversity policy and programs has supported your career development.*

The firm was founded with a commitment to diversity in the legal profession, and has consistently sought to find – and improve – ways to increase diversity within the firm. Our policies are very much geared toward accomplishing that goal, and the firm has been repeatedly recognized and honored for its efforts.

During my job search, I was always very impressed by the culture and collegial atmosphere at Leonard, Street and Deinard. I joined the firm upon graduating from law school in 2001, and was made a shareholder in 2009. From the beginning, the firm and my colleagues have consistently encouraged and supported me in building my practice.

The firm has been equally supportive and respectful of my life outside the firm, and recognizes that we all have personal and family commitments that are just as important as our professional commitments. In my experience, the key to making it work – from both my perspective and the firm's – is a mutual level of respect and flexibility. Like many other parents, I work hard to balance a fulfilling and successful career with the challenges and joys that come with raising my four-year-old daughter (together with my very supportive husband).

Through my own commitment to my clients, my colleagues and my firm, and the firm's flexibility and respect for me as an individual as well as an attorney, I've been able to have both without feeling like I have to sacrifice one for the other.

*Having a child can sometimes mark the end of being on the partner/shareholder track in many firms. You started working at the firm, have a four year old daughter and been made a shareholder. It obviously hasn't hindered your career development. How has the firm's diversity program contributed to your success?*

Again, I think that it is really important for both parties to be committed to a long-term arrangement that works, and to be flexible on a day-to-day basis to make sure that neither our professional commitments nor personal lives are compromised. When my daughter was born, the firm and my colleagues were extremely supportive and I never had to worry that my career or standing in the firm would somehow suffer a setback as a result of the time I took off during my leave. When I returned to the office, I did so on a full-time basis (though the firm does offer a part-time program that I could have chosen to take advantage of), and had to learn to juggle the demands of my job with the demands of being a new mom. Though I often had to leave the office unexpectedly during those first few months as a result of my daughter becoming ill, there was never a moment when my colleagues were anything but

supportive and understanding. I'm also proud to say that there was never a time when my work – or clients – suffered as a result of those last-minute adjustments to my schedule.

This firm is committed to investing in its lawyers. It takes a long-term view on career development and is prepared to make accommodations that make it possible for us to have fulfilling personal and professional lives.

*Did the firm provide you with any formal linkages to support you in those first couple of years or child rearing when as a parent you have to expect the unexpected to occur?*

There was no need for any sort of formal arrangement. One of the things that I love most about my job and this firm is the team approach that we take. Part of that is knowing there are always people who have my back - whether it's a matter of helping to pick up the slack in the event of an unexpected "sick-day," or stepping in to offer help and support (professional and personal) in those thankfully rare but exceedingly difficult times where we are dealing with a more serious illness or accident. I definitely have a support system within the firm, and it's very reassuring to know that I'm in a place where my colleagues and friends will step forward when I need them.

*Does your firm have a 'Women's Network' to provide women with an opportunity to mentor one another?*

Yes. The women shareholders meet on a monthly basis and there are regular meetings for all women attorneys held throughout the year. We discuss things that are happening within the firm and issues that are of particular concern to women, as well as ways we can help one another develop and enhance our careers. The firm also has training and marketing initiatives that are directed specifically toward women, and sponsors an annual networking/social event for women attorneys and women in the business community.

*Are shareholders like you assigned more junior female lawyers to mentor with?*

Mentoring relationships are very much encouraged but, in our firm, they tend to develop in a more informal, organic way, as opposed to through a formal arrangement. In my experience, mentoring relationships that develop naturally are far more effective. The regular meetings and other events held by the women attorneys provide a great opportunity for developing those relationships.

*Do you find that this commitment to diversity adds value to your client relationships?*

Absolutely. Like the firm, our clients are very committed to diversity and it's important for them to see that the firm is building a diverse practice. In fact, some of our national clients

are demanding diversity within their litigation teams and our firm is committed to meeting those expectations.

*What type of work do you do that's insurance related?*

I represent insurance companies in class actions and complex litigation, and have defended insurers in several class actions during the last few years on a national level. The subject matters vary, and have ranged anywhere from challenges to rates and rating practices, to subrogation and claims handling issues. For example, we defended a national insurer in a class action filed in Minnesota, where the class was challenging the legality of an insurance rating plan filed with the state. The court granted summary judgment in our client's favor and dismissed the case with prejudice. That ruling was ultimately affirmed by the Minnesota Supreme Court, which, on an issue of first impression, adopted the "filed rate doctrine" and held that it applied to insurance rates in Minnesota. We have also handled cases involving challenges to our clients' application of insurance rating rules, claims adjustment practices, subrogation practices, and offers of certain coverages. We have successfully resolved many of these matters in a variety of ways, including the negotiation of very favorable individual settlements after persuading plaintiffs to abandon their class allegations, early dismissal on a dispositive motion, and even voluntary

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## Must Reads



### The Bridge

By David Remnick

Alfred A. Knopf, a division of Random House (2010)

When initially elected to the U.S. Senate as its only sitting black senator, Barack Obama informed his chief of staff, "I don't want to be a black senator. I want to be a senator who happens to be black." That remark defines what the legacy of the current president is to date. David Remnick, editor of the New Yorker magazine, has written more than a current biography. This book will provide future historians with invaluable background information on both Barack Obama as an individual and the events and circumstances that coalesced to enable him to achieve a political office, the U.S. Presidency, that all the experts thought was at least one more generation away.

The story of how Barack Obama came into this world, the son of

a black visiting male scholar from Kenya and a white American female with the offbeat name of 'Stanley' Ann Dunham with roots in Kansas is well known. Or we think it is until Remnick fills in the details.

*"Any reader of Obama's memoir, anyone familiar with his campaign speeches, knows the touchstones of his life, and family that he chooses to emphasize: the idealist, who as a single mother, went on food stamps for a while and struggled with medical-insurance forms in her early fifties while she lay dying of cancer; the plain spoken Midwestern grandparents and their warm embrace and quiet desperation."*

Now, for the details that provide a clue as to what helped form Obama into a remarkable young man. Remnick recounts how his grandfather was able to arrange to have him enrolled in the elite Panahou private school in Hawaii that provided "Barry" as he then liked to be called with an opportunity to be educated with elites and link into a network of the well-to-do at a very early age.

Remnick provides the reader with this type of in depth background on Obama's youth for two reasons: first, he dispels conventional myths by pointing out that Obama had an upbringing that provided him with advantages not available to the great majority of Afro-Americans. Next, he provides an explanation of how from an early age, Obama learned to cross over from black to white culture and back and be comfortable in both worlds. This was to prove invaluable in his later political life in making both blacks

and whites feel comfortable with him and look at him as one of their own.

Fast-forward to Barack Obama the politician. We've all read the reports of how Michelle Obama has always been a reluctant political wife. Some accounts go so far as to portray her as opposed to him running for the U.S. Senate and subsequently the presidency and that he was constantly required to drag her along. Not so, according to the exhaustive research Remnick has done. In fact, Michelle is an excellent match for Barack when it comes to politics and they're very much in sync.

*Michelle's practiced dyspepsia was also part of the style of their relationship. She understood his ego and his self-involvement; this was her way of keeping it in check. Although politics was a strain on their relationship, it was never fatal. It is a mistake to make of her in those days, as some accounts have, a cartoonish nag; Michelle Obama was also proud of her husband and shared his desire to do good.*

That political ambition needed to be kept in check. Obama has been a consummate politician from the get-go. His career choices have always been associated with activities that are steps on a political ladder. For example, he chose to move to Chicago because the city contained a substantial black population. This was fertile ground for building a political base. Moreover, Chicago was the home of a substantial number of movers and shakers in the black community. It was an ideal place to build a network.

Working as a community organizer in Chicago's notorious South Side put him in touch with potential mentors. And as Remnick recounts, Obama was a master at learning from the masters.

*Like many young people of promise and ambition, especially ones with absent parents, Barack Obama had a hunger for mentors. He had the gift for winning over his elders and getting them to teach him about worlds that were alien to him. More than many of his peers, he sensed that there was much to learn from older people who had special knowledge about the way things worked, and his eagerness to learn brought out their eagerness to teach.*

Arguably, the best example of the power of this mentoring is the relationship between Obama and Valerie Jarrett. When initially introduced to her through Michele, she was one of the legendary architects of the late Harold Washington's election as Chicago's first black mayor, and had gone on to become Deputy Chief of Staff for Mayor Richard Daley, an emerging political legend in his own right. Obama was eager to learn the ins and outs of high level Chicago politics and Jarrett, like so many others in influential positions, took a shine to him. Within short order Obama was inducted into the elite of local politics.

*She (Valerie) was the one who could lead him to the black aristocracy. The lawyers. The business people. The politicians even. And not only the black aristocracy but also all the*

*movers and shakers in Chicago. She invited them to Martha's Vineyard for vacation. She had dinner parties where she had all kinds of important people for Barack and Michelle to meet. She invited them to charity events, to sit on boards of foundations. Without Valerie it would have taken Barack a lot longer.*

Mentoring also helped Obama develop a cohesive network of trusted advisors. Valerie Jarrett is now senior advisor and assistant to the President for Public Engagement and Intergovernmental Affairs. A glance at those closest to him reveals that they usually have some sort of mentoring relationship with him that, in some instances, goes back a long way. And the beat goes on. Elena Kagan, the current nominee for the U.S. Supreme Court, was Dean of Harvard Law School when Obama was a student and, not surprisingly, a mentor.

In addition to extensive background on the rise of Obama himself, Remnick does a masterful job in explaining how the time was right for a candidate of color to seek the presidency. The phrase "candidate of color" is used advisedly. As was pointed out above, Obama has attributes that make him attractive to and comfortable with whites, blacks, Asian and Hispanics. His looks, his demeanor, his manner of speaking and so on are attractive to all Americans. The American public had become comfortable with people of color in senior positions. The "Oprah Effect" had spilled over into mainstream life. Obama was the political beneficiary of all of this.

Those wanting a concise history of black politics and the evolution of black leadership in America would

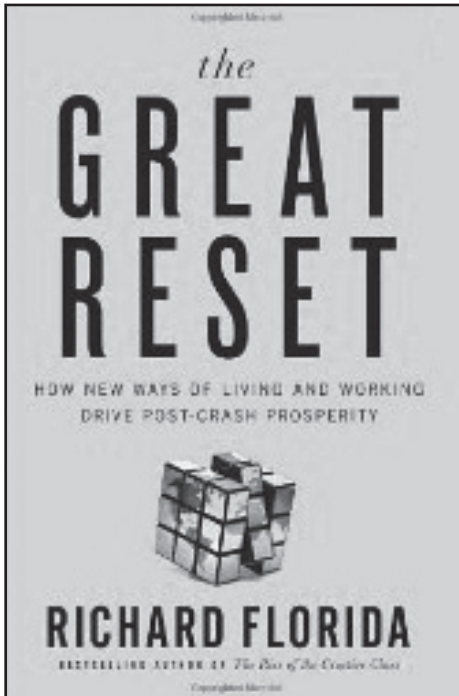
do well to read this book for that alone. For example, in the last part of the book Remnick delivers a fascinating history of black Americans' relationship with the White House from the pre-civil war period when slave labor was used to build it to accounts of black servants to white presidents, to the first black invited guest and finally to the arrival of the Obama family as principal residents.

This book contains 586 pages of text with another 40 pages of footnotes and bibliography. It's not a page-turner but it is one of those increasingly rare books that's highly readable while being thorough. Once you start reading it you won't want to stop. Once you finish it you'll have a different perspective on and respect for Obama, even if it's grudgingly given, as a man who recognized that the time was right and he was the man for the times throughout his career, the culmination of which is the President of the United States. ■

### Quotable Quote

*What Obama understood from the start of his political career was that a purist, an anti-machine like the Hyde Park alderman Leon Despres, might gain a stronger foothold on the path to Heaven, but would never advance far on the path to power. Obama could borrow from the cadences of King, he could advertise his genuine admiration for the civil rights movement, but he was a politician, not the leader of a movement. And to be a successful politician you had to make a few compromises along the way. Obama rarely failed to make them.*

*continued on page 12*



## The Great Reset

By Richard Florida

Random House (2010)

Richard Florida has made an enviable reputation for himself as the definitive source for articulating what he has labeled as the “creative class.” The creative class is composed of the “with it” crowd of knowledge management professionals who are re-shaping the world we live and work in. It’s a popular label since everyone likes to think of himself or herself as being creative and Florida has written extensively about how many people, not just credentialed professionals and high tech wunderkinds, can join the club.

His latest book addresses the real crux of the problem that increasing numbers of the creative class encounter, particularly in established bureaucratic organizations. They’ve stifled in their efforts to transform their

creative ideas and energy into actual practices. Florida, who is the Director of the Prosperity Institute at the University of Toronto, addresses this problem and suggests a solution that is already in progress. That solution is “the Great Reset” that is evolving through a “spatial fix.” Spatial means space and what Florida and his contemporaries argue is that our living and working environments must gravitate to a new space.

The spatial fix affects a way out of a crisis by creating a physical framework for development and further geographic expansion.

The spatial fix induces massive investment in and expansion of infrastructure and the built environment, which effectively freezes “a significant tranche of accumulated capital in the earth, while using it to support the further accumulation of capital.”

This is admittedly a mouthful of jargon. It becomes easier to digest when explained in a reset context. As its name implies, reset means to try again and to do things differently. A spatial fix facilitates a reset through a staged evolution. The first phase is the crisis in which old institutions break down. Think of the rust belt as an example. Once a sign of America’s industrial strength, it’s now broken. A series of crisis interventions such as the auto industry bail-out provide temporary relief but that era is on death row.

However, that doesn’t mean that there will be no more automobiles. A second phase of smart automotive manufacturing with a global dimension is emerging. Fuel-efficient cars are now the mantra of automotive manufacturing. On the not too

distant horizon is an entirely new breed of electronic automobiles being designed and engineered by the creative class. This is the third phase. A fourth phase will be the emergence of new forms of public transportation such as high speed trains that, along with the introduction of true cost road tolls, will encourage people to forego or at least cut back on the use of the personal automobile. The fifth phase will be a dramatically changed economic and environmental landscape in which people shift from suburban to dense urban style living that is compatible with the realities of work and personal life; less reliance on a fossil fuel economy.

One of the primary obstacles to a reset is overcoming the resources that are currently devoted to the ‘old economy.’ We frequently hear governments lament that they can’t afford to devote resources to new initiatives because all available capital is tied up in supporting and servicing the old economy. There are two ways of overcoming this inertia. The first is to develop mechanisms that make the production and distribution of those goods and services cheaper. For example, real estate development shifts from costly and cumbersome Greenfield suburban housing and big box retail outlet development to brown field reclamation and urban infill. Commensurate with that is the development of new technologies and mindsets that facilitate a shift to new modes of generating wealth and facilitating lifestyles that are a comfortable fit with the reset. Google is transforming the newspaper industry from paper and mass circulation driven to electronic on-line request.

The Kindle and I-Pad are in the process of transforming the nature of the book and the way we read it.

That's a start. But that's not indicative of what Florida labels as the "Great Reset."

*For the Great Reset to become a bona fide recovery, society needs to come full circle to harness not only emergent and shifting values, but also to generate new technologies, new economic systems and new patterns of consumption. The next Great Reset must ultimately do for our times what suburbanization did for the postwar era – take shape as a new lifestyle and a new economic landscape that can ultimately power new kinds of demand and undergird a new round of growth.*

One of the pillars of the foundation of this great reset is a shift to creating real wealth with money. Florida, like all financial and management gurus, deplors what financial institutions have degenerated into: movers around of money. It is a degeneration in the truest sense of the word in his opinion because it's not creating real wealth. In fact, fiascos like highly leveraged buy-outs and sub-prime mortgages have caused businesses to fail from crippling financial obligations and people to be literally put out on the street when they lose their homes.

Florida is an optimist. He sees signs that Generation "Y" up-and-comers are aware ahead of the conventional curve and are gravitating towards careers and lifestyles that will be the sources of the new wealth in a truly new economy. Unlike the Boomers and Generation Xers, they are much

more conscious of the fact that wealth needs to be redefined in the context of working for a living in a sustainable environment. They are focused on their material well-being and ambitious without being obsessed with making money. "When asked what career they would choose if finances were not a concern, the top choice was the arts, with 16 percent choosing it as their "dream field," followed by public service (12.5%) and education (12%). Less than half this number, just 5% of grads named finance and consulting."

The grand setting for the great reset will not be in suburban North America or even nation states. As Florida predicted a decade ago, in his breakthrough book, *The Rise of the Creative Class*, hot beds for the great reset will be *mega regions*. The 'tri-state' region of New York/New Jersey/Connecticut, Silicon Valley and the D.C. beltway in the U.S., London, England, the Toronto/Montréal, Ottawa (Tor-mont-awa) in Canada, Bangalore in India and Shanghai in China are examples of the direction in which creativity and the new wealth are clustering. Mega regions are global and interconnected.

Don't ask when this will happen. It's already happening. One of the best indicators is what Florida and others label as the suburban counter-revolution. If you're a Boomer or Generation Xer, you need to get with a program that is already being played out. That means if you own an oversized suburban home you should be looking to let go of it sooner rather than later and move into more manageable quarters with easy access to transit, links to mega region growth industries and accessible sports/culture/

leisure options. Suburban real estate is on the way out and ex-urban real estate is on the way in. London with its municipal road toll tax system is a precursor of what every regional and local government around the world will be required to do as they gravitate towards true costing for public services and generate revenue from existing infrastructure to support the services essential to a sustainable environment. ■

### Quotable Quote

*Employers can offer more flexible schedules and the ability to work from home or telecommute. But as we've already seen, in many cities traffic is not just a rush-hour problem. The only alternative left is to price the roads. We pay for everything else; we pay to take the subway, ride the bus, or take the train, we pay to drive through the Lincoln Tunnel or over the George Washington Bridge. Why should the roads be essentially free? If we want to make traffic better we have little choice other than to make people pay for the roads they drive on.*

## About Litigation Management Report

### Mission

The Litigation Management Report provides litigation managers in the insurance defense community with strategic insight on best practices in the application of subject matter expertise to legal expense management with leading edge e-billing technology platforms and business intelligence systems.

### Vision

Cost effective legal expense management of insurance defense through the leveraging of subject matter expertise into e-billing solutions.

*Performance Management  
continued from page 7*

it. There must be an inherent flexibility that does not require telephonic appearances to be scheduled at special times or dates. When telephonic appearances are made part of the regular calendar, it should make no difference as to whether the attorney is in person or over the phone.

*Scheduling and Billing Matters  
Should be Handled by Someone  
Other Than Busy Courtroom Staff*

Courtroom clerks and assistants are already busy enough. They should not be tasked with scheduling attorneys for their telephonic appearances. In public-private partnerships, these tasks are handled by the private enterprise, with pre-arranged methods for timely delivery of lists of the attorneys that will be appearing by phone.

*Coordination and Program  
Administration is of Utmost  
Importance*

There is a world of difference between a conference call and a court appearance conducted by telephone. Program coordination allows for the type of wide-scale participation often required by courts, thus distinguishing the appearance from a phone call. Coordination is something cash-strapped and understaffed courts generally prefer not to be troubled with, making a turnkey program absolutely essential.

Attorneys for virtually every insurer are already using CourtCall and other providers to some degree. Tracking programs, offered at no cost to the insurer, are readily available and can provide any carrier with a detailed usage report referencing the attorney, court, case, internal file number and other relevant data. There

have been over 2,000,000 organized telephonic court appearances completed, converting to approximately \$600,000,000.00 in savings for attorneys and their clients. On top of that, the 4,000,000 million trips to and from Court that have been erased will have helped save nearly 4,000,000 gallons of gasoline and aided in the prevention of nearly 50,000 metric tons of CO<sub>2</sub> from polluting the air. (A metric ton, for the sake of visualization, weighs about 2,200 pounds and encompasses roughly 19,683 cubic feet). At a very top-line level, that is over 110 million pounds and 984 million cubic feet of CO<sub>2</sub> completely eliminated through the use of telephonic appearances.

The advent of private enterprise telephonic court appearance programs has made it easier than ever to reduce litigation costs. Litigation Management Groups must jump at the opportunity to track usage at no cost. With such prevalent usage and cost-saving data available, they must also take a variety of steps to encourage the wide scale adoption of telephonic court appearances with their attorneys. One email from a claims manager to staff and outside attorneys can bring swift, wide-reaching results. The advantages of telephonic court appearances to insurance companies are real and apparent and, at this point, the extent to which the benefits are enjoyed is limited only by how much a carrier will help inform its attorneys of their availability.

*Matt Wapnick is a Los Angeles Account Executive/Court Liaison at CourtCall, LLC. His background is in marketing, having worked in new media/online advertising for several years prior to joining CourtCall in early 2010. Matt received a B.A. in Communication and Advertising from the University of Southern*

*Law firm Profile  
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dismissal by the plaintiff before any depositions were taken.

*How do you differentiate class action work from ordinary insured defense? What are some of the key distinctions?*

As with any litigated matter, you always need to be looking for ways to attack the merits of the underlying claims, and develop strategies for dispositive motion practice and ultimately winning on the merits. When you're defending a class action, you also need to be evaluating the scope of the putative class and arguments to make in opposition to class certification. In a class action, your ability to defeat a motion for class certification can be as important as having a strong position on the underlying merits, as a successful opposition to class certification can oftentimes end a case in the same way that a successful dispositive motion will. In addition, the discovery and motion practice in a class action is typically far more expansive than in an individual case, and the discovery is often national in scope. The stakes can be quite high, which results in a more significant investment of resources in all phases of the litigation.

*We met at the Council of  
Litigation Management (CLM)  
Conference. Are you the point  
person for your firm on the CLM  
and conference?*

My firm and I are new to the council and, yes, I am the point person for the firm. I made a decision to get involved with the CLM and the conference because I saw it as a great opportunity to expand my network and make new contacts in the industry, as well as hearing from others about the

work that they do and the trends they are seeing (and anticipating) in insurance litigation.

*What stood out for you at the conference?*

The level of exposure and opportunity to connect with different lawyers and insurance executives from across the country, and get so many different perspectives from both lawyers and insurers on developments in insurance litigation was very valuable.

One of the distinctions I noticed between my practice and that of many of the lawyers I met at the conference is that our firm primarily represents the insurance companies themselves in areas such as class action defense and complex litigation, rather than individual policyholders with insured claims. We certainly do have expertise in representing individual insureds but the firm has built a significant practice around the representation of insurers directly.

*What topics or issues raised at the conference were of particular interest to you?*

Alternative fee arrangements were a significant topic of discussion. Our firm has actually been using a variety of alternative fee arrangements with numerous clients for many years. While I don't see the billable hour disappearing any time soon, it is clear that law firms and clients alike will be well served to keep an open mind about alternative fee arrangements and work together to develop fee models that work for the client, the firm, the type, magnitude and volume of work, and the overall attorney-client relationship. Alternative fee

arrangements can cover a broad spectrum of service agreements, and I think we're going to see an increasing number of alternative fee arrangements being used in the future. This is not just a blip on the radar.

*Differentiate what it is like working directly for the insurer as opposed to the insured client.*

The primary difference is the nature of the relationship and the type of claims asserted. When you're defending claims asserted against an insurer directly, you don't have that tripartite element of the relationship, and the claims are generally arising from challenges to the insurer's business practices, rather than the alleged conduct of a policyholder. In either situation, the interests of the client are of the utmost importance. When representing an insured client and working with an insurer providing coverage for the claim and/or defense, it's also important to make sure that the interests of the insurer are taken into account, while working toward the best possible result for the insured client.

*Is there more of an emphasis on defending the case?*

When evaluating whether to pursue a potential settlement or continue to defend through further litigation, I think the analysis and factors taken into account are essentially the same regardless of whether the claim is asserted against the insurer directly or against an insured client. It is a function of assessing the strength of the claims and defenses at issue, the potential exposure, and the benefits and risks of each strategy. Most importantly, litigation and settlement strategies need to be developed with the client's underlying

business and long-term objectives in mind. It is important to understand the client's goals and appreciate the impact on the client's business – as well as the litigation – when determining how best to proceed.

*In a class action that is at "bet the firm" level how do you approach the case?*

In addition to the considerations we already talked about, it is essential to build the right team, keeping in mind everything from the client's business interests to specific experience and expertise with the substantive issues involved. This is something our firm is quite good at, and that sort of team approach to client service is something the firm values very much. We have considerable depth as well as bench strength, and have successfully handled many such matters in the past. No matter what the issue, we have the resources to pull an effective team together and provide top-quality legal work at competitive rates and creative fee arrangements designed to achieve the client's business objectives.

Our firm's approach to fees and matter management has worked quite well for our clients and the firm. Again, I think our success is largely the result of the investment we make in each of our client relationships, as well as each other and the firm. In each matter we handle, regardless of size or complexity, we are committed to delivering exceptional client service and value and developing creative and practical strategies to accomplish our clients' goals – both from a legal and business perspective. ■

## Events and Happenings

### 65th Annual Workers' Compensation Educational Conference & 22nd Annual Safety and Health Conference

Sunday, August 15 – Wednesday, August 18, 2010  
For more information contact FWCI at (850) 425-8156

### NAMIC Annual Convention

Manchester Grand Hyatt, San Diego CA  
Sunday, September 19 – Wednesday, September 22, 2010  
[www.namic.org](http://www.namic.org)

### Stone River Summit

Fairmont Resort, Scottsdale, AZ  
Monday, September 20 – Thursday, September 23, 2010  
[www.stoneriversummit.com](http://www.stoneriversummit.com)

### DRI 2010 Annual Meeting San Diego Marriott Hotel & Marina

Wednesday, October 20 – Sunday, October 24, 2010  
<http://www.dri.org/>

### 19th Annual Workers' Compensation and Disability Conference & Expo

Las Vegas Convention Center  
Wednesday, November 10 – Friday, November 12, 2010  
[www.wconference.com](http://www.wconference.com)

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#### Executive Editor

**John G. Kelly**  
DPIR, F.CIS, L.L.B., M.S.Sc., M.A. (Jud. Admin)  
e-mail: [johnkelly@rogers.com](mailto:johnkelly@rogers.com)

#### Associate Editor

**John F. Kelly**  
CEO, Allegient Systems  
e-mail: [jkelly@allegientsystems.com](mailto:jkelly@allegientsystems.com)

#### Contributors

**Nancy Fraser**  
RN and CEO  
Med Legal Consulting Source

**Matt Wapnick**  
Account Executive/Court Liaison  
CourtCall, LLC.

**Monica Davies**  
Partner  
Leonard, Street and Deinard

#### Allegient Systems

15 River Road, Suite 200  
Wilton, CT 06897

203.761.1289  
[www.allegientsystems.com](http://www.allegientsystems.com)

#### Litigation Management Report

65 Scadding Ave. Suite 121  
Toronto M5A 4L1

416.367.1226  
[www.litigationmanagementreport.com](http://www.litigationmanagementreport.com)

#### Readership Request

To be added to our readership, please contact John G. Kelly.  
e-mail: [johnkelly@rogers.com](mailto:johnkelly@rogers.com)

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