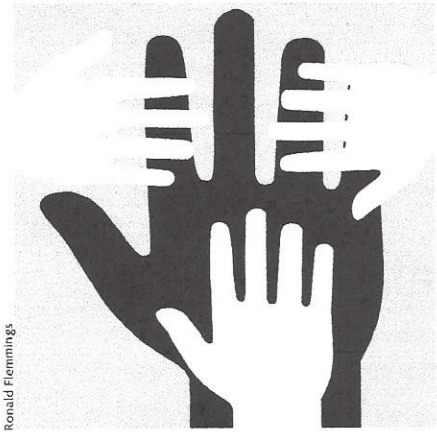
the pro bono effect

By Margaret Emery

Nonprofits, Small Businesses Can Benefit From Training



Ronald Flemmings

On a Wednesday evening in late October, 40 nonprofit professionals were gathered in a conference room at Crowell & Moring LLP's Washington, D.C., office, listening intently as employment attorney Rebecca Springer clicked through a slide presentation on workplace sexual harassment. As Springer described different scenarios that could lead an employee to complain of a hostile work environment, hands shot up around the room.

"One of our interns is being harassed on the street by a client she works with regularly," offered one participant, the executive director of a nonprofit that provides services to the homeless. Since the harassment was coming from a client rather than another employee, she asked, how should their organization handle it?

Springer nodded sympathetically, then noted that while the employer had a responsibility to protect its employees from any sexual harassment experienced on the job, there was no textbook response to this particular situation. She outlined several steps the organization could take, suggesting that it might need to consider a number of different approaches. After taking several more questions, Springer and her co-presenter, Crowell & Moring partner Kris Meade, moved on to discuss the process for handling harassment and discrimination complaints.

The session, part of the employment law training series for nonprofit organizations cosponsored by the D.C. Bar Pro Bono Center, Crowell & Moring, and the Center for Nonprofit Advancement, ended promptly at 7 p.m., but Meade and Springer stayed behind to answer more questions from participants. "We get a lot of great questions from the floor," Meade said later. "When we do this training for nonprofits and small businesses, many of the people who attend are not human resources professionals. So the participants ask very practical, common sense questions, and we spend a lot of time talking about specific scenarios."

Getting It Right

The District of Columbia is home to hundreds of nonprofits that serve low-income residents, and many of them cannot afford to hire a dedicated human resources staff member to ensure the organization is complying with federal and D.C. employment laws. Small businesses face the same dilemma: They need to keep costs down while ensuring they are not running afoul of the patchwork of statutes and regulations that govern employment discrimination, family leave, overtime requirements, and many other issues. This is where the D.C. Bar Pro Bono Center's employment law trainings come in.

The employment law series, which have been held since 2011, are offered separately to both nonprofits and small businesses each year, and each four-part series usually attracts 40 to 50 attendees. By providing nonprofit directors and small business owners the tools they need to manage their workers, employers can avoid problems and deal effectively with issues that come up before they become major headaches.

"For most nonprofits, employees are their biggest cost," says Regina Hopkins, assistant director at the Pro Bono Center. "Even large corporations get it wrong. It's easy to get it wrong, and it's expensive to get it wrong." Those high stakes, compounded by significant changes in D.C. employment laws over the past year, have left many employers scrambling to keep up.

The trainings are a boon for nonprofits and small businesses, whose representatives are able to attend for only $25.

Ways to Help

The D.C. Bar Pro Bono Center is supported entirely by voluntary contributions from D.C. Bar members and D.C. Bar Sections as well as local law firms, corporations, and foundations. To make a tax-deductible contribution, visit www.dcbar.org/pro-bono and click on "Donate."

"The fact that this program is affordable is really important," says Dawn Quattlebaum, chief program officer for the D.C. nonprofit Seabury Resources for Aging and a participant in the fall 2015 training series. "The content is fantastic—what we're learning is very beneficial."

The idea for the employment law training came to Pro Bono Center Managing Attorney Darryl Maxwell four years ago, when he noticed that the employment law segment of the Pro Bono Center's annual eight-part business law training had the longest and liveliest Q&A period of any of the segments. "Of all the topics we cover, it's the one that gets the most questions," says Maxwell. "Everyone has—or aspires to have—employees."

This year's employment law series covers hiring, terminating, and managing employees; employment discrimination; employee benefits; and employee compensation and classification.

A Fresh Perspective

While the goal of the series is to equip nonprofits and small businesses with the tools to handle their HR matters, attorney volunteers say the trainings also often enhance their practice by presenting them with different fact patterns than they typically encounter in their corporate work, and pushing them to consider new approaches to problem solving. For example, Meade notes that very small organizations dealing with a sexual harassment issue will have unique challenges due to tiny staffs and limited workspace.

"Thinking about how to deal with the complainant and the harasser requires a different calculus," Meade says. "At very small

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organizations, moving offices or changing reporting lines is often not an option."

For Crowell & Moring's new attorneys, the trainings also offer an opportunity to get involved right away, and to collaborate with attorneys with whom they might not ordinarily practice.

"The presentations are very much a group project," says Christine Hawes, an associate at the firm who has been a presenter at the trainings since 2012. "It's a great opportunity to work with different people in the labor and employment group."

Supporting the Community

Ultimately, the trainings provide far more than a primer on overtime regulations or illegal hiring practices. By helping to ensure that nonprofits and small businesses serving low-income communities are on firm legal footing with regard to their employees, the trainings contribute to stronger and more effective nonprofits and businesses that are better able to play an important role in those communities.

"Lack of proper employee management can jeopardize an organization's or business's stability," Hopkins says. "We're helping reinforce the foundations of these organizations and businesses by giving them affordable access to top-notch attorneys in the field."

Many of Crowell & Moring's attorneys have been regular volunteers. "It never gets old," says Meade, chair of the firm's labor and employment group and a member of its management board. He has presented at each of the Pro Bono Center's employment law trainings since 2011. "Even laws that have been around for a long time will go through changes, and new developments will arise. So the questions are always fresh, and the scenarios are always interesting."

And it is rewarding, the volunteers say, to see how valuable their expertise can be. By providing nonprofits and small businesses with the skills and knowledge they need to avoid expensive mistakes, attorneys can help participants to recognize and solve a problem before it escalates.

"If you can point people in the right direction," says Crowell & Moring counsel Joel Wood, who presents a segment on employee benefits, "they might not need to get an attorney involved. It can save them a lot of heartache."

Margaret Emery is an attorney at the D.C. Bar Pro Bono Center.

Overruled

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to limitations imposed by the Eleventh Amendment to the Constitution. But the dictum was set that the once sovereign states under the Articles of Confederation now had to yield some of those rights to the superior sovereignty of a government of all the people.

One does not have to agree with the public policy political viewpoints that Root, an editor of the conservative *Reason* magazine and anti-Obamacare activist, brings to his narrative. What is worth considering is his contention that the conflict over the role of the Supreme Court began almost at the Constitution's ratification and continues to center on the question of the degree to which the Constitution and the Court are supposed to protect the individual citizen from the overreaching of the government—federal and state—that is supposed to serve him.

What is cautionary about the story Root tells is how often one Court's rationale for restraint can be turned into a succeeding Court's justification for activism. He reminds us of the famed dictum of Progressive icon Justice Oliver Wendell Holmes Jr., "If my fellow citizens want to go to Hell I will help them. It's my job." Juxtaposed to that is the echo of Chief Justice John Roberts deferential decision in the Obamacare case, "It is not our job to save the people from the consequences of their political action." So who is the activist here?

Root begins his construct with Frederick Douglass, who escaped slavery in Talbot County, Maryland, and became the voice of the abolitionist movement before and during the Civil War.

Root's argument based on "the tremendous fact of self-ownership" not only led to the overthrowing of the institution of slavery, but it produced "a new constitutional order" that found its expression in the Fourteenth Amendment, which not only guaranteed equal protection to the individual to exercise political citizenry but also protected that individual from a broader list of acts by governments that limit the right to pursue free labor and to profit from his labor.

But scarcely five years after ratification, a majority of the Court stripped the amendment of its key meaning in a case of a Louisiana state-authorized monopoly, by ruling that there was no legal protection for individuals against state authority. Thus the Fourteenth Amendment became the shuttlecock, along with Article One's Commerce Clause, in the contest between those who would let popular will take us to "Hell" if need be versus those who would seek to interpose judicial rulings (on school segregation, abortion rights, or mandated health insurance) to hasten popular political change.

When confronted with the question of whether the Roberts Court leans more heavily to the activist left or the deferential right, Root offers a novel alternative. Taking other Supreme Court rulings into the decision mix, he argues that the current Court faces two basically conservative interpretations of what activism versus restraint means. One is the old anti-New Deal era strict constructionist view cherished by Libertarians. The other is a new hybrid typified by Roberts and legal guru Robert Bork, who have taken deference to legislation away from the Progressive Left.

This is an accessibly written and often witty book. It will make you think.

Author James Srodes' latest book is On Dupont Circle, Franklin and Eleanor Roosevelt and the Progressives Who Made Our World.

The Devil's Chessboard

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finitively. But he explains why the agency of national security has morphed from the romantic swashbuckling days of OSS and its contribution to the war against fascism to its present post-Snowden era of excessive secrecy, insularity from checks and balances, and lack of accountability. If one man personifies the history of CIA excesses Talbot and others have criticized, Allen Dulles is a prime candidate. Recent books, *The Brothers* and *The Georgetown Set*, for example, explore this phenomenon. Talbot's book adds bills of particulars to the same indictment, and his story is depressing and alarming.

Harry Truman, who created the CIA, later claimed "it was a mistake . . . If I'd known what was going to happen, I never would have done it . . . it's become a government of all its own and all secret." Others have questioned the continuing unchecked role of the CIA since Truman's remark. But flying the flag of national security, the agency perseveres through scandals and criticisms, seemingly impervious to reform.

Ronald Goldfarb is an attorney, author, and literary agent whose reviews appear regularly in Washington Lawyer. *E-mail him at rlglawlit@gmail.com.*