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## Lawfutures, or, Will You Still Need Me, Will You Still Feed Me, When I'm Sixty Four?

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# Lawfutures, or,

## Will You Still Need Me, Will You Still Feed Me, When I'm Sixty Four? [\*]

by Stephen T. Maher

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### The Accelerated Pace of Change

{1} I cannot imagine what it was like to practice law without a photocopy machine. In the first years of my practice, I received a few briefs typed the old fashioned way, on onion-skin paper with five sets of carbons in between. But since then, we have witnessed a continuing march of progress in information processing. From the mag card, to the memory typewriter, to the System 6, to the dedicated word processor, to the personal computer and now to the computer network, we have seen technology, when working correctly, providing tremendous assistance in meeting the demands of our busy lives. Word processing, document assembly, document management, deadline control, and many other things that lawyers did by hand are now automated. Photocopy machines facilitate an increased quality and speed of paper flow. The routine use of fax machines has reduced delivery time for paper communication by at least a day. The online transfer of word processing files allows paperless editing, coast to coast, in a matter of minutes. Advances in data storage, transfer and manipulation allow us to do, in minutes, things never thought possible.

{2} It will not be long until we can carry the equivalent of an entire law library in our briefcase. That library, and the many other things we will have immediately available, will be well used. Present day electronic search capabilities routinely allow us to find needles in haystacks, particular words used in a particular way among thousands and thousands of documents. That is something that we could not do with an army of assistants just years ago. Advances in search technology will soon bring us even more accurate ways to find what we are looking for. The day when people can ask a computer an intelligent legal question and get a controlling legal answer is the day that many lawyers will be looking for work. How have we prepared to deal with this technological revolution?

### The Infowarrior

{3} Lawyers, the original infowarriors, have fallen behind the times. Lawyers know the power of information better than most. The collection and marshalling of information has always been their stock in trade. As a group, however, they have failed to keep track of developments in information technology that make the gathering and organization of information cheaper and easier than ever before.

{4} This lapse in learning has consequences. Lawyers who have kept up with developments in technology may have an edge in head-to-head competition with lawyers who are less technologically aware. One dramatic way this imbalance is demonstrated is during the courtroom use of new technologies. Take, for example, the impact of technological improvements in the impeachment of a witness during cross-examination concerning prior inconsistent statements. Impeachment can often be powerful. Technological advances can make it devastating.

{5} The traditional impeachment drill allows the lawyer to read the prior question and answer to the witness and ask the witness whether the witness remembers the exchange. High tech impeachment uses videotaped deposition testimony placed on laser disks to show that prior exchange between counsel and the witness to the jury. Hearing the actual question and answer by the witness, rather than hearing the lawyer say what was said, provides the jury with more information about what actually occurred. The videotaped record of the deposition includes how things were said, and how people reacted to what was said. This additional information can increase the impact of the impeachment on the jury.

{6} The additional impact on the jury is due in part to the technology itself. Video is a powerful medium in society, and that power carries over into the courtroom. It is disquieting, to those who sit as factfinders, to see and hear the witness before them give a different answer while wearing the same suit. Without video, a witness can perhaps even deny the answer read by the lawyer from the deposition. Then, a court reporter could be called to read his or her notes, to confirm the exchange occurred. But even with this corroboration, doubt could remain about what really was said. Also, witness can admit inconsistency and claim confusion about the question when the impeachment is done in a traditional manner. A video can show, by the way the witness answered, that there was no confusion. Any challenge to the video version of the deposition would be foolhardy. The video provides all sorts of information, like how confidently an answer was given, what facial expression accompanied the statement, and other body language, that people normally use to determine meaning.

{7} The video provides more information useful for decisionmaking than a written transcript provides. The jury can use that additional information to make more informed judgements about not only what said in the past, but what consequences the prior inconsistent statement should have on the case. The inconsistency may not have much consequence if the witness giving the prior inconsistent statement seemed confused, or unsure, or seemed to misunderstand the question. It might be of greater importance if the video showed a quick and confident response and the testimony given at trial is contrary and seems calculated to benefit the witness.

{8} A variety of new legal issues and tactical concerns arise from the use of new technologies. The increase in the information available through video depositions, for example, raises many questions. First, it raises fairness issues. Must access to these this new technology be equally available to all? What if indigent litigants cannot afford to use video, and their opponents can? Second, can counsel switch back and forth between video and written transcripts, depending upon which helps the case? Or must video be used throughout where it is available? Since written transcripts give attorneys more leeway to put a certain spin on the question and answer, they may be preferred by counsel but might be less valuable in the truth finding process than the video version. These kinds of use issues will have to be explored.

{9} Third, how will this new technology change the practice? Certainly it will change witness preparation strategy. A witness appearing for video deposition must be as prepared as he would be for trial. A trial quality

performance is important because even things like the witness's tone of voice and facial movements may be examined at trial. Also, this technology will focus lawyers on questions like, who must be on camera and when, what kind of camera angle, lighting etc. is used, to assure that the witness is not unfairly depicted and makes a reasonable appearance on the screen. These kinds of issues may go to the impact, even the usability of the video, because judges may find that a video that unfairly depicts the witness may not be used.

{10} New kinds of impeachment may come out of this new medium as well. For example, one lesson from the Interactive Courtroom™ series demonstrates the use of a video deposition to impeach on body language. The witness gives the same verbal answer in the video deposition and at trial. However, the body language in the video deposition suggests that the answer stated at both the deposition and the trial is not correct. In that segment, the witness said he was not sorry for what had happened, but his body language suggested he was. When he was adamant at trial about not being sorry, the video deposition was used to impeach the witness' statement that he was as adamant about the point in deposition as in trial. What this suggests is that impeachment, using video, may not be limited to what said at a deposition. Future impeachment may include things like inconsistencies, emphasis, in certainty, and other nonverbal information preserved in the deposition video. Watch for all sorts of new types of impeachment made possible by the additional information brought to trial by the video deposition.

{11} The impact of video on trials is a chapter on trial practice that has yet to be written. From what we have already seen, we can predict that the impact will be significant. How soon will it be until we routinely see litigants hire trial directors and trial producers when the case is signed up, to keep them from working on the other side? Will trials be shot in their entirety, perhaps adding admissions from the pretrial phase, and then edited, with professional assistance, to present a closing argument that looks more like a football highlights show than a traditional closing?

{12} The broader use of video in trials may raise deeper issues as well. How should all this video be analyzed? Should the case turn on who makes the most moving closing film? Or, now that so much more factual information can be packed into a trial, will the trend be towards more careful and more thoughtful analysis of what it really proves? Another way to ask this question is to ask whether the closing video will tend more toward a political advertisement or a documentary. With this new ability to completely preserve and replay large volumes of information, will some more systematic method of analysis than is now employed gain favor? For example, will jurors be given more detailed interrogatory verdicts so they can answer the smaller questions on what happened factually, rather than just determine, based upon uncertain means, who should prevail? We will not know the answer to these questions for some time.

{13} One thing is clear. Technology will continue to make an impact on the practice of law, and as it does, it will continue to raise new problems and new opportunities. How ready are we for those new challenges?

## **The Challenge**

{14} What will the practice of law be like in twenty years? I have practiced and taught law for twenty years, and I hope to practice, teach and write for at least twenty more. This essay is an attempt to look down that road, and to guess about how the practice of law will change, to help people start to think about changes that may well reshape the legal profession.

{15} Like other lawyers of my generation, I have already seen great changes in the practice of law in my time. Two major forces have been responsible for many of the changes we have seen -- the increasing emphasis on the economics of the law business and the increasing influence of technology on the practice of law.

{16} Until recently, I had not given much thought to these changes. Looking at technology issues to most lawyers means looking a few months ahead and deciding which new computer to buy, not thinking about what computers will do to the practice and perception of law in the next twenty years.

{17} A few things have focused my attention on these issues. First, I have been teaching lawyers trial evidence, tactics and skills using new interactive multimedia materials developed at the Stanford Law School Interactive Video Project. These materials, an eight laser disc set sold as The Interactive Courtroom<sup>tm</sup>, use a computer, a disc player and a television set to put the users in the midst of the legal activities they are learning. The series is now being introduced on CD ROM, so that lawyers can sit at their multimedia computer and interact with the lessons at the desktop. It was during a visit to Richmond to teach with that system at the McGuire, Woods, Battle and Booth firm that I was introduced to this Law Journal. Using interactive teaching materials as much as I have has convinced me that, as the costs of developing interactive lessons continues to drop, and as their popularity grows, this technology will have a large impact on both teaching and practicing law.

{18} A second circumstance that focused me on the future of the practice was an observation I made while preparing to teach a civil procedure course. I noticed that the two aspects of the civil procedure rules that had changed most dramatically in the twenty years since I graduated law school were the increased emphasis on alternate dispute resolution and on the use of forms that embody the principles set out in the rules. The prospect of a future practice of law heavily dependent on the use of interactive forms which embody logic and law and follow them to cull and channel information seems a likely development. Add to that the human-like interface that voice recognition technology and "virtual reality" will soon be able to provide, and the prospect of machines taking over a significant part of the practice seems less like a science fiction story and more like a real possibility for the practice of law.

{19} Lawyers must begin to think more long term because the pace of change is accelerating, giving lawyers less and less time to adjust as the opportunities for major change arises. Ignoring new opportunities created by technology is not a viable option because the lawyers who fail to change will suffer a real and continuing competitive disadvantage in the legal marketplace.

## **Trends**

{20} Three forces are accelerating and will soon collide, creating a "triple witching hour" for the practice of law. First, the economic realities of practice will continually increase in importance as more lawyers enter the market and competition among lawyers increases. Clients with the more lucrative legal business, such as large corporations who routinely hire outside counsel, are already more conscious of the cost of legal services and many are taking action to reduce legal costs. As this trend continues, lawyers will continue to be pressured to lower rates, to use more time saving measures, and to open their use of time and time-saving measures to more immediate and searching review by clients. These demands will gradually force broad changes, not just in the way that lawyers charge for their work, but in the way they do their work.

{21} This leads to a second, related theme, the general intensification of broad popular dissatisfaction with the cost and inefficiency of justice as defined and dispensed in America. Those who can afford lawyers are acutely aware of how much it costs and how long it takes to resolve matters when they rely on counsel and the courts to order their legal affairs. But they are not alone. Those who cannot afford lawyers are also unhappy with the present system. Ordinary people increasingly find their lives affected by laws that they do not understand, cannot use to their advantage and cannot control when used against them. These ordinary people are looking for a better way, but to date they have not been happy with the available alternatives. Paralegal clinics are often no substitute for a good lawyer. Informal approaches to conflict resolution, from letter writing to mediation, are not as powerful as litigation when it comes to getting what you want.

Dissatisfaction with the present system has not yet caused a revolution because it appears that you must sacrifice the power of truth, as established by formal process, for affordability, simplicity and speed. When technology makes powerful new alternatives available, watch out. Software to help laypeople draft their own legal forms is just a small step in that new direction.

{22} This leads to the third theme, technology. To be competitive, lawyers will soon be forced to computerize more and more of their work. But technology cannot be limited to the service of the status quo. Technology will transform the practice of law as it transforms the world. Newly available technologies, like voice recognition, digital video and high volume data storage, will create new protocols governing how agreements are formed and monitored and how disputes are resolved. The rise of technology, or more accurately, the unbinding of technology from servant of our wishes to master of our destiny, is about to take place before our eyes. The technology currently making lawyers so much more productive and efficient may soon escape their control, change their routines, challenge the inefficiencies they enjoy and form the foundation of a new practice of law.

{23} It is reasonable to predict that technology will become pervasive in the law business, because law is an information business, and technology can do wonders with information. Technology offers new solutions to the problems raised by the economics of practice and by popular dissatisfaction with the present system, but they may not be the answers that lawyers will want to hear. We may not be anxious to find out that computers will soon do much of the work that lawyers and their paralegals and secretaries do each day as they try to make a living practicing law. Lawyers may not want to hear that computers may soon be called upon to offer revolutionary new systems of computerized justice which threaten to marginalize our crumbling justice system. Lawyers can defend the existing system with many cogent arguments, but that defense may prove to be of little interest to people essentially excluded from the present system by its cost and inefficiency, or to the people called upon to pay the bills for the legal services now required to navigate the present legal system.

{24} When I was discussing this piece with a nonlawyer, her reaction to this thought was that she did not realize that lawyers were subject to the same unsettling effects that technology has had on other industries. Many lawyers seem to believe that they are above the destructive force of technology. While we need only look at the wigs still worn in England to get a sense that legal institutions may sometimes resist trends much more effectively than other institutions, it is unwise to assume that we are immune from the forces at work here, especially in the areas of practice that relate closely to business. As new, more economical and more efficient methods are developed to establish the terms of business relationships, to monitor those relationships and to resolve disputes arising from those relationships, those new methods will be embraced by business. Economics and technology will change our clients' world. Our world must also change if we are to stay relevant in theirs.

{25} Lawyers and legal institutions are particularly vulnerable to the unsettling effects of technology because of the huge volume of information we process each day. Given the ever increasing power of computers, and their constantly falling cost, it is not unreasonable to predict that essentially unlimited computing power will be available to us in less than twenty years. That computing power will be enhanced by the linking of telecommunications technologies that will allow instant access and immediate use of vast amounts of information formerly unreachable in paper texts around the world. These forces will not only reduce overhead - they will reduce the lawyer's ability to charge for repetitive tasks. These forces are likely to spawn elaborate practice software, including complex interactive forms, to capture and exploit this great power.

{26} Established lawyers cannot turn their back on such vast computing power and survive. If they do not do whatever is possible to make their practice more efficient and cost-effective, someone else will. Aggressive, young, unestablished lawyers will be much more familiar with the latest technological advances than established lawyers generally are, and will continue to enter the practice in record numbers. They will do

whatever is technologically feasible to gain competitive advantage. Lawyers have no choice but to think very seriously about how the practice will change, and to try to better position themselves to remain within the practice's changing mainstream.

## Guessing the Future

{27} What sort of developments in the practice of law may result from the availability of essentially unlimited computing power and strong economic incentives to take full advantage of it? One likely development is the rise of interactive forms, forms designed and updated continuously to include recent legal developments and programmed to draw out and organize the pertinent facts. They will be interactive because they will include branching that allows the form to follow the facts where they lead, and, in the end, present the lawyer using the form with the facts, the law, and additional information, as needed, to provide legal advice and make legal decisions.

{28} Lawyers, as a group, are nowhere near the state of the art on capturing what they know in electronic form so it can be used again when needed. Firms in some areas of the law, for example firms that handle foreclosure actions, have faced economic pressure to automate to become competitive, or lose the client. This trend is likely to continue, even in areas of practice that are harder to standardize. Some firms have successfully maintained brief-banks and forms-files, but many of these aids are maintained, if at all, on the sneaker net ("Didn't you have a case like this last month?").

{29} Increased computing power, the development of artificial intelligence and the integration of voice recognition and other new technologies will allow greater sophistication in the development and use of interactive forms. As interactive forms rise to prominence, lawyers will gradually transfer what they know in their heads and through their experience to the interactive form, which will in turn shape the practice of the next lawyer who uses the form. In this way, lawyers developing interactive forms will have a more pronounced influence on the practice than those who came before.

{30} These new forms may not look like forms at all. They may range in appearance from interactive holographic images to something closer to what we understand as forms today. Even the forms that appear as more traditional text on a screen, prompting and capturing responses, will include features not now available to assure proper comprehension and full disclosure. These features are likely to include help systems with nested levels of interactive assistance. Tools similar to hypertext linking will allow users to drill down to any level of definition or explanation necessary to assure comprehension and explain the law embodied in the form.

{31} Interactive forms will be replaced by much friendlier interfaces sooner than we think. Images of individuals who understand, preserve and organize what is said using technologies like voice recognition and artificial intelligence are a likely development. These virtual assistants could be used to help us interview clients and witnesses or could even replace lawyers in dispensing simple legal advice. These virtual counselors could reside in electronic kiosks at the courthouse or in shopping malls (with the input given by the client seeking advice recorded on digital video to protect against future claims of poor legal advice) or could even be called up online, to give advice or provide reading material, interactive forms or other assistance.

{32} Interactive forms would have many virtues. They could capture the law in a manner that assures the law will be properly applied and will not be forgotten or misunderstood. Interactive forms could make the practice more efficient, because after a form is created it can be used over and over, saving the time, and the cost, of recreating it. They could also assure quality control, reducing errors and ensuring not only that the applicable legal points are considered, but that the law used is complete and up to date.

{33} It is likely that interactive forms will be developed by law firms rather than law publishers. Lawyers will pour their heads and hearts into interactive forms, and they will thus contain too much of the information that the lawyers use each day to make their living to sell for any one-time price. The firms that create interactive forms will get value out of them in two ways; first, by using them in-house and second by forming associations of firms who will be permitted, for a royalty, a share of the profits, or through some other ongoing payment scheme, to use the forms in their practices as well. These forms will likely be closely protected, through treatment as trade secrets, through copyright protection or in some other way. These efforts will raise interesting legal issues. Firms using a particularly prestigious "set" of practice forms might advertise this fact, turning some firm names into national brand names. Also, as forms become standardized, rulings in cases involving those forms could also have more nationwide importance. This situation might become analogous to the case of model statutes, whose invalidation in one jurisdiction tends to have more nationwide significance.

{34} Practice forms will have to be updated continuously to be reliable. Emerging technologies, like knowbots, independent self-acting computer programs, could be used to seek changes in the law as well as relevant new law, and send back a stream of new information to the updater. Change bulletins sent out over the network may replace the circulation of books of new cases or even specialized publications.

{35} Technology applied to practice in this way may be hard to define as either "training" or "practice." Is the time expended in updating the forms and sending out bulletins concerning changes practice or training? It is a little of both. This is just one illustration of how technology will tend to blur the line between training and practice. As technology allows training to be brought to bear directly on the actual event trained for, it looks more and more like the preparation part of the practice. The training and the event trained for are brought together by maintaining the information needed for practice in a form (incorporated in an interactive form used in the practice) that assures it will be incorporated at the practice right at the point to which it relates.

{36} Technology will blur the lines between training and practice in other contexts as well. For example, firms creating interactive practice forms may also create interactive video training programs to go with them in order to provide the more general training necessary to assure that the forms will be properly used. Those using the forms might be required to go through training as part of the licensing of the forms to assure the users of the forms take full advantage of them. How would that work? Perhaps this way: a lawyer is scheduled to depose the opposition's expert witness, but rather than prepare by reading the file and thinking cool thoughts, the lawyer may be required to conduct a full scale simulated expert deposition by interactive video in preparation for the real event. That deposition, which could be monitored and at least partially analyzed and critiqued by computer, could assure that counsel is up to speed for the real event.

{37} Law schools are, in some ways, ideally situated to take advantage of the trend towards the increased use of interactive forms and interactive video training. They have the brainpower and the academic atmosphere needed to assure excellence in the final product. If law schools developed extensive technological practice aids, like interactive forms and video lessons, those materials could be used to attract students to the school and to secure a national reputation for the school among practitioners and the public. But such development would take foresight, a major commitment of resources and significant coordination. Given current academic culture, it is unlikely that law schools will not be major players in the development of these materials.

{38} All of this shows that the rise of technology in law will tend to facilitate the rise of practice software that incorporates legal knowledge, and tend to diminish the value of the routine and repetitious tasks that are the bread and butter of legal practice. If everything in the practice is computerized that can be computerized, what is left for lawyers to do? The answer, in a nutshell, is lawyers will still be needed to "exercise judgment." Machines can store information, they can even help gather information and analyze information, but they will not be trusted to make critical decisions without human input.



{39} How much time does the average lawyer spend each day exercising judgment? Certainly not enough billable hours each day to stay in business. This means that lawyers must change the way they charge for their services in a technology-intensive practice. The fee charged the client will have to factor in the value of the interactive system that the lawyer is using to save time, especially because most lawyers will not be able to develop such a system for themselves and will have to pay to use that system. It may be that the specialist will be engaged to design and update interactive practice forms, and that the generalist will pay to use them, but that does not mean that the advice given to new lawyers today (Just one word: "specialize"), will hold true in the future.

{40} If specialized knowledge is seamlessly included in interactive forms that are generally used, how much work will remain for specialists? Some will update the forms, but the pervasive use of forms that specialists create may actually tend to reduce the need for specialists. At the moment, specialists have other advantages. They not only know the specialized law, they also know who to call and what to say in the many informal ways that matters are handled and decided today. However, to the extent that those informal methods of communication are replaced by computer to computer exchange, the personal contacts, subtleties and ambiguities that now are an important part of the specialist's practice may be reduced if not eliminated.

{41} Assuming the more general availability of specialized knowledge, through interactive forms and interactive video training, who is best prepared to do what is left for lawyers to do, exercise judgment, the specialist or the generalist? The argument can be made that the generalist, a lawyer with broad experience with many different clients in many different legal situations, is likely to bring a breadth of knowledge and experience to the exercise of judgment that may rival, or even surpass, that of a specialist. This certainly challenges conventional wisdom.

{42} What lawyers need to do is to open up new legal markets, so as the old ones change they can redirect their substantial talents toward new goals. Unlike big manufacturing companies, lawyers cannot easily export their legal products and services to China, even though there are less jury trials per person in China than there are cars per person. Where should lawyers look?

{43} The trend, over the years, has been the shrinking of the area staked out as "the practice of law." Title companies, accountants, banks, and a host of other businesses and professions have been "moving in" on the territory traditionally claimed by lawyers. Lawyers are being besieged by both a shrinking legal market and an ever increasing supply of new lawyers. The advent of do-it-yourself legal forms, to some, is just further evidence of how dismal the situation has become. I take another view. Do-it yourself forms are no panacea. They substitute only for the kind of work lawyers used to do, not the kind of work lawyers must learn to do. The sound we all hear is not the death-knell for the practice of law. It is a wake up call, a call to be more in touch with, and more relevant to, the every day lives of ordinary people.

{44} We need to develop new markets by developing new legal products and services that *really* help people, not that just help people get through a legal system that costs too much and does not produce the results that people need. For example, we may assure people that they have "won" when they have obtained an expensive, yet sometimes worthless, piece of paper titled "Final Judgment." That paper may represent victory in the legal system, but it is not victory in the eyes of real people with real problems and a limited budget.

{45} Lawyers need to develop systems that will allow people to have small daily victories over the little problems of their lives. People will not hold people who bring them such victories in contempt. They will experience an increase in their quality of their lives, and recognize those responsible.

{46} What about specifics? How about creating a virtual personal assistant, that helps the ordinary person with ordinary problems. Using the computing and telecommunicating power that will soon be available, this concierge-style service would not be limited to the "practice of law" and could be accessible over the net.

This virtual personal assistant could be assigned tasks, like helping to make or negotiate buying decisions, to follow up when those decisions do not bring promised value and to assist in getting promised value. This assistance could be delivered very inexpensively if it was heavily computer assisted and there were large overlaps in service needs, and hence economies of scale. It could bring "Consumer Reports"-style assistance to bear in a much more powerful way than is now thought possible. If the influence of consumer information of this type was pervasive throughout the marketplace, businesses providing products and services would have to pay more attention to it in order to be competitive. The consuming public's pervasive use of product quality information during buying decisions would use market forces to improve products, and thus might force improvements in quality more effectively than current alternatives, like litigation. Litigation involves an uneven willingness to bear high transaction costs on one side, and uneven incentives to correct problems on the other. Also, this heightened information use could make a difference in improving goods and services in the little cases that cannot be reached now except by class actions and small claims cases. The latter is often not worth the aggravation, and the former often provides very little real benefit to those suffering the harm.

{47} The use of computer and telecommunication power to reach and address the little problems could not only keep them from becoming big problems, but could collect and use information that could prevent problems. Presently, the lack of important information makes important buying decisions, a decision to put a new bedroom on the house, for example, like walking through a field of land mines. Will I hire a good contractor? How much should it really cost? What form of agreement would best protect me? What happens if there is a dispute? Even lawyers make such deals with the wrong contractor and end up in years of costly litigation. There should be a better way. Lawyers could do society a real service by developing better systems to create agreements, monitor performance and resolve disputes.

## Conclusion

{48} This Law Journal issue has taken publication beyond the traditional law review form by putting the finished issue on the Internet. This essay challenges another aspect of traditional law journal form: publication of the finished piece. Why must a legal publication article be a finished piece, to be cited but not to be changed after publication, when electronic publishing offers such flexibility and opportunities for improvement? This piece will take advantages of the opportunities for electronic comment and the discussion this medium provides, and will, after further thought and discussion, evolve into some different form.

{49} When I was a member of the full-time faculty at a law school, we regularly read drafts of works in progress and convened as a group to hear presentations and engage in discussions on that work. Why not use the new electronic law review format to bring that kind of opportunity to a much wider audience? This essay is accompanied by an e-mail discussion list provided by *The Journal*. To subscribe to the list, see "[Contacting the Journal](#)" for more information.

[\*] I would like to thank my brother Chris for his helpful insights and suggestions in the drafting of this article.

[\*\*] **NOTE:** All endnote citations in this article follow the conventions appropriate to the edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION that was in effect at the time of publication. When citing to this article, please use the format required by the Seventeenth Edition of THE BLUEBOOK, provided below for your convenience.

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