



TECHNOLOGY

Toward Smarter Courts

Artificial intelligence has made great inroads—but not as far as increasing access to civil justice

BY SEAN LA ROQUE-DOHERTY

When it comes to civil law, artificial intelligence identifies suitable jurors, speeds legal research, predicts judicial outcomes, and promises cheaper and faster electronic discovery. These AI use cases are becoming table stakes in litigation support software for law firms and corporate legal departments.

But when it comes to helping pro se litigants navigate the complex and in-

timidating civil court structure, AI isn't helping them access court procedures and legal documents.

According to the Legal Services Corp., 86% of the civil legal needs of low-income Americans received inadequate or no aid. On average, close to 50% of all cases filed in the U.S. Courts of Appeals since 1995 were pro se. In 2019, the National Center for State Courts reported from anecdotal data that 75% or more civil cases in

state and local courts have at least one self-represented litigant.

These pro se litigants need detailed information about their legal rights, how courts work, filing documents and handling their cases. They are draining court resources already hampered by financial constraints and manual processes.

With AI using data to improve customer experience in other industries—from banking and retail to consumer electronics and transportation—can it enhance access to justice in civil court?

Existing AI

The NCSC identifies several AI technologies in civil courts that can enhance courts' access, including natural language processing, machine learning and chatbots. NLP is used to generate documents or get legal answers from guided



Alan Carlson argues courts need to move to e-filing before deploying AI.

questionnaires that follow decision trees of legal or business rules. Legal navigators such as Florida Law Help and the Colorado Resource Network assist pro se litigants in identifying legal issues, drafting and answering complaints and filing court documents.

Because of COVID-19, many courts consider e-filing an access-to-justice issue. In Palm Beach County, Florida, courts use machine learning supplied by Apopka, Florida-based Computing System Innovations, as well as optical character resolution to scan and ingest e-filed documents and automatically docket them.

Henry Sal, CSI's founder and CEO, says the company's Intellidact software automatically separates, analyzes and classifies e-filed documents by type and docket code. Intellidact AI extracts data specific for each docket code, transforming unstructured document text into structured content. Software bots then perform the data entry, updating in a court's case management system.

According to Sal, Intellidact can automatically process 75%-80% of documents filed in a case management system without human intervention. "The balance requires human intervention because of OCR errors, or the software has not seen the document before," Sal says. "The same processing

engine can identify and redact privacy protection at no additional cost."

The software also automates Tyler Technologies' Odyssey File & Serve portals, which handles e-filing, decreases file processing time and makes documents immediately available to parties and the court. The first Intellidact projects under Tyler went live in courts in Stanislaus County, California, and Tarrant County, Texas, in January.

Since texting is popular among court users, machine learning and NLP technology can develop text-based chatbots to handle public inquiries and increase court access.

The New Jersey Courts launched a chatbot in 2019 called the Judiciary Information Assistant. The courts fed it Q&As, website FAQs, manuals, operating procedures and other court information to compile more than 10,000 question-and-answer pairings. JIA uses artificial intelligence to answer commonly asked questions by guiding users to specified court and legal topics—from attorney registration to tax—on the court's home page. Once JIA directs users to an answer, users can ask additional questions in free text or return to the main menu.

The Superior Court of California in Los Angeles County rolled out the LACourtConnect chatbot in June 2020 to automate the first level of support for remote hearings. Using Microsoft Azure Cognitive Services, the goal was to produce the same service level in answering users' queries and reduce the volume of calls to support agents.

Nevertheless, the court found training the informational bot in artificial intelligence very time-consuming.

To get the bot up and running quickly and efficiently, the court designed it along the same lines as the chatbot used to order Domino's Pizza. The LACC chatbot uses preliminary or guiding questions to lead users to the right answers from a knowledge

base of 100 questions based on user guides and FAQs.

Behind the curve

When it comes to integrating AI with civil courts to better serve the public, the U.S. is behind other countries, including Brazil and China.

Brazil's Superior Court of Justice uses an AI system called VICTOR to address the court's backlog of petitions. According to the 2017 Brazilian Federal Supreme Court Activity Report, the court issued 126,531 decisions and registered its lowest final collection of pending cases of the last five years (45,437). VICTOR reduces the initial analysis of petitions from 30 minutes to five seconds.

Chinese courts embrace AI in trials and verdicts, according to the Supreme People's Court. As early as 2016, the high court in Hebei province introduced the "smart court" concept.

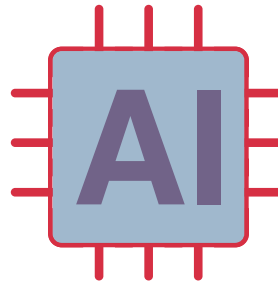
The smart court includes electronic case filing with OCR capabilities; case party identification and automated document production; and it delivers related laws, regulations and authoritative cases to judges.

Many U.S. courts cannot develop and deploy AI because they lack digital processes and data flowing from e-file and modern case management systems.

"How can you build a model where there's no data?" asks Alan Carlson, a court management consultant and former court executive in Orange and San Francisco counties in California. "Even those courts with labeled or structured data to train AI systems need to clean the data before they use it, and that takes time and money."

He adds: "The difficulty with data includes the insufficient size of available data sets, the absence of data standards, data integration, and data privacy and security."

Beyond the data problems, courts face technological challenges such as



the lack of interoperability and AI algorithms' transparency. Then there are the skills to ask data-oriented questions and the ethical challenges of replacing human judgment with machine inferences and determining the responsibility for errors using AI.

Is there a solution? "It's not just an AI thing," Carlson says. "Courts must first move to e-filing."

CSI's Sal adds that with e-filing, "courts need to trust that AI algorithms can provide higher-quality output from reading documents than humans. If you have 100% accurate text and no OCR errors, you will get 100% [accurate] extraction and classification of documents. The best OCR technology is still 92% accurate."

"AI is slowly getting integrated into various places," Carlson says. For example, Tyler Technologies acquired Modria, an online dispute resolution system, and incorporated the online dispute resolution software into Odyssey Court Solutions.

"There is faster innovation in private dispute resolution because we don't have to worry about getting judges signed on or approvals through the

courts," says Colin Rule, president and CEO of Mediate.com and co-founder of Modria. Although private dispute resolution providers do not yet use digital judges, they "are doing interesting things with machine learning and AI to score cases, guide parties and present a zone of potential agreement," he says.

Rule adds there is a lot that technology can do to structure negotiation and educate parties. Modria created online workspaces where parties in a court case could work out a mutual agreement.

"Although there are forward-looking courts, they are not built to innovate," Rule says, pointing out that

judges and courts are a monopoly and are immune to pressure to innovate due to lack of competition.



Ensuring trustworthiness

Attorneys, courts and the judiciary operate on trust. Without it, there is no avenue for self-represented litigants to access justice. The same is true of AI in courts.

"There is not a single area of the legal system where AI does not have the potential to advance the functions of the law and the values that animate the law. It all comes back to ensuring trustworthiness," says Nicolas Economou, who is CEO of H5, chair of the Future Society's Law & Society Initiative and chair of the law committees of the Institute of Electrical and Electronics Engineers' global initiative on ethics of autonomous and intelligent systems.

"Trustworthy adoption of AI means adoption based on sound evidence of the extent to which AI-enabled processes in the legal and judicial domain do, in fact, advance justice," Economou says. Like the trustworthy adoption of

Colin Rule: "Although there are forward-looking courts, they are not built to innovate." ■



Nicolas Economou: "Trustworthy adoption of AI means adoption based on sound evidence." ■

drugs or surgical procedures, he adds there must be evidence that AI is effective at achieving a specified objective without undue risk.

In the opening remarks at the Athens Roundtable on Artificial Intelligence and the Rule of Law in November, Judge Isabela Ferrari of the federal court in Rio de Janeiro called on regulators to develop annual benchmarking programs for AI applications in legal and judicial systems to produce trustworthy and transparent evidence accessible to all on whether specific legal and judicial AI applications effectively meet desired objectives. Otherwise, "We can only turn to marketing materials and studies of dubious qualities," she warned.

Court users must trust that AI and the judicial agents produce desirable outcomes and that they can be held accountable if not.

"This requires an operative definition of desirable outcomes and the ability to measure the extent to which these are met," Economou says. "This is not that hard. If we can achieve trustworthy technological adoption—or, equally importantly, avoidance of adoption—in medicine and aviation, we can surely do so for AI in the legal domain." ■



Photos courtesy of Colin Rule, H5

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Insights with Jack Newton

Staying Connected for Law Firm Success in a Digital World

By Jack Newton

COVID-19 has accelerated digital transformation in many industries, including legal. While this transformation was underway pre-COVID, there is no question that today we live in a world where every aspect of the legal experience is being digitized. This is underscored by data from the *2020 Legal Trends Report*, which found that 85% of law firms now use software to manage their practices, with 79% relying on cloud technology to store firm data, and 83% meeting with clients virtually.

As the race to immunize the world's population accelerates, we're continuing to see incredible resilience and adaptability in the legal industry. These changes will long outlast the effects of the pandemic, creating a new, better normal in which legal services are more accessible and more efficiently delivered.


However, there's still work to be done. Law firms must continually strive to find new ways to connect with those they serve, so that they can intentionally usher in this better normal. For example, while many law firms made their services available online last year, many clients weren't aware of this availability. According to the *Legal Trends Report*, only 26% of consumers saw lawyers meeting with clients virtually, and only

29% saw them storing information in the cloud. Most troubling of all, Clio's COVID-19 Impact Research found that as many as 33% of consumers believed that lawyers had stopped offering services altogether in the spring of last year, while in reality, just 2% of law firms had stopped offering services during that time.

Clients need legal services, but lawyers must connect with them and make it clear that they're continuing to shift to provide services in a way that is adapted to their new reality. The key, as always, is product-market fit: Develop deep empathy for your clients' mindset at all stages of the client journey, and ensure the services your firm offers match what they truly need. This doesn't have to be difficult, and will help you secure more clients and better serve your firm. For example, make sure you're using the right technology to create new connections with clients and meet them where they want to be served. Ensure your law firm is discoverable online, through your website and online listings like Google My Business, and make it simple for worried clients facing a legal issue to quickly book a consultation via streamlined online scheduling. Clear communication at this stage of the client journey is important for being found, building trust, and getting hired.

Looking to the end of the client journey, consider that to better connect with and attract more clients, your firm may have to reimagine the way it bills clients and collects payments. According to Clio's 2020 COVID-19 Impact Research, 61% of surveyed consumers said they could not afford to deal with a legal issue. This certainly makes sense amidst the struggles of a global pandemic, especially considering that, in 2018, the Federal Reserve found that 39% of Americans would not have the funds available to pay for an unexpected \$400 expense. Providing access to payment plans would help solve this, but although 72% of consumers want to pay their law firms this way, only 53% of law firms offer payment plans in comparison. Law firms willing to adapt and offer this alternative payment method stand to connect with a huge subset of clients and capture a substantial market opportunity.

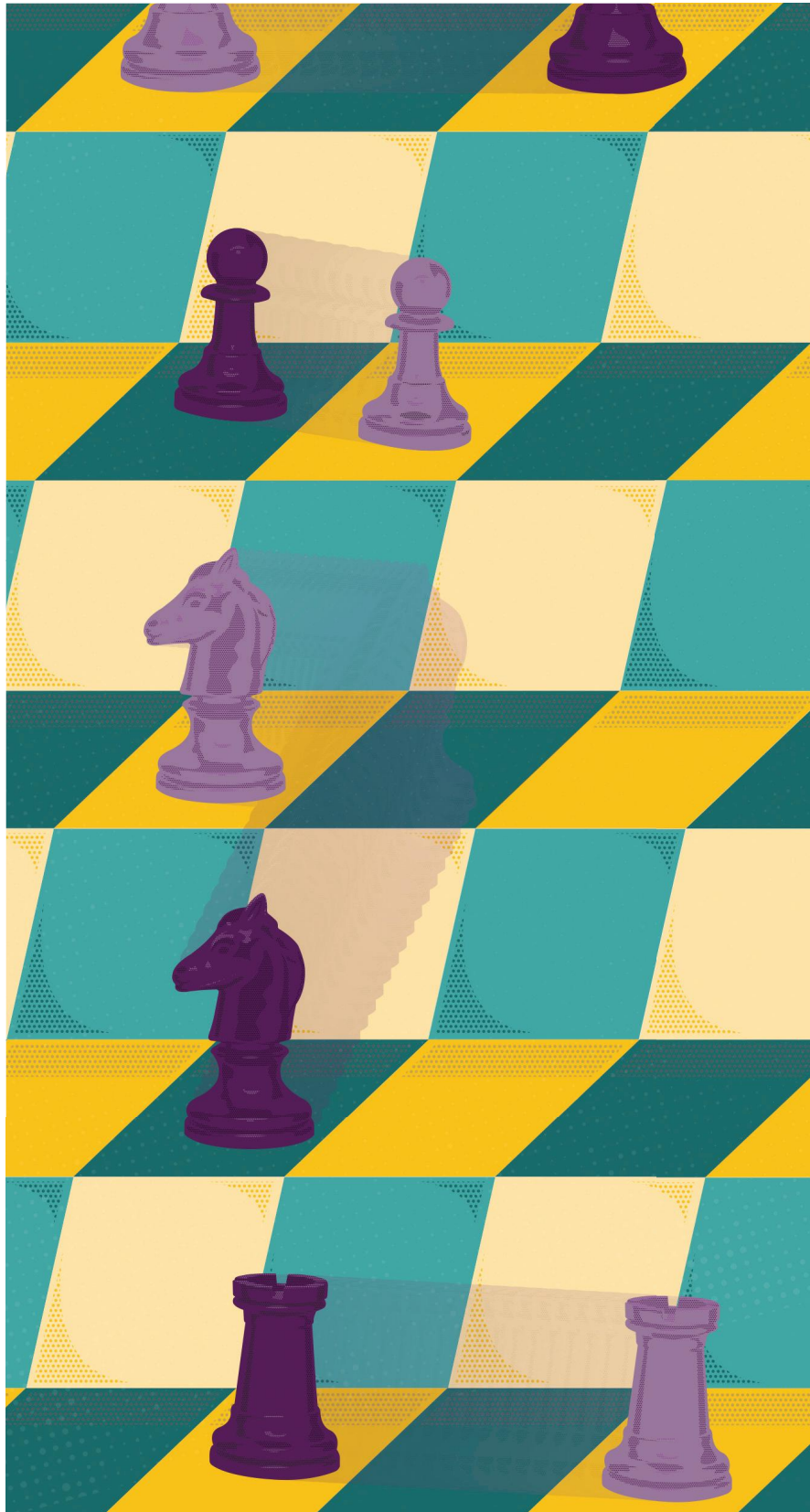
The bottom line is simple: law firms who can stay tuned into what clients need and find new ways to meet them where they are will be positioned to succeed, and empathy, adaptability and resilience will be key to success. Only when we stay connected can we build empathy for each other and thrive as an industry and a society.



Jack Newton is the founder of Clio and a pioneer of cloud-based practice management. Jack has spearheaded efforts to educate the legal community on the security, ethics, and privacy issues surrounding cloud computing, and is a nationally recognized writer and speaker on the state of the legal industry. Jack is the author of *"The Client-Centered Law Firm,"* the essential book for law firms looking to succeed in the experience-driven age, available at clientcenteredlawfirm.com.



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LAW FIRMS

In the Money

Lockstep compensation, long a staple of BigLaw, is declining in order to keep—and attract—talent

BY JOHN ROEMER

In 1919, the Boston Red Sox sold Babe Ruth to the New York Yankees for an unheard of \$100,000, a sum worth nearly \$1.5 million today. Sports fans credit the deal for an ensuing New York dynasty of pennants and championships and for Boston’s World Series drought, known by some as the “curse of the Bambino.”

Lateral transfers are nothing new. Like the big leagues, BigLaw seeks to gain powerhouse rainmakers via outsize salary offers. The deals have the added value of draining rivals’ rosters to kneecap the competition.

Lockstep compensation plans can hamper staid old firms. In 2018, Cravath, Swaine & Moore, established in 1819, fell victim to a no-holds-barred offer by a nimbler, younger rival when Kirkland & Ellis, founded in 1909, signed Cravath litigation partner Sandra Goldstein for \$11 million a year for five years. The megadeal was one of several in recent years that became emblematic of a trend away from the lockstep model decreasingly employed by traditionalist firms. In its place, in varying degrees, is the attorney-for-hire equivalent of Wild West free agency. Like the Sultan of Swat, Goldstein got a signing bonus.

In September, venerable Davis Polk & Wardwell—where Grover Cleveland was once of counsel—moved to a more flexible compensation system to better attract and retain rainmakers, according to multiple reports. Another old-line New York firm, Cleary Gottlieb Steen & Hamilton, has modified its lockstep structure, as reported by the *American*

Lawyer. Cleary Gottlieb did not reply to a request for comment. And Simpson Thatcher & Bartlett has broken lockstep ranks, according to the *American Lawyer*. Simpson Thatcher also did not reply to a request for comment.

“Understand that these are not ‘all or nothing’ changes,” John C. Coffee, director of the Center on Corporate Governance at Columbia Law School, said in an email, “but marginal ones to allow the firm to pay more to the highest-grossing partner. Other firms (for example, Debevoise & Plimpton) have decided not to change significantly.”

Free agency

Legal recruiters are on the front lines of the lateral trade wars. Dan Binstock, an attorney and partner at the legal search firm Garrison & Sisson in Washington, D.C., points to the effect Kirkland & Ellis has had by giving out huge guaranteed contracts to attract lateral partners. “They have thrown a wrench into the lockstep model for a number of top-tier firms. Kirkland rattled the lockstep magic,” Binstock says.

Jeffrey A. Lowe, the global practice leader of Major, Lindsey & Africa’s law firm practice group, noted that lateral transfers were once shunned by those observing old-school white-shoe norms. “There’s an emerging sense even there that there’s no stigma anymore to mov-

ing laterally,” he says. “With that goes the difficulty firms face of keeping partners with less a sense of firm loyalty, especially when they might be offered twice what they’re now making.”

Lowe says he foresaw the trend a dozen years ago when he examined law firms’ evolution. In his 2008 article “The Broken Covenant: ‘Partners for Life?’” Lowe argued that while lawyers once bonded with a single firm and worked their way to senior partnership, “over the last 30 years ... this covenant has steadily eroded across firms of all sizes, resulting in a culture that more closely resembles baseball free agency than a ‘gentlemanly’ profession.”

Other factors are also to blame, including lifting the longtime ban on lawyer advertising after the landmark

“Lateral hires are a key driver for revenue growth, so there’s continued interest in increasing market share that way.”

— AVIS CARAVELLO

1977 U.S. Supreme Court case *Bates v. State Bar of Arizona* and the media. Lowe notes that when journalists began ranking firms by size, income and compensation, envy and job-switching followed.

Even once-stuffy London firms in the so-called Magic Circle are taking a new look at their old lockstep pay structures as they strive to compete in the U.S., Lowe says, naming Allen & Overy as one whose partners voted recently for “more discretion” in offering generous packages to hire and retain junior and senior talent.

Meanwhile, *Legal Week* reported in October 2020 that another U.K. Magic Circle firm, Freshfields Bruckhaus

Avis Caravello is the founder of Attorney Search Consultants.



Major, Lindsey & Africa’s Jeffrey A. Lowe notes that lateral hires, once frowned upon, are now embraced.

Deringer, was considering changes to its own lockstep system.

Avis Caravello, a 30-year veteran of the legal recruiting industry, says the San Francisco location of her Attorney Search Consultants firm is at the center of a white-hot market encompassing Silicon Valley, where demand is off the charts.

“If a firm wants to grow here, they have to recruit hard, because the pool is a 10th the size of New York’s,” she says.

In April 2020, Caravello brokered a deal in which King & Spalding won a bidding war to hire 15 partners from Boies, Schiller & Flexner.

Caravello, who tracks lateral moves within Am Law 100 firms, says Lewis Brisbois Bisgaard & Smith led in national hiring in 2020. (The firm also had 41 departures that same year.) Among Am Law 50 firms, she says King & Spalding led the way, although she points out that big international firms have higher numbers.

“Lateral hires are a key driver for revenue growth, so there’s continued interest in increasing market share that way,” she says. ■





LAW FIRMS

Pandemic Pivot

The coronavirus has forced many lawyers to reinvent themselves—and some have become ‘COVID-19 attorneys’

BY DANIELLE BRAFF

The coronavirus has affected every aspect of life, from employment to housing to travel to child safety. And while some law firms have closed their doors within the last few months, others are simply adjusting their focus. In fact, some lawyers have switched focus entirely, becoming full-time “COVID attorneys.”

“When the pandemic first broke in March, there was a natural pivot for employment practices because business-

es were desperate for information on how to manage their workplaces,” says Justin Boron, a partner at the Philadelphia-based Freeman Mathis & Gary firm.

Boron’s firm—like nearly every other—hadn’t previously dealt with the legal issues arising from a pandemic, and the government administrative agencies hadn’t issued any guidance specific to COVID-19, he says. “So we had to take a deep dive into the existing regulations in similar contexts to give the best advice to clients that we could give at the time,” Boron says.

When it became clear COVID-19 was precipitating an economic crisis, Congress acted, passing a coronavirus relief bill in March 2020. A large part of the legislation focused on employee pay and benefits, so Boron’s firm tracked this to be able to advise its employer clients.

The firm formed a coronavirus task force, which Boron co-chairs, and he says there has been an uptick in small- and medium-size businesses retaining the firm to advise on COVID-19 issues,

ranging from the Paycheck Protection Program to mandatory leave laws.

“The new programs and their maze of red tape have created at least a temporary market for legal advice that wasn’t there before,” Boron says.

Others have seen their practices shift for more predictable reasons. Ben Schneider, of Schneider & Stone in Skokie, Illinois, is a bankruptcy lawyer, so he’s been very busy since the start of the coronavirus. Some of his clients need help taking advantage of the changes in the bankruptcy code. Others are dealing with issues related to the sudden loss of income because of pandemic-related layoffs or furloughs and/or increased expenses (food for kids at home, additional child care for e-learning, etc.). “I am not allowed to say that I specialize,” he says. “But I would say that 100% of my practice is now COVID bankruptcy law.”

Elder law is another area that’s been fundamentally remade by COVID-19. John Dalli, a partner with Dalli & Marino in New York, says he became a COVID-19 attorney overnight. His firm had been investigating nursing home and elder abuse cases in the New York area for more than two decades, and the pandemic brought to light many of the problems plaguing the industry.

“Nursing homes throughout the state of New York were hard-hit by the virus, and our clients lost many loved ones—so overnight, my firm turned into a COVID law firm helping families navigate the issues facing them as a result of having a loved one in a nursing home struck by the coronavirus.”

To prepare, Dalli says he immediately had to learn everything he could about the virus, how it spread, and particularly how it affected nursing home residents. He created a new page on his website as a resource center for clients. Shortly after the coronavirus hit, Dalli began to speak out about the effect of the virus on nursing home residents and particularly, how the pandemic revealed the understaffing crisis that had existed in these facilities for years—which cemented his position as a COVID-19 attorney.

Long-term planning

Some attorneys are simply using COVID-19 to jump-start their legal businesses. Kim Chan, a lawyer and founder of DocPro.com, a legal tech platform offering free legal documents and resources, launched his website at the beginning of 2020. Since March 2020, DocPro has refocused and began offering pandemic-related documents for its users, and traffic has grown more than 1,000 times since then, he says.

“We are focusing on COVID to generate more traffic and business,” Chan says. “However, COVID will be over after the vaccine is widely available, so we are using this as an opportunity to build a long-term customer base instead of having a long-lasting business based on COVID.”

Indeed, what happens after COVID-19—especially for those who made a big pivot? Barbara Barron, a labor and employment attorney, personal injury lawyer and shareholder at Texas-based MehaffyWeber who practices



Kim Chan cautions against focusing too much on COVID-19 and suggests using spikes in traffic and business to build a long-term consumer base.

from the firm’s Houston and Beaumont offices, says she doesn’t consider herself to be a COVID-19 lawyer. But like most attorneys, she felt the need to get up to

speed on how the pandemic has affected state and federal labor laws.

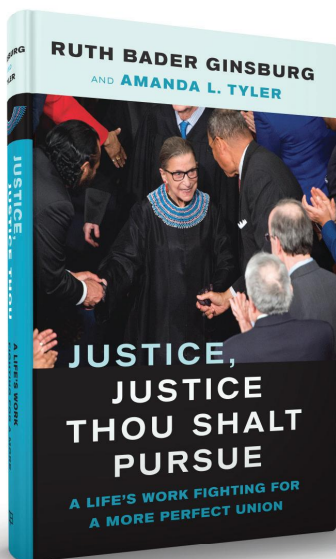
And even after the pandemic hopefully becomes a long-forgotten nightmare, she believes the virus will still be entangled within our legal system.

For example, employers now have many questions about whether vaccinations can be required—or what happens if proof of vaccination is required for airline travel, and an employee whose job duties require air travel refuses to take the vaccine.

So while David Reischer, a New York City-based employment lawyer and CEO of Legaladvice.com, says there’s no significant money to be made in marketing oneself as a COVID-19 attorney, he suggests attorneys market themselves as, for example, employment lawyers who are knowledgeable about the ever-changing pandemic.

“Merrily marketing oneself as a COVID-19 attorney is too faddish and does not highlight the full depth of actual experience,” he says. ■

HONORING GROUNDBREAKING WOMEN IN LAW



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