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Web only: Highlights from "Great and Mighty Things: Outsider Art from the Jill and Sheldon Bonovitz Collection." View the slide show of selected works from the Duane Morris chairman emeritus's holdings on americallawyer.com.

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Jerry Goldman

In this comment, I focus on three areas in which the Supreme Court of the United States could improve information sharing with the public: accessibility, data structure, and information standards. I then propose three simple and low-cost steps to address each of these areas.
THE COURT AND THE VISUAL: "IMAGES AND ARTIFACTS IN U.S. SUPREME COURT OPINIONS"
Nancy S. Marder 331

This Article contributes to the literature on the visual and the law by providing new empirical research on the use of images in U.S. Supreme Court opinions. In the trial court, the concern about using images is well known. In the highest court of the land, however, the use of images has been little studied and little discussed. This Article includes a comprehensive review of all images that appear in all opinions between 1997 and 2009. It also examines three paradigmatic images—maps, artifacts, and photos—and how they are used in three opinions. The use of maps and artifacts is the least controversial, especially when they are the focus of discussion in the opinion. The use of photos can be more questionable, especially when the case is emotionally charged and the justices do not discuss the photos in the opinion. Although “a picture is worth a thousand words,” it can be interpreted in many different ways. The justices need to choose their photos carefully and explain why they have included a particular photo and what they think it shows. Justices who see the case differently need to challenge the photo and what they think it depicts, just as they would challenge a precedent or a legal argument.

Topic 2: Ideology, Neutrality, and Self-Deception: What the Supreme Court Says and What the Public Hears

CognitivE Bias and the Constitution Dan M. Kahan 367

This article uses insights from the study of risk perception to remedy a deficit in liberal constitutional theory—and vice versa. The deficit common to both is inattention to cognitive illiberalism—the threat that unconscious biases pose to enforcement of basic principles of liberal neutrality. Liberal constitutional theory can learn to anticipate and control cognitive illiberalism from the study of biases such as the cultural cognition of risk. In exchange, the study of risk perception can learn from constitutional theory that the detrimental impact of such biases is not limited to distorted weighing of costs and benefits, by infusing such determinations with contentious social meanings. Cultural cognition forces citizens of diverse outlooks to experience all manner of risk regulation as struggles to impose a sectarian orthodoxy. The use of scientific knowledge to mitigate the threat that cognitive illiberalism poses to liberal principles should be a critical shared focus of attention for scholars of both constitutional law and risk regulation.

Judicial Overstating Dan Simon 411

and Nicholas Scurich

Ostensibly, we are all Legal Realists now. No longer do legal theorists maintain that judicial decision making fits the mechanical and formalist characterizations of yesteryear. Yet, the predominant style of American appellate court opinions seems to adhere to that improbable mode of adjudication: habitually, opinions provide excessively large sets of syllogistic reasons and portray the chosen decision as certain, singularly correct, and as determined inevitably by the legal materials. This article examines two possible explanations for this rhetorical style of Judicial Overstatement. First, we review the psychological research that suggests that judicial overstatement is a product of the cognitive processes by which judges arrive at their decisions. Research on the Coherence Effect suggests that during the decision making process, the cognitive system spreads apart the opposing decisions by inflating one set of arguments and deflating the other, with the effect of making one decision seem considerably stronger than its rival. This leads the judge to perceive the chosen decision as stronger than it is, and thus to overstate the opinion. It might also be possible that judges resort to overstatement because they believe that this form of reasoning promotes the legitimacy of the judiciary in the eyes of the public. We report on a recent experimental study that was conducted to test this possibility. We found that overstated and monolithic reasons did not promote the evaluations of the judges or of the decisions they rendered. Lay people gave more favorable evaluations when the judges provided nuanced opinions that admitted to the appeal of both sides of the dispute. In sum, judicial overstatement is best understood not as a persuasive device, but as an intra-personal, cognitive phenomenon. The certainty and singular correctness that are habitually reported in judicial opinions are not properties of the law, but artifacts of the judges' constructed representations of it.
DEFERENCE TO AUTHORITY AS A BASIS FOR MANAGING IDEOLOGICAL CONFLICT

Tom Tyler and Margarita Krochik

Americans are polarized in their views about a variety of social and economic issues. This raises the question how political and legal institutions can develop policies and practices that will be accepted by all the various sides to a public controversy. One approach is to build legitimacy, since people are generally more willing to defer to legitimate authorities. The results of a study in which people are asked about their willingness to accept decisions made by the Supreme Court or Congress suggests that the process through which institutions make policy decisions shapes deference in ways that are distinct from the perceived desirability of the decisions themselves. In particular, institutions gain public deference when they are perceived to consider people's needs and concerns and respect their values. These findings point to the importance of addressing these issues when explaining the process involved in making a political or judicial decision.

CLAIMING NEUTRALITY AND CONFESSIONING SUBJECTIVITY IN SUPREME COURT CONFIRMATION HEARINGS

Carolyn Shapiro

Supreme Court confirmation hearings provide a rare opportunity for the American people to hear what would-be justices think about the nature of judging and the role of the Supreme Court. In recent years, nominees have been quick to talk about judging in terms of neutrality and objectivity, most famously with Chief Justice Roberts' invocation of the "neutral umpire," and they have emphasized their reliance on legal texts and sources as if those sources can provide answers in difficult cases. Many of the cases heard by the Supreme Court, however, do not have objectively correct answers that can be deduced from the legal materials. Instead, the justices must bring judgment to bear, and that judgment inevitably incorporates subjectivity and reference to values and principles not explicit in the legal sources.

This Article considers the extent to which nominees admit to such subjectivity and the extent to which they claim neutrality or objectivity, looking at all confirmation hearings since 1955 and reporting some preliminary analysis. Through coding the nominees' testimony, the Article identifies some of the circumstances under which these claims and admissions are most likely to be made. Among other findings, this Article reports that Democratic and Republican nominees are equally likely to claim neutrality in colloquy with any particular senator. On the other hand, Democratic nominees are about twice as likely as Republican nominees to admit to a role for subjectivity. Drawing on the insights of cultural cognition scholars, this Article then considers the implications of such findings and raises potential concerns for public perceptions of the Court, especially in light of our current highly polarized political culture.
Topic 3: Journalists’ Insights

Opinion Announcements

Tony Mauro 477

When the Supreme Court handed down its landmark decision on the fate of the Affordable Care Act on June 28, 2012, several news organizations rushed to report, incorrectly, that the court had overturned the law. Those making the error did not wait for Chief Justice John Roberts Jr. to complete his twenty-minute announcement of the opinion from the bench. But anyone who had listened to the opinion announcement from start to finish would almost certainly have gotten it right.

This article examines the rarely discussed tradition of Supreme Court opinion announcements and their role in the interplay between the court, the public and the news media. Justices of the Supreme Court have announced their opinions from the bench since their first decision in 1792. Members of the court have viewed the practice as an important part of their accountability to the public, even if the audience in the courtroom is small and random.

Possible changes in the court’s practice of opinion announcements could enhance public understanding of the court. One would be to release the audio of the opinion announcements on a real-time or slightly delayed basis. Currently, opinion announcements become available only well after the end of the court term in which they were made. Another change to consider would be to release written opinions only at the end of the oral opinion announcement, which would encourage the news media to wait and listen before rushing to report on a just-released decision.

Topic 4: Beyond the Written Opinion: When Justices Speak to the Public

Beyond the Opinion: Supreme Court Justices and Extrajudicial Speech

Christopher W. Schmidt 487

This Article examines how and why Supreme Court justices venture beyond their written opinions to speak more directly to the American people. Drawing on the history of the post-New Deal Court, I first provide a general framework for categorizing the kinds of contributions sitting justices have sought to make to the public discourse when employing various modes of extrajudicial speech—lectures, interviews, books, articles, and the like. My goal here is twofold: to provide a historically grounded taxonomy of the primary motivations behind extrajudicial speech; and to refute commonplace claims of a lost historical tradition of justices refraining from off-the-bench commentary about their work. I then turn to an analysis of the risks and opportunities for justices who go beyond their written opinion. I argue that our understanding of the extrajudicial contributions of the justices has too often been clouded by idealized, historically inaccurate assumptions about the Court and by exaggerated assessments of the potential costs of substantive, controversial extrajudicial speech for the Court’s legitimacy.

Compared to the typical Supreme Court written opinion, extrajudicial speech allows for, even encourages, more personalized, more accessible, and potentially more effective pathways of communication with a general audience. By identifying the unique value of extrajudicial speech, I intend this Article to serve as an invitation for a more realistic and constructive discussion about the role of Supreme Court justices in our constitutional democracy.
THE PIPER LECTURE

THE GREAT RECESSION AND THE PRESSURE ON WORKPLACE RIGHTS Katherine S. Newman 529

This paper explores the impact of the Great Recession on the rights of workers in the U.S. and overseas. While secular trends in play before the economic downturn began had already eroded employment benefits and workers' rights, recent economic conditions have exacerbated conditions for workers. With the Great Recession have come record levels of long term unemployment, a rise in the number of involuntary part-time workers, and a growth in the already high rates of youth unemployment. All of these conditions, along with the decline of union representation, have placed downward pressure on wages and forced workers to give back hard won benefits, thereby increasing inequality within and between groups.

THE STEVENS LECTURE

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THE INTERNATIONAL CRIMINAL COURT'S UNJUSTIFIED JURISDICTION CLAIMS: LIBYA AS A CASE STUDY Jennifer Nimry Eseed 567

The International Criminal Court (ICC) is a treaty-based court that functions to end impunity for perpetrators of the gravest crimes that concern the international community. As of July 1, 2012, 121 have countries ratified the Rome Statute, the treaty governing the ICC, expressing their acceptance of the Court's jurisdiction. The ICC is fully independent from the United Nations, yet the Rome Statute problematically allows for the United Nation's Security Council to refer an issue to the ICC, whether or not the issue relates to a country that has ratified the treaty. This Note uses the 2011 conflict in Libya to demonstrate that the UN Security Council should not have the power to refer an issue to the ICC in a manner that allows the Court to improperly expand its jurisdictional reach and infringe on the sovereignty of nations.

WHEN DOES SLEAZE BECOME A CRIME? REDEFINING HONEST SERVICES FRAUD AFTER SKILLING v. UNITED STATES Teresa M. Becvar 593

Honest services fraud, which is defined as a scheme or artifice to deprive another of the intangible right of "honest services," is just one tool in the federal government's extensive arsenal used to prosecute public corruption and private corporate fraud. The Supreme Court curtailed the expansion of this versatile theory twice in the past three decades, most recently in June 2010 in Skilling v. United States. In Skilling, the Court held, inter alia, that the federal honest services statute covers only bribery and kickback schemes and not undisclosed self-dealing. Months later, members of Congress proposed the Honest Services Restoration Act (HSRA) to undo some of the effects of the Skilling decision. This Note argues that in some instances the proposed HSRA criminalizes too narrow or too broad a range of conduct. To address concerns about overcriminalization of petty misconduct, abuse of prosecutorial discretion, and violation of federalism principles, any amendment to the honest services statute should draw upon past federal appellate court rationale and implement reasoned limiting principles to clearly define the scope of the statute. In particular, a reformulated honest services statute should specify 1) the source of the fiduciary duty, the breach of which constitutes fraud; 2) the specific intent to defraud as the mens rea of the crime; and 3) legitimate gain to the accused and harm to the victim as alternative sufficient limiting principles to ensure that conduct rises to the level of criminal fraud.
PERMITS FOR PUDDLES? THE CONSTITUTIONALITY AND NECESSITY OF PROPOSED AGENCY GUIDANCE CLARIFYING CLEAN WATER ACT JURISDICTION

Jennifer L. Baader 621

The Clean Water Act, enacted and amended in the mid-20th century, was a significant development in the protection and restoration of the Nation’s waters. The Act authorized the Environmental Protection Agency and the Army Corps of Engineers to regulate the discharge of pollutants into many types of bodies of water. However, this wide-spread jurisdictional authority was challenged by the Supreme Court in two turn of the century cases which limited the application of the Act to certain waters. In 2011, a draft guidance document was released by the Environmental Protection Agency and the Army Corps of Engineers, which would increase waterway protection by offering more consistent and predictable procedures for identifying waters protected under the Act, as well as clarifying current legal confusion resulting from inconsistent court rulings and agency reports. This Note examines the changes the draft guidance would introduce to the current regulatory scheme should it be adopted. It also addresses potential industry costs and explores concerns that such guidance is an unlawful expansion of the Act’s jurisdiction. This Note ultimately concludes that the guidance is an appropriate and constitutional mechanism to institute crucial water protection, and should be followed promptly by a legally binding rulemaking.

BANNING THE HIJAB IN PRISONS: VIOLATIONS OF INCARCERATED MUSLIM WOMEN’S RIGHT TO FREE EXERCISE OF RELIGION

Ali Ammoura 657

Muslim American women who wear the hijab, or Islamic headscarf, face religious discrimination in nearly every aspect of their public life. They even face it during arrest or incarceration. Law enforcement officials often force Muslim women to remove their hijab while in custody, which both degrades and humiliates them in the process. But prison policies that prohibit incarcerated Muslim women from wearing the hijab violate their right to free exercise of religion. Penal institutions should not prevent incarcerated Muslim women from wearing a hijab without compelling reasons, especially when such policies often arise out of religious discrimination. Courts must protect the right of incarcerated Muslim women to wear the hijab if they choose because, like all persons, they have the right to practice their religion free from discrimination, whether incarcerated or not. Under both the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), wearing the hijab at all times is indisputably a religious exercise. Any violation or forcible removal of a woman’s hijab in front of non-related males substantially burdens her religious exercise under both rational basis and compelling interest standards. This Note argues that prison regulations that prohibit incarcerated Muslim women from wearing the hijab undoubtedly violate their right to free exercise of religion, and courts should acknowledge this as a violation under both the First Amendment and RLUIPA.
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"Green" Supply Chain Contractual Provisions
Stephen C. Ellis

Retailers everywhere have learned the lure of the term "green." And as the consuming public learns more about how big box retailers operate, they are demanding that the retailers run their businesses in "green" and "sustainable" ways. But given the flexibility of what "green" seems to mean, how does this translate into supply chain contractual provisions, which need definitonal specificity? Stephen C. Ellis addresses the problem in this article by providing model provisions in a number of areas including the general statement of intent, green technical specification and performance standards, processes to improve the sustainability of the product, green certification of suppliers by an independent rating agency, inspection and audit rights, ordering, packaging, and waste disposal, and specific enforcement and damages.

A Brief Guide To Comparative Advertising
Jason Reed Struble

Coupon clipping, comparison shopping, discount promotions, or sale events are rapidly falling out of favor with modern consumers, who have powerful online tools at their fingertips. Comparative advertising is an important tool for retailers executing an Everyday Low Price ("EDLP") strategy: a product level pricing strategy through which a company aims to convey to consumers that prices across its product line that are consistently the lowest available prices in the retail marketplace. The FTC has long taken the position that comparative advertising is permissible so long as it truthful, non-deceptive, and useful to consumers in making rational purchasing decisions. But this does not mean that retailers can proceed with taking some time reconsider their comparative advertising approaches. In this article, Jason Reed Struble discusses the FTC's role generally, the basics of the Lanham Act, how to evaluate a claim by reviewing it to determine if it is material to a reasonable purchaser's purchasing decision, whether the claim is literally false, and voluntarily resolving disputes before the National Advertising Division of the Better Business Bureau. The author also provides several practical tips for ensuring that a competitive price advertising campaign is lawful.

What Rules Regulate Government Access To Data Held By U.S. Cloud Service Providers?
Françoise Gilbert

Cloud computing is gaining more widespread acceptance because of the convenience of placing the end user's data and software in the hands of a remote service provider. But that very convenience is what is most worrisome to many cloud computing users. A specific concern is that the U.S. government might be able to access data stored outside the U.S. by a cloud service provider that is a subsidiary of a U.S. company. The USA PATRIOT Act is sometimes identified as the government's key to such data, but the subject is more nuanced than that. This article by Françoise Gilbert reviews the provisions of the USA PATRIOT Act, rules regarding government access to data, the Stored Communications Act, the Foreign Intelligence Surveillance Act and Amendment, as well as rules governing access to data in foreign countries.

What To Do When A Party Fails To Pay Its Portion Of Arbitration Fees
Steven C. Bennett

Alternative dispute resolutions procedures have become a well-established alternative to litigation for the good reason that they can be faster, cheaper, and pose fewer headaches for the practitioner than traditional litigation. But sometimes a troubling problem comes to the surface in arbitration: failure of a party to pay its share of the arbitration fees. Fortunately, there are options. This article by Steven C. Bennett discusses these options, including giving the opposing party the opportunity to advance the fees, file suit to compel the non-paying party to pay, allow the case to proceed to litigation rather than arbitration, and conserve funds with an abbreviated hearing.

***

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INCOME TAXATION AND ASSET VALUATION (I): ECONOMIC DEPRECIATION, ACCRUAL TAXATION, AND THE SAMUELSON THEOREM ............... *Theodore S. Sims* 217
With the 2013 federal estate tax exemption now "permanently" at $5.25 million (indexed for inflation), many practitioners have reported that their clients are no longer as interested in tax-savings strategies as they had been previously. So, practitioners are turning their attention to other issues. Some of the articles this month reflect this change in focus. In "Special Education Advocacy," p. 17, Bernard A. Krooks and Marion M. Walsh detail what estate planners should know if they have clients with disabilities (for example, what the school district is required to provide). And, in "Environmental Issues," p. 13, Albert M. Cohen explains how to help clients who own property that has produced or may produce environmental hazards. Additionally, if you have a client who wants to establish a domicile in a different state, you'll want to read "Exodus: The Art of Domicile," p. 10, by Robert A. Napier. Finally, if your client has married children, it's important to protect the assets from a former daughter- or son-in-law, as Edward D. Brown and Hudson Mead illustrate in "Protecting Family Inheritance From Divorce," p. 22.

In addition, our Retirement Benefits Committee, led by Michael J. Jones, has been busy, as reflected in this month's Committee Report. The report tackles a wide range of issues, including: (1) handling complications from alternative investments in individual retirement accounts, (2) calculating Internal Revenue Code Section 691(c) deductions, (3) identifying IRC Section 409A issues relating to taxation of nonqualified deferred compensation, (4) using portability for retirement benefits, and (5) considering real estate as an investment in a self-directed IRA.

Finally, you'll read about the winners of the "Advisors with Heart Awards," selected by our sister publication, REP (see p. 46). We'll be honoring our own winners in the "Trusts & Estates Practitioners with Heart Awards," which will appear in our October Charitable Giving Supplement.

—Susan R. Lipp
Editor in Chief
On the Cover

Our cover this month, "Eleuthera" (48 in. by 26.6 in.) by Alex Katz, sold for $5,625 at Phillips New York's recent Editions Day sale on April 29, 2013. A popular vacation destination, Eleuthera is a long, thin (only a mile wide in places) island in the Bahamas. It's known for its pink sandy beaches and the quality of its pineapples.

However, despite its serene appearance, Eleuthera has a rocky history. The Spanish discovered the Bahamas in 1492, though Eleuthera was originally inhabited by the Taino, a subset of the larger Aranak ethnic group indigenous to the West Indies. Viewing the Bahamas as of little use other than as a source of slave labor, the Spanish rapidly deported the majority of the indigenous people to work mines in other parts of the Caribbean, mostly Hispaniola. The population was wiped out completely by 1550, and the island remained uninhabited for nearly 100 years.

The island's resurrection began in 1648 when it was settled by a group of European Puritans from Bermuda who deemed themselves the "Eleutherian" adventurers, a moniker they passed on to the island itself. Eleuthera prospered from there, establishing itself as an upscale vacation destination and experiencing a particular boom period from 1950-1970, which casts some light on why Katz, who famously loved to depict stylish New Yorkers at play, chose it as a subject.

—David H. Lenok, Associate Legal Editor

Some of our other favorites from this auction include:

- p. 9, "Balloon Dog (Blue)" by Jeff Koons, which sold for $10,000.
- p. 12, "Untitled" by Cindy Sherman, which sold for $4,375.
- p. 18, "Cynthia in the Bedroom" by Tom Wesselmann, which sold for $6,875.
BRIEFING
6/ Tax Law Update
David A. Handler, partner in the Chicago office of Kirkland & Ellis LLP, and Alison E. Lothes, associate in the Boston office of Sullivan & Worcester LLP, report on:

* Estate of John F. Koons III, et al. v. Commissioner—Tax Court denies estate’s deduction for Graegin loan;

* Private Letter Ruling 201317010—Internal Revenue Service determines what rises to the level of material participation under Internal Revenue Code Section 469; and

* General Explanations of the Administration’s Fiscal Year 2014 Revenue Proposals—Obama administration releases new Greenbook.

8/ Philanthropy

FEATURES
Estate Planning & Taxation
10/ Exodus: The Art of Domicile
By Robert T. Napier
How much of a connection to a prior state of domicile is too much, and what should be done in the new state to establish domicile there? While clients can seldom sever all ties with their prior jurisdiction, they should do as much as possible to create favorable evidence by establishing facts that show intent to create a new state of domicile—before the audit papers are served.

Robert T. Napier is a partner at Harrison & Held, LLP in Chicago.

13/ Environmental Issues
By Albert M. Cohen
Environmental risks may be passed on to heirs, beneficiaries and trustees. That’s why it’s crucial to discuss with your clients the potential liability for clean-up costs under the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Through a hypothetical, author Albert M. Cohen reveals issues a client may face if he was the owner of a business that disposed of hazardous substances or owned property on which the hazardous substances were released.

Albert M. Cohen is a partner at Loeb & Loeb LLP in Los Angeles.

17/ Special Education Advocacy
By Bernard A. Krooks & Marion M. Walsh
A multitude of issues can arise from caring for a child with a disability. If attorneys don’t know the basics about special education services and advocacy, they may miss out on opportunities to serve clients, protect clients’ estates and help clients’ beneficiaries.

Bernard A. Krooks is a partner in the New York City, White Plains and Fishkill, N.Y. law firm of Littman Krooks LLP.

Marion M. Walsh is an associate in the New York City, White Plains and Fishkill, N.Y. law firm of Littman Krooks LLP.
Protecting Family Inheritances From Divorce
By Edward D. Brown & Hudson Mead
Not all marriages survive happily ever after. If your client has a child whose marriage ends in divorce, here are seven planning tips to prevent a former daughter- or son-in-law from reaching your client's child's inheritance. Plus, there's a list of drafting provisions to consider for trust documents to add a level of protection in divorce situations.

Edward D. Brown is a principal of Engel & Reiman pc in Denver.

Hudson Mead is an executive director at the Private Bank of J.P.Morgan in Denver.

Committee Report
Retirement Benefits

Alternative Investments in IRAs
By Michael J. Jones & Michelle L. Ward
With today's growing awareness of alternative investment opportunities, more individuals are looking at them for their individual retirement accounts. But, it's essential to perform a comprehensive analysis to determine if such an investment is in the best interest of your client.

Michael J. Jones is a partner in Monterey, Calif.'s Thompson Jones LLP and chairs the Trusts & Estates Retirement Benefits Committee.

Michelle L. Ward is a partner at Keebler & Associates in Green Bay, Wisc.

Tracking the Section 691(c) Deduction
By Christopher R. Hoyt
IRC Section 691(c) provides the principal source of relief for the federal estate tax that's levied on the inflated value of retirement assets. Although that section permits a beneficiary to deduct the federal estate tax attributable to income in respect of a decedent (IRD) in the same taxable year that the IRD is included in a beneficiary's income, it doesn't explain the correct way to deduct the tax when a beneficiary receives uneven distributions over a period of years from a retirement plan.

Christopher R. Hoyt is a professor of law at the University of Missouri-Kansas City School of Law in Kansas City, Mo.

Section 409A Reminder and Update
By Thomas C. Foster & Jennifer E. Long
IRC Section 409A and its accompanying regulations provide a comprehensive set of rules regulating the taxation of nonqualified deferred compensation (NDC). Although you don't need to be an expert in Section 409A, you do need to be aware of its provisions when advising executives and professionals who participate in NDC arrangements, so that they can avoid punitive taxation.

Thomas C. Foster is a director at McCandlish Holton, PC in Richmond, Va.

Jennifer E. Long is an associate at McCandlish Holton, PC in Richmond, Va.

Using Portability for Retirement Benefits
By Bruce D. Steiner
The higher exemption amount and portability provisions in the American Taxpayer Relief Act of 2012 open up new possibilities when it comes to retirement benefits planning.

Bruce D. Steiner is an attorney with Kleinberg, Kaplan, Wolf & Cohen, P.C. in New York.

Real Estate and the Self-Directed IRA
By Michael Held
Many professionals believe that an IRA may not purchase real estate. Wrong! Real estate is a permissible investment by a self-directed IRA, but it offers a tradeoff: Depreciation deductions are forfeited and capital gains treatment is lost. However, taxes are deferred until the time of distribution. So, before investing in real estate through a self-directed IRA, consider whether deferral of income for a period of time is sufficient to overcome the loss of the capital gains treatment.

Michael Held is an associate in the Chicago office of Harrison & Held, LLP.

Advisors with Heart Awards
Read about 10 extraordinary professionals in the advisory services industry, chosen by our sister publication, REP.
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