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Subject: GOP Sen. Blocks Vote On Claims Court Judge Picks

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## PUBLIC POLICY

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Thursday, September 15, 2016

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### TOP NEWS

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#### [GOP Sen. Blocks Vote On Claims Court Judge Picks](#)

Sen. Tom Cotton continued his blocking of appointments to the Court of Federal Claims on Tuesday, arguing that the court's caseload is too low to justify filling pending vacancies.

#### [House Votes To Pass Agency-Curtailing Measure](#)

Over Democratic members' complaints, the House voted through a measure Wednesday that backers claimed would bring to heel overzealous' agencies lobbying behind the scenes for burdensome rules they never consider the true cost of.

#### [EB-5 Markup Put Off Amid Uncertainty Over Program's Fate](#)

The markup of the EB-5 Regional Center Program reform bill introduced on Monday by House Judiciary Committee Chairman Bob Goodlatte, R-Va., which had been set for today, was abruptly canceled Tuesday night and will be postponed for a later date, according to a committee press release.

#### [EEOC Backs NLRB's Joint-Employer Rule At DC Circ.](#)

The Equal Employment Opportunity Commission voiced its support Wednesday for the loosened definition of a joint employer adopted by the National Labor Relations Board last year, telling the D.C. Circuit the new standard is in line with its own, time-tested approach.

#### [Water Infrastructure Bill Set For Senate Vote](#)

The Senate's efforts to kick-start more than \$9.4 billion in water infrastructure work on aid for communities like Flint, Michigan, with contaminated water cleared the last stumbling block Wednesday and is heading for a final vote as soon as Thursday.

#### [Cruz Sounds Alarm On Internet Transition As Some Cry Foul](#)

Sen. Ted Cruz blasted the intended privatization of the internet's domain name system at a Senate hearing Wednesday, warning that it will boost repressive regimes and diminish First Amendment protections, while opponents said his rhetoric does not match the facts of a technical handoff.

#### [Pa. Justices Urged To Ax Frivolous Suit Claims Against Attys](#)

Pennsylvania's highest court was urged in a brief on Monday to affirm a decision finding that the state's so-called Dragonetti Act, which allows attorneys to be held liable for pursuing frivolous litigation, unconstitutionally infringed on the judiciary's sole authority to regulate and police itself.

### LAW FIRMS

[Arnold & Porter](#)  
[BakerHostetler](#)  
[Bancroft PLLC](#)  
[Beeson Tayer](#)  
[Chamberlain Hrdlicka](#)  
[Cleary Gottlieb](#)  
[Covington & Burling](#)  
[Davis Polk](#)  
[Davis Wright Tremain](#)  
[Dechert](#)  
[Dentons](#)  
[Diamond McCarthy](#)  
[Earthjustice](#)  
[Feldman Shepherd](#)  
[Fennemore Craig](#)  
[Fish & Richardson](#)  
[Foley & Lardner](#)  
[Gibson Dunn](#)  
[Hangley Aronchick](#)  
[Jones Day](#)  
[K&L Gates](#)  
[Kane Pugh](#)  
[Keker & Van Nest](#)  
[King & Wood Mallesons](#)  
[Kirkland & Ellis](#)  
[Kline & Specter](#)  
[Lamb McErlane](#)  
[Latham & Watkins](#)  
[Marshall Gerstein](#)  
[Mayer Brown](#)  
[Morgan Lewis](#)  
[Munger Tolles](#)  
[Native American Rights Fund](#)  
[Orrick Herrington](#)

## ANALYSIS

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### The AIA At 5: How Less-Known Aspects Have Shaped Patents

When the America Invents Act became law five years ago, rules regarding patent applications and validity challenges grabbed headlines, but smaller provisions in the 58-page law have also influenced patent law. Here's a look at how some under-the-radar aspects of the AIA have played out.

### Alternative TTIP Approaches Come With Drawbacks

A slimmed-down version of the Transatlantic Trade and Investment Partnership — perhaps leaving out thorny intellectual property and arbitration issues — could prevent the deal from foundering but raises questions about the viability of the deal as a model for global trade accords.

### 3 Highlights As ACA Wars Resume On Capitol Hill

Affordable Care Act brawling resumed Wednesday on Capitol Hill as Republicans questioned multibillion-dollar settlements with insurers, Democrats ridiculed a watchdog's warnings about ACA fraud and one lawmaker dramatically botched an anti-ACA attack. Here are three highlights from congressional hearings.

### 3 Big EU Copyright Proposals You Need To Know

The European Union's executive body proposed sweeping changes Wednesday to modernize the bloc's copyright rules for the internet. As the new proposals move forward, here are three of them to keep an eye on.

## BANKING & SECURITIES

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### Calif. To Require Pension Funds To Reveal Private Equity Fees

California Gov. Jerry Brown on Wednesday signed into law a proposal to require public pension funds to disclose fees paid to private equity investment firms, aiming to increase transparency over how much of the funds' money are paid out fund managers.

### SEC Chief Flags Challenges In Algorithmic Trading Regs

Fundamental changes to the equity markets based on automated trading will require greater efforts by regulators to oversee algorithmic traders and to update rules on alternative trading systems, U.S. Securities and Exchange Commission Chair Mary Jo White said Wednesday.

### New Small Biz Group To Fight Leverage Restrictions On BDCs

A new lobbying group has formed to advocate for expanding small business access to capital, focusing initial efforts on opposing a U.S. Securities and Exchange Commission rule proposal it argues will limit how much capital small firms can access through business development companies.

### SEC Welcomes Whistleblower Attys, Enforcement Chief Says

U.S. Securities and Exchange Commission Enforcement Director Andrew Ceresney said the agency appreciates the help of the growing number of whistleblower attorneys as it seeks to expand its whistleblower program while also outlining hot tips for would-be tipsters in a speech Wednesday.

## ENERGY & ENVIRONMENTAL

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### House Committee Gets Legal Support For AG Subpoenas

Paul Hastings

Phillips & Cohen LLP

PilieroMazza PLLC

Quinn Emanuel

Schnader Harrison

Segal Roitman

Seyfarth Shaw

Shearman & Sterling

Sidley Austin

Simpson Thacher

Slover & Loftus

Snell & Wilmer

Squire Patton Boggs

Steptoe & Johnson LLP

Sterne Kessler

Susman Godfrey

Valle Makoff

Wheeler Trigg

White and Williams

WilmerHale

## COMPANIES

AT&T Inc.

Aetna Inc.

Amazon.com Inc.

America Fujikura Ltd.

American Bar Association

American Beverage Association

American Civil Liberties Union

American Federation of Labor &

Congress of Industrial

Organizations

American Medical Association I

Ares Capital Corp.

Association of Corporate Couns

BNSF Railway

BTI Consulting Group Inc.

Blue Cross and Blue Shield

Association

BlueCross BlueShield of North  
Carolina

Bridgestone Corp.

CBS Corporation

CSX Corporation

California State Teachers

Employees' Retirement System

Center for Biological Diversity I

House Science Committee Republicans on Wednesday received support from legal experts for subpoenas they issued to state attorneys general and environmental groups seeking information about whether those parties collaborated on climate change investigations targeting industry players like Exxon Mobil Corp.

### [Regulators Approve Calif. Desert Clean Energy Plan Revamps](#)

Federal and state regulators on Wednesday approved revisions of a sprawling renewable energy and conservation plan for the California desert to prioritize development on federal lands, but the new plan was quickly panned by clean energy industry groups and environmentalists.

### [EPA Defends 2008 Ozone Implementation Rule To DC Circ.](#)

The U.S. Environmental Protection Agency on Wednesday urged the D.C. Circuit to reject a slew of challenges to the agency's rule implementing 2008 ozone standards, including whether the regulator properly revoked 1997 standards.

### [US To Lead Global Alliance To Fight Shady Fishing Subsidies](#)

The U.S., along with 12 World Trade Organization members, on Wednesday launched an initiative to combat fishing subsidies that contribute to overfishing, overcapacity or are linked to illegal fishing, in a bid to help ensure the sustainability of fisheries around the world.

## HEALTH & LIFE SCIENCES

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### [UN Report On Public Health Access Blasted By Biz Groups](#)

A long-awaited United Nations report suggesting government-led initiatives to bridge the gap between health care innovation and public access released on Wednesday was immediately blasted by groups like the U.S. Chamber of Commerce and other medical and business associations that claimed it discounted the role of intellectual property, among other criticisms.

### [FDA Panels To Mull Opioid Painkillers In Children](#)

The U.S. Food and Drug Administration will ask several panels Thursday to weigh in on the use of opioid painkillers for children, seeking advice on how to manage the risks.

## TRANSPORTATION & INFRASTRUCTURE

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### [Mass. Takes Sick Time Law Fight With Railroads To 1st Circ.](#)

The Massachusetts attorney general on Wednesday appealed to the First Circuit a recent federal court ruling that the commonwealth cannot enforce its new paid sick leave law against railroads because they're already required to provide their employees sick leave benefits under federal law.

### [Calif. Slams Rail Injunction Bid In Hazmat Transpo Fee Suit](#)

California tax regulators blasted a bid by BNSF Railway Co. and Union Pacific Railroad Co. to block a new law charging a fee on rail cars transporting hazardous materials such as crude oil and chemicals, arguing there's no federal preemption and the railroads haven't suffered losses to justify an injunction.

### [NJ Bridge Scandal Trial Set To Open After Jurors Selected](#)

Prosecutors and defense counsel on Wednesday finished selecting a panel

[CenturyLink Inc.](#)

[Citigroup Inc.](#)

[Competitive Carriers Associatio](#)

[Computer & Communications  
Industry Association](#)

[Cray Inc](#)

[Exodus Refugee Immigration Ir](#)

[Exxon Mobil Corporation](#)

[Facebook](#)

[Financial Industry Regulatory  
Authority Inc.](#)

[Ford Motor Company](#)

[Genzyme Corporation](#)

[Goodyear Tire & Rubber Co.](#)

[Google Inc.](#)

[Helsinn Healthcare SA](#)

[Highmark Inc.](#)

[Hobby Lobby Stores](#)

[Hulu LLC](#)

[International Brotherhood of  
Electrical Workers](#)

[International Brotherhood of  
Teamsters](#)

[Internet Corporation for Assigne  
Names and Numbers](#)

[LinkedIn Corp.](#)

[Loan Syndications & Trading  
Association](#)

[McGraw Hill Financial Inc.](#)

[Monsanto Company](#)

[Morgan Stanley](#)

[National Association of  
Manufacturers](#)

[National Conference of State  
Legislatures](#)

[National Railroad Passenger  
Corporation](#)

[Netflix Inc.](#)

[New York University](#)

[Pew Charitable Trusts](#)

[PhRMA](#)

[Purdue Pharma LP](#)

[Republic Services, Inc.](#)

[Ritz-Carlton Company LLC](#)

[Salesforce.com Inc.](#)

[Sierra Club](#)

[THL Credit Inc](#)

of 16 jurors to serve on the trial of two former public officials charged in the George Washington Bridge lane-closing scandal, picking them out of hundreds of people considered for the high-profile case.

### Autonomous Vehicle Laws May Be Restrictive, Google Says

The CEO of Google Inc.'s autonomous vehicle program on Tuesday expressed his concern with newly passed legislation in Michigan seeking to open the state to wider use of the technology, saying it may restrict companies without previously established automotive businesses from taking advantage of the programs.

## GOVERNMENT CONTRACTS

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### US Signs \$38B Military Aid Package Deal With Israel

The United States has reportedly committed \$38 billion in security assistance to Israel in an agreement signed Wednesday, which the U.S. Department of State has called "the single largest pledge of bilateral military assistance in U. S. history. "

### Poor Oversight Blamed For Rampant Afghanistan Corruption

The nearly \$115 billion the U.S. spent on Afghanistan reconstruction has involved flawed oversight and contracting practices, contributing to the rampant growth of corruption in the nation and undermining reconstruction efforts, according to a watchdog report released Wednesday.

## INTERNATIONAL TRADE

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### Obama Restores Myanmar's Trade Benefits After 27-Year Ban

President Barack Obama said Wednesday he would lift a 27-year-old trade benefits ban on Myanmar, giving the Southeast Asian nation duty-free treatment for exports of more than 5,000 products to the U.S., the latest step in an ongoing effort to scale back sanctions against the country.

### Feds Say 5th Circ. Can't Hear Texas Medical Board's Appeal

The federal government on Wednesday sided with a telehealth company before the Fifth Circuit, saying that the appellate court doesn't have jurisdiction over the Texas Medical Board's appeal of its failed bid to dismiss the company's antitrust suit.

## TAX

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### Israeli Court Rejects Challenge Of US Tax Data-Sharing Pact

An Israeli Supreme Court panel has thrown out a challenge to a tax information-sharing agreement with the U.S. and removed a temporary block on the pact's implementation, rejecting arguments that the agreement violates the rights of Israelis.

### Philly Soft Drink Tax Targeted In Beverage Groups' Suit

The American Beverage Association and a group of retailers, distributors and consumers who oppose Philadelphia's recently passed tax on sweetened drinks hit the city with a state court lawsuit Wednesday, accusing it of duplicating a tax imposed by the state that will diminish the purchasing power of local residents.

### Calif. Gov. Vetoes Tampon Tax Bill, Citing Budget Concerns

Teva Pharmaceutical Industries Limited

Texas Medical Association

The Cato Corporation

The Federation of State Medical Boards Inc.

The Walt Disney Company

TiVo Inc.

Time Warner Inc.

Twitter Inc.

U.S. Chamber of Commerce

Union Pacific Corporation

Union of Concerned Scientists

Verizon Communications

Viacom Inc.

Zeughauser Group LLC

Zillow Inc.

## GOVERNMENT AGENCIES

Army Corps of Engineers

Bureau of Citizenship and Immigration Services

Bureau of Land Management

California Energy Commission

California Public Employees' Retirement System

California State Board of Equalization

Centers for Medicare & Medicaid Services

Commodity Futures Trading Commission

Congressional Budget Office

Congressional Research Service

Consumer Financial Protection Bureau

Department of Commerce

Equal Employment Opportunity Commission

European Commission

Executive Office of the President

Federal Acquisition Regulatory Council

Federal Bureau of Investigation

Federal Communications Commission

Federal Deposit Insurance Corp

Federal Election Commission



California will not become the fourth state this year to eliminate sales tax on tampons and other menstrual products after the measure ended up on the chopping block on Wednesday as part of a series of bills that Democratic Gov. Jerry Brown vetoed for creating or expanding existing tax breaks.

## IMMIGRATION

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### Keep H-2B Returner Apps Coming Despite Uncertainty: USCIS

U.S. Citizenship and Immigration Services on Tuesday urged businesses that employ H-2B workers to continue identifying foreigners they expect to hire again next year despite uncertainty over whether provisions exempting such returning workers from the annual cap will be extended into 2017.

### Posner Reams Ind. Atty Over Syrian Refugee Policy

A Seventh Circuit panel indicated Wednesday it will likely uphold a lower court's decision halting an Indiana policy aimed at keeping Syrian refugees out of the state, with Judge Richard Posner pointedly saying Gov. Mike Pence's attorney was "so out of it" when trying to explain how his directive could possibly be legal.

## NATIVE AMERICAN

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### Tribe Wants Sanctions Over Destroyed Notes In Casino Fight

The Tohono O'odham Nation urged an Arizona federal judge Wednesday to issue sanctions in a suit against the head of Arizona's gambling department over the tribe's right to offer Las Vegas-style gaming near Phoenix, alleging a state legal official destroyed notes from meetings with rival gaming tribes about how to stop the nation's plans.

## TELECOMMUNICATIONS

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### FCC's Pai Launches Call For Incentives To Expand Broadband

The federal government must offer incentives to spur private-sector broadband development in rural areas, and the Federal Communications Commission must remove regulatory barriers to help streamline broadband deployment, commissioner Ajit Pai said on Tuesday.

### Amazon Opposes FCC Licensing Involvement In Set-Top Plan

Amazon.com Inc. has joined Disney, CBS and others opposed to the Federal Communications Commission's plan to unlock competition in the set-top box market that includes agency involvement in the licensing process, according to a letter made public Tuesday.

### NYC Weighing Legal Action Against Verizon Over FiOS Deal

New York City officials on Tuesday informed Verizon New York Inc. they may face legal action for the company's alleged default on an agreement to deliver FiOS cable TV connections to every home in the city and improperly reducing a \$50 million performance bond to \$15 million.

### CenturyLink Cautions FCC On ISP Privacy And Breach Rules

Internet service provider CenturyLink Corp. pushed back on the Federal Communications Commission's proposed data privacy and breach notification rules, arguing that the agency's approach will hurt consumer choice and potentially lead to duplicative, confusing regulatory requirements.

Federal Emergency Management Agency

Federal Financial Institutions Examination Council

Federal Trade Commission

Food and Drug Administration

Gila River Indian Community

Government Accountability Office

Internal Revenue Service

International Trade Commission

Municipal Securities Rulemaking Board

National Highway Traffic Safety Administration

National Institute of Standards and Technology

National Labor Relations Board

New York State Department of Financial Services

Office of Foreign Assets Control  
Office of the Comptroller of the Currency

Office of the U.S. Trade Representative

Omaha Tribe of Nebraska

Port Authority of New York & New Jersey

Salt River Pima-Maricopa Indian Community

Securities and Exchange Commission

Special Inspector General for Afghanistan Reconstruction

Texas Attorney General's Office

Tohono O'odham Nation

U.S. Army

U.S. Attorney's Office

U.S. Census Bureau

U.S. Civilian Board of Contract Appeals

U.S. Department of Defense

U.S. Department of Energy

U.S. Department of Homeland Security

U.S. Department of Justice

U.S. Department of State

U.S. Department of the Interior

U.S. Department of the Treasury

## Rival Companies Urge FCC Action In Special Access Market

Data collected by the Federal Communications Commission “overwhelmingly shows” that the market for business data services is broken, several groups representing competing companies told the agency Tuesday, urging FCC action to reform it and reduce prices.

## PEOPLE

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### Shearman Partner To Lead NY AG's Antitrust Bureau

The co-head of Shearman & Sterling LLP's global antitrust group will join the New York attorney general's office to lead its antitrust bureau, Attorney General Eric T. Schneiderman announced Wednesday.

## EXPERT ANALYSIS

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### Why Political Law Matters During M&A

Those involved in corporate M&A often overlook political law compliance issues until after the transaction is complete. This can leave the acquiring company with unexpected post-merger problems to solve, says Robert Lenhard, partner at Covington & Burling LLP and former chairman of the Federal Election Commission.

### The Post-AIA Battleground For Patent Challenges

The implementation of the America Invents Act, which began on Sept. 16, 2012, ushered in a new age for patent law. The impact of the AIA has reverberated across all technological sectors and fundamentally changed the way the patent community approaches prosecution, licensing, enforcement and monetization, say attorneys with Sterne Kessler Goldstein & Fox PLLC.

### A Clean Air Act Nightmare For Yuma County, Ariz.

In response to certain air quality challenges Yuma County, Arizona, currently faces, the U.S. Environmental Protection Agency has repeatedly suggested the concerns be addressed through various relief mechanisms established in the Clean Air Act. Unfortunately, it is unlikely any of these options will be of use to Yuma County while it's at risk of being designated a nonattainment area for ozone, say attorneys at Snell & Wilmer LLP.

### Reducing Settlement Delays In Loan Trading Market

In a long-awaited development, the delayed-compensation standard for late settlement of loans trading at or near par recently changed in important ways. By incentivizing market participants to speed up settlement of loan assignments, the Loan Syndications & Trading Association's new standard should alleviate some of the factors that have contributed to blockages, say attorneys with K&L Gates LLP.

### FTC Makes Clear That NIST Cyber Framework Is Not A Cure-All

If you comply with the National Institute of Standards and Technology's cybersecurity framework, are you complying with what the Federal Trade Commission requires? The FTC recently published a blog post with a nuanced answer to this oft-asked question. The short answer: "No," say attorneys with Orrick Herrington & Sutcliffe LLP.

### Category Management: What Contractors Need To Know

In less than two years, the Office of Management and Budget's Category Management initiative has begun to reshape aspects of federal procurement,

[U.S. Environmental Protection Agency](#)

[U.S. General Services Administration](#)

[U.S. House of Representatives](#)

[U.S. Patent and Trademark Off](#)

[U.S. Supreme Court](#)

[United Nations](#)

[World Health Organization](#)

[World Intellectual Property Organization](#)

## LEGAL INDUSTRY

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### BigLaw Flounders Amid Fierce Competition In China

Despite the success stories of a select few firms, non-Chinese BigLaw players have largely failed to find a profitable foothold in China over the past several years as they fight for work in a flooded market, experts on the ground say.

### Ginsburg Says Legal Industry Lagging In Work-Life Balance

Associate Supreme Court Justice Ruth Bader Ginsburg on Wednesday lamented the slow pace at which the legal industry has adopted technology to allow for better work-life balance, urging firm attorneys and in-house counsel to band together to demand more flexibility for raising children and other personal issues.

### Ex-Simpson Thacher Clerk Gets Prison For Insider Trading

A New Jersey federal judge on Wednesday handed a 46-month prison sentence to Simpson Thacher & Bartlett LLP's former managing clerk for his role in an insider trader scheme that netted \$5.6 million for himself and two co-conspirators.

### Susman Godfrey Moves To Start Clerkship Bonuses At \$80K

Susman Godfrey LLP announced Tuesday that it is upping bonuses handed out to incoming attorneys with federal judicial clerkship experience, with attorneys who have completed one clerkship receiving \$80,000 and those who have completed more than one receiving up to \$100,000 upon joining the firm.

### Obama Nominates Bharara Deputy To NY's Eastern District

President Barack Obama on Tuesday tapped Manhattan U.S. Attorney Preet Bharara's criminal division deputy chief, a former Davis Polk & Wardwell LLP attorney with experience handling criminal matters throughout the state, to serve as a judge in New York's Eastern District.

### Calif. High Court To Hear Heller Ehrman Clawback Query

The California Supreme Court announced Wednesday it will decide whether a dissolved law firm can claw back profits earned on unfinished business by former partners at new firms, a case stemming from litigation launched by a trustee for bankrupt law firm Heller Ehrman LLP.

### Firm Culture Motivates London Lateral Hires, Study Finds

Law partners moving laterally in London selected new opportunities based on a firm's culture above all other motivating factors, including compensation and leadership opportunities, a new survey released on Wednesday by legal search firm Major Lindsey & Africa said.

### UK Firms Favor Atty Teams, Tech Investments Over Mergers

Firms in the U.K. are increasingly wary of using potentially risky mergers to increase business and service capability and instead are looking to poach full practice teams and to invest more in technology, according to a new survey from Fox Williams LLP and Byfield Consultancy.

### Pro Bono Firm Of 2016: Bancroft

Bringing its top-tier appellate advocacy to a wide range of gratis work, headlined by U.S. Supreme Court cases such as a prominent dispute over the so-called contraceptive mandate, has earned Bancroft PLLC a spot as one of Law360's Pro Bono Firms of 2016.

### [Rainmaker Q&A: Dechert's Laura Swihart](#)

Over time assignments can become more and more significant as clients become more accustomed to seeing you in various other roles relating to their transactions. I have learned that rain often starts with sprinkles, says Laura Swihart, a partner with Dechert LLP.

### [Rainmaker Q&A: Chamberlain Hrdlicka's Scot Kirkpatrick](#)

The main focus of a new lawyer should be to become an expert in their chosen area of the law. If you don't know your area, you are not going to be successful no matter how smooth you can talk, says Scot Kirkpatrick, shareholder at Chamberlain Hrdlicka White Williams & Aughtry.

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