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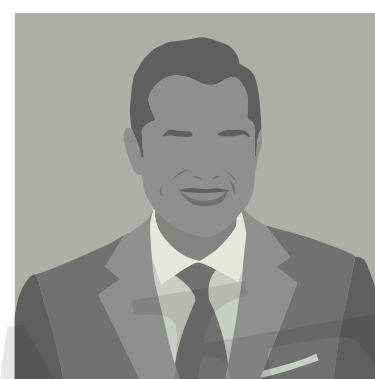


MANAGING PARTNER ROUNDTABLE Q2 2020

Law firm leaders from Denver firms discussed how their firms have handled the coronavirus pandemic so far and how they're adjusting their plans for the future. Participants included Kerry Jardine of Burg Simpson, Pat Linden of Linden Law Partners, Rehan Hasan of Hasan LLC, and Steve Shapiro of Shapiro Bieging Barber Otteson. **Starting on Page 13**



MANAGING PARTNER ROUNDTABLE

MANAGING PARTNER
ROUNDTABLE Q2 2020

Coming Up for Air

As businesses and law firms see respite through the stay-at-home orders and economic downturn, law firm leaders discuss how they've weathered the storm and how they are planning for the future now.



PAT LINDEN

TONY FLESOR
LAW WEEK COLORADO

Roundtable participants were Kerry Jardine of Burg Simpson, Pat Linden of Linden Law Partners, Rehan Hasan of Hasan LLC and Steve Shapiro of Shapiro Biegling Barber Otteson. Law Week managing editor Tony Flesor moderated the conversation.

LAW WEEK: Do you mind giving a brief introduction of yourselves and your practice, and some sense of the size firm that you're working with?

REHAN HASAN: I'm currently a solo practitioner. I've had my own practice for 11 years. I have fluctuated, though — I have had periods where I had some associates, clerks, that sort of thing. And I made the conscious decision to scale that back to solo practice, again. I act as general outside counsel



STEVE SHAPIRO

for companies and entrepreneurs from corporate structuring, day-to-day legal, stock options, deferred comp, financing, a lot of M&A work. These days I do quite a bit of real estate to boot. So, it's everything in the lifecycle of the business. So more of a general corporate practice.

KERRY JARDINE: I'm with the law firm Burg Simpson. We've got six or seven offices in Cincinnati, Phoenix, Las Vegas, Denver and Tampa and Sarasota, Florida. We have approximately 180 employees and approximately 75 attorneys.

We have about 10 practice areas ranging from construction defect, mass tort, worker's compensation, personal injury, medical malpractice, commercial practice. Basically, we do a mix of contingency work as well as hybrid type of fee arrangements across our practice areas.



REHAN HASAN

STEVE SHAPIRO: Our firm has about 16 or 17 lawyers in Dallas and Denver. Most lawyers are here in Denver. I do insurance coverage in bad faith to policyholders.

Also, commercial litigation, banking litigation, construction. In addition, we have a pretty robust banking practice in Denver and Dallas and represent a lot of community banks and also some very large, multibillion dollar banks and do capital raises, M&A, security offerings. Primarily out of Denver, we also do some real estate, transactional and litigation.

PAT LINDEN: I had my own firm for about five years this August, and prior to that, I was largely with large firms in the Denver area. Our practice is specialized. We are a transactional boutique that encompasses really all things. If I had to bucket into three primary items, that would be mergers and acquisitions,



KERRY JARDINE

venture capital and private equity and then corporate law, which would include LLCs, partnerships, and then kind of all things commercial contracts. We also have specialty in employment on transactional and executive compensation. So, we do a lot of work there.

We have essentially four full-time attorneys, and, depending on where things are at, a pretty steady flow of special counsel-slash-contractors that we know and trust and worked with over the years on an ad hoc basis.

LAW WEEK: To start off, I am curious in hearing how you've all been weathering the storm, so to speak. How have you changed what you do? For Pat and Rehan do you see a benefit in being your size right now or is that more of a risk? And likewise, for those managing larger firms, what are the benefits or

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MANAGING PARTNER ROUNDTABLE

“Everyone has different risk tolerances to COVID. I never missed a day in the office; other people we can’t drag back.”

-Steve Shapiro, Shapiro Biegling Barber Otteson managing partner

challenges of that structure right now?

LINDEN: We were having a great year, actually. At least our first quarter was, by far, the most solid practice I’d had, and I think as a firm, since we’ve been in business, so that was terrific.

That was right up until about March 15. I had a lot of different transactions going on. I don’t think we really anticipated that it was going to go from what it was — which was sort of this passing joke of this major flu — to there was a specific day where I felt like the world was ending. So, it’s amazing to think of how life has changed.

I’m in the capital market space, largely. In the M&A world and the venture capital world, deals really don’t happen unless there’s some connection to different private equity investors, and then they’re connected to bank facilities and what have you. So, we saw a dead stop in my practice for about a

good six-week period, which I think was just largely because we’re capital-markets-focused. And I think in a deal environment, things just changed, and everybody sort of reassessed.

That was a little nerve wracking, at first, to see how we went from full speed to almost zero. And then we decided during that time frame that we were going to really start working on the business and letting our clients know that we were learning as much as we could, pretty much in real time, on the PPP programs and trying to be a resource. So I think as things are opening up in general, things have really changed.

I would say we’re back to about 80% of where we were, and you know, I think the situation at large has really given me an opportunity to focus on the business. You get so busy practicing law, I think we’re better off in the perspective that we’ve been adaptable to working at home. And that’s proved to be easier

than we thought it was going to be.

I think money’s going back to work. I think there’s a lot of pent-up activity. So we’re excited about that.

LAW WEEK: Steve, Rehan, you’re in a similar practice space. Did you kind of see that similar dead stop sort of experience?

SHAPIRO: We expected that, but it didn’t occur. It changed a bit, it slowed down. We used to have some predictability in terms of deal flow, especially for our transactional group and M&A and securities, and deals stopped because the economics changed.

So we went more short-term in our projects. They would just pop up and they’d be shorter term projects. You open in the morning and we’d have a handful, but nothing we had anticipated or planned for.

And now, at this point, the deal flow is returning. For our clients and folks in the marketplace, I think they are starting to feel the way around the new situation and are more comfortable than I think proceeding with deals. We do a lot of loan documentation for banks — that slowed way down. Banks became very tight with lending. Litigation is staying robust. I thought mediations would come to a halt, but I’m still doing mediations. We’ve switched to Zoom for mediation, which worked much better than I anticipated.

Today, I actually had my first in-per-

son mediation in three months, which was great. I had to take a shower and shave and put on some clean clothes. So, I can feel it shifting back.

And I feel everyone has different risk tolerances to COVID. I never missed a day in the office; other people we can’t drag back. So that’s challenging to deal with that. But I feel like we have some forward momentum. But then every time you watch the news, you don’t know if you should have forward momentum. I’m hoping that we will continue forward and won’t go backwards. I think the economy has suffered enough, and small businesses like us have suffered enough, and, hopefully, we will do a better job of balancing people’s financial wellbeing along with their health.

HASAN: I’ve experienced something very similar to what Steve was describing. I was expecting a banner year — Q1 was extraordinarily good. And then obviously, with the global pandemic and the stay-at-home orders, I’ve found transactions halted. And that was more a product I think of everyone just trying to see what’s happening in the world. But I’ve always very consciously strived to nurture a mix in the practice of transactions and what I call day-to-day legal.

So when the transactions stopped, I found a lot of the more day-to-day legal matters kind of popped up, which was quite nice, and I think a part of it was companies having a moment to



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Julie has extensive experience as a trial lawyer representing individuals and businesses in federal and state courts as well as in arbitrations and mediations across the country. She has tried multiple jury and bench trials to verdict in Colorado and other jurisdictions. She has handled complex litigation for all types of businesses in a variety of matters involving construction, professional liability, product liability, qui tam, financial services, complex torts, employment and commercial litigation. Ms. Walker also has experience assisting licensed professionals in responding to regulatory inquiries and disciplinary matters.

303.628.3604
jwalker@irelandstapleton.com

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take a breath — whether they liked it or not — and be able to say O.K., well all that's always put off, we can do that now. So March was just fine. April, slowed up a little bit. May picked right back up. And then this month has been just as hectic as before.

I've also had a number of transactions now restarting, as well as a number of clients getting back into the swing. I think there's a level of comfort now with the world as it is. So we'll be having those transactions start to pick up again, for sure.

JARDINE: Burg Simpson is a trial firm. We don't do any transactional work. The majority of our revenue is contingency-based, so we're not heavily involved in hourly work, and we're not heavily involved in resource revenue areas that are disconnected from major corporations or major insurance companies.

So, for our particular practice area, these dislocations have not had a significant financial impact because, at the end of the day, your major insurance companies and your major corporations tend to have a lot of excess cash. And so that has enabled Burg Simpson to weather the 2008-2009 dislocation and the current dislocation without any significant disruption in terms of our revenue sources.

Now, having said that, Burg Simpson — and I'm sure every other law firm in Colorado and the country — in March was trying to figure out what was going on and what the impact would be. At that particular point, there was a tremendous amount of uncertainty as to exactly what the impact would be on our firm and what the impact would be on our revenue. How would trials be

fine, but at the time, we didn't know how that was going to work out.

The next major dynamic that we faced was we've got our Denver offices, we've got multiple out-of-state offices, and how are we going to make sure that everybody can be productive? So we ended up in a situation where we had to really focus on how do we make sure everybody can work from home and work from home at a very high level.

LAW WEEK: Steve, Kerry, you both mentioned that shift to working from home and how that might have changed some of the dynamics at your firms. I'm curious, what have been the biggest adjustments that you've seen? And do you think that's going to stick around after everything opens back up?

SHAPIRO: You know, we have some contract lawyers who work at home. Outside of that, we were always an office-based practice, so the remote workplace was thrust on us and I don't think it's ideal for what we do. There are a lot of inefficiencies with it. But we've managed through it. We have some staff who are in the vulnerable category for COVID, who have not returned and have been working from home, and it's less than ideal.

Do I see this as a long-term paradigm shift? I hope not. I'm a dinosaur. And so I dictate, and I'm heavily reliant on administrative support, and younger lawyers and I like to have them within reach. I don't think we have a plan to become a remote-based office and law practice. I think I'd like to get back to life as it existed before COVID, and all the stay-at-home and shelter-at-home orders.

“It was a little nerve wracking, at first, to see how we went from full speed to almost zero. And then we decided that we were going to really start working on the business”

-Pat Linden, Linden Law Partners managing partner

naturally been moving more and more to remote access. Now, up until the time of this pandemic, probably, 10% of the time spent by people in our organization was done remotely.

In January of this year, we probably had about 170 employees, and we probably had 70 to 80 of them who had remote access. So we've invested a tremendous amount to give our employees the ability to work remotely, in part because many of our employees prefer to have one or two days a week where they can work remotely. We found that providing them with that option improves the quality of their work experience, because some of them have significant commutes. So, we actually entered into this pandemic with at least half of our workforce having the systems in their homes that they needed to have in order to work remotely.

Now the challenge for us was, in a very short period of time, how do we get another 80 or 90 of our employees so that they have the computers, the screens, the hardware, everything that they need, the internet speeds that they need in order to really effectively work from home?

We wanted to be in a situation where our objective was that we could have 95% of our employees working from home and could be 100% as effective as we were before. And that was our objective and continues to be our objective.

Now, that doesn't mean that going forward, 95% of our people will be working 95% of their hours from home. But what it means is that we have the capability. And we've invested the resources so that if it came to that, we would have the ability to do that.

Over the last four or five years, we have made a major investment in our employees in working remotely, as it just so happens to have been the inertia of our firm, and wasn't necessarily a great strategy in preparation for some great pandemic, but rather, it just simply kind of is a way that our firm morphed.

The way I look at the future, I would fully expect that, for our firm, 60% of our hours and our work will be done remotely in 2021 and 70% potentially in 2022 for our particular practice area, I think it's the new normal. The way the inertia is flowing is towards more and more remote work. And there's many, many beautiful, exciting things about that model.

We used to spend an incredible amount of money dealing with just

travel and the efficiencies of having work being done by some tool as simple as Zoom. There's a lot of very, very positive things that have come out of this from an office-efficiencies standpoint with respect to our type of practice area. That has been a wonderful development that's kind of forced us to move in that direction, because we didn't have any choice. And as a result of that, we're seeing significant savings in many areas of overhead as a result of this increased move towards remote work and remote access.

HASAN: I want to commend Kerry and his firm; my sense and understanding is that it's highly unusual for a very large organization like a law firm to take such a pragmatic approach.

I think this is something that's been creeping up on the legal industry for some time, and the coronavirus and the Google pandemic has accelerated. The model, you know, we saw, I was at the cutting edge of coworking in the 2010s. At the beginning of 2010, I launched a company called Galvanize, the first large-scale coworking space. And it was really about how do you reimagine collaborative workspace in work environments. I can't tell you how many people who were very smart said, I don't see anybody ever trading in a cubicle in a high rise to work in an open space environment. And obviously, history decided otherwise.

I think a similar paradigm is affecting the legal industry now. I think technology has busted down so many barriers that it's really become about the style of practice and not knowing every area of law.

I can't say that every single area of law lends itself to a virtual practice, however, I would wager to say most of them would. I think we'll be continuing to move into a much more virtual, distributed-teams type of model, which most all other industries are doing. There's been a ton of data around this over the last 10 years, even over, you know, the last three- or four-month period of businesses in tremendously increased productivity over their teams once they have been allowed to work virtually. So it will be super interesting to see how that translates into the legal realm as well.

LAW WEEK: You've all mentioned that there's been at least some bounce-

“... that doesn't mean that going forward, 95% of our people will be working 95% of their hours from home. But what it means is that we have the capability.”

-Kerry Jardine, Burg Simpson managing partner

handled? And one of the big concerns is whether there was going to be any liquidity in March.

The big downturn in the market was a result of liquidity issues. So the first thing that we were concerned about was are we going to be able to access our lines of credit. So, for a couple of weeks, we were engaged in the process of determining how our lines of credit would hold up and how the banks would hold up and would they be able to fulfill their responsibilities on lines of credit.

As it turns out, the Fed stepped in and solved the liquidity issues. We never had any issues with lines of credit. And so that all worked out perfectly

LAW WEEK: So you're not going to be selling off any real estate then.

SHAPIRO: We're a year into an eight-year lease, so we're going to have to ride this out.

JARDINE: I think so much of this is very much practice-based. I think there are practice areas where working remotely is just simply not an option and is simply not going to be effective. And then there are practice areas in the legal space that can have a tremendous amount of remote access.

What our journey has been over the last three or four or five years has just

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“Somebody will wreck the economy somehow... We can either be reactive all over again or we can learn our lessons to try and be nimble and really build strong foundations for ourselves in the legal profession.”

-Rehan Hasan, Hasan LLC

back or even if there was a slowdown or a stop and that things are kind of coming back through the other side. I'm curious to hear what your outlook is going forward.

Are you rethinking how you're doing business development, or how you're planning for the next six months if there is any second wave or any other kind of economic ripple effects that might still be coming down the pipeline?

LINDEN: It's always been a big thing of mine to operate my firm as a business. I know they're all “business-es,” but, historically, law firms, especially big firms, I wouldn't call them super business- or entrepreneur-like.

When we started this firm, part of what I wanted to achieve was having it be a law business.

We have a very active media strategy, particularly social media, and have invested a lot of time and money to do that. And that's an always evolving thing. So, nothing really changed from what we were doing.

Personally, I think there are a lot of folks who have had some time to think more about their business and seeing the standstill. And I think that they're going to spend more time doing some of those types of activities.

I think across the board, you'll see that, but it gave us a little bit of time to hit the pause button and work on the strategy and really look at the things that we were doing from a marketing perspective, what we were doing from a staffing perspective, where we could improve and get leaner, invest some more dollars on these types of things and allowed me to really look at the at the business from 30,000 feet.

But in terms of the way that we operate, this has given us an opportunity to refine that. But we run this like a business, and everybody who's part of this has to think like a businessperson.

And that's a differentiator that we bring in and really relate to our clients. So, we've been helping them in the same ways through this pandemic. It hasn't just been legal, but the same types of issues — getting PPP money or how we're marketing ourselves, what everybody's trying to do to differentiate themselves. So that's been really great for us to be able to be proactive with other business owner clients throughout this.

LAW WEEK: Are there other thoughts on getting a change in pace to focus back on the business side of things? Or do you have any different strategy going forward versus how you've done things six months ago?

HASAN: I found it to be really nice, actually. A big chunk of my time has always been toward business development: coffees, lunches, that sort of thing. And we're in a period where we can't do that, and it's freed up so much time.

Business development is the most exhausting part of the practice for me. I welcome the billable hour pieces of my day as a bit of a break sometimes. But now, I think it will normalize being able to, rather than having a coffee with somebody you're introduced to, be able to just do a Zoom call.

I think nothing completely replaces the person-to-person relationship that one can build, but certainly I'll be utilizing Zoom and video conferencing as a great networking tool to be able to drill down into who are good people in my network who I can bring value to their business and vice versa. So that's streamlined and really been a great, great result for me on the business development side.

I think being forced to concentrate on the business of the law is always a good thing. I have started putting in a social media strategy, which is primarily LinkedIn and Twitter, with a marketing consultant that I brought on, who has been wonderful. And that was, up until now, in conjunction with the in-person things that I was doing. And then once COVID happened, we've had to rely on primarily that. So, it's been terrific to be able to see how that plays itself out from a development standpoint, and I have been really pleased with the way that social media piece has worked. I'll be looking forward to continuing that as we move forward. That's a real nice takeaway for me.

JARDINE: Our model has always been based on long-term planning. I met a lawyer once, who I really respected who talked to me about his 50-year business plan, and he was probably 60 years old at the time. I came to understand that to build a successful business, whether it's law or otherwise, you have to really take a long-term strategy.

So, what we've been doing, just year-in and year-out, is trying to stay focused long-term. If you stay focused

long-term, the volatility in the short-term is less troubling, if you know exactly where you're trying to get to.

And the practice of law, if you have great lawyers and you do great legal work, and you have a team that wants to work together, you get great teamwork. If you get that combination, and then you have a long-term horizon, you're going to be effective, you're going to be able to survive the dislocations that took place in 2008-2009 and the ones that are just taking place.

There are going to be, unfortunately, some law practices that aren't going to thrive, that won't be able to deal with the new dynamics that are taking place. Hopefully, that's a small number. But it's just the reality when we go through these changes, you have firms that are able to embrace change, as part of their culture, they have a long-term perspective, and they're able to ride these volatile moments forward and change, and change in a way that's going to be productive.

In order to really thrive going forward, you really have to have a very high technology IQ, you have to make significant investments in your IT, your hardware, your software, you have to stay in line with what's taking place because it's incredibly amazing what the opportunities are in the technology. I think the firms that really can develop the ability, it'll take a lot of energy and a lot of thinking and there'll be successes and failures along the way. But firms that can really take and develop

the ability to work remotely in ways that were kind of unthinkable five years ago. Those will be firms that will be much more able to withstand not only the volatility that we're going through right now. But the volatility that we anticipate we'll be looking at over the next five to 10 years.

LAW WEEK: I think that's a great point about that kind of IT flexibility and then investment. But Rehan, Pat, Steve, is there any main lesson learned, or main takeaway that you've had through this just strange time?

SHAPIRO: We've always had strong IT. We have sophisticated clients, so we have to match them with our IT systems. We've always had remote access, but it was something you used on weekends and evenings — not as your primary means of performance. So, we're able to shift into that model, easily, but we're a firm that's based on relationships and doing good work. And those are not mutually exclusive concepts. So, it's tough to maintain those relationships because you can't reach out and touch anyone anymore. It's through Zoom or telephone. And that works. But we have a lot of clients who like the face time with us. So we're not quite able to do that. But our relationship with our clients and the work we perform for them, as maintain goes through this transitional

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ROUNDTABLE
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period. What we'll transition ultimately. You adapt or die, right? So, we've been able to do that. And then we'll just have to see what it looks like on the other side.

LINDEN: From just a technology standpoint, I've worked for large, huge firms for close to 15 years. I think when you're on your own, it's easier, because the investment is actually quite minimal. If you're talking to a hugely staffed firm, that's a whole different ball game.

Our model is to be very nimble in staffing primarily with lawyers. We do a lot of our own stuff on the administrative front. So, I don't really know it any differently. From a technology standpoint, even though we have a five-year lease and nice office space, it really hasn't been a hiccup. Because the way that we structure our firm is it's all about the individual. The people we know are going to succeed. And those are people, fortunately, who I have a long-term relationship with. And we're in sync in terms of how we work as law-

yers and as business partners. So I think on the small-firm side, you're just going to see an acceleration of the capabilities that were already out there and people realizing that they can significantly reduce that resource-spend on certain areas.

One example: We're working on some M&A transactions that involve large amounts of money, and are really having to deal with some complex issues around PPP. And there's really no perfect roadmap for that stuff right now. We're figuring that out as we go, and I think that's a huge opportunity for us to navigate some really complex things on the transactional side.

I think it's going to distinguish the attorneys and business people who can really think outside the box on their feet, because you're going to have to in this environment. It's exciting to see. Some businesses are really taking advantage of opportunities that are out there for them. Others are going to suffer if they're not adaptable. But the bottom line is that if you're able to weather some of this new stuff that's coming on and be an influencer, there's really huge opportunities.

HASAN: When I started my practice, it was October 2009, and we were in the midst of the beginnings of the recession. So at the time, it really stunk. You know, there wasn't a whole lot of work. We just had to hustle, hustle, hustle. But in retrospect, I think I'm reaping the benefits of that now, because we're in a recession, officially, but I think we were seeing the effects of that back in March.

All the things I put into place because my firm arose out of that recession has really put me in really good stead now. How do you have access to lines of credit but also have a healthy amount of cash reserves to be able to pull on so they're both working together, assuming that lines of credit will freeze just like they did in the recession? How do you build a good group and continue the care and nurturing of clients, so that they continue to be sources of additional business rather than moving from transaction to transaction? And then also the move to paperless and virtual work. This feels like, O.K., if the world were to turn upside down, what would it look like? It might

look like this. And everything, you know, it feels really good that those lessons of the recession were heeded.

And then therefore, I wasn't worried at all because I knew we had a level of stability that I'd be able to wade through all of this now. There's always context and everyone's in a different situation, but I think learning the lessons of history absolutely helped today.

And I find the closest link in connection with the recession of 2009. And then moving forward, what are the big lessons? I talked to a lot of people to find out what people have done, and apply those because all of this will happen again. It may not be in the context of a global pandemic, but it will be something. Somebody will wreck the economy somehow.

I don't have so much confidence in our leaders. So we'll be in this all over again. We can either be reactive all over again or we can learn our lessons to try and be nimble and really build strong foundations for ourselves in the legal profession, which has had the luxury of being able to ride out a lot of this stuff in the past. •

CFPB DECISION
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professor at the University of Colorado, said the decision moves the needle a small amount for a future case for the Supreme Court to decide the president also has authority to fire the Federal Reserve chair at will.

"It leaves intact the precedents that say that he cannot do that. But it moves in the direction of that idea," Collins said.

The court mostly split along ideological lines, with Roberts leading a majority that Justices Neil Gorsuch, Clarence Thomas, Samuel Alito and Brett Kavanaugh joined. But Thomas also filed a partial concurrence and partial dissent to another part of the opinion, which Alito and Kavanaugh joined.

Justice Elena Kagan filed another partial concurrence and partial dissent, joined by Justices Ruth Bader Ginsburg,

Stephen Breyer and Sonia Sotomayor.

In the Humphrey precedent, Federal Trade Commission member William Humphrey refused to accept his firing by President Franklin D. Roosevelt. When he died a few months later, his estate challenged the firing in court by seeking Humphrey's salary between the date of his removal and the date of his death.

In his separate opinion, Thomas was direct about his dislike for the Humphrey's Executor precedent and the power of independent agencies as a de facto fourth branch of government. The Constitution just doesn't give Congress authority to delegate its legislative power or create agencies that have functions of multiple branches of government, he said.

"Humphrey's Executor relies on one key premise: the notion that there is a category of 'quasi-legislative' and 'quasi-judicial' power that is not exercised by Congress or the Judiciary, but that

is also not part of 'the executive power vested by the Constitution in the President,'" he wrote. "The problem is that the Court's premise was entirely wrong."

Thomas agreed with the majority's decision to limit the Humphrey's Executor precedent, but in his partial dissent he said he does not believe the court should have addressed the severability of the CFPB's single-director structure from the rest of the law establishing the agency.

Holcomb said under Thomas' reasoning to outright overturn the Humphrey's Executor precedent, it would create case law to eliminate all independent agencies and put them under the president's authority.

"He wants to use this as an occasion, number one, to strengthen the president, but number two, to attack the 'deep state.' And that phrase he never uses, of course, because it's so politically charged. But I think that is his goal."

But in her own separate opinion, Kagan wrote the Constitution doesn't address the president's authority to fire agency leaders. She believes Congress has historically had wide authority to establish independent agencies, and insulation of their heads from firing except for cause has allowed Congress to set up an agency with a structure that is best for its specific purpose.

"Judicial intrusion into this field usually reveals only how little courts know about governance. Even everything I just said is an over-simplification," Kagan wrote. "A given agency's independence (or lack of it) depends on a wealth of features, relating not just to removal standards, but also to dissenting appointments practices, procedural rules, internal organization, oversight regimes, historical traditions, cultural norms, and (inevitably) personal relationships. •

—Julia Cardi, JCardi@circuitmedia.com

COURT OPINIONS
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JULY 1, 2020

Ritchie v. Polis

Since declaring a state of emergency in March, the Governor has relied on his authority under the Colorado Disaster Emergency Act to issue various executive orders suspending certain statutes, rules and regulations in an effort to prevent further escalation of the pandemic and mitigate its effects. Among these is Executive Order D2020065, which suspends the operation of certain statutes governing the ballot initiative process that require signature collection to take place in person, and authorizes the Secretary of State to create temporary rules to permit signature gathering by mail and email.

In this per curiam C.A.R. 50 appeal, the Colorado Supreme Court ad-

ressed whether the act authorizes the Governor to create, by executive order, an exception to the requirement that signatures on petitions used to place initiatives on the ballot be collected in person. The court concluded that article V, section 1 of the Colorado Constitution requires that ballot initiative petitions be signed in the presence of the petition circulator. Because that requirement cannot be suspended by executive order, the Governor is not authorized to create an exception to that requirement. Accordingly, the Supreme Court reversed the judgment of the district court on this matter.

COURT OF APPEALS

JULY 2, 2020

Boyle v. Bristol West Insurance Company
Robert Boyle was a passenger in a

Toyota insured by Bristol West Insurance Company. The Toyota and another vehicle, a jeep, were involved in an incident of road rage, during which both vehicles were driven aggressively, cutting each other off and suddenly braking in front of each other. After both vehicles came to a stop, Boyle emerged from the Toyota and the driver of the Jeep struck Boyle with his car and dragged him for some distance, causing Boyle severe injuries.

Boyle's insurance policy included uninsured motorist coverage, and it insured any "person while occupying, maintaining or using [the owner's] covered auto." After settling for the respective policy limits with both his own insurer and with the insurer of the Jeep, Boyle sought underinsured motorist benefits from Bristol West. Bristol West denied his claim and Boyle filed a complaint for declaratory judgment in district court. Both parties

filed cross-motions for summary judgment. The district court granted Bristol West's motion, ruling that, because Boyle was not "using" the Toyota when he was injured, he was not entitled to benefits from Bristol West. The district court denied Boyle's motion.

Boyle contended that the district court erred by granting Bristol West's motion for summary judgment because Boyle "used" the Toyota when he was injured. This appeal required a division of the Court of Appeals to decide, apparently for the first time, whether a passenger in a motor vehicle involved in a road rage incident is "using" that vehicle for purposes of underinsured motorist coverage if he is injured after getting out of the vehicle to confront the driver of another vehicle. Because it concluded that Boyle was not using the vehicle when he was struck by the other vehicle, the court affirmed the judgment of the district court. •