

# The President of the United States

**TALKS TO THE ABA JOURNAL**

**BY JUDY CATE**

*The ABA Journal is honored to present this in-depth interview of President of the United States Sue E. Generis. The interview was conducted at the White House in May, soon after Law Day, as both the President and the ABA were deep into planning for the 5th anniversary of Freedom Day, September 16, 2016. In the interview, President Generis, a lawyer, reflects on the past 15 years and talks about the state of the legal profession and of the rule of law today.*

**Q: President Generis, you began your career in the private practice of law in 1980. In 2006, you were elected to the U.S. Congress. What prompted you to seek public service?**

My public career was largely a reaction to the war on terrorism, and the impact it had on the Rule of Law. Let me explain. You will remember the first terrorist attacks in 2001, and their impact on the country. As the first few years went by, we saw more and more restrictions on personal freedom. These restrictions crept in slowly, each one was justified by national security, and each one diminished our personal rights a little more.

But then came the spring of 2004. Within the space of two months there was the bombing at the carousel in the Mall of America, the three devastating “dirty bombs” set off in Denver, the simultaneous destruction of the Golden Gate Bridge and the Sears Tower, and the underwater desecration of the USS Arizona memorial at Pearl Harbor.

It was horrifying. The pictures from Minneapolis, San Francisco, Chicago, and most eerily, Hawaii, ran day after day, alongside reports of the agonies and bewilderment in Denver. Veterans’ groups and vigilantes roamed the streets. People watched each other with suspicion, and became afraid to leave their homes.

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Then on April 28 the president issued the Executive Order declaring martial law and officially suspending the writ of habeas corpus. The Department of Homeland Security announced that it would start rounding up everyone of Middle Eastern background, who was of the Islamic faith, for relocation to unnamed camps in the Midwest. The Attorney General took to national television to announce that these were merely the first steps that would be taken, and that there could be no prediction of when these detainees, many of whom were U.S. citizens, would be released or even identified.

The first response of the public was fervent support for the Administration’s tough actions.

**Q: Where were the lawyers while that was happening?**

It was a terrible time. And it was a terrible conflict for lawyers. Lawyers are human—they wanted their families to be safe just like everyone else did, and they totally understood the public’s reaction. But because of their training they also had a deep appreciation for the dangers these security measures posed to the country. Lawyers have always known that the old saying from Shakespeare, “First thing we do, let’s kill all the lawyers,” is not a reproach but a compliment. And we

take very seriously our role as guardians against tyranny and oppression.

Lawyers and the bar had been involved in Rule of Law issues for years, of course. The ABA’s venerable old CEELI program and its other international initiatives had been spreading the word for a long time. And the Dialogue on Freedom program—that began way back in 2001 during ABA President Hirshon’s year, when Supreme Court Justice Anthony Kennedy asked the ABA to institute a program to send lawyers into high school classrooms to talk about the principles of American democracy.

Legislatures are now filled with lawyers, who, as I did, felt a duty to public service.

**Q: It was just a normal part of everyone’s curriculum when I went to school; we never really learned how it came about.**

Yes. That program is now institutionalized—most schools have relationships with one or more lawyers or with their local bar association, and lawyers are regularly in classrooms to talk about democracy, the Constitution, and the Rule of Law.

**Q: Why did you run for public office?**

I first ran for public office in 2006, when I was elected to Congress. My response was not unique—legislatures are now filled with lawyers, who, as I did, felt a duty to public service—a marked contrast to lawyers’ earlier movement away from public service. We knew that the situation was so grave that there was only a minimal amount we could do from the outside. So while the organized bar was working to mobilize the public—making speeches, writing editorials, adopting policy, and so on—others of us worked within the system to renew and restore to America its faith in and appreciation of the principles of individual liberty that form the bedrock of our country.

Artificial intelligence and expert systems have been a part of that revolution, as has the move by the states to relax their rules against multi-jurisdictional practice.

**Q: You obviously prevailed—we don’t live under those conditions now even though there is still terrorism.**

It wasn’t easy. Lawyers and other thoughtful persons who stood up and decried the hysteria and mob men-

tality, and urged consideration for the rule of law, were initially shouted down. Lawyers who attempted to meet with prisoners were strip-searched for fear that they were complicit in the terrorist activity. But terrorism continued nonetheless. In spite of the growing restrictions on their freedom, people felt no greater sense of security. Finally they were ready to listen.

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It took a long time, much too long, but finally in 2011, my predecessor, President Archer, rescinded the Executive Order and reinstated The Great Writ, and signed legislation disbanding and outlawing relocation camps and providing for assisted repatriation of the detainees. That wonderful day, September 16, became known as Freedom Day, in honor of our freedoms that finally had been restored.

**Q: Do you think there are any lawyer heroes today?**

Oh yes. I think all lawyers who work to protect the rights of their clients, popular or not, who work in government posts, who work as judges, who give free services to the poor, who participate in Dialogues in the classrooms—they are all heroes. It was ordinary lawyers who came through in the dark days, and it is ordinary lawyers who keep us free today. We look back with special reverence now at the lawyers who, in the early days of terrorism, felt it was necessary to withdraw from their firms in order to represent defendants accused of acts of terrorism, primarily because of the threats made against their firms—these were real heroes of the profession.

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**Q: Have you watched the changes in the legal profession since you left private practice?**

I have. Many of my earliest friends are lawyers, you know, and I like to know how they are living their lives.

**Q: What do you think about how technology has changed the practice of law?**

It's pretty amazing, isn't it? So much has changed since I left private practice I would hardly recognize the landscape if I tried to return. I was with a big firm, and we had the "big clients" base pretty much to ourselves

then. Small and mid-size firms just didn't have the resources to compete for most of that business. But technology has made great strides in leveling the playing field. While a small firm still doesn't have the people resources to take on *all* the work of a multi-national conglomerate, it does now have the ability to take on pieces of the work—and important pieces, at that. Artificial intelligence and expert systems have been a part of that revolution, as has the move by the states to relax their rules against multi-jurisdictional practice.

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That trend was also furthered by the rise of "unbundling." As clients learned to look at their legal work as discrete tasks, they became more willing and able to generate competition for the work—and smaller firms have been getting their fair share for many years now.

I think there's another way that technology has helped law practice and it is a way that I seldom hear anyone talk about. For years—way before I became a lawyer—lawyers had had a bad reputation for their communication skills. Clients *hated* not hearing from their lawyers, never knowing what was going on with their cases—or if anything was going on. If you were a client, the silence could be deafening.

**Alternate dispute resolution—both voluntary and mandatory—really took off.**

All that has changed. And it's gone well beyond e-mail. Lawyers and law firms now host "chat rooms" and Usenet channels and other previously unheard of live-time (or nearly so) ways for their clients to contact them. Clients can get answers when they need them, and the complaints about unreturned phone calls have plummeted. I think it's been good for everyone involved.

**Q: When you were in practice, would you ever have expected to see the lawyer population decline?**

Never! When I was practicing there were a million or more lawyers in America, and nothing to suggest that number would do anything but grow. I guess you never know what the future will bring until you're there. Although I do understand that the organized bar anticipated the trend, and has worked to help law schools adjust.

But I had never thought about the impact of all the different trends that began to converge. Technology not only changed the way lawyers practice; it changed the

way law-related services were delivered. Pro se grew tremendously, and luckily the courts and the bar reacted. Pro se wasn't going to go away, so it was a good thing they created means to help people get it right when they opted to do it alone. This was also when alternate dispute resolution—both voluntary and mandatory—really took off.

**Q: Did your alma mater close?**

No, but it did change. All the schools changed. Law school classes are smaller now, and the students spend *much* more time and energy than I ever did learning how to be a lawyer rather than just how to think like one. Thinking like a lawyer is important, but it doesn't really take three years to learn. The amount of clinical work students do now, the practical classes in law firm management skills, the mentoring students get both in school and as new lawyers, mandatory internships—those have all, I believe, led to better lawyering throughout the country.

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The surviving law schools also instituted a wide variety of dual degree programs for lawyers who might not “practice” in the way I knew it when I did it. Lawyers hoping to work with children can get training in social work and child psychology, for example. There are programs in financial planning, tax planning—public policy for those of us going into politics—and so much more.

Law students now get training in technology, too. When computers first appeared, most law schools seemed largely to ignore them. A few schools embraced technology from the start, but in many schools, you might have received some training in Lexis and Westlaw, and maybe have been allowed to bring your laptop to class.

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I envy today's law students. Not only has their training improved, but so have their career choices! When I came out of school my student loan debt was so big I felt like I had little choice in what kind of job to take. I needed a job that would pay a lot so that I could pay my debts! I'd have loved to spend some time working

in a poverty law setting, or maybe for a state's attorney office or public defender, but just didn't see how it was possible. Don't get me wrong—I loved the work I chose—but I think I could have made another kind of contribution to society if I'd seen some options. Nowadays the Public Legal Service Credit Act lets lawyers “work off” their federal loans in a wide range of public interest settings. And the increased salaries in public interest positions has encouraged more and more of them to stay with it.

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**Q: You're envious of today's law students; what about today's clients?**

Envy wouldn't be the right word, but I do think that the way the practice of law has changed has been greatly to their benefit.

**Q: How so?**

We've already discussed the educational advances. Those aren't just good for students—clients benefit, too. But beyond that, legal services seem to be being delivered better at all levels of society.

The Legal Services Corporation got a big shot in the arm for its services to family farmers following the droughts in the Midwest. The drought actually began back in 2001, and by 2005 it looked like the farming industry would utterly collapse. Subsidies were not enough; LSC lawyers were the only ones helping the farmers hang on until the rains finally came and the water levels returned to something approximating normality. While LSC lawyers had been doing great work for many, many years, it took a disaster like that to get Congress's and the public's attention! They finally understood the importance of LSC.

**Understanding of the importance of lawyers for the poor spilled over into better funding for public defenders.**

And you know, that understanding of the importance of lawyers for the poor spilled over into better funding for public defenders. Public defenders are no longer just “in training” for their eventual real careers as private practitioners; most are professionally committed to a career in this work.

**Q: You haven't mentioned legal service to middle-class Americans. Has that changed?**

Services to the middle class have improved, too. Old surveys used to tell us that something like 80 percent of the “legal needs” of middle-income Americans were not being met, which meant those needs were not being met with the help of a lawyer.

**Technology has enabled people to help themselves more often, and get it right when they do.**

Well, in that sense perhaps it's still true. A lot of legal needs are not being met by lawyers. But we no longer believe that that necessarily means they are not being met!

As I mentioned earlier, a lot of the change is due to technology. It has enabled people to help themselves more often, and get it right when they do; and lawyers and the bar finally stopped digging in their heels trying to stop this moving train. With the help of the courts, they created ways of helping the “client” who appears without a lawyer. Kiosks are now in or near most courthouses, and can be accessed on the Internet. Courts have paraprofessionals available for on-site consultation. And in many areas when two parties are differently represented—one has a lawyer, the other can't afford one—and they can't agree to a lawyerless alternative setting, the “civil Gideon” case of 2012 provides a public lawyer.

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Private legal services insurance plans started to become available, at least in Britain, early in the century; but it finally became deductible for employers here, causing the number of people covered by prepaid services to mushroom. While those programs don't represent you if you are charged with extortion from your employer, or if you plow your car into a crowd in a football stadium parking lot, that isn't what most people need. They need someone to represent them when they buy a house. They need someone to write a letter for them to their mortgage company. They need someone to help them prepare their estate plan.

Back when I was in practice this would have been a terrible thing to mention in an interview with the ABA Journal, but the profession seems to have wised up. I believe that the growth of private businesses like Pro Se, Inc., providing what would in my day have been jealously guarded as “legal services,” has been all to

the good. And since the battles between non-lawyer providers and the profession have ended, they can now work together to provide clients with the most appropriate mix of services.

**Q: The kind of lawyering you used to do has changed, too, wouldn't you say? What do you think about those changes?**

It's changed a lot. I did see the beginnings of it while I was still practicing — big American firms merging or associating with foreign firms, or simply growing their own foreign lawyers. Internationalization isn't new, but it is a much bigger phenomenon than in my day. That's partly due to technology, but also to growing international understanding. The ABA should be so proud of the work it has done in that regard. Its original CEELI project was the beginning of a movement toward spreading real understanding and appreciation for the rule of law, and how law allows societies and citizens to prosper. The CEELI project soon led to similar projects in Africa and Southeast Asia, and has now spread around the world. It would be nice if this meant there was no more war or international conflict, and we know that hasn't happened. But isn't it encouraging that we can even imagine such an event?

**Legal services insurance plans finally became deductible for employers.**

But we were talking about law firms, not peace talks. Another big thing that has happened is the growth of private justice. I know that some people used to moan about that, back when it first began, but I don't see the harm in it. It gives clients quicker justice; they accept the results—and taking cases out of the civil system helps to keep court dockets down. That all seems to the good to me.

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**Q: Speaking of the courts, that seems to be one place where reform is still needed. Dockets are still much too big even though improvements have been made. What do you think we can do about that?**

Attempts were being made even back in “the old days” to manage court dockets. We had mandatory mediation

of many family matters, drug diversion programs in the criminal courts, alternate dispute resolution available for most civil cases—but dockets were still overloaded. The growth of private justice for large cases has helped some, as has raising the jurisdictional limits. But it is so important to maintain a quality system available to everyone that we can't just stop taking cases. And I am glad that despite all the talk in my time about how cases are “too complex” for juries, the jury system has been retained. I never believed it and I don't believe it now. A jury can understand the case if you present it properly. Trial lawyers throughout the ages have been compared to actors. Perhaps the comparison is better made to teachers.

**Another big thing that has happened is the growth of private justice.**

There have been changes, of course, a lot of them dealing with how evidence is presented and what is considered best evidence now that technology has made documents so easy to alter. Most courts now require litigants to disclose the evidentiary and legal basis for a claim at the time of filing, and there are mandated pre-litigation resolution processes. But we have to be careful—and we have been careful—to maintain the independence of the courts and in the process to maintain the courts as an equal branch of government.

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And in any event, when we do—carefully—take cases out of the courts one way or another, remember that more and more come in, and they come in with additional complexity from the unexpected, or unplanned, or unavoidable consequences of progress in areas such as biotechnology.

**Q: One last question, Madame President. At the beginning of this century, foreign multi-disciplinary practices had a strong hold on the global legal market. Do you have any explanation for how American law firms came to eclipse those firms to become the dominant legal players on the global scene?**

As a matter of fact I do. And it's a feat I believe only American firms could have accomplished.

Law firms, responding to the growing demands of

their corporate clients, understood the need to diversify their staffs and leadership if they were to keep and capture national and international markets. They recognized that America has a diversity of human resources unlike any other country, and they took advantage of it. While we still haven't achieved the level of diversity that fairly reflects American culture, there have been some notable changes. In particular, I would point to the rise of women and lawyers of color into positions of leadership in the major American law firms and throughout the organized bar. The law firms are now competitive throughout the world.

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These changes were complemented by the efforts the ABA and ethnic bar associations made to improve how they work together. I was pleased to be invited to speak at their first Decennial Gathering last year, and was impressed at the opportunity it provided for networking and cross-culturalization. I expect the Decennial Gatherings will make the American legal profession even stronger as the years go by. ■



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