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The Bench^{er}

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FROM THE PRESIDENT

The Honorable Barbara M.G. Lynn

At this writing, the Honorable Kent Jordan, of the Third Circuit Court of Appeals, remains the 11th president of the American Inns of Court Foundation, and he is rightly to be honored for his rich contributions to our common enterprise. In fact, as a law student at Georgetown University, Kent worked on the formation of the first Inns, so in fact, he has dedicated much of his professional life to being a cheerleader and advocate for the Inns of Court movement.

Although no one wants to follow Kent Jordan, I am truthfully thrilled to embark on a two-year term as president of your American Inns of Court Foundation. With a wonderful board of trustees and a superb executive director, Brigadier General Malinda E. Dunn (Ret.), I hope to extend our movement's message by encouraging the formation of new Inns across the country.

I have set an ambitious goal: 100 new Inns in the two years of my presidency. As you know, our mission is to advocate for the critical goals of civility, professionalism, ethics, and excellence. What characteristics could be more important to the future of our legal profession? I intend to travel widely visiting local Inns to see how we at the national level can assist in promoting our mutual values.

Several recent events this past spring brought into clear focus two of the cornerstones of the American Inns of Court: professionalism and civility. First, I will discuss the leak of a draft majority opinion from the Supreme Court of the United States. Second, I will discuss problems with our judicial confirmation process, as demonstrated during the confirmation of a new justice to succeed Associate Justice Stephen Breyer upon his retirement. I focus on the profound failings of professionalism and civility that characterized these events.

The leak of a draft majority opinion of the Supreme Court, in a hotly contentious decision, clearly implicates professionalism. Whatever one's view on the case's merits, the fundamental breach of someone's duty to the Supreme Court as an institution is breathtakingly wrong.

Judges and lawyers must be able to rely on their colleagues to preserve confidences so they are able to negotiate compromises without the premises being publicly revealed. Critically important to the

rule of law is the orderly process of decision-making, with time for sober reflection, detailed research, and exchange of views within the marketplace of ideas. The violation of such norms severely jeopardizes judicial collegiality, as well as public confidence in our judiciary's critical functions. All lawyers concerned about professionalism—and indeed we all should be—should be appalled at the lack of trustworthiness demonstrated in this breach of confidence.

Whatever changes are manifested in the final opinion will, I fear, be perceived as reacting to public critique of the draft, rather than the behind-the-scenes editing, discussion, and negotiation emblematic of a good collegial process leading to an opinion. We must decry the lack of professionalism in such conduct.

Now for a few words about the confirmation process. Clearly, one can appropriately question judicial nominees about their decision-making, the analytical frameworks they employ, and their qualifications. But civility, which I am defining as caring for one's identity, needs, and beliefs without denigrating someone else's in the process, should be a key aspect of nomination hearings. Instead, uncivil questioning and commentary abound. Nominees are routinely asked about their religion, and questions such as "On a scale of 1 to 10, how faithful would you say you are?" and "How would you feel if a senator up here said your faith—the dogma lives loudly within you—is of concern?" have been asked of nominees to our highest court.

These questions and suggestions run strongly afoul of the basic tenets of civility. One senator connected a former public defender nominee to a prior justice with the same last name—he, who prosecuted Nazis at Nuremberg, and she, as one who "might have gone there to defend them." Never was the Sixth Amendment featured or considered. "Gotcha" moments prevail, and civil dialogue is largely absent. And protests aimed at harassing justices and their families certainly reflect poorly on our society. Again, civility is key to our movement and a value we must enforce and champion.

The Inns are separate from any political process, and our members are drawn from all political persuasions. But we can, do, and must model behaviors that support our fundamental ideals of professionalism and civility, which will hopefully spread widely among our fellow lawyers and our national, state, and local leaders. ♦

Chester Bedell American Inn of Court

“My heart is heavy today,” began keynote speaker Benjamin L. Crump, Esquire. Crump arrived at a joint American Inn of Court event from a federal trial where, hours earlier, the jury convicted Ahmaud Arbery’s murderers of hate crimes. In February 2020 in Georgia, Arbery, a 25-year-old Black man, was shot and killed by three white men while he was jogging.

Crump represented Arbery’s family and expressed the pride he felt when hearing the verdict. A majority white jury in Georgia delivered Arbery’s family a “historic victory,” Crump said.

The joint meeting of seven Inns was coordinated by the Chester Bedell American Inn of Court in Jacksonville, Florida, during Black History Month.

After recounting and thanking the mentors that led Crump to his civil rights practice, the advocate for the families of Arbery, Breonna Taylor, George Floyd, Jacob Blake, and Daunte Wright introduced a thesis we too often forget: We must use the law “to make a better world for our children.” Quoting Martin Luther King Jr., Crump reminded the audience that “there comes a time when one must take a position that is neither safe nor popular, but he must take it because his conscience tells him it is right.”

Inn members listened intently as Crump recounted the killings of Arbery, Taylor, and Floyd. He pointed out that Arbery was killed after visiting an unfinished house that 23 white people had visited without incident. Police killed Taylor in her own apartment after entering to execute a “no-knock” warrant. Floyd, Crump said, “narrated the documentary of his own death.”

The video of Floyd’s death “galvanized people all across the world.” For the first time, large corporations expressed an interest in social justice. Crump implored the Inns: It’s “up to us” to treat every day as “a new opportunity to set a precedent” so that “all our children have an opportunity to achieve the American dream.”

Before Crump’s keynote, Edward Waters University student Ethan Tejedor and Judge Brian J. Davis taught the Inns about the life of Judge Joseph Edward Lee, reportedly the first Black lawyer in Jacksonville. Lee went on to become a state representative, state senator, federal customs collector, municipal judge, and law department dean.

In closing, pupil Blake Mathesie challenged the audience to become “instruments for good.”

The following Florida Inns participated in the joint meeting: Chester Bedell Inn, Florida Family Law Inn, and E. Robert Williams Inn in Jacksonville; Robert M. Foster Inn in Yulee; Gerald T. Bennett Cooperative Learning Inn and James C. Adkins Jr. Inn in Gainesville; and First District Appellate Inn in Tallahassee. ♦



Benjamin L. Crump, Esq.

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James C. Cawood Jr. American Inn of Court

In April, the James C. Cawood Jr. American Inn of Court in Annapolis, Maryland, hosted a joint meeting with the Anne Arundel Bar Association and conducted a drive to collect much-needed food and supplies for a local animal shelter. In addition, members were encouraged to donate their time, including legal expertise, to support the shelter in ways other members of the community cannot. The Inn collected an assortment of cat and dog food, small animal hay, pet carriers, medical and nursing supplies, leashes, harnesses, toys, kitty litter, laundry and cleaning supplies, hand sanitizer, gift cards, and other miscellaneous items. The shelter was thrilled and extremely grateful to have received the much-needed variety of food and supplies. ♦

Garland R. Walker American Inn of Court

In March, Pupillage Group 5 of the Garland R. Walker American Inn of Court in Houston, Texas, hosted an Oxford-style debate for the general Inn membership. The debate was titled “General Jurisdiction or Special Jurisdiction? A Debate” and concerned the motion “courts with specialized and exclusive jurisdiction benefit the legal system and should be used more frequently.”

The debate focused on courts such as specialized business courts, drug courts, family courts, and the Texas Court of Criminal Appeals. The pupillage group divided into three teams: neutrals, who presented background information on the topic; affirmatives, who advocated for the creation of more courts of special jurisdiction; and negatives, who opposed the proposition. The two advocacy groups were randomly assigned.

Before the debate began, the audience was polled to see where they stood on the issue, which revealed a preference for courts of special jurisdiction. After the teams presented, the general membership was given the opportunity to pose questions directly to the two teams and make floor speeches—both of which exhibited some strong feelings on the topic and allowed for excellent audience participation.

After the debate, the audience was polled again. Although the motion passed, it did so more narrowly than in the polling. Because the negative team changed more minds, it was declared the winner. The debate was well-received and gave younger Inn members an excellent opportunity to engage in advocacy in a fun and supportive environment. ♦

Daniel Webster-Batchelder American Inn of Court

In March 2022, the Daniel Webster-Batchelder American Inn of Court in Manchester, New Hampshire, chose to participate in a new and exciting community outreach project. In collaboration with the Manchester public school system, a book drive was held throughout March to collect books designated by each school’s librarians. These books were diverse in scope and subject and represent the local students of the Queen City. Approximately 250 books were requested, but the Inn was able to donate 450 new books to benefit local children ages 5 through 18. Additionally, approximately 150 used books were collected for the Summer Book Bus run by the Manchester school system. The Summer Book Bus drives through city neighborhoods throughout summer, providing free books and keeping children engaged

in reading. This success could not have been achieved without the new partnerships and relationships built with two local independent bookstores, Bookery Manchester and Gibson’s Bookstore in Concord. All parties agreed this should be an annual event given the success and engagement of Inn and community members. ♦



Heather Menezes, Esq.,
Inn executive director.

Texas Tech University School of Law American Inn of Court

The Texas Tech University School of Law American Inn of Court in Lubbock celebrated its 10-year anniversary in October 2021.

Former Texas Tech Law School Deans Susan Fortney, Esquire, and Darby Dickerson, Esquire, played instrumental roles in forming the Inn, which was chartered in 2011.

During its brief tenure, the Inn has achieved remarkable success, developing policies and programs that have enabled it to master effective practices in the American Inns of Court Achieving Excellence program and achieving platinum status in 2016.

The Inn emphasizes relevant and practical education for both its members and the local legal community through presentations at its monthly meetings and public member-led presentations for less-experienced attorneys. Its educational emphasis centers on principles central to the American Inns of Court mission and a high degree of skill in the practice of law. Through the dedication of its officers and members, the Inn continued its programing virtually throughout the pandemic.

The Inn and Tech Law have, from the beginning, enjoyed a mutually beneficial relationship. The school regularly hosts Inn meetings, and multiple faculty members participate in the Inn, including the current dean, Jack Nowlin. The Inn's annual membership also includes 10 Tech Law students who receive mentorship from and develop relationships with numerous judges and attorneys—an opportunity unavailable to many lawyers outside an Inn.

As observed by Professor Robert Sherwin, a member of the original organizing committee and current Tech Law director of advocacy programs: "The Inn has been a really special part of Tech Law. It's brought together our students and faculty with the Local Bar in new ways,...and I know our students...have benefited from the incredible mentorship and social interactions they...experience on a monthly basis."

The Inn anticipates continuing this valuable interaction and finding new ways to further the Inn's mission to positively affect Lubbock's legal community. ♦



The Texas Tech Inn's current Master of the Bench members include, front row, left to right, Leonard R. Grossman, Esq.; Paula J. Smith, Esq.; Judge Billy Eichman; Dean Jack W. Nowlin; and Julie C. Doss, Esq. Second row, left to right, are Tanya Boucher Conn, Esq.; Judge James Wesley Hendrix; Justice Judy C. Parker; Professor Sally M. Henry; and Angelique Weaver, Esq. Back row, left to right, are R. Michael McCauley Jr., Esq.; Sam C. Gregory, Esq.; Timothy T. Pridmore, Esq.; Judge Mark J. Hocker; Dean Richard Rosen; Judge Benjamin Webb; Judge Phillip Hays; Judge D. Gordon Bryant Jr.; Merinda K. Condra, Esq.; and Justice Lawrence M. Doss.

Richard A. Sicking American Inn of Court

In 2021, the Richard A. Sicking American Inn of Court in Miami, Florida, endeavored to adapt to the limitations of the COVID-19 pandemic by continuing to engage virtually. This permitted everyone to access quarterly meetings and presentations.

Inn members focused on subject matter issues dealing with the practice of workers' compensation. Members gave virtual presentations dealing with ethics and invited the chief branch discipline counsel and branch auditor with the Miami Branch of the Florida Bar to discuss professionalism and ethics. This presentation was as a great reminder, especially during these times when many are working from home or in an alternative manner, of our professional and ethical obligations.

In addition, the Inn members convened for presentations playfully titled "You Gotta Have (Good) Faith," "Workers' Comp Feud," and "The Good, the Bad, and the Ugly: A Presentation on Settlements."

The final presentation of the year was appropriately titled with the promise of the upcoming new year in mind: "Mindfulness for Stress Management for Attorneys" and was presented by social worker Barbara Byrne. ♦

Honorable Lee Yeakel Intellectual Property American Inn of Court

After many virtual meetings, members of the Honorable Lee Yeakel Intellectual Property American Inn of Court in Austin, Texas, are hoping in-person meetings will continue going forward. After one in-person meeting in December 2021 with a presentation about blockchain and intellectual property (IP) law, the Inn reverted to virtual meetings for January and February, covering practice tips from Judge Alan Albright and the issues of standing in patent case, respectively. In March, the Inn returned to an in-person meeting that addressed new technology's effect on jurisprudence.

Prior virtual meeting topics included IP topics in the lifestyle industries such as the right of publicity and patents in the sex industry, difficulties in obtaining trademarks in the marijuana industry, and copyright and licensing fights between rock-and-roll stars and politicians. Topics also included IP issues with name, image, and likeness in the



Pupillage Group 3 members are, left to right, Stephen R. Dartt Esq.; Alex Knapp, Esq.; James R. Ray III, Esq.; Karl Bayer, Esq.; and Hong Shi, Esq.

Supreme Court case and changes to rules governing collegiate athletes. ♦

Richard S. Rodney American Inn of Court

In March, the Richard S. Rodney American Inn of Court in Wilmington, Delaware, joined the other Delaware Inns in gathering for their annual Joint Inn Conference. The well-attended conference gave members of each Inn an opportunity to interact and receive continuing legal education (CLE) credit on topics relevant to all members of the Delaware Bar.

Although the conference normally meets at the Wilmington Riverfront, this year's event occurred virtually due to the pandemic. The event consisted of two CLE sessions and a keynote address delivered by Amanda Ripley, a journalist and expert in conflict analysis.

The joint conference was well-attended by members of the Delaware's Bankruptcy Inn, Richard K. Herrmann Technology Inn, Randy J. Holland Delaware Workers' Compensation Inn, Melson Arsht Inn, Terry Carey Inn, and Rodney Inn.

The CLE portion consisted of sessions on courtroom technology and data security and privacy.

Ripley's keynote focused on a discussion of her book *High Conflict: Why We Get Trapped and How We Get Out*. The keynote was sponsored by the Stargatt Trust, which funds programs dedicated to the principles of professionalism, collegiality, and integrity—principles known colloquially as the "Delaware Way."

During her address, Ripley explored the dynamics of conflicts within communities that often result in a crippling "us versus them" mentality. Because lawyers frequently operate in a high-conflict environment, Ripley discussed ways that attorneys can identify and avoid "trip wires" that lead to stalemate and deadlock. She also discussed ways to alleviate conflict-filled situations, such as quieting conflict instigators and taking pauses to allow parties to reset. The keynote finished with an active Q&A during which many attorneys were able to ask Ripley about ways to incorporate these conflict resolution tips into their practice. ♦

Central Kentucky American Inn of Court

The Central Kentucky American Inn of Court in Lexington thoroughly enjoyed hosting four British Pegasus Scholars—Lily Walker-Parr, Spencer Turner, William Sneddon, and Jamil Mohammed—from various English Inns in March.

The scholars had a packed schedule. They attended a jury selection, opening arguments, criminal sentencings, closing arguments, and other court proceedings. One day was spent in Frankfort, Kentucky, where they were able to visit the Kentucky Supreme Court, Court of Appeals, and the floor of the Senate chambers. They were also able to visit Maker's Mark Distillery, Four Roses Distillery, and Keeneland Racecourse; hike in Red River Gorge; and attend a sock hop.

Hosts Judge Lucinda Masterson and Andre Regard, Inn president, made sure there was a full schedule of activities. The scholars also attended the monthly Inn meeting, which was a joint meeting with the Salmon P. Chase American Inn of Court of Covington, Kentucky.



British Pegasus Scholars William Sneddon, Lily Walker-Parr, Jamil Mohammed, and Spencer Turner visit Four Roses Distillery in Lawrenceburg, Kentucky.

The scholars' visit was a fantastic experience for Inn members to learn about the English barrister system and the differences between practice in England and the United States. The Inn looks forward to hosting again, and some members are already planning reciprocal visits to England. ♦

Q. Todd Dickinson Intellectual Property American Inn of Court

In April, members of the Q. Todd Dickinson Intellectual Property American Inn of Court in Pittsburgh, Pennsylvania, attended a continuing education program about the tension between the patent system and the desires to protect public health and safety. Some reasons for this tension are restricted access to medicines, intellectual property rights of inventors in new medicines, rights of the public to health and benefits of scientific progress, and disproportionate negative effects on developing countries.

High prices for patented treatments have limited countries' capacity to supply medicine for a variety of illnesses. The Universal Declaration of Human Rights adopted by the United Nations states that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author." The Agreement on Trade-Related Aspects of Intellectual Property

Rights (TRIPS) establishes minimum standards for regulation of intellectual property.

A TRIPS waiver proposal introduced in October 2020 seeks to waive intellectual property rights for technologies needed to prevent and treat COVID-19, until widespread vaccination is in place globally, but it has failed to reach agreement. In April 2022, legislation was introduced in both the U.S. Senate and House prohibiting the Biden administration from negotiating any modifications to TRIPS without explicit authorization of Congress. A tension thus lies between domestic and international thought and between government-based protection of the public and a private sector-based for-profit model.

This leads us into patent rights of vaccine developers during the current pandemic. COVID-19 vaccines have been patented and have spurred litigation. Likely more litigation will ensue in the future. ♦

First Family Law American Inn of Court

The First Family Law American Inn of Court in Coral Gables, Florida, held a monthly meeting in April. Administrative Judge Samantha Ruiz Cohen provided an update on recent changes to family law rules of procedure, specifically the procedures to file a motion to vacate a general magistrate's recommended order. This included changes to the nomenclature and the establishment of timelines by which such motions should be heard and ruled upon. Cyril Moody, Esquire; Jessica Satinoff, Esquire; Grace M. Casas-Rowe, Esquire; and Robert Coleman, Esquire; gave an excellent and thorough presentation on the changes to Florida's alimony and parenting laws, which, among other things, could, if signed by the governor, mean the end of permanent alimony in Florida and a presumption in favor of equal time-sharing of children. ♦

James Kent American Inn of Court

In December 2021, the James Kent American Inn of Court in Norfolk, Virginia, challenged its members to help PiN Ministry in its effort to provide food, clothing, shelter, and free medical care for people that are either homeless or extremely poor in the region. At the meeting, the membership donated over \$2,000. Even more impressive was the nearly 200 items donated, including new and gently used jackets, sleeping bags, socks, backpacks, and other warm and cold weather gear.

This is the third year the Inn has coordinated with PiN Ministry as an outreach project to provide donations and encourage members to volunteer. Over these three years, the Inn has donated over 1,000 essential items and thousands of dollars to PiN Ministry.

Over the course of several weekends in March 2022, Inn President Stephen P. Pfeiffer, Esquire, and other members of the local bar volunteered their time and energy distributing these items to members of the homeless community. Donations are important, but giving time and performing personal acts of service can change the incorrect public perceptions about the legal community. ♦



Judge Linda McFadden, president of the Ladine Inn, presents the 2022 Spirit of Stanislaus County Mock Trial Award to Lucy Liang of Modesto High School.

Wray Ladine American Inn of Court

In February, the Wray Ladine American Inn of Court in Modesto, California, awarded its 2022 Spirit of Stanislaus County Mock Trial Award to Lucy Liang of Modesto High School. Judge Linda McFadden, president of the Ladine Inn, presented the award to Liang.

In 2019, the Inn resolved to establish a new scholarship award titled the Spirit of Stanislaus County Mock Trial Award. The \$500 scholarship is awarded to a Stanislaus County high school student who best exemplifies civility, justice, and fair play when participating in the county's mock trial competition. Each teacher-coach nominates a student and writes a letter demonstrating how that student exemplifies civility, ethics, and fair play. The award is then presented at the mock trial awards night among other awards issued for best team and individual mock trial performances.

There are at least a dozen Stanislaus County high schools that participate in the mock trial tournament each year, though COVID-19 reduced that number as practice sessions and tournaments had to move to virtual forums. This year the Inn received only two submissions from coaches, compared with the normal five to six submissions.

Liang was chosen based on the nomination by her teacher, Scott Miller, who wrote that during her two and a half years on the mock trial team, she has worked hard and stepped in when needed to become an essential part of the team. Despite technical issues and timing challenges during a recent competition, Liang kept time demonstrating honesty and "fair play" even when it affected her team negatively.

"With regard to civility, ethics, and fair play, there is nobody on our team this year who exemplifies these qualities more than Lucy Liang," Miller said. ♦



Oakland County Circuit Court Judges Jacob Cunningham and Julie McDonald with some of the clothes the Inn donated to Career Dress.

Oakland County Bar Association American Inn of Court

April was a busy month for the Oakland County Bar Association American Inn of Court in Oakland County, Michigan. Team Five's presentation was "Voor Dire—Let's Talk about Anything?" The team and their guest speakers provided an in-depth analysis of what attorneys can and cannot ask prospective jurors. The Inn also delivered a carload of new and gently used business attire to Career Dress, a local nonprofit that assists women actively seeking employment by providing interview and work attire. These women are referred to Career Dress from over 75 local and state agencies.

A week later, the Inn hosted "A Conversation with a Barrister," a virtual event with attorneys Anthony Haller, Esquire, and Amelia Clegg, Esquire. Both Haller and Clegg began their careers as English barristers before transitioning to practice in the United States at Blank Rome in Philadelphia and New York, respectively. Haller is a member of the American Inns of Court Board of Trustees. Inn members learned about the differences between the English and American judicial systems and how the Inns of Court fits into each system.

In March, the Inn hosted an interactive presentation on landlord-tenant law. Team Five delved into some traditional issues such as tenant and landlord obligations, security deposits, and the eviction process. Team members also touched on hot topics such as regulations and case law surrounding short-term tenancy and rental via online property marketplaces, marijuana and rental properties, and frustration of purpose resulting from COVID-19 shutdowns. The team posed multiple-choice questions, asking audience members to vote on their cell phones using an online app. The team ended its presentation with an overview of a new Michigan rental assistance program designed to help tenants and landlords resolve evictions during the pandemic. ♦

Owen M. Panner American Inn of Court

In April, the Owen M. Panner American Inn of Court in Portland, Oregon, enjoyed a final meeting presentation, "Philosophy and the Law: The Stoic Path to Professionalism in the Practice of Law." After two years of meeting remotely, the Inn started to move toward what it hopes will be in-person meetings in 2022 by welcoming a viewing party at a local Portland firm hosted by Inn members as well as virtually.

The presentation closed the Inn year on a high, with a program that brought large group engagement. The presenting Inn members provided an overview of the concepts and history of the study of stoicism. While the term "stoic" often has a semi-negative connotation in modern English, with a definition reflective of a "stern or emotionless state," the presentation focused on the stoicism concept of staying level-headed even when under pressure, based on the four stoicism virtues of wisdom, temperance, courage, and justice.

The pupillage group leading the meeting created a high level of involvement through highly effective use of breakout room discussions. The Inn was broken into small groups for 30 minutes, in which each group was provided five scenarios that tested the concepts of philosophical stoicism using practice conflict hypotheticals within a law firm setting.

Each scenario included three quotes from stoicism philosophers for consideration and debate on which quote best reflected the group's response to the scenario. Each group was tasked with selecting the quote that the group majority aligned with. Once the entire Inn reconvened, the groups then reported their discussions and conclusions to the entire Inn with additional large-group discussion.

The presentation as a whole provided an opportunity for robust discussion on the profession in a manner that has been challenging to achieve in these years of pandemic restrictions, isolation, and remote networking. The topics of the scenarios largely focused on challenging interactions inside the workspace, and the discussion on stoicism brought lively debate about how philosophical teachings can inform members' perceptions on approaches to inner-work communications and personal/professional debate. This format allowed space for members to explore concepts and learn from one another. ♦

Lloyd Lochridge American Inn of Court

When the membership team for the Lloyd Lochridge American Inn of Court, in Austin, Texas, assigned Colombina Valera, one of the Inn's student members, to Team 5, they overlooked one minor detail: The team's February presentation date coincided with the date Valera's baby was due.

On February 15, 2022, Valera and Team 5 gave a well-received and highly interactive presentation on the ethical issues raised by lawyers' participation in the January 6 insurrection and attempts to thwart Congress's certification of President Biden's victory in the 2020 election. It was exciting for everyone, but most of all for Valera—just hours later, she headed to the hospital. "I'm convinced the presentation put me into labor the next morning," she said.

A healthy baby boy, Roman Elio Valera, was born at 5:04 p.m. on February 17, weighing in at 6 pounds and 13 ounces. Baby Roman and his parents, Valera and her husband, Eli Durst, are doing well.

"I have a major newfound appreciation for parents and caretakers out there—it's not easy even under the best circumstances," Valera said. "I graduated early, in December, so now I just



Colombina Valera and Eli Durst, with their son Roman.

have to focus on the baby and studying for the July bar exam."

"I've always known our members are dedicated to our group presentations, but Colombina's persistence really goes to the next level," said Judge Todd Wong, Lochridge Inn president. "We are thrilled for her, but next time, she's welcome to take a pass from presenting!" ♦

British Judicial Assistants Visit Washington, DC

In April, 13 British judicial assistants from the Supreme Court of the United Kingdom visited the Washington, DC, area as part of a week-long placement program arranged by the American Inns of Court.

Since the Supreme Court of the United States was not open for visitors to observe oral arguments, the Supreme Court Institute at Georgetown University Law Center was able to arrange a moot for the judicial assistants to observe prior to their meeting with Associate Justice Stephen G. Breyer and his law clerks.

Judge Thomas L. Ambro of the U.S. Court of Appeals for the Third Circuit joined the judicial assistants as they met with preeminent leaders of the American bench and bar, as well as participated in a briefing provided by the Supreme Court Institute faculty. Other activities included a reception in their honor with Temple Bar Scholars, a reception with members of the William B. Bryant American Inn of Court,



Judicial assistants with U.S. Supreme Court Associate Justice Stephen G. Breyer are front row, left to right, Alessandro Forzani, Rebecca Fry, Justice Breyer, Isabella Buono, and Thomas Watret. Back row, left to right, are judicial assistants Crawford Jamieson, Jake Thorold, Aliya Al-Yassin, Robert Bellin, Ian Simester, Anna Brennan, Louis Grandjouan, Nicholas Wright, and Gretel Scott.

and a tour of the U.S. Department of Justice. The judicial assistants were also hosted for a day by the Temple American Inn of Court in Philadelphia, Pennsylvania, and the George Mason American Inn of Court in Arlington, Virginia. ♦

Honorable William W. Lipsitt American Inn of Court

The Honorable William W. Lipsitt American Inn of Court in Harrisburg, Pennsylvania, “went to the dogs” at its April meeting. Dog ambassadors from Susquehanna Service Dogs (SSD) and a working service dog and his person attended the meeting. SSD breeds, raises, trains, and places assistance dogs, hearing dogs, and facility dogs to assist children and adults with disabilities. Members of the Inn were able to interact with the dogs and learn about SSD’s mission.

Retired Sgt. Major Bob Lighty and his SSD, TieRod, touched the hearts of the members. Lighty shared the story of his war-related injuries and how TieRod has helped him navigate the demands of life.

The Inn learned that other SSDs serve children with autism and people with mobility problems and perform a myriad of other functions. Ambassador SSDs Katydid, Gordon, and Elwood were in attendance and, along with TieRod, charmed Inn members. All the SSDs (and Inn members) were well-behaved and sat and stayed when told to do so.

SSD is a Central Pennsylvania nonprofit that the Lipsitt Inn included in its team challenges. Lipsitt



Serves, the Inn’s charitable arm, selects local charities and issues challenges to the pupillage groups to engage in competition to help serve the needs of the selected charity. Every two months, presenting pupillage groups for those months are pitted against each other and challenged with raising the most in donations for the charity. The April and May pupillage groups are using Chewy.com to get the supplies SSD needs. The winning group gets a pat on the back, but the charity is the big winner. ♦

John Marshall American Inn of Court

To celebrate the 50th birthday of the Constitution of Virginia, the John Marshall American Inn of Court in Richmond, Virginia—joined by its sister Inn, the Lewis F. Powell Jr. American Inn of Court in Richmond—hosted a presentation from the man who was there at the beginning: A.E. Dick Howard, the Warner-Booker Distinguished Professor of International Law at the University of Virginia School of Law.

Howard was instrumental in the drafting, adopting, and ratifying of the first revision of the Virginia Constitution since the 1901 version that imposed Jim Crow laws on the Old Dominion. The commission charged with making recommendations to the General Assembly was racially integrated and bipartisan, but all male. Howard described the compromises

necessary to get the document through the Legislature and explained the energy required and challenges overcome in the ratification campaign once the document was submitted to the state residents for a vote.

Although it has been amended in discrete ways over the years, the Constitution of 1971 remains largely intact. And as its principal draftsman—whose Commentaries on the Constitution are Virginia’s current Federalist Papers—Howard is often called upon to opine on matters of interpretation.

And while no constitution lasts forever, Howard was pessimistic about the odds of a revision in the near future. While Virginia would likely see a more inclusive commission, he said the polarized politics of the day make any wholesale revision unlikely. ♦

Postponed 2020 and 2021 Celebrations of Excellence Held

March 26, 2022, and April 2, 2022
Supreme Court of the United States
Washington, DC

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Judge Kent A. Jordan, left, president, American Inns of Court, presents the 2020 A. Sherman Christensen Award to Thomas C. Leighton, right.



Edward M. Bearman, Esq., left, accepts the 2020 Lewis F. Powell Jr. Award for Professionalism and Ethics presented posthumously to his father, Leo Bearman Jr., by Dean William C. Koch Jr., right.



Kannon K. Shanmugam, Esq., left, presents the 2020 Warren E. Burger Prize to Christopher A. Suarez, Esq., right.

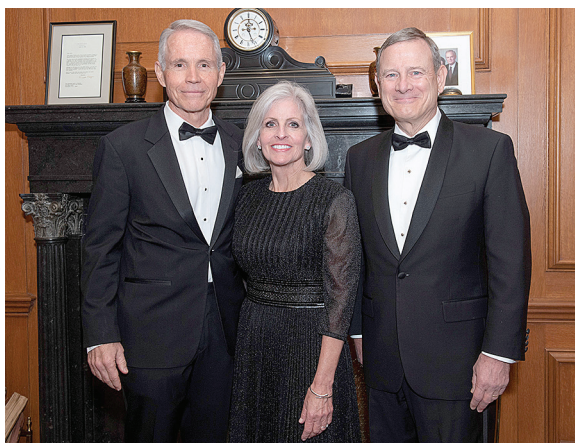


Joshua G. Borderud, Esq., left, receives the 2020 Sandra Day O'Connor Award for Professional Service from Chief Justice Collins J. Seitz Jr., right.



Recipients and family members of the 2020 American Inns of Court Professionalism Awards are, seated from left to right, Michele McKay Elison, daughter of Judge Monroe G. McKay*, 10th Circuit recipient; Judge Aleta A Trauger, Sixth Circuit recipient; Melanie McKay Edmunds, daughter of Judge McKay; back row, from left to right, Judge David S. Doty, Eighth Circuit recipient; Robert A. Zauzmet, Esq., Third Circuit; Thomas Campbell, Esq., Seventh Circuit recipient; Robin Edwards, wife of Steven M. Edwards, Esq.*, Second Circuit recipient; James I. Glasser, Esq., Second Circuit recipient; and James K. McKay, son of Judge McKay. (*Deceased)

PHOTO CREDIT: Fred Schilling



Judge David G. Campbell, left, recipient of the 2021 Lewis F. Powell Jr. Award for Professionalism and Ethics with his wife, Stacey Campbell, and Chief Justice John G. Roberts Jr.



Kannon K. Shanmugam, Esq., left, presents the 2021 Warren E. Burger Prize to Dais G. Yee, right.



Jonathan D. Wolf, Esq., left, receives the 2021 Sandra Day O'Connor Award for Professional Service from Chief Judge Barbara M.G. Lynn, right, vice president, American Inns of Court.



PHOTO CREDIT: Fred Schilling

Judge Carl E. Stewart, left, recipient of the 2021 A. Sherman Christensen Award with his wife, Jo Ann Stewart, and Chief Justice John G. Roberts Jr.



On the steps of the Supreme Court of the United States are, from left to right, Judge Kent A. Jordan, president, American Inns of Court; Judge Carl E. Stewart, past president (2014–2018); Chief Judge Barbara M.G. Lynn, vice president; and Dean William C. Koch Jr., past president, (2018–2020).

2020 and 2021 English Pegasus Scholars Visit United States

Each year, the American Inns of Court participates in the Pegasus Scholarship Trust, an exchange program that gives English barristers an opportunity to spend six weeks abroad to learn about a foreign legal system. The Pegasus Scholarship Trust also gives young lawyers from other countries an opportunity to spend six weeks in London to learn about the English legal system. Due to the pandemic, the 2020 and 2021 programs were postponed until this past spring.

The 2020 scholars are Lily Walker-Parr and Spencer Turner, and the 2021 scholars are Jamil Mohammed and William Sneddon. Walker-Parr and Turner are both members of The Honourable Society of the Inner Temple. Mohammed is a member of The Honourable Society of Gray's Inn and Sneddon is a member of The Honourable Society of Lincoln's Inn.

While in the United States, these scholars met with leading attorneys and members of the judiciary to understand and learn the mechanics and day-to-day work of the U.S. justice system. They were hosted by the Anthony M. Kennedy American Inn of Court in Sacramento, California, and the Central Kentucky American Inn of Court in Lexington, Kentucky. Their final two weeks were spent in Virginia, Maryland, and Washington, DC, where they visited several federal, state, and local courts.

Newly added for 2020 and 2021 is a special New York City placement coordinated by



At the 2021 Celebration of Excellence at the Supreme Court of the United States on April 2, 2022, sitting left to right, are Spencer Turner, Daniel Webb, Lily Walker-Parr, and Tiernan Fitzgibbon. Standing, left to right, are William Sneddon, British Pegasus Placement Committee Chair Jesse R. Binnall, Esq., and Jamil Mohammed.

MoloLamken LLP. Daniel Webb, a member of The Honourable Society of Lincoln's Inn, and Tiernan Fitzgibbon, a member of The Honourable Society of the Inner Temple, are the 2020 and 2021 scholars.

All six scholars participated in a week-long program in Washington, DC, and attended the 2021 American Inns of Court Celebration of Excellence at the Supreme Court of the United States on April 2, 2022. ♦

YOU ARE INVITED TO WRITE FOR THE BENCHER



UPCOMING THEMES AND DEADLINES:

November/December 2022

Theme: Working with Witnesses

Deadline: August 1, 2022

What are the best practices and ethical and professional issues involved when working with fact or expert witnesses? What do you need to do or know before contacting a witness? What are the rules regarding compensating or reimbursing witnesses? Does the type of witness preparation depend on the relationship with the witness? Please share with us your experience in working with witnesses.

January/February 2023

Theme: Bench-Bar Relations

Deadline: October 1, 2022

Good relationships between judges and attorneys support and improve the administration of justice and increase professionalism within the legal system. What steps have been taken to bring judges and attorneys together in your community? When the bench and bar work together, what positive outcomes can be achieved? How does being an Inn member promote good bench-bar relations?

For more information, please visit www.innsofcourt.org/Bencher.

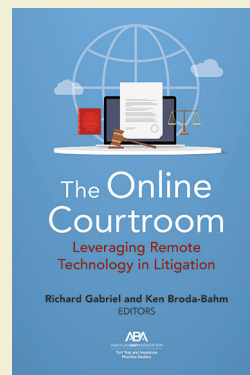
BOOK NEWS:

The Online Courtroom: Leveraging Remote Technology in Litigation

Editors Richard Gabriel and Ken Broda-Bahm | ABA Press, Tort Trial and Insurance Practice Section

By April 2020, the pandemic had shut down many courts and case backlogs began to build. Richard Gabriel, president of Decision Analysis, believed that technology might be able to address the backlog, so he gathered together a group of trial consultants, judges, lawyers, and court administrators to address the issue. The group was called the Online Courtroom Project. Gabriel proposed a demonstration mock trial completely online. In June 2020, the two-day mock trial took place with jury selection, opening statements, four witnesses, closing arguments, and jury deliberation. A report was written up and posted online. In November 2020, a two-day virtual summit was conducted with over 1,500 people attending. Shortly after that Gabriel and his co-editor, Ken Broda-Bahm, proposed a book about online proceedings to the American Bar Association and the book was published in April 2022.

Twenty-two authors contributed to *The Online Courtroom*, which consists of 20 chapters, addressing all issues relating to online trials and hearings. Visit www.innsofcourt.org/TheOnlineCourtroom for more information. ♦



Register Now: National Advocacy Training Program

SESSION A | September 12–13, 2022 **or** **SESSION B** | September 15–16, 2022
Washington, DC

The American Inns of Court is again offering its **National Advocacy Training Program**. We understand it is a challenging time to look ahead, but we are still planning to present this unparalleled program this fall.* Attorneys in their early to middle years of practice are invited to register for this unique opportunity to be professionally trained in oral advocacy and courtroom skills.

Registration is limited—register today at www.innsofcourt.org/NATP.

*While we are currently going forward with the National Advocacy Training Program as planned, we will keep attendees apprised of any changes to that status. In the event of cancellation, all attendees will receive a full reimbursement of the registration fee.

William ‘Mac’ Taylor American Inn of Court

The William “Mac” Taylor American Inn of Court in Dallas, Texas, has a tradition of toasting to the U.S. Constitution. At the Inn’s April meeting, Anthony J. Magee, Esquire, a Barrister member of The Honourable Society of Lincoln’s Inn and a past president of the Taylor Inn, offered the following toast:

In a meadow in Runnymede on June 15, 1215, King John of England signed the Magna Carta. Since then, many people (myself included) have erroneously thought of that “great charter” as the source and origin of the unalienable rights that have become the bulwark of free society, fundamental rights of such undeniable lineage that in the Declaration of Independence the founders of this nation described the truth of their existence as “self-evident.”

One such unalienable right—perhaps, the most fundamental right after life and liberty—is the right to freedom of expression. Yet, the right to free speech was neither created by, nor mentioned in, either the Magna Carta or the Articles of the United States Constitution. Moreover, while the Bill of Rights recognized and protected the right to freedom of speech, that right was not endowed by, nor is its continued potency, even in the United States, guaranteed by the First Amendment to the Constitution.

The First Amendment admonishes, among other things, that “Congress shall make no law...abridging the freedom of speech,” acknowledging explicitly that the Constitution itself proscribes only governmental infringement upon the people’s right to express themselves freely. The Constitution does not and cannot control the increasingly stultifying efforts of non-governmental actors to exert their power to suppress the right to speak freely in the public square, actors who seem to presume that the breadth of freedom of expression is co-extensive only with their own degree of tolerance for views with which they disagree or find unpalatable or which they conscientiously believe to be based on false premises.

For those of us who cherish our unalienable freedoms and those of our fellow citizens—whether we ardently agree or vehemently disagree with the content of their expression—I submit that for the sake of ensuring there remains for future generations a vibrant right to free speech worthy of protection against governmental intrusion, we should conduct ourselves and respectfully urge others to conduct themselves as though the spirit of the First Amendment governed our own individual actions—even, and especially, when we believe with all the conviction we can muster that the content of the expression of others that we may feel inclined to suppress is untruthful.

For anyone who finds this proposition outmoded, aberrant, or even abhorrent, I urge you to absorb these words of Associate Justice Anthony M. Kennedy from the 2012 decision of the Supreme Court of the United States in *United States v. Alvarez*: “The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straightout lie, the simple truth.”

So, as lawyers and professional advocates—whose tongues would as well be plucked from our mouths but for the unalienable right of the people we serve to freedom of expression and the concomitant right to petition the government for a redress of grievances—let us dedicate ourselves personally to the spirit and aims of the First Amendment and raise our glasses and our voices in unison to the Constitution of the United States of America.

To the Constitution! ♦

Youth Community Outreach Program-in-a-Box

The American Inns of Court has a suite of program materials to help your Inn extend the mission of the American Inns of Court in your local community. Created by a task force of Inn leaders from around the country, the Youth Community Outreach Project contains presentation materials, handouts, and detailed guidance for how your Inn can help educate high school students about their legal rights and responsibilities as young adults.



Download the materials for free:
www.innsofcourt.org/YouthOutreach



New ABA Ethics Opinion on Solicitation

As you may recall, in 2018, the American Bar Association (ABA) amended its ABA's Model Rules of Professional Conduct relating to "information about legal services," commonly known as the Model Rules on advertising. Perhaps the most extensive amendments were made in Model Rule 7.3, Solicitation of Clients. The amendments, among other things, added a narrowed definition of solicitation to the body of the Model Rule and revised the provisions on "live person-to-person contact":

- (a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.
- (b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with a:
 - (1) lawyer;
 - (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or
 - (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

The amendments also added comment language on what is meant by "live person-to-person contact" and discussed some concerns about live contact, among other subjects.

Nonetheless, amended Model Rule 7.3, while answering some questions, potentially raised others about how far a lawyer's responsibility extends for actions of other persons.

On April 13, 2022, the ABA's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion No. 501, Solicitation. The committee opined that the question of the extent of a lawyer's responsibility for breaches of solicitation prohibitions is not answered solely by Model Rule 7.3. The committee concluded that Model Rule 8.4, Misconduct, in its subsection (a), and Model

Rule 5.3, Responsibilities Regarding Nonlawyer Assistance, extend a lawyer's responsibility for compliance with solicitation prohibitions not only to actions carried out by the lawyer directly but also to the acts of persons employed by, retained by, or associated with the lawyer under certain circumstances.

Per the committee:

- Model Rule 5.3(b) requires lawyer supervisors to make reasonable efforts to ensure that all persons employed, retained, or associated with the lawyer are trained to comply with the Rules of Professional Conduct, including Rule 7.3(b)'s prohibition.
- Under Model Rule 5.3(c), a lawyer will be responsible for the conduct of another if the lawyer orders or with specific knowledge of the conduct ratifies it, or if the lawyer is a manager or supervisor and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
- Model Rule 8.4(a) makes it professional misconduct for a lawyer to "knowingly assist or induce another" to violate the Model Rules or knowingly do so through the acts of another. Failing to train a person employed, retained, or associated with the lawyer on Model Rule 7.3's restrictions may violate Rules 5.3(a), 5.3(b), and 8.4(a).

The committee also provided four "hypotheticals" to illustrate its understanding of the application of the Model Rules on solicitation. In three of the four hypothetical situations, the committee found at least one likely violation of the Model Rules.

The committee's opinions, like the Model Rules, are not governing law. However, nearly every state is a "Model Rules state" in the sense of paying some heed to the Model Rules. The committee's opinion may be found at www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions. ♦

John P. Ratnaswamy, Esquire, is the founder of The Law Office of John Ratnaswamy, LLC, in Chicago, Illinois. He is an adjunct professor of legal ethics at the Northwestern University School of Law. He is the current chair of the American Bar Association Solo, Small Firm, and General Practice Division's Committee on Ethics and Professional Responsibility. This column should not be understood to represent the views of any of those entities or his or the firm's current or former clients.



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Another Chance Can Change a Life of Crime

By Justice Arthur G. Scotland (Ret.)

It is judgment day in Reentry Court. But instead of having the serial car thief headed back to prison yet another time, the judge, prosecutor, defense attorney, and representatives of the probation department and multiple service providers stand, cheer, and applaud the defendant. Because this judgment day is graduation day in Reentry Court—a transition from a life of crime and custody to a productive crime-free and addiction-free life with the help and support of the court and community.

Reentry Court is one of seven collaborative courts in Sacramento County, California. The others are Veterans Treatment Court, Mental Health Court, Drug Court (known as Recovery Treatment Court), Homeless Court, DUI Treatment Court, and ReSET (Reducing Sexual Exploitation and Trafficking) Court for young women in prostitution. The goal is to provide repeat, non-violent offenders the support needed to successfully reenter the community without further incarceration and recidivism.

It takes a combination of commitments for collaborative courts to achieve their goal. First, criminal justice partners must commit to developing published guidelines governing a defendant's eligibility for collaborative court adjudication of the defendant's case. In Sacramento County, this task was done by a judge, prosecutor, public defender, probation officer (focusing on available community treatment programs), and sheriff's

office (in light of rehabilitation programs it already provides to inmates released from post-sentence custody). Agreed-upon guidelines for admission to a collaborative court encompass factors such as a defendant's current offense, criminal history, and criteria unique to each collaborative court, such as substance abuse addiction, mental illness, and veteran status.

Next is the determination whether a particular defendant is eligible and suitable for the program—a decision that begins with a defense attorney applying for a defendant's acceptance in the program. This also requires approval from the prosecutor and further assessment and approval by the court based on program guidelines.

Of course, it also requires the commitment of the defendant to comply with all of the program's requirements—beginning with the defendant

entering a no contest plea to the charge(s) and agreeing to a suspended sentence (usually up to three years in state prison or county jail in felony cases) and formal probation with general conditions of probation plus conditions specific to each collaborative court, including the defendant's participation in an intake assessment of what has driven the defendant's unlawful behavior and what can be done to address the problem(s).

The defendant is then referred to an Adult Day Reporting Center operated by the probation department, where probation officers and service providers develop a specific rehabilitation plan with a variety of services, including drug testing and substance abuse counseling; classes on anger management and cognitive behavioral therapy to help the person learn how to identify and change destructive or disturbing thought patterns that have a negative influence on behavior and emotions; HALT (housing for accountable living transitions); employment skill development (including instruction on resumes, interview skills, and applying for jobs); parenting classes, if applicable; and more. Experience has shown that most criminality begins and continues because of substance abuse, with some defendants becoming addicted before they are 10 years old. Thus, sobriety is a mandatory requirement for a defendant to fulfill the program's obligations.

A multi-disciplinary team, comprised of the judge, prosecutor, defense attorney, probation officer, and service providers, monitors the progress of each defendant, who must appear in collaborative court every two weeks (unless otherwise directed by the court). Immediately prior to court being convened, the team meets to discuss each defendant's progress, what steps still need to be taken by the defendant, and, in some cases, whether the defendant's lack of commitment and compliance with program requirements means he or she is no longer suitable for collaborative court adjudication.

The court hearings include sincere praise from the judge, prosecutor, defense counsel, and service providers for defendants doing their best in the program; encouragement to continue to fulfill program objectives; and awards, in the form of gift cards, to those who have made significant progress toward turning their lives around. For defendants who are not fully taking advantage of program opportunities, there are expressions of disappointment from the judge and other members of the multi-disciplinary team and warnings that further failure to comply will have negative consequences.

Graduation day is the goal and is celebrated in style, with defendants' family members in attendance, compliments by the judge and multi-disciplinary team members, and expressions of gratitude from graduates. In the words of one graduate, the court team "put a lot of hard work into this, and I didn't want to let them down...I didn't want to fail." With their suspended prison or jail terms lifted in Reentry Court, or the charges against them dismissed in the other collaborative courts, the graduates look forward to a crime-free and positive future for them, their families, and the community as a whole. Some graduates even volunteer to mentor defendants going through the program.

A large part of the success of the Sacramento County Superior Court collaborative courts programs is due to the innovative and enthusiastic involvement of Anthony M. Kennedy American Inn of Court members: Court of Appeal Justice Laurie Earl, who, as presiding judge of the Superior Court, called for the creation of a Reentry Court; Superior Court Judge Lawrence Brown, who collaborated with Earl to create the program and who presides over Reentry Court, as well as Mental Health Court, Veterans Treatment Court, Drug Recovery Treatment Court, and DUI Treatment Court; and Lee Seale, Esquire, former chief probation officer, now Superior Court executive officer, who was part of the team that developed the programs.

It also helps that Brown, a former state and federal prosecutor and executive director of the California District Attorneys Association, embraced the collaborative courts' mission from day one and whose enthusiasm and sense of humor set an upbeat tone in the courtroom as he banters with defendants during their hearings. As Brown said, "Court is traditionally an adversarial system...In collaborative courts, everyone works together with a shared goal of treatment and recovery."

The words of another graduate summarized the value of collaborative courts: "[Judge Brown and his court are] an absolute godsend. My life is completely different. If [Mental Health Court] hadn't happened for me, I would have ended up right back out on the street and in the same situation." ♦

Justice Arthur G. Scotland (Ret.) is of counsel for Nielsen Merksamer Parrinello Gross & Leoni LLP and retired presiding justice of the California Court of Appeal, Third Appellate District, in Sacramento, California. He is a Judicial Master of the Bench member of the Anthony M. Kennedy American Inn of Court. He is also a newly elected member of the American Inns of Court Board of Trustees and serves on the Editorial Board for The Bench.



PHOTO CREDIT: @Stockphoto.com/studiocasper

Veterans Treatment Court: How It Works and Why It Succeeds

By Judge David Abbott (Ret.)

For nearly six years, I was privileged to preside over the Veterans Treatment Court (VTC) in Sacramento, California. With the encouragement and support of the offices of the district attorney (DA), public defender (PD), and the probation department, we were able to begin a VTC in Sacramento County. VTC is one of several programs in Sacramento included in a growing trend in California and nationwide commonly referred to as collaborative or restorative justice.

During my tenure as a jurist, I sentenced many criminal defendants, granting probation to some and ordering others into confinement in county jail or state prison. It soon became obvious to me in most cases there was only a slim chance a defendant would be rehabilitated and become a productive member of mainstream society. There were too many obstacles for that person to overcome, not the least of which was a criminal record that prevented a meaningful return to gainful employment. These obstacles were not overcome by simple compliance with the terms and conditions of probation or parole. The general recidivism rate has remained steady at about 70% for decades.

However, I became aware that a newly created drug court was achieving success in lowering recidivism

among drug-dependent defendants by what is best described as a more “hands-on” approach, directed at rehabilitating individuals by enabling them to deal effectively with the specific problem that was responsible for their criminal conduct—namely, drug addiction. Though I never presided in the drug court, I could see the results when I monitored the progress of defendants I sentenced. Therefore, when I was given the opportunity to organize a VTC in Sacramento, I welcomed it with open arms.

But there was another reason for my interest in VTC. I served from 1974 to 1978 as a judge advocate in the Marine Corps, and I saw many of my fellow Marines who served in Vietnam struggle with the lingering effects of fighting in that war without remedy or recompense. Post-traumatic stress disorder (PTSD)

was unrecognized in psychology as a behavioral disorder and veterans of the Vietnam era were largely ignored. An opportunity to help veterans of any armed conflict had a special meaning for me.

VTC in California is governed by Penal Code Section 1170.9, which requires that there be a nexus between the criminal conduct charged and certain mental health conditions arising from military service. Specifically, if a veteran experienced sexual trauma or has PTSD, traumatic brain injury (TBI), or a substance abuse disorder stemming from their service in the military and their criminal conduct was caused by one or more of those conditions, they are eligible for participation in VTC. Successful completion of the VTC program will result in the record of conviction being expunged and waiver of all fines and fees imposed by the conviction, though the obligation to pay restitution to the victim(s) must be satisfied.

Notably, admission to VTC is not a “free pass” or “get out of jail free card.” The key element in this program is treatment. Consistent failure to comply with the treatment plan will result in deletion from the program and execution of the sentence imposed, returning the veteran to jail or prison, with payment of all fines, fees, and penalties. The challenges presented by the treatment plan can be quite rigorous, particularly when addressing the effects of PTSD, TBI, sexual trauma, and undergoing addiction therapy.

In order for a veteran to be admitted to the VTC program, the judge, DA, and PD must all agree the person should be admitted as a participant. This consensus or “buy-in” is why the VTC program and others like it are referred to as collaborative. Everyone involved must be committed to the treatment plan and its goals for that individual veteran.

This does not mean the prosecutor is simply waiting for the veteran’s failure to comply so they can be returned to prison. Nor does it mean the defense counsel is ignoring missteps by their client or standing on claims of privilege to prevent relevant information from being considered. All sides are cooperating in an effort to enable the veteran to succeed and ultimately qualify for graduation from the program. While there are consequences for non-compliance, the program is not conducted on a “zero-tolerance” basis. For example, if a participant tests positive for drugs or alcohol or fails to report for testing, he or she is not summarily deleted from the program. Imposition of community service, or perhaps 24–48 hours of confinement, is ordered and equally important. The treatment plan is re-evaluated to create a structure where the transgression can be effectively avoided in the future.

When a veteran is accepted into VTC, his or her entire personal situation is examined, beginning with a determination of whether the person is homeless, as many are. With help from the Veterans Administration (VA) and various community connections, the veteran is placed in an acceptable sheltered living environment. It may be a rehabilitation facility, group residence, or subsidized apartment, but one of the first objectives is to get the person off the street. This evaluation process includes the veteran’s justice officer (VJO), who is a representative of the VA, and the probation officer assigned to the VTC program. They meet with the veteran to develop a treatment plan and establish all that is expected of the veteran in the program, to include regular and random drug and alcohol testing and weekly visits by the probation officer. The VJO arranges a thorough examination of the veteran’s psychological condition and formulates a treatment plan to address PTSD, TBI, substance abuse, effects of sexual trauma, or a combination of these conditions.

Upon acceptance into VTC, the veteran appears in court and executes a contract accepting the conditions of the program, followed by entry of a plea of guilty or no contest in exchange for a sentence agreed upon by the DA and defense counsel, with approval from the court. Pursuant to the plea, sentence is imposed and execution is suspended pending participation in the VTC program. If the person is represented by private counsel, that attorney usually withdraws from the case and the public defender is appointed to assume representation through completion of the program. A minimum of one year is required for completion of the program, and often success is not achieved for two or three years.

An extremely important element of VTC is the assignment of a mentor for each participant. The mentor is a military veteran, often with combat experience, who volunteers and offers support and guidance to the participant and helps the veteran to remain in compliance with program requirements. Because the mentor is a veteran, there is a bond that develops with the participant that strengthens the person’s determination to meet the program objectives and succeed to graduation. The mentor and veteran meet as often as needed, but bi-weekly at a minimum. This is a unique aspect of VTC when compared to other collaborative court programs and contributes greatly to its overall success.

VTC is administered by a multi-disciplinary team (MDT), consisting of the judge, DA, PD, probation officer, VJO, and members of the court staff as needed. The MDT meets before every court

Continued on the next page.

appearance to discuss each veteran's progress or lack thereof, what has been done, and what needs to be done differently, if anything. At the outset, the veteran appears in court every two weeks and is questioned by the judge about his or her activities, classes, and any problems. Although the judge is aware of these matters because they were discussed at the MDT meeting, they are discussed with the veteran to give the veteran a chance to articulate what is happening from his or her perspective. It also shows the veteran that the judge is indeed involved and informed and, most important, that the judge is concerned and interested in the veteran's case and progress.

As the court appearances progress, their frequency diminishes, and if satisfactory progress is made, the veteran is allowed to "level up," progressing to levels two, three, and four and ultimately graduation. With especially notable progress or performance, a gift card is awarded. It has small monetary value but is appreciated by the veteran as a symbol of progress and achievement.

Treatment is stressed as the highest priority in the program, for without it, the veteran cannot progress and succeed. Therefore, although it is desirable for the veteran to have a job or be enrolled in school, those activities cannot take precedence over treatment and attending classes such as addiction rehabilitation therapy, cognitive behavioral therapy, batterers treatment, PTSD therapy, TBI therapy, a 12-step program, or sessions with a licensed clinical therapist, psychologist, or psychiatrist. Most treatment is received on an

outpatient basis, but some modalities require inpatient therapy for three to six months.

VTC requires commitment from the individual veteran, but also from the justice partners overseeing the program. By working together and collaborating, positive results have been achieved. I mentioned the general recidivism rate as being 70%. The recidivism rate among graduates of VTC is less than 5%. Moreover, we have graduates of the program who return as mentors to support the participants. Some veterans have received college degrees while in the program, and others have pursued bachelor's and master's degrees after graduating. Some of our participants have testified before the state legislature to increase funding for housing and similar programs.

By design, our U.S. justice system, and particularly our criminal justice system, is adversarial in nature. However, collaborative justice is directed at correcting the problem that led to criminal conduct in order to prevent continuing criminality. VTC is a fine example of this approach and how it can succeed. Prosecution, defense, judge, VA, VJO, and probation direct their energy and effort toward rehabilitating the individual, with a high degree of success. I have described my work in VTC as my most rewarding experience as a judge because our level of success showed me the interests of justice were well-served. ♦

David Abbott is a retired Superior Court judge from Sacramento, California, where he served as a trial judge for 18 years. He presided for five years over the Veterans Treatment Court in Sacramento, which he describes as "my most fulfilling experience as a judge." He is a military veteran of the Vietnam era, serving as a judge advocate in the U.S. Marine Corps from 1974 to 1978.



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The Importance of Juvenile Drug Treatment Court

**By Judge Joseph L. Fernandes and
Sabine A. Glocker, Esquire**

In 1995, in response to the success of adult drug treatment courts, juvenile drug treatment courts began emerging as a promising new model to help promote the rehabilitative focus of the juvenile justice system and aid in reducing adult criminality. Estimates suggest that substance abuse and related crime cost the U.S. \$820 billion to \$3.4 trillion annually. When youth become entangled in substance abuse and delinquency prior to adulthood, they run a substantial risk of continuing this behavior into adulthood and suffering the consequences not only for themselves, but their families and their communities. However, research suggests early intervention is likely to aid in juveniles becoming productive members of adult society and leading more prosperous lives.

Juvenile drug treatment courts (JDTCs) are one such method of not only preventing the financial burdens of adult criminality and substance abuse, but also improving the lives of youth nationwide. While somewhat difficult to conduct methodologically rigorous empirical studies on JDTCs, what research has been done suggests that JDTCs are an effective and positive method for reducing contacts with the juvenile justice system, reducing contacts with adult criminal courts once participants reach adulthood, and generally improving the lives of participants.

The Department of Justice's Office of Juvenile Justice and Delinquency Prevention released its

Juvenile Drug Treatment Court Guidelines in 2016, in response to the need for research-informed guidelines to promote efficacy in these programs and encourage high-quality service delivery for substance-abusing youth. The guidelines explained that approximately half of the juveniles entering the juvenile justice system have problems related to drugs and alcohol. However, the point of JDTCs is to focus on treatment for youth with substance use disorders, so the number of eligible youths is lower than the number of drug- or alcohol-related charges seen in juvenile courts. The federal

Continued on the next page.

guidelines detailed seven objectives with a number of guidelines nested beneath each objective. For instance, Objective 2 was to “ensure equitable treatment for all youth by adhering to eligibility criteria and conducting an initial screening.” Additionally, Guideline 2.1 states that the eligibility criteria for a JDTC program should include youth age 14 or older with a substance use disorder and moderate to high risk of reoffending. The objectives span from the qualifications of team members and requisite standards for assessment tools to the types of treatment methods that should be used within the programs and what data should be collected.

Over 25 years after the development of the first JDTC in the United States, more than 400 counties operate these programs. They exist in a vast array of jurisdictions, all operating with the goal of reducing youth contacts with the juvenile justice system, and subsequently the adult criminal system, and generally improving the lives of youth so they can become more productive members of society. JDTC programs are operated everywhere from small jurisdictions such as Trumbull County, Ohio, with fewer than 200,000 residents, to large jurisdictions such as Los Angeles County, California, with more than 10 million people.

Many programs began prior to the development and release of the federal guidelines, but the general idea behind the programs and the broad eligibility criteria are similar across jurisdictions and in line with the guidelines. Typically, eligible youth are ages 14 to 17, while the occasional program allows youth as young as 12 (Davies County, Kentucky) or 13 (Nassau County, New York). Juveniles typically cannot have violent or sexual offenses charged at the time of program consideration or in their history (although some counties, such as Clark County, Nevada, will assess these instances on a case-by-case basis, allowing some youth with those charges into the programs).

Some programs have a specific list of charged offenses eligible for the program (Palm Beach County, Florida), while others allow a broader array of offenses as long as the juvenile has been found to have a substance abuse disorder (Cuyahoga County, Ohio). Some place restrictions on the specific drug-related offenses allowed into the program, such as Santa Clara County, California, which does not permit juveniles convicted for selling more than \$100 of drugs. Others work with repeat offenders specifically, such as Oakland County, Michigan, whose JDTC program website states the program is for “youth who are non-violent repeat offenders [who] have been charged with drug, alcohol, or related offenses.”

Often youth get only one shot at a JDTC, such as in Santa Clara County, California, whose website specifically states that to be eligible youth must not have attended drug court before. Youth and their families also usually need to agree to participate in the program, and the programs are typically voluntarily.

We are from Philadelphia, Pennsylvania, and are a judge of the Court of Common Pleas and his judicial law clerk. In the Commonwealth of Pennsylvania, JDTCs are referred to as Juvenile Treatment Courts (JTCs), and five counties have such programs: Philadelphia, Lackawanna, Northumberland, York, and Blair counties. Philadelphia County’s First Judicial District is among the largest state courts in the U.S. According to the 2020 Juvenile Court Judges’ Commission’s Juvenile Court Annual Report, 1,955 delinquency allegations were brought in Philadelphia County, with 1,502 resulting in dispositions. This number is down due to a variety of reasons, including changes in arrest policies and the COVID-19 pandemic. While these and other factors generally resulted in a reduction of crime across all offense types, according to the report, drug offenses saw a smaller decrease than other offenses. In 2019, 2,664 delinquency allegations were filed in Philadelphia County, and 349 were drug offenses. In 2020, 266 of the 1,955 filed allegations were drug-related offenses.

While the 2021 report has not been published yet, given the percentages of past years, it is safe to estimate that roughly 13 to 14% of delinquency allegations in 2021 were likely drug related. The JTC program of the Philadelphia Family Court can provide and extend services to many youth. Courage, motivation, and leadership are needed from all local juvenile justice stakeholders for the program to continue to be an excellent diversion program for pre-adjudication youth in Philadelphia County. As of February 2022, Judge Joseph Fernandes was appointed the new presiding judge for the Philadelphia Family Court JTC program. With the end of the pandemic in sight, the goal is to re-focus and extend JTC services to assist as many Philadelphia youth as possible.

The JTC programs in the Commonwealth of Pennsylvania are certified in compliance with the federal guidelines and adhere to Pennsylvania’s principles of balanced and restorative justice: 1) community protection, in which the citizens of the Commonwealth have a right to a safe and secure community; 2) accountability, in which a juvenile incurs an obligation to the victim and the community to be accountable for his or her delinquent actions; and 3) youth redemption, which embodies

the belief that juveniles are capable of change and earning redemption. This last principle focuses on competency development, in which juveniles entering the Commonwealth's juvenile justice system should leave the system as more responsible and productive members of the community, and on individualization, where it is acknowledged that each case in the juvenile system has unique circumstances and that the response must be individually tailored based upon assessment of all relevant information and factors.

The Pennsylvania JTC programs provide continual judicial supervision and services for substance abuse, mental health, primary care, and family, education, vocational, and social development. The JTCs also coordinate and supervise the delivery of support services the juveniles need to address the problems that contributed to their involvement in the justice system.

The Philadelphia Family Court JTC program permits youth ages 14 to 17, with no serious mental health problems other than an identified need for substance abuse treatment, with no more than two prior adjudications, and no current or prior violent or firearm charges to seek services. Juveniles are interviewed by court intake workers, and those who admit to drug use or who indicate a likely use of drugs are then referred to the Clinical Evaluation Unit for a substance abuse assessment to determine need for treatment. Once accepted into the program, the juvenile is placed on deferred adjudication. When the juvenile successfully completes the program, the charges are dismissed, and if the juvenile continues to be arrest and drug free for another 12 months following completion of the program, the record of these charges will be expunged entirely. Juveniles come to court for review hearings bi-weekly for the first two phases of the program, and once entering the third phase, their court attendance may be reduced. The program further contains a graduated process of rewards and responses to ensure the juvenile continues complying with the program and has a positive and successful outcome.

Despite the fact that JDTCs are a benefit for the individual youth and society at large, the local community stakeholders, particularly the defense bar and the prosecutor's office, must reach a consensus on whether a juvenile is eligible to enter the Philadelphia County JTC program. The Juvenile Court, through the presiding judge and treatment providers, will always be a critical component. Among the many roles of the presiding judge, it is the role of community energizer and champion of

the court that is critical for a JDTC/JTC to function efficiently and be offered as an alternative diversion program to the juvenile arrested for drug offenses.

The principal of balanced and restorative justice requires the juvenile justice stakeholders to play a large role throughout the JTC process. One of the challenges to the presiding judge is how to engage the juvenile justice stakeholders. Of paramount importance is changing the mindset of how the prosecution and defense looks at the culture of juvenile justice whereby drug treatment courts are still a viable diversion program that would benefit everyone. It is imperative that the prosecution and defense carry out their roles in a way that benefits the individual juvenile, vis-à-vis JTC programming. In the not too recent past, there have been many reforms and initiatives to reduce crime and jail populations and to enforce various drug laws. However, the need for evidence-based drug treatment has actually risen, not diminished. The good news in Philadelphia County is that the Family Court Juvenile Drug Treatment Program is ready and available with the capacity to offer its services as long as court-involved youth are being considered for and offered the opportunity to participate in the program.

Research has shown that evidence-based drug treatment is effective and suggests that addressing drug issues as a juvenile is very effective at reducing drug issues in adulthood. The Philadelphia Family Court JTC program has a long history of success since its inception in 2004. It is an evidence-based program and certified as a problem-solving court by the Administrative Office of Pennsylvania Courts. Juveniles continue to graduate from the program, benefiting not only themselves but their families and local communities too. The City and County of Philadelphia reaps the benefits on a daily basis because the successful graduates of the JTC have received drug treatment and life skills, likely completed their education, and possibly obtained employment, making them more productive members of society upon reaching adulthood. This success is rooted in the philosophy of "restorative justice," the spirit of which is housed in the purpose clause of the Pennsylvania Juvenile Act. ♦

Judge Joseph L. Fernandes of the Court of Common Pleas in Philadelphia, Pennsylvania, is assigned to the Family Court Juvenile Branch, Dependency and Delinquency areas, and additionally presides over Juvenile Drug Treatment Court. He is a member of the Nicholas Cipriani American Inn of Court. Sabine A. Glocker, Esquire, is a 2019 graduate of Drexel University Kline School of Law's accelerated JD-program in Philadelphia, Pennsylvania, and also holds a master of science in forensic psychology. She currently serves as judicial law clerk to Fernandes.



Safe and Healthy Families Court— Nebraska’s First Child Welfare Problem-Solving Court Centered on Domestic Violence

By Abby Osborn, Esquire

In 2020, Judge Elise White, a Master of the Bench of the Robert Van Pelt American Inn of Court, in Lincoln, Nebraska, was appointed to the Separate Juvenile Court of Lancaster County. After practicing as an attorney and guardian ad litem, she had a vision for what she wanted the “domestic violence (DV) track” she was taking over to look like. Since taking the bench amid the early days of the pandemic, the DV track has now been officially established as a problem-solving court, renamed the “Safe and Healthy Families Court.” It is the first such court in the state.

In addition, the court’s partnering organizations were awarded the Breakthrough Initiative Grant by the Woods Charitable Fund, providing \$900,000 over three years to establish and fund the problem-solving court.

Attorneys accepting appointments in the Safe and Healthy Families Court, including prosecutors, must adhere to requirements that include completing monthly reflective practice sessions facilitated by trained practitioners, certifying they have reviewed the practice manual for the court, and agreeing to

strive to adhere to the court’s mission statement: “Professionals will work as a team to enhance communication and build relationships that will engage families, provide individual support, and ultimately improve outcomes in domestic violence cases.”

The practice manual sets forth the evolution of the court from the informal domestic violence track to the established problem-solving court, as well as the vision, mission statement, goals, intended outcomes, and procedures for admission and treatment protocols. The practice manual also outlines

the responsibilities for those involved in the Safe and Healthy Families Court, including the judge, various attorney roles, Department of Health and Human Services, treatment providers, and research team.

The research team, through the Center on Children, Families, and the Law (CCFL) at the University of Nebraska, Lincoln, provides program support, technical assistance, and evidence-based guidance. The team also oversees data collection and analysis to measure and assess the effectiveness of court process.

In addition to adjudication, disposition, monthly team meetings, and regular review hearings, monthly meetings among stakeholders also occur. These meetings are for attorneys, including prosecutors, parents' attorneys, and guardians ad litem; Department of Health and Human Services representatives; advocates from domestic violence victim advocacy organizations; CCFL staff; and Judge White. A separate sub-committee of shareholders produces a monthly continuing legal education series related to child welfare cases, specifically issues related to trauma and domestic violence.

White agreed to an interview regarding the Safe and Healthy Families Court and the unique opportunity that it provides to the families of Lancaster County. Having practiced alongside, and now before, White in the DV track, I was eager to learn more about her design for the court, why it is working, and what she sees for the court's future.

Why did you decide that the Safe and Healthy Families Court should be an officially sanctioned problem-solving court?

One of the struggles that we have had historically with child welfare cases where domestic violence is an adjudicated issue is ensuring for the children's safety without revictimizing the survivor of the domestic abuse. Given the traditional adversarial approach to litigation for these cases, perpetrators of domestic violence were often able to use the legal system itself to further victimize the other parent and keep the focus off their own harmful behavior. As an approved problem-solving court, we are now ethically authorized to take a team approach to these cases, which means as a court team we will be better able to support the surviving parent and hold the perpetrator accountable through the use of incentives and sanctions.

How do you think your perspective of recently joining the bench after practicing in the "DV track" influenced your desire to apply to be a problem-solving court?

Prior to being appointed to the bench, I represented victim parents and perpetrator parents and

served as guardian ad litem for the children on the DV Track, led by Judge Linda S. Porter. Having done this court from the attorney/guardian ad litem role really enlightened me to how my clients and the team viewed the approach on the track. This helped me gain a good understanding of the client's perspective, as well as the team's perspective to what was going well and what needed improvement when I took over handling this docket.

How has the grant by the Woods Charitable Fund enhanced the transition to an official problem-solving court?

The funding by Woods has been instrumental in providing domestic violence-informed training for our team, as well as allowing the various agencies working with the team and the families we serve to take a community-based approach to supporting the work done by the court team. It has really enhanced the quality and quantity of the collaboration between our community partners, which has been an asset to the children and families we have the pleasure of serving.

What has become the most noticeable difference between your problem-solving docket and your regular abuse/neglect docket?

The most striking difference I have seen has borne out in the data that we have collected so far [through the University of Nebraska, Lincoln Center for Children, Families, and the Law] and in my anecdotal observations, [and that] is the perception by the parents we work with that the court process is actually making things better. The research team working with our court has been conducting parent surveys for the problem-solving cases, as well as control group surveys with the non-problem-solving court families. The data have been quite resounding in that the parents in the problem-solving court overwhelmingly report (in significantly higher percentages than the control group) that they feel their voices are being heard, their needs are being met, and their family is doing better as a result of their involvement with the court.

What would you like to be able to do with the problem-solving court that you still are not able to do?

I think our biggest need right now is getting a problem-solving court coordinator to help manage the docket and be a point person for the court team. Given that we are a somewhat unusual problem-solving court in that we don't work with Probation (which is under the judicial branch), but rather the case management is through the Department of

Continued on the next page.

Health and Human Services (which is under the executive branch), trying to figure out how that position is funded and where that person would be employed has been a bit of a challenge. I am grateful that we have had wonderful cooperation between the department and the courts to try to get to the point of having this court even be a possibility, so I am confident that we will be able to get this need filled through a collaborative effort as well.

Why do you think the monthly collaboration between stakeholders is so important to the success of the Safe and Healthy Families Court?

One of the things we have learned about domestic violence in the court system is that division and lack of communication among the professionals working with these families gives the perpetrator of the abuse the ability to keep the focus on the team's internal conflict and not on their own dangerous behaviors. By having the monthly stakeholder meetings we have been able to create stronger connections between everyone working with these families and have been able to problem-solve and air our differences in a healthy constructive way,

which I believe has led to a more cohesive court team. Having a strong team allows us as a court team to support the victim parent while holding the perpetrator accountable, which is the goal of this entire program.

The benefits of the formal establishment of the Safe and Healthy Families Court have been recognized throughout the Separate Juvenile Court of Lancaster County. The Family Drug Court program has now begun the application process for formal establishment as a problem-solving court as well. I believe the establishment of formal policies, procedures, and the continued integration of stakeholders in a collaborative format will continue to improve the services to the families served through our juvenile court system. The Safe and Healthy Families Court is a model for success within our jurisdiction and could be in yours as well. ♦

Abby Osborn, Esquire, is an associate attorney at Shiffermiller Law Office, P.C., L.L.O. in Lincoln, Nebraska. Her practice focuses on juvenile court, criminal defense, and plaintiff's side employment and civil rights litigation. She is a member of the Robert Van Pelt American Inn of Court.

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PROFILE IN PROFESSIONALISM

Judge Susan H. Black

2022 Professionalism Award for the Eleventh Circuit

By Rebecca A. Clay



Even as a young girl, Susan Black wanted to be a lawyer like her father. When she was about 14, her dad took her to meet the dean of the University of Florida's law school, where he had gone. The dean was very nice, Black remembers. But, she says, he claimed she would change her mind and dismissed her with a "nice to meet you." "He was a person of his time," Black says. "Women were not going to law school then, so it never occurred to him that I would stay fast with my decision."

Black's father provided a counterbalance. A World War II veteran who had seen how many men did not return home, he wanted both his daughters to have professions and be able to support themselves. "The dean was not very encouraging, but my father was," Black says.

That encouragement paid off. After earning an honors undergraduate degree from Florida State University in 1964, Black achieved her dream of a law degree from the University of Florida's law school—now known as the Fredric G. Levin College of Law—in 1967 and an LLM from the University of Virginia School of Law in 1984. In 1992, President George H.W. Bush appointed her as a judge in the U.S. Court of Appeals for the Eleventh Circuit. She assumed senior status in 2011.

Before joining the Eleventh Circuit, Black had been a judge in the U.S. District Court for the Middle District of Florida since President Jimmy Carter appointed her in 1979. She served as chief judge of the Middle District of Florida from 1990 until her appointment to the Eleventh Circuit. Black began her judicial career as a judge in Florida's Duval County Court from 1973 to 1975 and as a state circuit judge in Florida's Fourth Judicial Circuit from 1975 to 1979. Before beginning her career as a judge, Black was assistant state's attorney and assistant general counsel, both in Jacksonville, Florida.

Black's career has been a series of firsts as a woman in Florida, point out members of the Chester Bedell American Inn of Court in Jacksonville, who seconded U.S. Eleventh Circuit Judge Joel F. Dubina's nomination of Black for the award. "She was Jacksonville's first female prosecutor, Jacksonville's first female assistant general counsel, and Duval County's first female county judge," they write. "In 1979, she became Florida's first female

federal judge, and in 1990, she became the first female chief judge of the U.S. District Court for the Middle District of Florida." In 1992, she became Florida's first female Circuit Court of Appeals judge.

Black has been active in training lawyers and judges throughout her career. She has taught at the National Institute for Trial Advocacy at the University of North Carolina at Chapel Hill and at Federal Judicial Center seminars across the United States. She spent more than 15 years teaching federal appellate practice at Duke University School of Law. As a state judge, Black was dean of the College for New Florida Circuit and County Court Judges and chaired the Florida Conference of Circuit Judges' Education Committee.

But "what makes Judge Black an especially deserving recipient of this award is her long devotion to the American Inns of Court," writes Chief Judge William H. Pryor Jr. of the Eleventh Circuit, who also supported Black's nomination for the award. "She has led and supported the Inns of Court movement from the beginning."

Black served on the founding board of trustees of the American Inns of Court Foundation from 1985 to 1991. She was also a founding member of the Chester Bedell American Inn of Court and served as its first president and again from 1991 to 1992.

"The concept of the Inns is not complicated: It is judges, experienced litigators, less experienced litigators, and law students getting together to share ideas," Black says. "In that sharing of ideas, the traditions of ethics and skills can be transmitted to new lawyers and students."

As a pioneering woman in the legal profession, Black has also served as an informal role model for girls and young women.

"As a little girl, I would often see Judge Black and her family at lunch on Sundays," remembers Virginia Baker Norton, now a circuit judge in the Fourth Judicial Circuit of Florida, who wrote in support of Black's nomination. "I was so excited to know that a girl could be a judge! Judge Black always had time for me and treated me with the greatest of respect. She was the first judge that I ever met, and consequently, represented all judges to me." ♦



Sharon D. Nelson, Esquire, is a practicing attorney and the president of Sensei Enterprises Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association, and the Fairfax Law Foundation. She is a co-author of 18 books published by the American Bar Association. She can be reached at snelson@senseient.com.

John W. Simek is vice president of Sensei Enterprises Inc. He is a certified information systems security professional, certified ethical hacker, and a nationally known expert in the area of digital forensics. He and Nelson provide legal technology, cybersecurity, and digital forensics services from their Fairfax, Virginia, firm. He can be reached at jsimek@senseient.com.

TECHNOLOGY IN THE PRACTICE OF LAW

By Sharon D. Nelson, Esquire, and John W. Simek

25% of Law Firms Have Been Breached, Only 36% of Firms Have an Incident Response Plan

Law Firms Are Not Moving Quickly Enough to Secure Their Data

You just can't quarrel with the data, which comes from the American Bar Association's *2021 Legal Technology Survey Report*. The true number of breached firms is likely significantly higher. Very often lawyers whose firms have suffered a breach, especially in large firms, are unaware of the breach unless it becomes public.

For more than 25 years we have been asking ourselves why more law firms don't have an incident response plan (IRP). We regularly ask law firm partners why they don't have an IRP. The most common answers are:

- "We're too small to be a target." (untrue)
- "Developing an IRP takes too much time and money." (Do these folks have any idea how much a data breach will likely cost in time, money, and reputational damage?)

The Grim Reality of Today's World

Educating lawyers about how vulnerable they are is a long process. In April 2022, Law.com posted an article precisely on this topic. As the article points out, cybercriminals don't care much about a law firm's size—they are more interested in the clients the law firm represents and the likelihood that smaller firms are easier to breach.

In today's world, most law firms, even the small ones, have cybersecurity insurance. Most folks are amazed to hear that insurance companies are a prime target for attackers. If they get into the networks of insurance companies, they not only know who they insure, but how much insurance they have. That makes it much simpler, for instance, to know how to price a ransom demand.

Practical Steps to Take to Protect Your Firm

First, enable multifactor authentication anywhere you can. It is generally free and will prevent more than 90% of account takeovers. Have adequate security in place to protect your data—if you hire a small cybersecurity firm whose employees have strong certifications in cybersecurity to do a security assessment, you will have a smaller price tag than if you engage one of the big players.

Generally, the smaller cybersecurity firms will give you a flat fee price, and they can often do

the assessment remotely, which cuts back on the price, working hand-in-hand with your IT people (or person!). As part of the fee, they usually provide a report detailing critical vulnerabilities that exist—these are your first problems to fix, and the company will likely provide an estimate/proposal—and then describe lesser vulnerabilities that you may have time to budget and plan for. This is money well spent. We do a lot of law firm security assessments, and only once did we find a firm with no critical vulnerabilities. Understand that an assessment is only a point in time. Vulnerabilities are constantly being discovered, which means you need to reassess periodically.

So What Does an Incident Plan Do for You?

Benjamin Franklin once said, "If you fail to plan, you plan to fail." Truer words were never spoken. On a regular basis, we are called by panic-stricken lawyers because their networks were compromised. Why are they panic-stricken? Because they don't have a plan. We call this the "headless chicken response." It is neither pretty, nor effective.

Here are key elements of the IRP:

- Who will manage the breach? Someone with a calm demeanor is preferred.
- Who will you call first? Our answer is your data breach lawyer, who knows volumes about data breaches that you don't and can guide you wisely.
- Who do you report the breach to? This answer has changed from calling the regional FBI office to contacting the Cybersecurity and Infrastructure Security Agency (CISA), part of the U.S. Department of Homeland Security. CISA can be reached to report anomalous cyberactivity and/or cyber incidents 24/7 at report@cisa.gov or (888) 282-0870.
- Identify a digital forensics company that you can call to investigate and remediate the problems.
- Notify your cyberinsurance company (have a paper copy of that policy and the state data breach notification laws and state privacy laws that you are subject to). Remember that you must also file a claim.
- Call your bank to place it on alert in case a suspicious transaction should arise.

There is much more to do, but if you roll up your sleeves and get to work, this will be a good start! ♦

Life after Incarceration: Addressing Legal Hurdles Upon Reentry

Program No.: P13420

Presented By: William L. Dwyer American Inn of Court
 Presented On: January 12, 2016
 Materials: List of Questions, Handouts, PowerPoint Presentation
 CLE: Approved (1.5hrs)

Summary

After the many hardships of prison life, people with criminal convictions face a new set of adversities upon release. This program focused on the many legal challenges faced by formerly incarcerated individuals as they reenter society. The program began with a sampling of legal hurdles such as housing, health care, and employment. Guest speakers who are subject matter experts elaborated on these various hurdles, providing examples and context. A series of “tough questions” was then presented to the membership, using real-time polling technology to track and discuss the results. Finally, opportunities for addressing these legal hurdles (including pending legislation and volunteer opportunities) were shared with the group.

Roles

Introduction Barrister
 Introduction Master of the Bench
 Sampling of Legal Hurdles Barrister
 Tough Questions (4) Barrister (3), Pupil (1)
 Conclusion Barrister

Agenda

Brief Introduction 5 minutes
 A Sampling of Legal Hurdles 15 minutes
 Tough Questions/Audience Participation 45 minutes
 What Can You Do? 20 minutes
 Conclusion 10 minutes

Recommended Physical Setup

PowerPoint presentation and real-time polling technology

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Submissions are encouraged and should be sent to programlibrary@innsofcourt.org and include all materials necessary for other Inns to restage the program. These materials might include a script, supporting documents, research materials, or any handouts.

When submitting a program, please be sure to include a Program Submission Form, which can be downloaded from our website, home.innsofcourt.org. Each program submitted to the national office adds to the Program Library and helps your Inn along the track to Achieving Excellence.

If you have any questions please call (703) 684-3590 or email programlibrary@innsofcourt.org.

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